

PETITIONER:
TARAK NATH SING & ANR.

Vs.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT: 04/12/1997

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 4TH DAY OF DECEMBER, 1997

Present:

Hon'ble Mr. Justice G.T. Nanavati

Hon'ble Mr. Justice V.N. Khare

Rajinder Sachhar, Sr.Adv., R.P. Gupta, Adv. with him for the appellants.

G.S. Chatterjee, Raja Chatterjee, (J.R.Das,) Adv for M/s. Sinha & Das, Advs. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

Nanavati, J

The appellants were convicted by the Sessions Court for committing the offence punishable under Section 307 read with Section 34 IPC and sentenced to suffer rigorous imprisonment for ten years. Appellant Tarak Nath Singh was also convicted under Sections 25 and 27 of the Arms Act and was sentenced to suffer rigorous imprisonment for one and three years respectively. The High Court confirmed the conviction of the appellants under Section 307 read with Section 34 IPC but reduced the sentence to rigorous imprisonment for eight years. Conviction of Tarak Nath Singh under sections 25 and 27 of Arms Act was set aside. Aggrieved by the conviction and the order of sentence the appellants have filed this appeal by special leave.

What has been found against the appellants is that on April 23, 1979 at about 10.30 p.m. when Ramashish Singh was examining his account books and counting money in this 'Gaddi' (place of business) the appellants with four or five unknown persons entered the 'Gaddi' with revolvers, knives and bombs, Tarak Nath Singh fired six rounds from his revolver and caused injuries to Ramashish Singh and Chhabi Nath (appellant No.2) stabbed him with a knife on his abdomen. After attacking Ramashish Singh in this manner the assailants had escaped after hurling bombs.

Both the courts below have believed the evidence of Ramashish (PW-1) and also of PWs-2,3 10 and 11. Shewnarayan (PW-2) was the owner of a nearby tea stall, Lalan Tewari (PW-3) was a passer by, Ganga Prasad (PW-10) was an employee of Ramashish and Birendera (PW-11) is the son of Ramashish. All of them rushed to his 'Gaddi' on their

attention being attacked by the sound of firing of shots and explosion of bombs and also by the alarm raised by Ramashish. All these witnesses had stated that soon after reaching there they were informed by Ramashish that he was attacked by Tarak nath Singh (appellant No.1), Chhabi Nath (appellant No.2) and four to five unknown persons. The trial court held that the evidence of Ramashish was corroborated by the medical evidence and also by the evidence of the aforesaid witnesses. It, therefore, convicted the appellants as stated above.

The High Court agreed with appreciation of the prosecution evidence by the trial court and confirmed the findings recorded by it that the appellants along with four of five other persons had attempted to cause the death of Ramashish Singh as alleged against them. It, however, held that conviction of appellant Tarak Nath Singh under section 25 and 27 of Arms Act was bad because the sanction granted by the District Magistrate was bad in law. It, therefore, acquitted Tarak Nath Singh of those charges. As regards the sentence imposed upon the appellants the High Court was of the view that it was rather harsh and therefore, reduced it as stated above.

Mr. Rajinder Sachhar, learned senior counsel for the appellants, contended that both the courts below failed to appreciate that the prosecution had failed to establish that an emergency light was burning in the 'Gaddi' at the time of the incident. His submission was that admittedly there was load shedding in the area at the time of the incident and therefore, it was incumbent upon the prosecution to prove that in the 'Gaddi' of Ramashish there was a source of light sufficient enough to identify the assailants. The Investigating Officer had neither seized any emergency light from the 'Gaddi' nor had made any inquiry in that behalf. We do not find any substance in this contention as it was not at all necessary for the police to seize and produce before the Court the said emergency light. Undisputedly the 'Gaddi' of Ramashish was open as the incident had taken place inside the 'Gaddi' and it was unlikely that at such a late hour Ramashish was sitting in his 'Gaddi' without any light. It was not even suggested to PWS-1,2,3,10 and 11 that there was no light in the Gaddi at the time of the incident or when they reached there. Both the courts have believed the evidence of the witnesses and held that there was light in the 'Gaddi' and we see no reason to doubt correctness of that finding.

