

(2003) 04 MP CK 0066
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 148/91

Girbal @ Girbar Singh Rajput

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Arms Act, 1959 — Section 25(1)
Criminal Procedure Code, 1973 (CrPC) — Section 154, 374(2)
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) ILR (MP) 456 : (2003) 4 MPHT 194

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : Vijay Lakhera, for the Appellant; Chanchal Sharma, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—Feeling aggrieved by the judgment of conviction and order of sentence passed on 22-2-1991 by the learned First Additional Sessions Judge, Tikamgarh in Sessions Trial No. 28/90 convicting the accused/appellant u/s 302 of the Indian Penal Code (hereinafter referred to as "the IPC") and u/s 25(1)(a) of the Arms Act and sentencing him to suffer imprisonment of life and two years" rigorous imprisonment respectively, the appellant/accused has preferred this appeal u/s 374(2) of the Code of Criminal Procedure.

2. In brief, the case of prosecution is that on 6-1-1990 at 8.30 in the night, informant Bhagwan Das, Bhagirath, Baijnath, Ranjor Singh were sitting and Bhagwan Das was persuading not to quarrel over the mine dispute and should lodge a report about the quarrel. At that juncture, Ghansu came and wielded 2-3 lathis on the person of Bhagirath, thereafter when he was going to his house, Ranjore (hereinafter referred to as "the deceased") chased him and asked why he had wielded the lathi. It is said that Girwar, Ram Sevak and Raghuveer came out of their houses. Accused/appellant Girwar was having a gun. At this juncture,

Ghansu directed him to fire, thereafter, he fired the gun, as a result of which the deceased fell down and breathed his last. The case of the prosecution is that in the morning, some quarrel had taken place between Bhagirath and Ghansu and on account of rivalry, the appellant killed the deceased.

3. Bhagwan Das lodged the Dehati Nalish at police Chowki Chakarpur and on the basis of which First Information Report was reduced in writing and in this manner criminal law set in motion. The investigating agency came to the spot and after completing certain formalities sent the dead-body of the deceased for the post-mortem. The doctor opined that the deceased died on account of gun shot injury to heart leading to syncop. The police seized the gun on 21-1-1990 vide seizure memo (Ex. P-7) at the instance of accused/ appellant from his house. The gun was thereafter sent for examination to the ballistic expert who vide its report dated 14-5-1990 held that there was evidence that the gun was used. However, the ballistic expert could not opine the duration when from this gun the shot was last fired. The ballistic expert further opined that pellets which were sent for the examination appeared to have been fired from the gun which was examined by him.

4. The police after investigation filed the charge-sheet against the accused/ appellant and three other accused persons, namely, Ghansu alias Ghanshyam, Ram Sevak Lodhi and Raghuveer Singh before the Competent Court which committed the case to the Court of Session and from where the case was sent for trial to the learned Trial Judge who has given the verdict.

5. The learned Trial Judge framed charges against the accused/appellant u/s 302, IPC and u/s 25(1)(a) of the Arms Act, however, Ghansu alias Ghanshyam was charged u/s 302 read with Section 34 and u/s 302 read with Section 114 of the IPC. The other accused persons Ram Sevak and Raghuveer were charged u/s 302 read with Section 34 of the IPC. All the accused abjured their guilt and pleaded complete innocence and maladroitness implication.

6. In order to bring home the charges, the prosecution examined as many as 11 witnesses and placed Exs. P-1 to P-9 the documents on record.

7. The learned Trial Judge after appreciating the oral and documentary evidence came to the conclusion that the prosecution failed to prove its case against Ghansu, Ram Sevak and Raghuveer and eventually acquitted them from all the charges. However, on the basis of the evidence, arrived at the conclusion that the appellant did commit the offence punishable u/s 302 of the IPC and u/s 25(1)(a) of the Arms Act, as a result of which convicted him of the said offence and passed the sentence mentioned hereinabove. Hence, this appeal has been preferred by the accused/appellant.

8. We have heard Mr. Vijay Lakhera, learned Counsel for the appellant and Mrs. Chanchal Sharma, Panel Lawyer for the State.

