

# SUPREME COURT OF INDIA

Mattar

Vs.

State of U.P.

Crl.A.No.334 of 1999

(Y.K. Sabharwal and H.K. Sema JJ.)

23.7.2002

## ORDER

**Y.K. Sabharwal, J.**

1. The appellant and his brother were charged for double murder - one of Ashok Kumar and other of Ram Prasad. Appellant was convicted under Section 302 IPC and his brother for offence under Section 302/34 IPC by Court of Sessions. They were awarded life sentence.

2. During the pendency of appeal in the High Court against conviction and sentence passed by the Court of Sessions, brother of the appellant died. The appellant's appeal was heard by a Division Bench of the High Court. There was difference of opinion between the two learned Judges, one expressed the opinion that the appeal of the appellant deserves to be allowed and the other learned Judge was of the opinion that the appeal deserves to be dismissed. Both the learned Judges gave separate **JUDGMENTS** which are fairly lengthy and contain a detailed examination of evidence. In view of this difference of opinion the matter was placed before a third learned Judge.

3. The case of the prosecution is based on the ocular testimony of three witnesses PWs 1, 2 and 3, besides the testimony of the informant PW4 and other evidence including medical evidence produced in the trial before the Court of Sessions. The third learned Judge, before whom the matter was placed, expressed the opinion that the appellant was rightly convicted under Section 302 IPC and awarded sentence of life imprisonment. In that opinion a brief reference has been made to the testimony of only one of the eye-witnesses, namely PW2 Smt. Kallania. According to the prosecution she was eye-witness to the murder of Ram Prasad and not to the murder of the other deceased Ashok Kumar. The eye witnesses to the murder of Ashok Kumar, according to the prosecution case, were PW1 and PW3. PW3 is an employee of PW1. Ashok Kumar deceased was brother of PW1. PW4 is father of Ashok Kumar and PW1 Sushil Kumar.

4. In view of the opinion of third learned Judge the appeal was dismissed by the High Court. The Judgment and order of High Court is under challenge in this appeal. We have gone

through the opinion of the third learned Judge. Unfortunately, except a brief reference to the testimony of PW2, the said opinion does not show that the learned Judge independently considered the testimony of other eye-witnesses, in particular PW1 and PW3. The Judges in different dissenting opinions have given detailed reasons, for and against the acceptance of version as deposed by these eye witnesses. The third learned Judge, under these circumstances, was required to independently examine the matter and express his opinion. It is not permissible to only or merely indicate the agreement with one or other view without giving reasons therefor. Therefore, Mr. B.B. Singh, learned counsel for the appellant is right in his submission that the matter deserves to be remanded to the High Court so that it may be heard afresh by a third judge so as to make available to the parties a reasoned opinion showing that the relevant evidence and submissions that may be urged by counsel for the parties have been independently considered. We refrain from expressing any opinion on the merits of the case and make it clear that merits have not been examined by this Court which aspect would be considered by the High Court (third Hon'ble Judge) in accordance with law.

5. In view of the fact that the appellant is in custody for a long period, we request the High Court to decide the matter expeditiously and, if possible, within a period of four months.

6. For the aforesaid reasons, we set aside the Judgment and order of the High Court in Crl. A. No. 2091/80 and remit the matter to the High Court in terms aforesaid. The appeal is disposal of accordingly.

Order accordingly.