

Gangotri Singh

Vs

State of U.P.

Criminal Appeals Nos.412-413 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

11.03.1992

JUDGEMENT

K.JAYACHANDRA REDDY, J.:-

1. The appellant Gangotri Singh was tried along with two others for an offence punishable under S. 302 read with S. 34, IPC. Each of these three accused was convicted and sentenced to death. A reference for confirmation of their death sentences was made to the High Court. The three convicted accused also filed separate appeals. The High Court by a common order acquitted the other two accused and confirmed the conviction of the appellant but reduced the sentence to imprisonment for life. The appellant has preferred these two appeals against the common order passed by the High Court.

2. The deceased Ram Naresh Pathak was a resident of Amdapur. The complainant PW 1 is the younger brother of the deceased. The appellant Gangotri Singh belongs to village Jhala Tarhar. The other two accused belong to village Amdapur and the Ruknapur. All this area falls within the limits of Payagpur police station, Bahraich District. The accused are related to each other. There was political rivalry between the appellants and the deceased. They belonged to different political parties. During the elections of a Cooperative Society the deceased helped one candidate who contested against Kanwar Bahadur Singh, one of the accused. The candidate supported by the deceased succeeded. This created bitterness among the parties and the police initiated proceedings under Sections 107 and 116, Cr. P. C. against both the parties. Three months thereafter there was another election of the Directors of Cooperative Bank. The deceased won the election. This further aggravated the hostility. PW 2 was the friend of the deceased. His wife was admitted in the local ladies hospital. On 26-12-1978 PW 2's wife delivered a dead child and therefore she had to stay in the hospital for some time. The deceased used to visit the hospital now and then. On 29-12-1978 at about 7 p. m. the deceased went to the hospital in a jeep driven by PW 3, PW 1 and PW 2 were also there accompanying the deceased. They spent some time in the ward of the hospital and came out to get into the jeep. At about 7.20 p.m. when the deceased was descending from the stair-case of the varandha to reach the jeep, the three accused were standing in the varandha. There were electric bulbs and tube-lights burning in the varandha. The other two accused exhorted the appellant to kill the deceased. Thereupon the appellant fired a shot by a country made pistol at the deceased which hit the deceased on his right shoulder and he fell down. The barrel of the pistol gave way and the pistol was dropped and the accused ran away. PW 3 immediately admitted the injured deceased in the emergency ward of the hospital. The doctor PW 9 examined him at 7.30 p.m. and he found a fire arm internal wound 8 cm x 3 cm in the lower part of right scapular region. The doctor immediately sent a requisition for recording of the dying declaration. PW 1 the brother of the deceased also submitted a written report at about 8 p.m. and a case under S. 394 read with S. 34, IPC was

registered. Meanwhile the Executive Magistrate PW 8 came to the hospital and recorded the dying declaration of the deceased, i.e. Ex. KA-16. The condition of the deceased became serious and he was transferred to the Lucknow Medical College where he succumbed to his injuries at 12.45 a.m. on the night of @page-SC949 3-1-1979. The doctor conducted the postmortem and on internal examination he found right side 8th rib was fractured and he removed one pellet from the right side of the chest. Right scapula was fractured in its lower part into multiple pieces. 5th to 9th spines of vertebrae were fractured and three pellets were also recovered from there. Left pleura was also lacerated. The doctor opined that the death was due to shock as a result of laceration and compression of spinal cord and other injuries which were found to be sufficient in the ordinary course of nature to cause death. An altered FIR was registered under Section 302, IPC. The Sub-Inspector PW 15 conducted the investigation seized fired cartridges and the pistol and also the barrel which was burst and they were sent to the ballistic expert. The accused were arrested and after investigation charge-sheet was filed. During the investigation another dying declaration Ex. KA-28 from the deceased was recorded by the Investigating Officer.

