

**(2005) 04 AHC CK 0129**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 1760 of 1997

Nauni Ram

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** April 5, 2005

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 409
- Police Act, 1861 - Section 29

**Hon'ble Judges:** M. Chaudhary, J; Imtiyaz Murtaza, J

**Bench:** Division Bench

**Advocate:** A.B.L. Gaur, H.C. Misra, G.S.D. Misra, V.P. Srivastava, L.V. Singhi and H.C. Misra, for the Appellant; S.S. Yadav and A.G.A., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

M. Chaudhary, J.

This is an appeal filed by accused Nauni Ram from judgment and order dated 12<sup>th</sup> of September 1997 passed by 1 Additional Sessions Judge Bijnor in Sessions Trial No. 457 of 1995 State v. Nauni Ram u/s 409 IPC and Sessions Trial No. 458 of 1995 State v. Nauni Ram u/s 29 of the Police Act connected with Sessions Trial No. 456 of 1995 State v. Nauni Ram u/s 302 IPC convicting the accused u/s 302 IPC and u/s 29 of the Police Act and sentencing him to imprisonment for life and six months" rigorous imprisonment respectively thereunder. However he was acquitted of the charge levelled against him u/s 409 IPC in Sessions Trial No. 457 of 1995 State v. Nauni Ram connected with the sessions trials aforesaid.

2. Brief facts giving rise to this appeal are that at about 8: 45 p.m. on 9<sup>th</sup> of August 1995 one Raj Kumar lodged an FIR (SIC) police station Kala Garh District Bijnor situate at a distance of about 45 paces from the place of occurrence Quarter No. C 615 Work Charge Colony alleging that his brother-in-law SI Om Veer Singh was posted at police station Kala Garh and was residing in Quarter No. C 615 Work

Charge Colony situate near the police station. A about 8:30 p.m. that very day he and his brother-in-law Om Veer Singh were taking food when a constable named Nauni Ram armed with a rifle reached at the window of his house aiming the rifle towards Om Veer Singh shouting that he would shoot him as he got his duty fixed in that shift, that thereon Om Veer Singh replied that he should leave the place quietly as he had no concern with his duty and he had not got fixed his duty at that hour as it was fixed by the Head Constable and that in the meanwhile Nauni Ram fired at Om Veer Singh in order to kill him and sustaining the firearm injures Om Veer Singh died instantaneously. The said incident was witnessed by several persons residing in neighbourhood and constables. He also mentioned in the FIR that he recognized the assailant well in the electric light inside the house and outside the house as well. The police registered a crime against constable Nauni Ram u/s 302 IPC accordingly.

3. At about 10:15 p.m. that very night constable Rakesh Chandra informed at police station Kala Garh that he alongwith constable Sunil Pathak went in search of constable Nauni Ram who was on the duty of Guard at the police station and ran away after committing the murder of SI Om Veer Singh with the official rifle and while searching him went at his quarter found that official rifle bearing butt No. 11 with its magazine with which he was armed on the duty of Guard was lying on a cot in his barrack quarter No. 591 but cartridge belt was not available, that he could not be traced out inspite of hectic efforts and that he left the police station when he was on duty as Guard with the official rifle alongwith cartridge belt without seeking permission. The police registered a crime against constable Nauni Ram u/s 409 IPC and Section 29 of the Police Act. Station Officer Mohd. Islam took up investigation of the case in his hands.

4. On the directions of SDM Dhampur Niab Tehsildar Govind Ram went at the scene of occurrence in the morning of 10<sup>th</sup> of August 1995 and drew inquest proceedings on the dead body of SI Om Veer Singh and prepared inquest report (Ext Ka 2) and other necessary papers (Exts Ka 4 to Ka 7) and entrusted the dead body in a sealed cover alongwith necessary papers to constables Om Prakash and Achhan Ali for being taken for its post mortem at 9:30 a.m.

5. Station officer Mohd Islam who took up investigation of the case in his hands recorded statements of the witnesses. He also inspected the place of occurrence and picked up the empty cartridge and blood stained bullet from the place of occurrence and also collected blood stained and simple cemented floor therefrom and blood stained "ban" from the cot on which he was sitting while taking food and prepared their memos (Exts Ka 3, Ka 10, Ka 11 & Ka 13). He also inspected the site and prepared its site plan map (Ext Ka 14). Station Officer also visited the quarter of accused Nauni Ram and recovered official rifle No. AA9338 of .303 bearing butt No. 11 bore lying on a cot inside the quarter and unloaded the rifle by removing one live cartridge from its chamber and magazine containing three live cartridges and prepared its memo (Ext Ka 12). He arrested accused Nauni Ram on 10<sup>th</sup> of August,

1995.

