

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S) . 2081 OF 2008

SHIV RAJ

... APPELLANT(S)

VERSUS

STATE OF RAJASTHAN

...RESPONDENT(S)

O R D E R

Heard learned counsel (Amicus Curiae) appearing
for the appellant and learned counsel for the State.

This appeal by special leave challenges the
judgment and order dated 06.12.2005 of the High Court
of Rajasthan, Jaipur Bench at Jaipur in D.B. Criminal
Appeal No. 419 of 2001 urging various legal
contentions.

According to the prosecution, one Tejprakash was done to death on 29.02.2000 at 8.10 p.m. . The reporting of the occurrence was done by Ramesh Chander, PW-4, the brother of the deceased Tejprakash. The first information report narrated the incident as under:

"12.....Sir, it is submitted that today on dated 29.2.2000 at about 8.P.M. my brother went outside for taking medicine from doctor, after about ten minutes, 10-12 persons of our colony including Jhabarji Choudhary told us that three boys stabbed my brother Tej Prakash in Shri Ram Nagar and fled from the scene, Then I immediately came on the site, my brother was lying there besmeared with blood. Many persons of our colony were standing there. Someone has already given information to the Police. At that time, police also arrived at the spot. In the way, me and Sub-Inspector of Police asked my brother as to who have stabbed you thereupon he named one Girraj among the boys who stabbed him. Apart from that he was not telling anything else. Some Children residing in our neighbour also saw this incident. My brother Tej Prakash was having stab wounds on the posterior part of his neck, large quantity of blood was coming out from this wound. While taking him to hospital, he fainted in the way near collecterate. When we admitted him in the emergency of S.M.S. Hospital, doctor declared him dead...."

During the course of investigation the police

recorded statements of Suresh Kumar, Jhabar Mal and Maliram, who were subsequently examined as prosecution witnesses in the trial to prove the charge against the appellant. According to the version of these witnesses, the deceased had given the names of the assailants. Going by the version of these witnesses, three persons were suspected to be involved in the occurrence viz., the present appellant, Devender and Rajinder. The accused persons were interrogated and the statement of the appellant under Section 27 of the Indian Evidence Act, led to the discovery of a blood-stained shirt and a knife. After due investigation, charge-sheet was filed and these accused persons were tried for the offence of murder of said Tejprakash.

The prosecution examined Ramesh Chander as PW-4 and Maliram as PW-5. These two witnesses, in their deposition in the court have referred to the fact that they had reached the place of occurrence soon after the incident. They had found Tejprakash seriously injured and said Tejprakash, in a low voice could utter the name of one of the assailants viz., that the of the present appellant. The other two witnesses

i.e. PW-9 and PW-10 further submitted that they had also independently reached the place of occurrence and that said Tej Prakash had given out names of three assailants viz., that of the aforesaid three accused persons, who were being tried. The medical evidence was unfolded through Dr. B.R. Baiwa, PW-16, who found the following injuries on the dead body of Tejprakash:

- "1. Swelling 4 x 3 cm (Lt.) side front to temporal region of scalp lower and lowerly.
2. Swelling 4 x 2 cm back of occipital region of scalp.
3. Abrasion 1 x 4 cm lateral on (Lt.) eye.
- 4 Bruise 4 x 3 cm. below left eye over cheek with swelling bluish reddish in colour.
5. Abrasion $\frac{1}{2}$ x $\frac{1}{4}$ cm. below (Ltd.) nipple on front of chest.
6. Abrasion 1 x $\frac{1}{4}$ cm (Rt.) coastal margin near & epigestrim.
7. Abrasion $\frac{1}{2}$ x $\frac{1}{2}$ cm. Lateral of (Lt.) elbow joint.
8. Abrasion 1 x $\frac{1}{2}$ cm. Dorsum of Lt. Hand.
9. Abrasion $\frac{1}{2}$ x $\frac{1}{2}$ cm. Lateral of (Lt.) buttock upper part.
10. Abrasion $\frac{1}{2}$ x $\frac{1}{4}$ cm. Lt. Forearm laterally middle $\frac{1}{3}$.
11. Abrasion $\frac{1}{4}$ x $\frac{1}{4}$ cm. dorsum of Rt. Hand.
- 12 Abrasion $\frac{1}{2}$ x $\frac{1}{4}$ cm. Over tip of nose.

