

## State Of Rajasthan vs Arjun Singh & Ors on 2 September, 2011

**Equivalent citations: AIR 2011 SUPREME COURT 3380, 2011 (9) SCC 115, 2011 AIR SCW 5295, AIR 2011 SC (CRIMINAL) 2181, 2012 (1) AIR JHAR R 144, 2011 CRILR(SC MAH GUJ) 774, 2011 (3) SCC(CRI) 647, 2011 (9) SCALE 661, (2012) 1 MAD LJ(CRI) 516, (2012) 77 ALLCRIC 708, (2011) 2 CRILR(RAJ) 774, (2011) 4 MH LJ (CRI) 644, (2011) 4 CHANDCRIC 126, (2011) 4 JCR 138 (SC), 2011 CRILR(SC&MP) 774, (2011) 3 UC 1914, (2011) 50 OCR 371, (2011) 3 ALLCRIR 2723, (2011) 9 SCALE 661, (2011) 4 RECCRIR 270, (2011) 4 ALLCRILR 270, (2011) 4 CRIMES 11**

**Author: P.Sathasivam**

**Bench: P. Sathasivam, H.L. Gokhale**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 552-554 OF 2003

State of Rajasthan

.... Appellant(s)

Versus

Arjun Singh & Ors. etc.

.... Respondent(s)

WITH

CRIMINAL APPEAL NOS. 555-557 OF 2003

AND

CRIMINAL APPEAL NO. 558 OF 2003

J U D G M E N T

P.Sathasivam,J.

1) These appeals are filed against the common final judgment and order dated 26.04.2002 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Criminal Appeal Nos. 504, 533 and 673 of 1995 whereby the High Court disposed of the appeals acquitting Karan Singh, Laxman Raigar, Bahadur Singh, Smt. Swaroop Bai, Smt. Gyan Kanwar and Smt. Bhagwan Kanwar of all the charges and altered the conviction and sentence of Shivraj Singh, Banney Singh and Arjun Singh from Sections 302/149 IPC and 307/149 IPC to Section 302/34 and 307/34 IPC passed by the trial Court.

2) Brief facts:

(a) On 24.12.1991, at about 09:30 a.m., an information was received by the In-charge, Police Out-post Anwa that cross firing had taken place between the Rajputs of that village.

After recording the said information in Rojnamcha (Ex. P31), immediately the police proceeded towards the spot and recorded Parchabayan of injured Himmat Raj Singh (Ex. P32) at about 11.40 a.m. It was stated by Himmat Raj Singh (since deceased) that at 9.30 a.m., when he was standing outside his house, Arjun Singh fired at him from a muzzle loaded gun from the roof of Karan Singh thereby 2-3 bullets hit him on the left hand and another 2-3 hit his abdomen and left thigh.

On hearing his cries, two of his brothers, namely, Raghuraj Singh (since deceased) and Raj Singh (PW-2) came there and took him inside the house and after leaving him there, when they were going to inform the police at Police out-post, Anwa, Bheem Singh and Gajender Singh (who are now absconding), Banney Singh, Karan Singh and Shivraj Singh fired gunshots at them, as a result of which, both of them received injuries.

Thereafter, accused Bahadur Singh came with a gandassa.

The other accused, Laxman Raigar also jumped into their house. It was also stated that Smt. Swaroop Bai, Smt. Gyan Kanwar and Smt. Bhagwan Kanwar were also present on the roof of Karan Singh and they tried to kill the other family members of the deceased with deadly weapons.

(b) The moment Raghuraj Singh and Raj Singh (PW-2) received injuries, Roop Singh, their father immediately rushed to the Police Out-post to inform the Police about the incident.

The police officials reached at the spot and on the basis of the statement of Himmat Raj Singh, a First Information Report (in short 'the FIR') being No. 228/1991 was registered against the accused persons for the offences punishable under Sections 307, 147, 148 and 149 IPC. The injured persons, Raghuraj Singh, Himmat Raj Singh, Dhiraj Raj Singh and Raj Singh were taken to the M.B.S. Hospital at Kota for treatment.

