

SUPREME COURT OF INDIA

State of M.P.

Vs.

Surpa

C.A.No.544 of 1992

(Dr. A.S.Anand CJI., R.C.Lahoti and Shivaraj V. Patil JJ.)

18.01.2001

ORDER

1. The State is in appeal by special leave against an order of acquittal dated 13th November, 1991 recorded by the High Court of Madhya Pradesh in Criminal Appeal No. 513 of 1987.

2. According to the prosecution case, on 16th January, 1986 in village Aabgari, Police Station Udaigarh, Distt. Jhabua, the respondent allegedly fired a shot from his licensed gun hitting deceased Gulab Singh, who succumbed to injuries at the spot. The occurrence is alleged to have taken place at about 6 P.M. and was witnessed by Soni Bai, PW-1 widow of the deceased and his son Bhanwar Singh, PW-2; as also by Bhuru, PW-3 whose house is located in front of the house of the deceased. The first information report was lodged by Soni Bai, PW-1 at Police Station Udaigarh next day, i.e. on 17th January, 1986 at 13. 15 hours. At that time she was accompanied by Ter Singh, Watchman PW-7. After recording the first information report, investigation was taken in hand by Shri T. S. Thakur, S.H.O. PW-5. He prepared the injury statement at the spot and after spot inspection and verification sent the body for post mortem examination, which was conducted by Dr. Kishore Kumar Mirkar - PW-6 on 18th January, 1986. The respondent was arrested and on his disclosure statement. Ex.P-7, his loaded gun was seized vide seizure memo, Ex. P-8. According to the post mortem report, the deceased died as a result of shock and haemorrhage caused by injuries 5, 7 and 8, as mentioned in that report. The post mortem report also records that those injuries had been caused by gun shot and during the post mortem examination a bullet was recovered from the chest cavity of the deceased. That bullet was preserved, sealed and forwarded to S.H.O. Udaigarh. After completion of the investigation, the respondent was sent up for trial. The learned Additional Sessions Judge, vide judgment dated 18th August, 1987 convicted the respondent for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life. The co-accused of the respondent, Alap Singh was, however, given benefit of doubt and acquitted. The respondent put in issue his conviction and sentence before the High Court and as already noticed, the High Court vide judgment dated 13th November, 1991 allowed his appeal and set aside his conviction and sentence. Hence this appeal by special leave by the State.

3. We have perused the record and heard learned counsel for the parties.

4. Admittedly, in the present case, on the disclosure statement Ex. P-7 made by the respondent, a loaded gun was seized by the investigating officer PW- 5 vide seizure memo Ex. P-8. According to Dr. Kishore Kumar Mirkar, PW-6, a bullet had been removed from the chest cavity and forwarded to the S. H. O. However, we find that the gun and the bullet were not sent to ballistic expert for any expert examination. This is a serious infirmity in the prosecution case and assumes even greater significance when we find that according to PW- 1, the deceased had received pellet injuries at his chest and jaw and the investigating officer PW-5 had also found, at the time of preparing the injury statement, that the deceased had received pellet injuries on his tongue, chest, chin and left shoulder. We find no explanation, whatsoever, to have been offered by the prosecution for reconciling the recovery of bullet from the chest cavity of the deceased and the presence of pellet injuries as deposed to by the witnesses. Since both the bullet and the gun had been recovered it was obligatory on the prosecution to have sent the same for expert examination so as to connect the recovered licensed gun of the respondent with the crime. In *Mohinder Singh v. The State*¹ under somewhat similar circumstances, this Court opined :

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it must prove the whole of that case. In the present case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle. Indeed, it seems more likely that they were caused by a rifle than by a gun, and yet the case for the prosecution is that the appellant was armed with a gun and, in his examination, it was definitely put to him that he was armed with the gun P.16. It is only, by the evidence of a duly qualified expert that it could have been ascertained whether the injuries attributed to the appellant were caused by a gun or by a rifle and such evidence alone could settle the controversy as to whether they could possibly have been caused by a fire arm being used at such a close range as is suggested in the evidence."

5. The learned Judges constituting the Bench in Mohinder Singh's case (supra) further observed that non-examination of the weapons by the expert had left "... a gap in the prosecution evidence on a most fundamental point and the error which has been committed by the courts below is to ignore the gap and decide the case merely upon the oral evidence of 3 witnesses....".

6. The infirmity, which was pointed out in Mohinder Singh's case (supra), exists in this case also. Coupled with that infirmity we find that PW- 1, Sona Bai, widow of the deceased who claims to be the eye witness did not report the matter to any one after 6 P.M. on 16th January, 1986 till next morning. According to PW-7, Tej Singh, Watchman, when Sona Bai went to him in the next morning after the occurrence she had told him that "someone" had

shot dead her husband. She had not disclosed to him name of the appellant. Bhanwar Singh, PW-2 son of the deceased as also Bhuru, PW-3, on their own showing, came out of their houses after hearing the gun fire. They saw the accused running. These two witnesses, strictly speaking, cannot be said to be eye witnesses of the actual occurrence.

7. Again whereas, according to Bhuru, PW-3, there existed enmity between the deceased and the accused because the accused used to ask the deceased to remove his hut from their land, Soni Bai, PW-1, categorically admitted in her cross-examination that "before this incident the Accused persons never asked us to remove our hut from their land. This is also wrong that there was enmity between us for this very reason." These contradictions make the existence of motive also doubtful.

8. In this state of evidence, coupled with the serious infirmity which we have pointed out of not sending the recovered lethal weapon and the bullet to an expert, we do not find it possible to say that the prosecution has established its case against the respondent beyond a reasonable doubt. The prosecution had come up with a positive case. It was obliged to prove the same. It has failed to do so. Under these circumstances, no fault can be found with the judgment of acquittal recorded by the High Court.

9. This appeal, thus, has no merits. It is, accordingly, dismissed.

10. The respondent is on bail. His bail bond shall stand discharged.
Appeal dismissed.

¹1950 SCR 821