

SUPREME COURT OF INDIA

State of U.P.

Vs.

Gajadhar Singh

Crl.A.No.332-333 of 2002

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

11.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in the present appeals is to the judgment of a Division Bench of the Allahabad High Court allowing the appeal filed by the respondents. The respondents were found guilty of offence punishable under Sections 302, 307 read with Section 149 of the *Indian Penal Code, 1860* (in short the `IPC') by the trial Court. It is to be noted that two appeals were filed before the High Court by the convicted accused persons. Criminal Appeal No.2007/1997 was preferred by Gajadhar Singh (respondent No.1) and Criminal Appeal No.1963/1997 was preferred by Janardan Singh, Sarvajit Singh, Suresh Singh, Umesh Singh, Mritunjai Singh and Haribhan Chaudhury. The High Court dismissed the appeal of respondent No.1-Gajadhar but set aside the conviction so far as appellants in the other appeal before it. However, so far as Gajadhar is concerned his conviction in terms of Section 307 read with Section 149 IPC was altered and he was convicted under Section 323 read with Section 149 IPC. So far as other appellants are concerned their convictions under Section 302 and 307 both read with Section 149 IPC were set aside and instead they were convicted under Section 323 read with Section 149 IPC. The conviction under Section 147 IPC was affirmed.

2. Background facts in a nutshell are as follows:

“The accused Gajadhar Singh and Umesh Singh are real brothers being sons of Ram Vichar Singh while Sarvajit Singh accused is son of Janardan Singh. Janardan Singh is the first cousin of Ram Vichar Singh as their fathers were real brothers. The remaining two accused, namely, Mritunjai Singh and Haribhan Chaudhury belonged to their group. Janardan Singh was earlier the Pradhan of Gaon Sabha Bankara Saiyed Bukhara. In the election scheduled to be held in April, 1995, the office of Pradhan of the said Gaon Sabha was reserved for a person belonging to backward caste. Janardan Singh then set up Haribhan Yadav (Chaudhary) while Chandra Bhan Singh (hereinafter referred to as `deceased') set up Ramakant Yadav as candidate for the office of Pradhan. Janardan Singh himself filed his nomination papers for the

membership of Block Development Committee while deceased Chandra Bhan Singh proposed the name of Shri Ram Bhar for the said office. The election for the office of Pradhan commenced in the morning of 7.4.1995 and the polling station was in the primary school of the village. Chandra Bhan Singh was also the polling agent of Ramakant Yadav. Shortly after commencement of the polling, Janardan Singh and some persons of his group started creating disturbance and resorted to rowdism. Chandra Bhan Singh asked them not to create any disturbance and to allow the poll to be conducted in a peaceful manner. Janardan Singh then exhorted his companions that he should be beaten. Thereafter Janardan Singh and Sarvajit Singh each caught one hand of Chandra Bhan Singh and Gajadhar Singh fired from a country made pistol upon him and the shot him upon his chest. Shivji Yadav, Deedan Singh and Keshav rushed forward to save him but the accused Suresh Singh Umesh Singh, Mritunjai Singh and Haribhan assaulted them with lathis. Chandra Bhan Singh fell clown and died on the spot. The injured Keshav Singh Shivji and Deedan Singh thereafter went to the PHC Siyar where medical aid was given to them and they were also medically examined. Keshav Singh got the FIR of the incident scribed by Raghav Singh and lodged the same at 12.40 p.m. at Police Station, Ubhav which is at a distance of 4 miles from the place of occurrence. Udai Bhan Singh (PW-6), clerk-constable, registered a case in the general diary on the basis of the FIR lodged by Keshav Singh. Subhash Chandra Sonkar (CW-2), SI Commended investigation of the case and immediately proceeded for the spot. The dead body of Chandra Bhan Singh was lying in front of the building of primary school in village Bankara Saiyed Bukhara. He found blood on the spot and collected plain and bloodstained earth from there and prepared its recovery memo. He also prepared a site-plan with the assistance of Keshav Singh and his statement under section 161 of the Code of Criminal Procedure, 1973 (in short the `Code') was also recorded by him. After completing other formalities, the body was sealed and was sent for Post-mortem examination. Subsequently, the investigation was handed over to T.P. Nanda (P.W.7), who recorded statements of some others witnesses.

After completion of investigation charge sheet was filed. As the accused persons pleaded innocence, trial was held.

Prosecution examined seven witnesses including the three eye witnesses. The accused examined one witness in support of their plea of innocence. As per the directions of the Court three persons were examined as court witnesses. The learned Sessions Judge believed the case of the prosecution and convicted and sentenced the accused as noted above.

Before the High Court in the appeals, the primary stand was that the prosecution evidence was not reliable. The High Court did not accept the stand. The High Court held that it was established beyond any shadow of doubt that Gajadhar had fired upon the deceased Chandra Bhan at 7.45 a.m. on 7.4.1995 in front of the building of the primary school which resulted in his death. So far as other accused persons are concerned the High Court noticed that the evidence was insufficient. The High Court,

therefore, was not inclined to believe that part of the prosecution case wherein the role of catching hands of the deceased was assigned to the accused Janardan and Sarvajit Singh. So far as remaining four accused persons are concerned the High Court noted that they allegedly did not cause any injury to the deceased. They were armed with lathis but they did not assault the deceased. They were alleged to have caused injuries to three persons, but all the injuries caused by them were found to be simple in nature. In that view of the matter the High Court found that the common object of the assembly was not to commit the murder of the deceased and it was the solitary act of Gajadhar Singh which resulted in his death. So far as conviction under Section 307 read with Section 149 IPC is concerned after referring to the nature of injuries sustained by three injured it was held that Section 307 read with Section 149 IPC had no application and instead appropriate conviction would be under Section 323 read with Section 149 IPC. Accordingly, it altered the conviction.”

3. In support of the appeals, learned counsel for the appellant submitted that the accused persons had caused injuries. The evidence of PWs had clearly established the accusations and, therefore, the High Court should not have altered the conviction as was done by the trial Court.

4. Learned counsel for the respondents on the other hand supported the judgment.

5. It is to be noted that conviction of Gajadhar for offence punishable under Section 302 read with Section 149 IPC has been affirmed and the conviction for offence in terms of Section 307 read with Section 149 IPC has been altered. The appeal filed by the State of U.P. so far as accused Gajadhar-respondent No.1 is concerned appears to be without any substance. So far as other accused persons are concerned, the High Court has in great detail referred to the evidence and directed acquittal of the other accused persons.

6. The evidence on record clearly established that the pistol was concealed and was not visible to anyone. The High Court rightly noted that the evidence adduced by the prosecution did not establish that remaining accused persons had any knowledge that Gajadhar was carrying a country made pistol or that he would go to shoot the deceased. The testimony of PW-2 shows that Janardan was initially asking the voters not to caste vote for Ramakant Yadav but to vote for his candidate and subsequently he had resorted to rowdism in order to disturb the voting process so that Ramakant Yadav may not win the election and that simple injuries were caused by blunt weapon to three persons. Therefore, as rightly observed by the High Court the common object of the assembly was not to commit the murder of Chandra Bhan Singh and it was the solitary act of Gajadhar. PW-2 had also stated that he had not seen the lathis or country made pistol in the hands of any of the accused persons at the time when Janardan was disturbing the voters and was asking them not to caste vote in favour of Ramakant Yadav. PW-4 i.e. Constable on duty had also stated that there was fight between the parties regarding disturbance in voting.

7. In view of the aforesaid factual position, we are not inclined to interfere in these appeals which are accordingly dismissed.