

Kunwar Bahadur And Ors. vs State Of Uttar Pradesh on 22 February, 1979

Equivalent citations: 1980CRILJ831, 1983(2)CRIMES216(SC), 1983(1)SCALE672, (1979)4SCC494, 1980SUPP(1)SCC339, 1979(11)UJ885(SC), AIR 1979 SUPREME COURT 1509, 1979 ALL. L. J. 903, (1979) UJ (SC) 885, 1980 SCC(CRI) 109, (1980) SIM LC 60, 1979 (4) SCC 494

Author: S. Murtaza Fazal Ali

Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against the judgment of the Allahabad High Court dated 5-10-1971, upholding the conviction of the appellants under Section 302/149 IPC but commuting the sentence of death to one of life imprisonment. The appellants were also convicted under Section 307/149 and sentenced to five years rigorous imprisonment and under Section 148 to two years rigorous imprisonment. We have heard Mr. Mulla, counsel for the appellant at great length and we have also heard Mr. Uniyal for the State. We have been taken through the judgment of the High Court and the evidence of the eye witnesses. After perusing the record we find that the prosecution case against the appellants has been fully proved as held by the High Court and there does not appear to be any error of law or misreading of any evidence so as to warrant our interference in special leave. Mr. Mulla, however, specially stressed the cases of two of the appellants, namely, Raja Ram and Nand Kishore. As regards Raja Ram, Mr. Mulla placed reliance on the finding of the High Court which appears to have found that even though Raja Ram was alleged to have been armed with a gun he may have caused an injury with a lathi as he has admitted in his statement under Section 342. The evidence of PW proves clearly two facts against this appellant. Firstly that the appellant before the occurrence exhorted the other assailants of the deceased persons and the injured to open the assault by guns and other weapons. Secondly, that this appellant was also armed with a gun and there is consistent evidence of the eye witnesses that all the three guns were fired though only one fire hit Nathu, The mere fact that only one person was hit by the gun cannot exclude the possibility of the other guns having been fired because it may be that even though the other guns were also fired the bullets did not hit anybody. In this view of the matter the High Court was not justified in holding that Raja Ram was armed with a lathi. Moreover, Raja Ram in his statement under Section 342 has not denied his presence at the spot but has admitted his presence there and has even stated in his statement under Section 342 before the committing Magistrate that he had also assaulted the prosecution party with lathi. In this view of the matter there is absolutely no reason to acquit Raja

Ram of the charges framed against him. The High Court was, therefore, fully justified in upholding his conviction though not for the reasons given by it. The first contention put forward by the learned Counsel for the appellant is, therefore, overruled.

2. It was then argued that so far as appellant Nand Kishore is concerned, he appears to be only 15 years at the time when the occurrence took place and it appears that when he was sent to prison the Jailor referred him to the Sewa Sadan under Section 7 of the United Provinces Borstal Act, 1938 Under this Section where a prisoner is sentenced for transportation i.e. life imprisonment and is below the age of 21 years he should be sent to Borstal School where he cannot be detained for more than five years. The law thus contemplates that for such an offender the sentence of five years will be equivalent even to a higher sentence of life imprisonment. It is not disputed before us that the appellant Nand Kishore had already served five years in that institution and has been released therefrom. The question, therefore, of his surrendering to serve the remaining sentence does not arise. With this modification the appeal is dismissed.