MANI RAM

v.

STATE OF RAJASTHAN

MARCH 31, 1993

[DR. A.S. ANAND AND N.P. SINGH, JJ.]

Supreme Court (Enlargement of Appellate Jurisdiction) Act, 1970: Section 2(a)—Appeal—Appreciation of evidence—Whether conviction granted by High Court proper.

Panal Code, 1860: Section 302 read with Section 27, Arms Act—Conviction—Appreciation of evidence—Semi-Digested food found in the stomach of deceased—Time of taking food—Deduction—Evidence of Witnesses—Validity of—Evidence relating to substitution of cartridges—Effect of.

The prosecution case was that about 20-22 days prior to the occurrence the appellant and his brother removed the fencing over the field of the deceased. This resulted in a quarrel and created ill-feelings between the deceased and the appellant and his brother.

On the date of occurrence, the deceased went to his field. Later on his wife, P.W.1 and his son, PW2 went to the field carrying meals for the deceased. The deceased took his meal and at about 12.30 p.m., all the three were returning to their village from the field, near at the water-course of the village, the appellant, who was coming from the village side, gave a 'lalkara' to the deceased and he fired a shot from his pistol at the deceased. The appellant's brother exhorted him to kill the deceased. Thereupon the appellant fired three more shots from his pistol. The deceased fell down and died at the spot.

PW1 accompanied by one Ganpatram went to police station and lodged the first information report at about 3 p.m. and the police investigation was commenced.

The appellant and his brother were sent up for trial, charging the former under section 302 IPC and the latter under section 302/114 IPC. Both were also charged under section 27 of the Arms Act.

The Trial Court acquitted the appellant and his brother of all the

A charges, as it found that the prosecution was unable to prove the case against them.

The State's appeal was partly allowed by the High Court. The High Court set aside the acquittal of the appellant and convicted him for an offence under section 302 IPC and sentenced him to undergo life im-
B prisonment. The High Court maintained the acquittal of the appellant's brother.

Under section 2(a) of the Supreme Court (Enlargement of Appellate Jurisidistion) Act, 1970 the present appeal was filed, contending that the
C judgment of the Trial Court could neither be styled as perverse nor even as unreasonable and that there was no other substantial and compelling reasons which could justify the setting aside of the order of acquittal and, therefore, the High Court should not have interferred with the order of acquittal; that the presence of undigested food in the stomach of the
D deceased belied the prosecution case and that the Trial Court was right in holding that the deceased could not have taken the meals at the time stated by his wife PW1 and his son, PW2 or murdered at 12.30 p.m., as alleged; that the inordinate delay in sending the empty cartridges to the ballistic expert went to show that the possibility that the same had been substituted by the investigating agency could not be ruled out and there-
E fore the conviction of the appellant by the High Court was not justified.

The State submitted that since it was an appeal under Section 2 of the Supreme Court (Enlargement of Appellate Jurisdiction) Act, 1970, this Court could itself appreciate the evidence to determine the guilt or other-
F wise of the appellant; that the findings recorded by the Trial Court were based on surmises and conjectures and the High Court was perfectly justified in reversing the order of acquittal; that the evidence of PW1 and PW2 conclusively established that the crime had been committed by the appellant by his pistol and their testimony had received ample corroboration not only from the statement of the doctor, PW9, but also from the
G evidence of PW11, the ballistic expert, who had opined that the four empty cartridges had been fired from the licenced pistol of the appellant and could not have been fired from any other weapon; that being rustic villagers much importance could not be attached to the time given by PW1 and PW2 during their depositions about the exact time when the deceased
H may have had his meals and therefore it could not be said that the medical

evidence had in any way belied the prosecution case. A

Dismissing the appeal, this Court,

HELD: 1.01. The process of digestion depends upon the digestive power of an individual and varies from in individual to an individual. It also depends upon the type and amount of food taken. The period of B digestion is different for different types of food. Some food articles like mutton, chicken etc. would take more time for being digested as compared to vegatarian food. No question at all were asked from the wife of the deceased about the type of food served by her to her husband or the amount of food taken by the deceased. That apart, the time stated by the C witnesses as to when the deceased took his food was only an approximate time as it was not even suggested to PW1 that she had a wrist watch and had actually seen the time when her husband took his food. Too much play on such slippery factors goes against realism and is not enough to discredit the otherwise reliable testimony of PW1. [856E-F]

