

A

HUSNA AND ORS.

v.

STATE OF PUNJAB

JANUARY 23, 1996

B

[DR. A.S. ANAND AND G.T. NANAVALI, JJ.]

Code of Criminal Procedure, 1973 :

C

S.162—Statements to police—Admissibility of—Accused not named in F.I.R.—Supplementary statement of complainant naming accused recorded during investigation—Held, is hit by s.162 and cannot be relied upon as a part of F.I.R.

Indian Penal Code, 1860 :

D

Ss.302, 302/34, 440—Accused committing house trespass—One of Intruders shot dead son of complainant—Accused not named in F.I.R. but complainant named them in a supplementary statement recorded by police during investigation—Trial Court convicting the accused who fired the shot, under Ss.302, 449 IPC and 25 Arms Act—Other accused convicted under Ss.302/34—Conviction and sentence of former upheld but that of latter set aside giving him benefit of doubt—Trial Court should not have relied upon supplementary statement as a part of F.I.R. as the same was hit by S.162 Cr.P.C.

E

Arms Act, 1959 :

F

S.25—Evidence of investigating officer regarding recovery of pistol from accused remained unchallenged in cross-examination—Also supported by recovery memos—Conviction and sentence awarded by trial court upheld.

G

Accused "H" "R" and "J" were tried by the Special Court for offence punishable under Ss.302/34 and 449 I.P.C. and s.25 of the Arms Act. The prosecution case was that at about 9 P.M. on 28.4.1984 two persons with their faces muffled and armed with pistols committed criminal trespass into the house of PW. 1, who raised an alarm and snatched away the pistol from one of the intruders. Meanwhile the son of PW. 1 joined him and in the scuffle the face of one of the intruders got unmuffled. At the exhortation of accused 'R', accused 'H' shot dead the son of PW. 1. Thereupon both the

H

assailants rushed out of the house where accused 'J' armed with a pistol was waiting. All the three then ran away. PW. 1 accompanied by the Sarpanch of the Village went to the police station and lodged the report on the basis of which the F.I.R. was recorded and investigation commenced. Since names of assailants were not disclosed in the F.I.R., during the investigation a supplementary statement of PW. 1 was recorded in which he named the accused. The report of the ballistic expert indicated that the empty recovered from the spot was fired from the pistol recovered from accused 'H'. The autopsy report indicated that the deceased had died as a result of the gunshot injury.

The trial court convicted accused 'H' of the offences punishable under ss.302 and 449, IPC. and s.25 of the Arms Act. Accused 'R' was convicted under Ss.302/34 and 449 IPC. Both of them were sentenced to life imprisonment. Accused 'J' was convicted and sentenced under s.25 of the Arms Act. All the three accused filed the present appeal.

Allowing the appeal of accused 'R' and dismissing that of the other two accused, this Court

HELD : 1. The supplementary statement of PW. 1 recorded during the investigation, in which the appellants were named, was hit by s.162 Cr. P.C. and the trial court could not have relied upon or treated the same as a part of the F.I.R.

2.1. The prosecution has not been able to satisfactorily establish the case against appellant 'R' beyond a reasonable doubt. No overt act has been ascribed to him during the entire occurrence. His presence at the time of occurrence has not been satisfactorily proved. All the three appellants are brothers and the possibility that appellant 'R' was named being brother or appellant 'H' cannot be ruled out. He is given benefit of doubt and is acquitted of all the charges. [860-F, H, 861-A]

2.2. The statement of PW. 1 that appellant 'H' fired the shot at the deceased inspires confidence and receives ample corroboration from the medical evidence as well as from the report of the ballistic expert. The empties had been sent to ballistic expert much before appellant 'H' was arrested and the weapon recovered from him. [861-C]

The ballistic expert opined that the empties had been fired from the weapon sent to him after arrest of appellant 'H'. The evidence on record

A has thus brought home the charge against appellant 'H' beyond every reasonable doubt and his conviction and sentence recorded by the trial court call for no interference. [861-D]

B 2.3. The conviction and sentence of appellant 'J' for the offence under s.25 of the Arms Act is well merited and there is no reason to interfere with the same. The evidence of the investigating officer regarding the recovery of pistol from appellant 'J' at the time of his arrest has remained unchallenged in the cross-examination, and is supported by the recovery memos also. [860-E-D]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 212 of 1986.

