

SUPREME COURT OF INDIA

Anwar Ali

Vs.

State of U.P.

Crl.A.No.316 of 2006

(B. S. Chauhan and Swatanter Kumar JJ.)

07.06.2011

ORDER

1. The Appeal is dismissed in terms of the signed order.
2. The accused-Appellants be taken into custody forthwith to serve out the remaining portion of their sentence.
3. The learned Counsel appearing for the Appellant, at the very outset, pointed out a defect in the listing of the present appeal. The Appellant had neither surrendered nor was granted bail by this Court. Thus, the appeal could not have been listed for hearing. According to him, this is the result of a bona fide error.
4. Apparently, as per rules and practice of this Court, the accused ought to have surrendered before the leave was granted or the appeal was admitted and listed for final hearing. However, vide order dated 06th March, 2006, delay was condoned and the appeal was admitted. Thus, the counsel appearing for the Appellants cannot be faulted with on this ground.
5. Be that as it may, we have decided to hear the appeal on merits and pass appropriate orders.
6. The present appeal is directed against the judgment of the Allahabad High Court dated 16th September, 2005 in Government Appeal No. 744 of 1982 which preferred against the judgment of acquittal passed by the learned trial Court on 14th December, 1981. It will be useful to refer to the case of the prosecution in brief and facts giving rise to the present appeal.

7. Lal Bahadur Singh and his brother Jeet Bahadur Singh were on inimical terms with Daroga, the village pradhan and others due to litigation going on between them. Akbar Ali @ Ghagghu, Anwar Ali, Hazrat Ali and Rauab Ali are sons of Daroga and Satlu is his son-in-law. Lais Mohammad, Hanif and Razzak are cousins of Daroga. Ayuub Mohammad and Akbar Ali are sons of Hanif. Insan Ali is son of Razzak. On 13th September, 1980 at about 8.30 a.m., Jeet Bahadur Singh was returning back from his fields to his house. On the way, he sat with Triyugi Narain Mishra near Dheki (Paddy thrashing machine) in the verandah of his house and started talking to him and his family members. At that time, Satbir alias Sadiq reached there and started talking to Jeet Bahadur Singh in connection with going to Bombay and went back. After some time, Daroga along with his sons and other acquaintances and one unknown person armed with lathis, ballams, bogda, knives and country-made pistols reached there. They started beating and attacking them with the weapons that they were carrying.

8. Watching the assault, Ferai and Sipahi rushed to the scene of occurrence. On hearing the hue and cry, others also came there. After causing injuries to Jeet Bahadur Singh, Satlu and the unknown person accompanying him fired with country-made pistols with an intention to scare away the co-villagers collected there who then ran away and all the other miscreants also fled away with the accused. Finally, the FIR was registered at 11.15 a.m. of the same noon upon a statement of the brother of the deceased Lal Bahadur Singh. The police registered a case against the accused under Sections 452, 307 and 302 Indian Penal Code. After investigation, charge sheet was filed in the Court. The accused were tried.

9. The trial Court vide its judgment dated 14th December, 1981 acquitted all the accused disbelieving the eye witnesses and the entire occurrence. However, the High Court differed with the view taken by the learned trial Court and by a detailed judgment convicted five accused namely Daroga, Anwar Ali, Ghagghu alias Akbar Ali, Hazrat Ali, Ayub Mohammad and Akbar Ali under Section 302 read with 149 Indian Penal Code and sentence them to imprisonment for life. They were also convicted under Section 148 Indian Penal Code and sentenced to two years rigorous imprisonment. The sentences were directed to run concurrently. Daroga died during the pendency of the appeal before the High Court and the other remaining accused were also acquitted by the High Court.

10. Learned Counsel appearing for the Appellants while impugning the judgment of the High Court, has contended that there are only three eye witnesses who are interested witnesses and the High Court could not have relied upon their

statements. They are namely, Lal Bahadur, PW1, Triyugi Narain, PW2 and Sipahi, PW3. The High Court, while noticing and discussing the evidence of all these witnesses, came to the conclusion that their presence on the place of occurrence cannot be doubted. It is a settled principle of law that merely because the witness is a relative or friend of the deceased, it would not be a sufficient ground to discard his statement. Once the prosecution has been able to prove its case by leading admissible and cogent evidence with reference to statement of the witnesses, the investigation conducted by the police officer and documentary evidence, then the statements of the eye witnesses which are corroborating the prosecution case cannot be brushed aside only because they are relatives of the deceased. These statements even otherwise are reliable and trustworthy. This is further supported by the medical evidence of Dr. D.P. Mishra who had performed the post mortem upon the body of the deceased, he noticed as many as 29 injuries upon the body of the deceased including injuries caused by knife, lacerated wounds, punctured wounds and it was clearly stated by the doctor that the death was caused due to shock and haemorrhage as a result of ante mortem injuries caused upon the body of the deceased.

11. The cumulative effect of this evidence is that the death of the deceased was as a result of brutal attack by the accused persons. The statements of PW1, PW2 and PW3 cannot be brushed aside merely because of their being relatives of the deceased. Therefore, we find no infirmity in the appreciation of the evidence or any other legal infirmity in the judgment of the High Court convicting the accused-Appellants herein.

12. For the foregoing reasons, the appeal is dismissed.

13. The accused-Appellants be taken into custody forthwith to serve out the remaining portion of their sentence.