D

1.02. The doctor opined that digestion begins in 1 or 1-1/2 hours. From this testimony, what was sought to be made out by the defence was that had the occurrence taken place at 12.30 noon, the deceased would have had his meals before 11.00 a.m. as semi-digested food was found in the stomach of the deceased. The emphasis on this aspect of the case by E the Trial Court, is misplaced because the medical evidence is only an evidence of opinion and is hardly decisive. [856-D]

1.03. The evidence of both the witenesses PW1 and PW2, the widow and son of the deceased, shows that they are consistent in their versions not only about the assailants but also about the manner of assault. Both F the witnesses have given a vivid description of the occurrence. The statement of PW1 that the deceased took his meals at about 10.30 a.m. and that the occurrence had taken at about 12-12.30 in the noon cannot be taken to have been contradicted by the medical evidence. [856-B]

G

1.04. The first information report was lodged by PW1 at 3.00 p.m. at a distance of about 13 miles from the place of occurrence and was therefore lodged with great promptitude and the entire version of the occurrence finds mention in that report. [857-B]

1.05. The testimony of the PWs1 and 2 has impressed the Court and H

they appear to be truthful witnesses and being the close relations of the deceased would, in the ordinary course of things, be the last person to screen the actual offenders and implicate the appellants falsely. Their testimony also receives ample corroboration from the medical evidence and the testimony of ballistic expert, PW11. [857 B-C]

1.06. No sugguestion even was made to anyone of the PWs. 6, 7, 8, 10, 12 that the sealed packets had allegedly been tampered with while in their custody. No such suggestion was even made to PW6 that he had either substituted the carridges sent to the ballistic expert or otherwise tampered with the sealed packets. There is no possibility of the substitution of the cartridges. [858-F]

1.07. Thus there are no suspicious features at all appearing in the evidence which may cast any doubt on the prosecution version that the deceased was shot at with the pistol by the appellant and that he died as a result of the injuries so received. The prosecution had successfully established the case against the appellant beyond any reasonable doubt.

[858 H, 859 A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 724 of 1985.

From the Judgment and Order dated 21.8.1985 of the Rajasthan High Court in D.B. Criminal Appeal No. 494 of 1974.

Mahabir Singh for the Appellant.

Aruneshwar Gupta for the Respondent.

The Judgment of the Court was delivered by

DR. ANAND, J. This appeal under Section 2(a) of the Supreme Court (Enlargement of Appellate Jurisdiction) Act, 1970 is directed against the judgment and order of the High Court of Rajasthan dated 21.8.1985 in Criminal Appeal No.494/1974 convicting the appellant for an offence under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life by reversing an order of his acquittal recorded by the Additional Sessions Judge, Ganganagar vide judgment and order dated 13.2.1974.

According to the prosecution case, Mani Ram appellant and his brother Hari Ram had removed the fencing over the field of Hazur Singh deceased about 20-22 days prior to the occurrence, which took place on 22.6.1972 at about 12.30 noon, and that action of the appellant and his brother had resulted in a quarrel between the brothers and Hazur Singh and had created ill feelings between the parties. On the fateful day of 22.6.1972, Hazur Singh deceased had gone to his field. His wife Surjeet Kaur PW1 and his Son Jaskaran PW2 later on went to the field carrying meals for Hazur Singh. After, Hazur Singh had taken his meal, all the three were returning to their village from the field at about 12.30 p.m. Hazur Singh was ahead of Surjeet Kaur and Jaskaran PWs by about one Kila. When Hazur Singh reached near the water-course of the village, the appellant Mani Ram was seen coming from the village side. He gave a 'lalkara' to Hazur Singh and immediately fired a shot from his pistol at him. His borther Hari Ram who was also armed with a gun exhorted Mani Ram appellant to kill Hazur Singh so that the enemy may not escape. Mani Ram thereupon fired three more shots from his pistol at Hazur Singh, who fell down and died at the spot. At some distance away, Sukh Ram PW4 was present and he also witnessed the occurrence. Surjeet Kaur PW1 accompanied by Ganpatram went to police station Tibi and lodged the first information report, Ex.P/1, at about 3.00 p.m. A case was accordingly registered and the investigating officer, Nisar Ahmed, PW13, visited the spot. He prepared the site plan, the site inspector note and effected recovery of the empty cartridges vide memo Ex.P/6 from the spot. The body of the deceased was sent for port-mortem examination, which was conducted by Dr. K.C. Mittal PW9. The autopsy report was prepared. The following injuries found of the dead-body of Hazur Singh deceased:

A B C D E F G H

(i) Gun shot wound oval in shape with inverted margins, bleeding size 3/4" x 1/2" in the mid right hypochendrium wound is traced upward and backward by the probe. Shirt is torn over the wound.

(ii) Gun shot would size 13/4" at the lower and of the left side of chest in midaxillary size. The edges are inverted. Wound is continued downwards and posteriorly as he is identified by probe. Shirt is torn.

(iii) Gun shot wound with inverted margins, Size 3/4" x

A 1/2" with ulterior medical size of lower and of left arm. Little bleeding. Wound is printing upward and posterior through bone. Shirt over wound is torn.

(iv) Gun shot wound 1 1/4" x 2/4" with margins averted ragged with severe bleeding on the posterior - lateral size B of the upper fifth of left arm. Shirt over wound is torn.

(v) Gun shot wound in intra-scapular region right side 1" x 1/4" x 3/4" circular averted and tagged margins with severe bleeding.

C

(vi) Gun shot wound mid-back left side 1 1/2" x 1" ragged and averted margins with severe bleeding.

According to the Doctor, the death was caused due to rupture of vital organs like liver, lung and big blood vessels causing severe hemorrhage and D shock as a result of the gun shot injuries and the same were sufficient in the ordinary course of nature to cause death. After completion of the investigation, the appellant alongwith his brother Hari Ram were sent up for trial. While the appellant was charged for an oftence under Section 302 IPC, Hari Ram was charged for the offence under Section 302/114 IPC. Both, the appellant and Hari Ram, were also charged for an offence under E Section 27 of the Arms Act. After the trial, the learned Sessions Judge found that there was no case made out against Hari Ram at all and that the prosecution had also not been able to prove the case against the appellant beyond a reasonable doubt. As a consequence, both Hari Ram and the appellant were acquitted of all the charges by the trial court. On F the State filing an appeal against the judgment and order of acquittal passed by the Trial Court, the High Court allowed the appeal of the State in part and while it set aside the acquittal of the appellant and convicted him for an offence under Section 302 IPC and sentenced him to suffer imprisonment for life, the acquittal of Hari Ram was maintained. While G the State has not questioned the acquittal of Hari Ram, the appellant, as already noticed, has filed this appeal.

Mr. Mahabir Singh, learned counsel for the appellant, submitted that the judgment of the Trial Court could neither be styled as perverse nor even as unreasonable and there were no other substantial and compelling H reasons which could justify the setting aside of the order of acquittal and,

therefore, the High Court should not have interferred with the order of acquittal. Learned counsel urged that the presence of undigested food in the stomach of the deceased belied the prosecution case and that the Trial Court was right in holding that Hazur Sigh Could not have taken the meals at the time stated by his wife Surjeet Kaur PW1 and his son Jaskaran PW2 or murdered at 12.30 p.m. as alleged. The learned counsel also submitted that the inordinate delay in sending the empty cartridges to the ballistic expert went to show that the possibility that the same had been substituted by the investigating agency could not be ruled out and therefore the conviction of the appellant by the High Court was not justified.

In reply, Mr. Aruneshwar Gupta, learned counsel appearing for the State of Rajasthan, submitted that since it was an appeal under Section 2 of the Supreme Court (Enlargement of Appellate Jurisdiction) Act, 1970, this Court could itself appreciate the evidence to determine the guilt or otherwise of the appellant. Learned counsel stated that the findings recorded by the Trial Court were based on surmises and conjectures and the High Court was perfectly justified in reversing the order of acquittal. Learned counsel emphasised that the evidence of PW1 Surjeet Kaur and PW4 Jaskaran conclusively established that the crime had been committed by the appellant by his pistol and their testimony has received ample corroboration not only from the statement of Dr. K.C. Mittal PW9 but also from the evidence of Shri G.R. Prasad PW11, the ballistic expert, who had opined that the four empty cartridges had been fired from the licenced pistol of the appellant and could not have been fired from any other weapon. Replying to the submission regarding the presence of undigested food, learned counsel submitted that being rustic villagers much importance could not be attached to the time given by PW1 and PW2 during their depositions about the exact time when the deceased may have had his meals and therefore it could not be said that the medical evidence had in any way belied the prosecution case.

