



2024 INSC 308

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S). 1258 OF 2010

RAMVIR @ SAKET SINGH

....APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH

....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. The instant appeal is directed against the judgment dated 27th July, 2007 passed by Division Bench of High Court of Madhya Pradesh at Gwalior whereby Criminal Appeal No. 607 of 1998 filed by the appellant was dismissed and the judgment and order dated 9th November, 1998 passed by the Vth Upper Sessions Judge, Bhind, Madhya Pradesh (hereinafter being referred to as the 'trial Court') in Session Case No. 70 of 1987 was upheld.

2. Vide judgment and order dated 9th November, 1998, the learned trial Court convicted and sentenced the appellant as below: -

(i) Under Section 302 of Indian Penal Code, 1860(hereinafter being referred to as 'IPC'): Life imprisonment and fine of Rs. 2000/- in default two months rigorous imprisonment (for the murder of Kaptan Singh).

(ii) Under Section 307 IPC: five years rigorous imprisonment and fine of Rs.1000/- in default one month rigorous imprisonment [for the attempted murder of Indal Singh (PW-12)]

3. The details of evidence and relevant facts are narrated in the judgments dated 9th November, 1998 and 27th July, 2007 passed by the trial Court and the High Court respectively and hence, need not be repeated.

4. The appellant herein was tried for the murders of Kaptan Singh and Kalyan Singh which took place in two separate incidents and for the attempted murder of Indal Singh(PW-12) in the incident in which Kaptan Singh was killed. Both these incidents took place

in village Bhajai, District Bhind, Madhya Pradesh on 10th November, 1985.

5. Upon conclusion of the trial, the learned trial Court vide judgment dated 9th November, 1998 acquitted the accused appellant from the charge of murder of Kalyan Singh holding that the two eyewitnesses who deposed against the appellant for the said incident, namely, Surajbeti(PW-5) and Hiramam(PW-6) were not reliable witnesses as they had not named the accused appellant in the statements made before the Investigating Officer (PW-18) being Exhibit D-5 and Exhibit D-6. However, placing reliance on the testimony of Raj Kumari(PW-7), Indal Singh(PW-12)(injured eyewitness) and Ramraj Singh(PW-14), the learned trial Court proceeded to convict and sentence the appellant as above for the commission of murder of Kaptan Singh and attempted murder of Indal Singh(PW-12).

6. It may be noted here that the appellant herein is reported to have suffered more than 14 years of substantive imprisonment and nearly 22 years imprisonment with remission. However, his prayer for grant of premature release/remission is not being considered on account of pendency of appeal.

7. Shri P.H. Parekh, learned senior counsel representing the appellant vehemently and fervently contended that the entire prosecution case is false and fabricated. In the very same incident in which Kaptan Singh (deceased) was killed and Indal Singh(PW-12) received injuries by fire arm, two persons from the side of accused appellant, namely, Chutallu @ Ram Mohan and Shiv Singh received gun shot injuries and expired. As per Shri Parekh, the prosecution witnesses failed to offer any explanation for the fatal injuries caused to Chutallu @ Ram Mohan and Shiv Singh and thus, the evidence of the prosecution witnesses is not trustworthy and reliable.

8. Learned senior counsel further contended that a cross case was registered against six persons from the complainant side including Indal Singh(PW-12) and Ramraj Singh(PW-14) and they were convicted by the trial Court for the offence punishable under Section 396 IPC and thus, it is established beyond all manner of doubt that the members of the complainant party were the aggressors. Thus, learned counsel submitted that the case of prosecution is fit to be discarded on two counts; (i) that the fatal injuries caused to two members of the accused side namely, Chutallu @ Ram Mohan and Shiv Singh were not explained by the

prosecution witnesses and; (ii) members of the complainant party having been convicted in the cross case, it is trite they were the aggressors and thus, the accused appellant deserves to be acquitted by giving him the benefit of doubt as well as by giving him the benefit of right of private defence.

9. It was further contended that in an incident involving extensive cross firing, the accused appellant did not receive a single injury and thus it is clear that the prosecution witnesses have not come out with the true version of the incident and their evidence is tainted and unworthy of reliance.

10. Learned senior counsel further submitted that the evidence of Ramraj Singh(PW-14) was not relied upon by the High Court.

11. It was further submitted that Raj Kumari(PW-7) and Indal Singh(PW-12) are interested partisan witnesses and are closely related to the deceased Kaptan Singh and hence, their evidence should not be accepted in absence of corroboration. On these grounds, he implored the Court to accept the appeal, set aside the impugned judgment and acquit the accused appellant of the charges.

12. *Per contra*, learned counsel appearing on behalf of the State vehemently opposed the submissions advanced by learned counsel for the appellant.

13. We have given our thoughtful consideration to the submissions advanced by learned counsel representing the parties and have gone through the impugned judgment and also scrutinized the evidence available on record.

14. We may, at the outset, note that insofar as the Sessions Case No. 68 of 1986 wherein six persons from the complainant side were convicted by the trial Court is concerned, it is *stricto sensu* not a cross case because the charge against those who stood trial in the aforesaid case was for the offence punishable under Section 396 IPC registered with the allegation of snatching the gun from Chutallu @ Ram Mohan. Thereafter, Ramraj Singh(PW-14) fired gun shots at Chutallu @ Ram Mohan causing him fatal injuries. At that time, Govind Singh and Udai Singh had also fired gun shots at Shiv Singh, who was standing on the platform of the house of Chhutkan Singh. Shiv Singh fell down on the spot and died as a result thereof. These six persons were convicted by the trial Court for commission of offence under Section 396 IPC vide its judgment dated 9th November, 1998.

