

Suraj Bhan vs.state

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Court : Delhi

Decided On : Aug-09-2018

Appellant : Suraj Bhan

Respondent : State

Advocate for Def. : Mr. Hirein Sharma

Advocate for Pet/Ap. : Mr. S.P. Kaushal, Mr. Ravinder Mehandra

Judgement :

\$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A.1/2003 SURAJ BHAN Appellant Through: Mr. S.P. Kaushal with Mr. Ravinder Mehandra, Dhananjay Kaushal, Advocates. versus STATE Respondent Through: Mr. Hirein Sharma, APP for State CORAM: JUSTICE S. MURALIDHAR JUSTICE VINOD GOEL JUDGMENT0908.2018 Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 7th August, 2002 passed by the learned Additional Sessions Judge, Delhi (ASJ) in Sessions Case No.

arising out of FIR No.1

registered at Police Station (PS) Paschim Vihar convicting the Appellant for the offences under Sections 302 and 307 of the Indian Penal Code (IPC) and Section 27 of the Arms Act and the order on sentence dated 12th August, 2002 whereby for the offence punishable under Section 302 IPC, he was sentenced to imprisonment for life along with a fine of Rs.1,000/-, and in default of payment of

fine to further undergo rigorous imprisonment (RI) for one year; for the offence under Section 307 IPC to undergo RI for seven years along with a fine of Rs.1,000/-, and in default of payment to further undergo RI for one year; and for the offence under Section 27 of the Arms Act, to RI for three years along with a fine of Rs.500/-, and in default of payment of

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fine to further undergo RI for six months.

2. The charge framed against the Appellant by the order dated 5th August, 1999 of the trial Court was that on 3rd February, 1999 at about 3.15 pm at House No.RZ-134, Sayed Nangloi, Delhi, he intentionally committed the murder of his sister Smt. Roshni (the deceased) thereby committing an offence punishable under Section 302 IPC. Secondly, he was charged with firing at Rajbir Singh (PW-13) and Smt. Santosh (PW-6) with a country- made katta (firearm) on the same date, time and place, thereby committing an offence punishable under Section 307 IPC and further that by using the country-made firearm, as described above, he had committed an offence punishable under Section 27 of the Arms Act.

3. The case is based on direct evidence of the eye witnesses. Fortunately, they were not injured although, according to the prosecution, they were fired upon by the Appellant. The first of these eye witnesses was Smt. Sunita (PW-5), the wife of PW-13. The deceased was her nand (sister-in-law). According to her, on 3rd February, 1999, she (PW-5) and PW-13 were present in their house which is RZ-134, Village Sayed Nangloi. PW-5 stated that the deceased was in her house in my neighbourhood. At this stage, it must be noticed that the house of the deceased was being referred to as RZ- 135. According to PW-5, at about 3 pm, the Appellant came to the house of the deceased. The Appellant then asked PW-13 to remove bricks which were lying on the roof of the house of the deceased. PW-13 replied that he had kept the bricks there with the consent of the deceased. Upon hearing this, the Appellant went into the room of a tenant of his; emerged from that room Crl.A.1/2003 Page 2 of 7 with a katta in his right hand and began attacking his sister, the deceased. This led to the deceased rushing to the house of PW-5 with the Appellant in pursuit. According to PW-5, the Appellant then fired a shot from the firearm which hit the deceased on her forehead. PW-5 rushed to the aid of the deceased. When the Appellant tried to load the katta again, the

bullet fell down. Out of fear, PW-5 then ran out into the street. According to PW-5, the Appellant went upstairs where PW-13 and Santosh (PW-6) (the daughter of the deceased) were present. When the Appellant fired at PW-13, he saved himself by covering himself with a slab of stone (pathar ki silli). When the Appellant started chasing PW-6, PW-13 overpowered and held him down, but the Appellant started running from there.

4. The case of the prosecution is that the Appellant was subsequently overpowered by two bystanders in the same village i.e. Shish Pal (PW-14) and Suresh (PW-15) and handed over to Head Constable Om Prakash (PW- 16). PW-16 then brought him to Inspector Rajender Prasad (PW-18) and finally it was PW-18 who seized the firearm from the Appellant by preparing a seizure memo to that effect. As far as the arrest of the Appellant is concerned, while PW-14 turned hostile, PW-15 fully supported the prosecution case.

5. At this stage, it requires to be noticed that the prosecution story is that although the mother of the Appellant and the deceased had already partitioned the family property i.e. RZ-135, Village Sayed Nangloi between the Appellant and the deceased, the Appellant was perhaps unhappy with the same. However, there is not much evidence in this regard that has come on CrI.A.1/2003 Page 3 of 7 record.

