

Surjansingh Vs. State

Surjansingh Vs. State

SooperKanoon Citation : sooperkanoon.com/757301

Court : Rajasthan

Decided On : Apr-27-1971

Reported in : 1971WLN360

Judge : B.P. Beri; and L.S. Mehta, JJ.

Appeal No. : D.B. Criminal Appeal No. 773 of 1970

Appellant : Surjansingh

Respondent : State

Disposition : Appeal dismissed

Judgement :

L.S. Mehta, J.

1. In village Kishanpura Utarda, police station, Sadul Shahr, District Ganganagar, one Nathusingh Rajput, son of Moolsingh, had 180 Bighas of land. Nathusingh had no son. He had a D/o Mst. Soni. Her son, Dhyan Singh, P W.6, had been taken in adoption by Nithu Singh. Nithu Singh died some 6 years back. Banwari Lal, P.W. 5, Sarpanch, Gram Panchayat, Kishanpura, caused mutation of 90 bighas of land in favour of Dhyan Singh and the residual in the name of Mst. Soni. Out of the share allotted to Dhyan Singh, a strip of 20 bighas in Chak No. 10 P.T.P. had been under the cultivation of Mangla Ram alias Sheo Karan, Bishnoi

(deceased) as a lessee for about 10 years. Sometime after the death of Nathu Singh. Sheo Karan had purchased the land from Dhyan Singh through a registered sale-deed. 12 bighas of land in Chak No. 10 P.T.P. and 8 bighas of land in Chak No. 13 P.T.P. had been under the tillage of Kapoor Singh. After the death of Ntthu Singh, the accused Surjan Singh Rajput, resident of Kishanpura Utarda, and his father Puran Singh, his uncles Ganpat Singh and Dungar Singh had taken wrongful possession of the land from Kapoor Singh and started cultivation. Surjan Singh also wanted to buy the land, which had been purchased by Sheo Karan. He held out a threat to Sheo Karan for the abandonment of the land. Sheo Karan, however, declined to give it up. Surjan Singh also wanted to get a sale-deed executed in respect of the land which he had extorted by from Kapoor Singh. He somehow suspected that because of Sheo Karan's intervention Dhyan Singh had not agreed to regularise his possession through the execution of a sale-deed. Surjan Singh then started harbouring ill will against Sheo Karan. He threw a challenge that some day he would expose his life to peril. Surjan Singh had also told Banwari Lal, Sarpanch, that Dhyan Singh was willing to sell his land to him, but Sheo Karan had been an impediment on his way to success. The Sarpanch, would tell Sheo Karan to desist from his activities lest he would be killed. On December 16, 1968, Sheo Karan had his turn of irrigating his land with canal water from 5.30 am to 3 p.m. He sent his 'Siri' Arjun Meghwal, P.W.8, to irrigate his land. Bhaira Ram, P.W. 3 and Mula Ram, P.W. 2, also went to Chak No. 10 P.T.P. to reap 'Guwar' crop. That day at about 1.30 p.m. Surjan Singh came to the land. He was armed with a 12 bore-gun (Ex. 7). Surjan Singh asked Sheo Karan to let him divert water towards his land. Sheo Karan said that he was entitled to avail himself of water upto 3 p.m. Thereafter he could divert it aside towards his land. Surjan Singh dwelt firmly on what he asserted. Sheo Karan told him that if he wanted to cut the water supply by force, he could please himself. Soon after Surjan Singh became frantic. He said 'I have nothing to do with water. I shall kill you'. Saying so, he loaded his gun. He fired a shot which hit Sheo Karan's abdomen. The victim fell down. Surjan Singh reloaded his gun. He then asked Bhaira Ram, Sahi Ram, and Moola Ram to lift Sheo Karan and take him towards his 'Jhuggi' (hut). Mst. Shanti Davi Bhaira Ram, Sahi Ram and Moola Rama implored Surjan Singh to leave Sheo Karan on his field. Surjan Singh did not agree to it. He beat Bhaira