(c) Shri Ajay Kumar Gupta, (PW-18), Munsif and Judicial Magistrate (North), Kota recorded the statements of Himmat Raj Singh and Raj Singh (PW-2). Since Raghuraj Singh was not medically fit to make a statement, his statement was not recorded. On the same day, Raghuraj Singh died in the Hospital, therefore, offence punishable under Section 302 IPC was added. On 29.01.1992, Himmat Raj Singh also died in the Hospital. After due investigation, the police submitted four charge sheets at different stages against Arjun Singh, Banney Singh, Shivraj Singh, Bahadur Singh, Smt. Swaroop Bai, Smt. Gyan Kanwar, Smt. Bhagwan Kanwar, Karan Singh and Laxman Raigar.

(d) On 07.09.1995, the Additional Sessions Judge, Kota, after examining 30 prosecution witnesses and 8 defence witnesses convicted Karan Singh under Sections 148, 302/149, 307/149 IPC and Section 3/27 of the Arms Act, 1959, Shivraj Singh, Banney Singh and Arjun Singh under Sections 148, 302/149, 307/149 IPC and Smt. Swaroop Bai, Smt. Gyan Kanwar, Smt. Bhagwan Kanwar, Laxman Raigar and Bahadur Singh under Sections 148, 302/149, 307/149 and 452 IPC and sentenced all of them to undergo rigorous imprisonment.

(e) Aggrieved by the judgment of the trial Court, Arjun Singh, Banney Singh, Shivraj Singh, Bahadur Singh, Smt. Swaroop Bai, Smt. Gyan Kanwar and Smt. Bhagwan Kanwar filed D.B. Criminal Appeal No. 504 of 1995, Laxman Raigar filed D.B. Criminal Appeal No. 673 of 1995, Karan Singh filed D.B. Criminal Appeal No. 533 of 1995 and Roop Singh-the complainant, filed D.B. Criminal Revision Petition No. 250 of 1996 before the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.

(f) On 26.04.2002, the High Court, by a common impugned judgment, set aside the order of conviction and sentence passed by the trial Judge against Karan Singh, Laxman Raigar, Bahadur Singh, Smt. Swaroop Bai, Smt. Gyan Kanwar and Smt. Bhagwan Kanwar and acquitted them of all the charges. As regards Arjun Singh, Banney Singh and Shivraj Singh, their conviction and sentences under Sections 302/149 and 307/149 IPC were altered to Sections 302/34 and 307/34 IPC.

(g) Against the acquitted persons, the State of Rajasthan filed Criminal Appeal Nos. 552-554 of 2003, Raj Singh, son of the Complainant-Roop Singh, who died during the pendency of the case, filed Criminal Appeal Nos. 555-557 of 2003. Against the order of conviction and sentence, accused Arjun Singh, Banney Singh and Shivraj Singh filed Criminal Appeal No. 558 of 2003 before this Court by way of special leave petitions.

3) Heard Mr. S.R. Bajwa, learned senior counsel for the convicted appellants, Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan and Ms. Aishwarya Bhatti, learned counsel for the son of the complainant.

Issues for consideration:

4) The question for consideration in these appeals is whether the High Court was justified in acquitting Bahadur Singh, Laxman Raigar, Karan Singh, Smt Swaroop Bai, Smt Gyan Kanwar and Smt Bhagwan Kanwar and also altering the conviction from 302/149 and 307/149 IPC to Sections 302/34 and 307/34 insofar as Arjun Singh, Banney Singh and Shivraj Singh.

5) Since the issues, allegations and overt acts are inter-

connected, let us consider all the available materials and ascertain whether the prosecution had established its case as initiated at the first instance.

Discussion:

6) As mentioned earlier, on 24.12.1991, at about 09:30 a.m., all the accused gathered on the roof of Karan Singh.

