

SUPREME COURT OF INDIA

Ajay Singh

Vs.

State of Bihar

Crl.A.Nos.744 of 1999 with 109 of 2000

(G. B. Pattanaik and S. N. Variava , JJ.)

27.04.2000

ORDER

1. These two appeals are directed against the judgment of the Patna High Court in dismissing the Criminal Appeal No. 351/1994 and convicting the appellants under Section 302, I.P.C. for having caused the murder of one Siaram. The prosecution case in nutshell is that the two accused appellants came in a motor cycle and after taking the fuel from the petrol pump they started firing at the deceased. The firing of the Ajay hit the chest of the deceased while firing from Bacha Singh hit the leg of the deceased. The further prosecution case is that immediately after firing these people left and the deceased while being carried to the hospital was found dead on the way. It is also the prosecution case that in another motor cycle one Sanjay Singh and Lallan Singh had also arrived there and said Sanjay Singh also fired from his pistol. On these allegations, three accused persons were tried before the learned Sessions Judge. The fourth accused could not be apprehended. Relying upon the evidence adduced, the learned Sessions Judge convicted Ajay and Bacha under Section 302 and convicted Sanjay under Section 302/34. Sanjay preferred an appeal which was registered as Criminal Appeal No. 262/1994 and Ajay and Bacha together preferred an appeal which was registered as Criminal Appeal No. 351/1994. The High Court reappreciated the evidence, and relying upon the oral evidence of PWs. 1 and 2, came to the conclusion that it is both Ajay and Bacha fired from the respective weapon which hit the deceased and the deceased ultimately died on account of gun shot injury. The conviction of Ajay and Bacha, therefore, was upheld and Criminal Appeal No. 351/1994 was dismissed, but Sanjay was given benefit of doubt and his Criminal

Appeal was allowed. It is against this conviction and sentence, the present two appeals have been preferred. Mr. Sharan appearing for accused Ajay and Mr. Jain appearing for Bacha attacked the evidence of P.Ws. 1 and 2 and contended that their evidence must be held to be untrustworthy and could not have been relied upon, and if their evidence is taken out of consideration, then there is no residue of evidence on which the charge against the accused persons can be said to have been established. Mr. Sharan also further argued that the evidence of P.W. 2, being positive, that he snatched the pistol from Ajay and handed over yet the prosecution never sent the same for being examined by Ballistic Expert, should be viewed with suspicion and the prosecution case should be doubted on that score. In support of this contention, reliance has been placed on the decision of this Court in Sukhwant Singh v. State of Punjab, (1995) 3 SCC 367 : (1995 AIR SCW 2521 : AIR 1995 SC 1601). We, in fact, see no reason as to why, though, the weapon was snatched from Ajay, as stated by P.W. 2, yet the investigating agency never sent the same to the Ballistic Expert for being examined, and produced the report before the Court. But on that sole ground, it may not be possible for us to discard the trustworthy testimony of two eye-witnesses, who have unequivocally indicated that the two accused Ajay and Bacha came on a motor cycle and fired from the respective weapon, which hit the deceased. Contentions having been advanced on the reliability of P.Ws. 1 and 2, though ordinarily, we do not reappraise the evidence, when two Courts of fact have appreciated and relied upon the same, yet we have gone through the evidence of two eye-witnesses P.Ws. 1 and 2. We do not find anything brought out in their cross-examination to impeach their testimony in any manner so as to affect the substratum of the prosecution case in relation to the two accused Ajay and Bacha coming on a motor cycle, and fired at the deceased from their respective weapon. We, therefore, hold the two aforesaid witnesses to be wholly trustworthy and the Courts below rightly relied upon their testimony to bring home the charge against the two accused appellants. It was contended on behalf of the accused Bacha Singh that the oral evidence is categorical that Bacha Singh fired which hit the deceased on his leg, but there is no injury either on the leg or on thigh, and therefore, should be discarded. The post-mortem report, as has been extracted in the impugned judgment, indicates that the second injury found on the dead body of the deceased was on umbilical part which would be slightly higher than the thigh. If there would not be any second injury on the dead body of the deceased the matter would have been different. But merely because the position of the injury is slightly different, the trustworthy testimony of oral evidence cannot be discarded on that score nor it can be said that medical evidence is contrary to oral evidence. In the aforesaid premises, having scrutinised the evidence of two eye-witnesses P.Ws. 1 and 2, we see no infirmity with the impugned judgment of the High Court maintaining the conviction of the two appellants under Section 302 and sentencing them to imprisonment for life. We do not find any merit in the appeals. The appeals are accordingly dismissed.

Appeals dismissed.