

## **Asgar Hussain vs The State Of U.P. on 25 September, 1973**

**Equivalent citations: AIR1974SC336, 1974CRILJ279, (1974)3SCC518, AIR 1974 SUPREME COURT 336, (1974) 3 SCC 518, 1974 SCC(CRI) 4, 1975 (1) SCJ 55, 1975 MADLJ(CRI) 21**

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**Bench: H.R. Khanna, R.S. Sarkaria, V.R. Krishna Iyer**

### **JUDGMENT**

H.R. Khanna, J.

1. Eight accused Asgar Hussain, Talib, Ilyas, Israil, Mashooq, Akhtar, Jarrar and Afsar were convicted by the Civil & Sessions Judge Moradabad for an offence under Section 302 read with Section 149 Indian Penal Code and other minor offences. Asgar Hussain and Israil "were sentenced to death, while the remaining six accused were sentenced to undergo imprisonment for life. Sentences of imprisonment for minor offences were also imposed upon the eight accused. On appeal and reference, the Allahabad High Court acquitted Mashooq, Akhtar, Jarrar and Afsar. The conviction of the remaining four accused was altered to that under Section 302 read with Section 34 Indian Penal Code. Their conviction for minor offences too was maintained. The High Court affirmed the death sentence of Asgar Hussain, while that of Israil was converted into one for imprisonment for life. Sentence for imprisonment for life imposed upon Talib and Ilyas was maintained. Asgar Hussain, Talib, Ilyas and Israil then applied to this Court for special leave to appeal against the Judgment of the High Court. The application of Talib, Hyas and Israil was dismissed. Leave was granted to Asgar Hussain but it was limited only to the question of sentence.

The prosecution case is that there was a dispute between Asgar Hussain and other accused on one side and Nawab Jan and Bankey deceased on the other,' with regard to the management of two mosques situated in village Saifpur Chittu in district Moradabad. On December 11, 1971, it is stated, Asgar Hussain and other accused asked Nawabian and Bankey to change the imam of one of the mosques. Nawabjan and Bankey deceased declined to accede to. this demand of Asgar Hussain and Talib. It appears that tempers got frayed at that time. Asgar Hussain and Talib then left after holding out a threat to Nawabjan and Bankey. About 1 1/2 hours thereafter at 2 p.m. , the eight accused are alleged to have arrived at one of the mosques, Nawabjan and Bankey along with others were present there. Asgar Hussain at that time was armed with his licensed double-barrel gun, while Israil had a single barrel unlicensed gun. Apart from Afsar who had a lathi, the remaining five accused too had firearms. On the instigation of Mashooq, Akhtar, Jarrar and Afsar, the other four accused fired at, Nawabjan and Bankey. Nawabjan and Bankey were killed at the spot. Report about the occurrence was thereafter lodged at the police station. During the investigation of the case, the

investigating officer found four cartridges lying at the spot. Two of those cartridges were found by the ballistic expert to have been fired from the gun of Asgar Hussain, while the remaining two were found to have been fired from the single barrel gun of Israil.

2. As mentioned earlier, the only question with which we are concerned is whether the sentence of death awarded to Asgar Hussain should be maintained or whether it should be converted into one for imprisonment for life. In this respect, we find that the High Court has converted the death sentence of Israil into one for imprisonment for life. The part played by Asgar Hussain was not materially different from that played by Israil and if Israil could escape the extreme penalty, we find no particular reason as to why there should be differentiation in the matter of sentence so far as Asgar Hussain appellant is concerned. The fact that Asgar Hussain is a village pardhan and is the leader of the party of the accused would not, in our opinion, justify differentiation in the matter of sentences. We would accordingly accept the appeal of Asgar Hussain to the extent of converting his sentence of death into one for imprisonment for life.