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

Sultan Singh Vs. State of Rajasthan

Sultan Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/767058

Court : Rajasthan

Decided On : May-19-2006

Reported in : RLW2007(1)Raj257

Judge : Shiv Kumar Sharma and; Mohammad Rafiq, JJ.

Appellant : Sultan Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Biri Singh

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Heard learned Counsel for the parties.

2. The brief facts giving rise to this appeal are that a First Information Report was lodged with Police Station Ramganj, Jaipur at the instance of one Ramji Lal S/o. Narayan, who was then posted as Sub Inspector of Police Station Ramganj, Jaipur at 2.15 P.M. on 16th November, 1999. In the report, it was stated that an information was received about a quarrel between a group of persons in the area of police station Ramganj. On receiving this message, Shri Hulasa Ram, SHO sent complainant Ramjilal and Constable Sedu Ram to the site of the disturbance. It

was stated that the SHO Hulasa Ram along with Head Constable Sultan Singh, Ramesh was & Ishwar Singh also followed them on foot. While the SHO Hulasa Ram was making efforts to pacify people, all of a sudden Head Constable Sultan Singh kicked a beggar sitting on the foot-path and overturned 'thelas' of some hawkers and scattered their goods and misbehaved with the persons who were passing by. SHO Hulasa Ram repremanded Sultan Singh for this but he became angry. Hulasa Ram again tried to pacify him stating that Ramganj was highly sensitive area and that he should not misbehave with public in such a manner. All of them came back to the police station. SHO asked Sultan Singh and Rameshwar to deposit their self loaded rifles (for short, SLR) in the malkhana. Hearing this, Head Constable Sultan Singh was infuriated and refused to deposit the SLR and went towards the mess situated in back side of Police Station. Suspecting any untoward incident, SHO along with Sepoy Rameshwar and Chhitar followed Sultan Singh and complainant Ramji La also followed them. At that time Sita Ram who was taking meals also came out in Varandha. SHO Hulasa Ram was trying to pacify Sultan Singh by addressing him as his son. Suddenly, Sultan Singh turned back and pointed SLR at SHO Hulasa Ram and shouted by saying as to how he (SHO) asked him to deposit the weapon. Sultan Singh also abused SHO and opened fire towards him. First bullet fired by Sultan Singh hit on right hand of SHO Hulasa Ram. Head Constable Sita Ram pulled the SHO towards Varandah. Sultan Singh at that stage fired another shot at SHO with the intention of killing him which, hit him on his back. SHO could hardly move two steps while pressing his chest with hands and fell down behind the room of the head-moharrir. Accused Sultan Singh continued to fire from behind the tin-shed by saying that if anyone tried to catch him, he would shoot him. One such fire also hit a neighbouring house. It was also stated that informant along with Constable Gajraj Singh, Bachhu Singh, Ram Roop and Ram Kumar Singh immediately took the injured Hulasa Ram in a vehicle driven by Constable Mahesh to SMS Hospital, Jaipur where he breathed his last.

3. On the basis of the aforesaid first information report, a case was registered under Sections 302 and 307 IPC at police station Ramganj and investigation started. The accused was arrested on the same day. SLR used in the crime alongwith cartridges were also seized. Statement of all these who were present in

police station were recorded by Dy. Superintendent of Police Ramganj Circle, who was Investigating Officer. Site plan of the place of incident was also prepared on the same day. Some fired and unused cartridges were also recovered from the site of incident. Panchnama of the dead body of Hulasa Ram was also prepared. Clothes of the deceased were sized and SLR used in the crime was also seized from the accused Sultan Singh. Copies of Rapat Rojnamchadated 16.11.99 Arm No. 110, HI, 117& 151 Police Line and copies of Rojnamcha, Police Station Ramganj were also simultaneously seized. Bed-head ticket of deceased Hulasa Ram was seized from hospital and record of the malkhana was also seized. Dead body of the deceased Hulasa Ram was sent for post-mortem.

