

RAGHBIR SINGH
v.
STATE OF HARYANA

APRIL 18, 2000

[D.P. WADHWA AND RUMA PAL, JJ.]

Evidence Act, 1872:

Section 54—FIR—Filing of—Delay in—Credibility of eyewitnesses—Effect on—Held: Rushing of victim to the hospital is more important than filing the FIR—On facts, delay in filing FIR satisfactorily explained—Hence, such delay does not affect the credibility of eyewitnesses.

Penal Code, 1860 : Section 302.

Murder—Death due to bullet injury—Peritonitis, renal failure, septicemia etc., of the deceased were relatable to the bullet injury—Held : Trial Court rightly concluded that death is due to bullet injury and not due to the diseases—Hence, conviction upheld.

Criminal Trial :

Witness—Eye witnesses—Not seen by the police at the hospital where the victim was admitted—Credibility of—Effect on—Held : As the eye witnesses were busy buying medicines and arranging blood it is not surprising that the police did not see them at the hospital—Hence, credibility of eyewitnesses is not affected.

Witness—Eye witnesses—Absence of—At the scene of occurrence—Inference—Non-mentioning the names of—By the doctors—Held : It is unreasonable to expect the doctors to name the persons accompanying the patients—It is illogical to infer absence of the eyewitnesses at the scene of occurrence by such non-mentioning.

Practice and Procedure :

Concurrent findings of fact—Interference with—By Supreme Court—Held : Will not interfere unless there is a manifest error of law or when the finding is perverse or is based on legally inadmissible evidence.

A The appellant-accused was convicted by the trial court under Section 302 of the Penal Code, 1960, which was confirmed by the High Court. Hence this appeal.

B According to the prosecution, the accused fired at one A who was removed to the hospital by the two eyewitnesses (PWs 1 and 2), where A succumbed to his injuries.

C On behalf of the accused it was contended that there was delay in the finding of FIR; that the police did not find PWs 1 and 2 at the hospital; that the names of PWs 1 and 2 were not mentioned by the doctors in the records of the hospital and, therefore, the eyewitnesses were not present at the scene of occurrence; and that the death was in fact caused by peritonitis, renal failure, septicemia etc.

Dismissing the appeal, this Court

D HELD : 1.1. This Court will not interfere with the concurrent findings of fact unless there is strong reason to do so, such as a manifest error of law in arriving at the finding or when the finding is perverse in the sense that any material fact has been overlooked or is based on any legally inadmissible evidence. [129-G-H]

E 1.2. The trial court found that the rushing of the victim to the hospital to save his life instead of first going to the police station was a satisfactory explanation for the delay in filing the FIR. This view was affirmed by the High Court and there is no reason to interfere with the same. [132-C]

F 2. PW-1 stated that he was busy buying medicines etc., and for hiring a taxi for removal of the deceased to the hospital PW-2 was inside a laboratory in connection with arranging blood and also gave his blood. For the police not to have been PWs 1 and 2 when they arrived at the hospital, under these circumstances, is not surprising. [132-E-G]

G 3.1. It would be unreasonable to expect the doctors to name the persons accompanying the patients. Besides to infer the absence of PW-1 and PW 2 at the scene of occurrence only because their names might not have been noted by the doctors or in the medical registers of the places to which the deceased was taken for treatment, calls for an illogical inference which
H the High Court did not and indeed could not draw. [132-H; 133-A-B]

3.2. Similarly, no inference of absence of PWs 1 and 2 from the scene of the crime can be drawn merely because the police officers did not see PWs 1 and PW 2 when they went to the hospital. [133-B]

4. The first challenge of the appellant regarding the credibility of the eyewitnesses' account is, therefore, unsustainable and is rejected. [133-C]

5. The evidence clearly shows that peritonitis, renal failure, septicemia etc., were directly relatable to the bullet injury. The trial court's conclusion that the death was caused by a shot fired from the revolver of the appellant is in keeping with the evidence on record. The claim of the appellant that the death of the deceased could have been caused for reasons other than the bullet injury is, therefore, unsustainable. [133-G-H; C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 645 of 1998.

From the Judgment and Order dated 8.9.97 of the Punjab and Haryana High Court in CrI.A. No. 120-DB of 1996.

U.R. Lalit and B.S. Gupta for the Appellant.

B.S. Chahar (for Prem Malhotra) and Mahabir Singh for the Respondent.

The Judgment of the Court was delivered by

RUMA PAL, J. This appeal has been preferred from the decision of the Punjab and Haryana High Court upholding the appellant's conviction under Section 302 of the Indian Penal Code (IPC). The appellant was found guilty by both the Trial Court and the High Court of having fatally shot one Arjun Singh. The appellant's challenge to this concurrent finding is two fold : first he says that the eyewitness' account of his complicity was not credible; second, that even if one were to accept the eye witness' evidence of the event, he could not have been convicted under Section 302 IPC as the death of Arjun Singh was in fact caused by renal failure, septicemia and respiratory failure.

