

Nirmal Singh

Vs

State of Rajasthan

Criminal Appeal No. 57 of 1970

(P. Jaganmohan Reddy, H. R. Khanna. J. M. Shelat JJ)

18.02.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant was convicted under Sections 302 and 307, I.P.C. and sentenced to undergo imprisonment for life and rigorous imprisonment for five years respectively. These sentences were ordered to run concurrently. The High Court confirmed the conviction and sentence, against which this appeal is by special leave.
2. The prosecution alleged that on September 30, 1965, at about 7 or 7.15 p.m. the appellant along with his four companions, namely, Arjun Singh, Jeet Singh, Sadhu Singh sons of Jasram and Gola Singh son of Inder Singh, armed with guns, shot at Mst. Richhpal Kaur wife of Balbir Singh and after she fell down they shot at Balbir Singh, Sarjeet Singh, Kehar Singh and Ravendra Singh, P. Ws. 1,4,5 and 10 respectively and caused them injuries. When they were being shot in this manner, P.W. 2 Vikram Singh started firing in reply. After the firing continued for some time the appellant and his companions stopped firing and made good their escape. The deceased was put in a cot and the cot was placed in a bullock-cart and taken to the Hospital at Ganganagar where she reached at about 9 p.m. The other injured were also taken there. P.W. 2 Vikram Singh went to the police station at Ganganagar to give the First Information Report. After reaching the police station at about 10 p.m. his report was taken down by P.W. 12 Girdhari Singh, S.H.O. which is Exhibit P-1. Immediately thereafter, P.W. 12 proceeded to the hospital and finding that the condition of Mst. Richhpal Kaur was precarious, sent for a First Class Magistrate, Shri Bhagwat Swaroop, P.W. 8 to record the dying declaration. P.W. 8 satisfied himself after consulting P.W. 6 Dr. A. S. Gahlot that she was in a fit condition to give the dying declaration and thereafter recorded it between 11.45 and 12 p.m. On the next day, i.e. 1-10-65, P.W. 6 took skiagrams of her abdomen, pelovic region and both thighs and operated upon her. The X-Ray showed four radio opaque gun-shot pellets in the various parts of her body. After the operation at about 12 noon on the same day, Richhpal Kaur died. A post-mortem was conducted which showed that there were about five internal injuries. Earlier when Dr. Vyas, P.W. 7 examined her, he found about nine external injuries of which injury Nos. 1,2,3, and 5 were wounds of entry which were all in the abdomen. She had also some other injuries on her thigh, knee-joint, femer and the right buttock. Except for Balbir Singh, Sarjeet Singh, Kehar Singh and Ravendra Singh each had one gun-shot wound on his body while Balbir Singh had three gun-shot wounds.
3. It appears that the accused, the deceased and Balbir Singh were near relations. There was a dispute regarding the possession of a Ahata No. 47 which was pending before the Rajasthan High Court. This dispute gave rise to the two factions in the village and proceedings under Section 107,