Accused- Arjun Singh fired at Himmat Raj Singh (since deceased) from the roof of Karan Singh from a capped gun thereby few bullets hit the deceased on the left hand and another 2-3 hit his abdomen and left thigh. On hearing his cries, brothers of the deceased, Raghuraj Singh and Raj Singh (PW-2) came there and took injured Himmat Raj Singh inside their house and after leaving him there, when both of them were going to police out-post to lodge a complaint, at that time, Bheem Singh, Gajendra Singh, Banney Singh, Karan Singh and Shivraj Singh fired on them resulting in the death of Raghuraj Singh. Other accused Bahadur Singh, Laxman Raigar, Smt Swaroop Bai, Smt. Gyan Kanwar and Smt Bhagwan Kanwar were also present on the roof of Karan Singh and they tried to kill other family members with deadly weapons. It is also the claim of the prosecution that the accused persons attempted on the life of Dhiraj Raj Singh - the brother of the deceased. The injured persons, namely, Raghuraj Singh, Himmat Raj Singh, Raj Singh and Dhiraj Raj Singh were taken to Kota Hospital. Raghuraj Singh died on the same day and Himmat Raj Singh died on 29.01.1992 in the hospital, however, Raj Singh survived. According to the High Court, there is complete consistency and credible evidence as far as three accused persons, namely, Arjun Singh, Banney Singh and Shivraj Singh are concerned, however, in respect of other six, there is no direct evidence and the case pleaded by the prosecution is unacceptable and acquitted them of all the charges.

7) The prosecution examined as many as 30 witnesses in support of its case. In the statements recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter called as "the Code"), all the accused denied the prosecution evidence and informed the Court that they were falsely implicated. In addition to their statements, 8 witnesses were examined in their defence.

8) Before considering the evidence of eye-witnesses, let us analyse the evidence of the Dr. Manmohan Sharma (PW-1), Medical Jurist in M.B.S. Hospital, Kota, who examined Raghuraj Singh, Himmat Raj Singh and Raj Singh on 24.12.1991 and Dhiraj Raj Singh on 28.12.1991. The injuries noted by Dr. Manmohan Sharma (PW-1) in Exs. P1-P4 are relevant, they are as follows:-

"Raghuraj Singh (Ex. P1)

1. Gunshot wound 1/2" x 3/4" oval with inverted margins blackening and tattooing on left shoulder outside.
2. Gunshot wound 3/4" x 1/2" oval with blackening on outer side lt. iliac crest posteriolateral aspect upper quadrant of lt. buttock.
3. Gunshot wound 1/2" x 1/2" on lt. hip 4" medial to No. 1.
4. Gunshot wound 1/4" x 3/4" upper quadrant of lt. buttock 5" below No. 1.
5. Gun shot wound 1/2" x 3/4", 2" medial to No. 1 on lt. buttock.
6. Gunshot wound 1/3" x 1/3" on sacral border of lt. buttock 3" away from middle.
7. Gun shot wound 1/3" x 1/3" 1" below No. 6, 3 & 1/2"

away from middle.

8. Gun shot wound 1/3" x 1/3" 1/2" below No. 6, 3 & 2"

away from middle.

Himmat Raj Singh (Ex. P2)

1. Gun shot wound 1/2" x 1/2" circular with inverted margin with blackish.
2. Gun shot wound 1/2" x 3/4" oval with blackening on the side of the abdomen.
3. Gun shot wound 3/4" x 3/4" oval iliac with blackening.
4. Gun shot wound 1/2" x 1/2" circular on left arm upper outer side with bleeding.
5. Gun shot wound 1/2" x 3/4" oval 2" below slight medial to forearm.
6. Gun shot wound 1/2" x 3/4" oval with inverted margin on left forearm innerside.
7. Gun shot wound 1/2" x 1/2" on the left hand. Raj Singh (Ex. P4)

1. Eight gun shot wounds about 1/2" x 1/2" size to 1" x 3/4"

scattered in front of left thigh blackening tattooing margin inverted.

Dhiraj Raj (Ex. P3)

1. Contusion 2" x 1" abrasion on left arm.
2. Contusion 3" x 1 and 1/2" with abrasion on left forearm.
3. Lacerated wound 1" x 1/3" x 1/3" abdomen right side outside in auxiliary 3" below knee joint."

