

Gautam Lal Vs. State

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Court : Allahabad

Decided On : Jan-29-1981

Reported in : 1981CriLJ1187

Judge : V.N. Varma and; P.N. Harkauli, JJ.

Appellant : Gautam Lal

Respondent : State

Judgement :

V. N. Varma, J.

1. This is an appeal from the judgment and order of Sri. M. P. S. Tomar, Additional Sessions Judge, Etah by which he convicted the appellant (Gautam Lai) under Sections 302 and 307, Indian Penal Code and sentenced him to imprisonment for life on each count.

2. Two persons lost their lives in this case, they were Sri. P. N. Mishra and Hari Singh. At the relevant time (21-10-1977) Sri. D. N. Mishra was S. O. Government Railway Police, Kasganj. On 21-10-1977, 14 Down on its run from Mathura to Lucknow arrived at Kasganj Railway Station at about 10.40 P. M. Soon after the train arrived at Kasganj Railway Station, Sri. D. N'. Mishra along with constable Chandra Prakash Tewari. P. W. 22 started checking it with a view to find out whether or not it was proper-? escorted by the Railway Police Security Force. He

found two rakshaks, namely Bhole Prasad and N. P. Mishra on the platform towards the front part of the train. He talked to them and learnt that two rakshaks more were in the train and they were sitting in one of the compartments at the rear. He then came to the rear part of the train and found those two rakshaks sleeping. One of them was the appellant and the other was Mahendra Singh. Sri. D. N. Mishra awakened them and reprimanded them for having gone to sleep. He took down their names and also asked them to remain alert. Telling them like this he left the place for going to another platform to check Train No. 117 UP which had steamed in at that very time. It is said that after he had covered a few steps and had arrived near the water-hut (pyaoe) the appellant fired three shots at him with his rifle. The three shots after killing him, pierced through his body - and hit three persons moving on the platform, namely, Hari Singh, Bhaneshwar Prasad and Kailash Chandra. They were also badly hurt. This shocking incident was seen to several persons > including Chandra Prakash Tewari P. W. 32, Mahesh Chandra P. W. 6, Dumdum Ram P. W. 2, Ganga Das P.W. 3 and Pushkar Sinful, P. W. 23. All these persons apprehended the appellant and disarmed him. Chandra Prakash Tewari, P. W. 22, and Pushkar Singh, P. W. 23 then took the appellant to the police station. There Chandra Prakash Tewari lodged a report at 11 P. M. He also deposited the rifle of the appellant at the police station.

3. S. I. B. S. Bhaduria, P. W. 26 was present at the police station when the report was lodged. He immediately went to the place of incident and found the dead body of Sri. D.N. Mishra lying on the platform. He also found Hari Singh, Rameshwar Singh and Kailash Chandra injured at that place. He immediately sent these three injured persons to Kasganj hospital for medical aid and then busied himself in holding an inquest on the dead body of D. N. Mishra. Hari Singh, Kailash Chandra and Rameshwar Singh were examined by Dr. K. S. Yadav between 11.30 P.M. and 11.50 P.M. and he found the following injuries on their bodies.

Hari Singh

Lacerated gunshot wound 4 cm x 2 cm brain protruding on the right side head 7 cm. towards the inner end of the right eyebrow. The wound was profusely bleeding.

Ramesh Chandra.

Lacerated gunshot wound 8 cm x 3-3 cms x muscle on the right side neck below ear,

Kailash Chandra

Gunshot wound 1 cm-x 1; cm x muscle blood vessels on the left side neck 2 behind ear lower part.

After S. I. B. S, Rbaduria had held an inquest on the dead body of Sri D.N. Mishra he sent it duly sealed to mortuary for post-mortem examination.

4. Hari Singh died in Kashganj hospital and information about his death was sent to S. O., G. R. P, Kasganj, S. I. Ramji Lal Sharma was sent to Kwgani hospital to hold an inquest on the dead body of Hari Singh. After r holding the inquest he also sent the dead body of Hari Singh duly sealed to mortuary for post-mortem examination.

