

PETITIONER:
BHAGIRATH & ORS.

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 11/07/1996

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

CITATION:
JT 1996 (6) 594 1996 SCALE (5)136

ACT:

HEADNOTE:

JUDGMENT:
THE 11TH DAY OF JULY, 1996

Present:

Hon'ble Mr. Justice M.K.Mukherjee
Hon'ble Mr. Justice S.P.Kurdukar

R.L.Kohli, Sr.Adv. and R.C.Kohli, Adv. with him for the appellants
D.B.Vohra, K.C.Bajaj, Advs. for Ms. Indu Malhotra, Adv. for the Respondent.

J U D G M E N T

The following Judgment of the Court was delivered:
Bhagirath and Others
V.

The State of Haryana

J U D G M E N T

S.P.KURDUKAR, J.

This Criminal Appeal is filed by the appellants (accused) challenging the legality and correctness of the order of conviction and sentence dated 12-4-1989 in Sessions Case No. 77 of 1989 passed by the Designated Court under section 307/34 of the Indian Penal Code and also section 27 of the Arms Act and section 6(1) of the Terrorist and Destructive Activities (Prevention) Act, 1985 (for short 'TADA').

2. The prosecution case may be briefly summarized as under:-

On 7-7-1986 at about 7.00 a.m., Rajinder (PW5) and his uncle Kishan Lal (PW6) were coming out of the house of the latter in order to go to their fields. When they came out of the house, they noticed Jai Kishan (A-2) was armed with a gun and standing by the side of Panchayat Ghar. Rai Singh (A-3) was standing there with a 12 bore pistol. Bhagirath (A-1) was standing behind the bitora with a DBBL gun near the Panchayat Ghar. It is alleged by the prosecution that they gave lalkara to Rajinder (PW5) and Kishan Lal (PW6) to stop and they would teach a lesson for filing the criminal appeal against them. Immediately, thereafter all the accused

stretched their weapons towards Rajinder (PW5) and Kishan Lal (PW). They raised a shout whereupon Partap came out of his house. At that time, Jai Kishan (A-2) fired side of his right shoulder. Bhagirath (A-1) fired a shot from his gun at Kishan Lal (PW6) hitting him on his right thigh. Rai Singh (A-3) also fired from his pistol. Due to gun shot injuries, Rajinder (PW 5) and Kishan Lal (PW 6) fell down in front of the door. Pratap raised a raula upon which all the three accused fled away to their houses with their weapons. Partap also fired two shots in the air from the gun of Rajinder (PW 5) with a view to save the injured persons from further assault. The injured were then taken to Fatehabad hospital for medical treatment. A rugga Ex.PC was sent to the Police Station alongwith copies of M.L.Rs at about 10.00 a.m. Inspector Jai Narain, SHO (PW 8) attached to Fatehabad Police Station reached the hospital and after obtaining the opinion of Dr. R.S.Bishnoi (PW 1) about the condition of the injured persons recorded the statement of Rajinder (Ex. PH). Jai Narain, SHO (PW 8) forwarded the said statement to the Police Station on which formal FIR Ex. PH/1 was recorded in Police Station, Fatehabad. Statement of Kishan Lal (PW 6) was also recorded. Jai narain, SHO (PW 8) then recorded the statements of various persons and seized the blood stain clothes of the injured. On 10-7-1986, Bhagirath (A-1) was arrested and the licenced DBBL gun (Ex.P5) was recovered from his possession with two live cartridges. His arms licence (Ex.P4) was also recovered. After completing the necessary investigation, a charge sheet was submitted against all the appellants for offences punishable under section 307 read with section 34 of the Indian Penal Code and under section 25 of the Arms Act and also under section 6(1) of TADA. The Designated Court found that a prima facie case was made out against the appellants under section 307/34 IPC and under section 25 of the Arms Act and also under section 6(1) of TADA.

3. The appellants denied the charge and claimed that they are innocent and they have been falsely implicated in the present case. They further stated that the complainant party bore a grudge and enmity against them and, therefore, they have been falsely implicated in the present crime. They prayed that they be acquitted.

4. The prosecution mainly relied upon the evidence of two injured persons, namely, Rajinder (PW 5) and Kishan Lal (PW 6) in addition to the evidence of Dr. R.S.Bishnoi (PW 1) who issued the injury certificates in respect of injuries to these two injured persons.