13. Incised wound 2 x $\frac{1}{2}$ cm. X muscle deep oblique anterior of lowerly Lt. Forearm.
14. Incised wound 3 x 1 cm. X muscle deep Lt. Forearm lowerly dorsum laterally.
15. Incised wound $\frac{1}{2}$ x $\frac{1}{4}$ cm. Skin deep (Rt.) coastal margin on the epigestrium.
16. Two incised wounds of size 4 x 2 cm. and 2 x 1 cm. With gap of 2 $\frac{1}{2}$ cm. lateral of Lt. Elbow both are muscle deep.
17. Incised wound 2 $\frac{1}{2}$ x 1 cm. X muscle deep oblique over it. Forearm upperly Dorsal laterally.
18. Incised wound of size 2 $\frac{1}{2}$ x 1 $\frac{1}{2}$ cm. x muscle deep oblique over back of buttock upper part.
19. Incised wound 2 x 1 cm. Muscle deep oblique over it. Buttock lower part posteriorly with reddish clotted blood present.
20. Incised stab wound of size 3 x 2 cm. x abdomen and chest cavity deep obliquely placed over Lt. Side back of chest lower part over 13 cm. level it. Side from mid line over 8th to 9th inter coastal space with freshs clotted reddish blood.
21. Incised stab wound of size 3 $\frac{1}{2}$ x 2 cm. X abdominal cavity deep oblique size (3 $\frac{1}{2}$ x 2 cm.) reddish clotted blood placed over back of chest (Rt. Side lower part over mid line and 2 $\frac{1}{2}$ cm. from mid line Rt. Side over 11th and 12th inter coastal space."

The trial court, after considering the material on record, found the case of the prosecution having been proved as against the present appellant and

Devender. It has, thus, convicted the present appellant and Devender for having committed the offence under Section 302 of the Indian Penal Code and sentenced them to suffer life imprisonment. The other accused viz, Rajinder was given benefit of doubt and was acquitted.

The convicted accused carried the matter further by way of D.B. Criminal Appeal No.419 of 2001 in the High Court. At the appellate stage, it was proved on record that accused Devender was, in fact, a juvenile as on the date of occurrence. The High Court, therefore, accepted the plea urged on his behalf and granted him appropriate benefit. As regards the present appellant, the High Court relied upon the statements of evidence of PW-4 and PW-5. According to the High Court, it was conclusively established that both the prosecution witnesses had reached the place of occurrence soon after the incident and that the deceased had given out the name of one of the assailants viz., that of the present appellant. Finding their statements to be trustworthy to be accepted which falls within the scope of Section 32(1) of the Indian Evidence Act, the High Court has found

after re-appreciation of evidence on record and rightly held that the case of the prosecution was proved beyond reasonable doubt against the present appellant. The High Court has, thus, affirmed the finding of conviction on the charge on the appellant and sentence, as recorded by the trial court insofar as the present appellant is concerned.

While entertaining this appeal by special leave, this Court was pleased to order release of the appellant on bail vide order dated 19.03.2010. We are apprised by learned counsel for the appellant that the appellant is still enjoying the facility of bail.

Learned counsel appearing for the appellant invited our attention to the specific assertion in the FIR to the effect that it was one Giriraj and his boys who were responsible for having caused the murder of the brother of the informant. However, while deposing, Ramesh Chander, PW-4, the author of the FIR, clearly asserted the name of the assailant to be Shivraj. While in the witness box, not even a single question was put to him in the cross-examination to elicit evidence from him to show that he was involved

in the crime. Furthermore, the role of the appellant as one of the assailants becomes very much clear from the assertion made by Maliram, PW-5. The statements of these two witnesses were rightly relied upon by the High Court to concur with the finding on the charge framed against the appellant. In our view, these two witnesses are completely trustworthy to be believed and their evidence has not been shaken in any manner in the cross-examination. The assertion coming from the other two witnesses viz., PW-9 and PW-10 was rightly segregated by the High Court and the benefit of acquittal on that count was granted to the other accused. However, insofar as the present appellant is concerned, the material on record consistently points out to his guilt. Therefore, we are satisfied that the appellant was rightly convicted and sentenced by the courts below.

We, therefore, do not find any reason whatsoever to differ from the view which has weighed with the High Court and the trial court. The appeal is accordingly dismissed.

The appellant, who is on bail, shall surrender

immediately and/or be taken into custody forthwith to
suffer the imprisonment as ordered. The bail bonds
stand cancelled.

.....J.
(V. GOPALA GOWDA)

.....J.
(UDAY UMESH LALIT)

NEW DELHI,
JANUARY 06, 2016

ITEM NO.105

COURT NO.10

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2081/2008

SHIV RAJ

Appellant(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date : 06/01/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Anil Kumar Karnwal, Adv. (A.C.)

For Respondent(s) Mr. Puneet Parihar, Adv.
Ms. Ruchi Kohli, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed
order.

The appellant, who is on bail, shall surrender
immediately and/or be taken into custody forthwith to
suffer the imprisonment as ordered. The bail bonds
stand cancelled.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)