
(2010) 07 AHC CK 0368
In the Allahabad High Court

Brij Bhushan and Shrawan Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 504

Citation : (2010) 07 AHC CK 0368

Hon'ble Judges : S.C. Agarwal, J; Amar Saran, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Since both the aforementioned criminal appeals have been filed against a Judgment and order dated 16.4.2009 passed by the Additional Sessions Judge/ Fast Track Court No. 1, Chitrakoot convicting and sentencing the appellants to life imprisonment inter alia u/s 302 IPC, the prayer for bail in both the appeals is being disposed of by this common order.
2. Heard learned Counsel for the appellants and learned Additional Government Advocate and perused the record of the case.
3. It is argued by the learned Counsel for the appellant-Shrawan Kumar that the case was of a sudden provocation and that the appellant has no reason to commit the murder of the deceased, who was aged about four years and that the appellant was carrying single barrel gun. It was argued that appellant Brij Bhushan was shown armed with DBBL gun and hence the injuries to the three injured and the deceased have been caused by Shrawan Kumar and they would have been caused by Brij Bhushan. There was enmity of the complainant with the appellants and they have been falsely implicated. The investigating officer has not found any pellets on the spot. The other witnesses Shakuntala, Ran Babu and Prem Narain were not examined. The dispute was with respect to the land, which was land of Prem Narain and not of Rudh Narain. Blackening was not likely from a distance from where the fire was made.

4. Learned Counsel for the appellant-Brij Bhushan argued that appellant Brij Bhushan is said to have fired on the leg of PW 3 only and he is suffering from bone marrow cancer. A counter affidavit has been filed by the learned AGA, which admits this fact.

5. Learned AGA, however, argued that there was no reason for the prosecution to concoct this story and the report was lodged promptly and that it was a broad day light murder. The appellant Shrawan was assigned the role of firing on the deceased and causing injuries to three persons. The case of Brij Bhushan is distinguishable to that of Shrawan Kumar.

6. Having considered the submissions of the parties and without expressing any opinion on the merits of the case, we are not inclined to grant bail to the appellant Shrawan Kumar. His prayer for bail is accordingly rejected.

7. Let the appellant-Brij Bhushan, convicted and sentenced in ST No. 13 of 2007, arising out of case crime No. 82 of 2006, under Sections 302/307/504 IPC, PS Mau, district chitrakoot, be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.

8. Realization of half of the fine shall also remain stayed during the pendency of the appeal against the appellant-Brij Bhushan.