9) With reference to the specific question about the injuries, Dr. Manmohan Sharma (PW-1) has explained to the Court that all the injuries referred to above were caused by gun shots. It was further revealed that Raj Singh had also sustained injuries. It is seen from the X-ray Report (Ex.P5) that Raj Singh had fracture of femur bone and according to Dr. Manmohan Sharma (PW-1), the injuries were serious in nature. He also opined that the injuries of Himmat Raj Singh and Raghuraj Singh were sufficient to cause death in the ordinary course of nature. In his evidence, he also explained that the death of Himmat Raj Singh was caused due to septicemia shock as a result of multiple ante-mortem injuries to abdomen. With reference to a suggestion, PW-1 had denied that blackening and tattooing marks can be possible only when gun shots were fired from a distance of 3 or 4 feet. In respect of the same, Dr. Sharma, (PW-1), explained in detail in his cross-examination that the same marks are possible even in the case of gun shots which are fired from a distance of more than 3 or 4 feet and it depends upon the nature of gun, gun powder, cartridges etc. Raj Singh, (PW-2), in his evidence, has stated that the accused Arjun Singh was standing on the roof of the house of Karan Singh and fired from muzzle loaded gun at Himmat Raj Singh. Though there is little discrepancy as to the distance from the upper portion of the house and the actual scene of occurrence, it cannot be concluded that the injuries on Raghuraj Singh, Himmat Raj Singh and Raj Singh were not caused by fire arms. In this regard, it is relevant to point out the description of injuries as noted by Dr. Sharma (PW-1) in Exs. P1-P4 which we have extracted earlier. In addition to the same, it is seen from the evidence of PW-1 that the blackening marks found around the wounds and the dead body confirmed that the deceased were within a distance of 6 feet from the assailants when they received the injuries.

10) Learned senior counsel for the accused persons contended that in the absence of recovery of pellets from the scene of occurrence or from the body of the injured persons, it is highly doubtful as to the scene of occurrence and whether such incident did take place in the manner suggested by the prosecution. Learned counsel appearing for the complainant pointed out that though there was an entry in Malkhana Register (Ex. P31A) wherein it was stated that a sealed packet containing pellets was deposited but prosecution failed to lead any evidence on this point. It was also pointed out that though a report was received from the Forensic Science Laboratory, no evidence regarding recovery of the pellets was produced. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere non-

recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable.

Likewise, absence of evidence regarding recovery of used pellets, blood stained clothes etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gun shot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gun shot wounds respectively while Raj Singh (PW-2) also received 8 gun shots scattered in front of left thigh.

All these injuries have been noted by the Doctor (PW-1) in his reports Exs. P1-P4.

11) If we analyze the evidence of Dr. Manmohan Sharma (PW-1), his reports, Exs.P1-P4 and the evidence of Raj Singh (PW-2), it leads to a conclusion that gun shot injuries tallied with the medical evidence and both the deceased persons died due to the same reason. Similar conclusion arrived at by the High Court cannot be doubted.

12) Coming to the contention relating to the motive, it is not in dispute that Raghuraj Singh and Himmat Raj Singh died due to gun shot injuries. The reliable eye-witnesses have stated that there was previous enmity between them and litigation was going on between the accused-Karan Singh and the complainant. Even in the absence of motive, in view of the assertion of eye-witnesses, particularly, Raj Singh, (PW-2), coupled with the medical evidence as seen from Exs. P1-P4, by the Doctor (PW-1), the case of the prosecution cannot be thrown out. In a catena of decisions, this Court has held that motive for doing a criminal act is generally a difficult area for the prosecution to prove since one cannot normally be seen into the mind of another. Motive is the emotion which impels a man to do a particular act. Even in the absence of specific evidence as to motive, in view of the fact that in the case on hand, two persons have been killed and one sustained injuries due to fire arms, the case of the prosecution cannot be thrown out on this ground.

13) Now, let us consider the oral evidence led in by the prosecution. We have already pointed out that though the prosecution has examined as many as 30 witnesses, they heavily relied only on 6 witnesses and out of these, Raj Singh (PW-2), Dhiraj Raj Singh (PW-3) and Brij Raj Singh (PW-4) are brothers, Roop Singh (PW-6) is their father and Durga Shankar (PW-5) and Satya Narain (PW-9) were working as labourers in the house of Roop Singh at the time of occurrence. It is true that the names of PWs 3, 4 and 6 were not mentioned either in parchabayan (Ex. P32) or in the statements, Exs. P22-23, recorded by the Judicial Magistrate, (PW-18) on the day of the occurrence.

