

CASE NO.:
Appeal (crl.) 1333-1334 of 1999

PETITIONER:
STATE OF U.P.

RESPONDENT:
SHIV KUMAR & ORS

DATE OF JUDGMENT: 20/04/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

These appeals have been preferred by the State of Uttar Pradesh against the judgment and order of the High Court of Judicature at Allahabad in Criminal Appeal No.1761 of 1980 dated 19.3.1999. By its impugned judgment and order, the High Court allowed the appeal preferred by the respondents and acquitted them of the charge under Section 302 read with Section 34 IPC. Earlier, the respondents were tried by the IV Addl. Sessions Judge, Fatehpur in Session Trial No.172/80, who by judgment and order dated 12th August, 1980 convicted them of the offence under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life.

The case of the prosecution is that on 26.2.1980, Rudrapal Pandey (deceased) requested his nephew Ram Bahadur (PW-1) to take his wife Smt. Shyampati to village Haswa from where they were to board a bus to Fatehpur. They proposed to go to Fatehpur to consult a doctor since the said Smt. Shyampati was suffering from headache etc. The case of the prosecution is that Ram Bahadur (PW-1) along with his aunt proceeded towards village Haswa. Later, the deceased Rudrapal Pandey followed them. According to the prosecution, while proceeding towards village Haswa, the deceased Rudrapal Pandey requested Daulat Singh (PW-2) to accompany him. When they reached near village Aswan Baxpur, all the respondents came armed with firearms and surrounded the deceased. The respondent Shiv Kumar was armed with a gun while the remaining three were armed with pistols. The respondents Shiv Kumar and Amar Singh fired one shot each from their gun and pistol respectively. Though the deceased attempted to run away, he was prevented by respondents Ram Lakhan and Ram Kumar from doing so by pushing him in the canal. Thereafter, Ram Lakhan and Ram Kumar fired one shot each from their pistols. The accused thereafter ran away and an alarm was raised by Ram Bahadur.

The motive suggested by the prosecution was that one Barjor Singh, uncle of the respondent Shiv Kumar, had been murdered and in that case Daulat Singh (PW-2) and his nephew Surajbali were the accused. In that case, the deceased Rudrapal Pandey was doing parvi on behalf of Daulat Singh (PW-2). This was the enmity which resulted in the murder of Rudrapal Pandey.

The Trial Court relying upon the testimony of PW-1 (Ram Bahadur) and PW-2 (Daulat Singh) convicted the respondents. The High Court has found their evidence to be unreliable and has, therefore, acquitted the respondents.

So far as Ram Bahadur (PW-1) is concerned, the specific allegation made by him was that the respondent Shiv Kumar fired at the deceased from his gun hitting him on his back, meaning thereby that he fired at the deceased from behind. The medical evidence is to the effect that on the back of the deceased, there was only an exit wound and there was no entry wound on the back of the deceased. Apparently, the alleged eye witness Ram Bahadur (PW-1) had not seen the actual occurrence and on finding an injury on the back of the deceased, he stated that the gun shot fired by the respondent Shiv Kumar hit the deceased on his back. It also appears from the record that though all the four respondents were said to have fired from their weapons, only two wounds of entry were found on the

chest of the deceased. So far as the witness Daulat Singh (PW-2) is concerned, the High Court doubted his presence because if he had been present on the spot, the respondents would not have spared him. This was because he was the person who is said to have committed the murder of the uncle of respondent Shiv Kumar. The deceased Rudrapal Pandey was only his pairokar. The evidence on record disclosed that he was standing five to six paces away from the deceased. The evidence on record also discloses that there was no obstruction between Daulat Singh (PW-2) and the respondents which may have prevented the respondents from firing at him. PW-1 (Ram Bahadur) does not say that Daulat Singh (PW-2) was with his uncle when he left his house. Daulat Singh (PW-2) has deposed that while going to village Haswa, the deceased had requested him to accompany him. There was no other reason for Daulat Singh (PW-2) to accompany the deceased on the fateful day. The High Court has further noticed that Smt. Shyampati was not even examined as a witness. The case of the respondents is that the whole story about Smt. Shyampati and PW-1 (Ram Bahadur) going to village Haswa is false and that neither of them were present when the incident took place. The failure of the prosecution to examine Smt. Shyampati at the trial was another circumstance which supported the prosecution case.

Having considered the entire evidence before us, we are also not satisfied about the truthfulness of these two witnesses and their evidence leaves an element of doubt in our mind. The High Court has given to the respondents the benefit of doubt. We find no reason to disturb the finding recorded by the High Court.

We find no merit in these appeals and the same are accordingly dismissed.