



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2685 OF 2023

Suresh @ Hanumant

... Appellant

versus

State (Govt. of NCT Delhi)

... Respondent

with

CRIMINAL APPEAL NO. 1250 OF 2023

and

CRIMINAL APPEAL NO. 3685 OF 2023

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant Suresh @ Hanumant in CrI. Appeal No.2685 of 2023 is accused no.3. The appellant, Dinesh Kumar @ Khali in CrI. Appeal No. 1250 of 2023 is accused no.1, and the appellant, Deepak Kumar @ Chintu in CrI. Appeal No.3685 of 2023 is accused no.2. The trial court convicted all the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC'). In addition, accused no.1 was convicted for an offence punishable under Section 25(1B)(a) and 27(1) of the

Arms Act, 1959 (for short, “the Arms Act”). They were sentenced to undergo rigorous life imprisonment for the offence punishable under Section 302 read with Section 34 of the IPC. Accused no. 1 was sentenced to pay a fine of Rs.20,000/- for the said offence. The accused nos.2 and 3 were sentenced to pay a fine of Rs.15,000/- each for the offence. Default sentences were provided for non-payment of fines. Accused no.1 was further sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.2,000/- for the offence punishable under Section 25(1B)(a) of the Arms Act. By the impugned judgment, a Division Bench of the High Court has confirmed the conviction and sentence of the appellants.

2. According to the case of the prosecution, the deceased Nagender Yadav was the husband of PW-1 Bindu. Accused no.1 used to stay in the same locality as PW-1 and the deceased. The other two accused used to roam around with accused no.1 in the locality and therefore, all three were known to the PW-1 and her deceased husband. According to the prosecution’s case, in Diwali of the year 2010, accused no.1 came to the house of the deceased and called the deceased outside the house. Accused no.1 was carrying a beer bottle at that time. He broke the said bottle on the door of the house of the deceased and left the house after abusing and threatening the deceased.

3. The incident happened on the intervening night of 15th and 16th May 2012. PW-1, along with her minor son, aged 10 years, and the deceased were sleeping in their house. Around

12:30 am on 16th May 2012, PW-1 heard a sound like a cracker. She woke up and heard her husband (deceased) calling her. She saw the deceased coming from the gate of the house in a bending position and was crying in pain. She turned on the light and found that the blood was oozing out of the abdomen of the deceased. Then she started weeping. The deceased upon asking PW-1 to call their family members, disclosed to her that accused no.1 had shot him when the accused nos.2 and 3 were also present with the accused no.1. Thereafter, PW-1 raised alarms, when PW-2 Ram Singh Yadav, who was the brother of the deceased and his sister's son Angad (PW-10), who were neighbours of the deceased, rushed there. The deceased was taken to Sanjay Gandhi Memorial Hospital, from where he was shifted to RML Hospital. After a few minutes, he was declared dead.

4. The prosecution mainly relies upon the dying declaration of the deceased made before PW-1 and PW-2 as well as recovery of the firearm at the instance of the accused no.1. Though it was claimed that PW-10 Angad was also present when the dying declaration was made by the deceased, to that extent PW-10 has not supported the prosecution. The Trial Court and the High Court have accepted the prosecution's case of dying declaration.

SUBMISSIONS

5. The learned counsel appearing for the appellants has taken us through the notes of evidence of the material prosecution witnesses. His first submission is that the

photographs on record show that there was a big iron gate to the deceased's house; therefore, the theory that the accused entered the house at midnight cannot be accepted. He submitted that, as seen from the evidence of PW-1, there was darkness where the deceased was attacked, and she had to turn on the light. Therefore, it is unlikely that the deceased may have recognised his assailants in the darkness. It was submitted that when the deceased was taken to Sanjay Gandhi Memorial Hospital, he was conscious and was able to walk. No dying declaration was recorded by the doctor who examined him. He pointed out that the report of the Forensic Science Laboratory (FSL) could not answer the question of whether the bullet recovered from the body of the deceased was fired from the weapon recovered at the instance of accused no.1. The learned counsel submitted that apart from the fact that the theory of dying declaration is doubtful and is not proved, even otherwise the appellants are entitled to the benefit of the doubt. The learned counsel for the respondent invited our attention to the evidence of the material prosecution witnesses and supported the impugned judgments.

