

PETITIONER:
HARBHAJAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 04/03/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

The appellant along with two other acquitted accused persons was put up for trial for an offence punishable under Section 302/84 IPC for having committed the murder of Rajpal Singh. Acchar Singh (A-1) is the father of Kaval Singh (A-2) and Harbhajan Singh (A-3). The appellant. The learned trial court acquitted A-1 and A-2 (which has affirmed by the High Court in the appeal preferred by the State) and their acquittal is not the subject matter of challenge before us. The appellant was, however convicted under Section 302 IPC and was sentenced to suffer life imprisonment and to pay a fine of Rs. 10.000/-, in default of fine to undergo further rigorous imprisonment for six months. This appeal arises under the following circumstances.

Nirmal Singh was living with his father and other members of his family on the outskirts of his fields at a distance of about one mile from the abadi of his village Santuwala. The tubewell of the accused persons was at a distance of 1-1/2 to 2 killas from the residence of Nirmal Singh. it is alleged by the prosecution that on June 12, 1985 at about 6.30 p.m. Bhupinder Singh (P.W.2) Along with his brother Rajpal Singh (since deceased) came to the house of Nirmal Singh (P.W.3) who happened to be the co-brother of Bhupinder Singh. They had come to Nirmal Singh to arrange labour for the purpose of planting paddy crop in their fields at village Jheetha. Gurdev Singh, the father of Nirmal Singh and Rajpal Singh, Rajpal Singh proceeded to the tubewell of A-1 leaving behind Bhupinder Singh in the house of Nirmal Singh. It is alleged by the prosecution that within a short time they heard a rōula from the side of the tubewell of A-1 and also overhead A-1 saying that Rajpal Singh should not be allowed to escape. When they came out of the house they noticed that the appellant and two other acquitted person were chasing Rajpal Singh while he was running towards his house. They further noticed that the appellant and Kewal Singh (A-2) were armed with rifle and a single barrel. 12 bore gun. when Rajpal Singh tried to scale over the wall and about to jump into the compound of Nirmal Singh, the appellant fired from his rifle causing a firearm

injury to Rajpal Singh, It is further alleged by the prosecution that Kewal Singh (A-2) also fired through his rifle and as a result of these fire arm injuries, the upper portion of the head of Rajpal Singh was blown off. Rajpal Singh fell down and died on the spot. Bhupinder Singh (P.W.2) and Nirmal Singh (P.W.3) then reached near the place of occurrence. Bhupinder Singh went to the village Jheetha to inform Gurdev Singh, the father of Rajpal Singh. Nirmal Singh and the father of Rajpal Singh then left for the police station, Zira and upon reaching there during night at about 12.10 a.m., they lodged the report Ex. P.D. on the basis of which a formal FIR Ex. PD/1 was recorded. ASI Chandan Singh (P.W.10) left along with them and on reaching the place of occurrence he started the investigation. During the spot panchnama three empty cartridges of rifle (Ex. P1 to P3) were seized vide seizure memo Ex.PF. One bullet Ex. P4 was also found embedded on the outer side of the well over which the deceased had scaled. It was also seized vide seizure memo Ex.PG. The empties were forward to the ballistic expert along with the rifle which was recovered from the possession of the appellant on June 16, 1985. The ballistic expert, however could not give any definite opinion about the use of bullet Ex.P4. The autopsy on the dead body was conducted by Dr. J.S. Gujral (P.W.1) and he found a big lacerated wound 28 cms" x 18 cms. on the right side of the head of Rajpal Singh and the brain matter was coming out. The bones of the right side of the head were found missing. After completing the necessary investigation the appellant along with two other acquitted accused persons was put up for trial for an offence punishable under Section 302/34 IPC. The appellant was also separately charge sheeted for an offence punishable under Section 25 of the Arms Act.

The appellant and two other acquitted accused persons denied the allegations levelled against them and pleaded that they have been falsely implicated at the instance of Nirmal Singh (P.W. 3) who was on inimical terms with them. They pleaded that they are innocent and be acquitted.

