

Sher Singh @ Sheru Vs. State

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Court : Delhi

Decided On : Jan-09-2014

Judge : Pratibha Rani

Appellant : Sher Singh @ Sheru

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.323/1998 SHER SINGH @ SHERU Through : Appellant Mr.Sumeet Verma, Amicus Curiae. versus STATE Through: Respondent Ms.Rajdipa Behura, APP for the State. Pronounced on :

9. In January, 2014 % CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J1 The Appellant Sher Singh has preferred this appeal impugning the judgment and order on sentence dated 19.10.1996 vide which he has been convicted under Sections 302/307/449 IPC and sentenced to undergo life imprisonment with fine of Rs.500/- for committing the offence punishable under Section 302 IPC, also to undergo RI for three years with fine of Rs.250/- for committing the offence punishable under Section 307 and further to undergo RI for one year with fine of Rs.250/- for committing the offence punishable under Section 449 IPC. All the sentences were ordered to run concurrently.

2. In brief, the prosecutions case is that the Appellant was residing in the neighbourhood of the complainant Braham Parkash, father of deceased Rakesh. The complainant had two sons and three daughters. One of his daughters M(name withheld to conceal her identity), aged about 18 years was pursuing her studies through correspondence in 10th Standard. The Appellant used to tease her as and when she used to go out. The complaints made to the family of Appellant Sher Singh had no effect on him. A day prior to this incident also, the Appellant teased and misbehaved with her resulting into another complaint to his family. The matter was not reported to the police due to fear of loss of reputation in society.

3. While narrating the incident in his statement Ex.PW2/A, he stated that on 27.02.1994 at about 2.20 pm, he alongwith his sons Vinod and Rakesh and nephew Manoj was present at home when Appellant entered their house and expressed his desire to meet M and settle the issue finally. The Appellant was asked to leave the house by him and his son Rakesh telling him that he had no connection with them. He and his son Rakesh made the Appellant to leave the house by physically taking him out in the gali. At that juncture, the Appellant took out a chhuri from the right dub of his pant and attacked Rakesh on the left side near armpit. On receiving the injuries, Rakesh fell down and started bleeding. Thereafter the Appellant aimed towards the chest of the complainant but the complainant managed to save himself and the chhuri touched his chin and he started bleeding. The Appellant was overpowered by Vinod and Manoj, along with the churri, when he again tried to attack the complainant. The Appellant also suffered injuries due to fall.

4. The complainant requested for legal action against Appellant Sher Singh for entering in his house with intention to kill him as well as his son Rakesh and causing injuries to them. The complainant also stated that Rakesh had suffered serious injuries and had been removed to hospital by police. The Appellant Sher Singh as well as the churri were produced by Manoj and Vinod before the SHO claiming that the incident had been witnessed by many persons. The complainant also requested for his medical examination.

5. On this statement Ex.PW2/A, the SHO made his endorsement, which also referred to the MLC No.652 of Rakesh, handed over by SI Hari Singh to the SHO at the spot on which the doctor had declared the patient to be brought dead, and sent the rukka at 5.10 pm for registration of the case.

6. Case FIR No.75/1994 under Section 302/307/449 IPC was registered vide DD No.14-A at 5.25 pm.

7. Inquest proceedings in respect of Rakesh were conducted by the SHO, PS Krishna Nagar and complainant was also got medically examined. Postmortem was got conducted on the body of Rakesh, exhibits were sent to CFSL and after completion of investigation, chargesheet was filed in the Court.

8. After the case was committed to the Court of Sessions, charge for committing the offences punishable under Sections 302/307/449 IPC was framed against the Appellant. As the Appellant pleaded not guilty and claimed trial, prosecution has examined 20 witnesses in support of its case. Appellant was also examined under Section 313 Cr.P.C to enable him to explain the evidence appearing against him. Appellant has produced DW-1 Sh.Balley and DW-2 Sh.Partap in his defence.

9. On behalf of the Appellant, Mr.Sumeet Verma, learned Amicus Curiae conceded that from the complaint and the statement of the complainant PW-2 Shri Braham Parkash (father of the deceased) (Ex.PW-2/A) and the other two eye witnesses, namely, PW-1 Manoj Kumar and PW-3 Vinod at the most the prosecution has been able to establish the incident in which Rakesh lost his life and the complainant PW-2 Braham Parkash suffered simple injury on his chin. Mr.Sumeet Verma submitted that though the injury suffered by the deceased proved fatal, but the alleged injury was inflicted on the left side of his shoulder which cannot be termed as vital part of the body. He urged that in the attendant circumstances together with the Appellants intention or knowledge at the most can make him liable for committing the offence punishable under Section 304 IPC for the reason that the Appellant had visited the house of the complainant to settle the issue with regard to his love affair with M (daughter of the complainant) and in that circumstance he could not have intended to cause the death of any member of the family of the girl with whom he was in love.

