

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.281 OF 2000

PREM CHAND GUPTA . . . APPELLANT

VERSUS

SHIV VIR & ANR. . . RESPONDENTS

WITH

CRIMINAL APPEAL NO.282 OF 2000

O R D E R

These two Appeals have been filed against the order of acquittal, one by the complainant and the other by the State, passed by the High Court of Judicature at Allahabad dated 1.11.1999.

We have heard learned counsel for the parties and perused the record.

The incident is said to have taken place on the

night of 21st and 22nd August 1994 and the FIR was filed at 2.45 A.M. at Police Station Ajitmal, District Etawah alleging that deceased Paras Ram and Vinod were shot dead by the accused.

It is alleged that Paras Ram and Vinod Kumar

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were sleeping at the roof of the house of Paras Ram.

At about 12 in the night accused Shiv Vir the son of

a police Sub-Inspector, reached at the roof and woke

up Paras Ram and demanded Rs.5000/- from him on gun

point. Vinod Kumar and Rajiv Kumar followed them.

Paras Ram was dragged to a distance of 100 to 150

yards near the house of Mathura Munshi and was

showered with shots. Thereafter Vinod was taken a

furlong away from the residential area and he too was

showered with shots. It is alleged that PW.1, the

father of the deceased Vinod Kumar, when heard hue

and cry coming from the house of Paras Ram, came on

the spot and saw the whole incident. On the basis of

this FIR, the investigation was taken up. The

prosecution after completion of the necessary

investigation filed a challan against the accused

under Section 302 IPC. The prosecution in support of

its case examined PW.1 Prem Chand, father of the

deceased Vinod and PW.4 Rajiv.

According to the testimony of PW.1 Prem Chand

when he heard the noise, he immediately rushed to the

scene and saw the accused shooting down Paras Ram and

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thereafter he saw Vinod was also being shot down by

the accused. Similarly, PW.2 Rajiv who alleged to

have been sleeping on the roof at that time, deposed

that accused brought down Paras Ram from the roof and

demanded a sum of Rs.5,000/- and shot down near the

house of Mathura Munshi with a single barrel gun and

likewise Vinod was also shot down at some distance.

The statement of Rajiv was recorded after five days. We have gone through the statements of both the witnesses. After going through their statements, we feel that the appreciation of the evidence done by the High Court appears to be justified. In fact, Prem Chand who was stated to be an eye witness to the incident saw the whole incident, whether he was really an eye witness or not, was doubtful. It is alleged that Prem Chand came after hearing the noise from his house situated at a distance of about 100 to 125 yards and saw that the deceased shooting down Paras Ram like a sitting Duck and no resistance was put either by Vinod or by Rajiv, both are alleged to be present at the scene of occurrence when the incident took place. Similarly no recovery of gun has

been made from the accused. No cartridges have been

sent to the Forensic Laboratory to connect the
accused with the commission of crime. On the
contrary, defence has produced a witness DW.1 who,
after examining the cartridges, has deposed that
these shots have been fired from the five different
guns though he is a Forensic Expert and had no
occasion to examine the gun and the cartridges but
after going through the empties through magnifying
glass has deposed that these five empties bear a
different marking. They should have been fired from
different guns. This gives a complete lie to the
prosecution story. In fact it was the bounden duty
of the prosecution to recover gun from the accused
and sent it for Forensic Laboratory to connect the
accused with the empties but no effort has been made
by the prosecution.

Looking to the overall statement of these

witnesses and the fact that no recovery of the gun
has been made, we are of the opinion that the High
Court has correctly appreciated the evidence and
given the benefit of doubt to the accused. There are

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no compelling reasons to take a different view after
examining the statements of PW 1 and PW 2. Hence, we
do not find any merit in the Appeal filed by the
complainant as well as the one filed by the State.
Consequently, the appeals are dismissed. The bail
bonds of the accused respondent are discharged.

.....J.

(A.K. Mathur)

.....J.

(Tarun Chatterjee)

New Delhi,
September 26, 2006.

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ITEM NO.105

COURT NO.10

SECTION II

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). 281 OF 2000

PREM CHAND GUPTA

Appellant (s)

VERSUS

SHIV VIR & ANR.

Respondent(s)

WITH APPEAL(CRL) NO. 282 of 2000

Date: 26/09/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. Ranjit Kumar, Sr. Adv.

for Ms. Anu Mohla, Adv.

Mr. Sahdev Singh, Adv. for

Mr. Javed Mahmud Rao, Adv.

For Respondent(s) Mr. Girdhar G. Upadhyay, Adv.

Ms. Vinita G. Upadhyay, Adv.

Mr. R.D. Upadhyay, Adv.

Mr. Sahdev Singh, Adv. for

Mr. Javed Mahmud Rao, Adv.

Mr. Jatinder Kumar Bhatia, Adv. (N.P.)

Mr. Ravi Prakash Mehrotra, Adv. (N.P.)

UPON hearing counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order.

(K.K. Chawla)

Court Master

(Radha R.Bhatia)

Court Master

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[Signed order is placed on the file]