

(2008) 01 RAJ CK 0063
In the Rajasthan High Court

Surjeet Singh and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 157, 162, 173, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 2 RLW 1554

Hon'ble Judges : Shiv Kumar Sharma, J; Mahesh Chandra Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Three persons lost their lives and seven sustained injuries in an incident occurred on March 10, 2001 in village Tidhariya Police Station Todabhim. Surjeet Singh, Suresh Singh and Deshraj, appellants herein, along with fourteen co-accused, were put to trial before learned Additional Sessions Judge (Fast Track) Hindaun City District Karauli. Learned Judge vide judgment dated January 31, 2007 while acquitting co-accused persons, convicted and sentenced the appellants as under:

Under Section 148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs. 200/-. in default to further suffer imprisonment for one month.

Deshraj u/s 302 and Suresh & Surjeet

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer imprisonment for six months.

Under Section 307 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs. 1000/-, in default to further suffer imprisonment for three months.

Deshraj:

Under Section 3/25 Arms Act:

To suffer rigorous imprisonment for two years and fine of Rs. 500/-, in default to further suffer imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. The prosecution story as set out in the FIR is that on March 10, 2001 around 5 PM while the informant Balveer (PW. 14) and other members of complainant party were watering the field as many as 29 assailants of village Peelwa (named in the FIR) came over there armed with guns and deadly weapons and made assault. Jogendra Singh fired at Kartar Singh, Khushi Ram fired at Sahab Singh, Deshraj fired at Hoshiyar Singh, Chandu fired at Gopi, Suresh fired at Vishal, Man Singh fired at Damo, Ummedi Devi inflicted sword blows on the person of Kartar, Reshmi Devi inflicted sword blow on Mukut, Surjeet fired at Samunder, Deshraj fired at Chiroji. Other assailants caused blows with lathi, Dharia and sword, Kartar Singh, Hoshiyar Singh and Sahab Singh died on the spot and Damo, Vishan, Gunji, Samandar Mukut, Chiroji Devi, Chatar Singh received injuries. On that report a case was registered under Sections 147, 148, 149, 323, 341, 307, 302 and 447 IPC and investigation commenced. Dead bodies were subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun City District Karauli. Charges under Sections 148, 302/149, 307/149, 323/149 and 324/149 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 25 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions while granting benefit of doubt to co-accused persons, convicted and sentenced the appellants as indicated herein above.

3. Death of Hoshiyar Singh, Sahab Singh and Kartar Singh was undeniably homicidal in nature. As per Post Mortem report (Ex. P. 60) following ante mortem injuries were found on the dead body of Hoshiyar Singh:

1. Abraded bruise of 7.5 cm x 4 cm on left side of chest upper part on dissection shows fracture 4th, 5th, 6th ribs and rupture of left pluera & lungs and dark fluid blood filled in left thoracic cavity.

2. A lacerated wound of 7 cm x 3 cm x bone deep on left parietal region of head clotted blood deposited on and around the wound.

On dissection shows multiple fractures of left parietal bone.

3. Five superficial punctured wound of 0.3 cm x 2 cm & 0.3 x 3 x muscle deep present one lower lateral part of left side of chest. 2 on " upper part of left side of abdomen and two on left thigh upper part. The wound not penetrated deeply. The margin of wound inverted.

No scratching, no blackening skin around the wound corresponding hole seen on this wearing clothes. Blood also deposited on clothes.

In the opinion of Dr. R.L. Meena (PW. 19) the cause of death was head injury and chest injury leading to excessive hemorrhage of blood leading to shock and death with cumulative effect of injury No. 2.

4. Deceased Sahab Singh as per Post Mortem report (Ex. P. 61) received following ante mortem injuries:

1. A punctured wound with lacerated irregular inverted & contused margins making 4.5 cm x 4 cm x internal deep, viscera are visible by necked eye on right side of chest. Pectoral region 4 cm away from axillary field & 4 cm below clavicular region oval in shape direction of wound ante position Surrounding the above described wound there are multiple punctured wound of varying size having a diameter from 3 cm to 5 cm, diameter in area of 14.00 cm x 13.5 cm on right side of chest. The margins of the wounds are inverted and contused the probe passes through and through wounds while rest of these wounds are not upto the whole depth of the skin.

No scrotching, no blackening or tattooing present on the skin around the wound. No exit wound found on his body.

In the opinion of Dr. R.L. Meena (PW. 19) the cause of death was shock due to massive internal hemorrhage caused by external injury due to extensive damage to the right lungs.

5. As per Post Mortem report (Ex. P. 62) deceased Kartar Singh received following ante mortem injuries:

1. Incised wound start from orbit of left eye extending on temporal region mastoid region parietal region upper part of left ear reached upto occipital region length of wound is 14 cm x 2 cm x bone deep in all depth the bone cut which is seen out side by necked eye and the brain matter all cut. Margin of wound is clean cut.

2. Incised wound of 5 cm x 1 cm x internal neck cavity deep margin of wound clean cut & spindle shape on left side of neck upper region, the great vessel cut.

3. Incised wound of 2.5 cm x 5 cm x bone deep on right leg middle part autening clotted blood deposited on wound margin clean cut.

4. Three punctured wound of 3 cm x 3cm x muscle deep size present right side of lower part of chest laterally & two are present on abdomen laterally clotted blood not penetrated invisible.

5. Fifteen punctured wound of size 3 cm x 2 cm and through and through 3 cm x 3cm size & muscle deep not penetrated deeply scattered to lower region of Rt. side abdomen injury region upper part of thigh. Margin of wound are contused, inverted.

