

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1449 OF 2009

HARI PRAKASH @ BABLU

... APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

O R D E R

This appeal has been preferred against the impugned judgment dated 25.04.2007 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 652 of 2001 affirming the judgment and order of learned Sessions Judge, Gurgaon dated 25.09.2001 passed in Sessions Case No. 2 of 2000 by which and whereunder the appellant stood convicted under Section 302 of the Indian Penal Code ("IPC" for short) and sentenced to imprisonment for life with a fine of Rs. 2,000/-; in default of payment of fine, to further undergo rigorous imprisonment for three months. He had further been convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for three years.

Learned counsel for the appellant-accused challenged the concurrent finding recorded by the High Court, raising various legal contentions and the same are pressed into service at the time of making submissions.

The concurrent finding of fact was recorded by the Division Bench of the High Court in the impugned judgment after elaborately referring to the prosecution witnesses, particularly P.W. 10-Pushpinder Chauhan, the eyewitness, the evidence of which is corroborated by P.W. 1, Dr. B.B. Aggarwal, Medical Officer, General Hospital, Gurgaon, the Doctor, who examined his case with reference to the nature of injuries sustained by the deceased on account of a shot by pistol at a short range in front of the shop of the deceased, which occurrence was witnessed by P.W. 10, who has deposed before the trial court. The trial judge after proper evaluation of the prosecution evidence threadbare, including the medical evidence, namely, the postmortem examination report submitted by P.W. 6-Dr. Vishesh Kumar, who conducted the postmortem examination of the dead body has correctly recorded the finding of guilt against the appellant-accused. The Doctor, who conducted the postmortem examination noted the following injuries on the dead body of the

deceased:

"1. There was a lacerated wound of size 5 x 5 cm on right side forehead, 3.5 cms above the suporaorbital ridge right side and 2.2 cms lateral to midline on right side with margins invested not tattoing and the wound was going inward into the cranial cavity.

2. There was a lacerated wound of size 3 cm x 2 cms on 2 cms lateral to injury No. 1 and about 4 cms above the right suporaorbital ridge. Margins averted and irregular. On exploration of the skull there was a oval defect in right frontal bone below the injury No. 1 of the size of 1.2 x 1 cm with fragmented bone around the wound upto 2 to 3 Mlt. throughout the periphery and depressed."

The Doctor has opined that the said injuries are the cause of death of the deceased. The Doctor in the postmortem opined that the death was caused on account of shock and haemorrhage due to the brain injury and further opined that the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature.

The correctness of the said finding was examined by the Division Bench of the High Court with reference to the legal contentions urged in the appeal. The High Court, being the first Appellate Court, has applied its mind to the evidence on record and reappreciated the evidence and arrived at the same conclusion as that of the trial judge by recording its reasons and has not accepted the case averred by the appellant-accused before the High Court. The correctness of the said concurrent finding is challenged in this appeal by learned counsel appearing on behalf of the appellant.

We have very carefully considered each one of the submissions made by learned counsel for the appellant, particularly that the prosecution has failed to examine the complainant witness, namely, Suresh, who was very much present at the time of the occurrence and, therefore, both the courts below could not have placed reliance upon the solitary eyewitness, namely, P.W.10, who is the brother of the deceased and further finding recorded accepting the evidence of P.W. 11, Sub-Inspector Balbir Singh, the Investigating Officer, coupled with the evidence of the Doctor and the postmortem report. Learned counsel for the appellant

further submitted that the concurrent finding on the charge recorded by the Division Bench is erroneous in law for the reason that the High Court should have considered the important fact that solitary eyewitness's evidence corroborated by even the Investigating Officer, who is not an eyewitness and non-examination of another complainant witness, namely, Suresh, and the absence of motive proved by being positive evidence, merely making an observation that the appellant was a classmate of the deceased. There was a quarrel in the School is the motive attributed to the accused in committing crime on 28.10.1999. A submission is made at the Bar to annul the concurrent finding of fact recorded in the impugned judgment.

Per contra, Mr. Manjit Singh, learned Additional Advocate General appearing on behalf of the respondent-State of Haryana, urged that the concurrent findings recorded by the High Court in the impugned judgment do not warrant any interference and, thus, this appeal is liable to be dismissed. He has invited our attention to the finding and reasons recorded by the impugned judgment, particularly the evidence of P.W. 10 coupled with the other evidence on record, the medical evidence and the recovery of the pistol. He

further submitted that having regard to the nature of the injuries sustained at the instance of the appellant-accused by using the pistol is the positive evidence on record i.e. further corroborated by defence witness D.W.2, namely, Sham Yadav, who, when examined, has also stated that he had heard sound of bursting of cracker and many persons gathered outside the shop of the deceased is also a relevant piece of evidence considered by both the courts below. The High Court after examination of the entire material evidence on record has considered the finding of fact recorded on the charge against the appellant-accused. The High Court did not find any reason, whatsoever, to interfere with the conviction and sentence imposed upon the appellant-accused.

We have carefully considered each one of the aspects which is urged before this Court. The trial court and the appellate court after proper evaluation of evidence on record arrived at the right conclusion and held that the charge of murder under Section 302 of the IPC and the offence under Section 25 of the Arms Act are rightly held to be proved. The sentence imposed upon the appellant-accused having regard to the gravity of the offence, the courts below have justified the imprisonment, referred to supra, which,

we do not find call for our interference in exercise of this Court's power in this appeal.

In the result, the appeal is devoid of merit and is thus dismissed.

.....J.
(V. GOPALA GOWDA)

.....J.
(C. NAGAPPAN)

NEW DELHI,
NOVEMBER 27, 2014.

ITEM NO.104

COURT NO.9

SECTION IIB

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). 1449/2009

HARI PRAKASH @ BABLU

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

(With appln. (s) for bail)

Date : 27/11/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Ranbir Singh Yadav, Adv.
 Mr. Puran Mal Saini, Adv.
 Ms. Anzu K. Varkey, Adv.

For Respondent(s) Mr. Manjit Singh, A.A.G.
 Ms. Nupur Choudhary, Adv.
 Ms. Vivekta Singh, Adv.
 Mr. Kamal Mohan Gupta, Adv.

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

The appeal is dismissed in terms of the signed order.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)