

PETITIONER:
SAHAB SINGH & ANR. ETC.& STATE OF RAJASTHAN

Vs.

RESPONDENT:
STATE OF RAJASTHAN & SAHAB SINGH & ANR. ETC.

DATE OF JUDGMENT: 03/03/1997

BENCH:
MADAN MOHAN PUNCHHI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:
THE 3RD DAY OF MARCH, 1997.

Present:

Hon'ble Mr. Justice Madan Mohan Punchhi
Hon'ble Mr. Justice K.T. Thomas
Girish Chandra,

A.K. Srivastav., Sr. Adv., Sushil Kumar Jain, / Adv. with
him for the appellants
K.S. Bhati, Adv. for the Petition in S.L.P. (Crl.) No. 3687/94
Sushil Kr. Jain, Adv. for Ms. Pratibha Jain, Adv. for
Respondent No. 5 & 6 in S.L.P. (Crl.) No. 3687/94

J U D G M E N T

The following Judgment of the Court was delivered :

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO. 3687 OF 1994

J U D G M E N T

Thomas J.

Seven persons were arrayed as accused in a murder trial before the Sessions Court for the murder of one Sher Singh which took place on 27.7.1989 around 6.00 p.m. and all the seven were convicted under sections 302, 148 read with section 149, Indian Penal Code. On appeal, the High Court acquitted five of them and confirmed the conviction as against two of them (A1-Sahab Singh and A5-Bachu Singh) under section 302 with the aid of section 34, IPC. Both were sentenced to life imprisonment and a fine of Rs. 5,000/- each. The appeal before us has been filed by those convicted persons by special leave. State of Rajasthan has moved for special leave to appeal against acquittal of the remaining accused. As we heard the whole case we are not inclined to grant special leave to the State of Rajasthan as against the acquittal. However, we proceed to consider the appeal filed by the convicted persons Sahab Singh and Bhim Singh.

The case against them, in short, is that they caused the murder of Sher Singh who was the husband of PW4 (Pushpa). Just before that Sher Singh reached the bus stop at Sait in Osmail on a motor-cycle which he parked on the road and was about to go to the nearby shop. Then all the assailants surrounded him. Appellant Bachu Singh who was armed with a katta (a country-made pistol). fired a shot at him. When the deceased tried to run away, he fell down and

then the other assailants including Sahab Singh attacked him with farsa and lathis. When Sher Singh died, the assailants left the scene.

There is no dispute that Sher Singh died at the said spot with many injuries. Though the defence suggested that Sher Singh might have died in a motor-cycle accident, the various injuries noticed on his body by the doctor who conducted post-mortem examination are undoubtedly suggestive of a homicidal death. He had six incised wounds of varying sizes on his head, besides two oval shaped lacerated wounds - one on the lateral side of his face and the other near his left ear. The doctor unmistakably described the lacerated wound as a gun shot injury, one was the entry wound while the other was the exit wound. His hyoid bone, larynx and trachea were fractured while the carotid artery was lacerated. From the aforesaid data there is no escape from the conclusion that deceased was murdered.

The two eye-witnesses who supported the prosecution version regarding the occurrence are Pushpa (PW4) wife of the deceased and Bhim Singh (PW13) who was the brother of Sher Singh. Though some other persons were examined as eye-witnesses they had turned hostile. The trial court and the High Court found the testimony of the two eye-witnesses quite reliable and hence acted on them for convicting the two appellants.

First information statement was given by PW13 (Bhim-Singh) at 7.30 a.m. at the Police Station. He narrated the incident therein broadly in the same manner as he described it in his evidence. PW4 (Pushpa) said that she happened to witness the occurrence as she was returning from Delhi where her father was residing and when she reached the bus-stop at Sait, Bhim Singh- her brother-in-law - told her that he was expecting Sher Singh to reach there and then she too waited for him. When Sher Singh reached there on a motor-cycle he parked it on the road-side to buy something from the shop. It was then that the assailants surrounded him and attacked him. She described the role played by the assailants in accordance with the prosecution case.

Learned counsel for the appellants contended that the two courts ought not have placed reliance on the evidence of Pushpa (PW4) for the simple reason that her name was not even spelled in the FIR which was furnished by none other than Bhim Singh, the brother of deceased. True, the name of Pushpa is not mentioned in the first information report. But this is a case where serious allegation have been made by the complainant regarding the role of the investigating officer and even the Sessions Judge made scathing criticism on the manner in which PW-19, investigating officer, conducted investigation in this case. Even that apart, if Bhim Singh had chosen not to mention the name of his sister-in-law being a lady, the testimony of Pushpa is not liable to be thrown over board on that reason alone. We bear in mind the fact that despite this drawback her testimony was believed by the trial court and the High Court. We were taken through the evidence of PW-4 (Pushpa) and we too are not disinclined to discard her evidence merely because Bhim Singh did not mention her name in the FIR.

At any rate, nothing could be said against the evidence of Bhim Singh except that he waited till next morning to go to the Police Station for furnishing the first information statement. Learned counsel contended that the possibility of deceased sustaining injuries in a different manner and these two witnesses coming to know of it only next morning cannot be ruled out. We are, however, not persuaded to accept the said contention. We bear in mind the fact that the incident

happened near a bus-stand and it is quite unlikely that the widow and the brother of the deceased would have come to know of the murder of the deceased only next morning. So the mere fact that first information report was lodged by PW13 only on the next morning is hardly sufficient to reject the evidence of PW13. Both the Courts have found the testimony of PW4 reliable. In the absence of good reasons we are not persuaded to take a different view about his evidence.

We find no reason to dissent from the finding which the High Court has adopted regarding the involvement of the two appellants in the murder of deceased Sher Singh. We, therefore, dismiss this appeal.

JUDIS