No scrotching, no blackening skin around the wound corresponding holes seen on wearing clothes. The wounds are fire arm injuries.

In the opinion of Dr. R.L. Meena (PW. 19) the cause of death was head injury leading to severe blood hemorrhage shock and death and also cumulative effect of other injuries.

6. Eye witnesses, who sustained injuries during incident, were examined by the prosecution. Their injury reports have been placed on record. Smt. Chiroja (PW. 11) (injury report (Ex. P. 69), Mukut Singh (PW. 2) (injury report (Ex. P. 70), Samandar Singh (PW. 1) (injury report (Ex. P. 72), Gunni Ram (PW. 21) (injury report (Ex. P. 73) have deposed against the appellants.

7. Learned Counsel for the appellants contended that the FIR lodged by complainant is highly suspected document being antetime and ante-dated. It being post investigation document is hit by Section 162 Cr.P.C. and inadmissible in evidence. The FIR was sent to the Court of Magistrate after an inordinate delay which is strong non-compliance of Section 157 Cr.P.C. It was next contended that the version of FIR is deliberated which cannot be paid any credence. Even complainant Balbir Singh admitted the factum that case was lodged/registered after due confabulations. The deceased and injured persons were working together at the time of incident seems to be highly dubious from the attending facts and circumstances of the case. The complainant party was also indulging in firing on accused persons. It was further urged. that independent witnesses were not produced by the prosecution and only interested witnesses have been examined. Testimony of alleged eye witnesses is riddled with numerous incongruences and embellishments rendering the same to be highly dubious in character. Recovery of gun had not been proved with the aid of cogent and convincing evidence. The deceased and the injured were harden criminals and on the Holi festival the complainant party teased young woman and in fact it was the cause of incident. In support of the submissions learned Counsel placed reliance on Suresh Chaudhary etc. Vs. State of Bihar, , Mohinder Singh v. State of Punjab JT 2003 (Supp. 1) SC 117 , State of Andhra Pradesh Vs. Punati Ramulu and others, Surendra Singh @ Bittu Vs. State of Uttaranchal, and Suresh Rai and Others Vs. State of Bihar, .

8. We have given our anxious consideration to the submissions advanced before us and with the assistance of learned Counsel, gone through the evidence on record.

9. Proper appreciation of evidence is a matter of experience, common sense and knowledge of human affairs, BIRCH J. in R. v. Madhub 21 WR Cr. 13 indicated thus:

For weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and common sense and shrewdness must be brought to bear upon the facts elicited in every case which a judge of facts in this country discharging the functions of a jury in England, has to weigh and decide.

10. Although efforts have been made by mathematical writers to formulate rules for determining moral certainty it is obvious that no satisfactory system can be devised for weighing evidence and drawing conclusions. In *Ramchandra Rambux Vs. Champabai and Others*, the Apex Court held that in order to judge the credibility of witnesses the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses but it is open to it to look into the surrounding circumstances as well as the probabilities.

11. In *Mohinder Singh v. State of Punjab* JT 2003 (Supp. 1) SC 117 the Supreme Court ruled that "where eye witnesses" evidence is acceptable, all other evidences that might have been produced by the prosecution recede to the background. It becomes more so in the case of eye witnesses who have suffered injuries in the alleged incident. Therefore, generally, it would be the endeavour of the courts to assess the evidence of eye witnesses first to find whether the prosecution case is acceptable or not."

12. Having assessed the evidence of injured eye witnesses viz. Samandar Singh (PW. 1) and Mukut Singh (PW. 2) we find that the prosecution case is acceptable qua the appellants Deshraj, Surjeet Singh and Suresh Singh. These witnesses categorically deposed that three appellants were members of unlawful assembly and Deshraj opened fire at Hoshiyar Singh as a result of which he died. Suresh fired at Vishal and Surjeet inflicted injuries with sharp edged weapon on the person of Samandar Singh. On the basis of disclosure statements of appellant Deshraj, 12 bore gun got recovered by Ram Swaroop Yadav 10 (PW. 24) in the presence of Motbirs Gajanand (PW. 7) and Ramesh Chand (PW. 9) District Magistrate accorded sanction to prosecute Deshraj u/s 3/25 Ams Act vide memo (Ex. P. 99). On examining the testimony of witnesses from the point of view of trustworthiness we find the witnesses highly reliable. Contradictions and embellishments noticed by us in the testimony of the prosecution witnesses do not go to the root of the case. Neither discrepancies are glaring nor the contradictions are serious. The evidence adduced against the three appellants, in our opinion, is worthy of acceptance. The prosecution is able to established charges against the appellants beyond reasonable doubt. Since informant Balveer (PW. 14) did not sustain any injury it appears that he himself did not see the incident and lodged the FIR on the basis of information received by him through eye witnesses. But this fact by itself does not affect the prosecution case.

13. Since none of the accused received injury, it appears to us that the appellants and other members of accused party against whom investigation had been kept pending u/s 173(8) Cr.P.C. made assault on unarmed persons. We fail to understand as to why the investigation against 27 persons was pending for

such a long period. Higher police-officials should intervene in nabbing the guilty. Be that as it may, we find that bonafides of the investigation has not been successfully assailed. The delay in sending FIR to Ilaqua Magistrate, therefore, does not assume significance in the presence of strong evidence of clinching nature.

As a result of the above discussion, the appeals fail and stand dismissed. Conviction and sentence of three appellants are maintained.