

Baital Singh and Another Vs. State of U.P.

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Court : Supreme Court of India

Decided On : Jul-19-1990

Reported in : AIR1990SC1982; 1990CriLJ2091a; 1990Supp(1)SCC804; 1991(1)LC315(SC)

Judge : Kuldeep Singh,; P.B. Sawant and; M. Fathima Beevi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 148, 149, 302 and 324; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 141 of 1979

Appellant : Baital Singh and Another

Respondent : State of U.P.

Judgement :

1. Baital Singh, Bhagwan Singh and Jangit Singh are real brothers. Ram Gopal, Ram Charan and Sheo Charan are the sons of Baital Singh. Om Prakash is the son of Bhagwan Singh. Sri Lal deceased was the son of Jangjit Singh. Baital Singh was not having good relations with his brothers Bhagwan Singh and Jangjit Singh.

2. Baital Singh, his three sons, Ram Gopal, Ram Charan and Sheo Charan along with Bidha and Shankar were tried for the murder of Sri Lal son of Jangjit Singh. They were acquitted by the Trial Court. On appeal by the State of U.P. the High

Court reversed the judgment of the Trial Court and convicted Baital Singh, Ram Gopal, Ram Charan, Sheo Charan and Shanker under Section 302 read with Section 149 I.P.C. and were sentenced to life imprisonment. They were also convicted under Section 324 read with Section 149 I.P.C. and Section 148 I.P.C. The acquittal of Bidha by the Trial Court was upheld by the High Court. We have been informed that Ram Charan and Sheo Charan died during the pendency of the appeal before the High Court. This appeal has been filed by Baital Singh and his son Ram Gopal.

We have heard learned Counsel for the parties. We have been taken through the judgment of the Trial Court as well as of the High Court. We have also been taken through the statements of witnesses and other record. We are in agreement with the appreciation of evidence by the High Court and are not inclined to interfere with the findings reached by the High Court except so far as these relate to Baital Singh-appellant. It is admitted position that no role was assigned to Baital Singh by any of the eye-witnesses in their statements under Section 161 Criminal Procedure Code, whereas at the trial the eye-witnesses deposed that Baital Singh gave injuries by a lathi. Baital Singh was 60 years of age at the time of occurrence which took place in the year 1972. We have a lurking suspicion in our mind so far as the presence of Baital Singh is concerned. It is common tendency in the faction-ridden villages to rope-in all the members of the adversary family. Keeping in view these circumstances we give benefit of doubt to Baital Singh and set aside his conviction and sentence.

3. As a result of acquittal of Baital Singh we alter the conviction of the remaining accused from Section 302 read with Section 149 to Section 302 read with Section 34 of the I.P.C. It is true that there was no charge under Section 302 read with Section 34 of the Indian Penal Code but the facts of the case are such that the accused could have been charged alternatively either under Section 302 read with Section 149 or under Section 302 read with Section 34. In this case according to the prosecution story all the accused came out of the house of Baital Singh and attacked Sri Lal. Ram Gopal and Ram Charan were armed with spears whereas Bidha, Baital Singh and Sheo Charan were armed with lathis. In the circumstances of the case no prejudice is likely to be caused to the accused whose appeal is

being dismissed. This Court in Lachman Singh v. The State : 1952 CriLJ863 and Karnail Singh v. State of Punjab : [1954]1SCR904 has held that the conviction under Section 149 can be substituted by Section 34 keeping in view the facts of the case.

4. We, therefore, accept the appeal so far as Baital Singh is concerned and dismiss the appeal in respect of Rani Gopal. We, however, alter the conviction of Ram Gopal to Section 302 read with Section 34 and maintain the sentence of life imprisonment awarded to him. The bail-bond of Ram Gopal is cancelled and he is directed to surrender forthwith to undergo the balance of the sentence.

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