From the Judgment and Order dated 18.4.85 of the Special Court at Ferozepur in Case No. 194/84 Trial No. 48 of 1985 & F.I.R. No. 96 of 1984.

D S.K. Dhingra for the Appellant.

Ranbir Yadav and R.S. Suri for the Respondent

The Judgment of the Court was delivered by

E DR. ANAND, J. The appellants were tried for offences under Section 302 /34 and 449 IPC by the learned Judge of the Special Court. Appellants Husna and Jalour Singh were also tried for an offence under Section 25 of the Arms Act. Vide Judgment dated 18.4.1985, the trial court convicted appellant Husna for an offence under Section 302 IPC and sentenced him to life imprisonment. He was also convicted for an offence under Section 449 IPC and sentenced to undergo seven years R.I. and for the offence under Section 25 of the Arms Act to nine months R.I. Appellant Rupa was convicted for an offence under Section 302/34 IPC and sentenced to life imprisonment. He was also convicted for an offence under Section 449 IPC and sentenced to undergo seven years R.I. Jalour Singh appellant was acquitted of the charges under Section 302/34 IPC and 449 IPC but F convicted for the offence under Section 25 of the Arms Act and sentenced to undergo nine months R.I. Through this statutory appeal, the appellants have called in question their conviction and sentence. Since the appeal was received from jail, an amicus curiae was appointed for the appellants. G

H According to the prosecution case on 28th April 1984 Sadhu Ram PW 1 was present at his house at about 9 p.m. along with his wife Kaushlya

PW 4, Satish Kumar (deceased) and other children. Two persons committed criminal trespass into the house with their faces muffled armed with pistols. Sadhu Ram PW 1 raised an alarm and snatched away the pistol from one of the two intruders. During the scuffle, the face of one of the intruders got unmuffled. Satish Kumar, deceased, came to the help of his father. At the exhortation of appellant Rupa, Husna appellant fired a shot which hit Satish Kumar on his face and he fell down. Both Rupa and Husna ran out of the house where Jalour Singh armed with a pistol was already waiting. All the three accused then ran away. Sadhu Ram PW 1 went near Satish Kumar and found him dead. Accompanied Sham Lal and Malkiat Singh, Sarpanch of the village, Sadhu Ram PW 1 went to police station to lodge a report. Formal FIR Ex. P1 was recorded on the basis of that report. Investigation was taken in hand and the investigation officer reached the house of PW 1. Smt. Kushlya PW 4, the mother of deceased Satish Kumar was sitting near the dead body alongwith some other members of the family and interrogated. She became hysterical and could not give any clue or details of the occurrence. An inquest report was prepared and the dead body sent for post mortem examination. An empty cartridge of 315 bore was taken into possession from the spot, vide recovery memo Ex. P5. It was sealed into a parcel. A blood stained brick was also taken into possession vide memo Ex. P6. Later on two more empty cartridges of 315 bore and one empty cartridge of 32 bore were also recovered and taken into possession vide memo Ex. P7. The post mortem on the dead body was performed by Dr. Anup Sood PW 7, which revealed the presence of an ante-mortem lacerated punctured wound with inverted margins on the left side of the face. Death of Satish Kumar according to the doctor was caused due to shock and haemorrhage as a result of the aforesaid injury which was opined by him to be sufficient in the ordinary course of nature to cause death. Since, no names of the assailants had been disclosed in the FIR, during the investigation a supplementary statement of PW 1 was recorded in which he gave the names of the accused. Appellant Husna and Jalour Singh were arrested on June 3, 1984 and weapons recovered from them. Rupa appellant stood already arrested in some other case and was formally shown as arrested in the present case on June 12, 1984. The empties recovered from the spot and the pistol recovered from Husna appellant were sent to the Director, Forensic Science Laboratory, Chandigarh who vide his report Ex. P18 opined that the empty recovered from the spot was found to have been fired from the pistol of Husna appellant. The prosecution with a view to connect the appellants with the crime examined Sadhu Ram PW 1 besides Jit Singh PW 2, draftsman PW 5, investigating officer

