

SUPREME COURT OF INDIA

State of U.P.

Vs.

Shiv Charan

(K Thomas and S Phukan JJ.)

15.01.2002

ORDER

1. Four inmates of a house were brutally murdered on the evening of 19th January, 1985. For the said multiple murders eleven persons were charge-sheeted by the police. All were convicted by the trial court out of whom three were sentenced to death and the remaining were sentenced to imprisonment for life. But the appeals filed by them before the High Court were allowed by a division bench of the High Court of Allahabad and the conviction and sentence passed on all the eleven accused were set aside. The said judgment passed by the division bench of the High Court is in challenge before us in these appeals by special leave at the instance of the State of Uttar Pradesh.

2. There is no dispute that Nathulal, the father of the house, and his wife Vidhya Devi and their two children Tej Singh and Rajvir Singh were shot dead while they were inside their own house on the night of 19.1.1985. It is also not disputed that they were killed by firearms. The gist of the prosecution case is that all the eleven accused entered into the compound, variously armed with rifles, guns and pistols, and on the exhortation made by the second accused- Jawahar Singh the shooting spree had been unleashed as against the inmates of the house.

3. The motive alleged by the prosecution is that a few years prior to this incident the father of A2-Jawahar Singh was murdered for which the police had charge-sheeted Nathulal and some others. Nathulal was convicted by the trial court and he preferred an appeal before the High Court. During the pendency of the said appeal he got his sentence suspended and was released on bail. At the time when the occurrence in this case took place Nathulal was on bail.

4. Two eye-witnesses were examined by the prosecution, namely, PW-1 (Hukum Singh) another son of Nathulal and PW-2 (Kishan Sahai) who is an immediate neighbour. The trial Court found the testimony of those two witnesses reliable and credit-worthy. But the division bench of the High Court picked out one or two aspects and highlighted them out of proportion and disbelieved the testimony of those two eye-witnesses.

5. The evidence of PW1 (Hukum Singh) contains the following facts:

He was in his own house when the assailants trespassed into the compound for the purpose of attacking the inmates of the house. He and three others, fearing that they too would be subjected to attack, hide themselves inside one "kothari" (a small room in which haystack had been stored). They could see the incident while remaining inside that room and when the attackers left the scene after completing the occurrence PW-1 (Hukum Singh) lodged the complaint with the police on the same night.

6. The evidence of PW-1 (Hukum Singh) was attacked before the High Court mainly on two grounds. One is that it was not possible for him and three others to hide themselves inside a small room covered by haystack. The other reason is that a letter written by PW-1 (Hukum Singh) on 24.1.1985 to his uncle has been admitted by him and a reading of the letter could indicate that he perhaps would not have been inside the said "kothari".

7. It appears that learned judges of the High Court were persuaded to give accord to the said line of attack and consequently the testimony of PW-1 (Hukum Singh) was disbelieved. In our view learned judge ought not have adopted those reasoning and jettison the testimony of the eye-witnesses who was admittedly one of the inmates of the house. At any rate he is the son of Nathulal one of the victims of the attack, and hence his presence at the scene was most probable. The letter which he was confronted with, had been read over to us by the learned counsel for the appellant - state. By no stretch of imagination can it be said that the contents of the said letter would go counter to the core of the testimony of PW-1 (Hukum Singh).

8. The evidence of PW-2 (Kishan Sahai) was disbelieved by the High Court on a seemingly flimsy ground. According to him, he happened to see the incident while he was going to see the cultivation in his guava orchard. The said orchard was situated on the western side of the place where the incident happened. According to the learned judges of the High Court PW-2 (Kishan Sahai) would not have passed the place of occurrence for reaching the orchard, and therefore, he would not have had any occasion to see the incident. When he went to the orchard which is admittedly situated next to the place of occurrence it is too much to think that the attention of the witness would not have been drawn to the terrible incident which was taking place on the next compound. We are, therefore, not disposed to give approval to the said reasoning of the High Court for dropping down the testimony of an eye-witness like PW-2 (Kishan Sahai).

9. What is the next course to be adopted by us in this case? We would have re-evaluated the evidence of PW1 (Hukum Singh) and PW2 (Kishan Sahai) had the depositions of those who witnesses been supplied to us by the state. In spite of repeated opportunities extended to the state they have not produced such depositions. We refrain from expressing any comment on the conduct of the state machinery for the lapse committed in the matter (learned counsel for the state today submitted that as late as now the state machinery produced a bunch of documents to him containing the depositions of PW1 (Hukum Singh) and PW2 (Kishan Sahai), but as they are in "Hindi" it is required to be translated).

10. In the aforesaid situation we adopt the more feasible course of remitting the appeals to the High Court for fresh disposal. For that purpose we set aside the impugned judgment of the High Court. The appeals before the High Court will be disposed of afresh after affording opportunity to the accused and the state. We direct all the convicted accused to surrender to the bail. They shall be taken into custody and should remain in custody until disposal of the appeals by the High Court. We direct the registrar of the High Court of Allahabad to board the appeals for hearing within a month of all the accused surrendering. We request the High Court to dispose of the appeals within two months thereafter, if possible.

11. These appeals are disposed of accordingly.