

Rajesh Kumar Vs. State

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Court : Delhi

Decided On : May-16-1988

Reported in : 35(1988)DLT262; 1989(16)DRJ21

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

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 194 of 1988

Appellant : Rajesh Kumar

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; P.N. Kohli,; Raman Sawhney and;

Judgement :

M.K. Chawla, J.

(1) Rajesh Kumar has challenged the.;Judgmentof the learned lower court passed on 3rd September, 1984, holding him guilty under Section 302 Indian Penal Code for causing the murder of Virender Singh and also under Section 324 Indian Penal Code for causing a simple injury with a sharp-edged weapon on the person of Bhuvan Chand. On the same day, he was sentenced to undergo imprisonment for life Along with a fine of Rs. 500.00 , in default of payment of which, he was required to undergo R.I. for one year for stabbing Bhuvan Chand under Section

324 Indian Penal Code Both the sentences of imprisonment were, however, ordered to run concurrently.

(2) The facts in brief are that on 26th May, 1983, Raj Kumar nephew of the accused had picked up a quarrel with Virender Singh (deceased) and Dhan Raj. On the following day, Virender Singh and Dhan Raj were seen sitting in the park by the complainant Kundan Singh. At about 9 P.M., Kundan Singh beard an exchange of hot words between Rajesh on the one side and Virender and Dhan Raj on the other. Kundan Singh rushed there to pacify the warring groups. In the meantime, Bhuvan also reached there. Rajesh accused at that time proclaimed in a loud voice that he would teach them a lesson for giving beating to Raj Kumar. When the scuffle between them started, Kundan Singh intervened and separated them. Rajesh accused then left for his house in anger, while hurling abuses. With the intention to patch up the disputes, Kundan Singh, complainant Along with Virender, Bhuvan and Dhan Raj, followed the accused to his house. Bhuvan was ahead of them all. The moment Bhuvan after climbing the platform (chabutra) had reached the gate of the appellant's house no. 105-D, Rajesh all of a sudden, came out armed with a knife and instantly stabbed Bhuvan on his left leg. The accused then gave blows with the same knife on the chest of Virender and escaped with it, towards ganda nallah. Both Bhuvan and Virender started bleeding. Virender had hardly retraced 4/5 steps when he fell down on the ground while holding his chest. He was immediately put on a cot and was removed to his house from where his father rushed him to Hindu Rao Hospital. Bhuvan was also removed to the Health Centre of the Delhi University by his father.

(3) At the hospital, Dr. G.K. Tandon examined Virender Singh. He found that there was no pulse, no heart sounds, no respiration and the pupils were dilated and fixed. The patient was declared 'brought dead', vide Mlc Ex. Public Witness IO/A.

(4) Constable Bishamber Singh was on duty at the Hindu Rao Hospital. He immediately conveyed the message on telephone to the Duty Officer in Police Station Roshnara, that Shri Hoshiar Singh got his son admitted in the hospital, who has been declared brought dead and that some officer be sent. This information was recorded at Seriall No. 21A in the Daily Diary Register. Public

Witness -15 Tapraj Singh, Sub-Inspector had received the message and immediately deputed Satya Parkash Sub Inspector for investigation. The Investigating Officer on receipt of this report reached the place of occurrence and recorded the statement Ex. Public Witness 3/B of Kundan Singh. Underneath it, he made his endorsement and sent the Ruqa to the Police Station on the basis of which Fir No. 243 (Ex. Public Witness 15/C) was registered at about 11.15 P.M.

(5) Bhuvan was first removed to Wus Health Centre, University of Delhi by his father at 9.40 P.M. where he was examined by Public Witness -6, Dr. Gurdeep Singh. On local examination, he noticed a two inch long incised wound, muscle deep gapping on the anterior, lateral aspect of thigh about six inch from the left anterior superior iliac spine. After preparing Mlc Ex. Public Witness 6/A, patient was referred to Hindu Rao Hospital. On examination by Dr. Sudhir Malhotra at the Hindu Rao Hospital, the injury was described as simple vide endorsement Ex. Public Witness S/A.

(6) During the course of investigation, S.I. Satya Parkash took into possession the MLCs of Virender Singh deceased and Bhuvan Chand from the hospital. The blood-stained pant of Bhuvan Chand was taken into possession vide memo Ex. Public Witness 2/A after it was converted into a sealed packet. From the place of occurrence, the I.O. lifted blood and control earth from 4 places, converted them into packets. A pair of chappal belonging to the deceased was also converted into a sealed parcel. The I.O. then prepared the site plan. Ex. Public Witness J6/B at the pointing out of Kundan Singh and Dhan Raj. The scene of occurrence was also got photographed by Head Constable Mahipal Singh.

(7) Public Witness -11 Satya Parkash, the Investigating Officer, then conducted the Inquest proceedings by filling Inquest form Ex. Public Witness I/A and got the dead body delivered to Constable Surinder Pal and Dalip for sending it to the Mortuary. On the next day, he received the post-mortem report. The case property was then deposited in the Malkhana and later on was sent to the office of the C.F.S.L. In due course of time, the reports of C.F.S.L. Ex. Pa, Pb and Pc were received.

