
(2007) 10 RAJ CK 0069

Rajasthan High Court (Jaipur Bench)

Case No: None

Dhariya @ Dhara Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: Oct. 29, 2007

Acts Referred:

- Arms Act, 1959 - Section 27, 3
- Penal Code, 1860 (IPC) - Section 302

Citation: (2008) 2 RLW 1219

Hon'ble Judges: Shiv Kumar Sharma, J; M.C. Sharma, J

Bench: Division Bench

Judgement

Shiv Kumar Sharma, J.

Dhariya @ Dhara Singh (appellant herein) and co-accused Bhairu Singh were put to trial before learned Additional Sessions Judge (Fast Track) No. 1, Jhalawar, who vide judgment dated August 5, 2002 while acquitting Bhairu Singh, convicted and sentenced the appellant as under:

Under Section 302 I.P.C.:

To suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer simple imprisonment for three months.

Under Section 3/25(1-B)(A) Arms Act:

To suffer rigorous imprisonment for one year and fine of Rs. 500/-, in default to further suffer simple imprisonment for one month.

Under Section 27 Arms Act:

To suffer rigorous imprisonment for three year and fine of Rs. 1000/-, in default to further suffer simple imprisonment for three months.

Substantive Sentences were ordered to run concurrently.

2. It is the prosecution case that on July 8, 2001 informant Devi Singh (P.W.10) submitted a written report (Ex.P/13) at Police Station Gangdhar to the effect that on the preceding day around 3 p.m. his brother Ram Singh (since deceased) had gone towards Chomahalla but he did not come back and his dead body was found lying near Railway-line. On that report a case u/s 302 I.P.C. was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge-sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1, Jhalawar. Charges under Sections 302 I.P.C. and 3/25 & 27 Arms Act were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation u/s 313 Cr.P.c, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated hereinabove.

3. Indisputably death of Ram Singh was homicidal in nature. As per Post-Mortem Report (Ex.P/12) following injuries were found on the dead body:

Gunshot injury

Wound of entrance 1-1/4" x 1-1/4" circular in shape margins scorched and tattooed present on the left side of back 3" below. The interior angle of left scapular.

4 (four) metal pellets recovered from the wound.

Wound of exit absent.

In the opinion of Dr. Ramesh Chand Khatik (P.W.9) the cause of death was shock as a result of gunshot injury to left lower lobe of lung.

4. Only contention advanced by learned Counsel for the appellant is that charge u/s 302 I.P.C. is not established against the appellant from the prosecution story Nirmala (P.W.6) fell in love with the appellant. On the day of incident the deceased made attempt to outrage the modesty of Nirmala. The appellant had seen the deceased touching thigh of Nirmala. Thereafter appellant and the deceased grappled each other and appellant having been provoked opened gun fire at the deceased and caused his death. We have been taken through the cross-examination of Nirmala as well as her police statements (Ex.P/8). It is no doubt true that Nirmala did not support the prosecution case and she was declared hostile but taking an overall view of matter we find that there was a grave provocation sufficient for the appellant to be deprived of his power of self-control.

5. From the suggestions made to Nirmala (P.W.6) in the cross-examination by the public prosecutor we notice that there has been no pre-plan or pre-meditation. In the circumstances in which the appellant opened fire it would appear that on the spur of the moment and incensed by anger the appellant snatched the gun from Bhairu Singh and opened fire and caused injuries to Ram Singh which resulted in the death of Ram Singh. The case of appellant thus clearly comes under Exception I to Section 300 I.P.C. and he is therefore guilty u/s 304 Part-I I.P.C.

6. For these reasons, we partly allow the appeal and instead of Section 302 I.P.C., we convict the appellant u/s 504 Part I of the Indian Penal code and sentence him to suffer rigorous imprisonment for ten years and fine of Rs. 5000/-in default to further suffer six months rigorous imprisonment. We however maintain conviction and sentence u/s 3/25 (1-B)(A) and 27 of the Arms Act.

The impugned judgment of the learned trial Judge stands modified as indicated hereinabove.