10. Learned Amicus Curiae for the Appellant has drawn our attention to the averments made in the complaint wherein it is the case of the complainant himself that when the Appellant entered their house, he expressed his desire to talk to M and to settle the issue on that day itself. It was the complainant and his two sons and the nephew who asked him to leave their house telling him that he had no connection with M and that the complainant was thrown out of the house by him and his son Rakesh (deceased). Further, as per the complainant, on being turned out of the house in the Gali, Appellant took out a chhuri and hit Rakesh on left side near kakh (armpit), as a result of which bleeding started and Rakesh fell down. Thereafter, the Appellant tried to hit the complainant and the chhuri touched his chin and at that very stage the Appellant was overpowered by PWs Vinod and Manoj. Counsel further submitted that though the postmortem report reveals other injuries also, but so far as the Appellant is concerned, only one stab injury is attributed to him and that too in a scuffle, hence he could not have been convicted for the offence punishable under Section 302 IPC.

11. While arguing on motive, learned Amicus Curiae for the Appellant submitted that as per the complainant, the Appellant used to tease his daughter and even a day prior to the incident he misbehaved with her. The issue was taken up with the family of the Appellant but with no desired effect on him but the prosecution has failed to prove the motive. Referring to the bundle of letters written to the Appellant not only by M but also by her sisters, counsel submitted that the same speak otherwise. Counsel for the Appellant further submitted that the Appellant is not denying the incident, but in view of the fact that only one injury that too on the non-vital part of the body is attributed to him, the fact that he was sent for medical examination but his MLC is not on record and in the complaint itself the injuries have been tried to be explained by the complainant himself by stating that the Appellant suffered injuries during the scuffle, indicate that there was a sudden fight in which the deceased suffered an injury which proved fatal. Thus, the case of the Appellant falls under Section 304 IPC. Counsel further submitted that the Appellant has already remained in custody for more than 7 years; the incident pertains to the year 1994 and he was bailed out in the year 2001 and has no criminal background, hence he may be sentenced to the period already spent by him in the custody in this case.

12. Ms.Rajdipa Behura, learned APP for the State has taken us through the accusations made in the charge sheet as well as statements of PWs 1 to 3 who are none else but cousin, father and brother of the deceased Rakesh. She further submitted that merely because the witnesses are family members should not be the sole ground to discard their testimonies. While referring to the postmortem report, she submitted that there are total six injuries received by the deceased and injuries Nos.3, 4 and 5 were collectively found to be sufficient to cause death in ordinary course of nature and injury No.6 was individually sufficient to cause death in the ordinary course of nature and in the given circumstances the contention of learned counsel for the Appellant to hold the Appellant guilty under Section 304 IPC is liable to be rejected.

13. During the course of hearing, attention of learned APP for the State was drawn to certain unexplained aspects of the prosecution case: (i) At the best taking the accusation made in the complaint as well as in the statements of PWs 1 to 3, the Appellant caused only one injury on the deceased Rakesh which landed near the armpit. (ii) Thereafter, when the Appellant tried to attack the complainant he was overpowered by PWs Manoj and Vinod along with the chhuri and handed over to the police in that very condition. Then who could be responsible for the other five injuries suffered by the deceased Rakesh which have been noticed during the postmortem examination. (iii) Deceased Rakesh has been examined and declared brought dead at SDN Hospital, Shahdara at 2:50 pm and in the column name of the relative or friend HC Surya Narayan, 288/PCR I/C R-20 is mentioned. Thus, he was removed to hospital by PCR, but any information to PCR prior to 2:50 p.m to enable HC Surya Narayan to reach the spot is not on record.

14. We have three DD entries on record i.e. DD Nos.9A, 10A and 11A. (1) DD No.9A recorded at 2:55 p.m at P.S. Krishna Nagar is to the effect that Rajender Sahni has telephonically informed about one boy namely Rakesh being stabbed in Shastri Park Gali Balmiki Basti and the assailant has been apprehended by the public. The DD was sent to ASI Inderpal Singh through Ct. Kalyan Chand. However, ASI Inderpal Singh or Ct. Kalyan Chand are not cited as witnesses. (2) DD No.10A has been recorded at P.S. Krishna Nagar at 3 p.m on the information given by duty constable at SDN Hospital about Rakesh being brought dead to the