(8) The accused after escaping from the scene of occurrence absconded. He could only be arrested on 25-6-1983 from village Jatpura, District Bulandshahar, U.P., though he was a native of village Kalyanpur, District Aligarh. After the necessary investigation, the Sub Inspector filed the charge sheet in the court.

(9) The accused in his statement under Section 313 Criminal Procedure Code . denied the prosecution case in toto. He, however, admitted his arrest on 25-6-1983 from village Jatpura. He took the stand that the deceased and the prosecution witnesses were inimically deposed towards Raj Kumar, son of his sister-in-law, who was residing with him at D-105, Reids Line, Delhi. These persons, according to him had pelted stones on the evening of 27th May, 1983 at his sisters house and broke window-panes. The plea was that a few of the stones had hit the inmates of the house. He further stated that the deceased and his companions were drunk. He denied having caused any injury to Virender or Bhuvan. He examined Ranbir Sharma, his sisters husband, in his defense.

(10) The learned lower court mainly relied upon the evidence of the eye-witnesses of the occurrence in basing the conviction. The Additional Sessions Judge disbelieved the theory of pelting of stones as not only improbable but not even possible to have taken place before the incident. Feeling aggrieved from the said finding, Rajesh has preferred this appeal.

(11) The main contention of the learned counsel for the appellant is that the accused acted in his right of private defense and the defense of the property of his sister, when the deceased Along with his companions came together and pelted stones and broke window panes of the house. At that point of time, feeling insecure, that they may not cause any harm to his person, he assaulted the deceased Virender Singh and caused injuries to Bhuvan. While exercising the right of self-defense, he had no intention to doing more harm than was necessary. At the most, according to the learned counsel, the accused can be said to have exceeded the right of private defense. He had no intention to cause such bodily injury to Virender which would cause his death. The offence, it is urged, squarely falls under Section 304 part li, Indian Penal Code and not under Section 302 IPC.

(12) To substantiate his submission, learned counsel referred and relied upon the evidence of the eye-witnesses, and the photographer Head Constable Mahipal Singh. On this aspect, Public Witness -5 Dhan Raj, while under cross-examination, stated that some children who were present at the pulia (culvert) of the park, after coming to know about the incident had reached quarter No. 105 and pelted stones, at about 12.30 in the night breaking glass window panes. They had hardly pelted 2/3 stones but nobody was hurt. At that time, the police was also present. Public Witness -II, however, admitted that windowpanes were broken and glass pieces were lying scattered there, when he reached the spot at about 1.15 A.M. to take the photographs from various angles. Besides these two witnesses, Kundan Singh denied having seen anybody pelting stones at the house of the accused. Similarly, Bhuvan Chand denied the suggestion that anyone of them shouted, abused or pelted stones at the house of the accused causing breakage of window panes. On the basis of this evidence, learned counsel wants the court to draw the inference that the stones must have been thrown at the house of the accused by the deceased and his colleagues before they tried to enter the house. We are not impressed by this argument. Such an inference cannot be drawn from the above evidence. At the most, it can be said on the scrutiny of that evidence produced by the prosecution that there were few stones lying near the house of the accused and a few window panes were found broken. But from this evidence, it cannot be said with certainty that stones were thrown at the house before the actual incident.

(13) Learned counsel then read the evidence of DW-I Ranbir Sharma, brother-in-law of the accused. According to this witness, he had been residing in quarter No. D-105, Reids Line for the past 6/7 months. Narrating the incident, he deposed that on 27-5-83, when he returned from his duty at 7 P.M., he took the tablet of Navalgin as at that time, he was not well due to severe headache. He went to bed inside the room, near the windows. After about one or two hours, he heard the sound of stones being pelted on the walls, windows and doors of his quarter. In fact, one or two stones bit his head after passing through the window panes. He immediately got up and while he was in the process of putting on his clothes, he heard the abuses being hurled. When he came out, he saw the injured persons being removed.

(14) Learned counsel pointed out that Rambir Sharma has not at all been cross-examined on this part of this story. That being so, according to the learned counsel, his evidence must be held to be trustworthy, and cannot be brushed aside on mere conjectures. In this behalf, learned counsel for the appellant relied upon the observations in a Judgment reported as *Inder Singh and Surinder Singh v. State*, 2nd (1978) 1 Delhi 633. The Division Bench of this Court while going through the rules of practice as to the examination of a witness observed as under :-

'THERE are two old rules of practice which must never be forgotten. First, the witness must be cross-examined on all parts of his testimony which it is intended to dispute. Otherwise, what the witness has said in his examination-in-chief, will be accepted as being true. Second, the attention of the witness must be drawn to any contradiction in his statement, or with any previous statement and he must be afforded an opportunity to explain. If that is not done, no argument founded on the contradiction is permissible.'

