



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.421 OF 2011

DHARMA @ DHARAM SINGH & ANR. . . . APPELLANT(S)

VS.

STATE OF HARYANA RESPONDENT(S)

J U D G M E N T

Abhay S.Oka, J.

Heard the learned counsel appearing for the parties.

2. This is an appeal against the order of conviction of the appellants who are accused Nos.1 and 2. The appellants were convicted by the Trial Court for the offence punishable under Section 302 read with 34 of the Indian Penal Code (for short "IPC"). The allegation against them was of intentionally committing murder of one Sarabjit Singh who was the Sarpanch of the concerned village. The incident is of 23rd June, 1992. The order of conviction by the Trial Court has been affirmed by the impugned judgment of the High Court. We may note here

that this Court by the order dated 9th July, 2012 enlarged the appellants on bail by noting that they have already undergone incarceration for a period of about eight years.

3. As the Advocate-on-Record of the appellants was elevated as a Judge of a High court, notice for making alternative arrangement was issued to both the appellants. Notice was served to the second appellant, but could not be served to the first appellant for want of complete address. Therefore, the appeal as far as the first appellant is concerned has been dismissed for non-prosecution. This being an appeal against conviction, the case of the first appellant on merits has to be examined. Therefore, the order dismissing the appeal qua appellant No.1 is recalled. We requested the learned counsel appearing for the second appellant to assist us for dealing with the appeal of the first appellant. He has readily agreed.

4. PW-2-Sukhi and PW-3-Rattan Singh are the only two alleged eye witnesses. As far as PW-3 is concerned, he did not support the prosecution and therefore, he was declared as hostile.

5. So far as the version of PW-2 who is the first informant is concerned, he stated that he along with the deceased had gone to a place known as Chainsa. On the return journey, they got down from the bus at Mohna. The incident occurred around 8.00 to 8.30 p.m., when they were near a tubewell. According to him, four persons emerged out of bushes. One of them abused the deceased. The first appellant fired a shot at the deceased. The appellants dragged the deceased towards the field on the left side and thereafter, fired two shots. The witness further stated that he cannot tell the name of the persons who had fired shot at the deceased.

6. Assuming that PW-2 really knew the appellants before the incident and he had seen the appellants while firing shots at the deceased, we find that PW-2 did not identify the accused who were present in the Court as the accused who killed the deceased. In fact, the examination-in-chief of the PW-2 shows that the witness has not identified the accused who were present in the Court as there is no such statement in the examination-in-chief. A witness who claims to be an eye witness must be in a position to identify the accused in the Court.

7. With a view to ascertain whether Annexure P-4 is the correct reproduction of the deposition of PW-2, we have perused the original deposition of PW-2 from the record of the Trial Court and we find that even the original deposition does not record that the PW-2 identified the accused in the Court.

8. Assuming that PW-2 had seen the appellants firing shots at the deceased, unless the said eye witness identifies the accused as Dharma and Parkash, the prosecution cannot establish that the accused who were prosecuted were guilty of the offence. As stated earlier, the only other eye witness PW-3 was declared as hostile.

9. Therefore, this is a case where the eye witness has not identified both the accused in the Court. In the circumstances, the appellants could not have been convicted in the absence of their identification by the eye witness before the Court.

10. Hence, the appeal is allowed. The impugned judgment dated 30th May, 2008 passed by the Division Bench of the High Court and dated 23rd October, 1998 passed by the Sessions Judge, Faridabad, Haryana are hereby quashed and set aside and the appellants are acquitted for the offences alleged against them.

11. As both of them have been enlarged on bail, their bail bonds stand cancelled.

.....J.
(ABHAY S.OKA)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
October 05, 2023.