

Supreme Court of India

State Of U.P. vs Jamshed And Anr. on 21 January, 1994

Equivalent citations: 1994 CriLJ 635, 1994 (1) Crimes 571 SC, JT 1994 (1) SC 122, 1994 (1) SCALE 114, 1994 Supp (1) SCC 610, 1994 (1) UJ 273 SC

Bench: K J Reddy, G Ray

JUDGMENT

1. These two appeals by the State of U.P. are filed against the judgment of a Division Bench of the High Court of Allahabad acquitting the two respondents - accused of the offences punishable under Sections 302, 302 read with 34 IPC and Section 25(1)(a) of the Arms Act. Jamshed, the respondent in Criminal Appeal No. 526/78 is the father of Kanwar Khan, the respondent in the other appeal. These two along with Qabool Ahmed - father of Jamshed and Vakil Baboo another son of Jamshed were put on trial before the Additional District and Sessions Judge Saharanpur for the offence of murder of one Ram Singh, the deceased in the case. It is alleged that on 21.6.1976 at about 5 p.m. in Village Gadharana, in furtherance of the common intention of the four accused persons, Jamshed committed the murder of Ram Singh by firing at him with a country made pistol and Kanwar Khan gave a blow with Balkati - a sharp-edged weapon. The trial Court convicted Jamshed under Section 302 IPC and sentenced him to death and he was also convicted under Section 25(1)(a) of the Arms Act and sentenced to undergo one year's R.I. Kanwar Khan was convicted under Sections 302 read with 34 IPC and sentenced to imprisonment for life. The other two accused were acquitted. The appeals were filed by Jamshed and Kanwar Khan along with reference for the confirmation of death sentence by the High Court, which by the impugned judgment acquitted both of them of all the charges. Hence the present appeals.

2. The prosecution case is as follows: All the four accused are the residents of Village Gadharana, Saharanpur District in Roorki Tehsil. PW 1 Dilawar Singh was Amin in Tehsil Roorki for realising land revenues and other Government dues from the cultivators. Village Gadharana also falls in his jurisdiction. The deceased Ram Singh was a peon working under him. The family of the accused borrowed about Rs. 33,000/- from the Government and the same was outstanding against them.

3. On 21.6.76 PW 1 had gone to Village Gadharana in connection with the realisation of dues along with the deceased. At about 5 p.m. the accused Jamshed came to call him and the deceased saying that he would pay all the dues outstanding at his residence. On that PW 1 and the deceased went with the accused to his house and Jamshed put them in a room of his house. Qabool Ahmad - father of Jamshed and his two sons Kanwar Khan and Vakil Baboo were there. They asked PW 1 to tell the accounts on which PW 1 told them that a sum of Rs. 33,000/- stands outstanding. Thereupon the accused Jamshed asked PW 1 to prepare the receipt. At this the deceased told that the receipt would not be prepared unless the money was received. Jamshed asked him as to why the receipt would not be prepared. Thereupon Ram Singh, the deceased replied that the receipt would not be prepared unless the money was received. Then it is alleged that Qabool Ahmed and Vakil Baboo caught hold of Ram Singh and Jamshed took out a country made pistol which he had kept hidden and placed the same below the ear of Ram Singh and fired at him. Kanwar Khan brought a Balkati and gave a blow with the same on the neck of the deceased, who died on the spot. After that Jamshed aimed the pistol towards PW 1 and forcibly made him prepare the receipts, Exs. Ka-1, Ka-2 and Ka-3, with back

dates. When PW 1 was forcibly made to sit in a room in the house of accused, PW 2, Daya Ram happened to come there searching for him. The accused persons made him also sit forcibly. At about 9 p.m the accused persons made a Buggi ready, kept "Phoos" and "Bhoosa" and "Kandas" in the Buggi and forced PWs 1 and 2 to place the dead body of the deceased in the Buggi. While so PW 2 managed to escape and he raised a hue and cry. On hearing the alarm PWs 3 and 4 and some other villagers reached there. PWs 3 and 4 and other snatched the pistol from Jamshed and they also released PW 1. Those persons surrounded the Buggi, took out the dead body and also caught hold of the accused. They also recovered the receipts Exs. Ka-1, Ka-2 and Ka-3 from the pocket of Qabool Ahmed. PW 1 on the spot prepared a report and went to the police station and lodged the same. On the basis of this report a case was registered and the investigation was taken up by PW 9. PW 9 seized the Buggi and other articles. He found the body of the deceased in the Buggi. He also seized the blood-stained articles. After the inquest report, the dead body was sent for post mortem. PW 5, the Doctor, conducted the post-mortem and he found two gun shot injuries on the left and right side of the neck. He also found an incised injury below the left ear. He opined that the death was caused by haemorrhage and shock due to gun shot wounds. The prosecution examined 10 witnesses and out of them PWs 1, 3, and 4 are the material witnesses. The accused pleaded not guilty. On their behalf several suggestions were made that there was an altercation and exchange of abuses between Qabool Ahmad and PW 1 and later on that night some miscreants surrounded PW 1 and the deceased and killed the deceased and that PW 1 managed to escape. The trial Court relying on the evidence particularly that of PW 1 convicted Jamshed and Kanwar Khan but acquitted the 'other two accused since they did not play any important role in the attack on the deceased. The learned Sessions Judges also believed the recovery of the weapons and the receipts Exs. Ka-1, Ka-2 and Ka-3.

