

A BHUPENDRA SINGH AND ORS.
v.
STATE OF UTTAR PRADESH

MARCH 14, 1991

B [A.M. AHMADI, V. RAMASWAMI AND
FATHIMA BEEVI, JJ.]

C *Indian Penal Code: Death cause by rifle shot—Body removed and burnt—Recoveries made from the place of occurrence—Evidence of witnesses as to place of occurrence uniform—Prosecution case about the place of occurrence established.*

D *Fire arms used—First shot by A1 from the rifle—Firing by others followed—Whether first shot hit the forehead of the deceased and whether injury caused by that shot caused his death—Evidence of witnesses that first shot was fired by A1 is consistent but it cannot be predicated whether this hit the deceased on his forehead and that injury caused his death—Conviction of A1 under section 302 I.P.C. altered to one under section 307 I.P.C.*

E Nineteen persons were tried by the Additional District and Sessions Judge, Khetri in S.T. No. 264 of 1973 for offences under sections 302/149, 201/149, 379/149, 147 and 148 for the incident that took place on 25.4.1972 in village Padaria Tula (UP) on the day of filing of the nomination papers for election for the post of Pradhan Gaon Sabha, Tikhra in which fire arms were used by the party led by Bhupendra Singh accused no. 1, who was also a candidate for the office of Pradhan of Gaon Sabha resulting in the death on the spot of F Gajendra Singh, one of the supporters of the rival candidate Ram Sewak, P.W.2.

G The prosecution case is that both the rival candidates with their supporters had come to village Padaria Tula on the morning of 25.4.1972 where nomination papers had to be filed. On seeing the party of the deceased arriving, Bhupendra Singh enquired from Ram Sewak (P.W.2) if he had come to file his nomination papers against him. Gajendra Singh (deceased) intervened and challengingly told the accused no. 1 that he should ask him. Following the altercation that ensued, it is alleged that Bhupendra Singh fired the first shot on the deceased followed by shooting by his other associates and the deceased H fell dead. The party of Ram Sewak fled from the scene to escape the

attack. It is further alleged that the body of the deceased was dragged by Gajendra Singh and his companions and carried by them on a tractor-trolley belonging to A1 on which they had come, burnt it and ashes thrown in the river causing disappearance of the entire evidence.

The first Additional Sessions Judge acquitted all the accused of all the charges on the ground that there are many infirmities in the prosecution case rendering its evidence unworthy of belief. The State of Uttar Pradesh preferred appeal before the Lucknow Bench of the Allahabad High Court. The High Court set aside the acquittal of Bhupendra Singh (A1) and convicted him for offence under section 302 I.P.C. and awarded sentence of Rigorous Imprisonment for life, set aside the acquittal of A 4, 7, 8 in part, convicted them under section 201 of I.P.C. and sentenced each of them to seven years Rigorous Imprisonment thereunder. Their acquittal under other charges was confirmed. Appeal as against rest of the accused was dismissed altogether. A1, 4, 7 and 8 have thus come in appeal against the judgment of the High Court.

In partly allowing the appeal setting aside the conviction of appellants 2 to 4 (A4, 7, 8) under section 201 I.P.C., and altering the conviction of appellant No. 1 (A1) from one under section 302 I.P.C. to one under section 307 I.P.C. and sentencing him to a term of 10 years rigorous imprisonment thereunder, this Court,

HELD: The evidence only established that the first appellant shot at the deceased but it is not known where the bullet hit and whether that injury caused by the said bullet shot caused the death. Even in the case of shooting by a rifle unless the evidence shows the particular injury caused by the same and that injury is sufficient to cause death, the offence under section 302 I.P.C. could not be said to have been made out. In the circumstances, therefore, we are unable to agree with the High Court that the first appellant is guilty of offence under section 302 IPC of causing the death of Gajendra Singh. However we are of the view that while the first appellant shot at the deceased there could be no doubt that either he had the intention to kill him or at least he had the knowledge that the act could cause the death. [863D-E]

We consider that the offence would come under the second limb or second part of section 307, IPC. Though imprisonment for life also could be awarded as sentence for such an offence, on the facts and circumstances we impose a sentence of 10 years rigorous imprisonment. We alter the conviction under section 302, IPC to one under section 307 IPC and sentence him to a term of 10 year rigorous imprisonment. [863G].