4. After completion of investigation, the charge-sheet against the accused appellant under Section 302 and 307 IPC was filed.

5. The prosecution has examined 19 witnesses in support of its case and has exhibited 48 documents. The prosecution also got exhibited 9 articles. Accused in his defence examined 4 witnesses and got 12 documents exhibited.

6. Learned trial Court after hearing arguments of both the parties and on examination of evidence on record, convicted the accused appellant under Section 302 and sentenced him to undergo rigorous imprisonment for life under Section 302 IPC with fine of Rs. 10,000/-, in default of payment of fine, he was required to further undergo rigorous imprisonment of one year. He was also convicted under Section 307 IPC and was sentenced to undergo rigorous imprisonment for 10 years with fine of Rs. 5,000/- and in default of payment of fine, he was required to further undergo six months' rigorous imprisonment, feeling aggrieved by the aforesaid judgment, the accused appellant has preferred the present appeal.

7. We have heard the argument advanced by Shri Biri Singh Sinsinwar, learned Counsel appearing for the accused appellant and Shri R.P. Kuldeep and Shri A.K. Sharma, learned Public Prosecutors and perused record.

8. Learned Counsel for the appellant Shri Biri Singh Sinsinwar argued that the trial Court has erred in not taking into consideration Rojnamcha report No. 1624 Ex. P. 17, No. 1625 Ex. P. 18 & N. 1627 Ex. P. 20 in its true perspective. He contended

that there was no entry in the rojnamcha report regarding issuance of SLR to the accused appellant nor was there any other evidence on record to prove that the accused was in possession of the fire air. Firearm in the Police Station is issued only when a police personal is going to discharge duties and on return from such duties he is required to deposit the same with malkhana. He further argued that Ex. P. 20 did not bear signature of the Incharge of the Police Station Ratan Singh and also SHO Hulasa ram. Therefore, the case of the prosecution that Ratan Singh took the firearm was falsified and there was no mention in any of the Rojnamcha Ex. P. 17 and Ex. P. 20 about the number of times accused appellant allegedly fired.

9. He further argued that the learned trial Court has erred in not taking into consideration that even though Senior Police Officers immediately arrived at the Police Station, Ramganj when the alleged incident took place, yet the first information report was not lodged for two & half hours. The prosecution has failed to give any satisfactory explanation about this undue delay. Statement of PW. 19 Shankar Lai Circle Officer who conducted the investigation itself cast serious doubt about the presence of the so called eye witnesses at the time of incident. Evidence of PW. 1 Ramji Lal S.I., PW. 2 Mahaveer Singh, PW. 3 Jabar Mai Head Constable also cast serious doubt about their presence at the scene of occurrence. He further argued that no sanctity can be attached to the alleged verbal orders of issuance of SLR to the accused appellant. No firearm can be taken out from the strong room without such arm being first issued in the name of concerned police personnel. In the present case, while the SLR allegedly used for commission of crime was on record issued in the name of some other person, but on evidence, the prosecution was now claiming that it was in the hands of the. appellant which hardly inspire any confidence.

10. Mr. Biri Singh further argued that learned trial Court failed to take into consideration that Ex. P. 15, entry of issuing licence to Jhabarmal has not been proved. PW. 9 Ganesh Dutt stated in the Court that the said document did not bear his signatures. He argued that no weapon, much less SLR, can be issued to any person permanently and argued that such weapon is issued only for the period of duty. No evidence has been brought on record showing that the seized

articles remained intact till the same reached the State FSL. He further argued that neither any armorer nor any expert of the arms was produced before the Court to prove the authenticity of the reports Ex. P. 46 to P. 48. He argued that the prosecution has suppressed the genesis of the incident and has not come with clean hands before the Court. Findings of the learned trial Court are based on surmises and conjectures. He therefore, argued that the present appeal deserves to be allowed and the accused appellant deserves to be acquitted.

