

THE STATE OF UTTAR PRADESH

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v.

RAJA ETC.

(Criminal Appeal Nos. 396-398 of 2015)

AUGUST 30, 2018

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[R. BANUMATHI AND VINEET SARAN, JJ.]

Penal Code, 1860 – s.302 r/w s.34 – Gun shot – Murder of victim-deceased and injuries to his brother – Conviction by trial court on evidence of eye-witness who was victim’s lawyer-brother-PW1 – High Court set aside conviction doubting the presence of PW1 at the time and place of occurrence – State’s appeal against acquittal – Held: PW-1 being a lawyer having good practice and also a member of the Nagar Palika giving audience to the public in the morning, the High Court rightly doubted his presence at the place of occurrence at 9.30 a.m. on the day of incident – High Court also doubted the evidence of PW-1 as to why an advocate like PW-1 instead of going to the court would follow his brother who was taking the cattle for grazing in the jungle – Absence of bullet holes on the clothes of the deceased also created a doubt about the case of the prosecution and the time and manner alleged – Raising doubts about the case of the prosecution, the High Court extended the benefit of doubt to the respondents-accused to reverse the conviction – The view taken by High Court did not suffer from any serious and substantial error warranting interference – No reason to take a different view.

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Dismissing the appeals, the Court

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HELD: 1. The records showed that PW-1 was an advocate having good practice at the Bar. PW-1 was also then a member of the Nagar Palika. In his evidence PW-1 admitted that normally he used to give hearing to the public in the morning time at the Nagar Palika. As observed by the High court that audience to the public by PW-1 could have been only before the commencement of court hours and thereafter he would go to the court. Occurrence happened on 13th June, 1995 at 9.30 a.m. It was brought on record that 13th June, 1995 was a working day.

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A PW-1 being a lawyer having good practice and also a member of
the Nagar Palika giving audience to the public in the morning,
the High Court rightly doubted his presence at the place of
occurrence at 9.30 a.m. on the said day. The High Court also
doubted the evidence of PW-1 as to why an advocate like PW-1
instead of going to the court would follow his deceased brother
B who was taking the cattle for grazing in the jungle and PW-1's
conduct in following his brother being unnatural. [Para 5][26-C-F]

2. In his evidence, PW-1 stated that after the occurrence
he went to the court to write down the complaint first. Here again,
the High Court observed that the conduct of PW-1 was quite
C unnatural in the sense that when one of his brothers, the deceased
was killed and another brother, PW-2 sustained injuries in his
arm, instead of taking the injured brother to a hospital or going
to the police station, PW-1 had gone all the way to the Court only
to write down the complaint. Here again, the conduct of PW-1, as
D observed by the High Court appeared to be strange and unnatural.
[Para 6][26-F-H]

3. The deceased sustained gunshot wound on the chest with
chest cavity deep. The doctor (PW-3) in his evidence pointed out
that there was not a single hole either in the vest, kurta and
tehmad which were sent along with the dead body for examination.
E Even the Inquest Report did not mention any bullet hole in the
clothes of the deceased. When the deceased sustained gunshot
injury on the chest with chest cavity deep, in the normal course
one would expect holes on the clothes worn by the deceased,
namely, western kurta. Raising doubts about the case of the
F prosecution, the High Court has extended the benefit of doubt
to the respondents-accused to reverse the conviction. It cannot
be said that the view taken by the High Court suffered from any
serious and substantial error warranting interference by this
Court. [Paras 7, 8][27-B-D]

G CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
Nos. 396-398 of 2015.

From the Judgment and Order dated 29.05.2009 of the High Court
of Judicature at Allahabad in Criminal Appeal Nos. 568, 231 and 250 of
2002.

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V. V. V. Pattabhiram, Ms. Priyanka, Sanjay Kumar Tyagi, Abhish Kumar, Yunus Malik, Prashant Chaudhary, Ajay Kumar Singh, Advs. for the appearing parties. A

The Judgment of the Court was delivered by

R. BANUMATHI, J.: 1. These appeals arise out of judgment and order dated 29th May, 2009 passed by the High Court of Judicature at Allahabad in Criminal Appeal NO.568 of 2002, Criminal Appeal No.231 of 2002 and Criminal Appeal NO.250 of 2002 in which the High Court reversed the verdict of the conviction and also the sentence and acquitted the respondents. B

