

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1392 OF 2008

SUDHIR KUMAR JAIN ...APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN ...RESPONDENT(S)

J U D G M E N T

R. BANUMATHI, J.

1. This appeal arises out of the impugned judgment dated 03.04.2008 passed by the High Court of Rajasthan at Jaipur Bench in Criminal Appeal No. 1717 of 2003 in and by which the High Court has affirmed the conviction of the appellant-accused under Section 302 IPC and Section 3 read with 25 of the Arms Act and the sentence of life imprisonment imposed upon him. On 17.04.2003 at around 09.45 a.m., deceased Rajendra Sahu came to the auto-stand near Baheti Hospital in his auto rickshaw. At around 12 noon when he was sitting on his auto-rickshaw, he saw one Maruti 800 bearing No. RJ-06C-3432 coming and three persons were sitting in the Car. Out of them, one of the occupants of the car opened the left front side door of the car and signalled Rajendra Sahu to come nearer to the car. The deceased - Rajendra Sahu got out from his auto-rickshaw and went near the car. At that time, the appellant who was sitting on the left front side of the said car armed with desi katta opened fire at deceased as a result of which he received injuries just

above his navel and blood started oozing out. On hearing the sound, Farooq (PW-17), Dilip Kumar (PW-9), Shambhu (PW-2) and Iqbal (PW-4) came running on which persons sitting in the car drove away. Iqbal (PW-4) then took the deceased to the hospital in auto-rickshaw. In the hospital, PW-22 ASI recorded the parcha bayan of deceased based on which FIR was registered under section 307 read with section 34 IPC. After the deceased succumbed to his injuries, FIR was altered to Section 302 IPC. Dr. R.K.Sharma (PW-26) who conducted the post-mortem opined that cause of death was shock as a result of firearm injuries to intestine and liver which were sufficient to cause death in the ordinary course of nature. On completion of investigation, charge-sheet was filed against the appellant viz. Sudhir Kumar Jain and co-accused Shailendra Gautam.

2. In the Trial Court, eye witnesses Farooq (PW-17), Dilip Kumar (PW-9), Shambhu (PW-2) and Iqbal (PW-4) who took the deceased to hospital were examined. All the witnesses viz. Farooq (PW-17), Dilip Kumar (PW-9), Shambhu (PW-2) and Iqbal (PW-4) have turned hostile. The prosecution also examined Harishankar (PW-3) and Nannu Khan (PW-5) as eye witnesses who have also not supported the prosecution case and were declared hostile. However, the prosecution relied upon the dying declaration - parcha bayan of the deceased Rajendra Sahu recorded by PW-22 ASI. Suresh Kumar, Constable (PW-18) in his evidence stated that he was travelling in the Maruti Car along with the accused. PW-18 Constable further stated that at about 12 noon when they came near Baheti Hospital, he got down from

the Maruti Car and started moving and one of the accused called auto driver and, thereafter, Constable (PW-18) heard the sound of firing. PW-18 stated that when he turned, he could not see anything and the car from which he got down was standing there and PW-18 moved from there and went to the Juvenile Court. The Trial Court held that the parcha bayan statement of the deceased was corroborated by the evidence of PW-18 Constable who travelled in the Maruti Car along with the accused. Based on parcha bayan and the evidence of PW-18 Constable and recovery of the country made pistol from the appellant-accused, the Trial Court convicted the appellant-accused under Section 302 IPC and sentenced him to undergo life imprisonment. The Trial Court also convicted the appellant under Section 3 read with 25 of the Arms Act and sentenced him to undergo two years imprisonment and imposed a fine of Rs.1,000/- with default clause. The Trial Court acquitted the co-accused Shailender Gautam. In appeal, the conviction and the sentence of imprisonment was affirmed by the High Court as aforesaid.

3. We have heard Ms. Gouri Karuna Das Mohanti, learned counsel appearing on behalf of the appellant as well as Mr. Harsha Vinoy, learned counsel appearing on behalf of the respondent-State of Rajasthan.

4. The Trial Court mainly relied upon parcha bayan of deceased recorded by PW-22 ASI. Of course, Dr. Renu Raonka (PW-28) stated that at the time of recording parcha bayan, deceased Rajendra Sahu was conscious. But in the parcha bayan, deceased Rajendra Sahu though narrated about the incident and firing by

one of the occupants of the car, has neither named the assailants nor mentioned the identity of the occupants of the car who opened the door and who fired at him. Since the deceased has not mentioned the names of the assailants, FIR also does not mention the names of the appellant-accused and the co-accused Shailendra Gautam. The eye witnesses who were examined by the prosecution namely Farooq (PW-17), Dilip Kumar (PW-9), Shambhu (PW-2) and two other witnesses viz. Harishankar (PW-3) and Nannu Khan (PW-5) have not supported the prosecution case and all of them were declared hostile. Thus, none of the eye witnesses examined by the prosecution have supported the prosecution case.