11. Shri Biri Singh learned Counsel for the appellant has relied upon a judgment of Hon'ble Supreme Court in the case of Jagat Singh v. State of Haryana reported in 1977 SCC (Cri) 95 wherein their Lordship of Supreme Court on the facts of that case held that the appellant having seen the aggressive posture of the students brought the gun from his house to protect himself and then faced with the fury of the students he lost nerve and fired from the gun. Sentence of life imprisonment in these facts was therefore reduced to rigorous imprisonment of 7 years. He further cited the judgment of Hon'ble Supreme Court in Surendra Singh @ Bittu v. State of Uttaranchal reported in : (2006)IILLJ253SC . In the said case, the accused on being instigated by his elder brother caused a single gun shot injury to deceased. The Hon'ble Supreme Court noted that basic story of the prosecution was the accused appellant fired gun-shot which hit the deceased on being instigated by his elder brother who was origfnally convicted by the trial Court but was later acquitted by High Court and another accused too was acquitted. Hon'ble Supreme Court in the circumstances of the case observed that genesis of occurrence was not proved and their Lordships of the Supreme Court therefore altered the conviction of the accused from one under Section 302 IPC to Section 304 Part-II of IPC.

12. Yet another judgment of the Hon'ble Supreme Court which has been cited by Mr. Biri Singh in Ishwar Singh v. State of U.P. reported in : 1976 CriLJ1883 , is on the point of unexplained delay of 2 days in filing of FIR. He further cited the judgment of Hon'ble Supreme Court in the case Meharaj Singh (L/NK.) v. State of U.P. : 1995 CriLJ457 which is again a judgment on the question of delay in lodging FIR which in the facts of that case, was held to be ante-timed to give it colour of a promptly lodged FIR and was eventually disbelieved. This led to giving of benefit of doubt to the accused resulting in their acquittal. One more decision of Hon'ble

Supreme Court in the case of Avadhesh and Anr. v. State of Madhya Pradesh reported in : 1988 CriLJ1154 on the question of delay in filing the FIR has been cited. In the fact of that case, their Lordships of Hon'ble Supreme Court held that no reason was given for delay in lodgment of FIR even though the police station was situated at a short distance. In another cited decision of the Hon'ble Supreme Court in the case of Thanedar Singh v. State of M.P. reported in : 2002 CriLJ254 , the incident took place in the intervening night of May 18 and 19, 1982 and the complaint was shown to have been lodged on the morning following the night of the occurrence. But it was received by the Magistrate on 21.5.1982. Unexplained delay in lodging and subsequent sending of FIR to the Magistrate was held to have cast a serious doubt about the presence of eye witnesses at the place and time of occurrence. Lastly, he cited the judgment of Hon'ble Supreme Court in the case of Thulia Kali v. State of Tamil Nadu reported in : 1972 CriLJ1296 in which it was held that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating oral evidence adduced at the trial. Importance of the such report can hardly be overestimated from the standpoint of the accused. Object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought.

13. On the basis of the aforesaid quoted arguments and various case laws relied upon by him in support of his case, the learned Counsel for the appellant has prayed that the present appeal be allowed and the impugned judgment convicting and sentencing the accused appellant as aforementioned should be set aside.

14. On the other hand learned Public Prosecutor Shri R.P. Kuldeep has supported the judgment of the trial Court and has argued that there was sufficient evidence on record to prove the charges against the accused appellant. It has been argued that article 1 SLR was handed over to accused Sultan Singh. According to Rojnamcha Aam No. 1624 and Articles 2, 3, 4 & 5 being live bullets were seized

by the. Investigating Officer vide Ex. P. 6, Articles 6 contained four small packets, one packet contains 6 empty of SLR from 2nd one bullet live and 3rd test of fired cartridges used in SLR by the accused from place B to C while one bullet is lead fired cartridges. PW. 1 Ramji Lal, PW. 3 Jhabar Mai, PW. 5 Sita Ram, PW. 6 Ishwar Singh, PW. 13 Rameshwar Prasad are the eye witnesses whose testimony before the trial Court clearly proved the charges against the accused appellant and they have remained unshaken in the cross-examination. PW. 10 Commando Pratap Singh who overpowered the accused Sultan Singh has also provided corroboration to their evidence PW. 12 Suresh Prakash, Constable who was at the relevant time on duty with S.P. North, Jaipur City has categorically stated that the accused was firing with SLR. The testimony of this witness also lend support to the prosecution in proving the charges against the accused.

