

Supreme Court of India

Mohd. Yusuf vs State Of U. P. on 27 January, 1994

Equivalent citations: AIR 1994 SC 1542, 1994 CriLJ 2181, 1994 (1) Crimes 642 SC, JT 1994 (1) SC 195, 1994 (1) SCALE 239, 1994 Supp (2) SCC 32, 1994 (1) UJ 254 SC

Bench: K J Reddy, G Ray

ORDER

1. This appeal is directed against judgment dated September 6, 1983, passed by the Division Bench of the High Court of Allahabad (Lucknow Bench) in Criminal Appeal No. 910 affirming the conviction under Section 302 I.P.C. against the appellant by the Additional Sessions Judge, Pratapgarh, dated November 5, 1976 in Sessions Trial No. 114 of 1973 and sentence of life imprisonment for the aforesaid conviction.

2. The short facts of the prosecution are that an anti-dacoity squad was sent from Police Lines Pratapgarh to Police Station, Baghrai. The original squad consisted of Head Constable Ram Iqbal Tewari P.W. 7, and three constables Ram Jatan Rai, Radhey Shyam Pandey and Ram Prasad Pandey. Subsequently, there were changes and at the relevant time this squad consisted of Head Constable Mohammed Yaqub, Constable Ram Dhani Singh, Constable Ramanand Pandey and Constable Mohammad Yusuf, the convicted appellant. On June 21, 1973, this squad was in village Ramgarh Banohi. It was scheduled to move for Phulpur on June 22, 1973. The squad reached village Bihar at about 4.00 P.M. Thereafter, the squad on reaching the grove of one Ahmad Husain, P.W. 3, Mohammad Yaqub a Head Constable (P.W.1) asked Mohammad Yusuf the appellant, and Ramanand Pandey deceased to bring Chaukidar from Naya Purwa. When the said two persons had gone about 50-60 steps away from the grove, there was exchange of abuses between the accused and the deceased and thereafter the other persons of the squad rushed towards the side along with some other persons who had arrived at that place. In the meantime, the accused No. 1 fired three consecutive shots with his rifle on the deceased Ramanand Pandey as a result of which the said Ramanand Pandey died on the spot. A written Report of the said incident was sent to the Police Station Baghrai by Mohammad Yaqub, Head Constable (P.W.1) and the case was registered and initial investigation was conducted by Sri Amir Hasan Zaidi, Station Officer of Police Station, Baghrai. The said Officer reached at the spot but thereafter the investigation was handed over to one Sri Lakshpat Singh P.W. 13. Charge sheet in the said case after investigation was submitted on July 18, 1973. The appellant was arrested along with 47 live cartridges in village Bechu Ka Purwa a hamlet of Phoolpur Mauri which is at a distance of three miles from the scene of occurrence at 10.30 P.M. The inquest was made and the rifle and empty cartridges found at the place of occurrence were scaled and were despatched and the post mortem of the deceased was conducted by Dr. B.K. Bhardwaj.

3. The doctor on conducting the post mortem had found gun shot injuries badly damaging the vital parts of the body. 17 witnesses were examined by the prosecution to prove the case. P.W.1, P.W. 3, P.W. 4 and P.W. 5 were examined as eye-witnesses and they deposed in support of the prosecution. The Police Constable Ram Naresh Singh was an eye-witness. Though he was examined in the committing court, but he died on September 11, 1973. His statement, therefore, was tendered under Section 288 of the old Criminal Procedure Code being Ext. Ka 36. P.W. 3 and P.W. 4 and Ram

Naresh were residents of Village Dewar Patti, which is about 2 or 3 furlongs to the south of the grove of Ahmad Husain. It transpires from the evidences of the eye-witnesses that the incident had taken place at about 50 or 60 steps from the grove and that there was altercation between the deceased and the appellant and the appellant fired shots at the deceased Ramanand Pandey. The evidences of the eyewitnesses are consistent on this aspect. It may be noted here that a suggestion was made that Ramanand Pandey was drunk and there was fight with the butt end of the rifles between the deceased and the appellant the deceased aimed his rifle towards the appellant and the appellant fired his rifle in self defence. The appellant did not examine any witness in his defence. The learned trial Judge after considering the evidence on record convicted the appellant on the charge of murder and awarded a sentence of life imprisonment.

