

CASE NO.:
Appeal (crl.) 1733 of 1996

PETITIONER:
State of Rajasthan

RESPONDENT:
Taran Singh & Anr.

DATE OF JUDGMENT: 08/10/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The State of Rajasthan is in appeal before us against the judgment of the High Court of Rajasthan at Jodhpur made in Criminal Appeal No.111 of 1991. The appeal before the High Court was against a judgment of Additional Sessions Judge No.1, Hanumangarh who by the said judgment, while acquitting 13 other accused persons, convicted the respondents herein for offences punishable under Sections 302 and 302 read with 34 IPC. By the impugned judgment, the High Court has allowed the appeal setting aside the conviction and sentence imposed on the respondents by the trial court.

Brief facts necessary for the disposal of this appeal are as follows :

Because of certain enmity arising out of political rivalry between the group of respondents herein and the complainant PW-1, it is stated that on 10.6.1988 at about 11 \026 11.30 p.m. in Chowk Bazar near the bus-stand in the village Tibi, respondents herein and 13 others formed themselves into an unlawful assembly and attacked deceased Mahavir Singh in which attack second respondent herein exhorted the first respondent to shoot said Mahavir Singh who belonged to the group of complainant and pursuant to the said exhortation A-1 shot said Mahavir Singh with a 12 bore gun which shot hit him on the back of his neck consequent to which Mahavir Singh fell down dead. The incident in question according to prosecution, was witnessed by PWs.1 and 2 and PW-3 who happened to come to the place of incident immediately thereafter. The complaint in this regard was lodged in Police Station Tibi by about 10.40 a.m. on 11.6.1988, and the special report in regard to this incident actually reached the jurisdictional Magistrate at about 12 Noon on that day.

The investigation in the case was conducted by PW-7 and based on the evidence of PWs.1 to 3 coupled with the supporting evidence led by the prosecution, the trial court came to the conclusion that the case against A-3 to A-15 has not been established by the prosecution, hence, acquitted them, while it found A-1 guilty of an offence punishable under Section 302 and A-2 was convicted for an offence punishable under Section 302 read with 34 IPC.

The High Court in appeal on re-appreciation of evidence came to the conclusion that the prosecution has failed to establish its case even against these accused persons, hence, allowed the appeal, setting aside the judgment of the trial court.

Mr. Alok Bachawat, learned counsel appearing for the appellant-State, contended that the High Court committed an error in coming to the conclusion that PWs.1 and 2 could not

have witnessed the incident in question. According to him, these two witnesses (PWs. 1 and 2) who had gone to see the brother of the deceased who was injured in a previous incident, were on their way-back from the hospital along with the deceased when the deceased was attacked by respondent No.1 at the instance of respondent No.2, because the deceased was the brother of said Surendra Singh and a party man of their political rival. Learned counsel also submitted that the court below erred in coming to the conclusion that the complaint in question was filed belatedly after due deliberations. He also challenged the finding of the High Court which held the place of incident as projected by the prosecution has not been established.

Mr. Sushil Kumar, learned senior counsel appearing for the respondents, supported the judgment of the High Court.

From a perusal of the judgment of the High Court, it is seen that the High Court has allowed the appeal on following grounds :

- (i) Presence of PWs.1 and 2 at the place of incident is doubtful;
- (ii) Though admittedly deceased was bleeding profusely and he was carried by PWs.1 and 2 to the hospital their clothes were not blood-stained;
- (iii) The version of PWs.1 and 2 as to the nature of attack is contrary to medical evidence and there is a serious doubt in regard to the place of occurrence;
- (iv) The report of the ballistic expert does not support the prosecution case;
- (v) The defence version of the incident in question is more probable.
- (vi) The contradiction between the evidence of PW-7, and I.O. on one hand and PWs.1 and 2 on the other creates serious doubt as to prosecution case.
- (vii) The prosecution has withheld material evidence which would have supported the defence case.

While coming to the above conclusions, the High Court in regard to the presence of PWs.1 and 2 at the place of incident observed that their presence there was doubtful because they having come to the hospital at Tibi to visit their relative who were allegedly injured in an earlier attack by the members of the accused group would not have left the hospital when the said injured Surendra Singh was still unconscious and unattended, that too taking with them the deceased who was the real brother of the said patient and who was present there to attend the patient, which act according to the High Court is opposed to normal human conduct in the absence of any special reason for doing so. The court also observed that the accused persons admittedly did not have any such motive to kill the deceased, therefore, their waiting at the bus-stand for the deceased to come there, per chance, cannot also be accepted because they had no knowledge that he would be passing through the said place. Even the motive to kill suggested by these witnesses for the attack on the deceased i.e. the deceased was the brother of injured Surendra Singh, is something which cannot be easily accepted. Apart from these facts, the High Court also took note of the fact that though deceased was profusely bleeding and these two witnesses carried him nearly 200 yards to the hospital, neither of the witnesses' clothes were blood-stained which is very unusual and most unlikely. The High Court noticed the following observations of the trial court in regard to the non existence of the blood on the clothes of PWs. 1 and 2 :

"So far as the question of the clothes of these two not being stained by blood of the deceased, Mahavir Singh is concerned, it is not essential that his blood must be stained with the cloth because enough blood had fallen at the place of incident and it also depend how they picked up the deceased for getting blood stains. If there clothes had contacted wound, then only, there would have been blood stain, but there is no evidence as to how the deceased was picked up and taken to the hospital. Thus in this circumstance on not being blood stained, it cannot be said that deceased Mahavir Singh had not taken to hospital by Dayaram and Vijay Pal from the place of incident."