Ram with the buttend of his gun and threatened them that in case they did not carry Sheo Karan to the 'Jhuggi', he would put all of them to death. This reproach frightened the 'Siris' of Sheo Karan. They lifted the injured and carried him to Surjan Singh's 'Jhuggi', which was at a distance of 44 Killas (one Killa being equivalent to 165 ft. x 165 ft.) and placed him in front of the hut. Then Surjan Singh aimed his gun at Sheo Karan's chest and fired it, resulting in his quick death. Later on Surjan Singh told the 'Siris' menacingly that they should better leave the place, otherwise they would have to play with their lives. At that time Budh Ram Bishnoi, whose land was situate near Chak No. 10 P.T.P, happened to come over there and witness the occurrence. Sahi Ram, Bhairam, Moola Ram and Mst. Shanti Devi went to the village Kishanpura. They apprised the Sarpanch Banwari Lal, P.W. 5, of the unfortunate calamity. Banwari Lal, P.W. 5, Sarpanch advised them to go to the police station, Sadul Shahar. He also accompanied the party. First information report of the occurrence was lodged with the police station, Sadul Shahar, that very day at 2.50 p.m. The police found a contusion on the left forearm of Bhaira Ram. The same was noted at the bottom of the first information report by the police. A case under Section 302, I.P.C. was registered and investigation was set in motion. The police prepared description memo of Sheo Karan's dead body (Ex. P.2), site-plan (Ex. P.3), detailed account of memo of the site (Ex. P.3A), seizure memo of the blood-stained clothes of the deceased Sheo Karan (Ex.P. 5) and other necessary documents. Police also recovered an empty cartridge on the spot under memo Ex. P.166 twelve bore cartridge pellets were found at Chak No. 10 P.T.P. They were seized by the police under memo Ex. P. 17. 5 more twelve bore pellets were found at Killa No. 2, Chak No. 10 P.T.P.A memo in respect thereof was prepared and is marked Ex. P.18, The accused Surjan Singh surrendered himself at the police station, Kotwali, Ganganagar, on December 26, 1968, at 10 p.m. along with his gun Ex. 7. The accused furnished information to the police that he had concealed one empty cartridge fired by his twelve bore sun in the thatch of his hut, in his field, at Killa No. 18, Chak No. 10 P.T.P. and he could get it recovered: vide Ex. P.28. Pursuant to that information the police recovered the fired cartridge at the instance of the accused in the presence of 'Motbirs' under memo Ex. P. 29. The gun, the empties, the pellets and wads recovered from the body of the deceased were duly sealed and were sent to Jagdish Prasad Nigam,

P.W. 16, Ballistic Expert, State Forensic Science Laboratory (MP) He examined the gun and found that it was in a perfect working order and it showed signs of discharge. He further opined that the empty cartridges Exs. E.C. 1 and Ex. E.C. 2 had been fired from the gun Ex. 7. The witness further expressed the view - that the pellets, marked Ex. P.1 to Ex. P.16, could form part of the load of twelve bore cartridges like Ex. E.C. 1 and Ex. E.C. 2 and that the wads W. 1 and W. 2 could also be the wads of the twelve bore cartridges. Dr. S.L. Kaushik, P.W. 13, Incharge, Primary Health Centre, Sadul Shahar, conducted autopsy on the dead body of Sheo Karan. He found the following injuries on the person of the deceased:

1. Gun shot wound 1' x 1' circular cavity deep on the body of sternum just near its angle. The wound was direct to left lateral side and down-ward. Margins of the wound were irregular and inverted. 1/7' of the right margin is is scorched. It was a wound of entry. There was the fracture of the body of the sternum under the wound.
2. Gun shot wound 1/3' x 1/3' into muscle deep on the left side of the chest 5' from the left nipple. It was a wound of exit.
3. Gun shot exit wound ' x ' cavity deep left side of chest ' below injury No. 2.
4. Gun shot exit wound ' x ' on muscle deep on the left side of chest ' below and medial to injury No. 3.
5. Gun shot wound exit 1/3' x 1/3' x muscle deep, left side of chest ' below injury No. 4.
6. Gun shot exit wound ' x ' muscle deep on the left side of chest ' below injury No. 5.
7. Gun shot wound 1' x ' muscle deep on posterior aspect of the right upper arm 2' above the lateral epicondyle.
8. Abrasion 2' x 1' then tapering gradually upward 7' on posterior aspect of the right upper arm ' above lateral epicondyle.

9. Abrasion 1' x 1' lenior on the front of neck 14' above the right sterno-clevicular joint.

10. Gun shot (entrance) wound 2 x 1' x circular x cavity deep on the left illiac fosse 3' below and lateral to umbilicus margins inverted and irregular directed to the left lateral side and downwards. Intestines hanging outside.

11. Gun shot exit wound 1/3' x 1/3' 'muscle deep on the left enquinal region 1' below ant-sup-illiac spine.

12. Gun shot exit wound 1/3' x 1/3' muscle deep on the left enquinal region ' below and lateral to ant-sup-illiac spine.

13. Gun shot (exit) wound 1/3' x 1/3' x muscle deep on the left buttock 1' below and lateral to the injury No. 12.

14. Gun shot exit wound ' x ' muscle deep on the left buttock ' below injury No. 13.

15. Gun shot exit wound 1/3' x 1/3' muscle deep on the left buttock.

16. Gun shot exit wound ' x ' muscle deep on the left buttock.

On opening the dead body the Doctor found as under:

Fracture of body of sternum and 8th, 9th and 10th left ribs near the angle. Left thoracic cavity contains blood and blood clots.