Cr. P.C. were going on against both the parties. A complaint, dated April 30, 1965 (Exhibit P-43), was filed by the S. H. O. Girdhari Singh under Section 107, Cr. P.C on the report of the accused Arjun Singh against P.W. 2 Vikram Singh and P.W. 4 Sarjeet Singh and some others. Another complaint, dated May 25, 1965 (Exhibit P-44) was filed on the report of P.W. 2 Vikram Singh against the appellant Nirmal Singh, his four companions and others. This complaint and countercomplaint were fixed for hearing on September 29 and 30, 1965. After attending the Court on September 30, 1965, they returned to the village on the evening at about 6 p.m. Balbir Singh, P.W. 1 had arranged a dinner for them and at about 7.15 p.m. Vikram Singh, Balbir Singh, Malkiat Singh, Dalip Singh Darshin Singh of Chak 3-G and Kehar Singh of Chak 7-G were sitting on cots outside the house of Balbir Singh and were talking to one another while waiting for the dinner. In the meantime, the deceased Richhpal Kaur came from inside the house and said that the dinner was ready. As she was saying this, all of a sudden there was gun-shot from the roof of Nirmal Singh whose house was just opposite to that of Balbir Singh divided by a lane of 23 width. As a result of this gun-shot, Richhpal Kaur was hit in the stomach. Immediately thereafter, P.W. 2 said he noticed Nirmal Singh, Arjun Singh, Jeet Singh, Sadhu Singh and Gola Singh standing on the roof armed with guns. A second shot was thereafter fired by Nirmal Singh. The second shot hit Richhpal Kaur in her back and she fell down. Balbir Singh and Kehar Singh tried to lift Richhpal Kaur with a view to take her inside the house. As they were about to do this, all the five accused named above started firing against as a result of which Balbir Singh, Ravendra Singh and Kehar Singh were also hit by pellets. Richhpal Kaur was taken inside the house but the firing continued for about 15 minutes.

4. The Trial Court disbelieved the testimony of the eye-witnesses so far as it implicated the companions of the appellant but insofar as Nirmal Singh is concerned, their evidence as supported by the dying declaration recorded by P.W. 8 Bhagwat Swaroop was accepted and the appellant was convicted as aforesaid. The other accused were acquitted. Even the High Court relied upon the dying declaration Exhibit P-11 insofar as it is corroborated by the eye-witnesses as also by the two circumstances, firstly, as the deceased was fired at from the roof of the appellant's Baithak, the appellant alone would be the likely person who could have fired at the deceased and secondly, he had a grudge against the deceased as disclosed by Exhibit P-30 which is a letter addressed by the appellant to P.W. 9 Sardul Singh, the brother of P.W. 1 Balbir Singh, in which the appellant had complained. That the troubles that Balbir Singh was creating for him was all due to his wife who "is making too much progress day by day."

5. The case of the appellant was that he was not present at the time of the occurrence but was at the house of Amarjit Singh; that when he reached his village at about 10.30 p.m. his Chowkidar Nihal Singh informed him that at about 8.00 or 8.30 there was a firing in the night from Balbir Singh's house towards his house and that in order to stop the firing he had also fired. This defence was disbelieved by both the Courts.

6. On behalf of the appellants it was contended firstly, that the version given by the eye-witnesses regarding the time of occurrence was unreliable, secondly, that the enmity between them and the appellant made their evidence unreliable, thirdly, that there is nothing to show that the deceased was in a fit condition to make the dying declaration recorded by P.W. 8 and fourthly, that the deceased had received the injuries as a result of an accident.

7. What we have to consider in this case is whether there is sufficient credible evidence to establish that the appellant was the person who fired the gun as a result of which Richhpal Kaur died and the other witnesses, P. Ws. 1, 4, 5 and 10 were injured; and whether the firing by the appellant was intentional or accidental. There is no doubt that the appellant had motive against the deceased and

P.W. 1 as disclosed by Exhibit P-30, dated September 13, 1965, to which we have already referred. It is urged that this letter which was addressed to Sardul Singh, P.W. 9 brother of Balbir Singh was more in the nature of a request to him to intercede and compromise the disputes between Balbir Singh and himself. But our reading of that letter does not justify this contention. Sardul Singh who is a Dy. Superintendent of Police is being informed by the appellant by that letter of the trouble which Balbir Singh is creating for him by making Gurmukh Singh drunk and setting him against him to abuse him in the names of his mother and sister. He, therefore, had to take proceedings to get Gurmukh Singh and Vikram Singh to execute bonds and furnish sureties under Sections 51 and 107, Cr. P.C. Even so, he says : "this Sardar Sahib is not mending himself at all and worsening himself a day by day. I request all of you that I may be got rid of them as you are my as well as their elders and brother. I shall be very grateful for the same. I fear lest myself and Sardar Sahib may take any step after being tired of it. After all you will get the compromise done between us. It is being done by my brother's wife and she is making too much progress day by day."