hospital and the DD was marked to SI Hari Singh. (3) DD No.11A was recorded at 3.04 p.m at P.S. Krishna Nagar on the information given through intercom by Wireless Operator of police station that one boy Rakesh has been stabbed by Sheru who had been caught by the police. Thus, all the DDs are much after the arrival of the deceased at SDN Hospital. (4) As per the complaint (Ex.PW-2/A) and the statement of SHO PW- 19, the SHO reached the spot on receiving the information of DD No.9A. He along with Ct. Narender Singh and Wireless Operator reached the spot where he found ASI Inderpal Singh and Ct. Kalyan Chand present and injured Rakesh had already been removed to SDN hospital. It was only while making the endorsement that he mentioned about the information being received of Rakesh being brought dead. In the statement of the complainant, there is no mention of death of Rakesh. (5) The time of MLC of Rakesh is 2:50 p.m, while that of his father Braham Parkash is 4 p.m in the same hospital. The SHO reached the spot on getting the information of DD No.9A recorded at 2.55 p.m. He must have taken some time to reach the spot and prior to that Rakesh had already been declared brought dead and conveyed to the police station vide DD No.10A recorded at 3 p.m. In that circumstance, it is difficult to comprehend as to how the same does not find mention in the complaint Ex.PW-2/A which must have been recorded much after Rakesh had been declared brought dead. Not only that, as per endorsement on the rukka, the complainant Braham Parkash has been sent to SDN hospital along with Ct. Radha Kishan. His MLC being recorded at 4 p.m and the rukka being sent from the spot at 5.10 p.m, no arrival and departure entry of the SHO for the spot or for any other place/purpose is placed on record. (6) PW-19 Inspector Tika Ram, the I.O of the case in his deposition before the Court stated about reaching the spot on receiving the wireless message, meeting ASI Inderpal Singh and Ct. Kalyan Chand at the spot, presence of PWs 1 to 3 Manoj, Braham Parkash and Vinod, handing over of the Appellant to the police by PWs 1 to 3 along with the dagger and taking over the investigation by him. He also stated about recording statement Ex.PW-2/A of the complainant and making endorsement Ex.PW-7/A thereon and sending the same through Ct. Kalyan Chand for registration of the FIR from the spot and thereafter inspection of the spot and preparation of the site plan and arrest of the accused. After deposing about the summoning of the crime team to the spot and taking samples of earth control and

seizure of the same, he deposed that SI Hari Singh received DD No.10-A who had gone to SDN Hospital. He had brought to me at the spot the MLC of injured Rakesh who had been declared as brought dead in the hospital. I went to the above hospital and conducted inquest proceedings on the dead body of Rakesh. I filled death report form Ex.PW-19/B. (7) It remains unexplained as to why the father, brother and cousin of the injured preferred to remain at the spot than to accompany the injured to the hospital to provide him the best medical treatment to save his life. (8) As per statement of PW-8 HC Surya Narayan, he was returning after attending a call of quarrel and on the way he noticed injured Rakesh being taken by his brother who was weeping and also informed on the way that Sheru has caused injuries. But, the two brothers PWs Manoj (cousin) and Vinod do not state that any of them accompanied the injured or were in the process of removing him to the hospital when PCR happened to pass from that place or removed the injured to hospital. HC Surya Narayan being unknown to the injured, for purpose of recording of MLC, could not have given the name parentage, complete address, religion as well as age of the injured who was declared brought dead.

15. Learned APP for the State submitted that the possibility is that the PCR might have enquired about the name and address while taking the injured to the hospital and narrated the same, but about the other injuries suffered by the injured, no explanation being available on record, could be given by her. However, the State could not controvert that as per the statements of PW1 to 3, only one injury was caused to Rakesh by the Appellant.

16. As already noted above, learned counsel for the Appellant is not denying the incident, but only praying that the conviction of the Appellant be altered from Section 302 IPC to Section 304 IPC. We confine our discussion limited to the extent as to whether from the facts available on record this is a case where the offence committed by the Appellant falls under Section 302 IPC or Section 304 IPC.

17. The motive attributed to the Appellant that he used to tease M (daughter of the complainant) is falsified from the letters admittedly written by M to the Appellant. As per the complainant, the Appellant entered his house to talk to M to settle the

issue finally. Thus, from the record, it is gathered that the purpose of visit of the Appellant was only in connection with his affair with the daughter of the complainant and the relationship which was not acceptable to the complainant and his family. This is clear from the fact that in the complaint itself it is recorded that the Appellant was informed that M.. Se Tera Koi Wasta Nahi Hai. The Appellant had gone to the house of the complainant armed with a churri. The conduct of going to the house of the girl, with whom he was in love armed with a churri, is not normal conduct. However, we find force in the submission of learned counsel for the Appellant that taking note of the strata to which the parties belong and fearing adverse reaction to his proposal by the family of M and also apprehending threat to his life, the act being in self-defence and no excessive user of the weapon by the Appellant till he was pushed to the wall by the brothers and father of M, bring the case within the Exception (iv) to Section 300 IPC.