- A So far as the offence under section 201 IPC is concerned we have read the entire evidence carefully and the same does not impress as to bring home the offence of screening the evidence. [863H, 865H]

CRIMINAL APPELLATE JURISDICTION: Criminal appeal No. 512 of 1979.

- B From the Judgment and Order Dated 18.7.1979 of the Allahabad High Court in CrI. A. No. 654 of 1974.

U.R. Lalit, Sobhag Mal Jain, Sudhanshu Atreya, Ms. P. Jain and S.K. Jain for the Appellants.

- C Vijay Bahuguna, Prashant Chaudhary and D. Bhandari (NP) for the Respondent.

The Judgment of the Court was delivered by

- D **V.RAMASWAMI, J.** The four appellants along with 15 others were charged for offences punishable under Section 302 read with section 149 and also section 201 read with section 149, section 379 read with section 149 and sections 147 and 148 of the Indian Penal Code. The charges were that they were members of an unlawful assembly, in prosecution of the common object of namely to deter Ram Sewak (PW 2), from filing the nomination paper for the post of Pradhan Gaon Sabha Tikhra and to commit the murder of his associates including one Gajendra Singh Yadav (deceased), a resident of village Bibiapur and in furtherance of that common object did commit the murder of the said Gajendra Singh Yadav and further committed rioting, theft of the licensed gun of said Gajendra Singh Yadav and live cartridges belonging to the deceased. They were also charged that in furtherance of the said common object and knowing that the murder of the said Gajendra Singh was punishable with death or imprisonment for life had caused the evidence of the said offence to disappear by scraping the blood stained earth at the scene of occurrence and burning it and taking away the dead body of Gajendra Singh and thereafter burning it with the intention of screening of evidence.
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- The first Additional District and Sessions Judge, Kheri in Sessions Trial No. 264 of 1973 acquitted all the accused persons of all the charges on the ground that there are many infirmities rendering the prosecution evidence unworthy of belief. The State of Uttar Pradesh preferred Criminal Appeal No. 654 of 1974 before the Luck-
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now Bench of the Allahabad High Court. The High Court set aside the acquittal of the first appellant Bhupendra Singh (A1) and convicted him for offence under section 302 of the Indian Penal Code and sentenced him to a term of life imprisonment. The High Court also set aside the acquittal of the second, third and fourth appellants (A 4, 7 and 8) in part, convicted them under section 201, IPC and sentenced them to a term of seven years rigorous imprisonment under that section. The acquittal of the appellants under the remaining charges were confirmed. The High Court also acquitted the other 15 appellants of all the charges.

The prosecution case was that the deceased and Ram Sewak (PW 2) who are residents of village Bibiapur alongwith Tarun Kumar (PW 1) son of the deceased, Ram Avtar Yadav (PW 3) and their party people came to the village Padaria Tula in a bullock-cart on 25.4.1972 for the purpose of filing the nomination papers of Ram Sewak (PW 2) for the election of Pradhan of Gaon Sabha. They reached around 10.30 A.M. the Mela Maidan near the compound of school-cum-temple in village Padaria Tula. They left the bullock-cart and the bullocks in a nearby place to the west of the eastern pathway about 50 paces away from the school where the nomination papers had to be filed. Bhupendra Singh, the first accused was also a candidate for the office of Pradhan of Gaon Sabha. He had also come for filing the nomination along with the other accused who were his supporters. On seeing the party of the deceased arrive Bhupendra Singh enquired Ram Sewak (PW 2), whether he had come to file a nomination paper against him. At that time Gajendra Singh, deceased intervened and challengingly told the first accused that he should ask him. This resulted in verbal altercation between the first accused and the deceased. The first accused then fired a shot with his rifle at the deceased and on receiving the bullet injury the deceased fell on the ground. The prosecution case further was that six other accused had also guns and they also fired at the deceased. The other accused who were armed with lathis and ballams, physically assaulted the deceased. Thereafter the accused dragged the deceased to a small mound on the west of the scene of occurrence and then loaded the dead body on the trolley of a tractor belonging to the first accused, which had been used by the accused to reach at the scene and which was driven by the first accused and the deceased was taken away. All the accused got into the trolley and shouting loudly that they are going to burn the body and throw its remains in the water drove the tractor towards the north. PWs 1 to 6 are stated to be eye witnesses to this part of the occurrence. PWs 7, 8, 9, and 10 are stated to have seen the first accused driving the tractor to