15. The learned Public Prosecutor has relied upon the judgment of the Hon'ble Supreme Court in the case of Ram Kumar v. State of Delhi reported in : 1999 CriLJ3522 wherein it was held that the evidence of police officers cannot be discarded when it is found to be reliable. On the strength of this judgment, it was argued that since the incident took place in the premises of police station, the police personnel present there were the natural witnesses and their testimony has rightly been relied upon by the trial Court for convicting the accused appellant. The learned Public Prosecutor has also relied upon the judgment in case of Leela Ram v. State of Haryana reported in : AIR 1999 SC3717 , wherein their Lordships of Hon'ble Supreme Court held that irregularity or illegality during investigation ought not to be treated as a ground to reject the entire prosecution case if it has been proved before the trial Court by lead of evidence. It has been held that there are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety, the Hon'ble Court further observed that corroboration of evidence with mathematical niceties cannot be expected in criminal cases. In this case, it was further held that the evidence of ballistic experts cannot be brushed aside since it is in the normal course of events, valuable material viz-a-viz the use of gun and the injury. Minor contradictions from the medical evidence does not travel to the root of the nature of the offence and would not constitute discrepancy in the totality of situation.

Learned Public Prosecutor has also relied upon yet another judgment of the Hon'ble Supreme Court in Sheelam Ramesh and Anr. v. State of A.P. reported in : 2000 CriLJ51 wherein the companion of the deceased immediately went to the police station which was situated at a distance of 200 ft. and returned with a police constable and took the injured first to the Hospital where he died 55 minutes after the incident and thereafter returned to the police Station and lodged a normal first information report. In the circumstances, the delay of one hour in lodging FIR was held to have been explained. It has therefore been argued that the learned trial Court has rightly convicted the accused appellant for the charges leveled against him.

16. We have given our thoughtful consideration to the arguments advanced by both the sides and examined the record. PW. 1 Ramji Lal who lodged the FIR at Police Station Ramganj has stated that when the accused appellant Sultan Singh hit a beggar sitting on the foot path and overturned the thela of hawker, the SHO Hulasa Ram repremanded him and told him behave. He stated that he told Sultan Singh that Ramganj was a sensitive area and he should not have behaved with the people like this. Sultan Singh thereupon got infuriated and went behind the room of head moharrir which was close to the mess. Apprehending any untoward incident, SHO Hulasa Ram also followed him. The accused Sultan Singh turned around and while pointing gun towards him, told him as who was he to ask me to deposit SLR. He immediately fired at Hulasa Ram which hit his fore-arm of the right hand. Head Constable Sita Ram who was present there immediately pulled Hulasa Ram from there and when Hulasa Ram started coming towards room of head moharrir, Sultan Singh while abusing again fired at him from behind at his back which passed through his body and it came out from right side of chest. Hulasa Ram was profusely bleeding and in that stage he fell down in the room of Head moharrir. Sultan Singh continued to fire from behind a tin-shed and threatened if an one dared to catch-hold him, he would finish him. He also fired towards adjoining house of one Sindhi Family. PW. 1 Ramji Lal has further stated that he along with Jagraj Singh, Bachu Singh and Ramswaroop immediately took the injured SHO to SMS Hospital and also informed his Senior Officers. The SHO however could not survive and breathed his last in emergency ward itself. PW. 13 Rameshwar Prasad who also accompanied the SHO and accused to the Ramganj