The prosecution in support of its case mainly relied upon the evidence of Bhupinder Singh (P.W.2) and Nirmal Singh (P.W. 3) as the witnesses of facts. In addition to the above evidence the prosecution also relied upon spot panchnama, seizure memos, report of the ballistic experts and the medical evidence of Dr. J.S. Gujral (P.W.1). The defence in support of their case examined Dr. J.S. Dalal (D.W. 1) as the ballistic expert.

The Sessions Judge, Ferozepur on appraisal of the oral and documentary evidence on record concluded that the prosecution had brought home the guilt of the appellant for committing the murder of Rajpal Singh and accordingly convicted him under Section 302 IPC and sentenced him to suffer imprisonment of life and to pay a fine of Rs. 10,000/-, in default of payment of fine to undergo further rigorous imprisonment for six months, out of the fine of Rs. 10,000/- if recovered, Rs. 8,000/- be paid to the next of kin of Rajpal Singh as compensation. The appellant was also convicted under Section 25 of the Arms Act for having been found in possession of a 315 bore rifle belonging to his father (A-1) in a separated trial and accordingly sentenced him to suffer rigorous imprisonment for two years.

The Learned Sessions Judge however gave the benefit of doubt to A-1 and A-2 and acquitted them of all the charges levelled against them. The appellant (A-3) aggrieved by his convictions on both the counts preferred two criminal appeals before the Punjab and Haryana High Court at Chandigarh. The State of Punjab also preferred an appeal

against the order of acquittal in respect of A-1) and A-2. All the three appeals were heard together and the High Court by its judgment and order dated April 30, 1978 dismissed all the appeals. The appellant being aggrieved by the order of conviction and sentence passed against him under Section 302 IPC has filed this appeal by Special Leave.

Mr. R.L. Kohli Learned Senior Counsel appearing in support of this appeal urged that the courts below have erred in convicting the appellant on the basis of evidence of Bhupinder Singh (P.W.2) and Nirmal Singh (P.W.3) when their evidence was not found credible as against A-1 and A-2. He then urged that the medical evidence does not fit in with the report of ballistic expert and there is not positive evidence on-----conclude that Rajpal Singh died because of the bullet which was alleged to have been fired by the appellant. He further urged that when both the eye witnesses have categorically state that the appellant and A-2 (acquitted) had fired through their fire arms on Rajpal Singh causing firearm injuries to him, it was extremely doubtful to conclude as to whose bullet or cartridge hit Rajpal Singh resulting into blowing off his head. He, therefore, submitted that the appellant is entitled to the benefit of doubt and he be acquitted.

We were taken though the judgments of the courts below and the relevant evidence on record. In our opinion none of these contentions is tenable. Both the learned courts below have found that the evidence of Bhupinder Singh (P.W.2) and Nirmal Singh (P.W.3) was trustworthy and stood corroborated by the medical evidence as also the report of the ballistic expert. We see no infirmity or illegality in the said finding. Both the eye witnesses have testified that the appellant had fired from his rifle and the bullet hit on head was blown off and as a result thereof the doctor could not give the opinion as regards type of weapon that was used in the used in the present crime. The report of the ballistic expert clearly indicated that the empties Ex.P1 to P3 could be fired from the rifle Ex. P8 which was recovered from the possession of the appellant. The report of the ballistic expert in our opinion supports the evidence of two eye witnesses.

We are also unable to accept the contention that the appellant be given the benefit of doubt as was given to A-1 and A-2. The only evidence against A-1 is that he gave a lalkara. The report of the ballistic expert did not support the prosecution in regard to the complicity of A-2 and, therefore, they were given the benefit of doubt and came to be acquitted. In view of these findings it is not possible to accept the contentions raised on behalf of the appellant that he be given the benefit of doubt.

It was then contended on behalf of the appellant that Nirmal Singh (P.W.3) was on inimical terms with the appellant and, therefore, he was falsely implicated in the present crime. We are unable to accept this contention because both the courts below have concurrently held that the evidence of Nirmal Singh (P.W. 3) is trustworthy we see no reason to interfere with the said finding.

In view of the above conclusions we are of the opinion that this Criminal Appeal is devoid of any merit and the same is dismissed. The appellant who is on bail shall surrender to his bailbonds to serve out the remainder part of his sentences.