

Satbir Singh Vs. State

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Court : Delhi

Decided On : Jan-25-1988

Reported in : 1988(15)DRJ89

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 66 of 1984

Appellant : Satbir Singh

Respondent : State

Advocate for Pet/Ap. : B.S.C. Singh,; Bharat Dubey,; Mukesh Kalia and;

Judgement :

M.K. Chawla, J.

(1) The present appeal by Satbir Singh is directed against the judgment of the Additional Sessions Judge, Delhi, dated February 8, 1984, whereby he was convicted of an offence under Section 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life. The allegation that he had also unlawfully used his licensed pistol for committing the murder of Kulwant Singh was proved and thus he was held guilty under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years.

(2) Before dealing with the submissions of the learned counsel for the appellant, it is relevant to keep in mind the brief facts as disclosed by the witnesses of the prosecution. The accused Satbir Singh owns a house bearing No. 1/5547, Gobind Nagar, Shivaji Park, Shahdara, Delhi. He was residing on the first floor of the said house. A part of the ground floor was in possession of Kulwant Singh and his wife Smt. Amarjit Kaur. Two days prior to the date of occurrence, the accused had an altercation with Smt. Amarjit Kaur on account of default of payment of arrears of rent. Amarjit Kaur told the accused that he should have a talk with her husband in this behalf. The accused thereupon is alleged to have given her filthy abuses.

(3) On 3-5-1982, Amarjit Kaur's father-in-law, Shri Ganda Singh, mother-in-law Smt. Satyawati and brother-in-law Shri Ranjit Singh had come to her house at about 8.30 or 9.00 P.M. At that time, Kulwant Singh was not present in the house. Amarjit Kaur told her in-laws that the accused had abused her two days back while demanding the arrears of rent. Ganda Singh then called the accused downstairs and told him that Amarjit Kaur was like his daughter-in-law and (hat he should not misbehave with her. The accused it was alleged then felt apologetic and went upstairs.

(4) At about 9.00 or 9.15 P.M. Kulwant Singh, husband of Amarjit Kaur arrived at the house. His wife again expressed her annoyance over the remarks of the accused and complained to her husband about the conduct of the accused. At that point of time, the accused is alleged to have called Kulwant Singh upstairs. As the prosecution story goes, Kulwant Singh exchanged hot words with the accused over the incident which had taken place two days earlier. Ganda Singh called his son downstairs and when he was about to come back, the accused fired two shots at him. On hearing the gun short, Ganda Singh, his son Ranjit Singh and Prem Chand, another tenant, rushed to the first floor and found Kulwant Singh lying in a pool of blood. He was immediately brought to the ground floor and removed to Dayanand Hospital. In the hospital, he was given first-aid but after an hour of the admission, the doctors advised Ganda Singh that the patient be removed to the Irwin Hospital. In the van of the Hospital, Kulwant Singh was removed to the Irwin Hospital where he was declared dead by the doctors.

(5) On receipt of a copy of the D.D. No. 23 at about 10.50 P.M., A.S.I. Albail Singh Along with Constable Tejbir Singh reached the place of occurrence. They also saw the accused with his pistol in his right hand standing on the roof of his house. Before reaching near him, Albail Singh warned the accused that he had been surrounded by the Police on all sides and that he should throw his pistol and surrender. The accused came downstairs. He was arrested. A.S.I. Albail Singh recorded the statement of Amarjit Kaur, w/o Kulwant Singh (Ex. Public Witness 11/A) and after making his endorsement (Public Witness 19/A), he sent it to the Police Station through Constable Tejbir Singh for the registration of the case. Public Witness 9, Head Constable Ganga Ram recorded the formal F.I.R. (Public Witness 9/C) and handed over the ruqa and the copy of the F.I.R. to the said constable for being delivered to the A.S.I. Albail Singh for further investigation. This witness also sent the special report to the Magistrate concerned through special messenger.

(6) After sometime Inspector Data Ram, Public Witness 22 and Bhagwan Dass also reached there. Data Ram recorded the statement of other witnesses who were present at the spot. He took into possession the pistol (P-6) with one live cartridge in it from the accused in pursuance of his statement under Section 27 of the Evidence Act. He also recovered 7 live cartridges in the holster lying in the room. The accused at that time produced his license for keeping the pistol. Before convening it into a sealed parcel, its sketch was prepared. The live cartridges were sealed in a separate parcel. Thereafter, other formalities at the place of occurrence were completed. Bhagwan Dass. was deputed to go to J.P.N. Hospital to obtain the relevant documents. The post-mortem examination on the dead body of the deceased was conducted the same day and after collecting its report and the reports from the office of the C.F.S.L., the investigation was completed and a report under Section 173, Criminal Procedure Code . was filed in the Court. The accused was challaned to stand trial for the commission of offence under Section 302 Indian Penal Code as well as Section 27 of the Arms Act. He was charged accordingly. He pleaded not guilty and claimed trial.