A PW 6 and Dr. Anup Sood PW 7. Avtar Singh PW 3 and Smt. Kaushalaya PW 4 were also tendered for cross-examination. The prosecution also filed the affidavits of police officials, whose evidence was of a formal nature at the trial. In their statements recorded under Section 313 Cr. P.C., the appellants denied the prosecution allegations against them and pleaded false implication.

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We have heard learned counsel for the parties and examined the record.

C The trial court acquitted Jalour Singh appellant of the charges under Sections 302/34 IPC and 449 IPC and the State has not filed any appeal against his acquittal. So far as the recovery of the pistol from him at the time of his arrest is concerned, the evidence of the investigating officer has remained unchallenged on that aspect of the case in the cross-examination. The statement of the investigating officer is supported by the recovery
D memos also. Learned Counsel for the appellant was unable to pointed out any infirmity in the order of the trial court convicting Jalour Singh for an offence under Section 25 Arms Act. In our opinion, the conviction and sentence of the appellant Jalour Singh for the offence under Section 25 of the Arms Act is well merited and we do not find any reason to interfere with the same.

E

Coming now to the case of appellants, Husna and Rupa.

As already noticed, in the FIR the names of both the appellants were found missing. They were only named in the supplementary statement of
F PW 1 recorded during the investigation and in our opinion that statement, which was recorded during the investigation was hit by Section 162 Cr. P.C. and the trial court could not have relied upon the same as a part of the FIR. All the three appellants are brothers. No overt act has been ascribed to Rupa appellant during the entire occurrence. It seems rather improbable that if PW 1 had allegedly snatched away a pistol from Rupa appellant
G before Husna fired a shot at Satish Kumar, he would not have fired the same to prevent Husna from firing the shot. Besides no empty recovered from the spot has been connected by the ballistic expert with the pistol allegedly recovered from Rupa appellant. After carefully analysing the evidence on the record, we are of the opinion that the prosecution has not
H been able to satisfactorily establish the case against appellant Rupa beyond

a reasonable doubt. The possibility that he was named being the brothers of Husna cannot be ruled out. His presence at the time of occurrence has not been satisfactorily proved. His conviction and sentence for the various offences as recorded by the trial court therefore cannot be sustained. A

That Satish Kumar died as a result of a fire arm injury, as found by Dr. Anup Sood PW 7, admits of no doubt. It was neither questioned in the trial court nor even before this court. The statement of PW 1 to the effect that it was Husna appellant who had fired the shot at Satish Kumar inspires confidence and receives ample corroboration both from the medical evidence as well as the report of the ballistic expert, who found the empties, recovered from the spot to have been fired from the weapon recovered from Husna appellant. Since, the empties had been sent to the ballistic expert much before Husna appellant was arrested and the weapon recovered from him, there is underlying assurance of the correctness of the prosecution case against him since the ballistic expert opined that the empties which had already been received by him had been fired from the weapon sent to him after the arrest of Husna, appellant. The evidence on the record has, thus brought home the charge to appellant Husna beyond every reasonable doubt and his conviction and sentence for the various offences as recorded by the trial court is well merited and calls for no interference. B C D

As a result of the above discussion, the appeals of Husna and Jalour Singh appellants are dismissed. The appeal of Rupa appellant is allowed and giving him the benefit of the doubt, he is acquitted of all the charges. He shall be released from custody forthwith if not required in any other case. E

R.P.

Appeal of accused 'R' allowed and appeal of the other two accused dismissed. F