area and was with him through out has also supported the version of PW. 1 Ramji Lal in every minute detail. Similarly PW. 3 Jhabar Mai Head Constable has also given the similar version of the incident. It may be stated that Jhabar Mai Head Constable was also with accused appellant when they went to visit of area of Amar Restaurant in Ramganj Bazar and continued with him and thereafter came to the Police Station and were asked to deposit arm. He has given similar version of the incident as given by PW. 1 and PW. 13. In the similar manner PW. 6 Ishwar Singh Constable in the same police station has also given similar version of incident. PW. 5 Sita Ram who was Head Constable in the Police station Ramganj has stated that on 16.11.99 while he was taking his meal around 1 P.M. in the mess, he heard somebody speaking loudly. When he came out from Mess he saw the accused appellant Sultan Singh standing with an SLR in his hand which he had pointed towards SHO Hulasa Ram. He has also proved the presence of the other eye witnesses by stating that Ramji Lai, Jhabar Mai, Ishwar Singh and Chhitarmal were present there. He has stated that Sultan Singh filed at Hulasa Ram twice and thereafter fired in air. PW. 15 Mohd. Akil who was then posted as Sub Inspector, Ramganj has proved Panch Nama Ex. P. 4 and seizure of the clothes of deceased vide Ex. 5. PW. 16 Mohan Lal has proved 26 photographs of deceased and site of incident which he himself had taken as Ex. P. 17 to Ex. P. 42.

17. PW. 11 Dr. M.R. Goyal the then Professor & Head of the Department of Medical Jurist, SMS Hospital, Jaipur has stated that the injured Hulasa Ram was brought to the hospital and he conducted his post-mortem and prepared report Ex. P. 16. According to the post-mortem report (Ex. P. 16) which has been proved by Dr. Mr. Goyal, following injuries were found on the person of deceased Hulasa Ram:

Injuries are No. 1 - One punctured wound with inverted margines3 x 1 cms x thorasic cavity deep. Stellate in shape. Vertically blood on back Rt.Side at 6th intercostal space and 8 cms. Lateral to mid-line. No blacking and tattooing present. Collar of abrasion not present.

Injury No. 2 - One extensive laceration with muscles exposed and falling envands as rib support not present the external diameter of wound of size 10x8 cms x

thoracic cavity deep obliquely placed on front of chest upper 2/3. It is 5 cms above from (Rt.) nipple and 8 cms from mid line and 4 cms below from (Rt) clavicle no blacking and tattooing present. Colloray abrasion could not be appreciated.

On dissection through the injury No. 1:

There is apparture through subcutaneous and deep tissues with fracture of 6th rib underline part the sent continue the middle lobe of (Rs.) lung with an approximate 2 cms in diameter oval. The deep on lung tissues when followed from posterior aspect, showed (disruption) extensive tear of lung tissues with blood is in a cavity. Anteriorly there is extensive tear of the soft tissues. Patoralis major and minor muscles with fracture communitted in pleures of ribs from 2nd to 6th rib was missing of most of 2nd rib. The track direction from Injury No. 1 to Injury No. 2 is forward and upwards it is ante-mortem in nature the injury No. 1 appears would of entry and injury No. 2 would of exit caused by riffled firearm ammunitions fired from a distance (distant shot).

Injury No. 3:-One punctured wound of size 2 x 11/2 cms muscles deep over lower of (Rt.). Fore arm anterox medialy near wrist no -burning - No tattooing no blacking.

Injury No. 4:- One irregular lacerations of size 5 x 3 cms with eversions on antero lateral aspect of (Rs.) wrist.

On following injury No. (3) & (4) both are communicating to each other from injury No. 3 the track is going obliquely down wounds Anterior lateral aspect of (Rt.) wrist. The Injury No. (3) appears to be wound of entry & injury N. (4) would of exit. Caused by Riffled firearm ammunition fired from a distance (distant shot) It is Ante-mortem in nature underlined bones shows no fractures.