3. The prosecution relied on the evidence of PWs 1 to 3, the eye-witnesses and the dying declarations Ex. KA-16 and KA-28. As mentioned above the learned Sessions Judge accepted the prosecution case in toto and convicted all the three accused. The High Court, however, acquitted the other two accused, but confirmed the conviction of the appellant as mentioned above. Before the High Court the defence counsel submitted that in the entry made by the doctor in bedhead ticket Ex. KA-2 it was noted that the injured stated that somebody shot at him and therefore the subsequent dying declarations KA-16 and KA-28 cannot be relied upon as they were a result of tutoring. It was also contended that the three eye-witnesses also are highly interested and therefore their evidence cannot be relied upon. The High Court, however, held that the endorsement in Ex. KA-2 relied upon by the defence was related to the manner in which the deceased had received injuries and did not refer to the identity of the assailants and, therefore, Ex. KA-2 does not belie the dying declaration Ex. KA-16 properly recorded by the Magistrate PW 8. The High Court, however, acquitted the other two accused on the ground that they did not participate in the occurrence and convicted the appellant on the ground that he caused the death of the deceased.

4. More or less the same contentions are advanced before us. Shri K. Madhva Reddy, the learned counsel submits that the endorsement in KA-2 made by the doctor was based on the information given by the deceased person and the same shows that some unknown persons assaulted the deceased and there is no ambiguity about the same. Having carefully examined the contents of Exs. KA-2 and KA-16 we are not able to agree with the learned counsel that KA-2 belies the version given in KA-16 and the later was a result of tutoring. The doctor PW 9 who made this entry stated in his deposition that on his asking the injured as to what happened the injured told him in Hindi and he made the endorsement in KA-2 in English in the bedhead ticket. The prosecution treated him hostile and cross-examined further on this aspect. PW 9 admitted that he did not even note that the injured was brought by his relation and on the other hand he noted "no money no relations". The doctor, however, admitted that neither his signature nor any date is there under the said endorsement. He also admitted that it is not a dying declaration and, therefore, he had informed to call the Magistrate. The endorsement in KA-2 reads as, "the patient alleged that somebody at about 7.24 p.m. on 29-12-78 shot at me on my forearm shoulder and ran away". Firstly in our view there was no necessity to make such an endorsement. As rightly pointed out by the High Court the endorsement related only to the manner in which the deceased had received injuries, therefore, much weight cannot be given to the contents of Ex. KA-2 and the same cannot be treated as a dying declaration and that apart Ex. KA-16 was recorded by the Magistrate at about 8.05 p.m. and we fail to appreciate as to how anybody could tutor the deceased in the hospital within such a short time

particularly when the injured was in great agony and when there were doctors and other people all around. PW 8 the Executive Magistrate stated in his @page-SC950 deposition that he reached the hospital at 8 p.m. and he removed everybody from the place and recorded the dying declaration in the presence of the doctor. After recording he read out the statement of the deceased and took the thumb impression because his right hand was having needle for glucose drip PW 9 remained there from the beginning to the end and signed on it certifying that the patient was conscious. In KA- 16 the deceased has stated that when he was coming down from the stair-case of the Women's Hospital he saw the three accused including the appellant standing there and the appellant fired at him. He did not, however, mention that the other two accused exhorted the appellant. As a matter of fact he had bitter enmity against the other two accused and the appellant was not an important person as compared to the other two accused, yet the deceased categorically stated that it was the appellant who shot at him. This itself shows that the declaration given by him was not a result of tutoring. It may not be necessary for us to refer to the contents of Ex. KA-28 recorded by the Investigating Officer. At that stage it was recorded as a statement under Section 161, Cr. P. C. and naturally more details were incorporated. However, we are satisfied that the Ex. KA-16 is a true one. Further we have the evidence of three eyewitnesses PWs 1, 2 and 3. We have gone through their evidence carefully. Their presence at the place of occurrence cannot be doubted. Having witnessed the occurrence they immediately shifted the injured to the hospital. Each one of them has categorically stated that the appellant shot at the deceased. Therefore there is overwhelming evidence against the appellant. We see no merits in these appeals. These are accordingly dismissed. Appeals dismissed.

</html