

RAI SINGH
v.
STATE OF HARYANA

AUGUST 23, 1996

[M.K. MUKHERJEE AND S.P. KURDUKAR, JJ.]

Criminal Law :

Penal Code, 1860 : Section 302.

Murder—Caused by pistol—Incident took place inside house of deceased at an unearthly hour—Son and daughter of deceased were most natural and probable witnesses—Their evidence stood amply corroborated by the fact that body of deceased was found in their house with firearm injuries—According to report of Forensic Science Laboratory these could have been caused by pistol which was concealed by accused—Held : conviction justified—Arms Act, 1959, S. 25—Terrorist and Disruptive Activities (Prevention) Act, 1985, S. 6.

The appellant was convicted under Section 302 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959 read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985. Hence this appeal.

According to the prosecution in the early hours when the deceased was sleeping in her house with her two children - her husband being away - she heard a knock on the door. When she opened the door she found the appellant-accused standing outside. Having come to know that her husband was away, the appellant told the deceased to accompany him. When she refused he fired at her with a pistol as a result of which she fell down dead. During investigation pursuant to the appellant's statement the pistol, which was concealed beneath a tree, was recovered. As regards to the motive for the murder, it was the further case of the prosecution, that the deceased and the appellant originally hailed from two neighbouring villages and that they were close to each other. After her marriage the appellant still continued to visit her and an illicit relationship grew between them. A fortnight before her murder the appellant had again come

A to meet her and her husband turned him out after assaulting him with a lathi.

Dismissing the appeal, this Court

B HELD : 1.1. Though the appellant pleaded not guilty to the charge of murder levelled against him, he admitted that he had developed illicit intimacy with the deceased and that about a fortnight prior to the incident her husband had found them in a compromising position. He also admitted his presence in the house of the deceased on the fateful night. According to him, he was called by the deceased herself and when her husband returned early in the morning he tried to kill the appellant but somehow he made good his escape. He did not know what happened thereafter. [128-C-D]

D 1.2. Since the murder took place inside the house of the deceased and that too at an unearthly hour, the son and daughter of the deceased were the most natural and probable witnesses. Besides, in spite of searching cross-examination, the defence could not discredit them. On the contrary, their evidence stands amply corroborated by the fact that the body of their mother was found in their house with firearm injuries, which according to the report of the Forensic Science Laboratory could be caused by the pistol which the appellant kept concealed beneath a tree, a fact which stands established by the evidence of the Investigating Officer and the witnesses to the recovery. [128-G-H; 129-A-B]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 479 of 1988.

From the Judgment and Order dated 8.6.88 of the Designated Court at Karnal in Sessions Trial No. 106 and 107 of 1987.

Sanjay Bansal (AC) for the Appellant.

G Ajay Siwach and Prem Malhotra for the Respondent.

The Judgment of the Court was delivered by

H M.K. MUKHERJEE, J. Rai Singh, the appellant before us, stands convicted and sentenced under Section 302 IPC and Section 25 of the Arms

Act, 1959 read with Section 6 of the Terrorist and Distructive Activities (Prevention) Act, 1985 for committing the murder of Smt. Parkashi W/o Attar Singh, with a country made pistol. A

2(a) According to the prosecution case in the early hours of January 30, 1987 when Smt. Parkashi was sleeping in her house in village Chhajpur under Panipat Police Station with her two children - her husband being away to Panipat where he worked as a Chowkidar in a factory - she heard a knock on the door. After lighting an earthen lamp when she opened the door she found the appellant standing outside. He asked her as to her husband's whereabouts and gave out that he wanted to take revenge as he (her husband) had assaulted him a fortnight ago. When she replied that he had gone to Panipat that appellant told Smt. Parkashi to accompany him. When she refused he started dragging her out. In course of the scuffle that ensued, the appellant brought out a pistol and fired at Smt. Parkashi, as a result of which she fell down dead. The appellant then ran away with the pistol. Attar Singh was then sent for and after his arrival their son Mohkam Singh (P.W.3) went to the police station and lodged a report. B C D

(b) S.I. Mehar Sigh (P.W. 7) took up investigation of the case and went to the spot along with other police officials. He held inquest upon the dead body of Smt. Parkashi and sent it for post mortem examination. He then prepared a rough site plan and seized some blood soaked earth from the spot which he packeted and sealed. E

(c) During investigation appellant was arrested and pursuant to his statement that he had concealed the pistol and a live cartridge under a tree near Sanauli barrier the same were recovered. The pistol and the pellets, which had earlier been recovered from inside the body of the deceased by P.W. 1 at the time of autopsy, were sent to the Director, Forensic Science Laboratory (FSL) Madhuban for their examination. In their reports FSL opined that the pistol was in working order and the pellets recovered from the body of the deceased could be parts of the empty cartridge case that was found embedded in the barrel of the pistol. On receipt of those reports and completion of investigation the Investigating Officer submitted chargesheet against the appellant. F G

(d) As regards the motive for the murder it was alleged by the H

A prosecution that the deceased and the appellant originally hailed from two neighbouring villages in the State of Uttar Pradesh and that they were close to each other. After her marriage to Attar Singh the deceased came to reside with him at Chhajpur. The appellant still continued to visit her and an illicit relationship grew between them. A fortnight before her murder the appellant had against come to meet her when her husband turned him out after assaulting him with a lathi.

3. Though the appellant pleaded not guilty to the charge of murder levelled against him, he admitted that he had developed illicit intimacy with Parkashi and that about a fortnight prior to the incident Attar Singh had found them in a compromising position. He also admitted his presence in the house of the deceased on the fateful night. According to him, he was called by the deceased herself and when her husband returned early in the morning he (her husband) tried to kill him but somehow he made good his escape. He did not know what happened thereafter.

4. That Smt. Parkashi met with her death on being fired from a pistol stands conclusively proved by the evidence of Dr. Gupta (P.W. 1) who held the post mortem examination and found a lacerated wound over the sternum and multiple metallic pieces embedded inside, which he extracted. He also found multiple lacerated wounds over the posterior wall of the pericardium. He opined that the injuries found by him were sufficient to cause death in the ordinary course of nature and that those injuries were caused by firearm.

5. To prove that the appellant was the culprit, the prosecution relied upon the eye witnesses' account given by Mohkar Singh (P.W. 3), son and Usha (P.W. 4), daughter of the deceased and the evidence adduced in proof of the recovery of the pistol along with an empty cartridge pursuant to the statement made by the appellant.

6. Having gone through the entire evidence on record we do not find any reason to interfere with the impugned judgment. Since the murder took place inside the house of the deceased and that too at an unearthly hour, the son and daughter of the deceased were the most natural and probable witnesses. Besides, we find that in spite of searching cross-examination, the defence could not discredit them. On the contrary, we find, their evidence

stands amply corroborated by the fact that the body of their mother was found in their house with firearm injuries, which according to the report of the FSL could be caused by the pistol which the appellant kept concealed beneath a tree, a fact which stands established by the evidence of the Investigating Officer and the witnesses to the recovery. A

7. We, therefore, find no merit in this appeal. It is accordingly dismissed. B

V.S.S.

Appeal dismissed.