18. Dr. R.M. Goyal in the post mortem report has given the following opinion on the cause of death of deceased Hulasa Ram:

The cause of death is shock and haemmorrhage brought about as a result of extensive disruption of the (Rt.) lung and soft tissues of the chest due to Riffled fire arm ammunition a distant shot. It is sufficient in ordinary course of nature to cause

death. Time since injury is fresh from the time of death. Time since death as per Hospital record of the Accidental emergency services S.M.S. Hospital, Jaipur is 2 P.M.

19. Another important witness examined in the trial as PW. 4 Ajay Tolani who was residing on the first floor of the house adjoining the Police Station. He has stated that when he heard fired shot from outside at about 1 P.M. and he opened his window and looked towards the police Station. He saw the accused appellant sitting beneath tin-shed. He has stated that he asked the accused not to the or else some body might got injured. The accused appellant opened fire towards him, he immediately moved away from window or else bullet would have hit him or even his wife and child. The bullet was so powerful which entered through iron net fitted on the window and made a hole and hit at wall made therein. P.W. 2 Mahaveer Singh Dy. S.P. Police Line, Jaipur stated that he received instructions from DIG, Range Jaipur on 16.11.1999 and he should immediately come with Commando, so that the accused could be caught. He along with 3 Commandos Pratap Singh, Dev Narain and Ghanshyam Singh reached the police station Ramganj. He saw the accused Sultan Singh rushing towards the market and there was panic in the public. The accused was having a rifle in his hand. The accused entered into a tent-house, 3 Commandos also followed him and entered into tent house. Commando Pratap kicked the accused, resultantly SLR fell down and he was immediately over-powered and taken to Police Station Ramganj and 4 unused cartridges were also recovered from him. He was formally arrested on the same day. P.W. 9 Ganesh Dutt who was the then Incharge of malkhana, Ramganj Police Station has stated that on 25.10.1999, he issued one SLR and 15 cartridges and two rifles to Jhabarmal who was Headmoharrir in the police station Ramganj. Jhabarmal was examined as P.W. 3 and he in his statement has corroborated the version of P.W. 9 Ganesh Dutt who has stated that on 25.10.1999 he got 2 rifles and one SLR issued because Ramganj Mandi was highly sensitive area. Whenever the weapon is issued, entry to this effect was required to be made in the Rojnamcha. The entry of SLR which was issued to the accused appellant by him was made in the Rojnamcha by his Assistant Lallu Ram. rojnamchaAams No. 1624 is Ex. D. 1 where such entry has been made at 11.45 p.m. in which SLR has been shown to have been issued to the accused appellant with 15 cartridges.

20. P.W. 19 Shankar Mai, who was then Dy. Superintendent of Police and Investigating Officer in his detailed statement has given all the details about the investigation and has stated that Reserve Inspector Mahaveer produced SLR with 5 cartridges recovered from the accused which were seized vide Ex. P. 6, SLR was Article 1, cartridges were Articles 2, 3, 4 & 5. He has also stated that 3 empty and fired cartridges recovered from the place 'B' of the site plan whereas another set of 3 empty and fired cartridges were found from the place 'C' and all these articles were seized as Ex. P. 6. All these articles were sent to the FSL and their report was Ex. P. 47 and Ex. P. 48. In Ex. P. 46, the result of the examination reveals that rifle contained in packet A was serviceable and indicated that the rifle was fired but the time of last fire could not be determined. It was also stated that cartridges contained in packets were the same cartridges which were fired from the same rifle Article 1 and one bullet from Packet C was also fired from the same rifle. Five cartridges from B & C work and 4 were also test fired in the laboratory. He has stated that there were holes in the clothes from packet D which the deceased was wearing at the time of incident could have been caused the subject bullet D-1.