In the opinion of Dr. Baushik, Sheo Karan died of haemorrhago and shock due to gun shot wounds. Injury No. 1 individually and the other injuries collectively were sufficient in the ordinary course of nature to cause death. The injuries were ante-mortem. The injuries were the results of two gun shots. The Doctor recovered 5 pellets and 2 wads in the body of the deceased. They were duly sealed and sent to the Station House Officer, Sadul Shahar. The Doctor did not find any scorching or blackening around injury No. 10. On December 17, 1968, the Doctor examined the injured Bhaira Ram. He noticed a swelling 2' x 1' oblique on the left fore-arm 1' below the lateral epicondyle. After necessary investigation the police presented a challan in the court of Munsif-Magistrate, Hanumangarh, against the accused

Surjan Singh and his associate Hanuman Singh. Preliminary inquiries were conducted by the said Magistrate as envisaged by Section 207-A., Cr.P.C. He then committed the accused Surjan Singh and Hanuman Singh for trial to the court of Sessions Judge, Ganganagar. The case was tried by the Additional Sessions Judge, Ganganagar. On May 7, 1969, charges under Section 302, IPC, and Section 27 Indian Arms Act were read over & explained to the accused Surjansingh and a charge under Section 302/34, I.P.C., was read over & explained to the accused Hanumansingh. Both the accused denied to have committed the alleged crimes and claimed trial. In support of its case the prosecution examined 17 witnesses, including eye-witnesses, Mst. Shanti Devi, P.W. 1, Moola Ram, P.W. 2, Bhaira Ram, P.W.3, Sahi Ram, P.W. 4, Arjun, P.W. 8. and Raja Ram, P.W. 9. The accused Surjan Singh in his statement, recorded under Section 342, Cr.P.C., stated that he did not acquire 20 bighas of land by force from Kapoor Singh and that he knew nothing in the matter, nor did he fire his gun at Sheo Karan. He also denied to have caused any injury to the fore-arm of Bhaira Ram with the butt of his gun. He repudiated the recoveries of the empty cartridges and the gun. He did not produce any evidence in his defence. The trial court, by its judgment, dated November 12, 1970, convicted Surjan Singh under Section 302, I.P.C. and Section 27, Indian Arms Act, and sentenced him to death on the former count but declined to pass separate sentence on the latter count It acquitted the co-accused Hanuman of the indictment under Section 302/34. I.P.C.

2. The learned Additional Sessions Judge, Ganganagar, has submitted proceedings (Murder Reference No. 5 of 1970) to this Court for confirmation of the death sentence in accordance with the provisions of Section 374, Cr.P.C. Dissatisfied by the verdict of the trial court, Surjan Singh has also taken an appeal (D.B. Criminal Appeal No. 773 of 197Q). Both the reference and the appeal emerging out of the same judgment, are, disposed of together.

3. First, we will take up the appeal filed by the condemned prisoner. The contention of learned Counsel for the appellant is that the charge read over and explained to the accused Surjan Singh was defective in as much as it dealt with only one fire and not with the two fires as alleged by the prosecution His further grievance is that the eye-witnesses have unanimously said that only who

shots were fired by the accused This eye-witness account does not accord with the medical evidence and the recovery of the 16 pellets. Learned Counsel then urged that the prosecution witnesses being; of partisan should not have been relied upon. Independent witnesses like Birbal and Sultan who were having their agricultural lands in the vicinity of the place the incident, have been with held and, therefore, adverse inference should be drawn against the prosecution. Learned Counsel's further complaint is that if the gun was fired from a close range as stated by the prosecution witnesses, there should have been marks of scorching or blackening around the injuries. In the end counsel beseeched that the sentence of death awarded by the trial court to the accused is, in the circumstances of the case, much too severe. Learned Deputy Government Advocate supported the judgment of the court below.

4. The first question that arises for consideration is whether Sheo Karan met a homicidal death as a result of the gun fires. Dr. S.L. Kaushik, PW 13 conducted the post mortem examination of the dead body of Sheo Karan on December 17, 1968, at 10.25 a.m. He found on the, person of the deceased as many as 19 gunshot injuries, as set forth above. There were in all 3 entry wounds, & the residue were the exit-wounds. Doctor is definitely of the view that all the injuries were the results 2 gun fires. Injury No. 1 individually and all the other injuries cumulatively were sufficient in the ordinary course of nature to have caused death. The medical evidence stands unchallenged. No comments were offered by counsel for the appellant on this aspect of the case. The trial court, therefore, was justified in arriving at the conclusion that Sheo Karan died of the gun fire wounds and that his death was homicidal.