6. Autopsy conducted on the dead body of Om Veer Singh by Dr V K Misra, Medical officer TB Clinic Bijnor on 10<sup>th</sup> of August 1995 at 3:00 p.m. revealed an ante mortem fire arm wound of entry 0.5 cm x 0.5 cm x cavity deep on upper part (deltoid area) of left arm 8 cm below left acromion process with margins inverted, direction inwards towards chest and communicating fire arm wound of exit 3 cm x 2 cm x cavity deep on right lateral aspect of chest 15 cm below right axilla with margins everted. On internal examination 3<sup>rd</sup> and 4<sup>th</sup> ribs on left side were found fractured anteriorly and 6<sup>th</sup> rib fractured on right lateral aspect. Both the lungs were found ruptured and pleura lacerated. Heart, peritoneum, big blood vessels and right diaphragm were also found ruptured. Stomach contained 150 ml unidentifiable food material. Small and large intestines were lacerated and full of gases. Liver was also found lacerated. The doctor opined that the death was caused due to shock and haemorrhage as a result of ante mortem firearm injuries within one day.

7. It appears that the investigating officer arrested accused Nauru Ram the same day and on interrogation by the investigating officer the disclosures made by the accused to him that he could get the cartridge belt alongwith cartridges and his liveries concealed in the bushes near Hydel Colony recovered led to the discovery of the cartridge belt containing 25 live cartridges of .303 bore and his liveries by the investigating officer from the place aforesaid at his instance at 3: 30 p.m. the same day in presence of public witnesses Tej Pal Singh and Balbir Singh (Exts Ka 19 & Ka 20). He also prepared site plan map of the place of recovery (Ext Ka 17).

8. After completing the investigation and obtaining sanction of Superintendent of Police Bijnor to prosecute constable Nauni Ram u/s 302 IPC (Ext Ka 21) and Section 409 IPC and Section 29 of the Police Act (Ext Ka 23) the police submitted charge sheets against the accused accordingly (Exts Ka 22, Ka 24 & Ka 31).

9. It appears that blood stained and simple cemented floor, blood stained "ban" of cot and blood stained clothes of the deceased were sent for chemical examination to Forensic Science Laboratory Agra. A perusal of the Serologist's Report goes to show that all the articles aforesaid contained human blood. However classification of blood group could not be ascertained (Ext Ka 28).

10. Official rifle No. AA 9338 alongwith four live cartridges (3 in magazine and one in chamber) recovered by the investigating officer and one empty cartridge and the blood stained bullet picked up by the investigating officer, from the scene of occurrence were also sent to Forensic Science Laboratory Agra to Ballistic Expert for his opinion. A perusal of the report of Ballistic Expert, Forensic Science Laboratory Agra goes to show that the cartridge (E C - 5) was fired with .303 bore rifle No. AA 9338 (Ext Ka 27).

11. After framing of the charge against the accused the prosecution examined Raj Kumar (PW 1) as eye witness of the occurrence. He narrated all the facts of the

occurrence as stated above from the beginning to the end identifying and naming accused Nauni Ram standing in the dock as the assailant who fired at his "behnoi" SI Om Veer Singh. PW 4 Constable Khacheru Singh is the witness who reached the scene of occurrence soon after hearing the sound of shot fired and stated about the conduct of accused constable Nauni Ram. On receiving information from constable Rakesh Chandra (PW 2) he also registered the crime at the police station against accused Nauni Ram u/s 409 IPC and Section 29 of the Police Act at 10: 15 p.m. the same night (Ext Ka 26), PW 7 constable Sunil Pathak is also witness of the fact that at the time of firing he alongwith constables Ram Prakash and Rakesh Chandra were standing out of the police station and talking together that as he heard the sound of shot fired he saw in the electric light that that shot was fired by Nauni Ram and immediately they ran to catch hold of him but he threatened them with murder uttering that he had shooted Om Veer Singh and would also shoot them and fled away and that immediately thereafter Raj Kumar came out from the rear door of the house and told that Om Veer Singh received fatal shot injury. PW 2 constable Rakesh Chandra deposed that the fateful day constable Nauni Ram was deputed on the duty of Guard (Pahara) in place of constable Surya Prakash vide GD entry No. 23 at 6:00 p.m. (Ext Ka 30). He further deposed that after recording of the FIR of the murder of SI Om Veer Singh against constable Nauni Ram he alongwith constable Sunil Pathak went in search of the culprit and also went to his quarter where official rifle butt No. 11 was lying on a cot but the cartridge belt was not there. He also got a case registered against constable Nauni Ram u/s 409 IPC and Section 29 of the Police Act (Ext Ka 26). He is also a witness of the recovery of official rifle with its magazine containing three live cartridges and one in its chamber lying on a cot inside the quarter of constable Nauni Ram by the investigating officer on 10.8. 95 (Ext Ka 12). PW 3 Naib Tehsildar Govind Ram who drew inquest proceedings on the dead body of Om Veer Singh has proved the inquest papers . PW 5 Station officer Mohd Islam who investigated the crime in main has proved the police papers. He also proved the recovery memo (Ext Ka 20) deposing that after being arrested he interrogated constable Nauni Ram and in pursuance of the disclosures made by him (Ext Ka 19) he recovered cartridge belt containing 25 live cartridges of .303 bore (Exts 2 to 27) and his liveries alongwith his name plate and UP Police badge from the bushes outside the Hydel Colony at his instance. P.W. 6 constable Om Prakash to whom dead body of Om Veer Singh in sealed cover alongwith necessary papers was entrusted for being taken for its post mortem has stated the said fact. PW 8 Balvir Singh is the public witness of the disclosures made by accused Nauni Ram to the investigating officer leading to the discovery of the cartridge belt alongwith 25 live cartridges and his liveries and that of recovery of the aforesaid articles by the investigating officer from the bushes near the Hydel Colony at the instance of the accused in his presence. (Exts Ka 19 & ka 20).

