

PETITIONER:
DALEEP SINGH

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 19/11/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

M.K. MUKERJEE, J.

1. Daleep Singh, the appellant before us, and seven others were arraigned before the Additional Sessions Judge, Moradabad for rioting, murder and other allied offences. During pendency of the trial one of them, namely, Jahangir singh, died. The trial ended with conviction and sentence of the appellant under Section 302 IPC and acquittal of the other six. Aggrieved by his conviction the appellant preferred an appeal which was dismissed by the High Court. Hence this appeal at his instance.

2. According to the prosecution case, at the time the incident, with which he are concerned in this appeal, took place a proceeding under Section 145 Cr.P.C. was pending in the Court of Sub Divisional Magistrate, Amroha, between the appellant, who is a resident of village Bhankori, and Teka Yadav of village Ram Sarai. On May 11, 1977, a date fixed for hearing of the above proceeding, Teka Yadav accompanied by his village Pradhan Sish Raj Singh (P.W.4), his co-village Ashok Kumar (P.W.1's) uncle Ram Pal (the deceased) and friend Veer Singh (P.W.2) went to Amroha in a car, which belonged to and was driven by Ram Kumar, for pairvi in that case. On their way back from Court Teka Yadav parted company at amroha and the other four continued their journey in the same car. Near the bust stand of village Umori, One of its tyres got punctured. Leaving the car there they got into a bus which came from the side of Amroha. In that bus they found the eight accused persons sitting armed with gun and other weapons. After they got into the bus the appellant asked the driver to proceed but Ram Pal requested the driver to wait awhile as one of their men was still to board. Over this issue a quarrel ensued between Ram, Pal and the appellant. In course thereof the other accused persons got up from their seats and started abusing Ram Pal. Immediately thereafter the appellant fired at Ram Pal who fell on his seat and died. The other accused persons also started assaulting them with Kirpans and other weapons. To save their lives, when Ashok Kumar and Veer Singh were about to get down from the bus two or them fired at them as a consequence whereof Veer Singh sustained injury on his

thigh. All the accused persons then run away.

3. Ashok Kumar prepared a written report about the incident and accompanied by Sish Raj Singh and injured Veer Singh went to Chajlait Police Station to lodge the same. S.I. Anil Kumar registered a case on that report and took up investigation. he sent Veer Singh to the District Hospital, Moradabad for treatment and then proceeded to the scene of occurrence along with Ashok Kumar and Sish Raj Singh. He held inquest upon the dead body of Ram Pal, which was lying inside the bus and sent it for post-mortem examination. On completion of investigation he submitted charge-sheet against the accused persons and in due course the case was committed to the court of session.

4. The appellant pleaded not guilty to the charges levelled against him and contended that he had been falsely implicated out of enmity. In support of its case the prosecution examined 14 witnesses but no witness was examined on behalf of the defence.

5. Of the witnesses examined by the prosecution Ashok Kumar (P.W.1), Veer Singh (P.W.2), Sish Raj Singh (P.W.4), and Ram Nath (P.W.9) figured as eye witnesses Mahendra (P.W.7), the conductor of the bus in question was also examined by the prosecution to give an account of the incident but he turned hostile. The trial Court held that the evidence of P.Ws. 1,2 and 4 so far as it sought to prove that the appellant fired at Ram Pal as a result of which he died could be safely relied upon as it stood corroborated by the medical evidence. Since their evidence regarding the roles of the other accused in the assault on Ram Pal was not corroborated by medical evidence the Court gave them the benefit of doubt. As regards the assault on Veer Singh for which a charge under Section 307 read with Section 149 IPC was framed against the accused the trial court observed that through there was no doubt that he was fired at while he was getting down from the bus, there was discrepancy in his evidence as to who fired at him, for earlier before the Magistrate who recorded his statement as dying trial named two of the other accused persons. On far as P.W.9 was concerned the Trial Court felt that his identification of the appellant, who was not known to him from before, could not be relied upon in absence of T.I. Parade held earlier to test his ability to remember the features of the miscreant. In dismissing the appeal of the appellant the High Court concurred with all the above findings of the trial Court.

