

Arjun Ram and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-07-1995

Reported in : 1996CriLJ577; 1995(3)WLC748; 1995(2)WLN123

Judge : V.S. Kokje and; V.G. Palshikar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 307; Indian Arms Act - Sections 27

Appeal No. : Cri. Appeal No. 162 of 1988

Appellant : Arjun Ram and ors.

Respondent : The State of Rajasthan

Advocate for Def. : Chandra Lekha, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Adv.

Judgement :

V.G. Palshikar, J.

1. This appeal is directed against the judgment and sentence dated 12-2-88 passed in Sessions Case No. 25/85 by the Addl. Sessions Judge No. 2, Hanumangarh convicting the accused appellants Under Sections 302/34 I.P.C, and 307/34 I.P.C, and Section 27 of the Indian Arms Act. For offence Under

Section 302/34, the sentence was imprisonment for life and a fine of Rs. 2,000/- each. For the offence Under Section 307 I.P.C, seven years' rigorous imprisonment and a fine of Rs. 1,000/- and for the offence under Section 27 of the Arms Act, rigorous imprisonment of two years and a fine of Rs. 500/-. All the sentences were ordered to run concurrently.

2. The prosecution story, stated in brief is that at about 6 in the morning of 22nd August 1983, the incident occurred at village Hardayalpura, in District Hanumangarh. It is alleged by the prosecution that at that time when Bhagirath was going to answer the call of nature, was shot at by Hanuman, as a result of which he died. The incident was witnessed by Patram, PW/4 and several others. PW/4, therefore, started running away from the scene when the other accused persons joined Hanuman and started chasing Patram. When Patram was so running away, his younger brother Birbal came from the opposite side and he was shot by accused Hanuman and accused Krishna, as a result of which Birbal also died. But the accused could not succeed in hitting Patram and they ran away. In the fire that was opened by the accused persons, several others were also injured, some of whom have been examined as witnesses. Relying on the testimony of these eye witnesses, the learned Judge recorded the conviction as aforesaid.

3. In this appeal reappraisal of evidence, without taking into consideration the judgment of the learned Sessions Judge, is necessary.

4. The prosecution has examined 14 witnesses to prove its case. PW/1 is Dr. Rajendra Kumar Gupta who conducted the post-mortem on the body of Birbal and has deposed that the death was caused due to gun shots. He thus proves homicidal death of Birbal. PW/2 is Ranjeet Singh, the Head Constable who was Incharge of the Malkhana where articles recovered or found from or around the scene of offence were entrusted. PW/3 is Kedarlal the Constable who took the articles for examination to the Forensic Science Laboratory, Jaipur.

5. PW/4 Patram is the First eye witness who lodged the First Information Report by 7.30 in the morning on the same day. He has deposed that at about 6.00 in the morning, when his father had gone to answer the call of nature, Hanuman, one of the accused, climbed the wall of his own house and that of the house of Sohanlal

and fired three shots at Bhagirath, who died as a result of those shots. He then stated that Hanuman jumped into the lane and was joined by the three accused persons, each of whom was carrying a fire-arm. Brothers and sisters of the witness came out after hearing the shots and shouts and accused fired from the guns at all of them and four were injured because of the gun fire. In order to save himself, the witness started running away from the house and was chased by the accused persons. When his younger brother Birbal was coming from the opposite side, shots were fired at him as a result of which he also died. But no injury was caused to Patram and the accused ran away. The witness proved Ex. P/7, the First Information Report. He was also a witness to the seizure of clothes of other injured persons and proves Ex. P/9 to 14. This witness has been thoroughly cross-examined. He has admitted that he is unable to attribute each shot fired by the accused persons to any particular injury. He has, however, not deposed nor has seen accused Arjun Ram who is 74 years of age and accused Moola Ram either instigating or abetting the other two accused. There is nothing in the cross-examination of this witness which would require discarding of his evidence.

6-10. PW/5 is Prem who came out of his house after hearing the gun-fire. He saw accused firing at Chelu Ram, s/o Bhagirath. He saw PW/4 Patram running away from his house and Birbal coming towards his house. He saw accused Krishna and . Hanuman shooting Birbal. In his cross-examination he was questioned on the distance between him and the place of occurrence, the nature of fires, the details regarding who fired at whom, causing what injury and the witness has answered all the questions truthfully. No doubt there are certain omissions or contradictions but by and large his evidence is duly corroborated by the testimony of PW/4 Patram and he also corroborates the testimony of PW/4.

