

PETITIONER:
RAM DUTT

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 17/04/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
VENKATASWAMI K. (J)

CITATION:
JT 1996 (4) 760 1996 SCALE (3)619

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY, J.

This appeal is directed against Order dated November 25, 1983 passed by the Division Bench of Allahabad High Court, (Lucknow Bench) in Crl. Appeal No. 151 of 1976. The appellant and six other co-accused faced a trial under Section 148, 302/149 and 307/148 Indian Penal Code before the learned Additional District and Sessions Judge, Kheri, in Sessions Trial No.A-45 of 1976. The learned Additional Sessions Judge acquitted accused No.4; * But convicted the appellant Ram Dutt under Sections 148, 307 read with Section 149, and 302 IPC. The accused Vijai Prakash, Ram Tahal, Ramlal, Dharai and Sheo Dutt were convicted under Sections 148, 307 read with 149 and 302 read with 149 IPC. The appellant was sentenced to suffer life imprisonment for the offence under Section 302 IPC, five years' rigorous imprisonment under Section 307 read with Section 149 and one year's rigorous imprisonment under Section 148. Various sentences were passed against the other convicted accused. It was directed that the sentences would run concurrently.

Against the said conviction and sentence passed by the learned Additional Sessions Judge, the accused Ram Tahal preferred Criminal Appeal No.900 of 1976 before the Lucknow Bench of the Allahabad High Court. The accused Vijay Prakash, Ramlal, Dharai @ Ram Dass and Sheo Dutt preferred Criminal Appeal No.12 of 1977 before the said Lucknow Bench and the appellant Ram Dutt preferred Criminal Appeal No. 151 of 1976 before the said Lucknow Bench against the conviction and sentence passed by the learned Additional Sessions Judge. All the said appeals were analogously heard and disposed of by the common judgment passed on November 25, 1983. The High Court convicted Vijai Prakash, Ram Tahal under Section 324 read with Section 34 and sentenced them to suffer one year's rigorous imprisonment but they were acquitted of the other charges. The accused Ramlal, Dharai @ Ram Dass and Sheo Dutt were not found guilty of any of the charges and they were

acquitted. Their conviction and sentence were set aside by the High Court. The conviction of the appellant under Section 302 and the sentence of life imprisonment for such offence was, however, upheld by the High Court. The conviction of the appellant under Sections 148, 307 read with 149 IPC has been set aside. The appellant Ram Dutt has also been convicted under Section 324 read with Section 34 and has been sentenced to suffer one year's rigorous imprisonment. We have been informed that the other convicted accused have not preferred any appeal and the only appeal, namely, Criminal Appeal No. 512 of 1984 has been preferred by Ram Dutt.

The prosecution case in short is that the complainant Sanwalia Prasad and the accused has strained relations for the last thirty years and there had been proceedings under Sections 107 and 117 of the Criminal Procedure Code between them. The appellant Ram Dutt and the other accused Sheo Dutt were real Brothers and sons of the accused Jadunath Prasad. The other accused persons were closely related. It is the prosecution case that the accused persons and the complainant Sanwalia Prasad and his son Pravin Kumar the deceased and other injured persons reside in the village Barniya in the police station Pasgawan in the District Kheri. At about 5.00 P.M. on November 24, 1975, Sheo Nath was coming to his village in a beffalo-cart from the side of a canal. When he reached near the fields of Chakrapani, the accused Vijai Prakash and Ram Tahal obstructed him from going to that side. There was a noisy altercations between Vijai Prakash and Ram Tanal and Sheo Nath. On hearing the noise, Sanwalia Prasad came out of his house to see what had happened. His son, Pravin Kumar, also came with him. When they reached near Tiraha in the south of the village, Sheo Nath met them. All the accused persons then reached the said place of incident on the northern side of the village and they stood towards the south west of the house of Hem Nath. All the accused persons were armed with guns except Jadunath who was armed with a rifle. The appellant Ram Dutt was the first persons who opened the fire with a D.B.B.L. gun and thereafter other persons also fired from their respective weapon. In view of such firing, Sanwalia Prasad, Praveen Kumar, Gurdayal, Hanuman Saran, Rajesh Kumar, Ram Niwas and Sheo Nath were injured. It is the prosecution case that Praveen Kumar well on the ground being hit by the gun fired by Ram Dutt and died on the spot. The accused after such firing ran away towards north. Sanwalia Prasad took Praveen Kumar to his house and took all the injured persons with him. All the six injured persons were medically examined at Salia hospital and thereafter Sanwalia with injured persons went to police station to lodge the first information report. He handed the report got prepared at his instance in the police station which was registered. Thereafter, investigation was taken by the police and the charge sheet was submitted against the said accused.