5. The next question that crops up for earnest consideration is whether consideration fired his sun and shot dead Sheo Karan on December 16, 1968. The important witness in this case is Mst. Shanti Devi (32), widow of Sheo Karan. She her husband Sheo Karan, her Siris' Bhaira Moola and Sahi Ram went to her field to reap 'Guwar' crop. Surjan Singh, accused and come to the spot. He was having a gun with him. He asked her husband to all him to divert water toward his land. Her husband told him that he could not do so as he was entitled to irrigate his land upto 3 p.m. Surjan Singh then told Sheo Karan that he would cut the water supply

just then. Soon after he made known to her husband that he had nothing to do with water and that he would put an end to his life. He loaded his gun and fired it at her husband. The victim sustained an injury on his abdomen and he fell down. Surjan Singh again loaded his gun and ordered threateningly Moola, Bhaira and Sahi Ram to carry the injured to his 'jhuggi' (hut). Her 'Siris' made humble application to Surjan Singh to leave alone Sheo Karan on his field. This prayer instead of softening further enraged Surjan Singh. He gave a blow on the fore arm of Bhaira Ram with the butt of his gun and asked all the 'Siris' to carry the injured Sheo Karan to his 'Jhuggi'. Thereupon they conducted Sheo Karan to the accused's 'Jhuggi'. There was a trail of blood in between the place where the victim was first shot and the 'Jhuggi'. Soon after Sheo Karan was put in front of the 'Jhuggi'. Surjan Singh aimed his gun at his chest and fired it. The victim breathed his last then and there. Subsequently Surjan Singh threatened all the eye witnesses to run away lest they would also experience the same destiny. There after all of them, including the witness, went to the village Kishanpura Utarda and apprised Sarpanch Banwari Lal, PW 5, of what had transpired, Mst. Shanti Devi has also supported in to the motive for the crime. She has stated that Surjan Singh was interested in the land (20 bighas), which her husband had bought from P.W. 6 Dhyan Singh, adopted son of Thakur Nathu Singh. He was anxious to buy Dhyan Singh's another strip of land, which he had acquired by force from Kapoor Singh to whom it had been tenanted. As Sheo Karan stood in his way in achieving his object, he had thrown a challenge through Sarpanch Banwari Lal, P.W. 6, that some day he would put an end to his life. This challenge had been given about a month prior to the occurrence. The witness then related the immediate cause of calamity relating to deflection of water in the field of Surjan Singh, as stated above.

6. The other eye-witnesses are P.W. 2 Moola Ram, P.W. 3 Bhaira Ram, and P.W. 4 Sahi Ram. They fully corroborate the testimony of Mst. Shanti Devi. All the 3 persons have given graphic account of the whole happening. They were present on the spot, when the accused Surjan Singh fired shot at Sheo Karan on the latter's field. They have also deposed how they were constrained at the point of gun to carry Sheo Karan to his 'Jhuggi', where Surjan Singh in their presence fired another shot at the chest of Sheo Karan and shot him dead.

7. Learned Counsel for the appellant submitted that Mst. Shanti Devi, P. W., is the widow of Sheo Karan and Bhaira Ram, P.W. 3, and Sahi Ram, P.W. 4, were his 'Siris'. These witnesses, therefore, were of partisan character. The fact that the prosecution witnesses in a murder trial are either the relations or the 'Siris' of the deceased does not detract from the value to be attached to their evidence, because, naturally enough, they are interested in seeing that the real murderer is convicted of the crime. They cannot be expected to adopt a course by which some innocent person would be substituted for the person really guilty of the murder and that too, when no enmity as such has been proved to have existed between the witnesses and the accused as would prevail upon them to give false evidence and to substitute him as the murderer in place of the real guilty. As has been observed by their Lordships of the Supreme Court in *Bhupendra Singh v. State of Punjab* : 1969 CriLJ6 :

Their feelings would be the strongest against the real culprit and, consequently, their evidence cannot be discarded on the mere ground of their close interest in the deceased.

The names of all the 4 eye-witnesses appear in the first information report. The fact that all the four eye-witnesses are mentioned in the first information report, filed soon after an hour of the occurrence, strengthened the fact of their presence on the spot during the incident.

8. Mst. Shanti Devi, widow of the deceased Sheo Karan, was an agriculturist by profession and when the 'Guwer' crop was being cut down, her presence on the spot was but natural. Bhera and Sahi Ram, were the 'Siris' of Sheo Karan and, therefore, their availability at the place cannot be doubted V particularly when the crop was being harvested. Moola Ram; P.W. 2, son of Bhaira Ram, was a hired labourer. He was the resident of Rishanpura Utarda. His presence at the site also cannot be said to be abnormal. Besides, Moola Ram is perfectly and independent witness.

9. It is in the evidence of the prosecution witnesses that after the first fire, the accused ordeied Moola Ram, Bhairam Ram and Sahi Ram to carry the injured Sheo Karan to his 'Jhuggi' and when the witnesses earnestly solicited that Sheo

Karan should be left where he was, the accused hit Bhairam Ram with the butt of his gun This fact stands corroborated by the medical evidence, given by Dr. S.L. Kaushik, P.W. 13, who has said that he examined Bhaira Rem and be noticed a swelling 2' x 1' x oblique on his left fore-arm 1' below lateral epicondyle. This lends further assurance to the presence of Bhaira Ram in particular and in general other witnesses who have testified how Bhaira Ram sustained an injury.

