

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1651 of 2019

NATTHU SINGH

...APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

1. The present appeal challenges the judgment and order dated 25th April 2019 passed by the High Court of Allahabad, thereby dismissing the appeal filed by the present appellant and accused No.2-Rajesh, challenging the judgment and order passed by the learned Additional Sessions Judge, Jalaun at Orai (hereinafter referred to as “the trial court”) in Sessions Trial No.223/2004, convicting the accused-Rajesh under Section 302 of the Indian Penal Code, 1860 (for short, “IPC”) and sentencing him to undergo rigorous imprisonment for life with a fine of

Rs.20,000/- and convicting the appellant herein for offences punishable under Section 302 IPC read with Section 34 IPC and sentencing him to undergo rigorous imprisonment for life with a fine of Rs.20,000/-.

2. The prosecution case, as could be gathered, is that when the deceased Vineet along with PW-1-Rajveer Singh and PW-3-Jitendra Singh were passing through the shop of one Raju Paanwala, four accused persons surrounded them. The present appellant exhorted the accused No.2-Rajesh to kill deceased Vineet, after which the accused No.2-Rajesh fired shots from the double barrel gun upon deceased Vineet, which hit him and he fell down after getting injured and died on the spot.

3. Shri R. Basant, learned Senior Counsel appearing on behalf of the appellant, submits that the trial court and the High Court have grossly erred in convicting the appellant and maintaining the same respectively. He submits that the rest of the eye witnesses have turned hostile. Though independent witness i.e. Raju Paanwala, in front of whose shop the occurrence has taken place, was examined by the Investigating Officer (I.O.), he has not been examined as the

prosecution witness in the trial. He, therefore, submits that solely on the basis of testimony of PW-3, the conviction would not be sustainable.

4. Ms. Sansriti Pathak, learned counsel appearing on behalf of the respondent-State, submits that there is no reason to interfere with the concurrent findings of fact. She submits that since a coordinate Bench of this Court, vide judgment and order dated 29th November 2019, has already dismissed the appeal of co-accused Rajesh, the present appeal, arising out of the same judgment, is also required to be dismissed.

5. With the assistance of the learned counsel for the appellant and the respondent, we have scrutinized the material on record.

6. No doubt that the learned counsel for the respondent-State is justified in submitting that the appeal of the co-accused has already been dismissed by this Court; however, it is settled law that dismissal of a special leave petition does not amount to affirmation of the view taken by the High Court or the trial court. Since, the leave is granted in this matter and that too prior to the date on

which the special leave petition of the co-accused Rajesh was dismissed, we are entitled to scrutinize the evidence.

7. PW-1-Rajveer Singh and PW-5-Satish Chandra have not supported the prosecution case. The evidence of the I.O. would reveal that he had recorded the statement of Raju Chaurasia, the owner of paan shop, in front of which the incident took place. He has not been examined as prosecution witness.

8. That leaves us only with the testimony of PW-3-Jitendra Singh. If his evidence is found to be trustworthy, the appeal would fail, however, in the event his evidence is found to be doubtful, the appellant would be entitled to benefit of doubt.

9. We have scrutinized the evidence of PW-3 minutely. No doubt that he refers to an exhortation made by the present appellant to Rajesh co-accused to kill the deceased. However, it is to be noted that his statement is recorded after a period of two months from the date of the occurrence. He admits in his evidence that he was in his house for the said period of two months. The distance between the village and the police station is only six

kilometers and that too connected by a pucca road. His conduct during the said period is also required to be taken into consideration. Though, the police station was at a distance of two kilometers from the place of occurrence, he chose not to go to the police station to report about the incident during the entirety of the period.

10. It is further to be noted that, though in the examination-in-chief, he states that all of them were encircled by the accused persons, in the cross-examination he states that only deceased Vineet was encircled by the accused and that they were at a distance of 5-6 paces.

11. The perusal of the evidence of I.O./PW-6 (Lalmani Gautam) would reveal that there is no explanation as to why the statement of the witnesses was recorded belatedly. The only explanation given by him is that he has recorded the statement of these witnesses after the investigation was given to him.

12. We find that the inordinate delay in recording the statement of the witnesses, coupled with no explanation to that effect from the I.O. and further the conduct of PW-3 would bring him in the category of witnesses who are not

wholly reliable. In our considered view, conviction on the sole testimony of such a witness, without there being any corroboration to his evidence, would not be justified.

13. In that view of the matter, the appellant is entitled to benefit of doubt. The appeal succeeds. The impugned judgment and order is quashed and set aside. The accused is acquitted of the charges charged with.

14. The appellant-accused is directed to be set at liberty forthwith, if his detention is not required in any other case.

15. The appeal is, accordingly, allowed.

16. Pending application(s), if any, shall stand disposed of.

.....J
[**B.R. GAVAI**]

.....J
[**VIKRAM NATH**]

NEW DELHI;
JANUARY 19, 2023