

CASE NO.:  
Appeal (crl.) 1099 of 2002

PETITIONER:  
Prem Singh

RESPONDENT:  
State of Himachal Pradesh

DATE OF JUDGMENT: 16/09/2003

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

JUDGMENT:  
J U D G M E N T

SANTOSH HEGDE, J.

The appellant was convicted under Section 302 IPC for having committed the murder of his nephew Hoshiar Singh on 3.11.1995 at 7 a.m. in the common courtyard of the house belonging to the appellant and his brothers in Dodhwan village within the jurisdiction of Sundernagar Police Station, Mandi District, by the Sessions Judge, Mandi, who sentenced him to imprisonment for life and to pay a fine of Rs.4,000/- in default to undergo imprisonment for one year. The High Court has confirmed the said sentence, hence, the appellant is before us in this appeal. The fact that there was a fight in the morning of 3.11.1995 in regard to collecting the water from the tap between the deceased and PW-2 Harinder Singh on one side and the appellant on the other is an admitted fact. Pursuant to the said fight, it is also admitted by the appellant that he went to his house and brought his licenced gun and started walking towards the house of the Pradhan of the Village.

Then the prosecution contends, the appellant after getting the gun, went to the house of the deceased where he was locked in a room of his house by his family members to prevent any further fight, there the appellant shot the deceased through the window, consequent to which he died. The appellant contends that when he was walking to the house of Pradhan, PW-2 confronted him and tried to snatch his gun, consequent to which there was a scuffle and the gun discharged accidentally, and in that process, the bullet went through the window and hit the deceased which caused his death, therefore, he was not responsible for his death.

In view of the above defence taken by the appellant the scope of enquiry in this appeal is very narrow and the questions for our consideration are :-

- (a) Did the firing take place as alleged by the prosecution or as alleged by the appellant ?
- (b) If it had taken place as alleged by the prosecution, did the appellant intend to cause the death of Hoshiar Singh so as to attract the provisions of Section 302 ?

The learned counsel appearing for the appellant contended that the appellant had no reason or motive to cause the death of Hoshiar Singh, inspite of the fact that there was some minor difference between them and the incident in the early morning of 3rd November, 1995 could never have been the reason for causing the murder. He also contended that the appellant was in a room which was locked and the window had wiremesh, hence, was dark inside, therefore, the appellant could never have aimed deliberately at the deceased and caused his death.

Alternatively, it is pleaded that assuming the prosecution

case is true, it is not a case which attracts Section 302 IPC. The two courts below have accepted the prosecution case that the appellant deliberately shot the deceased and the so called scuffle between the appellant and PW-2 Harinder Singh is not true. In this regard, the courts below have placed reliance on the evidence of PW-5 the mother of the appellant himself and PWs. 2, 3 and 6 who were eye-witnesses to the incident. As far as the defence taken by the appellant is concerned, no evidence has been lead by him to establish the same. We have carefully perused the evidence of the witnesses and find absolutely no reason to disagree with the findings of the two courts below. We agree with the courts below that the defence set up by the appellant as to the scuffle between him and PW-2 on his way to Pradhan's house is only an afterthought. Even the argument that the appellant could not have shot through the window which had the wiremesh and which was dark inside cannot be acceded to in view of the direct evidence of the eye-witnesses who have stated that the appellant aimed the gun at the victim through the window and shot him. Therefore, we are of the opinion that the courts below are justified in coming to the conclusion that the appellant committed the murder of Hoshiar Singh.

In the light of the above evidence, if we consider the conduct of the appellant, it is not possible to accept the argument of the appellant that the offence allegedly committed by him does not attract the provisions of Section 302. We have accepted the evidence of prosecution that the appellant after the first fight went to his house, brought his gun and walked up to the window of the room in which deceased was confined by his family members, aimed at the deceased and shot him dead which attributes not only motive and knowledge but also intention of the appellant to cause the death of the deceased, therefore, this action of the appellant amounts to murder punishable under Section 302 IPC. For the reasons stated above, this appeal fails and the same is dismissed.