

Om Prakash

Vs

State of Haryana.

Criminal Appeal No. 181 of 1970

(CJI S. M. Sikri, C. A. Vaidialingam, A. N. Ray JJ)

19.04.1971

JUDGMENT

SIKRI, C.J. -

1. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana accepting the reference made by the learned Sessions Judge for confirmation of the death sentence and dismissing the appeal of Om Prakash, appellant before us. We gave leave because the medical evidence seemed to conflict with the ocular evidence as it was suggested that the medical evidence showed that four shots were fired at the deceased and not two shots, as deposed to by the eye-witnesses. But now on a close examination of the medical evidence and the evidence of Dr. B. R. Sharma, Director, Forensic Science Laboratory, who was examined by the High Court as court witness, we are of the opinion that there is no conflict with the ocular evidence. The learned Sessions Judge and the High Court have relied on the evidence of the five eye-witnesses, namely, Smt. Bhagwani, P.W. 1, Surate, P.W. 5, Smt. Phulpati, P.W. 6, Smt Sahabo, P.W. 8 and Hari Singh, P.W. 9. They all deposed to the appellant having shot at Aik Singh, deceased, with a double barrel gun. Their evidence that two shots were fired is corroborated by the evidence of Shyam Murari Lal, P.W. 21, Railway booking clerk. The deceased was shot at while he was trying to buy a railway ticket from the said Shyam Murari Lal. In cross-examination it was not suggested to him that as a matter of fact four shots were fired. There is no reason why he should say that he heard two shots being fired if four shots had in fact been fired.

2. The learned counsel drew our attention to the prosecution case that the appellant was accompanied by two other persons, namely, Dalip, appellant's father, and Partap, his uncle, and that Dalip and Partap exhorted Om Prakash to fire at Aik Singh and it was thereafter that the appellant fired. The appellant was about 19 years old at that time. We may mention that benefit of doubt was given to Dalip and Pratap.

3. In view of the circumstances mentioned above we think that instead of the sentence of death sentence of imprisonment for life would be more appropriate. In the result the appeal is allowed to the extent that the sentence of death is altered to sentence of imprisonment for life.

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