

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
RAJENDRA SINGH

DATE OF JUDGMENT: 22/07/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Nanavati, J.

The State has filed these appeals as the respondent was not convicted by the High Court under Section 302 IPC and has been acquitted after setting aside his conviction under Section 304 part I and Section 323 Ipc by the Sessions Court, Bharatpur.

Briefly stated, the allegation against the respondent was that on 5.7. 79 at about 6 A.M. he had caused the death of Harveer, his nephew, by firing two shots at him and also by giving stick blows. According to the prosecution this incident was witnessed by P.W. 1 Govind Singh, P.W. 2 Vimla, P.W. 3 Kastoori, P.W. 4 Bhan Kaur, P.W. 5 Teji, P.W. 8 Ramjilal and P.W. 9 Jeevan Singh. The defence of the accused was that he was attacked and injured by Harveer and others, that he had no gun with him and that whatever injuries were found on the persons of the other side were inflicted by his wife in order to save him. The trial court believed the prosecution evidence and convicted the respondent under Section 304 Part I. The trial court, however, did not believe the evidence of the prosecution witnesses against the co-accused Ghamandi and acquitted him.

Aggrieved by his conviction, the respondent filed an appeal before the High Court. The State had also filed an appeal against the acquittal of the respondent under Section 302 IPC.

The High Court after reappreciating the evidence and considering the reasons given by the trial court held that the trial court was wrong in holding that the prosecution had established its case against the respondent beyond reasonable doubt. The High Court mainly gave two reasons for taking this view. it held that the medical evidence was inconsistent with the evidence of the eye witnesses. The eye witnesses had stated that the two shots fired by the respondent had caused injuries to harveer. But not a single injury on Harveer was found to have been caused by a gun shot. After appreciating the evidence of the doctor who had first examined harveer, and also of the doctor who had performed the post mortem and the Radiologist, the High Court held that the injuries found on Harveer were not

caused by a gun shot. The High Court disbelieved the eye witnesses as it was their positive case that both the shots fired by the respondent had injured Harveer and because of those injuries he had fallen down.

The second reason given by the High Court for disbelieving the eye witnesses is that all failed to explain the injuries on the respondent. They had denied that any injury was caused to the respondent. The respondent soon after the incident left the village and went to Bharatpur. There he had got himself examined by a Doctor at about 6.00 P.M. The Doctor noticed five injuries on his person; two of them were contused lacerated wounds. One was on his head and the other was on his face. The Doctor also opined that the injuries were 12 to 18 hours old. The respondent in his statement under Section 313 Cr. P.C. had stated that he had received those injuries during the morning incident which had taken place between him and Harveer. The High Court, therefore, held that the fact that the accused had received injuries in this very incident was thus established.

For the said two reasons the High Court held that the eye witnesses had not told the truth and had suppressed the true manner in which the incident had happened. The High Court, therefore, did not think it fit to rely upon their evidence and in absence of any other evidence acquitted the respondent.

It was submitted by the learned counsel for the State that as many as six witnesses were found injured and that would establish their presence at the place of the incident. In our opinion this contention is of no help to the appellant because their evidence has not been discarded on the ground that they were not present. Their evidence was discarded because they were found not telling the truth before the court. It was also submitted by the learned counsel that the evidence of PWs 1 to 4 stood corroborated by two independent witnesses, namely Ramjilal and Jeevan Singh. P.W.8 Ramjilal had stated that he had gone to the spot on hearing sound of a gun shot and tried to snatch away the gun from the respondent. But he was contradicted by his police statement wherein he had not stated anything regarding snatching of the gun. This omission on such a vital point has to be regarded as a contradiction and it creates a serious doubt about the truthfulness of his version. P.W. 9 Jeevan Singh had stated that he had also rushed to the spot on hearing the sound of a gun shot. He further stated that he had made an attempt to save Harveer and in doing so he had received an injury. He had not so stated before the police. This also shows that this witness had made a material improvement before the Court in order to make his evidence acceptable.

All the witnesses had categorically stated that they had not beaten the respondent and seen any injury on the accused. But the evidence establishes that the respondent had two contused lacerated wounds; on his face and one on his head. The injuries were bleeding injuries and visible and yet the witnesses stated that they had not seen any injury on the person of the respondent. That would mean that neither the family members of Harveer nor the two independent witnesses were willing to give a true version and had tried to suppress the part played by some of them which had resulted in causing injuries to the respondent. The High Court was, therefore, justified in not placing reliance on their evidence.

Both these appeals are, therefore, dismissed. The bail bond of the respondent is ordered to be cancelled.

JUDIS