6. Having regard to testimony of Dr. Manju Rastogi (P.W.8) who claimed to have examined Veer Singh (P.W.2) at the District Hospital, Moradabad on May 11, 1977 at 7.30 P.M. and found two gun shot wounds, one of entry and the other of exit, the presence of veer Singh at the time of incident and his having been fired at cannot be disputed. Still then we would leave his evidence out of our consideration in view of the material contradiction brought on record regarding his assailant.

7. That brings us to the evidence of the other two eye-witnesses, namely, P.Ws. 1 and 4. From their evidence we get that after an altercation that took place between the accused persons and the deceased over the string of the bus the appellant fired at Ram Pal from his gun as a result of which he fell down inside the bus. We need not however refer to their evidence relating to the subsequent part of the incident in view of the acquittal of the other accused persons of all the charges. Their evidence so far as it seeks to prove that the appellant fired at Ram Pal is clear, consistent and cogent. They were cross examined at length on

behalf of the accused person but nothing could be elicited to discredit them except that they were inimical towards the appellant. It was suggested to both of them that they were not present at the time of the incident but the suggestion was denied. It is trite that enmity is a double-edged weapon as it may provide a motive for the crime as also for false implication. However, in view of the admitted enmity between the parties we have carefully scrutinised the evidence of these two witnesses and sought for its corroboration. Our such exercise leads us to conclude that not only their evidence is trustworthy but their evidence stands amply corroborated. Their claim that they had gone to the court of the Sub Divisional Magistrate, Amroha for attending to the case under Section 145 Cr.P.C. is borne out by the certified copy of the order (Ext.Ka.20) passed in that proceedings on that day (May 11, 1977). The order indicates that they lawyers for the parties were present but the case was adjourned as the concerned magistrate had gone to Moradabad in connection with some election duty. The next corroboration of their evidence is furnished by the evidence of P.W.7, the bus conductor. It is, of course, true that he was declared hostile as he did not support the entire prosecution case but he testified that the bus (UPM 3265) of which he was the conductor on the date in question reached Umori bus stand at or about 2.45 P.M. He next stated that after the bus stopped there, the passengers started boarding it but he could not say how many passengers boarded the bus as he had gone to the nearby hotel. When he along with the driver of the bus was sitting in the hotel a firing took place in the bus in which one of the passengers died. The evidence of P.W.1 next gets ample support from the FIR he lodged at the police station within one hour of the incident. In the FIR THE entire substratum of the prosecution case finds place including the presence on Sish Pal Singh (P.W.4) in the bus along with him.

8. Coming now to the medical evidence we find that Dr. Dinesh Mohan (P.W.11) held post mortem examination upon had dead body of Ram Pal on May 12, 1977 and found the following injuries on his person:-

- "1. Gun shot wound 3 cm. * 1 cm. * thoracic cavity deep over lateral end of right collar bone. Margins were inverted. There was blackening and charring around the wound.
2. Contusion 3 cm. * 2cm. over lateral side of the front of chest 2 cm. below left nipple."

According to the doctor Ram Pal died due to shock and haemorrhage caused by the gun shot injury. The evidence of the doctor, therefore, fully supports the testimonies of PWs 1 and 4.

9. Having carefully gone through the entire evidence on record we are of the opinion that both the learned Courts below were fully justified in concluding that P.Ws. 1 and 4 were reliable witnesses and we find no reason to differ with the view so expressed. Their evidence along with the other evidence discussed above conclusively proves the case against the appellant.

10. In the result we do not find any merit in this appeal and the same is dismissed. The appellant, who is on bail, will now surrender to his bail bond to serve out the remainder of the sentence.