5. The investigation of the case was wrtrusrtd to S. I. Radhey Stiyatn Verma off Government Railway Police, SVrukhabad. He went to the spot on 2-10-1977 at 5.50 A.M. He recorded the statements of the material witnesses, Inspected the locality and drew the site plan (Ext. Ka. 29). He found some blood on the platform and took a part of tt in his possession.

6. The post-mortem examination on the dead body of D. N. Mishra was conducted by Dr. Daya Shanker on 22-10-1977 at 1 P.M. and he found the following artte-mortem injuries on the body:-

1. Firearm wound of entry (L) temple 0.5 cm x 0.5 cm 3 cm in front of (L) ear. No blackening or scorching seen.

2. Firearm wound of exit of No. (1) (L) occipital area 12 cm x 10 cm brain matter coming out. Direction front to back.

3. Firearm wound of entry (L) outer chest at level of nipple 0.5 am x 0.5 cm .1 cm from (L) nipple at 3 O'clock position. No blackening or scorching present.

4. Firearm wound of exit No. (3) (R) outer chest 3 cm x 2 cm at the nipple level 6 cm away from nipple at 7 O'clock position. Direction (L)-(R) Horizontal.
5. Firearm wound of entry (L) outer forearm upper part 0.5 cm x 0.5 cm. No blackening or scorching present.
6. Firearm wound of exit No. 5 inner side (L) upper arm 1 cm x 1 cm Direction L-R Horizontal.
7. Lacerated firearm wound (L) upper part back at the level of lower angle scapular 10 cm x 3 cm x muscle deep. According to Dr. Daya Shanker, death was due to Coma and syncope as a result of ante-mortem injuries.

6-A.' The post-mortem examination on the dead body of Hari Singh was also performed on 22-10-1977 at 1.45 P.M. The following one ante-mortem inkjet was found on the dead body.

Firearm wound of entry 3 cm x 1 cm x brain cavity on right side head 7 cm on right eyebrow. No blackening and scorching present. Brain material coming out.

One shot was recovered from the dead body and it was sent duly sealed to S. P. Etah.

7. After the investigation was over the investigating officer submitted a charge-sheet against the appellant under Sections 302 and 307, I.P.C.

8. The appellant pleaded not guilty and claimed to be tried. He admitted that on 21-10-1977 he had been escorting 14 Down along with rakshaks Bholey Prasad, N. P. Mathew and Mahendra Singh. He and Mahendra Singh happened to be in a compartment at the rear end of the train while the others were in front part of the train. Sri D. N. Mishra who happened to be in mufti dress met him and enquired from him as to how many rakshaks were on escort duty in the train. He did not disclose the number of rakshaks on escort duty in the train and this led to exchange of hot words between them. Sri. D.N. Mishra felt irked and tried to snatch away his rifle. He asked him not to snatch his rifle but he did not listen to him and continued with his unlawful activity. Apprehending that he might lose the

rifle he fired three times in defence of his property. The third shot hit D.N. Mishra and he fell down dead on the platform. According to him, nobody arrested him on the platform and he himself surrendered at the police station.

9. The learned Additional Sessions Judge found the prosecution case proved against the appellant and he, therefore, convicted and sentenced him as indicated above. Aggrieved he has come up in appeal to this Court.

10. We have heard the learned Counsel for the parties at sufficient length and after doing so we are firmly of the view that this appeal must be allowed. We find that the court below has not approached this case from a proper angle with the result that it fell in error and passed a wrong order of conviction against the appellant. It is true that the appellant admitted to have fired upon D. N. Mishra causing fatal injuries to him but this admission on the part of the appellant, in our opinion is not sufficient to fasten the guilt of murder on him. The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor 'shifted' because the accused pleads the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and not until it does so can the question arise whether the accused has acted in self defence. This position, though often overlooked, would be easy to understand if it is appreciated that the Civil Laws rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case it is open to Criminal Court to find in favour of an accused on a plea not taken up by him and by so doing the court does not invite the charge that it has made out a new case for the accused. The accused can be convicted only when the prosecution succeeds in proving that the incident in question had taken place in the way as alleged by it. The prosecution must stand on its own legs and cannot take advantage of the weakness of the defence. Nor can the court; on its own, make out a new case for the prosecution and convict the accused on that basis. It is now well established that when the very substratum of the evidence given by the eye witnesses examined by the prosecution is found to be false, then the only prudent course left to the court is to throw out the prosecution case in its entirety. In the instant case we find that the eye-witnesses examined by the prosecution have not cared to disclose the true picture of the incident. According to the