5. The evidence relied upon by the prosecution is the evidence of Suresh Kumar, Constable (PW-18) who claimed to have travelled in the Maruti Car bearing Registration No. RJ-06C-3432 along with the accused. PW-18 stated that on his way to the Court he travelled in the car along with the accused and got down near Baheti Hospital and started moving. After moving some distance, he heard the sound of firing and when he turned he could not see anything; but he found that the car from which he got down was standing there. The Trial Court mainly relied upon the evidence of PW-18 Constable and took it as corroborating evidence to substantiate the parcha bayan. It is pertinent to note that PW-18 Constable though claims to have heard the firing and saw the car standing there he has not given his statement regarding the occurrence at the earliest point of time. Though occurrence was of 17.04.2003, his

statement was recorded after lapse of about 18 days i.e. 04.05.2003. PW-18 in his evidence claimed that though he was going to the Court he was in plain clothes and that he kept his uniform in the Bag. The delay in recording statement of PW-18 constable and not reporting the matter to the police station about the occurrence by PW-18 raises serious doubt about the credibility of the testimony of PW-18.

6. The other evidence relied upon by the prosecution is the recovery of 12 bore country made pistol based on the disclosure statement of the appellant. It is to be pointed out that the witnesses for recovery of the country made pistol from the accused under Ex.P-15 (Recovery Memo) namely, Mahender Gurjar(PW-11) and Mahender Mayuri (PW-12) have not supported the case of the prosecution. PW-12 turned hostile; while PW-11 stated that he has taken the signatures in Ex.P-15 (Recovery Memo) in the police station. Of course, it is well settled that merely because the independent witnesses have not supported the recovery memo, the case of the prosecution as to the recovery cannot be doubted. Considering the recovery and Ex.P-37 (Ballistic Report) it is seen that three packets marked as A, B and C were sent to the Ballistic Expert (PW-25). Description of Articles as under:

Packet 'A'	contained two lead pellets
Packet 'B'	contained nineteen lead pellets
Pactet 'C'	Contained one 12-bore country made Pistol, marked W/1

Upon examination of the country made pistol and the other

packets, PW-25 opined as under:

1. One 12-bore country made pistol (W/1) from packet 'C' is not a serviceable firearm in the present condition due to some defect in its mechanism. However, after repair it can be made serviceable.

2. The examination of the barrel residue indicates that submitted 12-bore country made pistol (W/1) had been fired. However, the definite time of its last fire could not be ascertained.

3. Twenty one lead pellets from packet 'A' & 'B' are normally used in 12-bore ammunition. These pellets could have been fired from 12-bore country made pistol (W/1) from packet 'C'.

7. The accused was arrested on the same day i.e. 17.04.2003 at 5.50 p.m. and the 12-bore country made pistol was recovered immediately thereafter. The opinion of the ballistic expert that the 12 bore country made pistol from packet 'C' is not serviceable firearm in the present condition due to some defect in its mechanism raises doubt about the weapon used in the occurrence. Of course PW-25 has stated that the twenty one lead pellets contained in Packet 'A' and 'B' are normally used in 12-bore ammunition and these pellets could have been fired from 12-bore country made pistol (W/1) from packet 'C'. Since the 12-bore country made pistol (W/1) recovered pursuant to the disclosure statement made by appellant was not in working condition due to some defects in its mechanism, this raises doubt about the user of the weapon. Considering the fact that all the eye witnesses have turned hostile, in our view, it is unsafe to rely upon the recovery of the weapon and the opinion of the ballistic expert to

sustain the conviction. Learned counsel appearing for the respondent-State has submitted that the deceased Rajendra Sahu has stated about the Maruti Car bearing No. RJ-06C-3432 which was recovered in front of Niranjana Kumar who is the father of the appellant. It is pointed out that the prosecution has not produced RC of the car to show that it stands in the name of Niranjana Kumar. In any event, the piece of evidence regarding the recovery of the Maruti Car in front of the father of the appellant alone cannot form basis for conviction.

8. Considering the totality of the circumstances and that all the eye witnesses have turned hostile and the FIR does not mention the names of the accused coupled with other circumstances, we hold that the prosecution has not established the guilt of the appellant beyond reasonable doubt. The Trial Court and the High Court erred in basing the conviction upon evidence of PW-18 Constable and which in our view cannot be sustained. The conviction of the appellant under Section 302 IPC cannot be sustained and is liable to be set aside. The conviction of the appellant is set aside and the appellant is acquitted under Section 302 IPC and under Section 3/25 of the Arms Act.

9. The appeal is, accordingly, allowed.

.....J.  
[R. BANUMATHI]

NEW DELHI  
31ST JULY, 2019

.....J.  
[A.S. BOPANNA]