

STATE OF U.P.

V.

GAJADHAR SINGH AND ORS.

Criminal Appeal Nos. 332-333 Of 2002

FEBRUARY 11, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

Penal Code, 1860 :

ss.302, 307 r/w s.149 – Murder – Common object – Fight during elections – Two accused held hands of the deceased – Respondent no.1 fired upon him with a country made pistol – Three persons injured – All seven accused including respondent no.1 convicted by trial court u/ss.302,307 r/w s.149 – High Court affirmed conviction of respondent no.1 u/s.302 r/w 149 but altered his conviction u/s. 307 r/w s.149 to u/s.323 r/w s.149 – Conviction of other accused u/ss.302 and 307 r/w s.149 altered to u/s.323 r/w s.149 – Justification of – On facts, held: Justified – Prosecution did not establish that remaining accused persons had any knowledge that respondent no.1 was carrying a country made pistol or that he would go to shoot the deceased – Evidence on record established that the pistol was concealed and was not visible to anyone – Common object of the assembly was not to commit murder and it was the solitary act of respondent no.1.

According to the prosecution, on account of a fight during the Gaon Sabha elections, two accused held the hands of the polling agent of 'R' while respondent no.1 fired upon him with a country made pistol which resulted in his death. Three persons were injured in the incident. All the seven accused including respondent no.1 were convicted by the trial court under ss.302 and 307 both r/w s.149 IPC.

A On appeal, the High Court affirmed the conviction of
respondent no.1 under s.302 r/w 149 IPC but altered his
conviction under s.307 r/w s.149 IPC to under s.323 r/w
s.149 IPC. As regards the other respondents, their con-
victions under ss. 302 and 307 r/w s.149 IPC was set aside
B by the High Court and instead they were convicted under
s.323 r/w s.149 IPC. Hence the present appeals.

Dismissing the appeals, the Court

C HELD: The evidence on record clearly established
that the pistol was concealed and was not visible to any-
one. The High Court rightly noted that the evidence ad-
duced by the prosecution did not establish that remain-
ing accused persons had any knowledge that respondent
no.1 was carrying a country made pistol or that he would
D go to shoot the deceased. The testimony of PW-2 shows
that one accused 'J' was initially asking the voters not to
caste vote for 'R' but to vote for his candidate and subse-
quently he had resorted to rowdism in order to disturb
the voting process so that 'R' may not win the election and
E that simple injuries were caused by blunt weapon to three
persons. Therefore, as rightly observed by the High Court
the common object of the assembly was not to commit
the murder of the deceased and it was the solitary act of
respondent no.1. PW-2 had also stated that he had not
seen the lathis or country made pistol in the hands of any
F of the accused persons at the time when 'J' was disturb-
ing the voters and was asking them not to caste vote in
favour of 'R'. PW-4 i.e. Constable on duty had also stated
that there was fight between the parties regarding distur-
G bance in voting. In view of the aforesaid factual position,
this Court is not inclined to interfere. [Paras 6, 7] [22-G, H;
23-A, B, C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal Nos. 332-333 of 2002

H From the Judgment and Order dated 29.8.2001 of the High

Court of Judicature at Allahabad in Criminal Appeal Nos. 2007 A
of 1997 and 1963 of 1997

Pramod Swarup, Vikas Bansal, Anuvrat Sharma & Alka
Sinha for the Appellant.

Ajai Bhalla, Shefali Jain, Abha R. Sharma, Vandana B
Mishra, Ashok K. Srivastava, Saurabh Trivedi, C.S. Ashri & Jai
Prakash Pandey, for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. C

1. Challenge in the present appeals is to the judgment of a
Division Bench of the Allahabad High Court allowing the ap-
peal filed by the respondents. The respondents were found guilty
of offence punishable under Sections 302, 307 read with Sec-
tion 149 of the Indian Penal Code, 1860 (in short the 'IPC') by D
the trial Court. It is to be noted that two appeals were filed be-
fore the High Court by the convicted accused persons. Crimi-
nal Appeal No.2007/1997 was preferred by Gajadhar Singh (re-
spondent No.1) and Criminal Appeal No.1963/1997 was pre-
ferred by Janardan Singh, Sarvajit Singh, Suresh Singh, Umesh E
Singh, Mritunjai Singh and Haribhan Chaudhury. The High
Court dismissed the appeal of respondent No.1-Gajadhar but
set aside the conviction so far as appellants in the other appeal
before it. However, so far as Gajadhar is concerned his convic-
tion in terms of Section 307 read with Section 149 IPC was F
altered and he was convicted under Section 323 read with Sec-
tion 149 IPC. So far as other appellants are concerned their
convictions under Section 302 and 307 both read with Section
149 IPC were set aside and instead they were convicted under
Section 323 read with Section 149 IPC. The conviction under G
Section 147 IPC was affirmed.

2. Background facts in a nutshell are as follows :

The accused Gajadhar Singh and Umesh Singh are real
brothers being sons of Ram Vichar Singh while Sarvajit Singh H