4. The High Court rejected the prosecution case on the ground that there was intrinsic evidence to show that the first information was prepared later and it was anti timed and the version of PW 1 that it was written later and presented in the police station cannot be relied upon and consequently his evidence also becomes doubtful. The High Court also doubted the evidence of PW 1 regarding taking the receipt book and preparing the receipts Exs. Ka-1, Ka-2 and Ka-3. The High Court further relying on the site plan doubted the prosecution case that PW 1 and the deceased would have been allowed to go inside the house of the accused. The High Court was also not prepared to believe that he was forced to prepare the receipts and the learned Judge also dis-believed that PWs 3 and 4 rushed to the place of occurrence and therefore the prosecution case is open to a very serious doubt and accordingly acquitted the two respondents accused.

5. From the above facts it can be seen that PW 1 is an important witness. In the chief examination he has stated all the details of the occurrence which are set out already while suiting the prosecution case. It is not in dispute that PW 1 is an Am in and it was his duty to collect the Government dues from the villagers of Village Gadharana including the accused. PW 1 is an independent witness and he has no grudge against the family of the accused. The Investigating Officer PW 9 found the dead body of the deceased in the Buggi near the house of the accused. Pw 1's evidence is also corroborated by the evidence of PWs 2, 3 and 4. We are not able to see anything that can be said against the version given by PW 1 and as corroborated by the other witnesses. As a matter of fact PWs 3 and 4 along with other villagers rushed and found PW 1 being held by the accused and also found the dead body in the Buggi. They caught hold of, the accused and recovered a country made pistol from

Jamshed and also the receipts. PW 2 was cross-examined length. He accepted that he went to the house of the accused searching for PW 1 and he was also forcibly made to sit there. Nothing significant has been elicited in the cross-examination. Likewise PWs 3 and 4 are also independent witnesses. Both of them deposed that on hearing the cries they reached the house of the accused and found the dead body in the Buggi standing near the house of Jamshed. The material witnesses corroborate the version given by PW 1 and it is not in dispute that the deceased died of gun shot injuries. Therefore, the evidence is so overwhelming and the accused had no explanation as to how the dead body was lying in the Buggi and as to how PW 1 was released from the hold of the accused. On the other hand the suggestion made to PW was that on that day he went to the accused and demanded the payment of Rs. 33,000/- whereupon he was told that it is a big amount and it would be deposited and thereupon there was exchange of abuses and that night some bad characters surrounded PW 1 and the deceased in a Jungle and PW 1 ran away saving his life and then bad characters killed the deceased and that later the FIR was fabricated and also the receipts Exs. Ka-1, Ka-2 and Ka-3 and that the accused were falsely implicated. This is an absurd suggestion put forward as the defence plea. This absurd suggestion itself shows that the accused had no plea worthwhile mentioning to be put forward.

6. Be that as it may, we have to see whether the prosecution has established the guilt of these two respondents - accused beyond all reasonable doubt. We have carefully gone through the evidence of PWs 1 to 4 and as already discussed we see no infirmities in their evidence. While that is so the High Court strangely rejected the entire prosecution case on the mere ground that there was delay in giving the FIR. We are not able to appreciate how the High Court could reject the evidence of PWs 1 to 4 on some surmises which are absolutely baseless. The order of acquittal by the High Court is not based on the appreciation of the evidence and the reasons given in respect of the acquittal do not stand scrutiny at all and they are wholly unsound and we find the only view which is possible in this case is that the prosecution has proved that the two respondents- accused- participated in the occurrence as spoken to by PW 1.

7. So far as Jamshed is concerned it is proved beyond all reasonable doubts that he shot at the deceased with a country made pistol and that proved fatal. Kanwar Khan was aged only 16 years and it is alleged that he caused an incised injury, but the Doctor found it to be simple and that did not contribute in any manner to the death. Having regard to his age and the other circumstances we think it is not safe to convict him under Section 302 read with 34 IPC as it is difficult to say that he shared the common intention particularly when PW 1 has clearly stated that Jamshed took out a pistol from the right side of his waist, which he had hidden there, and shot at the deceased after the altercation between both of them. In view of this evidence of PW 1 it cannot be said that Kanwar Khan was aware that Jamshed had a pistol and he was likely to use it. Therefore, Kanwar Khan can be convicted only for his individual acts namely under Section 324 IPC.

8. In the result Criminal Appeal No. 526 of 1978 is allowed and the acquittal of the respondent accused Jamshed is set aside and he is convicted under Section 302 IPC and sentenced to imprisonment for life. He is further convicted under Section 25 of the Arms Act and sentenced to one year's R.I. The sentences are to run concurrently. Criminal Appeal No. 527 of 1978 is partly allowed and the respondent-accused Kanwar Khan is convicted under Section 324 IPC but

sentenced to the period already undergone.