(7) The prosecution in support of its case examined as many as 23 cases out of which Ganda Singh, Public Witness 1, Ranjit Singh, Public Witness 2, Smt. Amarjit

Kaur, Public Witness 11 and Smt. Satya Wati, Public Witness 16 are the eye-witnesses to the occurrence

(8) The accused in his statement under Section 313 Criminal Procedure Code . admitted that the deceased Kulwant Singh was his tenant on the ground floor of his house at the relevant time. He also admitted that two days prior to the date of occurrence, he had demanded the rent from the wife of the deceased but denied having insulted her or used abusive language. He, however, admitted that he had fired two shots and one of it had struck Kulwant Singh which caused his death. His plea, however, is that the shots were fired in his self-defense as four/five persons, one of whom was armed with a sharp edged weapon had come to attack him.

(9) After going through the oral as well as documentary evidence placed and proved on the record, the learned Additional Sessions Judge found the accused guilty of the offence charged with and sentenced as slated earlier.

(10) Learned counsel for the appellant submits that the court below has altogether ignored the evidence of the prosecution witnesses which conclusively proves that the accused was justified in firing two revolver shots acting in self-defense, one of which incidentally killed Kulwant Singh. According to him, there was a reasonable apprehension in the mind of the appellant that he would receive grievous injuries at the hands of the assailants, including the deceased when he came upstairs and assaulted him. His further submission is that during the exchange of hot words and the commotion which followed, one of the bullets hit Kulwant Singh on his collar-bone. There is no evidence to suggest that the appellant had aimed at a particular part of the body of the deceased or had intended to cause the injury which had proved fatal. At the most, according to the learned counsel, the offence would fall under Section 304(1) and not under Section 302 Indian Penal Code This is his alternative submission.

(11) The learned State counsel controverts the submissions and mainly relies upon the evidence of the witnesses of the occurrence which conclusively proved the prosecution story that the accused intended to cause such bodily injury as was likely to cause his death. According to the learned counsel, by firing two shots one after the other the accused had the intention and the knowledge that by doing so,

he was likely to cause the death of Kulwant Singh. The plea is that case does not fall in any of the exceptions to Section 300 Indian Penal Code and he has rightly been convicted of the offence under Section 302 Indian Penal Code .

(12) A murder is merely a particular form of culpable homicide. What distinguishes culpable homicide from murder is the presence of special mans read which consists of four mental attitudes stated in Section 300 Indian Penal Code . Unless the offence can be said to involve at least one such mental attitude it cannot be murder. When the injury is intentional and sufficient to cause death in the ordinary course of nature and death follows, the offence is murder. Where the intention of the accused was not to kill the deceased outright but to inflict injuries on his person so as to disable him from coming forward and assaulting, but the accused had the knowledge that the injuries would be likely to cause death of the deceased, the accused can escape the rigor of Section 302 Indian Penal Code In such a situation, he could be convicted under Section 304 I(I) or (II) depending upon the circumstances of the case.

(13) In order to arrive at a correct conclusion as to under which provision of the penal code the case of the present appellant would fall, one has to go by the admitted facts. From the evidence of the prosecution witnesses, it stands established that Kulwant Singh was the first to go upstairs to see the accused but he was not armed with any weapon. His intention was to desist the accused from indulging in hurling abuses to his wife in future. For that matter, there was an exchange of hot words. They also exchanged first blows as a result of which the accused received injuries on his face near the eyes. The accused immediately rushed to his room, brought his revolver and fired a shot towards Kulwant Singh which narrowly missed him. Hearing the shot, Ganda Singh, the father of the deceased, Ranjit Singh, his brother and Shri Prem Chand, the tenant on the ground floor rushed to the first floor. While they were climbing the stairs and before they could reach the first floor, the accused went up to the roof and from there fired another shot which hit the deceased in the middle of the left collar bone damaging the vessels underneath it. We rely upon the evidence of P.W. 1, Ganda Singh, Public Witness 2 Ranjit Singh, Public Witnessse, 11 Smt. Amarjit Kaur and P.W. 16 Smt. Satyavati, who are one in deposing that while they were still in the

process of climbing the stairs they heard the sound of second shot and immediately on reaching the first floor they noticed Kulwant Singh lying in a pool of blood. The accused at that time was standing on the roof with a pistol in his hand, from where he was apprehended by the police. They immediately brought Kulwant Singh to the ground floor and rushed him to the hospital where he was declared dead. This part of the evidence has not been shattered in cross-examination. Even though during the course of cross-examination, the accused tried to bring on record that one of the persons who came upstairs was armed with a kirpan but there is no evidence to prove this fact. The net result is that neither the deceased nor any of the persons were armed while they were in the process of climbing the stairs. There could not be any apprehension in the mind of the accused that they would cause the injuries on his person. He was not justified in firing the shots at Kulwant Singh on the plea of self-defense. In order to apply the first exception to Section 300 of the Code, the appellant must show from cogent and reliable evidence that he was deprived of his power of self-control at the time of the assault by him on the deceased, because of grave and sudden provocation offered by the latter. Any and every quarrel before an assault which proves fatal will not give rise to an assumption that the accused has committed the act while being deprived of the power of self-control by grave and sudden provocation. The test is as to whether a reasonable man belonging to the same class of the society, as the accused, placed in the situation in which the accused was placed, would be so provoked so as to lose his self-control, so as to bring his act within the first Exception to Section 300 of the Code. Even this test, according to our opinion has not been satisfied by the accused from the evidence on record and for that reason cannot take shelter under the plea of self-defense. In the circumstances, we do not accept the plea of self-defense as tried to be made as the defense for causing the death of Kulwant Singh.

