

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.366 OF 2005

STATE OF U.P.

.....APPELLANT

VERSUS

RAM SAJIWAN & ANR.

.....RESPONDENTS

O R D E R

The State has preferred an appeal against the acquittal of Ram Sajiwan and Daya Shanker by the Allahabad High Court in Criminal Appeal No.2668 of 2004.

On the night of 24/25.3.1979, at about 1.00 A.M., the accused persons i.e. Ram Sajiwan, Ram Kishore, Hem Chandra, Daya Shanker and three others came to the premises of Shambhoo Dayal and Mewa Lal. Ram Kishore and Hem Chandra had guns with them; Ram Sajiwan and Daya Shanker had lathis; of the remaining three persons, two had lathis while one had a country made pistol.

From the record, it is clear that there was a long standing enmity between the two groups and one of the reasons for the enmity was that Ram Sajiwan had taken forcible possession of 24 biswas of land belonging to Mewa Lal. Thereafter, Mewa Lal had taken back the possession and, therefore, Ram Sajiwan was annoyed with him. It appears that a few days before the incident, Ram Sajiwan's bullock had hurt Manju, who is the niece of Mewa Lal. On this, Mewa Lal and his brothers complained to Ram Sajiwan and this

2

also infuriated him and he, in turn, retorted in abusive language and held out that he would see them soon.

As mentioned above, on the night of 24/25.3.1979, the accused persons came to the premises of Shambhoo Dayal and Mewa Lal and found that Shambhoo Dayal and his two sons i.e. Om Prakash and Indrajeet were sleeping on the chabutra just outside the main house. In one room of the main house, Mewa Lal and his brother

Moti Lal was sleeping.

The accused persons came and they woke up Shambhoo Dayal and asked him for the whereabouts of Mewa Lal. When they did not get any suitable reply, it is alleged that Ram Sajiwan exhorted one of the assailants to fire upon Shambhoo Dayal at which point, Shambhoo Dayal was injured by several gun shots and Om Prakash was also beaten by the accused persons. Indrajit, however, managed to escape. Shambhoo Dayal later succumbed to his injuries.

According to Mewa Lal, he was able to see the incident from the door grill on the northern side and through the jali on the eastern side of his room and since the assailants were well-known to him due to their enmity, he was able to identify them from the light of the nearby lantern.

On these broad facts, a chargesheet was filed against all the accused persons and they were set down for trial.

The Trial Judge in S.T.No.204 of 1979 convicted all the accused persons under Section 302 read with Section 149 I.P.C. and sentenced them to life imprisonment. Ram Sajiwan and Daya Shanker, who were carrying lathis and had assaulted Shambhoo Dayal as well

3

as Om Prakash, were further convicted under Section 147 I.P.C. and sentenced to one year's rigorous imprisonment. Ram Kishore and Hem Chandra were convicted under Section 148 I.P.C. and sentenced to undergo one and a half year's rigorous imprisonment. Ram Sajiwan

was also convicted of an offence punishable under Section 323 read with Section 149 I.P.C. and sentenced to undergo nine month's rigorous imprisonment. One of the accused persons was acquitted while another died during the trial.

Feeling aggrieved by their conviction, the accused persons preferred Criminal Appeal No.2668 of 2004 which came to be decided by the Allahabad High Court by the judgment and order under appeal.

The High Court upheld the conviction of Ram Kishore and Hem Chandra but acquitted Ram Sajiwan and Daya Shanker.

We have gone through the judgment and order passed by the

High Court and find that the High Court has considered the evidence of two eye witnesses i.e. P.W.3 - Mewa Lal and P.W.4 - Om Prakash but has come to the conclusion that there is an element of doubt as to the participation of Ram Sajiwan and Daya Shanker in the incident. According to the High Court, there was a deep rooted enmity between the two groups and it is quite possible that Ram Sajiwan and Daya Shanker were roped in because of the enmity. The High Court has also made a reference to the various disputes to show that there was a long standing enmity between the two groups. One of the reasons for the enmity, as mentioned above, was that Ram Sajiwan had taken forcible possession over 24 biswas of land belonging to Mewa Lal and Mewa Lal had taken back the possession from him.

It is significant to note that the High Court did not doubt the presence of Ram Sajiwan and Daya Shanker at the scene of the crime but has only adverted to the doubt that they may have participated in the incident.

Having gone through the evidence of the two eye witnesses, we have no doubt that Ram Sajiwan and Daya Shanker were equally involved in the incident inasmuch as they have been named by both the eye witnesses as having assaulted Shambhoo Dayal as well as Om Prakash. Additionally, Ram Sajiwan exhorted the other assailants, who were armed with guns to fire upon Shambhoo Dayal. It cannot, therefore, be said that the participation of Ram Sajiwan and Daya Shanker was doubtful. In any event, the High Court has not doubted their presence at the time when the incident took place. Under these circumstances, we are of the opinion that the High Court has completely erred in appreciating the evidence and, in fact, had dealt with it in a perverse manner warranting interference by this Court.

In view of the above, we set aside the judgment and order of the High Court insofar as the acquittal of Ram Sajiwan and Daya Shanker is concerned and we uphold their conviction as ordered by the Trial Court. It is directed that they be taken into custody



UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Assistant Registrar

( Signed order is placed on the file )