15. It is further noteworthy that the Criminal Appeal No. 582 of 1998 preferred by six persons including Indal Singh(PW-12) and Ramraj Singh(PW-14) was allowed by the High Court vide judgment dated 27th July, 2007 and all of them were acquitted of the charge while setting aside the judgment dated 9th November, 1998 rendered by the learned trial Court.

16. On a threadbare reappraisal of the evidence available on record, we find that there is no dispute on the aspect that the incident wherein Kaptan Singh was killed took place in front of the house of Kaptan Singh.

17. There is also no dispute that Chutallu @ Ram Mohan and Shiv Singh received injuries in the very same incident which resulted in their death. The defence case is that the gun held by Chutallu @ Ram Mohan was snatched by the members of the complainant party and thereafter, Ramraj Singh(PW-14) fired a gun shot at Chutallu @ Ram Mohan injuring him in stomach and back.

18. The prosecution has come up with a clear case that when Indal Singh(PW-12) saw the assailants, i.e., the appellant herein and his two companions(Chutallu @ Ram Mohan and Shiv Singh) firing towards deceased Kaptan Singh, Ramraj Singh(PW-14) and

his camel, Indal Singh(PW-12) used his licensed weapons to fire at the assailants in self-defence and in defence of Ramraj Singh(PW-14) and Kaptan Singh. The gun shots fired by Ramraj Singh(PW-14) and Indal Singh(PW-12) resulted into the death of Chutallu @ Ram Mohan and Shiv Singh.

19. The evidence of Indal Singh(PW-12) and Raj Kumari(PW-7) is categoric on the aspect that the gun shots fired by accused appellant herein struck deceased Kaptan Singh on his stomach and chest, etc.

20. Indal Singh(PW-12) has come out with a clear case in his examination-in-chief explaining the manner in which Chutallu @ Ram Mohan and Shiv Singh received fatal gun shot injuries. His testimony could not be impeached despite extensive cross-examination. The allegation made by Indal Singh (PW-12) regarding the accused appellant having fired gun shots at Kaptan Singh is duly corroborated by presence of gun shot injuries on his body as deposed by the Medical Jurist Dr. Rakesh Sharma(PW-11).

21. The trial Court as well as the High Court, after thorough appreciation of evidence available on record, discarded the prosecution case regarding the charge of murder of Kalyan Singh

attributed to the appellant by holding that the testimonies of two eyewitnesses Surajbeti(PW-5) and HIRAMAN(PW-6) were not reliable.

22. However, the learned trial Court placed reliance on the evidence of three eyewitnesses i.e. Raj Kumari(PW-7), Indal Singh(PW-12) and Ramraj Singh(PW-14) so as to hold the accused appellant guilty of the charge of murder of Kaptan Singh and the attempted murder of Indal Singh(PW-12). The High Court, however, concluded that the trial Court had disbelieved the evidence of witness Ramraj Singh(PW-14). Though, this finding is erroneous but the High Court discarded the evidence of Ramraj Singh(PW-14) holding it to be not trustworthy based on the reasoning that he did not state as to what had caused injuries to Chutallu @ Ram Mohan and Shiv Singh. Furthermore, even though this witness claimed to have received gun shot injuries at the hands of the accused appellant but he was not medically examined. Therefore, the evidence of Ramraj Singh(PW-14) was rightly discarded by the High Court.

23. The presence of the other two eyewitnesses i.e. Raj Kumari(PW-7) and Indal Singh(PW-12) at house of Kaptan Singh

at the time of his murder was not disputed by the learned counsel for the appellant.

24. Having gone through the evidence of both the witnesses i.e. , Raj Kumari(PW-7) and Indal Singh(PW-12), we also find that nothing could be elicited in their cross-examination which creates a doubt in the mind of the Court regarding presence of these witnesses at the crime scene.

25. The contention advanced by learned counsel for the appellant that these witnesses are partisan witnesses as being closely related to the deceased and hence their evidence should be discarded, does not for a moment, convince us because in a case involving gruesome broad daylight double murder by repeated gun firing, it is unlikely that any of the persons from the neighbourhood, would have the courage to step forward as witnesses. Even otherwise, Indal Singh(PW-12) himself received injuries in the same incident. He has truthfully accepted his role in the incident stating that he fired the gun shots which hit two assailants namely, Chutallu @ Ram Mohan and Shiv Singh leading to their death. Hence, clearly the prosecution has given thorough explanation for the injuries received by persons from the side of the accused.

26. The High Court vide judgment dated 27th July, 2007, in the cross case, which was registered against six persons from the complainant party including Indal Singh(PW-12) and Ramraj Singh(PW-14), acquitted these six persons holding that the members of the accused party of the present case were the aggressors and that the injuries which resulted into death of Chutallu @ Ram Mohan and Shiv Singh were caused by Indal Singh(PW-12) and his companions in exercise of their right of private defence. The said finding has not been challenged and has thus attained finality.

27. The trivial contradictions sought to be highlighted by learned senior counsel for the appellant regarding absence of empty cartridges etc. at the place of incident and the plea of alibi is not tenable because we find that these contradictions are far too trivial so as to discard the entire prosecution case which is based on reliable and trustworthy set of eye witnesses whose evidence is corroborated by the evidence of the Medical Jurist and other attending circumstances.

28. The impugned judgments do not suffer from any infirmity warranting interference. Resultantly, the appeal lacks merit and is dismissed as such.

29. Pending application(s), if any, shall stand disposed of.

.....**J.**
(B.R. GAVAI)

.....**J.**
(SANDEEP MEHTA)

New Delhi;
April 16, 2024