

CASE NO.:
Appeal (crl.) 656 of 1997

PETITIONER:
Hem Raj, etc.

RESPONDENT:
Raja Ram & Ors.

DATE OF JUDGMENT: 22/01/2004

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NO. 657 OF 1997

K.G. BALAKRISHNAN, J.

Both these appeals arise from the common Judgment passed by the High Court of Rajasthan on 24.9.1996 in D.B. Criminal No. 353 of 1990, whereby the acquittal of three accused persons was confirmed. Criminal Appeal No. 656 of 1997 is filed by the de-facto complainant and the Criminal Appeal No. 657 of 1997 is by the State.

The respondents Raja Ram, Hari Padam and Pappu @ Raj Kumar were charged under Section 302 read with Section 114 I.P.C. and Sections 25 & 27 of the Indian Arms Act. The case against these respondents is that they caused the death of one Mota Ram son of Dana Ram at about 5.30 p.m. on 3.1.1985. PW 1 Hem Raj, the appellant in Criminal Appeal No. 656 of 1997 preferred the First Information statement before the Police on 3.1.1985 itself at about 9.00 p.m. In the F.I. Statement, he stated that he alongwith deceased Mota Ram was proceeding to their field and Mota Ram was walking about 15-20 steps ahead of him. The accused respondents suddenly emerged from the neighbouring field and accused Hari Padam shouted that enemy had come and that he had to be finished. Thereupon Raja Ram and Pappu @ Raj Kumar took out their pistols and fired at Mota Ram. On receiving the bullet injuries, Mota Ram fell on the ground. Immediately, Gangajal, brother of Mota Ram and one Hans Raj came there and all of them took the injured Mota Ram in a jeep to the hospital at Sri Ganganagar where Mota Ram was examined by a doctor who declared him dead. PW 1 then came to the Ghamudwali Police Station where he filed the F.I. Statement.

The police took up the investigation and held inquest over the dead body. Two shoes were recovered from the place of occurrence. Blood smeared soil was collected and an empty "khokha" was recovered from the place of incident. The accused Raja Ram was arrested on 13.1.1985 and at his instance, a pistol was recovered. Pappu @ Raj Kumar was arrested on 14.1.1985 and another pistol was recovered from him. Both the pistols along with the empty "khokha" were sent to Forensic Science Laboratory and Exh. 21 was submitted by the expert.

PW 4 conducted post-mortem examination of the dead body of deceased Mota Ram. The deceased Mota Ram had sustained four lacerated injuries and there were injuries to so many internal organs. The ribs were broken, the left side diaphragm was punctured, the peritonium above the liver was lacerated and the liver was punctured. The Doctor opined that the death of the deceased

Mota Ram occurred due to the injuries caused by firearms on the liver and stomach.

The learned Sessions Judge after elaborately considering the evidences on record held that the prosecution succeeded in proving the guilt of the accused and convicted Raja Ram and Pappu @ Raj Kumar for the offence under Section 302 read with Section 34 I.P.C. Hari Padam was convicted for the offence under Section 302 read with Section 114 I.P.C. No separate conviction and sentence was entered against the respondents by the Sessions Court for the offences under the Arms Act. The Sessions Court relied on the evidence of PW 1 to PW 3, recovery of the pistols at the instance of the accused persons and the report given by the Forensic Science Laboratory. The Sessions Court was of the opinion that prosecution had clearly proved that the accused were responsible for causing the death of Mota Ram.

The above finding of the Sessions Court was reversed by the High Court for the reasons recorded by the High Court in its judgment.

We have carefully considered the Judgment of the High Court and in our view the reasons given by the High Court to reverse the conviction and sentence are flimsy, untenable and bordering on perverse appreciation of evidence. The High Court was of the opinion that these three eyewitnesses were related to the deceased, and as there was enmity between the accused persons and the deceased Mota Ram, had these witnesses been present at the place of occurrence, the accused would have killed them also. Evidence of PW 1 to PW 3 was thus completely discarded on the ground that they were related to the deceased and were interested witnesses and they would not have been present at the scene of occurrence. It is true that PW 1 Hem Raj and PW 3 Gangajal were related to the deceased. But the presence of PW 1 at the time of occurrence could not be doubted for any reason. The other two witnesses came immediately after the occurrence. From the statement of PW 1, it is clear that the house of the deceased Mota Ram was closeby, and about 2 to 3 minutes would alone be sufficient to reach the place of incident from the house; therefore, it is quite possible that PW 2 and PW 3 must have come immediately after the occurrence. There is no improbability in the evidences of PW 2 and PW 3 who deposed that they had seen the accused at the place of incident. These three witnesses took the injured Mota Ram to the hospital in a jeep.

