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Court : Rajasthan

Decided On : Oct-28-1986

Reported in : 1986WLN(UC)617

Judge : Shyam Sunder Byas, J.

Appeal No. : D.B. Criminal Appeal No. 670 of 1976

Appellant : Mukh Ram

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. This appeal by the accused is directed against the judgment dated August 7, 1976 of the Additional Sessions Judge, Hanumangarh, convicting and sentencing the appellant for the offence under Section 302 IPC to life imprisonment and under Section 27 of the Arms Act to two years' rigorous imprisonment and a fine of Rs. 500/- in default of payment of fine to 3 month's further rigorous imprisonment.

2. The case relates to the incident which took place on March 11, 1974, at about 4.15 pm. at the house of Ganpat Ram in village Naiwala which resulted in the death of Chet Ram by a gun shot injury. The version given in the First Information

lodged at Police Station Tibbi on March 12, 1974 at 8.15 a.m. by Shri Ram brother of the deceased was that on the date of the incident at about 4.15 p.m. the accused had gone to the house of Ganpat Ram in connection with the marriage of his son. The accused was having a gun with him. He went inside the house, leaving his gun on a cot outside. The deceased who was also there lifted the gun and while he was handling it, the gun got fired, causing injuries to Chetram which resulted in his death.

3. Shri Sujan Singh SHO Tibbi took the investigation, reached the place of incident, conducted the site inspection, prepared the memo of inspection, recorded the statements of the witnesses and after completion of the investigation submitted a final report in the Court of Sub-Divisional Magistrate, Hanumangarh to the effect that the deceased had received the gun shot injuries by an accidental fire. The final report was endorsed by Shri Narnarain, Dy. Superintendent of Police. The Sub-Divisional Magistrate by the order dated the April 9, 1974 accepted the same.

4. Subsequently, it appears, a meeting of the Police Officers of the Circle was held at Hanumangarh on April 2, 1974. In that meeting the Superintendent of Police Sri Ganganagar did not agree with the result of investigation and directed Shri Narnarain Dy. Superintendent of Police to further investigate the matter. As a result of further investigation it was found by the said Dy. Superintendent of Police that it was not a case of accidental fire but a case of murder. A case under Section 302 IPC was accordingly registered at the Police Station Tibbi on April 23, 1974 which ultimately led to the filing of a charge sheet against the appellant for the offence under Section 302 IPC and Section 27 of the Arms Act in the court of Munsif and Judicial Magistrate Hanumangarh. The appellant was then committed to the court of Sessions for trial. The case was taken on transfer to the Additional Sessions Judge, Hanumangarh who recorded the plea of the accused on January 8, 1976. The accused pleaded not guilty and claimed to be tried.

5. The prosecution examined 8 witnesses in support of its case. The witnesses Mokam Ram, Chanda and Rampratap, examined by the prosecution as eye witnesses of the occurrence did not support the prosecution case. Their version was that Mukh Ram, accused was having a gun with him, when he came to the

house of Ganpat, in connection with the marriage of his son. He went inside the house leaving his gun on a cot out side. Deceased Chet Ram was then sitting on the cot. He lifted the gun and when he was so handling it, the gun got fired, causing injuries to the deceased. These witnesses were declared hostile. Only Shri Ram and Gopal, brothers of the deceased have supported the prosecution Shri Ram has deposed that he had gone to the house of Ganpat Ram in connection with the marriage of his son. Chet Ram also came there. As soon as he arrived, accused fired a gun at him as a result there of Chet Ram sustained injuries and died. He was confronted with his earlier version in the report Ex. D 5 and statement Ex. D 2 where he had stated that the gun got fired accidentally. He denied having made the said statements. Another witness to support the prosecution is Gopal who stated that it was accused Mukh Ram who aimed the gun towards the deceased. The shot fired through the gun, hit the deceased resulting in his death He was examined by the Police after a month and 13 days of the occurrence. Prior to it he did not narrate the occurrence to the police although he was present when the site was inspected and memo of inquest was prepared by Shri Sujan Singh S.H.O. Other witnesses, namely, Inderjeet Singh and Umed Singh have deposed to the various steps taken during investigation and Dr. Bheem Singh has proved the injuries and the post-mortem report of the deceased.

