

Non-reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1189 of 2008

State of U.P. Appellant

Versus

Raghunandan @ Bade Mali & Ors. ... Respondents

And

CRIMINAL APPEAL NO.1204 of 2008

Shiv Singh and AnotherAppellants

Versus

State of U.P.Respondent.

JUDGMENT

JUDGMENT

Uday Umesh Lalit, J.

1. These appeals by special leave arise from the judgment and order dated 23.08.2006 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.5747 of 2003. The Trial Court had convicted six accused persons namely Raghunandan @ Bade Mali, Mahesh, Shiv Singh, Brij Raj, Ram Niwas and Raju under Sections 148, 404, 302 read with 149 IPC and

sentenced them to life imprisonment and other sentences. The accused challenged their conviction and sentence by filing Criminal Appeal No.5747 of 2003 in the High Court. By its judgment under appeal, the High Court affirmed the conviction and sentence of Shiv Singh and Ram Niwas while it acquitted other four accused. The acquittal of those four accused is challenged by the State in Criminal Appeal No.1189 of 2008 while the conviction and sentence of Shiv Singh and Ram Niwas is under challenge in Criminal Appeal No.1204 of 2008. Both these appeals are being disposed of by this common judgment.

2. PW1 Brij Raj Singh submitted a written report on 01.01.2001 in P.S. Aliganj, District Etah to the effect that on that day he along with his nephew PW2 Shiv Ratan Singh and one Nahar Singh had gone to the bazaar to purchase vegetables. While returning from the bazaar on foot, the brother of PW1 named Raghunandan Singh, who had also gone to the market to purchase vegetables on a cycle, overtook them. When they arrived at the triangular crossing at Kila Road said Raghunandan Singh was about 50 steps ahead of them. Raghunandan Singh was carrying his Rifle on his shoulder. At this triangular crossing all the aforementioned six accused persons who had been waiting, started firing upon Raghunandan Singh, on account of which he died at the spot. The occurrence created a scramble and

shopkeepers closed down their shops and started fleeing. According to PW1, the accused had taken away the licensed rifle of the deceased Raghunandan Singh and made good their escape. PW1 further stated in his report that accused Raghunandan @ Bade Mali was armed with licensed double barrel gun while the other accused were also armed with fire arms. The incident occurred at 4:30 p.m. and the aforesaid report scribed by one Ram Babu Singh was submitted at 5:30 p.m., pursuant to which Crime No.2 of 2001 was registered in P.S. Aliganj.

3. As part of investigation, PW6 Sub Inspector Surender Singh Chauhan arrived at the place of occurrence but could not conduct the inquest upon the body of the deceased because of darkness. The inquest panchnama Ext. Ka-16 was prepared at 8 o'clock on the next day i.e. on 02.01.2001. At the spot, three empty cartridges were found, two of .315 bore and one of 12 bore. The body of the deceased was then sent for post mortem examination which was conducted on the same day at 2:30 p.m. by PW3 Dr. Hariom Gupta, Medical Officer, Distt. Hospital Etah and following ante mortem injuries were found:

- 1) Firearm wound of entry 4 x 1 cm on left side of hip.
- 2) Firearm wound of entry 1cm × 1cm side of back of chest, blackening present.

- 3) Firearm wound of exit 2cm × 1cm on right side of chest.
- 4) Firearm wound of entry 1.5cm × 1cm on right side of back of chest.
- 5) Firearm wound of entry 3cm × 1cm on left side of chest. Blackening present.
- 6) Lacerated wound 3cm × 1cm × muscle deep on top of skull.

On internal examination, both the lungs and pericardium were found lacerated. The cause of death was shock and hemorrhage as a result of the aforementioned ante mortem injuries.

4. All six accused persons were arrested and rifle of .315 bore bearing No.78 AB 0226 belonging to deceased Raghunandan Singh was recovered from the heap of straw in the house allegedly belonging to accused Raghunandan @ Bade Mali. A country made pistol of 12 bore was recovered from accused Ram Niwas along with two live cartridges of 12 bore while on the same day a country made pistol of .315 bore and live cartridges of same bore were recovered from accused Shiv Singh. According to the Ballistic Expert's opinion which was marked Ext. Ka(I) in the High Court at the appellate stage, out of three empties found at the site, empty cartridge marked EC 1 was found to have been fired from country made pistol recovered from accused Ram Niwas, while the other cartridge marked as EC 2 was found to

have been fired from the country made pistol recovered from the accused Shiv Singh. The characteristics of empty cartridge EC 3 were however not found sufficient for comparison.

5. The prosecution examined PW1 Brij Raj Singh and PW2 Shiv Ratan as eye witnesses to the occurrence. There were some elements of inconsistency in their statements, the principal being the assertion by PW2 Shiv Ratan that the dead body of deceased Raghunandan Singh was brought to the police station and that the body was in the police station during the night. The eye witness account about the incident however consistently disclosed that all the six accused had encircled deceased Raghunandan Singh whose body was found to be having five injuries by fire arms out of which four were entry wounds and the fifth was the exit wound. The location of the entry wounds in the front as well as in the back of the body of the deceased was consistent with the eye witness account. The sixth injury, a lacerated wound on the skull was also in keeping with the eye witness account that after taking the rifle from the deceased, accused Shiv Singh had hit the deceased with the butt of the rifle.
6. The Trial Court by its judgment and order dated 21.10.2003 found all six accused guilty of the charges levelled against them. It found the eye witness

account unfolded through the testimony of PW1 Brij Raj Singh and PW 2 Shiv Ratan to be trustworthy. The Trial Court found all the accused persons guilty under Sections 143, 120-B, 404, 302 read with Section 149 of IPC and sentenced each of them to undergo rigorous imprisonment for two years under Section 148 IPC, rigorous imprisonment for two years and fine of Rs.1000/- for the offence under Section 404 IPC, rigorous imprisonment for life and fine of Rs.5000/- for the offence under Section 302 read with Section 149 IPC and rigorous imprisonment for life and fine of Rs.5000/- for the offence under Section 302 read with Section 120-B IPC.

