

Shanker Vs. State of Rajasthan

Shanker Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/760404

Court : Rajasthan

Decided On : Sep-02-1996

Reported in : 1997CriLJ1388; 1996(2)WLN681

Judge : Dinesh Chandra Dalela and; Amaresh Ku. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; Indian Arms Act - Sections 25(1)(A); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 204 of 1978

Appellant : Shanker

Respondent : State of Rajasthan

Advocate for Def. : G.K. Vyas, Public Prosecutor

Advocate for Pet/Ap. : D.K. Purohit, Adv.

Disposition : Appeal allowed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the appellant and the learned Public Prosecutor for the State in Sessions Case No. 55/1977, State v. Shanker and Ors., three persons namely Shanker, Hanuman and Nikku alias Manjeet were tried by the

learned Additional Sessions Judge No. 2, Hanumangarh. Whereas Shanker was tried for the offences punishable under Section 302 of the Indian Penal Code and Section 25(1)(A) of the Indian Arms Act the other accused Nikku alias Manjeet and Hanuman were charged under Section 302 read with Section 34 of the Indian Penal Code. After trial appellant Shanker was found guilty under Section 302 of the Indian Penal Code and sentenced to life imprisonment and under Section 25(1)(A) of the Indian Arms Act sentenced to 2 year's rigorous imprisonment. The remaining two accused were acquitted. Feeling aggrieved by the verdict of conviction as well as sentence Shanker has filed this appeal.

2. In short the prosecution case is that on account of murder which was committed sometime during the infancy of the appellant-Shanker, there was a grudge which the appellant was bearing against Hari Ram, the deceased. On 20th January, 1977 at about 5 p.m. Bhopal Singh and Hari Ram were passing by the side of house of Gordhandas Mundra. At that time three persons who had hidden their faces, reached there and one of them opened fire with a pistol at Hari Ram. Consequently Hari Ram sustained fatal injuries on account of which he died. The faces of the three persons who attacked Hari Ram could not be recognised at the spot. The First Information Report was lodged at the Police Station on 20th January, 1977 at 6.10 p.m. On the basis of the report police registered the case under Section 302 of the Indian Penal Code and after usual investigation the challan was submitted before the learned Munsif and Judicial Magistrate, Suratgarh who ultimately committed the case to the Court of Session.

3. Charges were framed against three persons as described above and they pleaded not guilty to the charges. The prosecution produce its evidence. As many as 7 witnesses were produced by the prosecution. The accused persons were examined under Section 313 of the Criminal Procedure Code. No evidence was led in defence.

4. During investigation a test identification parade was held for the purpose of identifying the suspects who had been arrested by the police. But they could not be identified in the test identification parade. The prosecution case is that after the commencement of the investigation an empty cartridge, a pallet and the dead

body was recovered from the place of occurrence. An empty cartridge recovered from the scene was then and there sealed and two days after the incident the accused Shanker was arrested and at the time of arrest he was found carrying an unlicensed pistol of 12 Bore which was tied around his waist. He was also found carrying 2 cartridges one of No. 2 and the other of L.G. pistol as well as the cartridges recovered from the accused Shanker are alleged to have been sealed then and there. And these articles were sent to the Forensic Science Laboratory for the purpose of comparison and according to the report received from the Forensic Science Laboratory, which is Ex.P-16 the pistol that was sent for examination was found to be serviceable and the empty cartridge which was sent for examination was found to have been fired with the pistol that was sent for examination. The report Ex.P-16, therefore, establishes a nexus between the empty cartridge found at the place of occurrence and the pistol which is alleged to have been found from the accused Shanker at the time of arrest.

5. On the basis of the evidence relating to recovery of empty cartridge from the scene of occurrence and the recovery of pistol from the accused Shanker at the time of his arrest and the Forensic Science Laboratory Report Ex.P-16 and keeping in view the alleged motive and the fact that the accused was entertaining a grudge against Hari Ram, the learned Sessions Judge came to the conclusion that charge under Section 302 of the Indian Penal Code as well as the charge under Section 25(1)(A) of the Indian Arms Act was brought home to the appellant beyond reasonable doubt.