6. In his statement under Section 313. Cr.PC the accused denied the prosecution allegations and stated that he had gone to attend the marriage of Sohan son of Ganpat Baori. He went inside the house to offer 'Bapa' (some part of marriage celebrations). He had left the gun out side as it is considered ominous at such occasions. While inside, he heard the sound of a gun fire. He immediately rushed out and saw that Chet Ram had got injured and fallen down. He asked Chandu and Rampratap as to what had happened and they told him that Chet Ram was handling the gun when it got fired hitting the deceased and causing him injuries. The accused denied the presence of Shri Ram and Gopal at the place of the incident.

7. Shri Sujan Singh. S H.O. was examined as a Court witness and he deposed to the various steps taken by him during investigation. He further stated that he had submitted a final report to the Dy. Superintendent of Police Shri Narnarain who

forwarded the same to the Court of Sub-Divisional Magistrate. The final report was then accepted by the learned Magistrate. He further deposed that thereafter the gun and the clothes were destroyed.

8. By the judgment dated August 7, 1967, the Additional Sessions Judge, Hanumangarh, held the offence proved against the accused. The learned Additional Sessions Judge disbelieved the story that the gun got fired accidentally. He held that the accused had fired the gun towards the deceased. On these findings the learned Additional Sessions Judge convicted and sentenced the accused as aforesaid.

9. Aggrieved by this, the accused has filed the present appeal in this Court.

10. We have heard learned Counsel for the accused and the Public Prosecutor for the State.

11. As noticed above Mokamram, Chanda and Rampratap examined by the prosecution as eye-witnesses have turned hostile. They do not support the prosecution case. Their version, rather, is that leaving the gun on the cot outside, the accused went inside the house of Ganpat. The gun was handled by the deceased himself when it got fired and hit him, resulting in his death. The prosecution is thus left with the evidence of Shri Ram and Gopal. Their statements were read over to us. We are not impressed by their evidence. The witnesses do not inspire confidence and we are of the view that it would be quite unsafe to base conviction of the accused on their testimony. Both Shri Ram and Gopal are brothers of the deceased.

12. In the report submitted by Shri Ram on March 12, 1974 the version of the occurrence given by him was that the gun got fired when it was being handled by Chetram himself. It was not his case that the gun was fired by the accused towards the deceased. The memo of inquest was drawn in his presence and bears his signatures along with four others, namely, Sahiram, Darbar Singh, Barak Ali and Khetaram, Sahiram was the Sarpanch of the Gram Panchayat. It was not disclosed by Shri Ram during the inquest that the shot which hit the deceased was fired by the accused. In his report dated March 12, 1974, the witness in terms

stated:

esjs HkbbZ psrjke dh ekSr eq[kjke dh Hkjh gqbZ cUnwd dks NsM+&NkM;+ djus] vDlekr cUnwd pyus ls xksyh yx xbZ vkSj psrjke xksyh yxus ls ej x;k A

13. Coming now to the evidence of Gopal it is to be noted that he was examined for the first time during investigation on April 24, 1974 i.e. after a month and 13 days of the occurrence. He has admitted that he was present when Shri Sujan Singh, Investigating Officer, inspected the site and prepared the memo of inspection and the 'Panchnama'. He preferred not to disclose at the time the fact that the deceased had received the injuries as a result of gun shot aimed at him by the accused. It is unlikely that a real brother, who has witnessed the occurrence would remain silent for a period of one month and 13 days. We entertain serious doubt about his presence at the time of the incident. After carefully examining the statements of these witness, we are of the view that implicit reliance cannot be placed on their testimony. There being no other material on record, the conviction of the appellant for the offence under Section 302 IPC cannot be sustained.

14. As regards the case under the Arms Act, it was shown that the Director Police Forensic Science Laboratory has given a report to the effect that the firing impression on the cartridge did not tally with the impressions of the gun. Thus the prosecution has failed to connect the gun with the incident. Obviously, therefore the offence under Section 27 of the Arms Act is also not made out against the accused.

15. The result is that the appeal is allowed, the judgment of the learned Additional Sessions Judge, Hanumangarh, dated August 7, 1976 convicting and sentencing the appellant as aforesaid is set aside and the accused-appellant is acquitted of the charges levelled against him. He is already on bail and need not surrender to his bail bonds.