

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Hakam Singh

Crl.A.No.505 of 2007

(B.S. Chauhan and Swatanter Kumar JJ.)

15.06.2011

ORDER

1. Vide judgment dated 14th December, 2005, the Division Bench of the High Court of Judicature for Rajasthan at Jodhpur, set aside the judgment of the Trial Court dated 27th March, 2003, convicting Hakam Singh of an offence punishable under Section 302 IPC and awarding him the sentence to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment to undergo three months rigorous imprisonment. Aggrieved from the order of acquittal, the State has preferred the present appeal.

2. We have perused the evidence and gone through the well reasoned detailed judgment of the High Court. It is clear from the bare reading of the High Court judgment that the involvement of Hakam Singh in killing the deceased is not doubtful, but is improbable seen from any angle. The version given by the witnesses does not support the view that had been taken by the Trial Court. Furthermore, the High Court in paragraphs 19 and 22 of the judgment has recorded the following findings:

19. We are unable to agree with the contention of Mr. H.S.S. Kharlia, learned Counsel for the complainant that Hakam Singh is an extraordinary clever man and it was part of his strategy to first fire the gun shot from the terrace and to provoke Hardev Singh and party with a view to ultimately implicate them with a false charge of murder. As far as the cleverness is concerned, this can also be attributed to P.W.4 Tara Singh and P.W.5 Hardev Singh, more particularly when there is an admitted hostility between the prosecution witnesses and the Appellant. P.W.4 Tara Singh has gone to

the extent of saying that he heard the exact words spoken by the deceased Sardara Singh after he had sustained the fire arm injuries. Not only this he has even gone to the extent of saying that he heard the actual words spoken by the Appellant as well. On careful consideration of the evidence of P.W.4 Tara Singh, it is difficult for us to accept that he could hear actual utterances made by the deceased and the Appellant, as claimed by him. Looking to the suspicious nature of the evidence, we are of the view that P.W.4 Tara Singh cannot be placed in the category of trustworthy witness. As far as P.W.5 Hardev Singh is concerned, his statement is only to the extent that he had heard of the gun shot fire from the side of the house of Hakam Singh. Simply on the basis of the fact that there was gun shot fire from the house of Hakam Singh it cannot be said that it was the Hakam Singh who fired the gun at Sardara Singh. P.W.6 Pritam Singh is a chance witness. We have not found him a trustworthy witness having noticed material contradictions in his statement. The circumstances that the Appellant took the deceased to the hospital in his car does not go against him. On the contrary, the possibility cannot be ruled out that some body else fired at Sardara Singh and the Appellant Hakam Singh having the gun shot fire came out of the house and in order to save, took him to the hospital. Even as a matter of prudence a person after having caused fire arm injuries would not take him to the hospital so that if he survives he may be the star witness against him.

22. It is significant to notice that there was no reason for the Appellant to kill Sardara Singh. In other words there was no motive. It is well established that motive is a relevant factor, whether based on the testimony of ocular evidence of occurrence or circumstantial evidence. However, when the participation of accused is established by evidence of an eye witness, absence of motive becomes insignificant. Thus, absence of motive, however, puts the courts on guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture does not take place of legal proof. Reference be made to *Kishore Chand v. State of Himachal Pradesh* reported in A.I.R. 1990 S.C. 2140. The motive suggested in the case to the effect that Appellant killed his own man Sardara Singh to falsely implicate, the persons like P.W.4 Tara Singh and P.W.5 Hardev Singh, with whom his relations were hostile, on face appears to be absurd. On the contrary in view of the admitted hostility between the Appellant and the prosecution witnesses, the possibility of falsely implicating the Appellant, more particularly when Appellant cannot be attributed a rational motive to kill deceased and there is total absence of ocular evidence of the occurrence or circumstantial evidence of clinching nature, cannot be ruled out. Thus, taking in view totality of

entire evidence, considering the preponderance of probabilities, it is clear that prosecution has failed to prove case against the Appellant beyond reasonable doubt, as such we do not consider it safe to uphold the conviction of the Appellant on the charge of murder of Sardara Singh.

3. Once there is no motive and the accused himself had taken the deceased to the hospital, shows that he had no intention to commit a crime, much less to give a gun shot, which would inevitably result in the death of deceased. It is a settled principle of law that this Court would interfere with the judgment of acquittal only if the judgment was perverse or was contrary to the evidence on record. We are unable to see any of these ingredients in the judgment under appeal.

4. There is no merit in the appeal and the same is, accordingly, dismissed.