- A which the trolley was attached and the three other appellants and 15 or 16 more people sitting on the tractor and going towards a revulet shouting that they are taking the body of Gajendra Singh and that he will be burnt and thrown into the river. PW 10 Lalji also claimed that he saw the burning of the dead body near the river and the ashes thrown in river suita. Tarun Kumar (PW 1) son of the deceased went to his village Bibiapur, wrote the report Ex. Ka. 1. and gave the first information report before the Station House Officer Thana Mira which is about 12 miles from the scene of occurrence at 3.30 P.M. on that day. Rama Nand Tewari (PW 17) took up the investigation reached the scene of occurrence at 5.30 P.M. and seized some blood stained earth at a point marked 'A' in the plan and also some ashes,
- B besides 55 pellets wads, teeth and some buttons on the spot under Mahazars which were attested by Rajendra prasad (PW 4) and Durga prasad (PW 5) and another. On the 27th of the April, 1972 he inter-
- C rogated Asharfi (PW 7), Chhotanney (PW 8), Reoti Prasad (PW 9) and Lalji (PW 10) and accompanied by them he reached the jungle at the outskirts of village Daultapur where he found burnt leaves near a Shisham tree. He seized burnt earth, ashes and burnt pieces of bones under recovery memo in the presence of Rajendra Prasad (PW 4) and Durga Prasad (PW 5). On the 14th of May, 1972 in Village Mudia he interrogated Ram Autar (PW 3), Ram Sewak (PW 2), Gaua Din (PW 6) and others and submitted the charge sheet on 4th December, 1972.
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- E As already stated the charge against the first appellant was one under section 302 read with section 149, IPC and the Trial Court had acquitted him of that offence. The High Court on appeal by the State while setting aside the acquittal of the first appellant convicted him for the substantive offence under section 302, IPC on the ground that he was the principal offender; that his shot resulted in death of Gajendra
- F Singh and the other accused persons to whom no specific part has been brought home were entitled to benefit of doubt. The High Court also believed the prosecution case relating to the disposal of body by taking it away from the scene of occurrence and burning it and throwing the ashes in the river but held that PWs 7, 8, 9 and 10 speak of the appellants alone by name as among the persons in the tractor and
- G trolley and the names of others were not mentioned by them and therefore set aside the acquittal in respect of the offence under section 201 of IPC in so far as the appellants are concerned and convicted them and sentenced them a term of seven years of rigorous imprisonment. The four appellants have filed the above criminal appeal against this conviction and sentence of the High Court.
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There could be no doubt that an occurrence of type spoken to by the prosecution witnesses had taken place at the Mela Maidan, Padaria Tula. 25.4.1972 was the date fixed for filing nomination papers for the election of Pradhan of the Gaon Sabha comprising Padaria Tula. The place where the nomination papers had to be filed is the school premises at that place. Ramesh Chander Mishra (PW 15) the Sub Deputy Inspector of Schools had been authorised to receive the nomination papers. He was assisted by the Gram Sewak Ram Verma (CW 1) and Rajendra Prakash (PW 14) among others. They had stated in their evidence that they were inside the school premises and that around 10.30 A.M. they heard gun shots near the school. PW 2 Ram Sewak as also the first appellant Bhupendra Singh had come there to file their nomination papers along with other party people. The investigating officer had made certain recoveries from the scene of occurrence along with bullock-cart and the two bullocks in which the deceased and his party had come to the scene. The evidence of PWs 1 to 6 are also uniform that the occurrence had taken place at that place. We can therefore, safely assume that the incident took place at the Mela Maidan near the compound of school-cum-temple in Village Padaria Tula as stated by the prosecution. It is true that the pieces of burnt bones recovered from the place where the body was stated to have been burnt were sent to the Serologist but he was unable to tender any opinion regarding origin, sex and age. Though, it was contended by the learned counsel for the appellants that the prosecution had not established that any such occurrence had taken place that morning and that Gajendra Singh had fallen the victim in such occurrence we are unable to agree with the learned counsel that the occurrence had not taken place at all and that Gajendra Singh had not been proved to have been killed. There could be no doubt that corpus delicti could be established by the prosecution through direct evidence and that is what the prosecution had done in this case. In the circumstances we are of the view that the prosecution had established that there was an occurrence at 10.30 A.M. on 25.4.1972 at the place mentioned by the prosecution in which Gajendra Singh had fallen a victim and died.