These rules are subject to certain exceptions and the court enumerated those exceptions as under :-

'FAILURE to cross-examine, however, will not always amount to an acceptance of the witness' testimony, e.g. if the witness has had noticed to the contrary before hand or the story is itself of an incredible or romancing character or the abstention arises from mere motives of delicacy as where young children are called as witnesses for their parents in divorce cases or when counsel indicates that he is merely abstaining from convenience e.g. to save time. Where several witnesses are called to the same point, it is not always necessary to cross-examine them all. These rules apply equally if not more strictly on the criminal side.'

1. We have been taken through the cross-examination of Rambir Sharma and we do not find a single suggestion regarding the pelting of stones on the quarter and the breaking of window panes. It was required of the prosecutor to have cross-examined this witness to contradict him in case the prosecution was not accepting the version given in examination-in-chief. If his testimony is to be taken for granted, as is laid down in the above said Judgment, then certainly the incident of

pelting of stones must be held to have taken place before the accused stabbed Virender and Bhuvan. The exceptions enumerated in Inder Singh's case (supra) are not attracted. What is the effect of the unreliable defense version The submission is that under these circumstances, i.e. pelting of stones prior to the occurrence, there was reasonable apprehension in the mind of the accused that the assailants will cause him bodily injury.

(16) In similar circumstances, according to the learned counsel the Supreme Court in a Judgment reported as *Yogindra Morarji v. State of Gujarat* 1980 Cr.L.J. 459, converted the offence of murder under Section 302 Ipc to the one under Section 304 Part II, Indian Penal Code It was a case where the appellant had some dispute about payment of wages with his labourers. When they demanded payment of their dues, the appellant refused to pay insisting that nothing was due from him and curtly asked them to quit the house. The labourers came out of the house but waited at a distance of 250 ft. At about 9.30 P.M. when the appellant was going in a jeep, the labourers raised their arms signalling to the appellant to stop the vehicle. Some of the companions of the labourers also came close to the jeep. On seeing these persons on the road, the appellant took out his revolver and fired three shots one after the other. Two of those shots did not hit anybody but the third shot fired by the appellant hit Kana one of his employees in the chest. The appellant then sped away in his vehicle. Kana was taken to the hospital and declared dead.

(17) The Sessions Judge found, that the version given by the accused that the labourers had blocked or barricaded the road and that his jeep had been stoned and damaged, gave a reasonable apprehension in the mind of the accused that he would receive a grievous hurt at their hand. The accused was justified in firing three shots in his right of private defense, it was held. The accused was given the benefit of doubt and acquitted. On appeal by the State, the High Court held that apart from the bare statement of the appellant and the suggestions made by the defense to the prosecution witnesses in cross-examination, there was not an iota of evidence on record to support the defense version had been concocted and was false on material points and rejected the plea of private defense. However, the accused was convicted under Section 304 Part II, Indian Penal Code and not

under Section 302 as charged.

(18) In appeal, the Supreme Court observed :-

'HELD(after reviewing the entire prosecution and defense evidence on record) that, though the material brought on the record is insufficient to prove affirmatively the defense version that the jeep of the accused was pelted with stones and damaged, it does not establish a reasonable possibility, falling short of a preponderating probability as to the existence of that fact. In the circumstances, the right of private defense of the body accrued to the accused. As soon as two of the persons raised their hands to stop the jeep of the accused and then tried to follow and close on it, it was not unreasonable for the accused to apprehend some physical harm at their hands. thereforee, under Section 101 Penal Code a right of private defense of the body had accrued to the accused. But this was a case in which the accused has exceeded the right of private defense available to him under Section 101 Penal Code. Nevertheless, this was a circumstance which could be taken into account in mitigation of sentence.'

For the foregoing reasons, the conviction of the appellant was upheld under Section 304 Part II, Indian Penal Code. The learned counsel for the appellant submits that the law laid down by the Supreme Court Judgment, fairly applies to the facts of the case in hand. According to him, even though the evidence of pelting of stones was insufficient to prove affirmatively the defense version, but the circumstances were such which gave reasonable apprehension in the mind of the appellant that in case he did not immediately exercise his right of private defense, he was likely to receive bodily injuries. We agree with him that in the circumstances of the present case, culpable homicide cannot be held to be murder when the accused exercised in good faith his right of private defense. It was not a case of premeditation. We hold that the accused, however, exceeded this right by causing the death of Virender.

(19) No other point has been urged nor any requires going into.

(20) In the result, we accept the appeal and set aside the order of conviction and sentence under Section 302 Indian Penal Code and convert the same to the one

under Section 304 Part II. His conviction under Section 324 Indian Penal Code how- ever, is confirmed. The accused is in judicial custody since his arrest on 25th June, 1983 i.e. a little less than 5 years. The ends of justice would be fully met if his sentence of imprisonment is reduced to the one already under- gone on both counts. The accused is in jail. He be set at liberty at once if not required in any other case.

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