CONSIDERATION OF SUBMISSIONS

6. We have perused the notes of evidence and other documents on record. Firstly, we turn to the evidence of PW-1 Bindu, the widow of the deceased. The English version of the relevant part of her examination-in-chief reads thus:

“On the intervening night of 15/16.05.12,
I along with my husband and other family
members were sleeping in our house

bearing no. P-7/164. I was sleeping on the sofa with my minor son Shashank aged about 10 years while my husband was sleeping in the same room. At about 12:30 a.m., **I heard the sound like that of a cracker. I immediately woke up. I saw that my husband was calling me by my name Bindu- Bindu and he was coming from the gate side in bending position and he was crying with pain. I switched on the light and I saw blood was oozing out from the abdomen of my husband. I started weeping. I asked my husband about the injury then my husband told me to call my family members and told me that accused Dinesh @ Khali had shot him. He also told me that his two associates namely Deepak Kumar @ Chintu and Suresh @ Hanumant were also present with the accused Dinesh Kumar @ Khali at that time. I raised alarm and my tenants and neighbours reached there along with my brother-in-law (Jeth) Ram Singh and my nephew (Bhanja) Angad Yadav.** I requested my Jeth and neighbours to remove my husband immediately to some hospital. Thereafter, my husband was removed from spot by my brother-in-law Ram Singh and my nephew Angad on the motorcycle of my nephew Angad. My brother-in-law Ram Singh and my Bhanja were sleeping in other room of my house when I raised alarm. Thereafter, I left my house on foot for hospital and I reached Sanjay Gandhi Memorial Hospital and I came to know

there that my husband has been referred to some other hospital. Thereafter, I left SGM Hospital for my house. When I was on the way, police met me. I told the police the same facts which I have deposed today and told the name of all three accused persons to police.”

(emphasis added)

7. Scrutiny of the cross-examination of PW-1 shows that there is no contradiction or omission brought on record as regards the version mentioned above. PW-1 stated that some other tenants came there apart from PW-2 and PW-10, but she could not recollect their names. She stated that she did not disclose the names of the accused persons to the persons who came there, considering the condition of the deceased. She stated that when her husband was taken to the hospital, she was weeping. She stated that she also reached Sanjay Gandhi Hospital on foot, when she was told that her husband was taken to some other hospital. Then she returned to her house when police enquired with her, and she disclosed the names of the accused to them. Her statement was recorded on 16th May 2012 in the afternoon. She denied the correctness of the suggestion that her deceased husband was suspecting that she was having illicit relations with PW-10 Angad. The appellants contended that the gate of the deceased's house was a huge iron gate. Hence, the story that the appellants opened it and entered the house cannot be accepted. It is pertinent to note that in the cross-examination of PW-1, it was brought on record that the gate of her home was open. She stated that she put

on a light in the house when she saw the deceased coming towards her. It was tried to be contended that there was darkness near the gate. But in the cross-examination of PW-1, it was brought on record that there was a street light at some distance.

8. According to us, the testimony of PW-1 appears natural. No material contradictions and omissions were brought on record in her cross-examination. No suggestion was given to the witness that the deceased was not in a position to speak. She identified the accused persons who were known to her in the Court. Hence, her evidence is worthy of acceptance.

9. PW-2 stated that at 12.30 am on 16th May 2012, when he was sleeping inside the house, he heard cries coming from the side of the lane. He came out and recognised the voice of the deceased. Even PW-10 Angad came there. PW-1 instructed him to get the deceased to the hospital. He stated that PW-1 was weeping. Therefore, he and PW-10 took the deceased to Sanjay Gandhi Hospital on a motorcycle driven by PW-10. The deceased was made to sit between him and PW-10 on the motorcycle. His version of the dying declaration reads thus:

“On the way to hospital, I asked from Nagender as to how he received injuries. My brother Nagender told me that accused Dinesh had caused bullet injury to him and accused Suresh and Deepak were also with him at the time of incident. Doctor started treatment of my brother in emergency ward and doctor told us that the condition of

Nagender is very serious and suggested us to take him to RML Hospital. Doctor obtained my signatures on the MLC of Nagender. Thereafter, I along with Nephew Angad started searching for a conveyance to remove my injured brother to RML Hospital. But we did not find any conveyance in the hospital at that time and we told this fact to the doctor. Thereafter, doctor arranged an official Ambulance from the hospital and my brother Nagender was referred to RML Hospital and he was shifted to RML Hospital in the said Ambulance and we got him admitted there. My nephew Angad also reached in RML Hospital on his motorcycle. During treatment my brother Nagender had expired in RML Hospital.”