12. The accused denied the alleged occurrence altogether also denying the alleged recovery of cartridge belt alongwith his liveries at his instance and stating that he

was got implicated in the case falsely due to lobbyism at the police station.

13. The defence examined DW 1 S.K. Rastogi Judicial clerk Collectorate Bijnor in his defence. He filed special report of the crime.

14. On an appraisal of the parties' evidence on record and hearing the parties' learned counsel the trial judge believing the prosecution case and evidence held the accused guilty of the charge levelled against him u/s 302 IPC and Section 29 of the Police Act and he convicted him and sentenced as stated above.

15. Feeling aggrieved by the impugned judgment the accused preferred this appeal for redress.

16. We have heard learned counsel for the appellant and the learned AGA for the State as well.

17. After going through the impugned judgment and record of the case we find ourselves in full agreement with the findings recorded by the trial judge. However the appellant's learned counsel has advanced the following arguments and now we will see if any of them has got any force:

18. The appellant's learned counsel contended that since constable Nauni Ram was not known to Raj Kumar (PW 1), the first informant the FIR lodged by him naming constable Nauni Ram as the assailant is of no use and loses all its corroborative value. The prosecution examined PW 1 Raj Kumar, "behnoi" of the deceased and the first informant as eye witness of the occurrence. He narrated all the facts of the occurrence from the beginning to the end deposing that he had come last evening to see his brother-in-law Om Veer Singh; that at about 8:30 p.m. on 9<sup>th</sup> of August 95 he alongwith Om Veer Singh were just about to take food that a constable taking rifle came at the window of the quarter and asked Om Veer Singh that he had got him deputed on "pehara" duty and now he would shoot him ; that thereon Om Veer Singh asked him to go quietly as he had not got him deputed on "pehara" duty as the duties were fixed by clerk constable and that immediately that constable named Nauni Ram fired at Om Veer Singh with rifle causing him fatal injury and that the said incident was witnessed by persons residing in the neighbourhood and constables in the electric light inside the house and bulbs lighted on the electric pole. He also proved FIR of the occurrence lodged at the police station situate at a very short distance i.e. 45 paces from the place of occurrence (Ext ka 1). He was subjected to searching and gruelling cross- examination but nothing useful to the accused could be elicited therefrom. However he stated in his cross-examination that he did not know constable Nauni Ram since before the occurrence. But he was not questioned by the defence counsel in his cross- examination that as to how he happened to mention the name of the assailant constable in the FIR lodged by him. In all probability SI Om Veer Singh in the course of talks might have addressed the constable as Nauni Ram and it is why he mentioned the name of the assailant as constable Nauni Run. Since the defence counsel did not put any question to this

witness in his cross-examination that if he did not know that constable by name since before the occurrence how he mentioned the name of the assailant constable in the FIR now no benefit can be taken by the accused appellant on this count. Further, sworn testimony of PW 1 Raj Kumar stands corroborated by the testimony of PW 4 constable Khacheru Singh and PW 7 constable Sunil Pathak on the point. PW 4 Khacheru Singh deposed in his examination-in-chief that at the time of occurrence he was present in the office of the police station; that on hearing the sound of shot fired he came out of the office and saw that constable Nauni Ram was standing at the window of the quarter of Om Veer Singh pointing his rifle at the window. Then he rushed to the quarter of SI Om Veer Singh and asked Nauni Ram as to where the shot was fired and then he told that he had killed the sub-inspector and if he proceeded towards him to catch hold of him he would also shoot him. He was not cross-examined at all on the point. However he was given a suggestion only that he did not witness any occurrence nor he had any talk with Nauni Ram which he denied emphatically. PW 7 constable Sunil Pathak deposed in his examination-in-chief that that evening he alongwith constable Ram Prakash and Rakesh Chandra were standing outside the police station and talking together that at about 8:30 p.m. they heard the sound of shot fired from the side of the quarter of SI Om Veer Singh and saw that constable Nauni Ram had fired and as they rushed towards the quarter in order to catch hold of constable Nauni Ram he asked them to go away as he had killed Om Veer Singh and would also shoot them and bolted away. He too has not been cross-examined at all on the point and as he was given a suggestion only by the defence counsel in his cross-examination that he did not witness any occurrence nor the accused confessed his guilt before him which he categorically denied. Thus the said argument advanced by the appellant's learned counsel that since PW 1 Raj Kumar, the first informant did not know constable Nauni Ram since before the occurrence the FIR naming him as the assailant is of no avail to the prosecution has got no substance and is repelled.