14) It was also pointed out that all the eye-witnesses, particularly, PWs 3, 4 and 6 being brothers and father of the deceased, they are interested in their version and no reliance need to be placed on their statements. We are unable to accept the said contention. This Court, in a series of decisions, has held that the testimony of such eye-witnesses should not be rejected merely because witnesses are related to the deceased. This Court has held that their testimonies have to be carefully analysed because of their relationship and if the same are cogent and if there is no discrepancy, the same are acceptable vide Abdul Rashid Abdul Rahiman Patel & Ors.

vs. State of Maharashtra (2007) 9 SCC 1. Likewise, minor discrepancies in the evidence of eye-witnesses are also immaterial. However, as rightly pointed out, if Dhiraj Raj Singh (PW-3) had sustained some injuries, his name could have been mentioned in Exs. P22, P23 and P32 which were earliest versions. In those documents, the names of Raghuraj Singh, who died on the same day and Himmat Raj Singh, who died later and Raj Singh, who received gun shot injuries alone were mentioned and none else. Another aspect, as rightly pointed out is that when the injured persons were examined by the Doctor on the same day, admittedly, PW-3 was examined only on the fourth day of the incident and it was seen that he did not receive any gun shot injury. Considering all these aspects including the fact that there is no proof of receiving gun shot injury to PW-3 and also taking note of the fact that he was 13 years of age at the time of occurrence, as rightly pointed out by the High Court, his presence itself is doubtful.

15) The remaining eye-witnesses, as per the prosecution version, are PWs 2, 4 and 6. It was demonstrated before us by the learned senior counsel for the accused that the names of PWs 4 and 6 did not occur in parchabayan (Ex. P 32) as well as in the statements (Exs. P22 and P23) recorded by Shri Ajay Kumar Gupta, (PW-18), Judicial Magistrate, on the day of occurrence. The statement in Ex. P32 was recorded at 11:40 a.m. and the incident took place at about 09:30 a.m. Though it was recorded within two hours, as rightly pointed out, while mentioning the details of the occurrence, names of the assailants, eye-witnesses, the presence of Dhiraj Raj Singh (PW-3), Brij Raj Singh (PW-4) and Roop Singh (PW-6) was not mentioned. We have already noted that even in Exs. P22-23, the names of PWs 3, 4 and 6 were not noted and no explanation has been offered for their absence. The verification of those documents clearly show that only the names of Raghuraj Singh and Himmat Raj Singh (both died due to gun shot injuries) and Raj Singh (PW-2) who also received gun shot injuries were noted and except these names, none else was noted. Another important factor is that Himmat Raj Singh, Raghuraj Singh and Raj Singh (PW-2) alone were medically examined on the same day whereas Dhiraj Raj Singh (PW-3) was examined after 4 days of the incident and that too by the very same Doctor (PW-1). There is no explanation at all for non-examination of PW-3 by the Doctor along with other injured witnesses. In these circumstances, as rightly observed by the High Court, the presence of eye-witnesses, namely, PWs 3, 4 and 6 at the place of occurrence on the date and time as pleaded by the prosecution is highly doubtful. We agree with the said conclusion.

16) In the light of the above conclusion, the only witness available to support the case of the prosecution is Raj Singh (PW-2). Let us consider his evidentiary value and how far he supported the case of the prosecution. Mr. Bajwa, learned senior counsel for the accused, by pointing out certain contradictions, submitted that it is not safe to convict the accused based on his evidence. It is also pointed out that Raj Singh (PW-2) is highly interested witness and closely related to eye-witnesses. It was further pointed out that in the absence of any neighbour, conviction based on the testimony of PW-2 alone is not sustainable. In the light of the above submissions, we have carefully scrutinized the evidence of PW-