2. The facts of the case in a nutshell are as follows. On 13th June, 1995 at 9.00 a.m. deceased-Shabu along with Riyazuddin (PW-2) was taking their buffaloes for grazing in the *jungle*. Complainant, Imamuddin (PW-1) and Hafiz were following them. The case of the prosecution is that when deceased-Shabu and Riyazuddin (PW-2) were so proceeding to the *jungle*, accused Raja (A-1) exhorted the other accused that they have an opportunity to kill both the brothers, namely, deceased-Shabu and Riyazuddin (PW-2). Raju (A-2) and Aas Mohammad (A-3) (since acquitted) who were armed with rifles fired at Shabu and also on Riyazuddin (PW-2). Shabu sustained gunshot injuries on his chest and died on the spot. Injured Riyazuddin (PW-2) received injuries on his right forearm. On seeing Imamuddin (PW-1) and other villagers coming towards them, all the accused ran away. On the complaint lodged by Imamuddin (PW-1), law was set in motion. Dr. P.K. Chaturvedi (PW-3) conducted post-mortem on dead-body of the deceased-Shabu and noted the following injuries: C D E

“1. Gunshot wound 1 cm. x 1 cm x chest cavity deep on right side of front of chest 2 cm. Below right nipple at 4 O’clock position margins inverted and lacerated. No blackening and no charring (external wound) detected medially backwards towards left scapula” F

3. Based upon the evidence of Imamuddin (PW-1) and Riyazuddin (PW-2), injured witness, the trial court convicted Raja (A-1) (since dead) Raju (A-2) and also Aas Mohammad (A-3) under Section 302 I.P.C. read with 34 I.P.C. Fourth accused Sarfaraj was acquitted by the trial court from all the charges. In the appeal preferred by the accused, the G

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A High Court set aside the conviction and acquitted the accused from all the charges. Being aggrieved, the State is before us.

4. We have heard Mr. V.V.V. Pattabhiram, learned counsel appearing for the appellant-State and Mr. Yunus Malik, learned counsel appearing for the respondent(s) and also perused the impugned judgment of the High Court and the evidence/materials on record.

5. Though the trial court held that Imamuddin (PW-1) is a trustworthy witness, the High Court doubted the presence of Imamuddin (PW-1) at the time and place of occurrence and also trustworthiness of his evidence. It is brought on record that Imamuddin (PW-1) is an advocate having good practice at the Bar. Imamuddin (PW-1) was also then a member of the Nagar Palika. In his evidence Imamuddin (PW-1) has admitted that normally he used to give hearing to the public in the morning time at the Nagar Palika. As observed by the High court that audience to the public by Imamuddin (PW-1) could have been only before the commencement of court hours and thereafter he would go to the court. Occurrence happened on 13th June, 1995 at 9.30 a.m. It is brought on record that 13th June, 1995 was a working day. Imamuddin (PW-1) being a lawyer having good practice and also a member of the Nagar Palika giving audience to the public in the morning, the High Court rightly doubted his presence at the place of occurrence at 9.30 a.m. on the said day. The High Court also doubted the evidence of Imamuddin (PW-1) as to why an advocate like Imamuddin (PW-1) instead of going to the court would follow his deceased brother-Shabu who was taking the cattle for grazing in the *jungle* and PW-1-Imamuddin's conduct in following his brother being unnatural and we find it difficult to take a different view.

6. In his evidence, Imamuddin (PW-1) stated that after the occurrence he went to the court to write down the complaint first. Here again, the High Court observed that the conduct of Imamuddin (PW-1) is quite unnatural in the sense that when one of his brothers, Shabu, was killed and another brother, Riyazuddin (PW-2), sustained injuries in his arm, instead of taking the injured brother to a hospital or going to the police station, Imamuddin (PW-1) had gone all the way to the Court only to write down the complaint. Here again, the conduct of Imamuddin (PW-1), as observed by the High Court appears to be strange and unnatural.

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7. The High Court has also referred to the submission of the counsel who appeared for the accused which in our considered view is relevant. As pointed out earlier, the deceased-Shabu sustained gunshot wound on the chest with chest cavity deep. Dr. P.K. Chaturvedi (PW-3) in his evidence as pointed out that there was not a single hole either in the vest, kurta and tehmad which were sent along with the dead body for examination. Even the Inquest Report does not mention any bullet hole in the clothes of the deceased-Shabu. When the deceased-Shabu sustained gunshot injury on the chest with chest cavity deep, in the normal course one would expect holes on the clothes worn by the deceased, namely, western kurta. Absence of bullet holes on the clothes of the deceased creates a doubt about the case of the prosecution and the time and manner alleged. Raising doubts about the case of the prosecution, the High Court has extended the benefit of doubt to the respondents-accused to reverse the conviction.

8. For the foregoing reasons, it cannot be said that the view taken by the High Court suffers from any serious and substantial error warranting interference by this Court.

9. In the result, the appeals are dismissed.