In taking up the first plea, it would be well to keep in mind that this Court will not interfere with concurrent findings of fact unless there is strong reason to do so, such as a manifest error of law in arriving at the finding or when the finding is perverse in the sense that any material fact has been

A overlooked or is based on any legally inadmissible evidence.

B The eye witnesses in this case were Nasib Singh (PW 1) the deceased's son, and Banarsi (PW 2), the deceased's brother. Shorn of unnecessary details, both of them testified that on 26.4.91, at about 5.30 p.m., the appellant armed with a revolver and his brother Kehar Singh, empty handed, came to the outside of the house of Shiv Dutt in a lane in village Sakra. Kehar Singh raised 'lalkara' that the Sarpanch (Arjun Singh) should be shot and killed. Thereupon, the appellant fired three shots at Arjun Singh. The first shot hit Arjun Singh on the right side of his chest, the second hit him above the elbow of the left arm and the third on the left wrist. Both PW 1 and PW 2 raised an alarm. Arjun Singh collapsed. Arjun Singh was removed by PW 1 and PW 2 to the Primary Health Centre, Kaul. The doctor of the Centre gave some treatment to Arjun Singh but advised that he should be removed to Kaithal General Hospital. Zile Singh accompanied them from the Primary Health Centre, Kaul to the General Hospital, Kaithal. Arjun Singh was examined at Kaithal by the Doctor and was referred to the Post Graduate Institute (PGI), Chandigarh where Arjun Singh was ultimately admitted. Both PW 1 and PW 2 then left Chandigarh. PW 1 returned to his village, Sakra. He reached his village at 8.00 a.m on 27th April 1991. He was on his way to Chandigarh via the Police Station at Dhand when the police met him and he made a statement (Ex.PA) before the police. The police thereafter accompanied PW 1 to the scene of the shooting. Arjun Singh expired on 1.5.91 in PGI.

F Banarasi (PW 2)'s account of the incident of the shooting was substantially the same. His statement was recorded by the police on 30th April 1991. In his cross examination, PW 2 stated that before the shooting, Arjun Singh was sitting in front of the house of Shiv Dutt when the appellant fired the first shot from a distance of six feet and then came forward by about one or two steps when the second shot was fired and the third shot was fired from about a distance of a 1/2 foot.

G Both PW 1 and PW 2 stated that the motive for the appellant's killing Arjun Singh was because of a dispute over land which had resulted in a fight in which the appellant had received a gun shot injury in his abdomen. In the criminal case instituted in this connection, the appellant had alleged that he had been shot by Arjun Singh.

H The Trial Court found that "PW 1 and PW 2 have withstood the test of

their lengthy cross examination and nothing beneficial could come out to the defence. There is no material discrepancy or improvement in their statement which could go to the root of the case to dislodge the case of the prosecution.”

In the case before us, the appellant took a plea of alibi. According to the appellant, between 23.4.91 and 28.4.91, he was at Delhi along with Mukhtiar Singh (DW 3) and stayed at the house of Bhim Singh (DW 2). The evidence of DW 3 was rejected by the Trial Court not only on the ground that he was an interested witness, (as the appellant had supported him in the Assembly Election and because he was an accused in an incident regarding a dispute over land in which PW 1 was the complainant), but also because DW 2 categorically denied that either DW 3 or the appellant were known to him or had stayed with him. DW 2 was not declared hostile by the defence nor was the finding of the Trial Court in this regard assailed by the appellant before the High Court.

Apart from finding this consistency in the evidence given by PW 1 and 2, the Trial Court noted that the other oral and documentary and material evidence corroborated their case. Amongst the material evidence relied on was the fact that the bullet recovered from the body of Arjun Singh was found by the Forensic Science Laboratory (FSL) to have been fired from the revolver (Ex. PO) of the appellant and not from any other fire arm. The Trial Court accordingly found the guilt of the appellant and Kehar Singh established and convicted them under Section 302/34 IPC. Both were sentenced to imprisonment for life and also to pay a fine of Rs.2,000 each.

The appellant and Kehar Singh appealed before the High Court. The complainant, PW 1 also filed a revision application seeking enhancement of the fine and compensation. The High Court acquitted Kehar Singh holding that Kehar Singh was not present at the scene of occurrence and that this finding was fortified from the fact that “but for ascribing him a ‘lalkara’ that Arjun Singh should be killed, no role has been attributed to him”. The High Court was also of the view that “had Kehar Singh been at the scene of occurrence, he would not have come empty handed.” However, the evidence of PW 1 and PW2 as to the presence of Raghbir Singh and his commission of the crime was accepted after an elaborate discussion of the evidence. The High Court upheld the appellant’s conviction and also allowed the revision application filed by PW 1 by enhancing the fine to Rs.10,000 and directing the same to be paid to the complainant. In default, the appellant was to suffer rigorous imprison-

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A ment for one year.