10. The trial court, which recorded the statements of the above-nrred 4 witnesses, relied upon their version. An appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness as the trial Judge alone knows the demeanour of the witness. He alone can appreciate the manner in which the questions were answered, whether with honest candour or with doubtful plausibility. He alone can form a reliable opinion as to whether the witness had emerged with credit from' cross-examination : see Vaharshak v. Standard Coal Co. A.I.R. 1943 P.C. 159.

11. We have carefully looked into the cross examination of the above witnesses and, in our opinion, the prosecution story, in all its main aspects, is true and reliable. There is very little to criticise in the evidence of the above four eye-witnesses. The fact that they have made a few small and un-important contradictions is of little consequence. The major part of the prosecution story hangs together remarkably well despite many attempts to trip them in cross-examination.

12. The testimony of the above-named 4 eye witnesses finds further support in the evidence of P.W. 8 Arjun and P.W. 9 Raja Ram, Arjun Meghwal of village Kishanpura Utarda had gone to irrigate Sheo Karan's field at about 5.30 a.m. on the date of the occurrence. At about 1 or 1.30 p.m., Hanuman and Surjan Singh accused told him that he would cut the water supply. The witness said to Surjan Singh that he should better advise Sheo Karan in the matter. The witness further says:

Sheokaran, his wife, Sahiram, Bhaira, and Moola were collecting Guwar in their field at a distance of about 3 Killa from me. Surjan accused then proceeded towards Sheokaran's field. Hanuman remained with me. After some time I saw

Surjan firing a shot at Sheokaran, as a result of which Sheokaran fell down. Then I saw Sheokaran being carried by Sahiram, Bhaira and Moola towards the Jhuggi of Surjan accused. Mst. Shanti was seen following them weeping and crying. Sheokaran was laid before the Jhuggi. At that time Hanuman said to me that he would cut the throat of Sheokaran. I also heard report of another gun fire near the Jhuggi.

In the cross-examination the witness states that the place where the accused first fired at Sheo Karan in the field was visible from the place where he was watering the field. The witness further deposed in the cross-examination that he saw Sheo Karan accused firing near the 'Jhuggi'. It is true that at one place the witness has said that he could not say at what distance and from what position Surjan had fired at Sheo Karan, but from this statement it can not be said that Arjun did not see the actual event. The witness was at some distance and therefore, he could not precisely point out the degree of remoteness from which the gun was shot and the exact position of Surjan Singh at the time of the actual firing.

13. Raja Ram P.W. 9 is the neighbour of Sheo Karan's field. His land was only at a distance of about 3 Killas from that of Sheo Karan. The, witness has categorically said:

I saw Surjan accused present in the court firing at Sheo Karan. There after Sheo Karan fell down. About 4 minutes thereafter, Sheo Karan was carried by Sahiram, Mula Ram and Bhaira Ram, towards the south. Mst. Shanti was following them weeping. Sheo Karan was placed near the 'Jhuggi' of Surjan Singh After about two minutes, I heard report of another fire.

Nothing has been elicited in the cross examination of the above 2 witnesses, which may detract from the value to be attached to their evidence. Their testimony is consistent. Though these witnesses were at some distance, but they actually saw the entire incident. Both of them are independent. We see no reason to disbelieve them. They afford unstinted corroboration to the testimony of eye-witnesses Mst. Shanti Devi, Moola Ram. Bhaira Ram and Sahi Ram.

14. The evidence discussed above reveals that the prosecution story is supported by as many as 6 eye-witnesses. In the circumstances of the case we do not think that the testimony of these witnesses is in any manner not worthy of credence. We must, therefore, hold that their evidence has been rightly relied upon by the trial court and it fastens the guilt on to the accused.

15. Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no significance. However, in this case there is the evidence of Sarpanch, Banwari Lal, P.W. 5, that there was a dispute between Sheo Karan and Surjan Singh accused regarding the land of one Nathu Thakur. Accused was interested buying 20 bighas of land which Sheo-Karan was cultivating and the same area of land which Kapoor Singh was tiling. Both the strips of lands once belonged to Nathu Thakur. A month before the occurrence Surjan Singh told the witness to tell Sheo Karan not to stand on his way, otherwise he would kill him. This statement gets corroboration from Mst. ShantiDevi, P.W. 1 and Dhayan Singh, P.W. 6. Their testimony has not been assailed. The prosecution has thus succeeded in proving that there was bitter animosity between Sheo Karan and the appellant.

16. Learned Counsel for the appellant has submitted that the prosecution did not examine independent witnesses like Birbal and Sultan who being neighbours were present near the site of the occurrence. An adverse inference against the prosecution should, therefore, be drawn on account of their non-production. In this connection, it may be pointed out that none of the 6 eye-witnesses has categorically said that Birbal and Sultan were available near -about the scene of the crime. A question was put to Mst. Shanti Devi, P.W. 1, in connection with the presence of Birbal and Sultan, to which her reply was:

The fields of Sultan and Birbal are adjoining our fields on the north side. They might be working at their fields, but none of them came near us.

