

PETITIONER:
MOHAN SINGH

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 20/11/1997

BENCH:
G.T. NANAVALI, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

THE 20TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice G.T. Nanavati
Hon'ble Mr. Justice G.B. Pattanaik

R.C. Kaushik, Sat pal Singh and D.K. Garg, Advs., for the
appellant
A.S. Pundit, Alkhil Kaushik and R.K. Singh, Advs. for the
Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
NANAVALI, J.

This appeal is directed against the judgment and order passed by the Allahabad High Court in Criminal Appeal No. 754 of 1978. The High Court confirmed the conviction of the appellant under section 302 IPC.

The appellant was tried with four other accused for the murder of Vijay Singh, son of Jang Bahadur Singh of village Burchuni. All the five accused, because of previous enmity, were alleged to have gone to the house of Vijay Singh on 7.7.1976 at about 3.30 p.m. They then climbed over the Varandah of his house where Vijay Singh was lying on a cot. They first abused him. Thereafter some of them exhorted Mohan Singh, the appellant to kill him as he was the root of all the litigation. Thereupon, the appellant fired a shot from his gun which hit Vijay Singh who was sitting in the kitchen about 10 feet away from the cot of the deceased raised an alarm as a result of which Man Singh, PW2 and Pratap Singh, PW4 came there running. They saw the accused running a way from the roof.

In the Trial Court, the prosecution had examined these three witnesses. The Trial Court found the evidence of PW3, Chandrakali fully reliable. The Trial Court also found that her evidence received support from the evidence of the other two witnesses who had been the accused running away soon after the commission of crime and stood corroborated by the medical evidence. However, it gave benefit of doubt to the other four accused on the ground that the possibility of their being falsely implicated could not be ruled out in view of the enmity between the parties.

The High Court on re-appreciation of the evidence

agreed with the finding recorded by the Trial Court. The High Court found that no material contradiction was found in the evidence of Chandrakali and the other witnesses. We have also carefully considered the evidence of Chandrakali. We find that at the time of commission of the offence she was in the kitchen which was in the Varandah itself where her son was lying on a cot. The evidence further discloses that before firing the shot the accused had abused Vijay Singh and there was exhortation to the effect that he should be killed as he was the cause of all the litigation between them. The abuses and the exhortation were bound to attract the attention of Chandrakali who was sitting at the distance of only 10 feet. therefore, her evidence that she had seen the accused standing near the cot of her son and that out of the five accused the appellant had fired the shot and injured her son deserved to be accepted. It was submitted by the learned counsel for the appellant that the complainant to whom she had narrated the incident soon after it was committed, has not specifically stated in his evidence that her aunt had told him that appellant Mohan Singh had fired the shot. In the FIR it was specifically stated by him that the shot was fired by Mohan Singh, i.e. the appellant. His only source of information was his aunt who had disclosed to him how the incident had occurred. Therefore, this omission cannot create any doubt regarding the evidence of Chandrakali PW3.

It was next urged the learned counsel for the appellant that according to the medical evidence the death of Vijay Singh could have taken at about 6.00 a.m. and that appears to be more probable because Doctor who performed the post-mortem examination has stated that the large intestine was found full of faecal matter. The High Court has considered this aspect and pointed out that the medical evidence does not necessarily lead to that conclusion. Vijay Singh was ill and all the while lying in a bed. Moreover, there was no evidence to show when he had taken his last meal. The High Court has rightly observed that if really Vijay Singh had died at 6.00 a.m. then his dead body would not have been kept in the house till 4.00 p.m.

No other point was urged by the learned counsel for the appellant. We find no infirmity either in the appreciation of the evidence or in the reasoning of the High Court. We, therefore, see no reason to interfere with the judgment and order passed by the High Court. This appeal is, therefore, dismissed. The appellant shall surrender to custody to serve out the remaining part of the sentence.