

Ram Gopal

Vs

State of Rajasthan

Criminal Appeal No. 608 of 1986

(CJI M. M. Punchhi, K. T. Thomas JJ)

28.07.1998

JUDGMENT

THOMAS, J. –

1. This appeal by special leave is by an accused who was convicted under Section 302 IPC for murdering his nephew (Gopinath) by firing a gun. The trial court and the High Court has concurrently found that the appellant had intentionally fired the gun and caused the death of Gopinath. The defence version that the firearm got accidentally triggered off in a scuffle was not accepted by the two courts.

2. The case of the prosecution was that accused Ram Gopal and his brother's sons were at loggerheads, years ago Ram Gopal had murdered the father of Gopinath. On the evening of the date of occurrence (24-6-1985), there was a quarrel between the deceased and the appellant about which a complaint was made by the deceased with the police. In the night, by about 11 p.m., when the deceased was trying to repair an electric lamp, the appellant fired his rifle at him through the window which resulted in Gopinath falling down dead. His brother Vishwanath (PW 1) rushed to the scene and the appellant aimed a gunshot at him also but he escaped by ducking down. Then another brother Bharat Bhushan rushed up who too was targeted, but the target was missed and Bharat Bhushan caught hold of the firearm and there ensued a scuffle between the two. The police came to the scene and nabbed the appellant.

3. Though PW 1 Vishwanath has not seen the crucial act of firing at the deceased, his evidence reached very close to the version of any eyewitness. He gave first information to the police on the same night. Two eyewitnesses PW 2 (Asha) and PW 3 (Maya) are sisters of the deceased. PW 4 Bharat Bhushan narrated the incident which took place after he reached the scene which, of course, was subsequent to the shooting down of the deceased.

4. The appellant denied the prosecution version regarding previous enmity. He tried to show that he was maintaining a good relationship with his nephews right from the beginning. Regarding the occurrence, he said that he returned home only at about 11 p.m. from his work spot and he was carrying his rifle with him and on reaching home, he found the door closed. When he opened the door, he noticed PW 4 and deceased Gopinath hiding behind and waiting for him. A scuffle followed and in the course of the hubbub, the rifle happened to be triggered off.

5. The High Court did not believe the above version of defence. Learned Judges pointed out that since a police petition was filed by the deceased complaining that the appellant had assaulted him on the said evening at the place of occurrence, it is a strong material to suggest that the appellant was

present at the house much earlier than 11 p.m. Another argument of the defence was that the incident would not have taken place on the first floor because blood was found on the ground floor. That argument also was repelled for a good reason that the dead body was taken down and blood would have oozed out and thus blood was found on the ground floor.

6. The main argument is that all the eyewitnesses are interested persons being the kith and kin of the deceased. It is true that the prosecution could not examine any independent witness for proving the occurrence, but the situation and time was such that no independent witness could be expected to be present. The venue of the incident was inside the dwelling house of the deceased and the time of the incident was near midnight. In such a situation, the inmates of the house would be most natural witnesses to such an occurrence. Hence they are the most natural in such circumstances. There is no question of discarding such evidence on the mere premise that they are related to the deceased.

7. Another point raised is that the FIR is silent about the details of the occurrence. But the skeletal facts revealed in the FIR are consistent with the detailed narration of the eyewitnesses in the evidence. The trial court and the High Court have rightly pointed out that non-mention of the details of the occurrence in the FIR is not sufficient to jettison the vital document.

8. We do not think that the trial court and the High Court have committed any error in reaching the conclusion that the appellant has intentionally murdered the deceased. We therefore dismiss this appeal.