prosecution witnesses the appellant had fired three shots at D. N. Mishra and all these shots hit him. After killing D. N. Mishra these shots pierced through his body and they hit three persons more, namely, Hari Singh, Bameshwar Singh and Kailash Chandra. Hari Singh succumbed to his injuries a few hours later but Rameshwar Singh and Kattash Chandra were lucky to survive. One of the shots had lodged itself in the body of Hari Singh and the same was recovered from his body at the time of post-mortem examination. The court below did not avail of the services of a ballistic expert to get that shot examined. In this Court we sent that shot to the ballistic expert for examination and report. The ballistic expert examined and stated before us on oath that he did not find any rifling marks on the shot. He was, therefore, unable to give a definite opinion whether the shot examined by him was a rifle bullet. However, we think that it could not have been a rifle bullet because no rifling marks were found on it. If that is so, then it means that Hari Singh did not die of a rifle shot fired by the appellant. Obviously, therefore, he died of a shot that had been fired by somebody else. The prosecution story that he died of a shot fired by the appellant is, therefore, patently false. The fallacy of the prosecution case becomes apparent from another fact also. Rameshwar Singh had received a lacerated gunshot wound 8 cm x 3 cm x muscle deep. He was also said to have been injured from the rifle shot fired by the appellant. The ballistic expert examined by us is of the opinion that a rifle bullet cannot cause a lacerated wound measuring 8 cm x 3 cm muscle deep. This opinion of the ballistic expert was not challenged by the prosecution. Thus, from this it again follows that Rameshwar Singh did not receive his gun shot wound from the firing done by the appellant.

11. The prosecution has not offered any credible explanation as to how Hari Singh deceased and Rameshwar Singh injured received their injuries. They had certainly not received their injuries at the hands of the appellant. On the face of it they received their injuries from the firing done by somebody else. 'Who that somebody else' was, has not been disclosed to us. This means that the incident in question never took place in the manner and in the circumstances as alleged by the prosecution. For aught we know the appellant might have opened fire with his rifle when other people had also been firing and he felt that his life was in danger. It is now a well settled principle of criminal law that an accused can be convicted only

when on the evidence produced the court is in a position to come to a definite conclusion beyond the possibility of reasonable doubt that the accused committed the offence with which he stood charged. No conviction can be based on mere possibility. Nor is it permissible for the court to speculate as to what had really happened. If both the parties come to court with untrue facts and conceal the real truth they have themselves to blame and they cannot expect the court to arrive at any definite conclusion on the unreliable evidence produced either for or against either of the parties. In such a case the court will certainly attempt to separate the grain from the chaff but only if it is possible to do so. In certain circumstances it may be found to be an Impossible task. That is particularly be when the evidence of both the parties is unreliable and cannot be accepted even in part with safety. In such a case it is not open to the court to make out a third case which is different from the case set up by both the parties. In a situation like this the court can only say that the matter is doubtful in the extreme and it is not possible to arrive at any conclusion one Way or the other. The result of such a finding may be that the person who stands as an accused in the case may have to be given the benefit of doubt. But that cannot be helped. The defective investigation and the conduct of the parties themselves are really responsible for that regrettable result. In such a case there can be no question of recording any conviction.

12. In the result, we allow this appeal and set aside the conviction and sentences passed attaints the appellant. The appellant is in iail and is ordered to be released forthwith unless required in connection with some other case.

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