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Devinder Vs. State of Haryana

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Court : Supreme Court of India

Decided On : Sep-13-1996

Reported in : AIR1997SC454; 1996(2)ALD(Cri)902; 1996CriLJ4461; 1996(6)SCALE520a; [1996]Supp6SCR249

Judge : M.K. Mukharji and; S.P. Kurdukar, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 307; Terrorist and Disruptive Activities (Prevention) Act, 1985 - Sections 6; Arms Act, 1959 - Sections 25 and 27

Appeal No. : Criminal Appeal No. 446 of 1987

Appellant : Devinder

Respondent : State of Haryana

Advocate for Def. : Prem Malhotra, Adv.

Advocate for Pet/Ap. : Rajni Anand, Adv. (AC)

Prior history : From the Judgment and Order dated 26.7.86 of the Designated Court, Rohtak, haryana in Sessions Case No. 550 of 1986

Judgement :
ORDER

M.K. Mukherjee, J

1. The subject matter of challenge in this appeal is the judgment and order dated May 30, 1987 rendered by the Designated Court, Rohtak, while disposing of Sessions Case No. 550 of 1986 and Arms Act Case No. 551 of 1986. By the impugned judgment and order the Court convicted and sentenced the appellant Devinder @ Pappy under Section 302 IPC and Sections 25 and 27 of the Arms Act, 1959 read with Section 6 of Terrorist and disruptive Activities (Prevention) Act, 1985 ('TADA' for short).

2. Shorn of details the prosecution case is as under : (a) Ramphal (the deceased) used to sell vegetables from his shop-cum-residence in the Janta Colony, Rohtak city. On July 26, 1986 at or about 9 A.M. the appellant went to his shop and asked for some vegetables on credit. Ramphal told the appellant that as he had not paid his earlier dues he would not oblige him any more. Since such refusal of Ramphal was in the presence of two others, namely, Jagdish (P.W. 10) and Satbir Singh (P.W. 11), the appellant felt insulted and left in a huff.

(b) About twenty minutes thereafter the appellant came back with a knife and remarked that he would teach him (Ramphal) a lesson for insulting him in the presence of others. Ramphal, who was then cooking, stood up and attempted to escape. He however could not succeed in his attempt as the appellant gave him two blows with the knife - one of the left side of the chest and the other on the abdomen. Jagdish and Satbir Singh, who were there still then, and one Umesh, who reached there by chance, witnessed the assault.

(c) Jagdish and Umesh then carried Ramphal in a rickshaw to the Medical College Hospital, Rohtak where he was examined by Dr. Sushil Kumar Jain (P.W. 5) first, After examination, Dr. Jain sent a medico legal report (Ex. PS) and a rukka (Ex. PD) to the Police Post attached to the hospital where an entry in terms thereof was made by Constable Mangal Singh (P.W. 1) in the daily diary book at 1.45 P.M. (Ex. PE).

(d) In the meantime, however,-at 11.30 A.M. to be precise-the City Police Station, Rqhtak had received a telephonic message from the above Police Post about the admission of Ramphal in the hospital with injuries on his person and, after recording that message in the daily dairy book (Ex. PF), ASI Tota Ram (P.W. 12)

had left for the hospital. Reaching there he found Jagdish present and recorded him statement (Ex. PZ) at 2.40 P.M. which was treated as the FIR. After forwarding the statement to the Police Station for registering a case, Tota Ram took up investigation and went to the spot. He prepared a rough site plan and seized some blood-stained earth therefrom in the presence of Jagdish and Satbir.

(e) Ramphal, who was admitted as an indoor patient in the hospital, was operated upon by Dr. Pradeep Kumar (P.W. 7) for his injuries but he succumbed to them on the following day i.e. July 27, 1986 at 11.30 A.M. On receipt of that information the case which was earlier registered against the appellant under Section 307 I.P.C. was converted into one under Section 302 I.P.C. and a special Report (Ex. PH) was sent to the local Magistrate, ASI Tota Ram then went to the hospital and after holding inquest upon the dead body of Ramphal, sent it for autopsy which was performed by Dr. M.K. Bishnoi (P.W. 9).

