

Azad Singh Vs. the State

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Court : Delhi

Decided On : Feb-17-1987

Reported in : 32(1987)DLT34; 1987(13)DRJ70

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 428

Appeal No. : Criminal Appeal No. 262 of 1985 (Against order of P.S. Sharma, Addl. Sessions Judge, Delhi, D/- 13-8)

Appellant : Azad Singh

Respondent : The State

Advocate for Pet/Ap. : Nandita Chandra,; amices Curiae and; P.S. Sharma, Advs

Judgement :

1. Azad Singh, appellant was convicted for the offence under S. 304(I) of the Indian Penal Code and sentenced to R.I. for 7 years. The period already undergone by him was set off by virtue of S. 428 Cr.P.C. He filed the appeal through Superintendent, Jail. At his request, Miss Nandita Chandra, Advocate was appointed amices curiae. She worked hard on the case and has ably put the arguments before this Court.

2. The circumstances under which Azad Singh was apprehended in brief, are : that one Shri Jai Parkash along with his family members was residing at House No. WZ-162, Sadipur, New Delhi. Azad Singh accused was in occupation of a nearby house bearing No. WZ-171. He was living along with his family and parents. As the story goes, one Shri Harkesh nephew of Jai Parkash had illicit relations with the wife of Azad Singh. He was spending all his salary on that woman. Ramesh is the elder brother of Harkesh. He was aware of this relationship. Few days prior to the date of the incident, Ramesh along with his uncle Partap Singh advised Azad Singh accused that he should keep his wife under control. This was not to the liking of Azad Singh and he exchanged hot words with them.

On 30-3-83 at about 9.15 p.m., Jai Parkash, his elder brother Ramesh and uncle Pratap Singh went to the house of Azad Singh to sort out the matter. Jai Parkash called Azad Singh out and they again told him that he should keep his wife under check, so that the life of Harkesh is not ruined. Azad Singh flew into rage and started hurling abuses telling those persons that they were unnecessarily bringing bad name to his wife. Pratap Singh tried to send Azad Singh inside the house but the latter took out a chhuri and gave blows on the left side of the chest and arm of Pratap Singh. On receipt of the injuries, Pratap Singh fell down. Jai Parkash and Ramesh caught hold of Azad Singh with the chhuri. In that process, Azad Singh also received minor injuries. They immediately raised noise, on hearing of which, many persons of the mohalla assembled. Jai Parkash and one Ashok Kumar took Pratap Singh to the Willingdon Hospital in a three wheeler scooter, where the doctors declared him dead. Message was flashed to the Police Station, as a consequence of which, S.I. Didar Singh first went to the hospital, procured the medico-legal report, recorded the statement of Jai Parkash and got registered a case u/s. 302 I.P.C. He also collected the blood-stained clothes of Pratap Singh from the hospital. Thereafter, he came to the spot, got the scene of occurrence photographed and plan prepared. The weapon of offence was taken into possession. Blood was lifted from the spot, statements of the witnesses were recorded, the accused was arrested Jai Parkash was also got medically examined. During the course of the investigation, the I.O. obtained the post-mortem report, completed the investigation and filed the challan.

3. The accused pleaded not guilty to the charge and claimed trial. The prosecution examined a number of witnesses out of which Jai Parkash and Ramesh are the witnesses of the actual occurrence. The accused while under examination u/s. 313 Cr.P.C. admitted that Pratap Singh, Jai Parkash and Ramesh were living near his house in village Shadipur. Shri Harkesh, his friend, was on visiting terms to his house. He, however, denied that Harkesh had illicit relations with his wife Saroj or he was spending his salary on her. He denied having attacked Pratap Singh or had given him chhuri blows. In fact, Pratap Singh and his companions had come inside his house and shouted to kill him. They started giving him beating. He acted in his self-defense. The knife used by him was not a chhuri but a small kitchen knife. He, however, led no evidence in defense. The learned lower court on consideration of the oral as well as documentary evidence on record believed the prosecution version and convicted and sentenced the accused as stated earlier.

4. Learned counsel for the accused has raised four-fold contention. According to her, the occurrence took place inside the house of the accused where the complainant party had leveled the allegations of immoral and unchaste conduct of his wife. The complainant party also gave beating to the accused who in order to save himself and to ward off the danger gave one blow with a pen knife in his self-defense. She also urged that there is a delay in recording the F.I.R. no independent witness has been produced and the injuries on the person of Azad Singh have not been fully explained. Learned counsel for the State, on the other hand, has controverted the submissions and has taken me through the record showing that none of these arguments are borne out from the evidence.

5. The incident has taken place at about 9.15 p.m. on 30-3-83. The accused was present at his house when PW Jai Parkash, Ramesh and Pratap Singh has gone there. It is the case of the prosecution that the Pws made imputations of immoral character to Saroj, the wife of the accused. The accused admits the presence of the PWs but according to him, these persons had given him beating inside the house. He acted in self-defense by inflicting injury on the person of Pratap Singh by a small vegetable-cutting knife. If the incident took place inside the house then certainly some blood would have fallen in the compound of the house. This is not so. According to the I.O. and the attesting witnesses of the memos, the blood had

fallen in the street and was lifted from there. Admittedly, the PWs had gone to the house of the accused unarmed and had no intention to quarrel or cause any bodily injury. On that account, there was no occasion for them to go inside the house of the accused or cause any injury to him. The first submission as such has no substance.