The witnesses were asked whether their clothes were stained with blood while the injured Mota Ram was being taken to the hospital and one of the witnesses stated that his clothes were not stained with blood. This was taken as a ground to doubt his evidence and to show that he was not at all present at the place of the incident. Deceased Mota Ram was wearing clothes when he sustained bullet injuries. One injury was on his stomach and the other injury was above posterial 8th inter coastal space. There is no case that the deceased had profuse bleeding and even if there was bleeding, the blood may not have been splashed to stain the clothes of PW 1 to PW 3 especially when deceased himself was wearing clothes. Moreover, the clothes worn by these witnesses were not recovered by the police as it would be an irrelevant piece of evidence. The High Court should not have appreciated the evidence on these wrong premises.

Another reason given by the High Court to acquit the accused is that the F.I. Statement must not have been given at the time and place stated therein. Two reasons have been attributed to this assumption. PW 1 deposed that he left the hospital at Sri Ganganagar and came to Ghamudwali Police Station and gave the F.I. Statement at about 9.00 p.m. This, according to the High Court is highly improbable, PW-1 being a close relative would not have left the dead body in the hospital, whereas PW-1 deposed that many other relatives had come to the hospital, thereafter, he left for the Police Station to give the F.I. Statement. The F.I. Statement reached the Court on the next day at 1.30 p.m. This also was adversely commented upon by the High Court. We do not think that there was any delay either in recording the F.I. Statement or sending the challan to the Court. The absence of the name of the accused in the Inquest Report was also adversely commented upon by High Court and it was stated that the F.I. Statement must have been prepared thereafter. In the Inquest Report, there is

no specific column to mention the names of the accused and that may be the reason that names of the accused are not mentioned and the FIR number is not given. It is pertinent to note that neither investigating officer nor the officer who conducted the inquest was questioned on this aspect.

The reasons given by the High Court in reversing the conviction are not tenable or justifiable. This is a case where the PW 1 had given a convincing evidence as to how the incident happened and it is proved that Raja Ram and Pappu @ Raj Kumar used their pistols and injured Mota Ram. It is important to note that an empty "khokha" was recovered from the place of the incident. The pistol recovered from accused Pappu @ Raj Kumar and the bullet found therein tallied with empty "Khokha" recovered from the place of occurrence. The pistol recovered at the instance of Raja Ram was also in working condition and the report of the forensic laboratory shows that the same was used for firing. The recovery of the bullet from the empty "khokha" from the place of incident was not believed by the High Court for the reason that PW 2 did not see that such an article was lying there on the ground at that time. A strange way of appreciation of evidence has been adopted by the High court and we are of the view that the High Court flawed seriously and it caused miscarriage of justice warranting interference by this Court.

Keeping in mind fully that this being an appeal against acquittal, this Court ought to be slow in reversing the same, we considered the evidence of the witnesses and the other relevant facts of the case. We are of the view that the prosecution successfully proved that the accused Raja Ram and Pappu @ Raj Kumar fired bullets at Mota Ram and caused his death. As regards the involvement of Hari Padam, we have serious doubts. Exhortation made to kill the deceased Mota Ram is attributed to him and that by itself is not a strong evidence to prove his complicity. He has to be given the benefit of doubt and we accordingly do so. Though a charge was framed against the accused persons under Sections 25 & 27 of the Indian Arms Act, no conviction was entered against them despite recovery of weapons from them and the proved fact that these weapons were used for the commission of the offence. The evidence on record was not discussed in detail and no conviction was entered against them for that offence. So we do not want to express any opinion on that count.

In the result, accused Raja Ram and Pappu @ Raj Kumar are convicted for the offence under Section 302 read with Section 34 I.P.C. and each of them is sentenced to undergo imprisonment for life. The accused Hari Padam is acquitted of all the charges framed against him. The accused Raja Ram and Pappu @ Raj Kumar are directed to surrender to their bail bonds to serve out their sentence. On their failure to surrender within two weeks, the Additional Sessions Court, Sri Ganganagar shall take further steps in the matter.

The appeals are disposed of accordingly.