

PETITIONER:
CHHOTU AND ANOTHER

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 20/08/1996

BENCH:
KURDUKAR S.P. (J)
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KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (7) 346 1996 SCALE (6)80

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. P. KURDUKAR. J.

Both the appellants (A-1 and A-2) were tried for an offence punishable under Section 307 read with 34 of the Indian Penal Code alleging that on 7th July, 1986, they attempted to commit the murder of one Rahu Ram (PW 5) by their pistols.

2. Briefly stated the prosecution case is as under:-

Rahu Ram (PW 5) is a resident of Barnala road, Sirsa. He was an office bearer of the truck union at Sirsa. Two fold motive as alleged by the prosecution, is that (1) murder of Brij Lal the father of Balwant Singh (A-2) by Dungar (brother of PW 5) some 30 years back, (2) Maru Ram, uncle of A-1 and A-2 was killed in an incident which took place in the office of the truck union at Sirsa. It is alleged by the prosecution that A-1 and A-2 were under the belief that Maru Ram was got killed by Rahu Ram (PW 5).

3. On 7th July, 1986, Rahu Ram (PW 5) was sitting on the chair outside the radio repair shop Raj. At that time, both the accused came from the direction of Sirsa town and told Rahu Ram (PW 5) that they would teach him a lesson for giving evidence in the murder case of Maru Ram. It is alleged by the prosecution that Balwant Singh (A-2) caught hold of Rahu Ram (PW 5) from the waist. Rahu Ram (PW 5) grappled with Balwant Singh (A-2) and in that process pistol carried by him fell down from his pocket. Rahu Ram (PW 5) kicked that pistol away. In the mean time, Chhotu (A-1) took out pistol from his pocket and placed on the chest of Rahu Ram (PW 5). Fortunately, for Rahu Ram, the pistol did not fire. A-1 again tried to fire through the said pistol but could not succeed. Ram Murti (PW 6) and one Arjan who were standing nearby came to the rescue of Rahu Ram. In the meantime, both the accused fled away with their weapons. Rahu Ram (PW 5) and Ram Murti (PW 6) then hired a Rickshaw to go to police station to lodge a report but the police met them near Tehsil office. Rahu Ram (PW 5) gave his statement

to the police on the basis of which FIR was recorded in the police station.

4. Rahu Ram (PW 5) was then sent to the hospital for medical examination. Dr. P.K.Jain(PW 1), examined him and noticed one lacerated wound measuring 5x.5x.5 cm on the right parietal region and it was bleeding. Two more abrasions were also found on the left knee joint. Dr.P.K.Jain (PW 1) accordingly issued the injury certificate in respect of Rahu Ram (PW 5). After completing the necessary investigations, both the accused were put up for trial for the aforesaid offence. Both the accused denied the charge and claimed to be tried. According to them, they have been falsely implicated because of enmity with Rahu Ram (PW 5). They are innocent and they be acquitted.

5. Apart from the evidence of injured Rahu Ram (PW 5), the prosecution examined Ram Murti (PW 6) as an eye witness in addition to the examination of other formal witnesses.

6. The learned Additional Judge, Designated Court, Bhiwani at Sirsa on appraisal of the evidence on record held that the prosecution has proved the guilt of the accused and accordingly by his judgment and order dated May 23, 1987 convicted them for an offence punishable under Section 307 read with 34 of the Indian Penal Code. The learned Trial Judge sentenced each of the accused to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.300/-. In default of payment of fine, to undergo further rigorous imprisonment for three months. It is this order of conviction and sentence, which is sought to be challenged by the appellants in this appeal.

7. With the assistance of learned counsel for the parties, we have gone through the evidence and other materials on record. Learned counsel for the appellants urged that the evidence of Rahu Ram (PW 5) and Ram Murti (PW 6) is totally untrustworthy and the same cannot form the basis of conviction. It was then contended that if the accused had any intention to commit the murder of Rahu Ram (PW 5), there was no difficulty whatsoever when they alleged to have gone there with two loaded pistols. The incident in question took place about 8.00 a.m. in a thickly populated area, yet the prosecution has not chosen to examine any independent witness especially in a case where prosecution itself has come before the court with deep rooted enmity between the complainant and the accused. It was then contended that the incident alleged to have taken place on the July, 1986 at about 8.00 a.m. but the copy of the First Information Report (Ex.PD/1) was sent to the Illaqa Magistrate only on 14th July, 1986. No explanation whatsoever is given either by the complainant or by the investigating agency as regards seven days delay in sending the copy of the First Information Report (Ex.PD/1) to the Illaqa Magistrate. The delay in sending the copy of FIR (Ex.PD/1) is pointer to the fact that PW 5 and PW 6 could not identify the assailants and only after the recovery of the alleged pistols from the accused, they were named as assailants in the FIR. Learned counsel for the appellants, therefore, submitted that in the absence of any satisfactory explanation from the prosecution, the accused are entitled for benefit of doubt.

8. Learned counsel for the State of Haryana supported the impugned judgment.

9. There is no serious dispute as regards the injuries sustained by Rahu Ram (PW 5). His evidence finds sufficient corroboration from the evidence of Dr. P.K.Jain(PW 1) who stated on oath that he examine Rahu Ram (PW 5) on 7th July, 1986 and noticed the injuries mentioned in his certificate. We, therefore, proceed on the footing that incident which

took place on 7th July, 1986 at about 8.00 a.m., Rahu Ram sustained the injuries. But, however, the important question is as to whether prosecution has successfully established the identity and complicity of both the appellants in the present crime. If the First Information Report lodged by Rahu Ram (PW 5) on 7th July, 1986 at about 9.00 a.m. why was it not forwarded to the Illaqa Magistrate till 14th July, 1986? Rahu Ram (PW5), the injured complainant, however, could not throw much light on this issue. The investigating officer alone could explain this delay. The copy of the First Information Report (Ex.PD/1) which is placed on record unmistakably indicates that the same was received by the Illaqa Magistrate on 14th July, 1986. The investigating officer has given no explanation whatsoever as regards the delay in forwarding the FIR (Ex.PD/1). It is in the light of this delay, the suggestion put by the defence that Rahu Ram (PW 5) and Ram Murti (PW 6) could not identify the assailants assumes great importance. It was also suggested to both these witnesses (although they denied) that since both these witnesses could not identify the assailants, their names were not mentioned in the FIR lodged on 7th July, 1986 and only after recovery of the weapons on 13th July, 1986 from the appellants, their names came to be written in the FIR and thereafter it was sent to the Illaqa Magistrate on 14th July, 1986. Considering the defence of the accused in the light of the evidence on record and previous enmity between the parties, we are of the opinion that prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

10. In the result, the impugned judgment and order of conviction and sentence dated 23rd May, 1987 passed by the learned Additional Judge, Designated Court, Bhiwani at Sirsa, against both the appellants is quashed and set aside. Both the accused are given benefit of doubt and accordingly acquitted. Bailbonds of the accused to stand cancelled.