We have given our thoughtful consideration to the submissions made at the Bar and have with the assistance of learned counsel for the parties examined the judgments of the courts below as also the material evidence in the case.

We are in agreement with the High Court that the evidence of PW1 Surjeet Kaur and PW2 Jaskaran has not been viewed and considered in

A the correct and proper prospective by the trial court and undue and unwarranted emphasis had been attached to certain minor discrepancies. Our independent appraisal of the evidence of both the witnesses PW1 and PW2, the widow and son of the deceased, shows that they are consistent in their versions not only about the assailants but also about the manner of
B assault, as has been noticed by us in the earlier part of this judgment. Both the witnesses have given a vivid description of the occurrence. The statement of PW1 Surjeet Kaur that Hazur Singh took his meals at about 10.30 a.m. and that the occurrence had taken at about 12- 12.30 in the noon cannot be taken to have been contradicted by the medical evidence. Indeed, in the post-mortem examination, Dr. K.C. Mittal PW9 found
C "semi-solid undigested food in the stomach of the deceased". The doctor opined that digestion begins in 1 or 1 1/2 hours. From this testimony, what was sought to be made out by the defence was that had the occurrence taken place at 12.30 noon, the deceased would have had his meals before 11.00 a.m. as semi-digested food was found in the stomach of the deceased.
D The emphasis on this aspect of the case by the Trial Court, in our opinion, is misplaced not only because the medical evidence is only an evidence of opinion and is hardly decisive but also because when Dr. K.C. Mittal PW9 stated that digestion begins in 1 or 1.1/2 hours, he did not clarify as to what was the extent of the undigested food in the stomach of the deceased. The
E process of digestion depends upon the digestive power of the an individual and varies from an individual to an individual. It also depends upon the type and amount of food taken. The period of digestion is different for different types of food. Some food articles like mutton, chicken etc. would take more time for being digested as compared to vegetarian food. No
F questions at all were asked from the wife of the deceased about the type of food served to her husband or the amount of food taken by the deceased. That apart, the time stated by the witnesses as to when the deceased took his food was only an approximate time as it was not even suggested to PW1 that she had a wrist watch and had actually seen the time when her husband took his food. Too much play on such slippery factors goes against realism
G and is not enough to discredit the otherwise reliable testimony of PW1. In our opinion, the evidence of PWs 1 and 2 does not stand contradicted by the medical evidence at all and as a matter of fact, the presence of semi solid undigested food in the stomach lends support of the testimony of the two witnesses that they had gone to the field latter on with the food for the
H deceased and had actually served meal to him. It lends assurance to their

presence in the field with the deceased. Despite the lengthy cross-examination nothing was brought out in the cross-examination of either of these two witnesses which could effect the veracity of their testimony. The first information report was lodged by Surjeet Kaur PW1 at 3.00 p.m. at a distance of about 15 miles from the place of occurrence and was therefore lodged with great promptitude and the entire version of the occurrence finds mention in that report. The testimony of both the witnesses has impressed us and they appear to us to be truthful witenesses and being the close relations of the deceased would, in the ordinary course of things, be the last persons to screen the actual offender and implicate the appellants falsely. Their testimony also receives ample corroboration from the medical evidence and the testimony of ballistic expert Shri G.R. Prasad PW11.