(emphasis added)

10. No suggestion was given to the witness that the deceased was not in a position to speak. In the cross-examination, he denied that there used to be a quarrel between the deceased and PW-1, as the deceased had a suspicion about the relationship between PW-1 and PW-10 Angad. He denied the correctness of the said suggestion. There is one omission brought on record in the cross-examination. The omission is about his statement in the examination-in-chief that, on being asked by the doctor, the deceased said that accused no.1 had shot him. However, there is no omission or contradiction about his statement in the examination-in-chief that on the way to the hospital, the deceased told him that accused no.1 had shot

him, and the other two accused were present along with accused no.1 at that time. His testimony appears to be reliable.

11. Now, we come to evidence of PW-10. PW10, in his examination-in-chief, just mentioned that the deceased informed PW2 about the assailants while he was riding the motorcycle to the hospital. In the examination-in-chief, he deposed that he, along with PW-2, took the injured deceased on his motorcycle to Sanjay Gandhi Hospital. However, he had not deposed to the dying declaration made by the deceased. Neither PW-1 nor PW-2 have stated that any dying declaration was made by the deceased to PW-10. Therefore, in the cross-examination, he stated that the deceased had not disclosed anything in his presence.

12. PW-23 Deepak did not support the prosecution. He was cross-examined by the public prosecutor with the permission of the Court.

13. Now, we come to the evidence of recovery of the weapon of assault at the instance of the accused no.1. The weapon was a country-made pistol of .315 bore. The country-made pistol and one cartridge were sent to FSL. PW-15 V.R. Anand, a ballistic expert, was examined. He stated that the country-made pistol was in working condition and that the test fire was successfully conducted. An empty cartridge was fired. However, he stated that no opinion can be given whether the bullet marked as Exhibit EB-1, which was found in the body of the deceased, had been fired through the country-made pistol.

14. Thus, the evidence of PW-1 and PW-2 on the dying declaration made by the deceased is consistent and very reliable. Their version of the dying declaration has not been shaken in the cross-examination. As both the witnesses are close relatives of the deceased, we have closely scrutinised their testimony. PW-10 has not fully supported the prosecution. As the evidence of the other two witnesses is worthy of acceptance, the prosecution's case cannot be disbelieved on the ground that PW-10 did not support the prosecution.

15. Once the dying declaration made by the deceased is proved, the fact that the ballistic expert could not give a definite opinion on the question of whether the cartridge recovered from the body of the deceased was fired by the revolver recovered at the instance of the accused no.1, is not relevant at all. Once it is held that the dying declarations are duly proved, this lacuna is insignificant.

16. Accused nos. 2 and 3 were present and were accompanying accused no.1 when accused no.1 shot the deceased. Some arguments were made that there was darkness near the gate of the house of the deceased, and therefore, the deceased may not have identified the accused. However, we cannot ignore that the accused were known to the deceased for quite some time. Since the deceased knew the three accused persons, it is not possible to accept the contention that the deceased may not have recognised them. Moreover, it is brought on record in the cross-examination of PW-1 that there

was a street light nearby. The incident happened at the gate of the house of the deceased.

17. Looking at the evidence on record, Section 34 of IPC has been correctly applied to the facts of the case. From the conduct of the accused persons reflected from the evidence on record, common intention on their part was duly proved.

18. Therefore, we find no error in the view taken by the Trial Court and the High Court. Accordingly, the appeals are dismissed. We grant time of one month to the accused to surrender for undergoing their remaining sentence. We make it clear that as and when the appellants-accused become eligible for consideration of grant of permanent remission, their cases shall be considered by the respondent government as expeditiously as possible.

.....J.
(Abhay S Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
March 05, 2025.**