A accused is son of Janardan Singh. Janardan Singh is the first cousin of Ram Vichar Singh as their fathers were real brothers. The remaining two accused, namely, Mritunjai Singh and Haribhan Chaudhury belonged to their group. Janardan Singh was earlier the Pradhan of Gaon Sabha Bankara Saiyed Bukhara. In the election scheduled to be held in April, 1995, the office of Pradhan of the said Gaon Sabha was reserved for a person belonging to backward caste. Janardan Singh then set up Haribhan Yadav (Chaudhary) while Chandra Bhan Singh (hereinafter referred to as 'deceased') set up Ramakant Yadav as candidate for the office of Pradhan. Janardan Singh himself filed his nomination papers for the membership of Block Development Committee while deceased Chandra Bhan Singh proposed the name of Shri Ram Bhar for the said office. The election for the office of Pradhan commenced in the morning of 7.4.1995 and the polling station was in the primary school of the village. Chandra Bhan Singh was also the polling agent of Ramakant Yadav. Shortly after commencement of the polling, Janardan Singh and some persons of his group started creating disturbance and resorted to rowdism. Chandra Bhan Singh asked them not to create any disturbance and to allow the poll to be conducted in a peaceful manner. Janardan Singh then exhorted his companions that he should be beaten. Thereafter Janardan Singh and Sarvajit Singh each caught one hand of Chandra Bhan Singh and Gajadhar Singh fired from a country made pistol upon him and the shot him upon his chest. Shivji Yadav, Deedan Singh and Keshav rushed forward to save him but the accused Suresh Singh Umesh Singh, Mritunjai Singh and Haribhan assaulted them with lathis. Chandra Bhan Singh fell clown and died on the spot. The injured Keshav Singh Shivji and Deedan Singh thereafter went to the PHC Siyar where medical aid was given to them and they were also medically examined. Keshav Singh got the FIR of the incident scribed by Raghav Singh and lodged the same at 12.40 p.m. at Police Station, Ubhav which is at a distance of 4 miles from the place of occurrence. Udai Bhan Singh (PW-6), clerk-constable, registered a

case in the general diary on the basis of the FIR lodged by Keshav Singh. Subhash Chandra Sonkar (CW-2), SI Com-
mended investigation of the case and immediately proceeded
for the spot. The dead body of Chandra Bhan Singh was lying
in front of the building of primary school in village Bankara Saiyed
Bukhara. He found blood on the spot and collected plain and
bloodstained earth from there and prepared its recovery memo.
He also prepared a site-plan with the assistance of Keshav Singh
and his statement under section 161 of the Code of Criminal
Procedure, 1973 (in short the 'Code') was also recorded by
him. After completing other formalities, the body was sealed
and was sent for Post-mortem examination. Subsequently, the
investigation was handed over to T.P. Nanda (P.W.7), who re-
corded statements of some others witnesses.

After completion of investigation charge sheet was filed.
As the accused persons pleaded innocence, trial was held.

Prosecution examined seven witnesses including the three
eye witnesses. The accused examined one witness in support
of their plea of innocence. As per the directions of the Court
three persons were examined as court witnesses. The learned
Sessions Judge believed the case of the prosecution and con-
victed and sentenced the accused as noted above.

Before the High Court in the appeals, the primary stand
was that the prosecution evidence was not reliable. The High
Court did not accept the stand. The High Court held that it was
established beyond any shadow of doubt that Gajadhar had fired
upon the deceased Chandra Bhan at 7.45 a.m. on 7.4.1995 in
front of the building of the primary school which resulted in his
death. So far as other accused persons are concerned the High
Court noticed that the evidence was insufficient. The High Court,
therefore, was not inclined to believe that part of the prosecution
case wherein the role of catching hands of the deceased
was assigned to the accused Janardan and Sarvajit Singh. So
far as remaining four accused persons are concerned the High
Court noted that they allegedly did not cause any injury to the

A deceased. They were armed with lathis but they did not assault
the deceased. They were alleged to have caused injuries to
three persons, but all the injuries caused by them were found to
be simple in nature. In that view of the matter the High Court
found that the common object of the assembly was not to com-
mit the murder of the deceased and it was the solitary act of
B Gajadhar Singh which resulted in his death. So far as convic-
tion under Section 307 read with Section 149 IPC is concerned
after referring to the nature of injuries sustained by three injured
it was held that Section 307 read with Section 149 IPC had no
C application and instead appropriate conviction would be under
Section 323 read with Section 149 IPC. Accordingly, it altered
the conviction.

3. In support of the appeals, learned counsel for the appel-
lant submitted that the accused persons had caused injuries.
D The evidence of PWs had clearly established the accusations
and, therefore, the High Court should not have altered the con-
viction as was done by the trial Court.

4. Learned counsel for the respondents on the other hand
E supported the judgment.

5. It is to be noted that conviction of Gajadhar for offence
punishable under Section 302 read with Section 149 IPC has
been affirmed and the conviction for offence in terms of Section
307 read with Section 149 IPC has been altered. The appeal
F filed by the State of U.P. so far as accused Gajadhar-respon-
dent No.1 is concerned appears to be without any substance.
So far as other accused persons are concerned, the High Court
has in great detail referred to the evidence and directed acquit-
tal of the other accused persons.

G 6. The evidence on record clearly established that the pis-
tol was concealed and was not visible to anyone. The High Court
rightly noted that the evidence adduced by the prosecution did
not establish that remaining accused persons had any knowl-
edge that Gajadhar was carrying a country made pistol or that
H he would go to shoot the deceased. The testimony of PW-2

shows that Janardan was initially asking the voters not to caste A
vote for Ramakant Yadav but to vote for his candidate and sub-
sequently he had resorted to rowdism in order to disturb the
voting process so that Ramakant Yadav may not win the elec-
tion and that simple injuries were caused by blunt weapon B
to three persons. Therefore, as rightly observed by the High Court
the common object of the assembly was not to commit the mur-
der of Chandra Bhan Singh and it was the solitary act of
Gajadhar. PW-2 had also stated that he had not seen the lathis
or country made pistol in the hands of any of the accused per-
sons at the time when Janardan was disturbing the voters and C
was asking them not to caste vote in favour of Ramakant Yadav.
PW-4 i.e. Constable on duty had also stated that there was fight
between the parties regarding disturbance in voting.

7. In view of the aforesaid factual position, we are not in-
clined to interfere in these appeals which are accordingly dis- D
missed.

B.B.B.

Appeals dismissed