

**SUPREME COURT OF INDIA**

Ram Singh

Vs.

State of Rajasthan

C.A.No.1712of2008

(Ranjan Gogoi and P. Sathasivam,JJ.)

22.11.2012

**JUDGMENT**

**Ranjan Gogoi ,J.**

1. Aggrieved by the judgment and order dated 08.08.2007 passed by the High Court of Rajasthan at Jaipur Bench affirming the conviction of the appellant under Section 302 IPC and the sentence of life imprisonment imposed, this appeal has been filed upon grant of special leave by this Court.

2. The case of the prosecution, in brief, is that at about 10.30

“a. m. on 13.09.2000, Hariram (PW-23), lodged a written complaint with the Police Station at Baran stating that at about 10 a.m. of the same day he alongwith his nephew Ramlal and some other family members were sitting on the road in order to go to Baran. According to the complainant/first informant there was an old enmity between him and one Ghasilal. In the complaint filed it was specifically stated that while they were waiting to go to Baran, Ghasilal along with his sons Ram Singh (appellant), Ramswaroop, Ramshyam and son-in-law Akheraj came in a tractor armed with different weapons including a firearm. Immediately on reaching the spot accused-appellant Ram Singh fired from a gun at Rooplal as a result of which the said person died on the spot. It was alleged that accused Ram Singh had also fired a t Surajmal, causing injuries on his hand. The other accused persons had assaulted Satyanarayan (PW-7), Seokaran and Ramlal with Kutia and Gandasia. It was further stated by the complainant that as a result of the gun shot injury Rooplal died on the spot.”

3. On the basis of the aforesaid complaint, case No. 255/2000 (P.S. Baran) was registered under Sections 147, 148, 149, 341, 307, 302 IPC. The case was duly investigated and on completion of the investigation charge sheet under Sections 147, 148, 149, 341, 307, 302 IPC was filed against Ghasilal, Ramswaroop, Ramshyam and Ram Singh (accused Akheraj died while the case was under investigation). Thereafter the case was committed for trial to the court of Sessions at Baran where charges under the aforesaid provisions of the Penal Code read with Section 149 IPC were framed against all the accused including the accused-appellant. As the accused persons claimed innocence and wanted to be tried, a regular trial was held in the course of which the prosecution examined 23 witnesses and also exhibited a large number of documents. Two witnesses were examined by the defence including the accused Ghasilal. The statements of the accused persons were recorded under section 313 Cr.P.C. Thereafter, at the conclusion of the trial, all the accused were convicted under Sections 148, 302/149, 307/149, 323/149, 324/149 IPC. Each of the accused persons was sentenced to undergo rigorous imprisonment for life for the offence under Section 302/149 IPC. For the offence under Section 323/149, 324/149 and 148 IPC each of the accused persons were sentenced to undergo imprisonment for six months and one year respectively. All the sentences were directed to run concurrently.

4. Aggrieved by the aforesaid order of conviction and the sentences imposed all the four accused moved the High Court of Rajasthan by filing an appeal which was partially allowed by the impugned order dated 8.8.2007. While the conviction of the appellant was altered from Section 302/149 IPC to Section 302 IPC, the sentence of life imprisonment imposed was maintained. The High Court, however, acquitted the other three accused of the offence under Section 302/149 IPC while maintaining the conviction under Section 323 IPC. In view of the fact that each of the said accused had undergone confinement for a period of more than six months, the High Court ordered for their release. It is against the aforesaid order of the High Court convicting the appellant under section 302 IPC and the sentence of life imprisonment imposed on him that the present appeal has been filed.

5. We have heard Mr. Ramesh C. Kohli, learned counsel for the appellant and Mr. Jasbir Singh Malik, learned AAG for the State of Rajasthan.

6. Learned counsel for the appellant has contended that the conviction of the accused-appellant under section 302 IPC is wholly untenable in law. Learned counsel has placed before the Court the defence version of the occurrence as revealed by the cross-examination by PWs 7, 22 and 23 and also the evidence of DW 1 Narottam Lal (driver of the tractor) and DW 2, Ghasilal. Learned counsel has specifically pointed out that while Ghasilal and his sons were proceeding towards the temple they were attacked by the party of the complainant and the deceased Rooplal has brought out a double barrel gun from his house

to eliminate Ghasilal. At that point of time the accused-appellant intervened and in the melee the gun was taken hold of by PW 7 Satyanarayan who fired two shots at Ghasilal but the same hit the deceased Rooplal and injured Surajmal (PW 17). Learned counsel has submitted that there is no material on record to disbelieve the aforesaid version put forth by the defence. Furthermore, according to the learned counsel, in the present case, the alleged weapon of offence had not been seized/recovered and though four shots, according to the prosecution witnesses, were fired in the course of the incident, only one empty cartridge was recovered from the spot by PW 20, the Investigating Officer. It is therefore urged that in the above fact situation it cannot be said that the defence version lacks authenticity and that the prosecution has established its case beyond all reasonable doubt so as to warrant the conviction of the accused.