8. The above letter was written about 17 days prior to the incident which also refers to the proceedings under Section 107, Cr. P.C. (Exhibit P-43). After these proceedings were taken there is nothing to show that the feelings between the appellant on the one hand and Balbir Singh, Vikram Singh and deceased on the other were any better.

9. On the day of occurrence P. Ws. 1, 2, 4, 5 and 10 were present in Balbir Singh's house in the evening for a meal, when the incident according to the F.I.R. took place between 7 or 7.15 p.m. The witness Balbir Singh stated that it took place at about 6.45 p.m. and on that day it became dark after 7.30 p.m. P.W. 10 Ravendra Singh stated that at the time of the incident there was a reddish light of setting sun. According to Vikram Singh P.W. 2, Lakh Singh and Sarjeet Singh returned to the house at about 5.30 p.m. on that day and that the firing in this case took place after about 1.5 hours of their arrival. Even according to this statement the time of the incident would be about 7 p.m. though he admits that in the report Exhibit 1 he had stated that they returned to the house at about 6 p.m. and had given the time of the incident as 7.15 p.m. by approximation. P.W. 3 Gurmukh Singh denies having said to the police that the time when the incident took place was about 7 or 7.15 but that he told them that it was 15 or 20 minutes after sun-set. It is not denied that the sun-set on that day as noticed by the trial Judge was at 6.08 p.m. so that even according to his statement the time of the incident would be about 7.15 p.m. kahar Singh, P.W. 5 stated that he reached the house of Balbir Singh at about 5.30 p.m. and that it had become dark when they started for the hospital. He denied stating to the police that the time of the occurrence was 7 or 7.15 p.m. There is some discrepancy in the evidences of these witnesses and an attempt is made by some of them to fix the time of the occurrence are about 6 or 6.30 p.m. It is, however, contended on behalf of the appellant that in the dying declaration Richhpal Kaur stated the time to be 8 p.m. and if this is true, darkness had already set in and it would not be possible for the eye-witness to identify the person who fired from the appellant's house. We think this contention ignores that Richhpal Kaur had given the time of the incident as about 8 p.m. which clearly indicates that it was only approximate. It would be too artificial to read here deposition as giving a precise time. Reading the evidence as a whole there can be no doubt that the approximate time of the occurrence can be fixed at about 7 or 7.15 p.m. as given immediately thereafter in the First Information Report. Even so, it is submitted that darkness would have set in by that time but as pointed out by the trial Court, immediately after the setting of the sun it does not become dark as there would be light for considerable time which would enable one to identify others specially when the persons concerned are known from before. It may also be noticed that according to P.W. 11 at the time of firing the moon was visible and this fact was also adverted to by the Trial Court when it said that the moon came up immediately. The High Court accepted this appreciation of evidence of the Trial Court and further pointed out that the place from

which the firing took place and that the place at which the deceased was hurt were at a distance of 600 and if there was darkness the assailant could not have correctly aimed at the deceased specially when she was not expected to be present there at that time. The High Court further referred to the common experience that even after the setting of the sun, twilight continues to remain present for a considerable time in that part of the country specially in the months of September and October, when the sky is comparatively clearer than in other months. We have no reason to differ from the conclusions arrived at by both the courts that there was sufficient light for the eye-witnesses to identify the person or persons who were shooting from the house of the appellant.

10. That the appellant was the person who shot at the deceased is abundantly clear from Exhibit P-11, the dying declaration of the deceased. The probative value of this dying declaration, however, has been challenged on the ground that the Magistrate P.W. 8 did not obtain the certificate of the Doctor that the deceased was conscious and was in a fit condition to make the statement. In the dying declaration the Magistrate stated thus :

"I reached the Civil Hospital at Ganganagar on September 30, 1965, at 11.45 p.m. and Dr. Gahlot told that her condition, i.e. the condition of Smt. Richhpal Kuar was bad but she could give some statement. Thereupon the statement of Smt. Richhpal Kaur was recorded and whatever she deposed it was taken correctly and it was read over and she admitted it to be correct."

