

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 914-915 OF 2000

STATE OF U.P.

Appellant (s)

VERSUS

GOKUL & ORS.  
ent(s)

Respondent(s)

(With Office Report)

Date: 11/10/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. Pramod Swarup, Adv.

Mr. Vivek Singh, Adv.

Mr. Javed Mahmud Rao, Adv.

For Respondent(s)

Ms. Abha R. Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed judgment.

(Ajay Kr. Jain)  
(Vijay Dhawan)

Court Master

Court Master

(Signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 914-915 OF 2000

State of U.P.  
... Appellant

Versus

Gokul & Ors.  
.... Respondents

JUDGMENT

We have heard counsel for the parties.

The four respondents before us were put up for trial before the VIII Additional Sessions Judge,

Kanpur in Sessions Trial No. 257 of 1979 charged of the offences punishable under Sections 120-B and

302/120-B IPC. The allegations against them was that on 9th August, 1979 at about 6.00 p.m. when Ram Nath

(deceased) was going on his bicycle carrying a bundle of karvi grass and his sister Ram Dulari (PW-1) was

following him on foot, the respondents four in number, came out from behind the bushes and while Shashi

Kumar and Ram Lal fired at him from their country made pistols, respondents Krishna Kumar and Gokul

assaulted him with their respective weapons, namely, kulhari and pharsa, after he fell down. As a result Ram

Nath died on the spot. A first information report was lodged by PW-1 Ram Dulari at 9.10 p.m. at P.S.

Ghatampur, which was at a distance of 5 Kms. from the place of occurrence.

Three witnesses were examined as eye witnesses in the case. PW-1 the sister of Ram Nath,

namely, Ram Dulari, PW-2 Raj Bishamhbar and PW-3 Mahabir were said to be present in the locality when

the occurrence took place and had witnessed the occurrence.

The Trial Court on appreciation of the evidence on record came to the conclusion that the

prosecution had proved its case against the respondents under Section 302 IPC. The charge under Section

120-B IPC was not proved and accordingly he sentenced the respondents to undergo imprisonment for life.

Aggrieved by the judgment of the Trial Court, the respondents preferred Criminal Appeal Nos.

2589/1980 and 2599/1980. The High Court by its impugned judgment and order on reappreciation of

evidence on record came to the conclusion that the prosecution had failed to establish its case beyond

reasonable doubt. It may be observed that Mahabir PW-3 was declared hostile. Raj Bishamhbar PW-2 who

was projected as an independent witness in the first information report, being a resident of the locality where

the occurrence took place, was found to be not only a partisan but also an inimical witness. He was a witness

against the respondents Shashi Kumar and Krishna Kumar in a criminal case under Sections 323, 452, 504

and 506 IPC. In fact, he filed an affidavit to oppose the bail application of Shashi Kumar in the instant case.

He also jointly owned a tractor with the deceased Ram Nath. His presence was not corroborated by any

injury that he might have sustained in the course of the incident. He was examined three days after the

occurrence. The High Court, therefore, found his evidence to be unreliable having regard to the strong

enmity between this witness and two of the respondents.

The presence of Ram Dulari (PW-1) also appeared to the High Court to be doubtful. Only one

bundle of karvi grass was being carried on the carrier of the bicycle and the High Court was of the view that

it was wholly unnecessary for two persons to go and cut one bundle of karvi grass. Moreover, it found that if,

as alleged, the deceased was riding a bicycle and Ram Dulari was going on foot, they would not have reached

the road at about the same time and she would have been far away from the place of occurrence and,

therefore, unable to witness the occurrence or to identify the assailants. Her presence at the spot appeared

to the High Court to be doubtful.

The High Court has also taken into account another circumstance, namely, that of the four

accused Shashi and Krishna Kumar are brothers. The remaining two accused Gokul and Ram Lal have no

concern with Shashi and Krishna Kumar. The prosecution has alleged separate motives as against these two

sets of accused. It is the case of the prosecution that Ram Lal, his father and his uncle had filed a civil suit

against Smt. Ram Dulari and the deceased and in that case, the deceased was doing pairvi. Since Ram Dulari

(PW-1) won the case, respondent Ram Lal entertained inimical feelings towards her. So far as Shashi Kumar

and Krishna Kumar are concerned it was alleged that the deceased was a witness in a criminal case against

them. Having regard to the fact that Shashi Kumar and Krishna Kumar on the one hand and Gokul and Ram

Lal on the other hand have nothing in common, and the two families had no concern with each other, it

appeared to the High Court that their acting together in commission of the offence appeared to be doubtful.

There was really no reason for them, who were strangers to each other to have joined together to commit the

murder of the deceased.

On appraisal of the evidence on record, the High Court entertained a serious doubt about the

truthfulness of the case.

While we cannot say that another view is not possible in the facts and circumstances of the case,

we cannot also say that the view taken by the High Court on appreciation of the evidence on record, is not a

possible reasonable view, or is either perverse or unreasonable. On appreciation of the evidence on record

and having regard to the totality of the evidence, the High Court entertained a serious doubt about the

truthfulness of the case of the prosecution and therefore passed an order of acquittal in favour of the

respondents. We find no reason to upset that finding in an appeal against acquittal. These appeals are,

therefore, dismissed.

.....J.

(B.P. SINGH)

.....J.

(TARUN CHATTERJEE)

New Delhi

October 11, 2006

