

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 19 OF 2012

Krishan @ Kala

Appellant (s)

VERSUS

State of Haryana

Respondent(s)

WITH

CRIMINAL APPEAL NOS. 470 AND 1415/2014 AND 719/2015

O R D E R

Heard learned counsel for the parties.

Learned counsel on behalf of some of the appellants-Jitender and Jasbir submits that the concurrent finding of fact recorded by the High Court on the charge in exercise of its appellate jurisdiction is erroneous in law, thereby resulting in miscarriage of justice to the case of the appellants as the grounds which were urged before the High Court, namely, the prosecution witnesses (PWs) 3, 4 and 5 are not the eye witnesses, there was a delay of four and half hours in lodging the FIR, for which no tenable explanation was given, no Test Identification Parade was conducted in the court, independent witnesses were not examined by the prosecution to prove the guilt, there is material discrepancy of prosecution witnesses in the case,

there is a variance in the ocular and medical evidence and that the sanction order in prosecuting the appellants under Section 27 of the Arms Act is not proved. Our attention was invited by the learned counsel for the appellants to the evidence of the prosecution witnesses in support of his legal contentions, as mentioned above.

On the other hand, learned counsel appearing for the State justifies the concurrent finding of fact recorded on the charge in holding that the guilt of the appellants has been proved contending that the High Court in exercise of its appellate jurisdiction has applied its mind and re-appreciated the entire evidence on record and found that the finding of fact recorded on the guilt for the charge under Sections 302 read with Section 149 and Section 148 of the Indian Penal Code read with Section 27 of the Arms Act is held to be proved. The concurrent finding of fact recorded by the High Court after careful consideration of the rival legal submissions urged on behalf of the parties on the charge against all the appellants has neither shown to be erroneous nor error in law. The learned counsel for the State submits that the Appellate Court has applied its mind carefully and the entire evidence on record has been properly evaluated and analyzed the same and recorded the concurrent finding of fact on the charge against the appellants. Therefore, he submits that it is not a fit case for interference of this Court in exercise of its power under Article 136 of the Constitution of India.

With reference to the above-said rival legal contentions urged by the learned counsel for the parties, we have very carefully considered each one of the legal contentions adverted above by the learned counsel on behalf of some of the appellants and our attention was drawn to the depositions of PWs. 3, 4 and 5 and also the Doctor's evidence. We have examined the injuries sustained by the deceased. The Doctor who was examined in the case has spoken about the injuries found on the dead body and the same has been extracted by the trial Court in its judgment from the post mortem report. Our attention was drawn to the same. The Doctor who was examined has opined the injuries on PWs. 3, 4 and 5 and other injury nos. 1 to 6 on the dead body which were ante mortem were caused by using fire arm. He has also opined that the other injuries were not caused by the sharp edged weapon.

The Appellate Court examined the contention urged on behalf of the appellants that Pws. 3, 4 and 5 are not eye witnesses in the case, the same has been rightly disbelieved by the Court by recording valid and cogent reasons in the impugned judgment. The High Court in exercise of its appellate jurisdiction on re-appreciation of evidence on record has found that the conclusions arrived at on the charges by the trial Judge on the basis of the evidence on record is held to be correct. The High Court has rightly accepted the findings recorded on the charge by the trial Court against the appellants as the same is supported with

cogent and valid reasons. Unless it is shown that there is miscarriage of justice caused to the case of the appellants in recording the finding of guilt against them, the jurisdiction normally will not be invoked to interfere with the concurrent finding of fact.

After going through the entire reasoning portion of the judgment of the High Court, we do not find any error in either on the finding or conclusions arrived at by the High Court. It is also necessary to state that after arresting some of the appellants, they had disclosed the weapons used in committing crime and the place where they were kept that is admissible. In pursuance of the disclosure statement made by the appellants recovery of the weapon was made, the same is in conformity with Section 27 of the Evidence Act, use of the said country made pistols in committing crime were recovered and it was further found by the Investigation Officer that there was blood stains on the said weapons which is proved by examining the mahazar witnesses, the same was sent to the ballistic experts for this opinion who have submitted the report. The report is on record and it is established that it is the human blood. Apart from that the blood stains found on the shirt and baniyan of the deceased were also of the human blood, is the finding recorded by the Forensic Science experts. Material evidence on record has also been taken into consideration by the trial Court to record its finding on the charge by believing the evidence of the eye-witnesses and the medical evidence and evidence

of experts (Forensic Science and the ballistic report). The same has been reconsidered and re-appreciated by the High Court.

Further both the Courts below have considered each one of the legal contentions urged on behalf of the appellants, as noted above, and rightly rejected the same by recording its valid & cogent reasons. The learned counsel has failed to show to us that the findings recorded on the above contentions are either vitiated on account of erroneous reasoning or error in law.

For the aforesaid reasons, we do not find any good reason whatsoever for our interference with the impugned judgment and order in these appeals to set aside the findings of conviction and the sentence imposed by the Courts below on the appellants.

The appeals are accordingly dismissed as the same are devoid of merit.

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

.....J.
(ARUN MISHRA)

New Delhi;
Date: 24.02.2016.

ITEM NO.113

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). 19/2012

KRISHAN @ KALA

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

(with office report)

WITH

Crl.A. No. 470/2014

(With Office Report)

Crl.A. No. 1415/2014

(With Office Report)

Crl.A. No. 719/2015

(With appln.(s) for exemption from filing c/c of the impugned judgment and Interim Relief and Office Report)

Date : 24/02/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Vidya Dhar Gaur,Adv. (NP)

Mr. J.B.Mudgil,Adv.

Mr. Uma Shanker,Adv.

Mr. D.C.Ahlawat,Adv.

Mr. Bankey Bihari Sharma,Adv.

For Respondent(s) Mr. Samar Vijay Singh,Adv.

Mr. Gautam Sharma,Adv.

Mr. Sanjay Kumar Visen,Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order placed on the file.

(SUMAN WADHWA)

AR-cum-PS

(MALA KUMARI SHARMA)

COURT MASTER

Signed order is placed on the file.