From this answer it cannot be inferred that these persons, were present in their fields at the crucial time. That apart, it is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it for unfolding its case; but it would be unsafe to lay down as a general rule that every witness must be

examined even though his evidence may not be very material or even if it is found that he has been won over or terrorised. In such a case it is always open to the defence to examine such a witness and the court can also call such a witness in the box in the interest of justice under Section 540, Cr.P.C. In the instant case it has not been proved that the two witnesses Sultan & Balbir, were present on the spot and that their evidence would have furnished substantial material for unfolding the prosecution story. We do not, therefore think that it was necessary for the prosecution to examine them. A mere consideration that they might have thrown some further light to how things happened would not justify the conclusion that the commission to examine them was due to any oblique motive and could go to benefit the accused.

17. Learned Counsel for the appellant then submitted that as many as 16 pellets were recovered either from the spot or from the body of Sheo Karan. That shows that 3 shots were fired by the accused. This fact, learned Counsel adds, gets further support from the medical evidence given by Dr. S.L. Kaushik, P.W. 13, who has stated that he noticed 3 entry wounds in the body of the deceased Sheo Karan. The eye-witnesses have unanimously said that the accused fired only 2 shots. The benefit of the discrepancy between the eye-witnesses' account and the medical evidence, counsel submits, should go in favour of the accused. P.W. 4 Sahi Ram has stated that the police recovered 6 pellets under Sheo Karan's body near the 'Jhuggi'. The police also recovered an empty 12 bore cartridge and 4 pellets from the place where Sheo Karan was first fired. Sarpanch Banwari Lal, P.W. 5, says that the police found an empty cartridge lying in the field and it was taken in its possession after preparing a memo Ex. P. 16. The police also found 5 pellets in the field and prepared a memo Ex. P. 17. Both the memoranda bear his signatures. The witness further says that 6 pellets were recovered from the dead body of Sheo Karan at the 'Jhuggi'. They were seized by the police under memo Ex. P. 18, which has been attested by him. Dr. S.J. Kaushik, P.W. 13, has deposed that 5 pellets were recovered from the body of Sheo Karan, i.e., 3 from the lateral wall of the thoracic region and 2 from the left hip. They were sent to the Station House Officer in a sealed condition. P.W. 14 Suraj Prakash, Incharge Police Station, Sadul Shahr, testifies that they found an empty cartridge of a 12 bore gun and 5 pellets in Killa No. 2. He further found 6 pellets at the place where

the dead body of Sheo Karan was laying. It is in the evidence of Station House Officer, Kotwali, Ganganagar, Surja Ram P.W. 15, that Surjan Singh accused surrendered himself to the police station, on December 26, 1968, at 10 a.m. He had one 12 bore single barrel gun, 5 live cartridges and a licence of the weapon. The articles were seized and they were sent to the police station, Sadul Shahar. P.W. 17 Lalchand, Station House Officer, Sadul Shahar, obtained the gun in a sealed condition, The accused Surjan Singh while in the police custody, gave information to the Station House Officer Lalchand that he had placed an empty cartridge in the thatch of his hut in Killa No. 18, Chak Ho. 10 P.T.P. That information was reduced to writing and is marked Ex. P. 28. Pursuant to it empty cartridge was recovered by the police at the instance of the accused under memo Ex. P.29. The recovered empties, the pellets including wads, and the gun were sent to the Ballistic Expert Jagdish Prasad Nigam, P.W. 16, in a sealed condition through P.W. 12 Sujan Singh, P.C. No. 336, police station, Sadul Shahar. Sujan Singh has unequivocally said that nobody tampered with the seals so long as they remained in his custody. He handed over the packets to the Director, Forensic Science, Laboratory, Sagar. P.W. 16 Jagdish Prasad Nigam of the Forensic Science Laboratory, Sagar (M.P.) examined all these articles which he had received in a sealed and labelled condition. In his opinion the gun Ex. 7, was in perfect working order and it showed signs of discharge. The empty cartridges Exs. E.C. 1 and E.C. 2 were fired from the gun Ex. 7. The Ballistic Expert further expressed the view that the pellets Exs. P.1 to P.16 could form part of the load of the 12 bore cartridge like Exs. E.G. 1 and Ex. C.2. The wads W. 1 and W. 2. could also be of the 12 bore cartridge.