5. The trial court after examining the materials on record and after careful perusal of the evidence of Rajinder (PW 5) and Kishan Lal (PW 6) found the appellants guilty of offences for which they were put up for trial. The Designated Court vide its impugned judgment found Jai Kishan (A-2) guilty of offence punishable under section 307 IPC. Bhagirath (A-1) and Rai Singh (A-3) were held guilty for an offence punishable under section 307/34 IPC for causing injuries to Rajinder. Bhagirath (A-1) was also held guilty and convicted under section 307 IPC alongwith Jai Kishan (A-2) and Rai Singh (A-3) for offences punishable under section 307/34 IPC for causing injuries to Kishan Lal (PW 6). Additionally Bhagirath (A-1) was also held guilty for an offence punishable under section 27 of the Arms Act read with section 6(1) of the TADA. Consistent with these findings, the Designated Court awarded seven years' rigorous imprisonment to all the appellants under section 307/34 of the Indian Penal Code for causing injuries to Rajinder (PW

5) and Kishan Lal (PW 6). Bhagirath (A-1) was sentenced to undergo rigorous imprisonment for two years under section 27 of the Arms Act read with section 6(1) of the TADA. All the substantive sentences were ordered to run concurrently. It is this order of conviction and sentence which is the subject matter of challenge in this criminal appeal.

6. Mr. R.L.Kohli, learned Senior Counsel appearing in support of this appeal urged that the evidence of Rajinder (PW 5) and Kishan Lal (PW 6) is totally unreliable. It was contended that both these witnesses bore an enmity against the appellants and, therefore, they have been falsely implicated in the present crime. It was submitted that Rai Singh (A-3) and Jai Kishan (A-2) were earlier tried for the offence of murder of Ra, Kumar, father of Rajinder (PW 5) and ultimately both of them were acquitted by the High court. Against this order of acquittal, Rajinder (PW 5) has filed the appeal in this Court which was pending at the time of the incident. It is because of this enmity, Rajinder (PW 5) and Kishan Lal (PW 6) have falsely implicated the appellants in the present crime.

7. After going through the evidence of Rajinder (PW 5) and Kishan Lal (PW 6), we find that their evidence is trustworthy and cannot be rejected on the ground put forth on behalf of the appellants. It is true that Jai Kishan (A-2) and Rai Singh (A-3) were tried for the offence of murder of Ram Kumar father of Rajinder (PW 5) but that by itself could not be sufficient ground in the present case to disbelieve the evidence of these two injured witnesses. In a case of this nature, all that is required is to scrutinise the evidence of such witnesses very carefully. Motive is a double edged weapon. It is also well settled that when prosecution relies upon the evidence of the eye witnesses to prove the incident, motive assumes a secondary role. In the present case, the testimony of eye witnesses if found acceptable and, therefore, adequacy of motive is not relevant. In our considered view, the motive sought to be relied upon by the appellants in no way affects the credibility of the injured witnesses. We, therefore, see no substance in the first contention.

8. It was then urged on behalf of the appellants that the manner in which the incident of firing was alleged by the prosecution is totally imaginary and having regard to the distance and the spot of firing, it was inconceivable that the injuries of this nature could be caused. It was contended on behalf of the appellants that according to both the injured witnesses, Bhagirath (A-1) was standing behind the bitora from where he fired through DBBL gun. The prosecution evidence further shows that Bhagirath (A-1) fired from the height of 5'. If firing is done from that angle and range, counsel urged that it would be impossible to cause the injury in question. This submission again does not appeal to us because Rajinder (PW 5) and Kishan Lal (PW 6) have given necessary details how all the three accused stretched their guns and fired at them which caused injuries on their persons. It cannot be forgotten that the incident in question took place at about 7.00 a.m. in the month of July, 1986 when there was sufficient day light to identify the accused. Dr.R.S. Bishnoi (PW 1) had also testified that the injuries on Rajinder (PW 5) and Kishan Lal (PW 6) were fire arm injuries. There is nothing in the evidence of Dr. R.S. Bishnoi (PW 1) to discard the evidence of both these injured witnesses, namely, Rajinder (PW 5) and Kishan Lal (PW 6).

9. It may also be stated that the FIR in the present case was lodged at the earliest opportunity without any loss of

time and in the said FIR the names of all the three appellants (accused) were mentioned with reference to specific role and the place from where they used the fire arm. The First Information Report in all material particulars corroborates the evidence of Rajinder (PW 5).

10. It was then urged that the prosecution has come out with a story, that Partap had fired twice and, therefore, the probability of injuries having been caused to Rajinder (PW 5) Kishan Lal (PW 6) cannot be ruled out. This submission against is devoid of any merits because when Partap came out of his house and was his uncle and brother were being the target of firing, he opened the fire in the air to scare away the appellants. The trial court accepted the prosecution story in this behalf and in the facts and circumstances of the case, we do not see any reason to take a different view of the said evidence.

11. Lastly, it was urged on behalf of the appellants that having regard to the injuries sustained by Rajinder (PW 5) and Kishan Lal (PW 6), the sentence awarded to each of the appellant is totally disproportionate. We do not see any substance in this contention. The appellants fired through their guns at Rajinder and Kishan Lal and it was their fortune that pellets did not hit on the vital part of the body. It is clear from the evidence on record that the appellants did attempt to commit the murder of Rajinder opinion, this is not a case where any leniency in respect of the sentences is called for.

12. In the result, the appeal fails and the same is dismissed. The appellants, who are on bail, shall surrender to their bailbonds forthwith to serve out the remainder of sentences.