

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 935 OF 2011

PRABHASH KUMAR SINGH

... APPELLANTS

:VERSUS:

THE STATE OF BIHAR (NOW JHARKHAND)

...RESPONDENT

J U D G M E N T

Aniruddha Bose, J.

It is submitted by the learned counsel representing both the parties that appellant No. 2 has expired. The appeal against appellant No.2, thus, has abated.

2. Both the appellants were tried and convicted for committing murder of one Ashok Rewani (the deceased victim) on 22nd January, 1993. The Trial Court convicted the surviving appellant under Section 302 of the Indian Penal Code, 1860 (the Code) and sentenced to undergo imprisonment for life. We shall henceforth refer to him as the appellant only in this order. Conviction of the deceased appellant was

under Section 302/109 of the Code and he was also ordered to undergo the same sentence. The High Court of Jharkhand confirmed the judgment of the Trial Court as also the order of sentence. The place of occurrence of the offence was Mahuwar Chawk, within Harla police station in the district of Bokaro, Jharkhand. Time of occurrence was about 10 P.M. The case, out of which this appeal arises, was initiated on the basis of a “Fardbeyan” of one Nun Chand Rewani, who had deposed in the trial as P.W. 3. The “Fardbeyan” was recorded at Bokaro General Hospital where the deceased victim was taken to by his relatives, who at the time of occurrence were with him. Such recording was done by a Sub-inspector of the said Police Station, Inderdeo Singh. The latter was the Investigating Officer (I.O.) and was examined in the trial as P.W 4.

3. The prosecution case, accepted by the Trial Court as also by the High Court, was that the deceased victim on the night of occurrence went by a two-wheeler to the said chawk and was having tea at that time along with P.W. 3, one Nun Chand Rewani and Rupesh Kumar Rewani (P.W.1), nephew of the deceased victim. The former was also a relative of the deceased victim. At the same time, as it transpires from evidence, the second appellant (since deceased) had reached the spot and started abusing the deceased victim. On protest by the latter, the

surviving appellant was called and was exhorted to kill the deceased victim. The surviving appellant then took out a pistol and shot at deceased victim. Injury was caused to his chest and he fell down. Thereafter, the present appellant fired another shot while escaping from the spot.

4. On completion of investigation, charge-sheet was submitted against both the accused persons under sections 302/34 of the Code. Charge was framed against the appellants for committing offence under the aforesaid sections and in the case of deceased appellant, charge under section 109 of the Code was added. Five witnesses were examined by the prosecution, among whom P.W. 1, P.W. 2 and P.W. 3 were witnesses of fact. The I.O. and the autopsy surgeon, Dr. Satya Narain Lal (P.W. 5) were also examined. The Trial Court found both of them guilty. Stand of both the accused persons in response to their examination under Section 313 of the Code of Criminal Procedure was that of general denial.

5. The prosecution version was that the deceased was killed in close range firing by appellant at the instigation of the deceased appellant, who was his father. Conviction of the appellant was primarily based on eyewitness account of the incident or deposition of P.W. 1 and P.W. 3

at the trial. The cause of death, being hemorrhage and shock caused by bullet injury from firearm, has been established by the P.W. 5. His deposition largely corroborates the post-mortem report (Ext.4). Apart from injuries, both external and internal in the chest region of the deceased victim, the post-mortem report revealed that his second rib was fractured. Digested food was present in his stomach. There was, however, no exit wound.

6. Learned Counsel appearing for the appellant has sought to assail the judgment under appeal mainly on argument of inconclusive medical evidence to connect killing of the deceased victim with bullet injury. Submission of the learned counsel for the appellant is that the nature of injury was such that it could not have come from a close range firing, in that there was no charring on the body of the deceased. The bullet or any part thereof was also not recovered. Moreover, there was no collection of any material having blood component in it. The standard defence of unidentifiability of the accused persons by the eyewitnesses, time of occurrence of the incident being night time, was also taken in course of hearing before us.

7. So far as the evidence of P.W.1 and P.W.3 are concerned, we do

not find much inconsistency on their presence at the location at the time of occurrence. No contrary suggestion was put to them at the time of cross-examination. The surviving appellant has been identified by both these eyewitnesses. An alternative motive was sought to be made out for causing death of the victim, being his relationship with a girl coming from an indigenous tribe. Case of the appellant is that he was in no way connected with the said cause and he was falsely implicated. Learned counsel for the appellant has argued that the assailant must have been someone else because of the aforesaid relationship related dispute. It has been pointed out by the appellant's counsel that there was no evidence of any scuffle which could have had resulted in fracture of rib. On this reasoning also, argument on false implication of the appellant has been advanced. But, on the aspect of relationship of the deceased victim with a girl coming from an indigenous tribe, barring suggestion to that effect in course of cross-examination of P.W. 2 and P.W.3, no other evidence has been led. So we find no reason to examine this plea at this stage.

