

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 95 OF 2000

MAHENDRA SINGH

Appellant (s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)(with office report)

Date: 26/07/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE H.S. BEDI

For Appellant(s) Mr. Mukesh Sharma, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s) Mr. Aruneshwar Gupta, Addl. Adv. Genl.
Mr. Naveen Kumar Singh, Adv.
Mr. Mukul Sood, Adv.
Mr. Shashwat Gupta, Adv.
Mr. Adarsh Sabharwal, Adv.

UPON hearing counsel the Court made the following
ORDER

For the reasons stated in the signed order, the appeal is allowed in part. The appellant is on bail. If he has not served out the sentence of five years, he may be taken into custody to serve the rest of his sentence. His bail bonds are hereby cancelled.

[Meenu Sethi] [Pushap Lata Bhardwaj]
Court Master

Court Master

Signed order is placed on the file
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 95/2000

Mahendra Singh ...Appellant

Versus

State of Rajasthan

...Respondent

ORDER

Appellant before us is aggrieved by and dis-satisfied with the judgment of conviction and sentence passed in Criminal Appeal No.115 of 1979 passed by a Division Bench of the High Court of Rajasthan at Jodhpur whereby and whereunder the order of acquittal passed on 5.10.1978 by the Sessions Judge, Sriganganagar in Sessions Case No. 110/77 was reversed.

The incident took place at about 7.15 p.m. on 22nd September,

1977. Deceased Amrit Lal was said to be drinking water from the tap at the relevant time. Appellant went to him and started abusing. Allegedly, there was a dispute in regard to the previous conduct of Amrit Lal in the matter of removal of 'Loharins' from the villages. Further, the prosecution case is that the deceased was stabbed by Amrit Lal in the stomach whereafter he ran away.

Before the learned Sessions Judge PW1-Sohan Singh, PW2-Jogender Pal and PW4 Tekchand who were brothers and nephew of the deceased respectively were examined as eye witnesses. PW5-Hansraj is the father of the deceased whereas PW6-Gurbaksh Singh was a witness in regard to the purported motive of the appellant herein to cause the death of the deceased Amrit Lal.

The deceased after being injured was taken to a hospital. Several dying declarations were recorded. One of them was recorded by PW9-Shri Veervardan which was marked at Exbt.P-14 and another by PW11-Shri Ramkishan Songara, who was the Judicial Magistrate who had recorded the dying declaration, marked as Exbt.P-18.

Learned Sessions Judge recorded the judgment of acquittal disbelieving the prosecution case. The High Court not only relied upon the evidence of PW2.Joginder Pal and PW4-Tekchand but also on the dying declarations. The High Court furthermore noticed the admission of commission of offence made by the accused in his examination under Section 313 of the Criminal Procedure Code. In its impugned judgment, however, the High Court opined that the appellant may not have any intention to cause the death of the deceased and, therefore, he was convicted under Section 304 Part II of the Indian Penal Code. For arriving at the said finding, the High Court accepted that there had been hot exchanges between the deceased and the accused immediately prior to the assault. It was also noticed by the High Court that the accused had caused unwarranted interference in the personal life of the accused.

The incident, as noticed hereinbefore, took place on 22 nd September, 1977. It is not in dispute that there was no pre-meditation on the part of the appellant for causing the aforesaid injury. They met at a place where the incident took place. There had been hot exchanges. If the appellant is to be believed, on the date of the incident, it was the deceased who had started abusing the appellant. He has accepted that he had also abused the deceased followed by scuffle.

Appellant in his statement under Section 313 Cr.P.C. stated as under:

" ...He caught hold of my private part and told that he will not spare me alive. I had a small knife in my pocket. In my defence I plied the knife which hit in the stomach of Amrit Lal and he fell down....."

We may not place entire reliance on the aforesaid statement of the appellant but then the fact remains that the prosecution case was not believed in its entirety by both the Courts below. The High Court has held that there was no intention on the part of the appellant to cause the death of the deceased. Therefore, in the peculiar facts and circumstances of this, we are of the opinion that the sentence imposed upon the appellant is on a higher side. Keeping in view the fact that the occurrence took place about thirty years back, in our opinion, imposition of five years sentence will serve the ends of justice.

For the reasons stated above, the appeal is allowed in part. The appellant is on bail. If he has not served out the sentence of five years, he may be taken into custody to serve the rest of his sentence. His bail bonds are hereby cancelled.

.....J.
[S.B. SINHA]

.....J.
[H.S. BEDI]

New Delhi,
July 26, 2007