Having noticed this explanation the High Court came to the conclusion that this is an inference which could not have been drawn by any reasonable person from the material on record and we are in agreement with the said finding of the High Court because we notice from the evidence of PWs.1 and 2 when they picked up the deceased, he was still bleeding profusely and according to them, PW-1 carried him on his shoulder while PW-2 held the chest of the deceased. Frankly we are unable to understand how the deceased could have been carried in the manner spoken to by these 2 witnesses. Be that as it may, as held by the High Court in our opinion, if really these two witnesses carried the deceased, the possibility of these witnesses' clothes being not blood-stained, is next to impossible. In this background, if we examine the narration of incident by these two witnesses, like the High Court, we also notice that according to these witnesses when they came from the hospital and started walking towards their village, on the way they found the accused persons and their followers waiting in a jeep and a tractor abusing abovesaid Surendra Singh. We first of all, do not find any acceptable reason why the accused persons should have been abusing said Surendra Singh amongst themselves when there was nobody from the side of Surendra Singh to listen to said abuses. That apart, we notice it is the version of these two witnesses that the deceased decided to bring about peace between the two groups, hence, proceeded towards the accused saying that now since the election is over, let there be no fight any further. It was at this stage, A-2 exhorted A-1 to kill the deceased stating that he is the brother of Surendra Singh, and when the deceased heard this exhortation, he allegedly turned around and ran which would mean he started running towards the hospital from where he came. At that time, A-1 shot him on his back. As noticed by the High Court, if we examine the sketch plan then this part of the evidence of PWs.1 and 2 does not find support from prosecution's own case because the direction in which the deceased and PWs.1 and 2 were walking, was opposite to the place where the hospital was situated (as could be seen from the sketch) and if deceased turned around and started running back, it should be towards the hospital, if so from the sketch we find that the body of the deceased was lying not in the direction of the hospital but in the direction of a shop belonging to one Gopal Pandit in the Thara which is in the opposite direction. Therefore, there is serious discrepancy also in regard to the manner in which the incident took place atleast as evident from the sketch plan produced by the prosecution and as spoken to by the two witnesses. In this context, the High Court took into consideration the defence put forward by the accused persons who had stated that after the incident in which Surendra Singh was injured, the members of the group belonging to said

Surendra Singh which included the deceased, came to the Chowk Bazar and wanted to attack the supporters of the group of the accused persons who were in the shop of one Om Prakash Satyanarain which was situated near the bus-stand and said Om Prakash and others who were in the shop, noticing the likely attack from this group, downed the shutters of the shop but the same did not close completely hence, one of the members of the group supporting Surendra Singh by name Safi Mohd. fired with a 12 bore gun which inadvertently hit the deceased who was then peeping between the gaps in the shutter into the shop, and because of that injury the deceased fell down dead on the Thara of the said shop of Om Prakash. Since there is sufficient material to show that the body of the deceased in this case was found lying on the Thara of the shop of said Om Prakash, said defence taken by the accused persons finds some support. At this juncture, we may also consider the material relied upon by the High Court that there was a parallel investigation in regard to the said attack in the shop of Om Prakash and in the said investigation, the investigating agency had recorded certain statements which clearly showed the possibility of the deceased having died in such an attack. This was admitted by PW-7, the I.O. who had noted in the case-diary of that case as follows :

"These points were indicated and included in the file that the dead body was taken to the hospital himself and declared dead by the M.O."

This entry in the case-diary shows that it is the I.O. who took the dead-body of Mahavir, the deceased, in this case to the hospital from the place of incident, and not PWs.1 and 2. This factor also supports the defence theory. That apart, as noticed by the High Court a Gandasa was found opposite to the shop of said Om Prakash by the investigating agency and it is not the case of the prosecution in this case that these accused carried any Gandasa, while defence had suggested that the assailants went to the shop of Om Prakash carrying Gandasa apart from a gun. Though the trial court has noticed some of the aspects of the defence case, in our opinion, it did not appreciate it properly and brushed aside this defence rather lightly which the High Court has considered in detail and for good reasons has placed reliance on the same. Bearing in mind these facts of the prosecution's case and the suggestion of the defence that the complaint in question was drafted after due deliberations only in the morning of 11.6.1988 coupled with the fact that said FIR reached the jurisdictional Magistrate at 11 a.m. on that day, strengthens the argument of the defence that the complaint in question had come into existence much later as stated by the prosecution.

There is another reason why presence of PWs.1 and 2 becomes suspect on the date of incident in the village Tibi or at least it indicates that these witnesses are not stating the true facts. From the evidence of PW-7, the I.O. it is seen that when he came to know of the injuries suffered by Surendra Singh, he went to the hospital at about 9 p.m. and recorded his statement; whereas PWs.1 and 2 state that when they went to the hospital at 9 p.m. they did not see the I.O. there and injured Surendra Singh was in an unconscious state, therefore, either the I.O. who stated that he recorded the statement at 9 p.m. or the statement of PWs.1 and 2 that they went to the hospital at 9 p.m. is false. Either way, the prosecution has to suffer the consequence of such contradiction.

The High Court has also relied upon the evidence of PW-8, the ballistic expert, from whose evidence it is clear that it is not possible to establish whether the fire-arm used in the attack

as alleged by the prosecution was the same as was sent to him for his examination. This is because of the fact that the investigating agency has not recovered any empties of the cartridges used in killing the deceased. The ballistic expert's evidence in this regard only shows that the injury suffered by the deceased could have been caused from a 12 bore gun of similar nature.

From the above discussion, we are satisfied that the judgment of the High Court is unexceptional, therefore, it does not call for any interference. Accordingly, the appeal is dismissed.

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JUDIS