8. As regards nature of injury, the gun-shot injury being cause of death has been established by the post-mortem report as well as deposition of the autopsy surgeon. Argument has also been advanced on behalf of the appellant that the injury did not bear the typical

characteristic that came from close range bullet firing. But we do not find any clear cut suggestion being given to the Doctor (P.W.5) who had prepared the post-mortem report on this aspect. P.W.5 categorically stated in his deposition that injury of the deceased victim came from bullet fired from firearm. The Trial Court and the High Court have committed no error on this point in accepting eyewitness account supported by medical evidence. In his deposition, P.W.5 has stated:-

“Outer physical force may cause laceration of heart and lung. Fracture of ribs may be caused by fall and physical force applied by blunt weapon. Bullet causes puncture injury. Puncture injury has length, breadth and width. In puncture injury the width is greater than breadth and length. I cannot say what is the velocity of a bullet. In fire arm injury char mark is formed when it is fired from very short distance. The pellet causes multiple injuries and in case of bullet single injury is caused. If pellet is fired from short distance it passes through the body like bullet.”

9. As would be evident from this part of P.W.5's deposition, there was fracture of ribs of the deceased victim but the P.W.5 opined that it could be caused from fall.

10. The appellant has sought to prove that the time of death was also not proved as evidence from P.W.1 and P.W.3 came that they had gone to the said chawk after meal. From this part of their deposition, the appellant wants to establish that if that was the case, the stomach of the deceased could have residue of undigested food. But this part of

the argument has been elaborately dealt with by the High Court and in

Para 13 of its Judgment the High Court observed and held:-

“13. In this regard following opinion of Modi’s Medical Jurisprudence and Toxicology, 23rd Edition at page 450 is very relevant:-

‘It must also be remembered that the process of digestion in normal, healthy persons may continue for a long time after death.’

It has come in evidence that at the time of death, the deceased was aged about 28 years. Thus it is apparent that at that time deceased was a young man. It has also come in evidence that the post-mortem was held on 23.1.1993 at 11 a.m. Under the aforesaid circumstance, because the deceased was a normal young man of 28 years of age, digestion process might have been continuing after the death of the deceased till the period of post-mortem and in that view of the matter only because digested food has been found in the stomach of deceased it cannot be held that the prosecution had failed to prove the time of occurrence that too in view of the cogent, clear and acceptable evidence of P.W. 1 and 3.”

11. The High Court has negated the argument of lack of visibility during night time on the basis that the crime was committed within a city and there must have had been sufficient lighting. The place of occurrence was also near two tea shops which would obviously have had lighting.

12. In such circumstances, we do not find any reason to interfere with the judgment of the High Court. As there is clear eyewitness account of the incident and none of the two eyewitnesses could be shaken during cross-examination and they had stuck to the

recollection of the facts relating to the incident, the mere fact that the weapon of assault or the bullet was not recovered cannot demolish the prosecution case. The appeal is accordingly dismissed and the judgment and order of Trial Court sustained by the High Court is confirmed. We are apprised by the Learned Counsel for the appellant that he is on bail. His bail bonds are cancelled and he is directed to surrender within four weeks from today, failing which the Trial court shall take necessary steps so that he undergoes the sentence. A copy of this order be sent to the Trial Court.

.....J.
[DEEPAK GUPTA]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;

September 12, 2019.

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Criminal Appeal No(s). 935/2011

PRABHASH KUMAR SINGH

Appellant(s)

VERSUS

THE STATE OF BIHAR (NOW JHARKHAND)

Respondent(s)

Date : 12-09-2019 This appeal was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

**For Appellant(s) Mr. Shishir Pinaki, Adv.
Mr. Sanjay Jain, AOR**

**For Respondent(s) Mr. Jayesh Gaurav, Adv.
Mr. Ratan Kumar Choudhuri, AOR**

UPON hearing the counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed non-reportable judgment. Pending application, if any, stands disposed of.

**(MEENAKSHI KOHLI)
COURT MASTER**

**(RENU KAPOOR)
COURT MASTER**

[Signed non-reportable judgment is placed on the file]