

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 400/2013

DHARMENDRA

APPELLANT(S)

VERSUS

STATE OF U.P.

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 607/2013

O R D E R

These criminal appeals, which are to be disposed of by a common order, are directed against the judgment of the High Court whereunder the High Court upheld the sentence and conviction of the appellants under Section 302 read with Section 34 of the Indian Penal Code (IPC).

The prosecution story, briefly stated is that, the incident occurred on 28.10.2001 in which one Arvind (hereinafter referred to as the 'deceased') was killed by the accused persons. It is alleged that some days prior to the incident a quarrel was said to have taken place between the deceased and the accused persons. As a consequence thereof accused Bali lodged a report under Section 307 of the IPC. This had caused a heart burning enmity which is said to be the motive of the incident occurred on 28.10.2001. The murder of the deceased is said to have been committed at about 9.30 a.m. when

he was going to Nagra Haat along with his uncle Devi Sahu (PW-1) and brother Rajesh Sahu (PW-2). It is alleged that when the deceased along with his uncle and brother reached the temple of Shankar Ji, they were confronted by the accused persons, in which the appellant Dharmendra is said to have caught hold of the deceased and accused Balli fired on his forehead about 5 cm above the left eyebrow by a country-made pistol causing the deceased fall down on the ground and then accused Raju who took a stone of about 8 x 8 inch and struck on the back of his head. Devi Das Sahu, the uncle of the deceased as well as Rajendra Sahu brother of the deceased ran away from the scene of the occurrence towards a lane going to Nagra Haat to save their lives. Several persons assembled at the place of occurrence but the assailants fled away extending threat to kill if any body attempts to chase them. Devi Das Sahu went to police station and got prepared the written report made by his son on the basis of which first information report was lodged.

After completion of the investigation, the police filed charge sheet against the appellants under Section 302 read with Section 34 of the IPC. The prosecution altogether examined six witnesses (PW-1 to PW-6). The statements under Section 313 Cr.P.C. of the appellants were recorded in which they pleaded their false implication.

The learned Sessions Judge upon consideration of the evidence and material available on record held that prosecution has proved

its case beyond reasonable doubt and accordingly convicted all the accused of the charges framed against them.

Aggrieved by the order of conviction, the accused persons preferred an appeal before the High Court. The High Court upon re-appreciation of the evidence and the totality of circumstances came to the conclusion that the appellants are guilty of the offence punishable under Section 302/34 of the IPC. Hence, the appellants are before us in these appeals challenging their conviction and award of sentence affirmed by the High Court under Section 302/34 of the IPC.

We have heard the learned counsel appearing for the appellants as well as for the State and perused the material available on record.

The arguments before us remain the same which were advanced before the High Court. In the first instance, it was argued that First Information Report(FIR) was written at the Police Station in consultation with the police and deliberate gaps were left in the FIR with a motive to fill the same at a later point of time. This contention was rejected by the High Court taking note of the fact that no suggestion to this effect was given to the witnesses by the defence. Therefore, this argument is clearly an afterthought and rightly rejected by the High Court. So much so, the High Court has found, as a fact, that in the original FIR there are no alleged gaps, and on the contrary, the FIR is recorded in a continuous

manner without leaving any possibility of insertion in the said FIR. It was also sought to argue that as per the prosecution, the deceased was going to the market for purchasing of 200 Kg of wheat taking in a gunny bag and an attempt was made to highlight that it was unthinkable that a person would take a gunny bag for bringing of 200 Kg wheat as it is impossible to carry the gunny bag with so much weight. However, what is missed is that, the prosecution witnesses in their deposition made it abundantly clear that the wheat, which was to be purchased, was supposed to be brought on trolley in two gunny bags.

Another argument which was raised was that the accused Balli @ Manmohan had been externed under the Goondas Act and, therefore, his presence at the place of incident was not possible. However, here also the courts below have pointed out that he was permitted to enter in the district two hours prior on the date fixed in the cases pending against him and could remain in the district 12 hours after the date. Thus, 24 hours time was available to Balli to enter the district when the date was fixed for in any of his cases. The incident happened on the date when one case was fixed and the possibility of his presence in the district was clearly established. In any case, his presence is recorded by the eye-witnesses to the incident and, therefore, mere externment would not be a ground to say that he was not at the place of incident. Once he was seen at the place of incident and the eye-witnesses also saw him that he had fired at the deceased, the externment order would be of no consequence, inasmuch as, he could have even

violated the said order to commit the crime.

Insofar as Dharmendra is concerned, it has come on record that he was admittedly a friend of Balli and knew about his past history and, therefore, there was no reason to disbelieve the eye-witnesses that after committing the crime all three accused persons fled away in the same direction. Therefore, it was not possible that Dharmendra was not aware of the place of hiding of the weapons used in the incident which were recovered on the disclosure statement made by him and it is he who pointed out the place where the weapons of crime were hidden.

We, thus, find that no substantial question of law has been raised. The testimonies of the eye-witnesses are unblemished and are trustworthy and the conviction recorded by the Trial Court and upheld by the High Court warrants no interference.

The criminal appeals are, accordingly, dismissed.

.....J.
[A.K. SIKRI]

.....J.
[AMITAVA ROY]

NEW DELHI;
OCTOBER 05, 2016.

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). 400/2013

DHARMENDRA

Appellant(s)

VERSUS

STATE OF U.P.

Respondent(s)

(with appln. (s) for bail and office report)

WITH

Crl.A. No. 607/2013

(WITH Office Report)

Date : 05/10/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Mr. E. C. Vidya Sagar,Adv.

Mr. S.P. Singh, Sr. Adv.

Mr. Abdul Qudir, Adv.

Mr. P.V. Singh, Adv.

Mr. B. K. Pal,Adv.

For Respondent(s) Ms. P. Ratnamala,Adv.

UPON hearing the counsel the Court made the following
O R D E RThe Criminal Appeals are dismissed in terms of the signed
order.

Pending application, if any, shall be disposed of accordingly.

(Ashwani Thakur)

COURT MASTER

(Signed order is placed on the file)

(Mala Kumari Sharma)

COURT MASTER