21. In the face of the detailed discussion and material available n record, the charges against the petitioner not only under Section 302 IPC and also Under Section 307 IPC was proved beyond reasonable doubt. The alleged discrepancy as has been pointed out by the learned Counsel for the appellant with regard to Roznamcha Report 1624 and Malkhana report Ex. P. 11 were not such as to completely destroy the case of the prosecution and more particularly when charges against the accused appellant are proved beyond reasonable doubt on the basis of overwhelming ocular evidence corroborated by expert evidence from medical as well as ballistic side. Merely because the Investigating Officer has committed certain irregularity or illegality during investigation that by itself not cause any doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that count alone. In case of State of Rajasthan v. Kishore : 1996 CriLJ2003 , their Lordship of Hon'ble Supreme Court has held as under:

It is equally true that the investigating officer PW 8 committed grave irregularity in omitting to send the burnt clothes and other incriminating material for chemical examination to lend corroboration to the evidence. Mere fact that the investigating officer committed irregularity or illegality during the course of the investigation would not and does not cast doubt on the prosecution case nor trustworthy and reliable evidence can be cast aside to record acquittal on that account, it is seen from the Panchnama recovery of the incriminating material from the scene of offence that there was an attempt to screen the offence by destroying the evidence. Others were prevented from entering the room. That by itself indicates an attempt on the part of the accused to destroy the incriminating evidence and to prevent others from saving the life of the deceased.

22. The Hon'ble Supreme Court in the case of Leela Ram v. State of Haryana (supra) observed as under:

Be it noted that the High Court is within its jurisdiction being the first appellate Court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to gettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.

23. In our view, instead of splitting, totality of the situation should be viewed by the Court and evidence should be considered from the point of view of trustworthiness. An irregularity or even illegality during investigation made by the Investigating Officer does not by itself constitute a ground for rejecting the entire prosecution case, e cannot also accept the argument f the learned Counsel for the appellant that the accused caused fire arm injury on the person of deceased without intention of causing his death or without requisite knowledge that it was

likely to cause his death and therefore that offence should fall within the purview of Section 304 Part II IPC. The evidence available on the record in the present case would clearly prove that inspite of being repeated request by S.H.O. to deposit the firearm, the accused appellant did not deposit the same, but started abusing the deceased and not only fired at once which he received on forearm of his right hand. When Hulasa Ram tried to escape, he repeated the fire which hit him at his back and the bullet pierced through his body from right side of the chest. The accused appellant, therefore, was definitely had the intention of causing the death or such bodily injury as in his knowledge was likely to cause the death of the deceased. In view of the illustration 'A' given below, Section 300 IPC, the offence committed by the accused appellant would fall under Section 300 IPC and would be punishable under Section 302 IPC.

24. We also cannot accept the arguments of the learned Counsel for the appellant that the FIR, in facts of the present case was lodged with any undue delay or the delay was such as would give rise to the doubt about correctness of the version of the prosecution. More over, the incident was took place about 12.30 a.m. whereas the first information report was lodged at 2.15 p.m. and in between headmoharrir of Police Station recorded a brief entry of the incident in the Rojnamcha at 12.55 noon. In the present case, the SHO who being highest officer of the Police Station was himself hit not once, but twice by gun shot injuries by his own subordinate head constable in the premises of the Police station itself. Every one present in the police station including all those who have been examined as eye-witnesses in trial must have naturally been taken aback on this sudden and grave incident of firing. In normal human conduct, it cannot be expected of them that they would immediately sit back to jot down the first information report rather than taking the injured SHO to hospital at once. When SHO received first gun shot injury he tried to escape and when second fatal injury was received by him then immediately the other police personnels who were present in the police station was to take him hospital and save his life, if at all it was possible. Delay of two and half hours in lodgment of the first information report cannot be stretch of arguments be held to be fatal to the prosecution case. We may in this connect refer to judgment of the Hon'ble Supreme Court in Case of Sheelam Ramesh v. State of A.P. reported in : 2000 CriLJ51 (supra) where members of People's War Group, a militant outfit,

