

PETITIONER:
RAM GOPAL

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 28/07/1998

BENCH:
CJI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:
THOMAS, J.

This appeal by special leave is by an accused who convicted under Section 302 IPC for murdering his nephew (Gopinath) by firing a gun. The trial court and the High Court has concurrently found that appellant had intentionally fired the gun and caused the death of Gopinath. The defence version that the firearm got accidentally triggered off in a scuffle was not accepted by the two courts.

The case of the prosecution was that accused Ram Gopal and his brother's sons were at loggerheads, years ago Ram Gopal had murdered the father of Gopinath. On the evening of the date of occurrence (24-6-1985) there was a quarrel between deceased and appellant about which a complaint was made by the deceased with the police. In the night, by about 11 P. M. when the deceased was trying to repair an electric lamp appellant fired his rifle at him through the window which resulted in Gopinath falling down dead. His brother Vishwanath (PW-1) rushed to the scene and appellant aimed a gun shot at him also but he escaped by ducking down. Then another brother Bharat Bhusan rushed up who too was targetted, but target missed and Bharat Bhusan caught hold of the firearm and there ensued a scuffle between the two. Police came to the scene and nabbed the appellant.

Though PW-1 Vishwanath has not seen the crucial act of firing at the deceased his evidence reached very close to the version of an eye witness. He gave first information to the police on the same night. Two eye witnesses PW-2 (Asha) and PW-3 (Maya) are sisters of the deceased. PW-4 Bharat Bhusan narrated the incident which took place after he reached the scene which of course was subsequent to the shooting down of the deceased.

Appellant denied the prosecution version regarding previous enmity. He tried to show that he was maintaining good relationship with his nephews right from the beginning. Regarding the occurrence he said that he returned home only at about 11 P.M. from his work spot and he was carrying his rifle with him and on reaching home he found the door closed. When he opened the door he noticed PW-4 and deceased Gopinath hiding behind and waiting for him. A scuffle

followed and in the course of the hubub the rifle happened to be triggered off.

High Court did not believe the above version of the defence. Learned Judges pointed out that since a police petition was filed by the deceased complaining that appellant had assaulted him on the said evening at the place of occurrence, it is a strong material to suggest that appellant was present at the house much earlier than 11 P.M. Another argument of the defence was that the incident would not have taken place on the first floor because blood was found on the ground floor. That argument also was repelled for a good reason that the dead body was taken down and blood would have oozed out and thus blood was found on the ground floor.

The main argument is that all the eye witness are interested persons being the kith and kin of the deceased. It is true that prosecution could not examine any independent witness for proving the occurrence. But the situation and time was such that no independent witness could be expected to be present. The venue of the incident was inside the dwelling house of the deceased and the time of the incident was near midnight. In such a situation the inmates of the house would be the most natural witness to such occurrence. Hence they are the most natural witness in such circumstances. There is no question of discarding such evidence on the mere premise that they are related to the deceased.

Another point raised is that the FIR is silent about the details of the occurrence. But the skeletal facts revealed in the FIR are consistent with the detailed narration of the eye witnesses in the evidence. The trial court and the High Court have rightly pointed out that non-mention of the details of the occurrence in the FIR is not sufficient to jettison the vital document.

We do not think that the trial court and the High Court have committed any error in reaching the conclusion that appellant has intentionally murdered the deceased. We therefore dismiss this appeal.