18. The recovery of the gun, 2 empty cartridges and 16 pellets supply an important link connecting the accused with the crime. The submission of learned Counsel for the appellant is that 16 pellets could have formed part of the 3 cartridges and not 2. No question was put to, the Ballistic Expert on, this point. That apart Dr. Kaushik. P.W. 13 has precisely stated that the injuries on the person of the deceased could have been caused by 2 shots of gun fire. It is true that Dr. S.L. Kaushik has deposed that he noticed 3 entry wounds on the deceased's body. One such injury was on the sternum, the other was on the posterior aspect of the right upper arm and the third appeared on the umbilicus region. From the 3 entry

wounds it cannot be inferred that actually they were the result of 3 shots. The injury on the right upper arm could have also been caused by a pellet straying from the first or the second fire. In that view of the matter, it is difficult to hold that the medical evidence does not accord with the prosecution story, disclosed by the eye witnesses.

19. Learned Counsel for the appellant then submitted that eye-witnesses produced by the prosecution say that gun shots were fired from a very close range. If that were so, there should have been marks of blackening and charring on the body of Sheo Karan.

20. It is stated in Lyon's Medical Jurisprudence. Tenth Edition, Page 276, that:

If the muzzle of the gun is held to the surface of the body, or within a few inches of it, the whole charge of shot enters as one mass, followed by the wad and the still highly compressed gases resulting from the explosion.

The learned author further says that:

If the gun be held some what farther away from the body, the shot will enter an mass, but the gases will no longer follow.... At a distance of 3 feet, the shot mass begins to spread.

In Taylor's Principles and Practice of Medical jurisprudence. Twelfth Edition, Vol. I, P.296, it is given;

We may assume that marks of burning, of blackening, or of tattooing from powder indicate that the weapon was fired from a near distance, certainly within arm's reach.

In Modi's Medical Jurisprudence and Toxicology, 14th Edn., p. 233, it is epitomised:

If a firearm is discharged very close to the body in actual contact, subcutaneous tissues over an area of two or three Inches round the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tatoed with unburnt grain of gun-powder.... No blackening or scorching is

found, if the firearm is discharged from a distance of more than four feet. Moreover, these signs may be absent even when the weapon is pressed tightly against the skin of the body, as the gases of the explosion and the flame, smoke and particles of gunpowder will all follow the track of the bullet in the body.

In the present case from the evidence of Mst. Shanti, it is apparent that the accused made first fire at Sheo Karan from a distance of about 10 ft. though the witness as said that the second fire was made from a distance of about 2 ft. The witness is a rustic woman. It cannot be said that her statement in regard to the distance from which the second fire was made is absolutely correct. The distance which she has related is approximate. Similarly Moola Ram, P.W. 2, has said that the accused fired his gun from a distance of 5 ft. in the field and the second fire was made from a distance of about 6 ft. Bhaira Ram. P.W. 3, on the other hand, says that the second fire was made firm a distance, of 5 feet. The above evidence when read as a whole, shows that the firearm, when discharged, was not very close to the victim's body nor was it in actual contact with it. Therefore, blackening or scorching marks could not have been found on the person of the deceased.

21. Learned Counsel for the appellant further urged that the charge framed by the trial court is defective in as much as the charge did not explicitly mention the 2 fires, alleged to have been made by the accused. Because of the omission of the second fire in the charge, the counsel added, the accused, has been materially prejudiced. The relevant portion of the charge reads as under:

That you, on or about the 16 day of December, 1968, at 1.30 p.m. in the field of Sheokaran situated in 'Rohi' of village Kishanpura Utarda committed the murder of Sheokaran by firing gun shot and thereby you committed an offence punishable under Section 302 Indian Penal Code which is within the cognizance of the court of Sessions Judge, Ganganagar.

22. It is true that in the charge quoted above, the details of the 2 fires have not been given. Sections 225 and 537, Cr.P.C., deal with cases where a charge is framed, but there are errors, emissions or irregularities therein. Section 225 provides that no error or emission in the statement of the particulars required to be stated in the charge is to be regarded as material unless the accused has been

misled thereby and it has occasioned a failure of justice. Section 537, Criminal Procedure Code, lays down that no finding, sentence or order shall be reversed or altered on account of any error or irregularity in the charge unless it has occasioned a failure of justice. Section 535, Cr.P.C., deals with cases where no charge has been framed & provides that no finding or sentence in the case shall be deemed invalid in appeal or revision unless the court considers that a failure of justice has in fact been occasioned thereby. The point under discussion received the consideration of their Lordships of the Supreme Court in *Moti Das v. State of Bihar* : AIR 1954 SC657 , wherein his Lordship Bose J., speaking for the court; observed:

But a mere imperfection in the charge cannot be used to overthrow a conviction unless prejudice can be shown. The irregularity is curable both under Section 225 and Section 537 of the Criminal Procedure Code.

Again, in *W. Slaney v. State of M.P.* : 1956 CriLJ291 , their Lordships of the Supreme Court made the following observation:

In generality of cases the omission in framing a charge is not per se fatal. The very broad proposition that where there is no charge, the conviction would be illegal, prejudicial or no prejudice, cannot be accepted as sound.

