

# SUPREME COURT OF INDIA

State of U.P.

Vs.

Hari Om

(M Punchhi and M Srinivasan JJ.)

02.12.1997

## JUDGMENT

1. These appeals are against the judgment and order dated 8-11-1990 passed by a Division Bench of the High Court of Allahabad acquitting the accused/respondent of the charge of patricide.

2. The deceased Madan Lal had four sons, mother, a wife and a daughter. The respondent, Hari Om was his eldest son. Hari Om alone was married. The deceased, Madan Lal had about 28 bighas of land, a pair of bullocks and a buffalo. The respondent, a tailor by profession wanted to shift to his in-laws' house and a few days before the occurrence, had actually shifted to that place. On 26-6-1980, Madan Lal, the deceased and his son, Har Govind, PW were returning home from their fields in the evening at about 6.30 p.m. after having carried out their agricultural pursuits. The deceased was leading his pair of bullocks and behind him his son Har Govind was walking carrying a "plough". Close to an orchard on the way, the respondent was found standing. He engaged his father in talk on the topic that he should separate him and give him his share of the property. The deceased maintained that he had given education to his sons and that his giving any share to the deceased did not arise. Some altercation took place. It is at that moment that the respondent exclaimed that he would not let his father live and whereupon he gave a "suja" blow on the chest of his father. The deceased fell down on the receipt of the injury and breathed his last. The occurrence, as was obvious, was witnessed by PW 1, Har Govind. On an alarm raised, one Basanti Lal, PW 2 and Ram Bahadur, PW 3 were attracted to the scene. They, however, did not see the actual occurrence but were told about it by PW 1. The pair of bullocks were taken away by the respondent but on the way, he left the bullock which was lame and took the other towards the village. The matter was reported

to the police by PW 1 after writing down the details of the occurrence. The investigation was, thus, set in motion. The autopsy of the deceased was conducted. Other investigative steps were undertaken and finally the accused/respondent was put to trial for the offence under Section 302 IPC. The Court of Session convicted him of the said charge and awarded him life imprisonment, which on appeal was upset by the High Court acquitting him of the charge. The aggrieved State of Uttar Pradesh is before us in appeal.

3. We have gone through the judgment under appeal and the reasons given therein for acquittal. Some fault has been found in the first information report given by PW 1 as it bears certain overwritings pertaining to what was being taken by the deceased to his house. It is noticeable that the document which became the first information report was prepared by PW 1 in the village itself before he went and gave it at the police station. Thus there was no police involvement either in that writing or overwriting. And the overwriting pertained merely to a detail as to what was being carried by the deceased to his house and what was being carried by PW 1. Those were not material particulars insofar as the actual occurrence was concerned. What actually affected the case was that there had been a demand by the accused/respondent to his deceased father that he be separated and given his share in his father's property and the said claim was refuted by the deceased. This has to be viewed in the background that such claim by married sons is common and normal in rural societies. It was not an instance of animosity which could have bred the necessary criminal intent in the mind of the accused/respondent to kill his father. There was no major ill-will between the parties i.e. father and the son for the accused/respondent to have resorted to take that step. The other material particular was that he had caused only one injury to the deceased, necessarily not the one which he intended to cause because neither the deceased was expected to have remained stationary nor was it possible in the circumstances since he was leading the bullocks and was in motion. The situs of the injury could not have thus been fixed as target by the accused so as to infer conclusively of his having intended to cause the injury which had actually been caused. From this it cannot be inferred that the intention of the accused/respondent was to murder his father even though in anger he may have exclaimed so. We, therefore, are clearly of the view that if the accused is held guilty of any offence then that offence would have to be one punishable under Section 304 Part II IPC and not punishable under Section 302 IPC.

4. But before the accused/respondent can be convicted, we have to weigh the testimony of PWs 1 and 3. To repeat, there was no ill-will between the two or that there was cause for the accused/respondent to become determined to kill his father. PW 1 is the accused/respondent's brother. It cannot be expected that PW 1 would tell a lie involving his brother as an accused, and for what reason. Besides his evidence, we have the acceptable evidence of PW 3, Ram Bahadur who was not only a natural witness having arrived at the scene of the occurrence on hearing an alarm but otherwise unconnected with the family. There was thus no occasion for PW 1 to have substituted the assailant at the spur of the moment and tell a lie to PW 3 in naming the accused/respondent as the culprit. Basanti Lal, PW 2 turned hostile and his evidence is of no value to the prosecution. The available evidence thus being of PWs 1 and 3, it rightly inspired confidence in the Court of Session and we see no reason why the High Court should have upset the verdict of guilt as recorded by that Court. Unhesitatingly, we upset the view of the High Court and substitute it with the view a foretold holding the accused/respondent guilty of offence under Section 304 Part II IPC for which he shall stand convicted and sentenced to four years' rigorous imprisonment. Ordered accordingly.

The accused/respondent is on bail. He is required to surrender to his bail bonds.

5. The appeals are allowed to the extent afore-mentioned.