

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1931 OF 2013
(Arising out of SLP(Cr1.) No.4763/2010)

STATE OF HARYANA

Appellant(s)

:VERSUS:

RAJINDER

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. Vikas Sharma, learned counsel appearing for the State of Haryana and Mr. Salil Bhattacharya, learned counsel appearing for the respondent. This appeal by the State of Haryana seeks to challenge the judgment and order dated 18.9.2009 rendered by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.715-DB of 2004 whereby the respondent Rajinder son of Jita came to be acquitted from a charge under Section 302 I.P.C. amongst other charges.

3. The short facts leading to this appeal are this wise. The respondent herein along with some others were alleged to have murdered one Lachhman on 26.11.2002. There were in all 10 accused. They were tried for the offences under Sections 302, 452, 342, 148 & 149 of the Indian Penal Code and Section 25 of the Arms Act. The learned Sessions Judge by his judgment and order dated 23/27.7.2004 convicted all of them in Sessions Case No.13 of 2003 and sentenced them to life imprisonment along with other punishments. The respondent herein filed Criminal Appeal No.715-DB of 2004 before the High Court which came to be allowed by the Division Bench of the High Court acquitting him. Hence, this appeal by the State.

4. Learned counsel for the State of Haryana points out that the exclusion of the respondent from the other group by the High Court in the impugned judgment was erroneous. The respondent was also a party to the crime and the High Court should not have reversed the judgment of conviction. He has drawn our attention to the judgment of the Sessions

Court and also to the statement of PW-8 - Rajmal who stated that the respondent Rajinder son of Jita gave a Lalkara (shout) and all other accused persons assembled there which led to the murder of the aforesaid Lachhman. It is also stated in the deposition of the said witness that the respondent gave a Gandasa blow on the left cheek of the deceased Lachhman. Learned counsel pointed out that the Sessions Judge disbelieved the DW-4 Ishwar Singh who stated that the respondent Rajinder was not present at the site of the occurrence but he, in fact, was working at another place on the relevant date. Learned counsel submitted that this finding of the Sessions Judge could not have been upturned by the High Court.

JUDGMENT

5. We have perused the judgment of the High Court which clearly records that not only has this DW-4 deposed as above, but a copy of the relevant register Exhibit D-C has been produced to show that this accused was in the office of the Haryana State Electricity Board at that particular point of time. It is also to be noted that the allegation against the respondent is that he had given a blow by a

Gandasa on the left cheek of the deceased. There is no such injury on the left cheek of the deceased and it is Injury No.5 which was on the chest of the deceased because of which the deceased succumbed to death. This being the position, we do not see any error in the order passed by the High Court. It is also material to note that the incident was of 26.11.2002 and the Sessions Court judgment is of 23/27.7.2004 and the High Court judgment is of 18.9.2009. All this time the respondent was in custody until he was acquitted by the High Court. We do not see any reason to interfere with the impugned order passed by the High Court. This appeal is, therefore, dismissed.

.....J
(H.L. GOKHALE)

.....J
(KURIAN JOSEPH)

New Delhi;
November 12, 2013.