Mr. Lalit, learned counsel for the appellants took us through the entire evidence and contended that the prosecution had not established the complicity of the first appellant for murder and the appellants for the offence of screening the evidence punishable under section 201, IPC.

In the FIR, Tarun Kumar (PW 1) had mentioned the names of the four appellants and the presence of PWs 2 to 6 at the scene of

- A occurrence. All these eye witnesses had uniformly stated that they saw only Bhupendra Singh firing at the deceased which brought him down to the ground and stated further that immediately on hearing the first shot they ran and hid themselves behind the dilapidated wall of the temple and they had heard only 6 and 7 shots thereafter. They have not attributed over acts to any of the accused other than Bhupendra
- B Singh, the first appellant. It is in those circumstances, the High Court confirmed the acquittal of all the accused other than Bhupendra Singh of the offence under section 302 read with section 149, IPC. PWs 3 to 6 have stated in their evidence that during the course of verbal altercation between the first accused and the deceased, the first accused shot Gajendra Singh with rifle on the fore-head. On the basis of that shooting with the rifle on the fore-head the first appellant was convicted
- C for the substantial offence of murder under section 302 IPC and sentenced to life imprisonment.

- In the FIR though Tarun Kumar, PW 1, has stated that the first appellant fired at his father first, he had not stated that the bullet hit
- D fore-head bringing down its father to the ground. It is stated in the FIR:

- E “Bhupender then, first of all, fired on my father; along with him, all other started firing. My father then fell down as a result of attack by fire-arms; then others with lathis and ballams started assaulting. Seeing this incident, I ran towards the temple to save my life. From there, I noticed that Bhupender Singh and his companions carried the dead body of my father, along with his gun, in his tractor-trolley towards Karmapura.”

- F Thus though an overt act had been assigned to the first appellant in the FIR it had not been stated where the bullet shot hit the deceased. It is true that in their oral evidence PWs 3 to 6 have assigned the first shooting to the first appellant but their evidence relating to the shot hitting at the fore-head could not be accepted for more than one reason. As already stated, PW 1, first went to his village Bibiapur from
- G the scene of occurrence at Padaria Tula, prepared the FIR in his house and then delivered the same at 3.30 P.M. at the Police Station. In spite of time-gap and his being with deceased at the time of the occurrence he had not specifically stated that the first aim of the first appellant hit the fore-head of the deceased. The names of PWs 2 to 6 are given in the FIR itself. However, PWs 3 and 6 were examined by the
- H Investigating Officer only on 14th of May and no explanation was forth-