The grounds on which the credibility of the eye witnesses' account have been assailed before us are, (i) delay in informing the police by PW1; (ii) the fact that the police did not find PW 1 or PW 2 when they went to Kaithal or Chandigarh and (iii) the non-mentioning of the names of PW 1 and PW 2 by the doctors or in the records of the Primary Health Centre, Kaul, General Hospital, Kaithal or the PGI, Chandigarh. These issues were specifically considered by both the Courts.

C With regard to the delay in filing the FIR, both the Courts have found that there was no delay in filing the FIR. The Trial Court found that the rushing of the victim to the Hospital to save his life instead of first going to the police station was a satisfactory explanation for the delay in making the complaint. The view was affirmed by the High Court and we find no reason to interfere with the same.

D On the second ground of challenge, the police at Kaithal were first informed at 7.20 p.m. on 26.4.91 when they received a 'ruqa' from the General Hospital at Kaithal (PW 5). They went to Kaithal to see Arjun Singh at 8.00 p.m. According to PW 5, no relative of Arjun Singh had reached there. SI Balbir Singh, CIA staff of Police Station, Dhand said that he received a wireless message from the police station at Kaithal at 7.30 p.m. on 26.4.91 and reached the PGI, Chandigarh at 3.00 a.m. on 27.4.91 when he found no one there with Arjun Singh except the attending doctor.

F PW 1 and PW 2 both said that they left Kaithal's General Hospital for PGI, Chandigarh at 8.30 p.m. on 26.4.91. Before that PW 1 was "busy buying medicines etc., and for hiring taxi for removal of my father to Chandigarh". As far as PW 2 is concerned, he said that after arriving at Kaithal Hospital at 7.00 p.m. he "remained inside the laboratory in connection with arranging blood and I also gave my blood in the laboratory of the Civil Hospital, Kaithal". Both witnesses said that they arrived at the PGI, Chandigarh at 11.30/11.45 p.m. and both left at 12.30 p.m. after admitting Arjun Singh. For the police not to have seen PW 1 and PW 2 either at Kaul or Kaithal or at PGI, Chandigarh when they arrived there, under these circumstances, is not surprising.

H On the third ground, we find that there was sufficient evidence to show

that Arjun Singh was accompanied by some persons not only at Kaul but also at Kaithal and at the PGI, Chandigarh and, as correctly held by the High Court, it would be unreasonable to expect the doctors to name the persons accompanying the patients. Besides to infer the absence of PW 1 and PW 2 at the scene of occurrence only because their names might not have been noted by the doctors or in the medical registers of the places to which the deceased was taken for treatment, calls for an illogical inference which the High Court did not and indeed could not draw.

Similarly, no inference of PW 1's and PW 2's absence from the scene of the crime can be drawn merely because the police officers did not see PW 1 and PW 2 when they went to Kaithal and Chandigarh.

The first challenge of the appellant regarding the credibility of the eye witnesses' account is, therefore, unsustainable and is rejected.

The claim of the appellant that the death of Arjun Singh could have been caused for reasons other than the bullet injury is equally unsustainable. The appellant sought to rely upon the evidence of Dr. Sushil Budhiraja, Senior Resident, PGI, Chandigarh that Arjun Singh was a diabetic and, "..... In this case blood had been infected. There were four causes of the death in the present case i.e., renal failure, septicaemia, DIC and respiratory failure. ARF is an abbreviation of acute renal failure. ATN is abbreviation of acute tubular necrosis. It also denotes acute renal failure". On re-examination, PW 17 clarified, "The complication of renal failure, septicaemia, DIC and respiratory failure developed because of the injury received by Arjun Singh and consequent operation."

Furthermore, the evidence of Dr. Dalbir Singh who conducted the postmortem examination of Arjun Singh (PW 4) was that four injuries had been caused to the body of the deceased, of which injuries Nos. 1, 3 and 5 could be caused by a fire arm. He also opined that "..... the cause of death was due to shock due to septicaemia following peritonitis due to injuries to the large gut, liver and intervening structures". PW 4 also stated that the bullet wound on the chest, if left untreated, was sufficient to have caused death in the ordinary course of nature.

The evidence thus clearly shows that peritonitis, renal failure, septicaemia etc., were directly relatable to the bullet injury. The Trial Court's

A conclusion that the death was caused by a shot fired from the revolver of the appellant is in keeping with the evidence on record. Significantly, the plea does not appear to have been raised before the High Court at all.

B. In our view, the appellant has been unable to point out any error of law or any perversity which would justify this Court in upsetting the concurrent finding as to the guilt of the appellant under Section 302 IPC. However, the enhancement of the fine by the High Court from Rs.2,000 to Rs. 10,000 on the revision application of PW 1 is unsupported by any reason. For the reasons stated above, we dismiss the appeal but set aside the enhancement of the fine and restore the fine of Rs.2,000 as originally imposed by the Trial Court.

C V.S.S.

Appeal dismissed.