
(2006) 11 AHC CK 0267
In the Allahabad High Court
Case No : Government Appeal No. 2251 of 1978

State of U.P.	Vs	APPELLANT
Bhanwar Singh and Another		RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 3 ACR 2598

Hon'ble Judges : V.D. Chaturvedi, J; R.C. Deepak, J

Bench : Division Bench

Advocate : M.C. Joshi and A.G.A, for the Appellant; Tufail Hasan and Anurag Pathak, for the Respondent

Judgement

R.C. Deepak, J.—This Government Appeal has been filed on behalf of the State of U.P. against the judgment and order dated 31.5.1978, passed by Sri Harish Chandra, Sessions Judge, Etah in Sessions Trial No. 106 of 1977 u/s 302/34, I.P.C. pertaining to Police Station Jalesar, district Etah whereby the accused Bhanwar Singh and Daulata have been acquitted.

2. Heard Sri M. C. Joshi, learned Additional Government Advocate for the State-Appellant, Sri Tufail Hasan and Sri Anurag Pathak, learned Counsel for the accused-Respondent Daulata and perused the record.

3. The acquitted co-accused Bhanwar Singh had already died and his appeal stands abated vide order dated 2.9.1994.

4. The brief facts of the prosecution case are that in the intervening night of 31st October and 1st November, 1976, Virendra Kumar and Babu Ram both (deceased) were sleeping in their khalihaan to look after urad crop stored therein. The accused Bhanwar Singh armed with gun, accused Daulata armed with country made pistol and their two companions armed with lathi and katti respectively reached there and fired at Virendra Kumar and Babu Ram, who sustained injuries and both died on the spot. Thereafter, their dead bodies were

put to fire. Sukh Nandan, Har Prasad, Netrapal and Rajendra Singh are said to have witnessed the occurrence. In regard to the occurrence, Suresh Chandra, the maternal uncle of the deceased Virendra Kumar lodged the first information report and a case as Case Crime No. 391 of 1976 u/s 302, I.P.C. was registered at Police Station Jalesar, district Etah at 4.00 a.m. on 1st November, 1976, against them. The investigation into the case was made by Ram Prakash Gupta, the then Station Officer of the said Police Station and after the completion of the investigation, he submitted the charge-sheet on 3.11.1976. The case was committed to the Court of Session. The charges were framed on 25.4.1978 u/s 302/34, I.P.C. 31.5.1978 and 1.6.1978, were fixed for the prosecution evidence. The witnesses did not appear on these dates. The learned trial court on the first date, i.e., 31.5.1978 acquitted them. Hence the present appeal, already referred-to-above.

5. This Government appeal is an outcome of a shocking conduct of a Sessions Judge in a sessions trial. This trial was for a cognizable offence u/s 302, I.P.C. of heinous nature wherein two persons have been brutally murdered. The clumsy conduct exposes the phenomenon and provides an occasion for raising of the eyebrows. Such treatment to a trial of any cognizable offence involving heinousness if allowed to go unnoticed for passage of sufficient length of time since closure of trial, the system of justice is bound to suffer irreparable loss.

6. In the above scenario, we proceed to make an incision of the facts and circumstances available on the record of the case.

7. The law on the question under our scrutiny is well-settled. If in a trial of a cognizable offence witness or witnesses fail to turn up or the prosecution is unable to produce them, the Courts cannot sit and watch the happenings silently. Courts are meant to be broad beaten by a shadow and poor prosecution or traumatized by a wily power wedding offender. Arms of the law though elastic yet have strength to grapple with such situation. It has to activate itself morally and mentally to thwart or check such machination. The trial court has the power to summon the witnesses, use the coercive measures to procure and secure attendance. It has ample power to punish an errant or dithered witnesses. It has enough power to take to task the law enforcement machinery to enforce its order. Failure to adopt such measures before acquitting the accused persons on the ground of non-prosecution of evidence that too on the first day after the charges were framed cannot therefore, be comprehended. The case has to be sent back for the recording of the evidence and the conclusion of the trial in accordance with law and procedure.

8. Consequently, the Government appeal is allowed. The judgment and order dated 31.5.1978, passed by the trial court are set aside. The trial court's record be sent back forthwith for fresh trial. The trial court shall proceed expeditiously with the trial and shall conclude the same within a reasonable period preferably within a period of 4 months from the date of presentation of a certified copy of this judgment.

9. A judicial officer becomes Sessions Judge after a very long judicial experience. The closure of the prosecution evidence in a double murder case, on the first very date of evidence and the conclusion of the trial in acquittal on that very date fails to rule out the probability that the Judge acquitted the accused persons with some ulterior motive. The procedure adopted by the Sessions Judge is unwanted, unwarranted and extremely painful. We do condemn it. We wish that such incident may not recur in future. Hence, we direct the Registrar General to place this judgment before Hon''ble the Chief Justice for His Lordship's pleasure to take appropriate action against the trial Judge concerned.

10. Since the accused-Respondent Daulata is detained in jail by the order of this Court, he shall remain therein subject to the result of trial.