

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

CRIMINAL APPEAL NO. 1299 OF 2006

SUNIL

.....

APPELLANT

VERSUS

STATE OF HARYANA

.....

RESPONDENT

O R D E R

1. This appeal arises out of the following facts:

1.1 Suraj Bhan accused, Satbir P.W. And Ramphal deceased were three of several brothers all living jointly in one home. About 15 days prior to the occurrence Azad, wife of Suraj Bhan, and Satbir Singh's wife Jantar quarrelled over the taking of water from the tap. At about 5:00p.m. on the 22nd February, 1993 , Suraj Bhan accused who was in the Army but was on leave that day, accompanied by his son Sunil and Azad Azad aforesaid came to Satbir's side of the family home where he along with his brother Ram Phal, Ram Phal's wife Saroj and Zile Singh, another brother, were sitting

together. Suraj Bhan was armed with a shot gun whereas Sunil was carrying a bandolier containing cartridges. Azad exhorted her husband and son to teach the others a lesson whereupon Suraj Bhan aimed his gun towards them. Ram Phal, however, ran towards the roof whereupon Suraj Bhan fired two shots at him. Sunil thereafter took the gun from his father and fired two shots towards them but as Satbir Singh and the others had taken shelter behind a parapet no injury was suffered by them. The accused thereafter ran away from the spot.

1.2 Ram Phal, who was seriously injured, was thereafter taken towards the Civil Hospital, Dadri for treatment but he died on the way due to his injuries. On the basis of the statement made by Satbir to Sub Inspector Amrik Singh, S.H.O., Police Station Dadri, at 8:40p.m. Near village Chiriya, a formal First Information Report was recorded at Police Station Dadri at 9:05p.m. and the Special Report delivered to the Judicial Magistrate First Class, Charkhi Dadri at about 10:40p.m., the same night. On the completion of the investigation Suraj Bhan, his wife Azad and their son Sunil were brought to trial. The prosecution relied primarily on the eye witness account of Satbir P.W. 4 and his brother Zile Singh, P.W. 5 as also SI Amrik

Singh - P.W. 6 as well as the medical evidence of P.W. 2 - Dr. S.N. Sharma and P.W. 3 - Dr. S.C. Gupta, who had performed the post mortem on the dead body. The trial court, relying on the aforesaid evidence as well as the recoveries of the spent cartridges and wads from the place of incident and finding that the eye witness account was supported by the medical evidence convicted Suraj Bhan and Sunil under Section 302/34, 307/34 and 450 of the Indian Penal Code and Suraj Bhan under Section 27 of the Arms Act as well and sentenced them to life imprisonment for the primary offence. Azad was given the benefit of doubt and acquitted. The matter was thereafter taken in appeal before the High Court which has confirmed the judgment of the trial court. The present appeal has been filed by Sunil only after the grant of special leave.

2. We notice from the judgment of the High Court that it had relied on the significant fact that the FIR had come into existence within four or five hours of the incident as the incident had taken place at about 5:00p.m. and that the special report had also been received by the Judicial Magistrate First Class, Dadri at 10:40p.m.. The High Court had also relied extensively on the statements of P.Ws. 4 and 5 who are

the real brothers of the victim as also of Suraj Bhan and therefore the uncles of the appellant Sunil. We have also seen the site plan which reveals that the incident happened in the house of the parties concerned, who happened to be the real brothers.

3. Mr. Sanjay Jain, the learned counsel for the appellant has, however, argued that as the spent cartridge cases had been picked up not from one place but from different places it appeared that the story that Sunil had taken the gun from his father and fired two shots, was not borne out. We have perused the site plan and find that the distance between the two places from where the spent cartridges had been picked up was so minimal that it would have no effect on the merits of the case. In any event, the eye witness account of P.Ws. 4 and 5 who are the brothers of the deceased and the accused Suraj Bhan cannot be faulted in any manner. It is also the admitted position that both the parties were living jointly in the same house although in different portions thereof.

4. On the last date of hearing that is, on the 12th January, 2011, Mr. Jain had raised an argument that the appellant was less than 18 years of age on the date of

the incident and in this view of the matter he could not have been brought to trial along with his co-accused. We had, accordingly, adjourned the matter seeking a report from Bhiwani. Mr. Satish Ahlawat, Additional District and Sessions Judge, Bhiwani has sent a report dated 28th February, 2011 and we have perused the same. It reveals that on the date of the incident i.e. 2nd February, 1993 the appellant was 18 years 9 months and 26 days of age. He was, therefore, clearly not a juvenile. We, accordingly, find no merit in the appeal which is, accordingly, dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[GYAN SUDHA MISRA]

NEW DELHI
JULY 13, 2011.

JUDGMENT