

CASE NO.:  
Appeal (crl.) 1344-1346 of 1999

PETITIONER:  
STATE OF U.P.

RESPONDENT:  
SHYAM VEER & 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 dated 17th December, 1997 in Criminal Appeal Nos. 186, 214 and 474 of 1997 along with Criminal Appeal No.(Capital Case)No.198/97. The High Court also disposed of Reference No.17/97. The respondents 13 in number were put up for trial before the Ist Addl.District & Sessions Judge, Etah in Sessions

Trial No.321/89. By judgment and order of 25th January, 1997 the trial court found respondents 1 to 5 guilty of the offences under Section 302/149 IPC, 436, 353 and 147 IPC.

It sentenced them to death under Section 302/149 IPC, to life imprisonment under Section 436 IPC and 2 years rigorous imprisonment each under Sections 353 and 147 IPC. The respondents 6 to 13 were sentenced to life imprisonment under Section 302/109 as well as under Section 436/109

IPC, and to two years rigorous imprisonment under Section 353 IPC. They were, however, acquitted of the charge under Section 147 IPC. The several appeals along with Death Reference

were disposed of by the High Court by its impugned judgment and order. The High Court declined the Death Reference on a finding that respondents 1 to 5 were guilty of offence under

Section 304 Part-I and not under Section 302/149 IPC. It sentenced them to 10 years rigorous

imprisonment under that Section. It further reduced their sentence under Section 436 IPC to 7

years rigorous imprisonment while upholding the sentence under Section 147 IPC. Respondent

6 to 13 were acquitted of all the charges levelled against them.

The case of the prosecution is that on 22nd March, 1989 the villagers of village Badhapura were celebrating Holi festival when that unfortunate incident took place. Deceased

Ghamandi Lal, a dhobi by caste was also a resident of the village. At about 7.00 P.M. Rajvir

Singh, who appeared to be under the influence of liquor, came in front of his house and allegedly

started abusing Ghamandi Lal, (deceased) calling him a dhobi, etc. To this, Indal (deceased) son

of Ghamandi Lal objected. Rajvir Singh did not pay any heed and continued to abuse Ghamandi Lal by his caste. This infuriated Indal, son of Ghamandi Lal who went inside his house brought out the licensed gun of his father and fired 2/3 shots at Rajvir Singh, as a result of

which Rajvir Singh died on the spot. Immediately, the message reached the family members of

Rajvir Singh. Respondents 1 to 3 his brothers, and respondents 4 and 5 his cousins reached

the house of Ghamandi Lal. They lifted the body from in front of the house of Ghamandi Lal and placed it under a Neem tree. They were infuriated and vowed to avenge the murder of their brother, and in that mood they approached the house of Ghamandi Lal. Ghamandi Lal apprehending death at their hands, entered his house and bolted the door from inside. The aforesaid respondents climbed on the roof of his house, broke open a portion of the roof and threw inside the room straw and other inflammable materials. Thereafter, they set fire to the house. The admitted case is that all this took place within 15 minutes of the murder of Rajvir Singh.

A first information report had been lodged at 2.45 A.M. regarding the death of Rajvir Singh by Shyamvir Singh, his brother. The first information report relating to the incident in question was lodged at 3.15 A.M. by Kamlesh PW4, a cousin of Ghamandi Lal. On the basis of the earlier first information report the police force had reached village Badha pura. It is the case of the prosecution that respondents 6 to 13 prevented the police force as well as the villagers from extinguishing the fire. Ultimately, the house was burnt down. From the burnt house the bodies of Ghamandi Lal, his wife Janak Dulari and his sons Vir Pal, Raj Kumar and Indal were recovered.

Though the prosecution examined several witnesses to prove its case, PWS 1, 2 & 3 were declared hostile. PW4 Kamlesh who was also informant in the case and a cousin of the deceased supported the case of the prosecution. PW5 Bittan Devi is also a neighbour like Kamlesh PW4. She was also a sister of the wife of Ghamandi Lal. The trial court relied upon their testimony and found the respondents guilty as noticed earlier. The High Court also relied upon the testimony of PW4 Kamlesh as corroborated by the testimony of Bittan Devi PW5. However, the High Court was of the view that in the facts and circumstances of the case the respondents 1 to 5 were entitled to the benefit of Exception 1 of Section 300 IPC. Respondents 6 to 13 were acquitted of the charges framed against them because admittedly they were not present when the remaining accused decided to set fire to the house or when they actually set fire to the house. The High Court found that in the facts of the case they could not be found guilty of the offences under either Sections 302/109 IPC or Section 436/109 IPC or even under Section 353 IPC. In fact, the Addl. Advocate General appearing before the High Court conceded the case against them.

In appeal before us, learned counsel appearing for the appellant State submits that so far as respondents 1 to 5 are concerned, their conviction under Section 302/149 IPC ought to have been affirmed. According to him, this is not a case which is covered by Exception I to Section 300 IPC. No doubt, the provocation was grave but it was not sudden. According to him, respondents 1 to 5 had come to the place of occurrence on hearing about their brother's death, they had thereafter picked up the body of the deceased brother and kept it under a Neem tree. Only thereafter they set fire to the house of the deceased. No argument was advanced before us against acquittal of respondents 6 to 13 by counsel appearing for the State of U.P.

On the other hand, counsel for the aforesaid respondents submitted that it is not disputed that the second occurrence took place within 15 minutes of the first occurrence. Indal, son of Ghamandi Lal had unnecessarily caused the death of their brother Rajvir Singh. The incident seriously infuriated the family members of the deceased and resulted in deprivation

of power of self control. The time gap of only 15 minutes between the two incidents supports the case of the respondents that what they did was under grave provocation whilst deprived of their power of self control on account of the murder of their brother by Indal. According to her the time gap of 15 minutes was not sufficient for the members of the family of the Rajvir Singh to gain their self control particularly, when they saw the dead body of their brother who was murdered by Indal. It must have taken some time for them to reach the house of Ghamandi Lal, and within no time thereafter the second occurrence took place.

Having regard to the facts and circumstances of the case, we are not in a position to say that the view taken by the High Court is not a possible reasonable view of the evidence on record. The respondents 1 to 5 have been sentenced to 10 years rigorous imprisonment under Section 304 Part-I IPC and also to 7 years rigorous imprisonment under Section 436 IPC apart from the sentence of two years under Section 147 IPC. The occurrence took place 16 years ago.

We are, therefore, not inclined to interfere with the order of the High Court.

The appeals are accordingly dismissed.