4. In the appeal it was contended on behalf of the appellant that the first information report was ante dated, but such submission was rejected by the High Court. It may be noted that on June 23, 1973 when the appellant was produced before the Additional District Magistrate, Partapgarh, he moved an application before the learned Magistrate to the effect that first information report had not been prepared so far. The learned Magistrate passed an order requiring the A.P.P. to put up first information report or to submit a report as to why the same had not been received. On the first information report the signature the Circle Inspector was dated June 26, 1973. The High Court in consideration of the materials on record inter alia came to the finding that the report of the said incident had been lodged at 8.30 P.M. on June 22, 1973. The distance of the police station was 7 miles from the place of occurrence. There is nothing suspicious with respect to the first information report Ext. Ka 17 or the General Diary report prepared on its basis. Ext. Ka 18, The papers were sent to the doctor for post mortem and the mortuary was 36 kilometers away from the place of occurrence. The High Court, therefore, held that simply because the Circle Inspector received the report on June 26, 1973, it did not indicate that first information report had not come into existence at the time alleged by the prosecution. The submission made before the High Court that the incident had not been witnessed by any of the eye-witnesses was not accepted and the presence of P.W. 1 and P.W. 5 could not be doubted as they were members of the anti-dacoity squad. The contention made before the High Court that as the prosecution had failed to establish the origin which led to the firing, the benefit should be extended to the accused, was, however, not accepted by the High Court in view of the positive evidence given by P.W. 1 Mohammad Yaqub, P.W. 3 Ahmad Husain, P.W. 4 Chintamani, P.W. 5 Ram Dhani. The High Court having come to the finding that the prosecution has proved by leading clinching evidence that the accused had committed the murder, upheld the sentence passed by the learned Additional Sessions Judge, Hence, this appeal.

5. The learned Counsel for the appellant has urged that admittedly there was altercation and there is evidence of one of the witnesses being a member of the said police squad that in view of the altercation both the accused and the deceased raised their rifles. The learned Counsel has contended that if a loaded rifle was raised by the deceased then the accused was justified in firing at the deceased in order to save his life because there was imminent danger to his life if the deceased would have fired the rifle first. In the aforesaid circumstances, the courts below ought to have held that the accused had fired by way of self defence and as such there was no occasion to convict him on the charge of murder. The learned Counsel has also contended that in a case like this, there cannot be any question of exceeding right to self defence because to stop an attempt from being fired

upon by an armed police constable, the only recourse to which the accused could take was to fire his rifle to stop the deceased and if on such firing, the death had occurred such death could not have been helped. The learned Counsel has also contended that the genesis of the fight between the deceased and the accused had not been noticed by any one because it came out in the evidence that the eye-witnesses only heard them abusing. Hence, it cannot be said who was the real aggressor between the accused and the deceased. It has also been contended by the learned counsel that although it is the prosecution case that three shots were fired by the accused but from the medical evidence it transpires that only two gun shot injuries were found on the dead body. Such discrepancies as to the number of shots only suggests that the witnesses had not seen the occurrence and were not telling the truth but were resorting to imagination.

6. We are, however, unable to accept the said contentions of learned Counsel for the appellant. It has been established on evidence that 50 cartridges were issued to the appellant and the rifle and 47 cartridges were recovered from him. Three empty cartridges were also recovered from the place of occurrence. Accordingly, it is established that three shots had been fired by the accused from the service rifle. The plea of self-defence cannot be accepted for the simple reason that there is positive evidence that due to altercation and exchange of abuses between the deceased and the accused, both the deceased and the accused raised their rifles but when the said witnesses and the other members of the police squad had rushed towards them, the deceased lowered his rifle but the accused fired three shots at the deceased. Hence, there was no occasion for firing a number of shots for the alleged self-defence and such pleas have been rightly rejected by both the courts below. It has been stated by the eye-witnesses that in view of the altercation and exchange of abuses, the appellant had fired three shots at the deceased from the rifle. Simply because gun shots were noted by the doctor, it cannot be established that three shots were not fired, because it is not unlikely that one shot might have missed the target. In our view, there is clinching evidence in support of the prosecution case and the learned Sessions Judge having believed the eye-witnesses for good reasons, convicted the accused and passed the sentence of life imprisonment against him and the High Court having accepted the finding, affirmed the same on appeal. There is no merit in this appeal and the same is, therefore, dismissed. The appellant was released on bail during the pendency of the appeal in this Court. He should, therefore, be taken into custody to serve out the remaining part of the sentence.