2. First of all, merely because the witness is related to eye-

witnesses or the family of the deceased is not a ground for rejection vide *Kuldip Yadav vs. State of Bihar* (2011) 5 SCC



324. It was also held that merely because the prosecution has not examined neighbours, it cannot be claimed that it is fatal to their case, when the evidence of eye-witnesses examined on their side is found to be acceptable and reliable. Raj Singh, (PW-2), in his evidence, in categorical terms has asserted that he saw five to seven persons standing on the roof of the house of Karan Singh. He had specifically mentioned the names of those persons as Bahadur Singh, Shivraj Singh, Banney Singh, Smt Swaroop Bai, Smt Gyan Kanwar, Smt Bhagwan Kanwar, Gajendra Singh and Karan Singh. Inasmuch as in the parchabayan (Ex. P32), only the name of Arjun Singh and as per Ex. P22 the names of Arjun Singh and Banney Singh was mentioned, who were present on the roof at the relevant time, as rightly observed by the High Court, the claim of Raj Singh (PW-2) that all the accused persons were standing on the roof is not believable, however, his assertion that two persons Arjun Singh and Banney Singh were on the roof cannot be denied. Even if we eschew certain portion from the evidence of PW-2, his assertion and the statement regarding the involvement of Arjun Singh, Shivraj Singh and Banney Singh cannot be disputed. In categorical terms, he explained the role played by these persons. It is clear from his evidence that he received gun shot injuries which is also supported by medical evidence. In view of the same, his presence at the time of occurrence cannot be disputed and is found to be proved. This is also strengthened from his statement in parchabayan (Ex. P32) and Ex. P22 statement given to Judicial Magistrate (PW-18). A perusal of Ex. P32 makes it clear that it was Arjun Singh who first fired a gun shot at Himmat Raj Singh and subsequently Bheem Singh, Gajendra Singh (both absconding) Banney Singh and Shivraj Singh also fired at Raghuraj Singh and Raj Singh causing injury to them.

Ex. P32 also clearly shows that there are specific allegations of causing gun shot injuries against Shivraj Singh, Arjun Singh and Banney Singh. In the same manner, verification of Ex.

P22 shows that Arjun Singh and Banney Singh fired at the deceased Himmat Raj Singh and, thereafter, Bheem Singh and Shivraj Singh fired at the brothers of Himmat Raj Singh when they were going to inform the police. Though Mr. Bajwa pointed out certain discrepancies as to the number of gun shots, in view of the number of injuries, as seen from Exs. P1- P4, supported by the evidence of Dr. Manmohan Sharma (PW-

1), the said objection is liable to be rejected and participation of these three accused, namely, Arjun Singh, Banney Singh and Shivraj Singh is clearly proved through various circumstances including the evidence of PW-2.

17) Finally, learned senior counsel for the accused pointed out that inasmuch as Himmat Raj Singh died after 35 days due to septicemia, the Courts below are not justified in convicting the accused persons for an offence under Section 302 IPC for his death. Considering the medical evidence that Himmat Raj Singh sustained 7 gun shot injuries which were sufficient to cause death in the ordinary course, we are satisfied that the death of Himmat Raj Singh undoubtedly falls within the ambit of 302 IPC.

18) The materials placed by the prosecution clearly prove the guilt against the three convicted accused, namely, Shivraj Singh, Arjun Singh and Banney Singh who were armed with guns and with their common intention they fired gun shots resulting in death of Raghuraj Singh and Himmat Raj

Singh as well as causing injuries to Raj Singh (PW-2), in such circumstances, their conviction and sentence by both the courts have to be confirmed.

19) Dr. Manish Singhvi vehemently argued as to the role of the acquitted accused. As discussed in the earlier paras and on going through the evidence relating to their role and the detailed analysis by the High Court, we agree with the said conclusion and reject his arguments. For the same reasoning, the appeals filed by the son of the complainant are also liable to be dismissed.

20) In view of the above discussion and conclusion, we agree with the decision of the High Court, consequently, all the appeals are dismissed.

.....J. (P. SATHASIVAM) .....J. (H.L. GOKHALE)  
NEW DELHI;

SEPTEMBER 2, 2011.