

Baij Nath

Vs

State of U.P.

(G. T. Nanavati, Syed Shah Mohammed Quadri JJ)

16.03.1998

JUDGMENT

NANAVATI J

1. Leave granted.

2. Heard learned counsel for the parties. The appellant - Baij Nath has been convicted under Section 304 Part II read with Section 149 IPS. It was alleged against him that he had provoked his co-accused to kill Devi Charan.

3. After perusing the evidence, we find that all the witnesses had made consistent improvements regarding the role played by Baij Nath. In the FIR, the only role alleged to have been played by him was that he had provoked others to kill Devi Charan. Before the court all these witnesses stated that Baij Nath had also given blows to Devi Charan. There was no other evidence against him except the evidence of those three witnesses who, as stated above, had made material improvement regarding the role played by Baij Nath. There was no corroborative evidence to show that Baij Nath was present at the time of the incident. The courts below were therefore in error in convicting the appellant for the offence punishable under section 304 Part II read with section 149 IPC.

4. As we are of the view that his presence at the time of the incident has not been satisfactorily established, he deserves to be given benefit of doubt. We, therefore, allow this appeal, set aside his conviction under section 304 Part II read with Section 149 IPC and acquit him of the charge levelled against him.

5. His bail bonds are ordered to be cancelled.