

Kanwar Pal Singh

Vs

State of Haryana

Criminal Appeal No. 243 of 1982

(K. Jayachandra Reddy, G. N. Ray JJ)

24.09.1992

JUDGMENT

1. Heard learned counsel for the parties.

2. This is an appeal under S. 379, Cr.P.C. read with S 2 of the Supreme Court (Enlargement of Criminal Appellate jurisdiction) Act. The appellant was tried under S. 302. IPC and Ss. 25 and 27 of the Arms Act. The prosecution case is that on 7-3-79 at about 4 PM in the village, the appellant killed his wife by gun shot fired from a double-barrelled gun. She died on the spot. The prosecution relied on the evidence of the two eye-witnesses and also on the evidence of the ASI, who at the relevant time was in the said village and apprehended the appellant immediately after the occurrence and recovered the double barrelled gun. The trial Court acquitted the accused holding that the evidence of the two eye-witnesses is somewhat discrepant. In an appeal by the State, the High Court interfered and accepted the evidence of the two eye-witnesses and other circumstances and accordingly, convicted the appellant under S. 302. IPC and sentenced him to undergo imprisonment for life. He was also convicted under Ss. 25 and 27 of the Arms Act and sentenced to undergo R.I. for 6 months. The sentences were directed to run concurrently'.

3. In this appeal, the learned counsel for the appellant submits that the view taken by the trial Court is not altogether unreasonable and when two views are possible in a given case, the appellate Court ought not to have interfered in an appeal of this nature.

4. This is a simple case. Two chowkidars are eye-witnesses in this case. The Asstt. Sub-Inspector (PW 15) happened to be present at the house of the Sarpanch. He sent the two eye-witnesses PW-9 and PW-14 to call some respectable persons from the village as he wanted to gather some particulars about some convicts. When the two Chowkidars happened to pass in front of the house of Sarpanch, they heard a loud quarrel going on between the appellant and his wife, Tara Devi. The appellant was an employee in a factory at Karnal. At the time of the occurrence, Tara Devi, the deceased was sitting on the ground. The deceased wanted her husband to take her to Karnal as she did not like to be a member of the joint family. The accused refused to take her to Karnal. The deceased was adamant to go with the appellant and there were exchanges of words and the quarrel ensued. At that juncture, the appellant fired a shot from the double-barrelled gun in his hand at the deceased on the forehead, leading to the instantaneous death of the deceased. The accused then went away from the scene of occurrence along with the gun. The two eye-witnesses followed so as to catch him. In the meanwhile, the ASI (PW 15) who was in the house of Sarpanch, on hearing about the incident came to the spot, chased the accused and caught hold of him, along with the double-

barrelled gun. The double barrelled gun contained one fired cartridge and one live cartridge. The articles were seized and an FIR was given and promptly a case was registered. The doctor's evidence undoubtedly shows that the deceased died due to gun-shot injury. The statements of the two chowkidars were also recorded under S. 164, Cr.P.C. The accused denied the offence and pleaded not guilty. He, however, admitted that he was the employee of a factory at Karnal and attended the factory on 3rd March and he was on leave on 5th and 6th and he did not attend the office on March 7th and thereafter.

5. We have gone through the judgment of the trial Court. The reasons given for discarding the evidence are highly unsound. The statements of the two eye-witnesses recorded under S. 164, Cr.P.C. and therefore it was necessary to view their evidence with some initial distrust. We do not think that this can invariably be a rule of law. Sometimes the police gets the statements recorded in a routine manner. The other discrepancy pointed out is that the presence of A.S.I. itself has not been satisfactorily established. This approach of the trial Court, in our view is very erroneous. This is a case where the husband is alleged to have shot at the deceased and immediately the accused-husband was apprehended. The medical evidence corroborates the same. Now coming to the two eyewitnesses, they are independent witnesses and the report was given promptly' in which all the details were mentioned. The High Court has considered every aspect in great detail and has also considered the reasons given by the Trial Court, and has rightly held that they are highly unsound and unbelievable. The High Court has rightly interfered. We see no ground to interfere. The appeal is dismissed accordingly.

Appeal dismissed.

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