The attitude of the Supreme Court is summed up by his Lordship Gajendragadker J. (as he then was) in *K. Kunhahammil v. The State of Madras* : 1960 CriLJ1013 where he says:

The breach of every provision of the Code does not necessarily make the trial invalid. If the criminal trial is conducted substantially in the manner prescribed by the Code but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537.

In a D.B. case of the Patna High Court in *Nankhoo Mehton v. Emperor* A.I.R. 1936 Patna 358 Rowland, J. held:

It might have been desirable to mention both places, but accused cannot have been misled in his defence and the omission to name Sarmara does not effect the

conviction.

Here, we also deem it desirable to refer to a decision of the Privy Council because much of the judicial thinking in our country has been moulded by their observations. In *Kottava v. Emperor A.I.R. 1947 P.C. 67*, his Lordship Beaumont. said:

If the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537.

Viscount Sumner in *Atta Md. v. Emperor A.I.R. 1930 P.C. 57*, held:

In the complete absence of anything that outrages what is done to natural justice in criminal cases, their Lordships find it impossible to advise his Majesty to interfere.

In this case it might have been desirable to mention both the places in the charge sheet, but the two places are near each other and the victim was Sheo Karan. The charge does say that on December 16, 1968, at 1.30 p.m. in the field of Sheo Karan the accused committed the murder of Sheo Karan by firing gun-shot. The accused had been distinctly told about the two fires at two separate places in his examination under Section 342, Criminal Procedure Code. In this context we do not think prejudice is possible in this case.

23. We agree that a man must know what offence he is being tried for and that he must be told in clear and unambiguous terms, but to say that a technical jargon of words affords him protection is no more than to base the substance of the matter on fanciful theory, divorced from practical reality. Here the accused knew of what he was being tried for. The main facts of the case were explained to him. He was given a full and fair chance to defend himself As all these elements are present, we do not think any prejudice has been caused on the basis of the assumed irregularity as pointed out by the counsel for the accused.

24. As a last resort, the learned Counsel for the appellant vehemently urged that the trial court was wrong in awarding capital sentence to the appellant. His

argument is that there has been protracted trial in this case and that the accused is only about 27 years of age. Therefore, the sentence v awarded by the trial court should be interfered with, The occurrence took place on December 16, 1968. After the occurrence the police investigated the case. Later on preliminary inquiry was conducted by the Munsiff-Magistrate, Hanumangarh. Then the accused was committed to the Sessions Judge Ganganagar. The Additional Sessions Judge tried the case and pronounced judgment on November 12, 1970. Keeping in view the above dates of the various stages at which the case had to be dealt with, we do not think that the complaint of learned Counsel in regard to the prolongation of the trial is correct. The accused is about 27 years of age. That age cannot be regarded as tender. Besides, age alone cannot be a sufficient, judicial ground for awarding lesser punishment. In *Bhagwan Swaroop v. State of U.P.* : 1971 CriLJ413 . His Lordship Sikri J. (as he then was) had refused to interfere in the sentence of death awarded to the appellant Bhagwah Swaroop, who was only 19 years of age. In that case the accused whipped out a knife and stabbed Dhan Singh in the neck. In Criminal Appeal No. 157 of 1969, decided on February 2, 1970, *Dharampal v. State of M.P.*, the appellant Dharampal inflicted a spear blow on the abdomen of Abhaya Ram, as a result of which the latter fell down and died on the spot. In that case their Lordships of the Supreme Court said:

without anything more he suddenly inflicted a very serious injury in the abdomen of Abhaya Ram, who was defenceless and unarmad. The fact that he gave only a single blow with the spear is not a circumstance which will mitigate the offence, in view of the medical opinion that the particular spear injury caused by the appellant is sufficient in the ordinary course of nature to cause death.

In this case accused went to Sheo Karen's field, fully armed, with a 12 bore gun. He first challenged Sheo Karan and then he fired his gun in his abdomen. Thereafter he told the prosecution witnesses to carry the injured to his 'Jhuggi' and when they declined to do so, he threatened them by hitting the butt of his gun on the left fore arm of Bhaira Ram. The witnesses were thus compelled to take Sheo Karan to the 'Jhuggi' of the accused, where the injured was still found alive. The appellant fired a second shot on his chest and shot him dead on the spot. There was trail of blood in between the two places from which fires were made. The

murder of an unarmed Sheo Karan was entirely unprovoked and perpetrated with a determination reflected by the removal of the injured man to his own field by the accused and by firing a second shot. The interval of time did not help to ease the anger. The removal of the dead body to his own field by accused Surjan Singh smacks of a design to build up a defence. Such a murderer does not merit the lesser of the two sentences. There is no circumstance whatever on the record which we can take into account for reducing the sentence.

25. We accordingly accept the reference submitted by the learned Additional Sessions Judge, Ganganagar & confirm the sentence of death awarded to Surjan Singh. The appeal filed by the prisoner fails & is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com