

CASE NO.:
Appeal (crl.) 380 of 2001

PETITIONER:
Gyasiram & Anr.

RESPONDENT:
State of M.P.

DATE OF JUDGMENT: 06/01/2003

BENCH:
R.C. LAHOTI & BRIJESH KUMAR.

JUDGMENT:

J U D G M E N T

R.C. Lahoti, J.

Gyasiram, the accused — appellant No.1, has been held guilty of an offence punishable under Section 302 IPC. Angad, accused — appellant No.2, has been held guilty of an offence punishable under Section 302 read with Section 34 IPC. Both the appellants have been sentenced to imprisonment for life.

The incident took place on 9th August, 1991 between 2.30 and 3 p.m. in village Guthina, P.S. Maharajpura, Gwalior. There are party factions in the village consisting of two communities. On the date of the incident, the persons belonging to the community of the accused were sitting on the pathway in wait for the deceased. Both the accused persons were armed with fire arms. When the deceased and his companions passed by their side they followed them. Then they opened fire. There was an indiscriminate firing made by the accused persons and their other companions who have been acquitted. So far as Gyasiram, accused-appellant, is concerned, the finding arrived at by the Session Court and upheld by the High Court is that when the deceased Kalyan Singh had fallen down injured and lay prostrate on the earth, Gyasiram placed his gun on the buttocks of the deceased and fired which fatally injured the deceased and resulted in his death.

There is overwhelming evidence consisting of eye-witness account of the incident given by Megh Singh, PW-3, Shiv Narayan, PW-4 and Mehtab Singh, PW-9. Out of these three witnesses, Shiv Narayan and Mehtab Singh have themselves suffered injuries and were medically examined. There was yet another eye witness Damodar, PW-1, who turned hostile and did not support the prosecution case. The learned Session Judge has minutely scrutinized the testimony of the eye witnesses in the background of the fact that party factions existed in the village and the prosecution witnesses and the accused persons belonged to opposite groups. However, having cautiously examined the testimony of the eye witnesses, the trial Court has found Megh Singh, Shiv Narayan and Mehtab Singh (respectively PW-3, 4 and 9) to be the witnesses of truth. Their presence at the place of the incident is not doubted and cannot be doubted. The factum of indiscriminate firing done by the accused persons finds corroboration from several bullets recovered from the place of the incident, some of them found embedded in the trees standing at the site of the incident. Since it was a case of rioting, to the extent to which the trial Court found any doubt as to the participation of the accused persons, they have been acquitted. So far as the two accused-appellants are concerned, it has been positively found that Gyasiram, appellant, placed his gun on the buttocks of the deceased, who was lying prostrate on the earth having sustained injuries, and fired the gun resulting into a fatal injury. So far as the

appellant Angad is concerned, it has been found by the Session Court that he too was sitting with accused Gyasiram, both armed with guns awaiting the arrival of the deceased and his companions. Both of them followed the deceased. Angad appellant had also indulged in firing and he had also fired aiming at the deceased. Thus, the participation of appellant Angad in the incident and his sharing common intention with co-accused Gyasiram to commit the murder of the deceased has been established beyond any shadow of reasonable doubt. The participation of the two accused persons finds corroboration from the FIR which was lodged within one and a half hours of the incident at the Police Station situated at a distance of about 9 kms. from the place of the incident. There was no possibility of any embellishment. The medical evidence fully supports the role assigned by the eye witnesses to the accused persons in the incident. The accused — appellants had taken the plea of having acted in exercise of right of private defence which plea has been discarded by the Session Court as also by the High Court assigning valid reasons. We do not find the verdict of guilty recorded by the trial Court and upheld by the High Court liable to be interfered with.

The appeal is held devoid of any merit. It is dismissed. The conviction of the two accused-appellants, as recorded by the trial Court and upheld by the High Court, is maintained.