

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.436/2010

MOHINDER SINGH

Appellant(s)

VERSUS

STATE OF HIMACHAL PRADESH

Respondent(s)

O R D E R

The appeal arises out of the impugned final Judgment and Order dated 21.08.2003 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.246 of 2001 whereby the High Court dismissed the appeal of the appellant.

The facts of the case are that Mohinder Singh-appellant herein-accused No.1, deceased Balbir Singh, Rajinder Singh (PW-1) and Prem Raj (PW-7) were real brothers.

Prem Raj (PW-7), at the relevant time was employed in a Hotel at Rampur. The appellant-Mohinder Singh, Rajinder Singh (PW-1) and deceased Balbir Singh were living in village Rohal in Tehsil Chirgaon of District Shimla. There was a dispute between the brothers in respect of the land left by their father between Mohinder Singh on one hand and three brothers on the other. The appellant-accused No.1 was living separately from his brothers after the death of his father.

On June 19, 2000, Rajinder Singh (PW-1) and his brother Balbir Singh were in their house. Appellant-accused No.1,

accompanied by Dalip Singh(accused No.2), his brother-in-law came to the house of Rajinder Singh and Balbir Singh. They started abusing them and hurling stones towards the house. Balbir Singh asked appellant-Mohinder Singh (A-1) and Dalip Singh (A-2) to stop hurling stones. The appellant-accused No.1 got infuriated and fired at Balbir Singh with a gun he was carrying. Balbir Singh was shot on his face and neck. He fell down and succumbed to the injuries. Both Mohinder Singh (A-1) and Dalip Singh (A-2) then entered the house, took away some clothes, utensils and papers of the property of their father. Rajinder Singh(PW-1) shifted the dead body from verandah to the room. He locked the room and went to Surinder Singh, a member of the Gram Panchayat to inform him about the incident. Surinder Singh did not come to the spot and told Rajinder Singh (PW-1) that he would come next day morning. Rajinder Singh (PW-1) was scared and did not return back to his house. He went to the house of his father's sister Ganga Mani at Chinchawara Village. He spent the night there. In the morning Rajinder Singh (PW-1) came to Rohru and telephonically informed Prem Raj (PW-7) his brother, about the incident. He went to Rohru to lodge the report with the police at that place but accused No.1 was following him and threatened Rajinder Singh (PW-1) not to do so. He thereafter came to Police post at Chirgaon and lodged the report 9Ex. PW12/A with the police post Chirgaon. On the basis of this report, FIR Exhibit PW12/B was registered at Police Station Rohru.

During the investigation, accused appellant made a

disclosure statement pursuant to which the Gun (Ex.P.3), the weapon of offence was recovered. The dead body was subjected to postmortem on June 22, 2000 by Dr. P.C. Gupta, then Senior Medical Officer, Civil Hospital, Rohru. He found four lead pellets, one large and three small, having been embedded on the left side of the neck. Another four lead pellets, one large and three small were found embedded on the middle of the neck just above the cervical spine.

In the opinion of the doctor, the deceased expired due to gun shot injury leading to rupture of both carotid arteries and shock, within five minutes of the injury.

The trial Court convicted accused-appellant for commission of offence under Section 302, IPC and sentenced him to life imprisonment with a fine of Rs.5,000/- and in case of default, to pay the fine to further undergo imprisonment for six months.

The appellant challenged the order of the trial Court before the High Court. The High Court upheld the conviction and dismissed the appeal of the appellant. Hence the appeal.

We have heard learned counsel for the parties at length.

In the facts and circumstances of the case and evidence on record, in our view, there was no sudden provocation. The accused came to the house of Balbir Singh, his brother and fired at him which resulted in his instant death.

Thus, as prayed no case is made out to convert the offence under Section 302, IPC to one under Section 304, IPC.

The Criminal Appeal is dismissed.

The appellant was granted bail by this Court on 07.03.2011.

His bail bonds are cancelled and he is directed to surrender before the concerned trial Court within three weeks to serve the sentence failing which the concerned police authorities shall take him into custody.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

NEW DELHI;
MARCH 13, 2019.

ITEM NO.109

COURT NO.4

SECTION II-C

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

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Date : 13-03-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr. C. N. Sree Kumar, AOR
Mr. Amit Sharma, Adv.
Ms. Malavika B. Pillai, Adv.

For Respondent(s) Mr. Abhinav Mukerji, AOR
Ms. Pratishtha Vij, Adv.
Mrs. Bihu Sharma, Adv.

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

The Criminal Appeal is dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

[signed order is placed on the file]