Dr. Mittal PW9, as already noticed, found six injuries on the deceased and opined that the same were sufficient in the ordinary course of nature to cause the death. In the FIR Ex. P1 lodged soon after the occurrence PW1 Surjeet Kaur had stated that Mani Ram appellant had fired 3-4 shots after he had fired the first shot on her husband. At the trial, she however could not state exactly as to how many shots had been fired by the appellant from his pistol. That is no surprising because she could not be expected to keep an exact account of the shots fired by the appellant, when she found her husband being shot at and having fallen dwon dead. She categorically attributed the gun shot injuries to the appellant and did not attribute any injury to the acquitted accused Hari Ram. Since, it has been found that the recovered empties had been fired from the pistol of the appellant, it lends sufficient corroboration to her testimony. We may ignore the testimony of Sukh Ram PW4 as a matter of abundant caution but that would not in any way detract from the reliability of the testimony of PW1 and PW2.

The pistol, weapon of offence, was taken into possession from the appellant by PW6 SHO Bhim Singh. It is a licenced pistol of the appellant. According to the evidence of ballistic expert PW11, the empty cartridges sent to him for examination had been fired from that pistol and that pistol alone and from no other similar weapon. Of course, the sealed packets containing the pistol and the cartridges were sent to the ballistic expert after a long delay and that could have created some doubts about the possibility of substitution of the cartridges, while the packets remained with the police but the evidence on the record rules out any possibility of such

A a substitution. The three sealed packets, one, contiaining pistol, the second, contianing the emply cartridge recovered from the spot and the third, containing the three empty cartridges recovered from the appellant alongwith the pistol, were deposited in the malkhana of the police station. They had been received by Head Constable Mani Ram PW10 on 23.6.1972, B the very next day after the occurrence. He had sent the same to the Police lines at Ganganagar. The prosecution examined PW12 Amar Singh who had carried the three packets from the police-station to the police lines at Ganganagar. He categorically stated that while the packets remained with him, they were not tampered with at all. PW10 Mani Ram also deposed that during the period, the sealed packets remained in the malkhana, they C were not tampered with by anyone and that they were handed over to Amar Singh PW12 in the same condition. According to PW7 Ram Chandra, he received the three packets from Amar Singh and after taking them into custody he made an entry in the register and that while the packets remained in his custody, nobody tampered with them. The packets were D sent to the ballistic expert and received there by Jaswant Singh PW8 and Mamraj Singh. Jaswant Singh, appearing as PW8, deposed that he delivered the packets to the ballistic expert on the very next day after receiving them and while the packets remained in his custody, nobody tampered with them. According to the Ballistic expert, PW11, the packets E when recieved by him were properly sealed and the seals were intact and tallied with the specimen of the seal sent to him. None of these witnesses were at all cross-examined. No suggestion even was made to anyone of them that the sealed packets had allegedly been tampered with while in their custody. No such suggestion was even made to SHO Bhim Singh PW6 that he had either substituted the cartridges sent to the ballistic expert or F other-wise tampered with the sealed packets. It is, therefore, futile to contend that the possibility of the substitution of the cartridges could not be ruled out. There is no basis for such an argument. The evidence of the ballistic expert, Shri G.R. Prasad PW11, read with the medical evidence of PW9 and the testimony of the eye-witnesses PWs1 and 2 clearly establishes G that the appellant had fired from his licenced pistol at the deceased and that the deceased dies as a result of the pistol shot injuries received by him. We agree with learned Judge of the High Court that there are no suspicious features at all appearing in the evidence which may cast any doubt on the prosecution version that the deceased was shot at with the pistol by H the appellant and that he died as a result of the injuries so recived.

Thus, in view of what we have discussed above, we find that the prosecution has successfully established the case against the appellant beyond any reasonable doubt and since the Trial Court had passed an order of acquittal on wholly erroneous grounds, the High Court after a proper appraisal of the evidence was right in setting aside the order of acquittal and convicting the appellant for an offence under Section 302 IPC as well for an offence under Section 27 Arms Act. Our independent analysis of the evidence on record shows that the order of conviction and the sentence of life imprisonment and two years rigorous imprisonment recorded by the High Court against the appellant for the offence under Sections 302 IPC and 27 Arms Act respectively is well merited and does not call for any interference. Both the sentences shall, however, run concurrently. Consequently, the appeal fails and is dismissed. The appellant is on bail. His bail bonds shall stand cancelled and he shall be taken into custody to suffer the remaining period of the sentence.

A B C

V.P.R. Appeal dismissed.