11. PW/6 is Dr. Devilal who conducted the postmortem on the body of Bhagirath and has deposed that the deceased Bhagirath was killed by gun shots. The medical evidence given by this witness corroborates the testimony of the eye witness.

12. PW/7 Krishna is another eye-witness belonging to the family of Bhagirath, who was injured by the gun-shots. He came out of the house on hearing the shots, saw

all the four accused armed, received injury by pellets. He generally corroborates the other eye witnesses. He has been thoroughly cross-examined but he is not shaken.

13. PW/8 is Sardul Singh a Constable, PW/9 is the Investigating Officer Abdul Aziz. PW/10 is Bhagwan Singh is the Assistant Police Sub-Inspector who assisted Abdul Aziz. PW/11 Ajit Singh is another Constable. PW/12 is Om Prakash who carried the articles to Laboratory and brought them back and PW/13 is yet another eye-witness who saw accused firing at the injured persons. He speaks of Krishna, Chelu, Guddi and Chawli being injured by the pellets. PW/14 Bhadar is a Panch witness.

14. On appreciation of this evidence, the learned Judge came to a conclusion that the prosecution has proved its story beyond reasonable doubt. He found that the accused persons had the common intention of killing the deceased and, therefore, convicted all of them Under Section 302/34 and Section 307/34 I. P.C. It is this judgment of conviction which is assailed in this case.

15. Mr. Doongar Singh, learned counsel appearing on behalf of the accused submitted that the prosecution evidence is wholly unreliable as it consists only of interested witnesses. However, the submission is not wholly correct. As pointed out above, there are at least two independent witnesses who corroborates the other eye witnesses on all material particulars. It cannot, therefore, be said that the conviction rest solely on the testimony of interested witnesses. No doubt, the witnesses are interested but their interest and presence both is natural and that by itself cannot be a reason to disbelieve those witnesses, particularly when the statements made by them are duly corroborated by two independent witnesses who saw the incident and further corroboration of this testimony is to be found in the medical evidence given by the doctors who conducted the post-mortem. On this ground alone, therefore, the judgment cannot be found to be incorrect.

16. Then it was submitted by the learned counsel that even if the evidence of the eye witnesses is to be accepted, a scrutiny thereof will show that no overt act of any kind is attributed to Arjun Ram, who is an old man of 74 years or Moola ram, who is a young boy of 18 years. No doubt their presence at the scene of offence is

proved but mere presence, in the absence of any overt act is wholly insufficient to warrant conviction Under Section 302/34 of the Penal Code. The learned counsel then submitted that there is no evidence of any motive, due to which the four accused can have the common intention of killing deceased. The petty quarrel which is said to be the cause of killing is not properly proved and in any event it is not proved of the involvement of Arjun Ram and Moola Ram.

17. A careful scrutiny of the evidence requires acceptance of this submission on the part of Mr. Doongar Singh. Factually there is no evidence sufficient enough to warrant their conviction by use of Section 34. There is no evidence of common intention and the cause for which, if the killing took place, is also not attributable to these two persons. There is certainly no evidence of any overt act on the part of these two persons. Merely because they belong to a family (Arjun Ram is the father and the other three accused are his sons), it cannot be said that Arjun Ram and Moola Ram share the intention to kill the deceased. Their coming out of the house, after hearing gun shots, with arms, is also not unnatural as they could be apprehensive of their own being shot at. Having found that their own are the assailants, they became mute spectators to whole incident. However shameful their conduct may be, it is not sufficient to warrant their conviction. We are, therefore, unable to agree with the learned Judge in relation to the conviction of these persons for any of the offence and in our opinion, they are entitled to be acquitted.

18. However, on a careful scrutiny and re-appreciation of the evidence on record given by the eye-witnesses, which is duly corroborated by the other witnesses, we have no hesitation in accepting the findings given by the learned Sessions Judge in relation to the guilt of the accused Hanuman and accused Krishna. There is no reason to interfere with this order in so far as the conviction of accused Hanuman and Krishna is concerned.

19. In the result, the appeal partly succeeds. The judgment and order of conviction and sentence in relation to Arjun Ram and Moola Ram is hereby set aside and they are acquitted of the offence with which they are charged. They are, entitled to be set at liberty, if they are not required for some other offence by the Police. In so

far as the appeal of Hanuman and Krishna is concerned, it is devoid of any substance and is, hereby, dismissed.

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