7. On the other hand, learned counsel for the State has pointed out that PW 7, Satyanarayan, PW 22 Bachibai and PW 23 Hariram are the eye witnesses to the occurrence. The evidence of the aforesaid witnesses clearly brings out the details of the incident and the sequence of events that had taken place. From the testimony of the aforesaid witnesses it is clear that it is the accused-appellant, Ram Singh, who was armed with a .12 bore double barrel gun had fired first at Surajmal causing injuries on him and, thereafter, had fired twice at the deceased Rooplal, first on the chest and, thereafter, in the stomach. According to the aforesaid witnesses accused Ram Singh had fired a fourth shot in the air. The three eye-witnesses are clear and consistent in narrating the aforesaid facts and nothing has been elucidated in their cross-examination to discredit their statements. Learned State Counsel has also submitted that the defence version is inherently incredible as the tractor in which the accused persons were traveling, which was subsequently impounded, belonged to one Prembai and not to the accused party. If that is so, according to learned counsel the starting point of the defence version that they had gone to the temple to seek divine blessings on the occasion of the purchase of a new tractor, has been proved to be incorrect. It is also pointed out by the learned State counsel that the defence version does not find support from any independent witness though many such persons were reportedly present at the time of the incident. The failure of the prosecution to recover the weapon of assault or all the four empty cartridges from the place of occurrence, according to learned State counsel, is not fatal to the prosecution case.

8. We have considered the arguments advanced on behalf of the parties. We have also perused the evidence of PW 7, 22 and 23 as well as DW 1 and DW 2. On such consideration we find that the eye witnesses examined by the prosecution i.e. PWs 7, 22 and 23 have been clear and consistent while describing the sequence of events that had taken place on the day of the occurrence. There is no material discrepancy or contradiction in the statement of the said witness who had clearly identified the accused-appellant Ram Singh as being the person who

had fired four shots from the . 12 bore barrel gun that he was carrying with him. The eye witnesses have also been categorical in stating that the accused-appellant had first fired at Surajmal (PW 17) and thereafter he had fired twice at the deceased Rooplal hitting him on the chest and the stomach. The fourth shot, according to the eye witnesses, was fired in the air. The elaborate cross-examination of the eye-witnesses on behalf of the accused has failed to discredit their testimony in any manner whatsoever. All the aforesaid witnesses have also categorically denied the defence version which was put to them in their cross-examination.

9. As against the above, what we find is a relatively weak and somewhat unacceptable defence version which remains unsubstantiated in the absence of any acceptable evidence. According to the defence, Ghasilal along with his sons were proceeding in a tractor to the temple to seek divine blessings on the purchase of a new tractor by the family. On the way they were accosted by Rooplal, Surajmal and others who had assaulted Ghasilal. The defence version is to the further effect that deceased Rooplal brought out a double barrel gun from his house to kill Ghasilal at which point of time the accused-appellant, Ram Singh, had grabbed Rooplal. In the scuffle and melee that had ensued PW 7, Satyanarayan is reported to have taken the fire arm and had fired two shots at Ghasilal which shots, however, hit Rooplal and Surajmal as a result of which Rooplal died and Surajmal was injured. The aforesaid version remains unsubstantiated. On the contrary the materials on record show that the tractor which was impounded for being involved in the incident belonged to one Prembai and not to the party of the accused. Besides, DW1, Narottam Lal who was driving the tractor was an employee of Prembai and not of the accused. The above facts clearly demonstrate the falsity of the defence version. Also in the examination of the accused-appellant under Section 313 CrPC the above defence has not been specifically taken. Though several independent persons were reportedly available none of them have been examined in order to lend credence to the defence story. On the other hand PW 19 Rajesh, who is not related to either side and had reportedly come out of his house on hearing the commotion had supported the prosecution case against the accused appellant. All the three eye witnesses examined by the prosecution, as already noted, have clearly and unequivocally deposed with regard to the involvement of the present accused-appellant in the death of Rooplal.

10. In view of the above, we have no difficulty in reaching the conclusion that the conviction of the accused-appellant Ram Singh under Section 302 IPC and the sentence imposed thereunder is fully justified. We, therefore, dismiss the appeal and affirm the conviction and sentence imposed on the accused-appellant.