IN THE SUPREME COURT OF INDIA
CRIMINIAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 920 OF 2008

NANHEY SHEIKH …APPELLANT

VERSUS

STATE OF U.P. …RESPONDENT

WITH

CRIMINAL APPEAL NO. 2190 OF 2009

O R D E R

1. In these two appeals as similar facts are involved, we propose to dispose of both these appeals by this common judgment and order.

2. Criminal Appeal No. 920 of 2008 was filed by Nanhey Sheikh whereas Criminal Appeal No. 2190 of 2009 was filed by Sahulat and Irshad. Since one of the appellants namely Sahulat, had failed to surrender himself, Criminal Appeal No. 2190 of 2009, stood dismissed with respect to him due to his default in surrendering in terms of order of the Court dated 7th October, 2009. Therefore, in the present two appeals we are concerned with the orders of conviction and sentence passed by the High Court against Nanhey Sheikh and Irshad.

3. The aforesaid appellants were acquitted by the trial Court whereas their order of acquittal was set aside by the High Court by convicting them under Section 302 read with Section 149 of the Indian Penal Code.

4. The order of conviction passed by the High Court against both the appellants are challenged by the counsel appearing for the appellants herein contending, inter alia, that the High Court was not justified in setting aside the order of acquittal on the four grounds which are set out in the impugned judgment which according to the learned counsel which are non-existent and illogical. He has further submitted before us that it is not the prosecution case also that both the present appellants had fired from their pistols. He has also submitted before us that although the allegation was that the two appellants were allegedly having pistols while they accosted and surrounded Ali Bahadur, the fact remains that no pistols were recovered from their custody and possession and consequently there is definitely doubt about their presence as also participation in the occurrence. We have also heard the learned counsel appearing for the State who has submitted that these two appellants were also part of the unlawful assembly as the second incident could well be said to be in continuation of the first incident.

5. Having gone through the evidence on record, we are, however, of the considered opinion that there is some doubt about the presence as also participation of the said two appellants in the alleged occurrence. The evidence adduced by the prosecution itself discloses that Ali Bahadur had run away from the place where Anwar Ali was killed and when he was running towards his house he was accosted by the present appellants near his house. That indicates that these two appellants were not present at the place where the first incident had taken place, which, in turn, indicates that they were not present at the place where Anwar Ali was killed but they were at a different place. It is also not proved in evidence that these two appellants had fired any shot on the deceased Ai Bahadur since the only allegation made against them is that they had surrounded Ali Bahadur with pistols in their hands. It is thus clearly established that even if they had pistols in their hands they did not fire from them. No pistol has also been recovered from their possession and at their instance. All these circumstances create doubt in our mind about their participation in the incident.

6. In that view of the matter, we are of the considered opinion that the High Court was not justified in setting aside the order of acquittal on the grounds mentioned in

the impugned judgment. The grounds on which the order of acquittal was set aside, in our considered opinion, were not sufficient to set aside a well considered order of acquittal. It cannot be said that the order of acquittal passed by the trial Court was perverse or infirm or palpably erroneous. Indeed according to us, the view taken by the trial Court is a possible and plausible view taken on appreciation of evidence, which did not call for interference.

7. After considering the entire evidence on record, both the appeals filed by the present appellants are allowed. They shall be set at liberty forthwith if not wanted in any other case.

……J.
[DR. MUKUNDAKAM SHARMA]

……J.
[A.K. PATNAIK]

NEW DELHI
MARCH 17, 2010.