(14) The fact remains that Kulwant Singh died because of the bullet shot fired by the accused from his revolver. The question is as to what was the intention of the accused at the time he fired the second shot from a distance of about 18 to 20 ft. From that distance, it was just not possible for him to have aimed the shot on a particular part of the body which could cause the instant death. Apprehending that the persons on the ground floor might come to the first floor, his intention was to

prevent the assailants from coming forward and cause him any injury. Under that bona fide apprehension, he fired the second shot which hit the deceased on his left side collar bone which admittedly is not a vital part of the body though the bullet travelled downwards and caused the death. We are of the view that it is not a case where the accused could be held guilty of the offence under Section 302 Indian Penal Code .

(15) If that be the position, then the case would either fall within the four corners of Section 304(I) or (II) of the Code. The distinction between Part I and Part II of this provision is that the first paragraph of Section applies to the offences of culpable homicide not amounting to the murder if the act by which the death is caused, is done :- (a) with the intention of causing death ; or (b) with the intention of causing such bodily injury as is likely to cause death. A case under Sub-clause (a) will be culpable homicide not amounting to murder only if it falls within any of the exceptions to Section 300 ; for, otherwise it would fall under the first clause of Section 300 and would amount to murder. The second paragraph of the Section which may be referred to as Part II applies to acts which are done without any intention to cause death or such bodily injury as is likely to cause death but which are done with the knowledge that they are likely to cause death. The question whether the accused had the knowledge that his act was likely to cause death is, as in the case of intention, a question of fact depending upon the circumstances of the particular case, the weapon used, the part of the body on which the injury was inflicted, the number of injuries caused, the deliberateness of the act and other allied circumstances.

(16) As observed earlier, the appellant had received injuries below his eyes during the scuffle with the deceased. He apprehended further injuries to his person from other family members of the deceased assembled on the ground floor. Under that fear, he rushed to a safer place with his revolver and from a distance of about 18 to 20 ft. fired the second shot. On these admitted facts, the submission of the learned counsel for the accused is that at the most, the offence would fall within the four corners of Section 304(II) Indian Penal Code. Under similar circumstances, according to the learned counsel, the offence under Section 302 Indian Penal Code was converted to the one under Section 304(II) in a case

reported as *Randhir Singh v. State of Punjab and Haryana*, 1982 CLJ 195 . In this case, the accused is alleged to have given a blow with a kassi on the head of the deceased who under the impact of the blow fell down on the ground and was removed to the hospital where he died after six days. The accused was convicted under Section 302 I.P.C. by the learned Sessions Judge on the basis of the medical report and the attending circumstances. The High Court of Punjab and Haryana confirmed the conviction and the sentence imposed upon the accused. The Supreme Court, on the totality of circumstances, viz. that there was only one Or injury ; that the weapon was not carried by the appellant in advance ; that there was no premeditation ; that the appellant was a young college going boy ; that there was some altercation between the deceased and his father and that the death occurred nearly after six days, concluded that the appellant must' be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. Under these circumstances, the appellant was held to have committed an offence under Section 304(11) of the Indian Penal Code.

(17) The principles laid in the Supreme Court Judgment referred to above have a bearing to the case in hand but the facts are distinguishable from the given facts, insofar as the weapon used is a revolver and that the death of Kuldip Singh was instantaneous. To our mind, the case of the appellant will squarely fall within the provisions of Section 304(1). The weapon of offence used in the commission of offence was nonetheless a dangerous one. When the appellant fired the shot at the deceased, though from a distance, he must have known that the bullet could hit him on a vulnerable part of the body and that such a blow was likely to result in his death. In these circumstances, we hold that the accused fired the shot with the intention to cause an injury which was likely to cause death and in fact has resulted in the death of the deceased. We are, therefore, of the opinion that the offence calls under Section 304(1), Indian Penal Code .

(18) On the quantum of sentence, we have given our careful thought. The accused was apprehended on 3rd May, 1982. He remained in judicial custody during the trial and even after the filing of the appeal, on 14th March, 1984. He was, however, released on bail on 3rd December, 1984. Thus, he has already suffered an imprisonment for a period of two years and seven months. In our opinion, the ends

of justice would be fully met if his sentence of life imprisonment is reduced to imprisonment for a period of seven years. His conviction and sentence under the Arms Act is confirmed but made concurrent. He shall be entitled to the set-off for the period of sentence already undergone. The accused is on bail. His bail bonds are hereby cancelled. He be taken into custody forthwith to serve the remaining part of the sentence imposed on him.

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