6. The other witnesses who have supported the prosecution are Santosh (PW-6) and Rajbir (PW-13). According to PW-6, who is the daughter of the deceased, it was the Appellant who fired upon her mother, after she had rushed to the house of PW-13. She too spoke of the attempt by the Appellant to shoot at PW-13 who saved himself with the silli. PW-13 also corroborated the above two versions to a large extent.

7. One remarkable feature of the trial is that there was hardly any effective cross-examination of the aforementioned witnesses. This is despite a legal aid counsel being assigned to the Appellant. Ground (6) of the appeal specifically adverts to this aspect of the case. One of the prayers is that the Appellant should be offered one more opportunity to engage a proper counsel so that he could effectively cross-examine the above eye witnesses, many of whom are still around.

8. This Court is not inclined to accept this prayer at this stage, particularly since the occurrence in question is of the year 1999, nearly two decades ago. The remand of the matter to the trial Court for this purpose at this stage would only prolong the agony of all concerned. Further, in light of the view proposed to be taken by this Court, for the reasons explained hereafter, the remanding of the matter to the trial Court may not be necessary.

9. There is no doubt that the above eye witnesses are all related to the Appellant in one way or the other. However, there appears to be no particular reason why they would speak falsehood or falsely accuse the Appellant, particularly since there is no evidence of any previous enmity between them and him.

10. The medical evidence, in the form of the testimony of Dr. L.K. Barua (PW-12), who conducted the post-mortem of the deceased, reveals that the fatal wound was the single bullet wound which entered the forehead of the deceased. The margins of the wound were found inverted and abraded without any blackening, tattooing or charring around the wound. There was no other external injury seen on the body of the deceased. This meant that the bullet was fired upon the deceased from the front.

11. Although at first blush it appeared that the eye witness testimony may not have been corroborated by the medical evidence, the testimonies of PWs 5, 6 and 13 when read carefully, makes it possible that the deceased ran to the house of PWs 5 and 13 and while she stood next to them, the Appellant fired upon her from the front on her forehead in their presence. The Court finds no particular reason to disbelieve these eye witnesses.

12. What also strengthens the case of the prosecution is the evidence of PW- 15 that the Appellant was in fact chased and overpowered and found with the country-made katta in his hand, trying to flee. This incriminating evidence has not been able to be shaken by the Appellant in the cross- examination of PW-15.

13. This Court is, therefore, in agreement with the trial Court as far as the prosecution case regarding the Appellant having killed his sister with the country

made firearm is concerned. Crl.A.1/2003 Page 5 of 7 14. However, on the question of the nature of the offence, as already noticed, it is a single-bullet wound on the forehead which has resulted in the death of the deceased. From the versions of all the eye witnesses, the incident clearly happened on the spur of the moment on a relatively trivial matter about the Appellant objecting to PW-13 having placed some bricks on the roof of the house of the deceased. When PW-13 told the Appellant that it was the deceased who had permitted him to keep the bricks there, the Appellant rushed into the room of his tenant, brought out a katta and fired upon the deceased after chasing her into the house of PW-13. The attack by the Appellant on the deceased was, therefore, not premeditated. It was on the spur of the moment and it was in the heat of passion. The Court is, therefore, satisfied that Exception 1 to Section 300 IPC is attracted, when read with the Explanation thereto with none of the provisos being attracted in the facts and circumstances of the case.

15. At the same time, the single shot having been fired at the forehead of the deceased, it cannot possibly be said that the Appellant did not intend to kill the deceased. Consequently, although the offence is culpable homicide not amounting to murder, it is properly classifiable as falling under Part I of Section 304 IPC.

16. Consequently, the Court converts the conviction of the Appellant from one punishable under Section 302 IPC to one punishable under Part I of Section 304 IPC.

17. As far as the sentence for the aforementioned offence is concerned, the Crl.A.1/2003 Page 6 of 7 Court notices as on 11th April, 2005 when the Appellant's sentence was suspended, he had already undergone six years and one month of imprisonment. Further, the Appellant's jail conduct was satisfactory and he had no past history of involvement in crime. Also, the Appellant has not violated any of the conditions for the grant of suspension of sentence. In the circumstances, the Appellant is sentenced, for the offence under Section 304 Part-I IPC, to the period already undergone by him.

18. The conviction of the Appellant under Section 307 IPC is maintained but his sentence therefor including the default sentences for non-payment of fine is

confined to the period already undergone. The conviction and sentence for the offence under Section 27 of the Arms Act are maintained. All sentences are to run concurrently.

19. The net result is that the bail bonds and surety bonds furnished by the Appellant are hereby discharged with his having completed the sentence awarded to him.

20. The appeal is disposed of in the above terms.

21. The trial Court record be returned forthwith together with a certified copy of this judgment. S. MURALIDHAR, J.

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