It was next contended that Ramashish was really taken to the hospital not by his son Birendera but by Jagdish, son-in-law of the elder brother of Ramashish, and that till Ramashish was admitted in the emergency ward names of the assailants were not known either to Ramashish or Jagdish as disclosed by the discharge certificate and the medical certificate, which contained history of the assault but did not contain the names of assailants. It was also submitted that Birendera really did not know about the incident and had not gone to the hospital at all and to support his false claim the prosecution had examined Shewnarayan (PW-2). It is true that in the discharge certificate prepared by the hospital it is mentioned that the person who got Ramashish admitted in the hospital was one Jagdish but from that it does not necessarily follow that Birendera had not taken his father to the hospital. The evidence of Birendera on this point is not only supported by the evidence of PWS-1,3 and 10 but also by the evidence of PWS-4, 5 and 14. Jahar Banerjee (PW-4) was an employee of Calcutta Medical Research Institute, where the injured Ramashish was taken for

treatment. He has stated that he had seen a private car arriving at that place with one person having bleeding injuries. Kalisankar Dhar (PW-5) was another employee of that Institute working in the emergency department and has stated that on being informed that a patient had been brought in a serious condition he had gone with a stretcher and taken him to the emergency department. According to his evidence the patient had bleeding injuries and the man who was with him had helped him in getting down from the car. That man had no money and, therefore, had gone back in his car to bring money. he identified that person as Birendera Singh, in the court. In cross-examination he further stated that he saw one person in the car besides the patient and denied that Birendera Singh, identified by him in the court, was not the person who was with the patient. Sub Inspector Dinesh Chakraborty (PW-14) had stated in his evidence that on receiving information about the incident he had rushed to the 'Gaddi' of Ramashish and at that time he had seen Ramashish lying in a car in injured condition and his son Birendera Singh was making necessary arrangements to take him to the hospital. The evidence of these three independent witnesses was not at all challenged. It was, therefore, satisfactorily established by the prosecution that Birendera Singh after taking his injured father to the hospital had gone back to his house to get some money. It is quite possible that Jagdish (son-in-law of the elder brother of Ramashish) and Madan (son of the elder brother of Ramashish who had also by that time arrived at the hospital, as stated by Birendera himself, might have volunteered to give the history of assault to Dr. Tapan Bhattacharjee, who had prepared the necessary case papers. The defence version that it was Jagdish, who had taken injured Ramashish from the 'Gaddi' to the Hospital, has not been accepted by both the courts below. We are also of the view that the said version was rightly not believed. Once we believe that it was Birendera Singh who had taken his father to the hospital the contention raised by the learned counsel with respect to the evidence of Shewnarayan (PW-2) has to be rejected. The contention that names of the assailants were not known even to Ramashish till he was admitted in the emergency department also has to be rejected.

It was next contended by the learned counsel that Ramashish was about 58 years old at the time of the incident and, therefore, after receiving injuries on his hands and face as a result of firing of bullets from the revolver and after being stabbed by a knife on his abdomen could not have offered any resistance and therefore his evidence that he had snatched away the knife from the hands of one of the assailants and caused injury to him cannot be believed. The evidence discloses that even after receiving those injuries Ramashish had not fallen down and he was in a position to hand over money and the papers containing accounts to Shewnarayan (PW-2). Moreover, it was not put to any of the doctors who had examined Ramashish that after receiving injuries he could not have offered any resistance. As stated by the doctor on the basis of nature of injuries caused to Ramashish the bullets fired had little force and, therefore, it cannot be said that the version of Ramashish that he could offer resistance, snatch away a knife from the hands of one of the assailants and caused an injury one of them is improbable.

It was lastly submitted by the learned counsel that even if the conviction of the appellants is maintained the sentence imposed upon them deserves to be reduced particularly in view of the fact that the accused and

injured are close relatives and now 18 years have passed. He also pointed out that the appellants had remained in jail for a substantial period and now the situation has also changed. During these 18 years, the appellants have not been involved in any offence. Considering the facts and circumstances of the case, in our opinion, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone but a fine of Rs. 10,000/- each is imposed upon the appellants.

We, therefore, partly allow this appeal. The conviction of the appellants is maintained but the sentence imposed upon them is altered from rigorous imprisonment of eight years to rigorous imprisonment for the period already undergone but the appellants are directed to pay a fine of Rs. 10,000/- each. In case of default of payment of fine the appellants will undergo further rigorous imprisonment for a period of two years. It is directed that out of the fine, if paid, the injured Ramashish be paid Rs. 10,000/- as compensation.