6. The learned counsel for the appellant has submitted that in this case the prosecution evidence cannot be said to be reliable inasmuch as Motbirs witnesses in whose presence the empty cartridge is alleged to have been seized do not support the prosecution case as they have stated that they had seen the cartridge for the first time at the Police Station and put signature at the recovery memo at the Police Station and that in the documents which were prepared by the Investigating Officer it is nowhere been mention that the empty cartridge recovered from the scene was sealed then and there. In view of these facts the submission made by the learned counsel for the appellant is that prosecution has not proved without reasonable doubt that the empty cartridge which was sent to Forensic

Science Laboratory was in fact recovered from the scene of occurrence. The learned counsel for the appellant has also seriously questioned recovery of the pistol from Shanker at the time of his arrest. Our attention has been drawn to the statement of Investigating Officer who had admitted in the cross-examination that he cannot identify the accused Shanker from whose possession the pistol was recovered. The learned Public Prosecutor has also not been able to point out why the other Police Officer who was present at the time of alleged recovery was not examined when the Investigating Officer Jila Singh could not identify the appellant Shanker during his cross-examination. It is also pertinent to point out that the Motbirs witnesses in whose presence appellant Shanker had been arrested along with the pistol in his possession have not been examined in this case. It is also submitted by the learned counsel for the appellant that in this case the prosecution has not cared to prove that the empty cartridge alleged to have been recovered from the scene and the pistol were sent to the Forensic Science Laboratory, Jaipur without being tampered with.

7. The learned Public Prosecutor on the other hand tried to support the judgment given by the learned trial Court.

8. We have carefully considered the rival contention and perused the record. In this case the circumstantial evidence against the appellant Shanker is in form of alleged recovery of empty cartridge from the scene of occurrence, alleged recovery of pistol from the appellant Shanker at the time of his arrest and the Forensic Science Laboratory's Report Ex.P-16 which proves that the empty cartridge was fired with the pistol sent for examination.

9. The submission of the learned counsel for the appellant is that the Motbirs witnesses who could have supported the prosecution case as to the alleged recovery of empty cartridge from the scene of occurrence have not supported the prosecution case and on the other hand stated that they had not seen cartridge on the scene of occurrence and put the signature in the Police Station and in these circumstances the story that an empty cartridge was recovered from the scene of occurrence is open to grave suspicion. It may also be pertinent to point out that only one shot was fired and the pistol contains no magazine and there is no

automatic ejection of cartridge from the pistol. Therefore, unless there is a necessity of re-loading the pistol there was no necessity to unload the pistol after using them so as to drop the empty cartridge at the scene of occurrence for the purpose of being used as evidence. The very fact that only one shot was fired suggests that there was no necessity of unloading the pistol which had been fired and as such there is little possibility of the empty cartridge having been dropped on the ground. So far as the recovery of pistol is concerned it was incumbent on the part of Investigating Officer to prove that he had recovered the pistol from the appellant Shanker but in his cross-examination the Investigating Officer could not identify the appellant Shanker. Besides the Motbirs have not been examined and the other Police Officer who was present at the time of recovery has also not been examined. Therefore, recovery of pistol from the appellant Shanker is also open to serious doubt.

10. We are, therefore, of the opinion that the learned Sessions Judge committed an error in coming to the conclusion that the recovery of empty cartridge from the scene of occurrence and the recovery of pistol from the appellant Shanker was proved beyond reasonable doubt. If the recovery of empty cartridge and the recovery of the pistol from the appellant is held not proved the mere fact that the Forensic Science Laboratory Report Ex. P-16 creates a nexus between the empty cartridge and the pistol cannot by any means justify the conviction of the appellant.

11. For reasons stated above this appeal deserves to be allowed and is hereby allowed. The conviction as well as the sentence of the appellant Shanker under Section 302 of the Indian Penal Code and Section 25(1)(A) of the Indian Arms Act are hereby set aside. The bail bonds of the appellant are hereby cancelled, he need not surrender.