9. In the Dehati Nalish, it has been stated by Bhagwan Das (P.W. 1) that accused/

appellant fired upon his father who fell down and died. He has further stated in the said report that on account of enmity, the accused killed his father. This witness was examined as P.W. 1. In the Court he has deposed the role of other co-accused persons as well as that of accused/appellant. He has specifically deposed that the bullet which was fired struck the chest of the deceased and he immediately breathed his last.

10. The testimony of this witness is corroborated by the evidence of Bhagirath (P.W. 3) who is the son of the deceased. He has stated that accused/ appellant was having a gun with him and he fired the gun and the bullet struck the chest of his father. Both the witnesses, namely, Bhagwandas (P.W. 1) and Bhagirath (P.W. 3) had denied the suggestion of the defence Counsel that when the quarrel commenced between Bhagirath and these witnesses, at that juncture Veer Singh who is the son of Bhagwan Das (P.W. 1) fired and the bullet struck the chest of the deceased.

11. Apart from the evidence of above said eye-witnesses who are the sons of the deceased, the prosecution also examined an independent eye-witness, namely, Amrat Singh (P.W. 7) who has stated that he has seen the incident. He has corroborated the evidence of Bhagwan Das and Bhagirath. This witness Amrat Singh (P.W. 7) has specifically assigned the role to the accused stating that he came out from his house with the gun and fired it on the deceased, as a result of which the deceased passed away.

12. The learned Counsel for the appellant argued that the names of Baijnath (P.W. 5) and Amrat Singh (P.W. 7) have not been named in the FIR and, therefore, the entire case of the prosecution becomes doubtful. It has also been put forth by the learned Counsel for the appellant that when the altercation had taken place between the informant Bhagwan Das and Bhagirath, Veer Singh who is the son of informant Bhagwan Das came out with a gun and fired and the bullet struck the chest of the deceased.

13. So far as the first contention of the learned Counsel regarding the non-mention of the eye-witnesses in the First Information Report is concerned, suffice it to say that mere non-mention of the name of eye-witness in the FIR would not in itself be a ground to dis-credit the entire case of the prosecution and its evidence. In such situation, the only thing is required to be done is that their evidence is to be appreciated on their own merits. (See *The State of Bihar Vs. Ram Padarath Singh and Others*,

14. It is well settled law that the FIR need not be an encyclopedia of evidence. Similarly, the FIR is not a substantive piece of evidence and it can be used to corroborate or contradict the witness. (See *Dharma Rama Bhagare Vs. The State of Maharashtra*, and *Ramlal v. State of M.P.* 1999 (2) VB 282). On the basis of the anvil of the ratio decidendi of these cases, we have X-rayed the evidence of independent eye-witnesses, Baijnath (P.W. 5) and Amrat Singh (P.W. 7), Their evidence is clear, cogent and credit-worthy implicating the appellant and his

specific role causing the injury by gun shot to the deceased. Even if the evidence of these two witnesses is not taken into consideration, there is specific evidence of Bhagwan Das (P.W. 1) and Bhagirath (P.W. 3) specifying the role of the appellant causing gun shot injury. There is no reason to discard the cogent and credit-worthy evidence of these witnesses.

15. The post-mortem of the deceased was performed by Dr. N.D. Sharma (P.W. 9). His report is Ex. P-12. According to his report, the deceased died on account of the gun shot injury. The doctor took out six pellets from the body of the deceased and these pellets were sent to the ballistic expert and it was found by the ballistic expert that these pellets were fired by the gun (Article A-1) which he examined.

16. The seizure of the gun has been proved by the investigating officer Nagendra Kumar Pateria (P.W. 11) who has stated that at the instance of the accused, the gun which was used in the commission of the crime, was seized from his house and the seizure memo is Ex. P-7.

17. We have perused the reasons of conviction assigned by the Trial Court and we do not find anything so as to deviate ourselves from the reasons assigned by the Trial Court. The finding of the Trial Court is based on the proper appreciation of evidence placed on record.

18. On the basis of above said premised reasons, we have no hesitation to hold that the learned Trial Judge did not commit any error in arriving a finding that the appellant committed the offence u/s 302, IPC and u/s 25(1)(a) of the Arms Act.

19. In the result, the appeal is devoid of any force and is hereby dismissed.