armed with pistol and tamanchas appeared from ambush and fired at one of three ex-members of the Group. One of the surviving ex-members rushed to the police station situated at a distance of 200 Ft. while other one ran away. And he returned with police to the site of incident and took injured to the hospital. He returned to the police station after 55 minutes and lodged the formal FIR, their Lordships of Hon'ble Supreme Court held that there was no delay in filing FIR. The ratio of this judgment of the Hon'ble Supreme Court squarely applies the present case, not for reason of the law enunciated thereunder but also because of similarity in the facts. In the present case of Harbans Kaur and Anr. v. State of Haryana reported in 2005 Vol. 9 SCC p. 195, their Lordships of the Supreme Court in similar circumstances held as under:

So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition, immediate effort was to get him hospitalised and get him treated. There cannot be any generalisation that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done.

25. This very view was reiterated by the Hon'ble. Supreme Court in the case of Ravi Kumar v. State of Punjab reported in : 2005 CriLJ1742 whereof, their Lordships observed as under:

As the evidence on record shows, the occurrence took place around 7 a.m. on 30.5.1996. In the said occurrence the deceased was seriously injured. Therefore, the First priority of his brothers i.e. Mohan Lai (PW-3) and Ram Lubhaya was to provide immediate medical aid so that his life could be saved. He was immediately taken to Primary Health Centre, Jadla and thereafter was taken to Civil Hospital, Nawanshahr. There the doctor after examining him found the condition to be serious and referred the patient to PGI at Chandigarh where he ultimately died at 1.15 p.m. After his death PW-3 lodged First information report at Police station,

Nawanshahr shortly thereafter, after making arrangements for his funderal. The distance between the hospital and the police station is a few kilometers. The special report was received by the Illaqa Magistrate shortly after midnight. The sequence of events as is evident from the record shows that there was no unreasonable delay in lodging the FIR as the first effort of his brothers was to take the deceased to different hospitals from medical aid. As has been rightly observed by the courts below the first priority. of the family members was to save the life of the deceased.

26. In our view, delay in every case, even if it be long, would by itself be not fatal to the case of the prosecution, if it has been able t prove the same by leading cogent and reliable evidence.

27. We cannot also accept the argument that the prosecution has suppressed the genesis of the incident and has come out with distorted version of the actual incident. Quantity and quality of the prosecution evidence in the present case where a large number of witnesses have deposed before the trial Court as eye-witnesses does not give rise to any contradiction between their version and all of the eye-witnesses have given their independent version of the incident, yet with a striking similarity with one another. Totality of evidence available on record persuade us to reject this argument of the learned Counsel for the appellant that the prosecution has suppressed the genesis of the incident.

28. In our view, non-examination of armour or ballistic expert could not be fatal to the prosecution case because the charges against the accused-appellant have been proved by over-whelming evidence which mostly consists of direct evidence of various witnesses as corroborated by medical evidence. Moreover, the testimony of D.W. 1 Shri Prem Sagar Manocha, Dy. Director, State Forensic Science Laboratory, D.W. 2 Shri Sher Singh, Senior Scientific Officer (Serology), State Forensic Science Laboratory and D.W. 4 Shri Narendra Kumar Kachhawaha, State Senior Scientific Officer, who are experts on the subject lend credence to the prosecution story. In the face of their evidence, the argument of the petitioner that no armour or ballistic expert was examined cannot be accepted.

29. Lastly, we also can overturn the conviction of accused appellant for offence under Section 307 IPC. This charge against him has been proved on the basis of statement of P.W. 4 Ajay Tolani. He has stated that when he heard the sound of fire shot from outside at about 1 p.m., he opened his window and looked towards the police station and saw the accused appellant sitting beneath tin-shed. He has stated that he asked the accused not to fire or else some body might got injured. The accused appellant opened fire towards him as well. He immediately moved away from window or else bullet would have hit either him or his wife and child. The bullet was so power that it entered through iron net fitted on the window and made a hole in the wall.

30. Under these circumstances, this appeal is dismissed and the judgment of the trial is upheld.

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