11. Only two questions were asked by the Magistrate as to (1) who fired at her and with what weapon, and (2) on which part the injury has been received. To both of these questions her reply was clear and precise. She stated that Nirmal Singh had shot her with a gun that day in the evening at about 8 p.m., that the name of Nirmal Singh's father is Teja Singh Jat Sikh and that the injuries have been received on the stomach and on both the thighs. It was sought to be pointed out that Dr. Gahlot did not say that he had been asked by P.W. 8 about the condition of the injured and that he had certified that she was conscious and in a fit condition to make a statement. It is true that the Doctor did not make a categorical statement that the Magistrate had asked him whether the injured was conscious and in a fit state to make a statement. He, however, said that he does not recollect if her dying declaration was recorded by a Magistrate in his presence nor was he, after seeing the endorsement in Exhibit P-11, able to recollect if Mr. Mathur had come and recorded her statement. There seems to have been some mistake as the Doctor seems to have misread the name in Exhibit P-11. Be that as it may, according to P.W. 8 who had no reason to depose falsely, he verified that the injured was in her senses from Dr. Gahlot. He says that Dr. Gahlot told him that Mst. Richhpal Kaur was able to make a statement. There was no cross-examination on this aspect. All that was asked was whether the relations of Mst. Richhpal Kaur were present when he recorded the statement and the Magistrate replied that they were not. We are satisfied that this dying declaration is authentic and was given by person who was conscious and in a fit condition to give the statement. It was again urged that P.Ws. 1, 2 and others who were injured had travelled with her in the same cart and tutored her. There is absolutely no evidence of this. On the other hand, none of the prosecution witnesses could have travelled in the same cart as already seen she was put in a cot and the cot was placed in a cart so that there could be no room for any other to travel with her. The Magistrate's evidence also shows that there was no one present when he recorded the statement.

12. There is ample corroboration of the statement of the deceased in that she mentioned about her injuries which are borne out by not only the evidence of Dr. Vyas, P.W. 7 but the post-mortem report. The injuries on P.Ws. 1, 4, 5 and 10 and the evidence of these witnesses afford further corroboration to the dying declaration, that the appellant had shot at the deceased. Lastly it is urged

that the injuries on the deceased and the several witnesses to which we have referred, were the result of an accident. Whatever credibility there may be in this defence, and we are not able to understand how two shots could have been fired by accident which is what prosecution witnesses have spoken to and accepted as true by both the courts, it was not put forward either before the Trial Court or before the High Court, nor is there anything in the statement of the accused under Section 342, Cr. P.C. to justify it. On the other hand, the accused's case militates against any theory of accident because according to him he was not present and it was only his Chowkidar who fired in reply to the firing from the house of Balbir Singh. Once that defence is disbelieved as indeed it has been, the theory of accident falls to the ground. There was a faint suggestion that the act of the appellant was such as would bring the case under Section 304 but this in our view would be far-fetched. It may be pointed out that there were as many as four frontal entry wounds on the deceased and two on the buttocks. There was one wound at the back which was an exit wound. The frontal injuries show that the deceased was shot at while she was facing the house of the appellant but it is stated that some of the injuries are on the side and the buttock which do not justify this conclusion. The fallacy in this argument is based on the assumption, which is invalid, that the deceased had stood-still until the firing was over and was not moving or that when she fell down she fell on her back only.

13. In the view we have taken, we have no hesitation in accepting the prosecution case that the appellant was the person who shot at Richhpal Kaur and also at P. Ws. 1, 4, 5 and 10. The appeal is accordingly dismissed.

</html