7. The convicted accused being aggrieved, filed Criminal Appeal No.5747 of 2003 in the High Court of Judicature at Allahabad. It was submitted on their behalf that the scribe was not examined, that the F.I.R was ante-timed and lodged after deliberation and consultation, that there was motive on the part of the prosecution to implicate the accused falsely, that there were contradictions in the version of two eye witnesses and that the possibility of false implication of some of the accused was very much present. At the appellate stage the genuineness of the report of the Ballistic Expert was specifically admitted, whereupon said report was marked as High Court Ext. Ka (1). The High Court found that the evidence regarding recovery of the rifle of the deceased from the heap of straw from the house belonging to the

accused Raghunandan was not satisfactory. It further found that the licensed weapon which said accused Raghunandan @ Bade Mali was allegedly carrying was not used at all. At the same time the empties recovered from the place of occurrence did match with the country made pistols recovered from accused Shiv Singh and Ram Niwas. The High Court therefore found the case of the prosecution to have been established as against Shiv Singh and Ram Niwas but gave benefit of doubt to the other accused. The conviction and sentence of Shiv Singh and Ram Niwas as recorded by the Trial Court was therefore maintained while the other accused were acquitted of all the charges levelled against them.

8. The acquittal of Raghunandan @ Bade Mali, Mahesh, Brij Raj and Raju is under challenge in Criminal Appeal No.1189 of 2008 while convicted accused Shiv Singh and Ram Niwas have challenged their conviction and sentence in Criminal Appeal No.1204 of 2008. By order dated 24.01.2011 the convicted accused were ordered to be released on bail, which facility they have since then been enjoying.
9. We have heard Shri C.D. Singh and Shri Ranjit Rao, learned Advocates for the State in Criminal Appeal Nos.1189 and 1204 of 2008 respectively while the accused were represented by Mr. Salman Khurshid, learned Senior

Advocate in both the matters. It was submitted on behalf of the State that minor inconsistencies apart, the version given by eye witnesses was well supported by medical evidence on record. Furthermore, the opinion of the Ballistic Expert having been admitted at the appellate stage, the issue stood completely clinched in favour of the prosecution. The fact that there were four entry wounds, some in the front while the others in the back of the deceased, completely supported the eye witness account. The preparedness and participation of all the accused having been clearly established, they ought to have been convicted and the acquittal of four of the accused persons was completely unjustified.

10. Mr. Khurshid, learned Senior Advocate on the other hand submitted that the inconsistencies in the version of the eye witnesses were such that both the versions were required to be rejected, that the first information report was clearly submitted after due deliberation and consultation, that the scribe of the original complaint and Nahar Singh were not examined at all, and that the facts on record did not rule out the possibility of over implication on the part of the eye witnesses. Emphasis was laid on the fact that first five accused are real brothers while the sixth accused is the son of accused Ram Niwas and that 15 to 20 days before the incident one Ram Singh, other

brother of first five accused was murdered in respect of which two sons and two nephews of deceased Raghunandan Singh were named as culprits in the murder.

11. We have gone through the entire record and considered the rival submissions. It is true that there are certain inconsistencies in the versions of both eye witnesses. But such inconsistencies are not pertaining to the basic substratum of the case. The first information report in the instant case was lodged soon after the incident and the injuries on the person of the deceased also show that more than one fire arm must have been used in the transaction. Even if the recovery of the licensed weapon of the deceased is eschewed, the recovery of the country made pistols from Shiv Singh and Ram Niwas stands completely proved. Furthermore, the empty cartridges found at the spot, as opined by the Ballistic Expert, are found to have been fired from those country-made pistols recovered from Shiv Singh and Ram Niwas. In the circumstances the involvement of accused Shiv Singh and Ram Niwas in the incident in question stands fully established. At the same time, since the recovery of licensed weapon of the deceased from the house of the accused Raghunandan @ Bade Mali was not established and so also the fact that said Raghunandan @ Bade Mali, though statedly armed with a double barrel rifle had not used that weapon at all, the assessment made by

the High Court that there could be possibility of over implication is quite correct. We find the view taken by the High Court as regards the acquittal of four accused, to be a possible view which would not warrant any interference in this appeal against acquittal. We, therefore, affirm the view taken by the High Court as regards the acquittal of those four accused but at the same time find sufficient material on record as regards involvement of Shiv Singh and Ram Niwas. We therefore, affirm the conviction and sentence as recorded concurrently against Shiv Singh and Ram Niwas.

12. In the result, these appeals are dismissed affirming the view taken by the High Court in the judgment and order under appeal. The bail bonds of Shiv Singh and Ram Niwas stand cancelled and they be taken in custody forthwith to undergo the sentence awarded to them.

JUDGMENT

.....J.
(Pinaki Chandra Ghose)

.....J.
(Uday Umesh Lalit)

New Delhi,
September 29, 2015