6. It may be that except PW Jai Parkash and Ramesh the prosecution has not produced any other eye-witnesses but for that also, there is a valid Explanation. The fact of the matter is that at the time of the actual occurrence, no other person was present except the deceased and the two P.Ws. Others came on the scene after hearing the noise. Furthermore, it was the month of March and generally the people are expected to be indoors at about 9.15 p.m. The presence of Jai Parkash and Ramesh PW is amply admitted by the accused. The prosecution rightly did not try to introduce any other witness to this occurrence as in fact there was none. Even accused had not thought it worthwhile to examine his wife, father or mother to falsify or contradict the version of the prosecution. Whether Jai Parkash and Ramesh are near relations or interested persons will not make any difference insofar as they narrate the actual sequence of the occurrence which goes completely with the prosecution story. Their testimony has rightly been believed by the learned trial court and I have also no hesitation to accept the same as reliable and correct.

7. There is also no delay in the registration of the case. The time of the occurrence is 9.15 p.m. The deceased was removed to the Willingdon hospital. Constable Harnam Singh was on duty. He gave the information at about 10.10 p.m. to the Police Station, Patel Nagar. The entry was recorded in the Daily Diary at Serial No. 28-A. Its copy was given to Didar Singh who went to the hospital. In the meantime, the Police Control Room had also been informed of the incident at about 9.30 p.m. A.S.I. Ram Kishan went to the spot. Azad Singh was produced before him by PW Raj Pal and Ramesh with Chhuri. A.S.I. Ram Kishan did not move in the matter except guarding the scene of occurrence and waited for the arrival of the I.O. At the hospital, Didar Singh managed to obtain the medico-legal report and the blood-stained clothes of the deceased and after some persuasion. He then recorded the statement of Jai Parkash PW and sent the ruqa to Police

Station for the registration of the case. Thereafter, he came to the spot and completed the other formalities. It took some time but there was no question of fabricating the evidence or falsely implicating the accused who had been apprehended immediately after the occurrence and handed over to the Police at about 9.30 p.m.

8. The medical evidence fairly and squarely supports the ocular testimony of the P.Ws. On examination at the hospital, the post-mortem doctor noticed as many as 7 external injuries on the person of Pratap Singh, deceased. These were mostly abrasions which could be the result of falling on the ground or while being taken to the hospital in a three wheeler scooter. Injury No. 7 was described as incised stab wound 3/4' x 1/2' x vertically placed on the left side chest wall in mid auxilliary line 4.5' below the armpit. In the opinion of the doctor, injuries Nos. 1 to 6 were caused by blunt object/force and the incised wound on the chest wall was caused by sharp-edged weapon and was sufficient to cause death in the ordinary course of nature. The death was due to haemorrhagic shock resulting from the injury. The prosecution has also given a valid Explanationn of the injuries on the person of the accused. Dr. J. K. Handa had found abrasions on the nose and chest, contusion on the left thigh and lateral side of chest. Injuries on the person of Azad Singh were opined by the doctor to be possible in a scuffle or as a result of fall. Even according to Azad Singh, there was some scuffle and grappling before he gave knife blow to Pratap Singh. It also admits of no doubt that the complainant party must have given him beating after disarming and overpowering him to give vent to their anger and aroused emotions. This in my opinion sufficiently explained the injuries on the person of accused Azad Singh and there is nothing to doubt the prosecution story on this account.

9. The story of self-defense set up by the accused has also not been accepted and in my opinion on valid grounds. In this behalf, the learned lower court has referred to numerous judgments against which there was nothing substantial for the learned counsel to argue. However, I am in respectful agreement with the conclusion of the learned lower court that in the present case, the accused had flared up when Pratap Singh, Ramesh and Jai Parkash had asserted that his wife was unchaste and was indulging in illicit love affairs with Harkesh. Having regard

to the strata of society to which the accused belonged, the type of people around, the kind of locality and the nature of relationship he had with Harkesh, the accused lost control and picked up a knife and gave a blow on the chest of Pratap Singh. Provocation was not sought voluntarily and there was no premeditation. The accused did not go anywhere in search of knife and cannot be said to have taken any undue advantage. There was a sudden quarrel in the heat of passion and the case falls u/s. 304(1) IPC and not u/s. 302 I.P.C. With this conclusion the accused Azad Singh was rightly held guilty and convicted of the offence u/s. 304(1) of the Indian Penal Code.

10. On the question of sentence, learned counsel for the accused has submitted that her client has been in judicial custody for the last about 4 years. By this time he has earned remission of more than six months. During this period, his father has expired and his aged mother is suffering from a deadly disease. He has no brother or any other relation to look after his wife and an infant child and that he is a young man of 26 years of age with no previous conviction. According to her, it is a fit case for showing leniency. Learned counsel for the State has nothing to say on the question of sentence. Keeping in view the circumstances leading to the unfortunate incident and the fact that there is nobody to look after the aged mother, Wife and infant son of the accused, the ends of justice, in my opinion, will be fully met if the sentence is reduced to the one already undergone. Ordered accordingly. The accused be released immediately if not wanted in any other case.

11. Order accordingly.