(f) In course of the investigation the appellant was arrested on July 29, 1986 and pursuant to a statement made by him to Tota Ram on July 31, 1986 (Ex. PEE) a spring activated knife concealed under the bricks in i a deserted kotha towards the southern boundary wall of Hanuman Park, Rohtak was recovered in the presence of Jagdish (P.W. 10) and Daya Chand. After recovery of the knife a separate case was registered against the appellant under the Arms Act, 1959 read with Section 6 of TADA.

(g) The blood-stained earth recovered from the spot, the shirt removed from the dead body of Ramphal and the knife recovered pursuant to the statement of the appellant were sent to the Forensic Science Laboratory (F.S.L.), Madhuban for chemical examination and human blood was detected on all those articles on such examination. On completion of the investigation ASI Tota Ram submitted two separate charge-sheets against the appellant; one under Section 302 I.P.C. for the murder of Ramphal on July 26, 1986 and the other under Section 25 and 27 of the Arms Act, 1959 read with Section 6 of TADA for unlawful possession and user of a spring actuated knife.

3. The two cases arising out of the above charge-sheets were clubbed and tried together and were disposed of by the impugned judgment in the manner indicated

above.

4. The appellant pleaded not guilty to the charges leveled against him and his defence was that at the instance of Jagdish and Ramphal he was falsely implicated in the case as he had, three days prior to the alleged murder of Ramphal, a quarrel with Jagdish and Umesh over their misbehavior in their locality under the influence of liquor.

5. In support of their respective cases prosecution examined twelve witnesses and the defence one.

6. To sustain the charge of murder leveled against the appellant the prosecution rested its case principally upon the ocular version of Jagdish (P.W. 10) and Satbir (P.W. 11). The Designated Court found them to be the most probable and natural witnesses and as their evidence stood amply corroborated by the evidence of the doctors, the recovery of the knife pursuant to the statement of the appellant, and the report of the Forensic Science Laboratory held the appellant guilty of both the charges leveled against him.

7. Having carefully gone through the entire materials on record, we are unable to sustain the impugned judgment. Though apparently there is not reason to disbelieve the two eye witnesses, there are certain underlying circumstances which persuade us to give the benefit of reasonable doubt to the appellant. According to the prosecution case - and as testified by Jagdish - immediately after the assault Ramphal was taken to the hospital by him (Jagdish) and Umesh (not examined), who were present at the time of the assault. Dr. Jain testified that at the time of admission Ramphal was fully conscious and his blood pressure and pulse were normal. From the medico legal report (Ex. PS) that the doctor sent to the police after examining Ramphal we find that apart from his name, the father's name of Ramphal, his address, his occupation and an account as to how the injuries were caused find place. Obviously all these particulars had been furnished by Ramphal, and/or Jagdish and Umesh, who had accompanied him. In that context it was expected, if really the appellant was the assailant, that his name would be disclosed by all or any of them while furnishing the cause of the injuries. It can, therefore, be legitimately inferred that at the earliest available opportunity

the name of the appellant was not disclosed.

8. It was, however, contended by Mr. Malhotra appearing on behalf of the respondent that since the F.I.R. was lodged by Jagdish with promptitude and therein the name of the appellant as the assailant had been mentioned, non-disclosure of his name earlier before the doctor, who was under no statutory obligation to record the name of the assailant, was of no moment. If the F.I.R. was recorded at 2.40 P.M. (on July 26, 1986) as indicated therein we might have persuaded ourselves to accept the contention of Mr. Malhotra but we find, surprisingly enough, that no special report in respect of the registration of the case was sent to the Magistrate on that day; and, indeed, as the evidence on record unmistakably shows that it was forwarded to the Magistrate only after the case was converted to one under Section 302 IPC consequent upon the death of Ramphal on July 27,1986 and received in his office at 10 P.M. This glaring circumstance prompts us to hold that the F.I.R. did not see the light of the day till the death of Ramphal and the version of the prosecution that the F.I.R. was recorded on July 26, 1986 is not true.

9. 9. For the foregoing discussion the prosecution case as presented before the Court cannot be accepted. We, therefore, allow this appeal, set aside the conviction and sentence recorded against the appellant and acquit him. The appellant, who is in jail, be released forthwith unless wanted in connection with some other case.

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