

Dr. I.B. Gupta

Vs

State of U.P.

Criminal Appeal No. 134 of 1984

(P. N. Singh, K. Jayachandra Reddy JJ)

08.04.1993

ORDER

1. In respect of a murder that took place on September 11, 1978 one Shampoo alias Surendra Pratap Singh was tried for the offence punishable under Section 302 of India Penal Code. He was convicted by the Sessions Court. The prosecution also relied on a dying declaration recorded by Dr I.B. Gupta and also by the Executive Magistrate. The convicted accused preferred an appeal to the High Court. The High Court acquitted him. However, in the course of the judgment the High Court commented on the conduct of Dr I.B. Gupta and observed that subsequently at the instance of the Investigating Office the dying declaration of the deceased was interpolated as the dying declaration recorded by the Executive Magistrate and the same was not in conformity with regard to the participation of one Subhash. Thereafter the following observation is made by the High Court :

"The entire conduct of Dr I.B. Gupta in the circumstance of the case is highly undeserving of a Medical Officer. He is not fit to be retained in Government service."

2. It may be mentioned here that the State had preferred on appeal to this Court against the order of acquittal passed by the High Court and as that appeal was pending in this Court Dr. I.B. Gupta filed the present appeal for expunging the remarks and special leave as granted. It appears that the State appeal is abated since the respondent died. In this appeal it is submitted that Dr. I.B. Gupta, the appellant, only acted in discharge of his official duty and it was a typographical mistake, namely, that the timing was 1.45 a.m. instead of 1.45 p.m. when the dying declaration was recorded and observation made is of serious nature affecting his career and his promotion also.

3. We have perused that part of the judgment of the High Court. The observation is made mainly relying on the statement of the Investigating Officer who is said to have recorded the statement of the doctor under Section 161 CrPC. Relying on the statement, the High Court reached the conclusion that the doctor also connived to bring the dying declaration in conformity with the prosecution version. This observation in any event overlooks the fact that the Investigating Officer is also responsible and the observation is not strictly called for against the doctor who only treated the injured and attended on him at that stage. The doctor has not disowned any of those irregularities which by themselves could happen in discharge of his official duty on the basis of those irregularities the observation that he is not fit to be retained in Government service is rather damaging and far-fetched, without, any further inquiry as to the alleged conduct of the doctor. Any such stricture which affects his career amounts to condemn him without being heard. In these circumstances, this observation in the form of stricture is quashed. The appeal is allowed accordingly.

</html