

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 1150 OF 2013

KRISHAN Appellant (s)
VERSUS
STATE OF HARYANA & ANR Respondent(s)

WITH APPEAL(CRL) NO. 1133 of 2013
(With appln.for bail and office report)

Date: 13/03/2014 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Mr. Ram Naresh Yadav, Adv.
Mr. Vibhuti Sushant Gupta, Adv.
Dr. Kailash Chand,Adv.

Mr. Ajay Veer Singh Jain, Adv.
Mr. R.K. Verma, Adv.
Mr. U.K. Bokadia, Adv.
Mr. Aishwarya Jain, Adv.
Mr. Mohd.Irshad Hanif, Adv.

For Respondent(s) Mr. Ajay Veer Singh Jain, Adv.
Mr. R.K. Verma, Adv.
Mr. U.K. Bokadia, Adv.
Mr. Aishwarya Jain, Adv.
Mr. Mohd.Irshad Hanif,Adv.

Dr. Monika Gusain ,Adv

Ms. Nupur Chaudhary, Adv.
Mr. Tarjit Singh Chikkara, Adv.
Mr. Kamal Mohan Gupta ,Adv

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

The appeals are dismissed in terms of the signed order.

[Usha Bhardwaj] [Sneh Lata Sharma]
A.R.-cum-P.S. Court Master
Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1150 OF 2013

Versus

|State of Haryana & Anr.

|.. Respondents |

WITH CRIMINAL APPEAL NO.1133/2013

O R D E R

Both the appeals arise out of the same judgment and as such they were heard together and are being disposed of by this common judgment.

Kailash Chander (appellant in Cr1.A.No.1133/2013), informant Sri Kishan (PW-9) and Parvinder the deceased are brothers. Manmohan (PW-10) happens to be the son of the informant Sri Kishan and Gajender Parkash (since acquitted) son of Kailash Chander. All the brothers were residing separately and there existed a land dispute between appellant Kailash Chander, informant Sri Kishan and the deceased Parvinder and their father Mukhtiar Singh and in fact a litigation in this regard was pending in the Court. According to the prosecution on 02.02.2001 at about 5.30 p.m. Asha the daughter of the informant while returning after giving water to the buffalo was abused and beaten by Gajender Parkash. On the next day, the informant protested as to why his daughter was

..2/-

:2:

beaten whereupon Kailash Chander brought out a gun from his house and in the meanwhile, Parvinder, Sri Kishan and Manmohan also reached there. It is alleged that Kailash Chander with his licensed gun fired at Parvinder causing injury to him. It is further alleged that thereafter Kailash Chander fired 2-3 shots causing injuries to Parvinder and sustaining injuries he fell down. It is also alleged that Kailash Chander fired more shots causing injuries to Manmohan. It is the case of the prosecution that Gajender Parkash (since acquitted) has snatched the gun from his father and fired at Parvinder and ran away. Parvinder was taken to the hospital where he was declared dead. PW-10 Manmohan was examined by PW-14 Dr. Giriraj and he referred him for treatment to the P.G.I. Rohtak.

On the basis of the information given by PW-9 the case was registered and the police after usual investigation submitted the charge sheet. The accused persons were charged for commission of offence under Section 302 and 307/34 of the Indian Penal Code. In addition Kailash Chander was charged for the offence under Section 27 of the Arms Act. The trial court held both the accused i.e. Kailash Chander and his son Gajender Parkash guilty under Section 302/34 and 307/34 Indian Penal Code and sentenced them to undergo imprisonment for life and a

...3/-

:3:

fine of Rs.2000/- each with default clause. They were also sentenced to undergo rigorous imprisonment for 5 years for the offence under Section 307/34 of the Indian Penal Code. In addition, Kailash Chander was convicted for offence under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for one year. Both of them preferred an appeal and the High Court by its judgment dated 05.03.2012 passed in Criminal Appeal No.647DB of 2007 sustained the conviction of the Kailash Chander with certain modification but set aside the conviction and sentence of Gajender Parkash. The High Court held Kailash Chander guilty under Section 302 of Indian Penal Code simpliciter and altered his conviction from Section 307/34 to that of Section 323 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for six months. The High Court maintained the conviction and sentence under Section 27 of the Arms Act.

Aggrieved by the conviction Kailash Chander has preferred Criminal Appeal No.1133 of 2013 with the leave of the Court whereas the informant Krishan aggrieved by the acquittal of Gajender Parkash has preferred Criminal Appeal No.1150 of 2013 with the leave of the Court.

We have heard Mr. Ajay Veer Singh on behalf of the ...4/-

:4:

appellant Kailash Chander, Ms. Nupur Choudhary for the State of Haryana and Mr. Ram Naresh Yadav for the informant Kishan. The prosecution to bring home the charge has mainly relied upon the evidence of PW-9 Sri Kishan and PW-10 Manmohan who claimed to be the eye-witnesses to the occurrence. PW-10 Manmohan has sustained fire arm injury in the occurrence. PW-14 Dr. Giriraj who examined him had stated that the injury found on his person is possible to be caused by fire arm. The prosecution has also relied upon the evidence of PW-7 Dr. Anil who has conducted postmortem examination on the dead body of Parvinder. PW-9 and PW-10 have consistently stated that it is appellant Kailash Chander who had caused fire arm injury to Parvinder. The same finds support from the evidence of PW-12 Dr. Ved Kumar who had conducted the postmortem examination. PW-10 as stated earlier has also sustained fire arm injury in the occurrence. Hence, his claim of being an eye witness to the occurrence is fit to be accepted. Thus the evidence of PW-9 and PW-10 are corroborated by the evidence of doctor who conducted the postmortem examination. The trial court and the High Court on appraisal of their evidence have found that evidence to be reliable. We do not find any reason to take a different view.

As regards the acquittal of Gajender Parkash, the ..5/-

:5:

High Court has found vital contradiction in the evidence of PW-9 and PW-10 so far as this accused is concerned. Not only that their evidence, so far as the accused Gajender Parkash is concerned, is not corroborated by the medical evidence. The possibility of his being falsely implicated being the son of Kailash Chander cannot be ruled out. In the face of the same, the High Court found his presence to be doubtful and accordingly gave him the benefit of doubt.

We are of the opinion that the view taken by the High Court in the state of evidence was one of the possible views and therefore the same does not call for interference by us in the present appeals.

We do not find any merit in these appeals and they are dismissed accordingly.

.....j.
[CHANDRAMAULI KR.PRASAD]

.....J.
[PINAKI CHANDRA GHOSE]

NEW DELHI,
MARCH 13, 2014.