The appellant, was convicted under Section 302 for murdering the deceased Pravin Kumar and also for causing injuries to others. Accordingly, he has been convicted under Sections 302, 324 read with 34 IPC by the High Court. For the purpose of disposing of this appeal, it is not necessary to consider the complicity of the other accused persons because Ram Dutt is the only appellant in this appeal. The learned counsel appearing for the appellant at the hearing of this appeal has submitted that although the conviction of Ram Dutt under Section 302 IPC has been affirmed by the High Court, both the courts have failed to notice the significant fact which has clearly emerged from the depositions given by

the eye witnesses in the said Sessions Trial. The learned counsel has contended that it is the positive case of the prosecution and the eye-witnesses that besides the appellant Ram Dutt, other accused persons also opened fire from their respective fire arm. The learned counsel has submitted that PW 7 Lok Nath, stated in his statement under Section 161 Cr.P.C. that Ram Dutt was armed with a pistol and he was found with such pistol near a guava tree by the side of the house of Hem Nath. At the trial, however, the witnesses stated that Ram Dutt fired from a double barreled gun causing injuries to Pravin Kumar and also to Sanwalia Prasad, the father of the deceased. It has been contended by the learned counsel for the appellant that if all the accused had opened fire from their respective weapon almost simultaneously, it is not possible to precisely determine as to whether Ram Dutt had actually caused injuries on Pravin Kumar resulting his death. The learned counsel has submitted that it is quite apparent that firing was resorted to by a number of persons causing injuries on a number of witnesses on the side of the prosecution. Even if it is assumed that Ram Dutt did not fire from a pistol but had fired from a gun, there is no convincing evidence on the basis of which it can be clearly found that he had actually caused the death of Pravin Kumar. The learned counsel has submitted that the High Court has acquitted some of the accused and has convicted Vijai Prakash and Ram Tahal under Section 324 for causing injuries to other persons and has passed a sentence of one year's rigorous imprisonment against them. In the facts of the case, Ram Dutt should also have been treated similarly and his conviction under Section 302 I.P.C. is not at all warranted. In the facts of the case, the concurrent finding by the learned Additional Sessions Judge and by the High Court that Ram Dutt was guilty for the offence under Section 302 IPC for murdering Pravin Kumar is passed on surmise and conjecture. Accordingly, his conviction under Section 302 is liable to be set aside.

In our view, such contention of the learned counsel for the appellant cannot be accepted. PW 3, Sanwalia Prasad, the father of the deceased has specifically deposed that it was the appellant Ram Dutt who first opened the fire with a double barrel gun which critically injured his son Pravin Kumar and he also sustained injuries. It was after such firing by Ram Dutt other accused also fired from their respective fire arm which caused injuries to the other persons. PW 5 Sheo Nath has also specifically stated that Ram Dutt fired from a gun which hit Pravin Kumar resulting his death. In view of such clear and specific evidence, in our view, there is no occasion to entertain a doubt as to whether or not the deceased was injured by Ram Dutt who had opened fire with a gun. Both the learned Additional Sessions Judge and the High Court having accepted the depositions of the eye-witnesses about the complicity of the appellant Ram Dutt in causing the murder of Pravin Kumar had no hesitation in convicting the appellants for the offence of murder. There is also clinching evidence that besides the appellant, some other accused persons also fired from their respective fire arm thereby causing injuries to Sanwalia Prasad and other persons. In view of such depositions, the conviction of the appellant for the offence under Section 324 read with 34 IPC is also justified. We, therefore, find no reason to interfere with the conviction and sentence passed against the appellant and the appeal is therefore dismissed. It appears that the appellant was granted bail by an order of this Court dated April 29, 1985. The bail bond stands cancelled. The appellant is directed to be arrested and

detained in jail to serve out the sentence passed against him.

JUDIS