coming as to why they were not examined earlier. PWs 1 and 2 did not say in their oral evidence that the shot aimed by the first appellant hit the fore-head of the deceased. PWs 3, 4, 5 and 6 gave the evidence to the effect that the first rifle shot of the appellant hit the deceased on his fore-head. But this part of the statement we are unable to believe because PW 1, Tarun Kumar had not confirmed this either in the FIR or in his evidence as PW 1. This was also not stated by PW 2 in his evidence or during investigation as seen from the evidence of PW 17 the investigation officer. PWs 3 and 6 were examined by PW 17 only after 20 days i.e. on the 14th of May, 1972 though their names were mentioned in the FIR. In the circumstances the contention of the learned counsel for the appellants that the possibility of an improvement in the case to implicate A-1 for a substantive offence cannot be ruled out. While we could accept the case of the prosecution trying to establish corpus delicti through the evidence of PWs 1 to 6 we could not accept the evidence in so far as it referred to the bullet shot hitting on the fore-head of the deceased. The evidence only established that the first appellant shot at the deceased but it is not known where the bullet hit and whether that injury caused by the said bullet shot caused the death. Even in the case of shooting by a rifle unless the evidence show that particular injury caused by the same and that injury is sufficient to cause death, the offence under section 302 IPC could not be said to have been made out. In the circumstances, therefore, we are unable to agree with the High Court that the first appellant is guilty of offence under section 302 IPC of causing the death of Gajendra Singh. However, we are of the view that while the first appellant shot at the deceased there could be no doubt that either he had the intention to kill him or at least he had the knowledge that the act could cause the death.

All the witnesses also say that the shot by A-1 brought down the deceased to the ground. There could, therefore, be no doubt that the shot had caused some hurt or injury though we could not predicate what was the nature of the injury and whether that injury could have caused the death. In the circumstances we consider that the offence would come under the second limb or second part of section 307, IPC. Though imprisonment for life also could be awarded as sentence for such an offence on the facts and circumstances we impose a sentence of 10 years rigorous imprisonment. Accordingly we alter the conviction under section 302, IPC as one under section 307 IPC and sentence him to a term of 10 years rigorous imprisonment.

So far as the offence under section 201 IPC is concerned the

- A prosecution relied upon the evidence of PWs 7, 8, 9 and 10. The evidence of PWs 7, 8 and 9 only go to show that they had seen 15 to 20 people sitting in the trolley of the tractor driven by the first accused. They have referred to the names of the appellants among the 20 people who were in the trolley. However, none of them had stated that they had seen the body of Gajendra Singh alive or dead in the trolley. The
- B prosecution tried to establish that the accused were carrying body of Gajendra Singh in the trolley from the statement of PW 7 who said that Chet Ram one of the persons who was travelling in the trolley along with other and who is now dead was saying or shouting that:

- C “Gajender Singh had been killed and he would be roasted and eaten and thrown in the river.”

And the statement of PW 3 that:

- D “the people sitting the trolley were talking amongst themselves and uttering the words ‘today we have killed and brought a lion’.”

But PWs 7 and 8 had not given any such version to PW 17 in their statements during investigation. PW 9 turned hostile and his evidence is also worth nothing. PW 10 had stated that Chet Ram said:

- E “We have killed Gajendra Singh and brought him on this tractor why you have come here.”

- and then he ran about 250 steps towards the east and stood there but the version given in the statement before PW 17 was different. This evidence can be relied on only for the purpose of showing that about
- F 15 or 20 people were travelling in the trolley of a tractor driven by the first accused which was going towards the river. This evidence does not bring home the offence of screening the evidence. Of course PW 10 said that the body was burnt with wooden pieces and grass and after it was all burnt Chet Ram, who is now dead, collected the whole residual ashes and threw them in the Sutia rivulet. He mentioned the name of
- G Chet Ram and no other name. Further though he stated to be a neighbour of Ram Sewak PW 2 and Ram Sewak and himself used to meet everyday he did not tell PW 2 about the burning of the body of the appellants. This witness also belongs to the Ahir community which is the community of the deceased Gajendra Singh also. It appears that only the bones stated to have been recovered were sent for chemical
- H analysis and the report of the serologist was that it was not possible to

★ give any opinion regarding the origin, sex and age. The report had not even stated that they were human bones. Though PW 10 had stated that there were with him two others at the time and PW 17 had taken PW 10 and the said two others also to the place where the body was stated to have been burnt, they had not been examined. We have read the evidence carefully and the evidence also does not impress us that he is telling the truth.

In the result we set aside the conviction of the appellants under section 201, IPC. The conviction of the first appellant is modified into one under section 307, IPC and we sentence him to 10 years rigorous imprisonment. The bail bonds of appellants 2, 3 and 4 are cancelled. The first appellant is directed to surrender.

R.N.J.

Appeal partly allowed.