

STATE OF U.P.
v.
RAM BAHADUR SINGH AND ORS.

A

OCTOBER 29, 2003

[K.G. BALAKRISHNAN AND B.N. AGRAWAL, JJ.]

B

Penal Code, 1860 :

S. 302 read with s. 34—Serious infirmities in prosecution case—Effect of—Property dispute between complainant party and accused persons—Prosecution case that wordy altercation followed by two gun shots fired by one of the accused hitting one of the complainant party causing his death on the spot—Trial court convicting the accused who was alleged to have fired gunshots u/s 302/34—Acquittal by High Court noticing serious infirmities in prosecution case—Held, oral evidence inconsistent with medical evidence—Serious injuries caused to accused—All these not satisfactorily explained by prosecution—This creates suspicion—Under the circumstances, High Court took a plausible view—Not a fit case to interfere with in exercise of jurisdiction under Article 136 of the Constitution—Constitution of India—Article 136.

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E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1787 of 1996.

From the Judgment and Order dated 15.2.96 of the Allahabad High Court in CrI. A. No. 457 of 1979.

F

WITH

CrI. A. No. 1358 of 2003.

R.K. Singh, J.K. Bhatia for Pramod Swarup, P.K. Jain for the Appellant.

G

S.C. Maheshwari, Ms. Sandhya Goswami and M.P.S. Tomar for the Respondents.

The Order of the Court was delivered :

H

A Leave granted in SLP (CRL) No. 1064/1996.

B Criminal Appeal No. 1787/1996 has been preferred by the State of U.P. against the judgment of the High Court of Judicature of Allahabad at Lucknow in Criminal Appeal No. 457 of 1979. Against the very same judgment one private party has also filed a Criminal Appeal by way of Special leave. In both these appeals the acquittal of four accused persons is challenged. Accused were tried by the 5th Additional Sessions Judge, Barabanki alleging that they caused the death of Onkar Nath Singh. The incident occurred on 6.12.1974 at 4.30 p.m. There was property dispute between Onkar Nath Singh on the one hand and the accused persons. On the date of the incident, PW-4 Jagdish Baksh Singh was ploughing his field with a tractor. The accused persons raised objections to the ploughing of the field by Jagdish Baksh Singh. It seems that there was wordy altercation. Accused Bhanu Pratap Singh, who was armed with a gun, fired a shot and hit on the chest of Onkar Nath Singh. Onkar Nath Singh tried to run away from the place, then he was shot again. Onkar Nath Singh fell on the ground after running few paces. PW-1 Bikram Shah Singh and PW-4 Jagdish Baksh Singh snatched the gun from Bhanu Pratap Singh. Onkar Nath Singh died on the spot. First information statement was given by PW-1 at about 7.15 P.M. on the same day and PW-8 recorded the same and started investigation of the case.

F PW-3 Dr. V.N. Agarwal examined the dead body of Onkar Nath Singh and prepared Ext. Ka-3 post-mortem report. There were two injuries on the body of deceased Onkar Nath Singh. One gun shot wound of entry 6 cm. x 4 cm. tissue deep on front of left side chest upper part and other exit injury of 1 cm. x 1 cm. tissue deep on right side back lower part with direction forward and upward. Doctor opined death was due to shock and haemorrhage. The Sessions Judge found all the four accused persons guilty of murder. Bhanu Pratap Singh was convicted for the offence under section 302 simplicitor and the other three accused persons were convicted for the offence under section 302 read with section 34.

H In the appeal preferred by the accused persons, the High Court found that there were serious infirmities in the prosecution case. It is found that oral evidence given by the eye witnesses was inconsistent with the medical evidence given by PW-3. As per the oral evidence, the accused Bhanu

Pratap Singh was standing at a distance of 18 to 20 feet away from the deceased Onkar Nath Singh when he fired. Oral evidence to the effect that tattooing and scorching was present on the adjoining skin, that could have been caused only if the firing had been done from a distance of four feet. Reason given by the High Court cannot be said to be perverse or unreasonable. It may also be noted that the accused Bhanu Pratap Singh had sustained serious injuries on his body. He was examined by Dr. PW-1 A.P. Mahanti. One injury was incised wound on the top of the head in intra-parital region scalp deep and there were other lacerated injuries. The prosecution could not give any rationale explanation as to how the accused Bhanu Pratap Singh sustained these injuries. Moreover, according to prosecution there were two gun shot injuries at the instance of the Bhanu Pratap Singh and both of them hit on the deceased whereas the injuries on the body of the deceased could only show that Onkar Nath Singh received only one gun shot. All these are not satisfactorily explained by the prosecution. It naturally creates suspicious and under these circumstances we feel that the High Court has taken a plausible view. This is not a fit case where this Court in exercise of its jurisdiction under Article 136 can interfere with such findings. These two appeals fail and are dismissed.

R.P.

† Appeals dismissed.