18. We have heard the learned counsel for the parties and considered the rival contentions put forth by them. Somewhat similar situation arose in the case of Mangesh vs. State of Maharashtra (2011) 2 SCC 123 with the difference that in the case of Mangesh the brother happened to kill the boy with whom his sister was in love whereas in the present case the brother died at the hands of the person with whom his sister was in love. After considering the facts of the case and case law relied upon by the parties, the Supreme Court held that since the assault was not premeditated and everything happened at the spur of moment upon the accused being overcome by emotions (though not justified) attracted the offence punishable under Section 304 (Part-I) IPC notwithstanding that 6 injuries were caused including on the left side of the chest which is vital part of the body. It was highlighted by the Supreme Court that when a person loses his senses and becomes violent that by itself may not be a ground to be considered against him and a holistic view in the matter has to be taken.

19. The above decision highlighted the difference between premeditated acts and acts upon sudden loss of self-control in the heat of passion.

20. In a recent decision Chenda Ram @ Chanda Ram vs. State of Chhattisgarh 2013 (10) SCALE 637 the Supreme Court has considered its earlier decision right

from Virsa Singh vs. State of Punjab (1958) 1 SCR1495 State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr. (1976) 4 SCC382 Pappu vs. State of Madhya Pradesh (2006) 7 SCC391 Jagriti Devi vs. State of Himachal Pradesh (2009) 14 SCC771 and Gurmukh Singh vs. State of Haryana (2009) 15 SCC635 In paragraph 15 of its Report, the Supreme Court observed as under:- 15. In Gurmukh Singh v. State of Haryana (2009) 15 SCC635after scanning all the previous decisions where the death was caused by a single blow, this Court indicated, though not exhaustively, a few factors to be taken into consideration while awarding the sentence. To quote:

23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under: a) Motive or previous enmity; b) Whether the incident had taken place on the spur of the moment; c) The intention/knowledge of the accused while inflicting the blow or injury; d) Whether the death ensued instantaneously or the victim died after several days; e) The gravity, dimension and nature of injury; f) The age and general health condition of the accused; g) Whether the injury was caused without pre- meditation in a sudden fight; h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted; i) The criminal background and adverse history of the accused; j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock; k) Number of other criminal cases pending against the accused; l) Incident occurred within the family members or close relations; m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?. These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors

which are required to be kept in view while convicting and sentencing the accused.

21. While examining the case of the Appellant in the light of the aforesaid well settled legal principles, it can safely be said that within the contours of granting benefit, if two views emerge from the same facts, one favouring the accused should be adopted. After examining the circumstances in which the occurrence has taken place and taking note of the fact that only one injury is attributed to the Appellant, we are of the considered view that the offence committed by the Appellant falls in the category of culpable homicide not amounting to murder which is punishable under Section 304 IPC.

22. The next point falling for determination before us is as to whether the offence committed by the Appellant falls under first part of Section 304 IPC or second part. Having regard to the parameters laid down in *Gurmukh Singh vs. State of Haryana* (supra), we find it to be a case falling under Section 304 (Part-II) IPC.

23. In the facts and circumstances of the case, the conviction awarded to the Appellant requires alteration from Section 302 IPC to Section 304 (Part-II) IPC. The appeal stands disposed of in the above terms modifying the conviction of the Appellant from the offence committed under Section 302 IPC to Section 304 (Part-II) IPC. Accordingly, setting aside the substantive sentence under Section 302 IPC to undergo rigorous imprisonment for life, we impose the sentence upon the Appellant to undergo R.I. for 7 years for committing the offence under Section 304 (Part-II) IPC. Other sentences awarded to the Appellant under Sections 307 and 449 IPC, including payment of fine shall remain unaltered.

24. As per the nominal roll of the Appellant dated 28.04.2000, the Appellant has undergone sentence of 6 years and 15 days and remission of 1 year, 1 month and 16 days. The Appellant was admitted to bail on 08.08.2001. Thus, the Appellant has already undergone sentence of more than 7 years in custody in the present case. Since all the sentences were ordered to run concurrently, his bail bonds/surety bonds stand discharged subject to payment of fine, if not already deposited by the Appellant.

25. Trial Court Record be sent back forthwith along with a copy of this judgment.
(PRATIBHA RANI) JUDGE (REVA KHETRAPAL) JUDGE January 09, 2014 st/dc

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