19. Secondly, the appellant's learned counsel also argued that since at the time of occurrence there was no electric light the witnesses could not have seen the incident and recognized the assailant. PW 1 Raj Kumar, PW 4 Khachcru Singh and PW 7 constable Sunil Pathak consistently stated that at the time of occurrence there was electric light inside the house of the deceased and outside the house on the road as well and also at the police station and they witnessed the incident and recognized constable Nauni Ram well at the scene of occurrence. But neither of these three witnesses has been given a suggestion even that at the time of occurrence there was no electric light. Thus the statements of the witnesses abovenamed on the point of electric light have gone unchallenged. The said argument advanced by the appellant's learned counsel therefore holds no water and falls to the ground.

20. Regarding the recovery of rifle No. AA 9338 butt No. 11 with its magazine containing three live cartridges and one in its chamber from a cot lying inside the

quarter of accused Nauni Ram PW 5 station officer Mohd Islam, the investigating officer who made the recovery (Ext ka 12) has appeared as a recovery witness. PW 2 constable Rakesh Chandra and PW 7 constable Sunil Pathak have appeared as the recovery witnesses; but neither of them has been cross-examined at all on the point of the said recovery of office at rifle lying on the cot inside the quarter of constable Nauni Ram PW 5 station officer Mohd Islam too was not cross-examined at all on this point. However he was given a suggestion only that the rifle was not recovered from the quarter of accused Nauni Rain which he denied emphatically. Thus there is nothing on the record to disbelieve the recovery of official rifle with its magazine containing three live cartridges and one cartridge in its chamber from the cot inside the quarter of accused Nauni Ram.

21. According to the Ballistic Expert, Forensic Science Laboratory Agra the empty cartridge picked up by the investigating officer from the scene of occurrence was fired with the rifle No. AA 9338 of .303 bore recovered by the investigating officer. It have come in evidence that that rifle was entrusted to constable Nauni Ram in for his "pehara" duty and was recovered lying on a cot from his quarter by the investigating officer.

22. Regarding the recovery of cartridge belt containing 25 live cartridges and liveries of accused Nauni Ram with his name plate and UP Police badge (Exts Ka 19 & Ka 20) from the bushes behind the Hydel colony at the instance of accused Nauni Ram in presence of public witnesses Balbir Singh and Tej Ram Singh in pursuance of the disclosures made by him to the investigating officer after his arrest on 10<sup>th</sup> of August 1995, PW 5 station officer Mohd Islam, the investigating officer himself appeared as a recovery witness. The prosecution examined PW 8 Balbir Singh public witness who corroborated him deposing likewise on all the material points. Both these witnesses have not been cross-examinee it all on the point. Thus statements of both these witnesses have gone uncontroverted on the point of recovery of cartridge belt and liveries of constable Nauni Ram at his instance from the bushes outside the Hydel colony in pursuance of the disclosures made by him to the investigating officer after his arrest.

23. Thus the recovery of rifle No. AA 9338 of .303 bore with its magazine containing three live cartridges and one live cartridge in its chamber lying on a cot inside the quarter of accused Nauni Ram by the investigating officer and that of the cartridge belt containing 25 cartridges of .303 bore and his liveries from the bushes near the Hydel colony at the instance of accused Nauni Ram by the investigating officer in pursuance of the disclosures made by him after his arrest are free from doubt.

24. In view of the above state of evidence and facts and circumstances attending the case we are of the view that the trial judge was perfectly justified in holding the accused guilty of the charge levelled against him u/s 302 IPC and Section 29 of the Police Act and he was rightly convicted and sentenced thereunder. The appeal has therefore got no merit and is liable to be dismissed.

25. The appeal is dismissed. Accused Nauni Ram is already in jail. He shall serve out the sentence imposed upon him.

26. Office to send certified copy of the judgment and record of the case to the court below immediately to ensure necessary compliance under intimation to this court within one month from today.