

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

CRIMINAL APPEAL NO. 184 OF 2004

RAWAT RAM

.. APPELLANT

VS.

RAJU SINGH & ORS.

.. RESPONDENTS

O R D E R

1. Six persons i.e. the four respondents herein Raju Singh, Kishor Singh, Moti Singh and Anish and two others Hakam Ali and Birju Singh were brought to trial for offences punishable under Sections 302, 148/149 etc. of the IPC for having committed the murder of Ram Chandra on 9th December, 1994, at about 3:45p.m. in Rampura Basti, Police Station, Naya Shahar, Bikaner. As per the prosecution story, P.W. 7 Mohini, the mother of the deceased had gone to buy vegetables from a shop near her residence and while she was doing so she noticed the six accused (the seventh

one who had absconded and is undergoing trial) belabouring her son Ram Chandra. As per her allegations, Raju Singh's brother whose name was not known to her, fired a shot into Ram Chandra's head, killing him. Seeing the incident P.W. 7, shouted and went close to her son but before she reached the spot the accused persons ran away. The motive for the incident was prolonged enmity and litigation between the parties arising out of a property dispute. Soon after the incident, P.W. 2, Rawat Ram, the appellant herein, and the father of the deceased, reached the place of incident and the story was narrated to him by P.W. 7. He then rushed to the Police Station and lodged a report at about 4:20p.m. which was recorded by P.W. 10 Hemant Sharma, ASI. The accused were brought to trial on the completion of the investigation. In the course of her evidence, P.W. 7, Mohini modified her statement and stated that it was Hakam Ali who had fired the shot which had killed her son. The trial court relying on the evidence of P.W. 2 and P.W. 7 as also the medical evidence convicted the accused (except Birju who was acquitted) for offences under Sections 302, 149, 148 etc. and sentenced them to imprisonment for life and to other terms of imprisonment as well. An appeal was thereafter taken to the High Court and during the pendency of the appeal, Hakam Ali who was attributed the main role, passed away. The High Court re-examined the matter and

observed that the fact that the FIR had apparently been lodged about 36 to 48 hours after the incident as it is said to have recorded at 4:20p.m. on 9th December, 1994, but as the special report had been delivered the next evening to the Magistrate at his residence, it appeared that the FIR had been brought into existence much later and then ante-timed. The High Court also held that the only prosecution witness produced was P.W. 7 Mohini and her statement under Section 161 of the Cr.P.C. had been recorded for the first time about 2 or 3 days after the incident and as the vegetable vendor had not even been cited as a witness, there was no corroborating circumstance to the presence of P.W. 7 and she being a chance witness, her presence was doubtful. The Statement of P.W. 2 was also rejected for the simple reason that he was not an eye witness and he had come to the spot after the accused had run away. The High Court also noted that no effort had been made by the prosecution to collect any evidence from the place of occurrence which was a busy market place. The High Court, accordingly, acquitted the accused. The matter is before us at the instance of the complainant, Rawat Ram, the father of the deceased.

2. We have gone through the judgment of the High Court very carefully with the assistance of the learned counsel

for the parties. We find that the High Court was fully justified in recording its judgment and the reasons given are clearly relevant to the case. Admittedly, P.W. 7 - Mohini was the only witness and in the light of the fact that she was not the author of the FIR and her statement had been recorded after three days of the incident and the FIR had been recorded at the instance of P.W. 2, the father of the deceased about 36 to 48 hours after the murder, no sanctity could be attached to it. We also see that several persons who had been present had been interrogated by the Investigating Officer but they were not even cited as witnesses during the trial. In the light of the fact that the incident happened at a distance of 1/4th k.m. from where PW-2 was working, it is obvious that PW 2 and PW 7 were chance witnesses, whose presence was doubtful. On the contrary, the vegetable vendor has come as a defence witness to disown the story projected by the prosecution. On a perusal of the judgment of the High Court, we are of the opinion that it cannot be said to be erroneous in any manner.

3. The learned counsel for the appellant has, however, argued that a knife had been recovered from Raju Singh respondent herein and at least he should be hauled up for the incident. We see that the two witnesses of recovery

are Rawat Ram P.W.2 and Surya Ram P.W. 9. P.W. 9 was a resident of Vijay Nagar, a place about 150 miles from Bikaner, and was also a colleague of Rawat Ram as they were working in the same place. In this view of the matter, we find that the High Court was absolutely justified in holding that the recovery of the weapons including the knife allegedly used by Raju Singh could not be foisted on the accused.

4. We thus find no merit in the appeal which is, accordingly, dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(DR. MUKUNDAKAM SHARMA)

New Delhi,
September 29, 2010.