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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1162 OF 2016
(Arising from SLP(Crl.) No.6760/2010)
Rafeek ..Appellant

versus

State of M.P. ..Respondent

O R D E R

1. In the incident which took place on 22.10.1996, Abdul Hamid lost his life. Prosecution came to be initiated against Chhote Khan, Aslam Khan and Rafeek, allegedly for being responsible for the death of Abdul Hamid. The Additional Sessions Judge, Raisen, convicted all the three accused, by an order dated 11.07.1998. The above conviction was recorded under Section 302 read with 34 of the Indian Penal Code.

2. All the three accused approached the High Court of Madhya Pradesh at Jabalpur (hereinafter referred to as the 'High Court'). Whilst Chhote Khan and Aslam Khan preferred Criminal Appeal No. 1661/1998, Rafeek independently preferred Criminal Appeal No. 1594 of 1998. The High Court vide its impugned common judgment dated 25.03.2008, upheld the conviction of all the three accused. Dissatisfied with the order passed by the High Court, Rafeek alone has approached this Court by filing Special Leave Petition (Criminal) No. 6760 of 2010.

3. Leave granted.

4. It was the vehement contention of the learned counsel for

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the appellant, that the sole eye witness Mukheem Miya PW3 had expressly recorded during the course of his examination-in-chief, that he knew Rafeek. He further asserted, that Rafeek was not available at the spot, at the time of occurrence. He also went on to state, that Rafeek had done nothing. In conjunction with the statement of Mukheem Miya PW3, learned counsel for the appellant placed reliance, on the first two witnesses who reached the place of occurrence, namely, Bashir Khan PW1, and Akhtar Khan PW2. In their deposition, they had not named Rafeek as one of the assailants of the deceased Abdul Hamid. In fact, they clearly expressed the third accused as 'Rahees'. Based on the conjoint reading of the statements of Bashir Khan PW1, Akhtar Khan PW

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and Mukheem Miya PW3, it was the submission of the learned counsel for the appellant, that the conviction of the appellant Rafeek was wholly unjustified, as the same was not supported by any acceptable evidence.

5. As against the above contention, it was the submission of the learned counsel for the State of Madhya Pradesh, that there are a number of statements made by the deceased himself, which can be styled as 'dying declaration' indicating, that the assailants who had assaulted and stabbed him (which eventually resulted in his death) were the three accused, namely, Chhote Khan, Aslam Khan and Rafeek.

6. In the above context, reliance was first placed on Exhibit P8, which was recorded by Dr. S.K. Gupta PW9, who treated Abdul Hamid, when he was taken to the hospital, immediately after the occurrence. It is also pointed out, that Dr. S.K. Gupta, PW9

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recorded the statement of the deceased Abdul Hamid in the presence of his senior Dr. S.K. Sharma, PW6. Reading the statements of Dr. S.K. Sharma, PW6 and Dr. S.K. Gupta, PW9, it clearly emerges, that the deceased had pointed out three names, namely, Chhote Khan, Aslam Khan and Rafeek, as the three assailants who had stabbed him.

7. In addition to the above, our attention has been drawn to Exhibit P22, namely, the 'Dehati Nalishi' recorded by Dault Singh, Sub-Inspector, who appeared before the trial Court as PW17. The instant statement was also recorded on the same date as Exhibit P8,

namely, on 22.10.1996, i.e., on the day of the occurrence itself. Abdul Hamid again named the same three accused, namely, Chotte Khan, Aslam Khan and Rafeek, to Daulat Singh, PW17.

8. Based on the Dehati Nalishi recorded by Daulat Singh, PW17, first information report, Exhibit P16, was recorded by Shiv Shankar Dubey, PW13. In the first information report also, the three accused were named at the outset. Consequent upon the initiation of investigation, the statement of the deceased Abdul Hamid was again recorded under Section 161 of the Code of Criminal Procedure, by Daulat Singh, PW17. The same was placed on the record of the trial Court, as Exhibit P25. During the above statement also, Abdul Hamid named Chhote Khan, Aslam Khan and Rafeek, as the three assailants who had attacked him on 22.10.1996.

9. Based on the assertions made by the deceased himself, it was submitted, that there was no justification whatsoever, to place reliance on the statements of Bashir Khan â- PW1, Akhtar Khan â- PW2 and Mukheem Miya â- PW3. It was pointed out, that all these three

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witnesses had been declared hostile, on account of the fact, that in their statements recorded under Section 161 of the Code of Criminal Procedure, they had named 'Rafeek' and not 'Rahees'.

10. In order to demonstrate that it was indeed Rafeek and not Rahees who had participated in the occurrence on 22.10.1996, learned counsel for the appellant raised another very plausible contention, namely, that Rafeek was really not the son of Abdul Hamid, and as such, since Abdul Hamid has described the assailants as his three sons, it was not justifiable for the courts below, to have recorded the conviction of Rafeek, who was not at all the son of the deceased Abdul Hamid.

11. In order to demonstrate that the submission advanced at the hands of the learned counsel for the appellant was misconceived, learned counsel for the respondent â- State placed reliance on the observations recorded in paragraph 36 by the trial Court, that Rafeek was indeed the â- Sgrand sonâ- \235 of the deceased Abdul Hamid, and as such, there was nothing serious about the reference to Rafeek as his son. In addition to the above, learned counsel for the State also placed reliance on the vernacular copy of the Exhibit P25 wherein Rafeek was actually described as the â- Sgrand sonâ- \235 of the deceased Abdul Hamid. Even in the first information report, the correct description of the Rafeek was given by describing him as the â- Sgrand sonâ- \235 of Abdul Hamid.

12. Insofar as the instant aspect of the matter is concerned, we are of the view, that the submission advanced at the hands of the learned counsel for the appellant cannot result in any benefit to the accused â- appellant, on account of the fact, that none of

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the prosecution witnesses was questioned on the issue whether Rafeek was or was not the son of the deceased Abdul Hamid. In fact, it was accepted by the accused, by not questioning the prosecution witnesses, the relationship between Rafeek and the deceased Abdul Hamid. Even otherwise, we find no justification in accepting the contention advanced at the hands of the learned counsel for the appellant, in view of Exhibits P8, P16, P22 and P25, already referred to hereinabove.

13. For the reasons recorded hereinabove, we find no merit in this appeal, and the same is accordingly dismissed.

â- |.....J.

[JAGDISH SINGH KHEAR]

â- |.....J.

[ARUN MISHRA]

NEW DELHI; â- |.....J.

NOVEMBER 29, 2016. [A.M. KHANWILKAR]

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ITEM NO.3

COURT NO.2

SECTION IIA

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6760/2010
(Arising out of impugned final judgment and order dated 25/03/2008
in CRLA No. 1594/1998 passed by the High Court Of M.P At Jabalpur)
RAFEEK
Petitioner(s)

VERSUS

STATE OF M.P. Respondent(s)

Date : 29/11/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Ms. Yugandhara P. Jha, Adv.

Mr. Prasanna Mohan, Adv.

Mr. Kunal Verma, Adv.

for Mr. M. A. Krishna Moorthy, A OR

For Respondent(s) Mr. Sunny Choudhary, Adv.

Mr. Ankit Kr. Lal, Adv.

for Mr. Mishra Saurabh, A OR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

(Renuka Sadana) (Parveen Kumar)

Assistant Registrar

AR-cum-PS

[signed order is placed on the file]