

Gurdeep Singh Vs. State

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Court : Delhi

Decided On : Dec-01-1994

Reported in : 1995IAD(Delhi)41; 1994(31)DRJ579

Judge : P.K. Bahri and; S.D. Pandit, JJ.

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

Appeal No. : Criminal Appeal No. 110 of 1988

Appellant : Gurdeep Singh

Respondent : State

Advocate for Pet/Ap. : Rajeev Awasthi and; N.K. Handa, Advs

Judgement :

P.K. Bahri, J.

(1) This appeal has been directed against judgment and order of an Additional Sessions Judge, New Delhi, dated August 23, 1989, by which he convicted the appellant of offence punishable under Section 302 of the Indian Penal code having murdered one Murlidhar with a Kirpan and sentenced him to undergo life imprisonment and to pay a fine of Rs.500.00 and in default, to undergo simple imprisonment for three months and also sentenced him to undergo one year rigorous imprisonment under Section 27 of the Arms Act Appellant has filed the

appeal challenging his convictions and sentences.

(2) The facts of the case, in brief, are that Murlidhar deceased was a three wheeler scooter driver and was resident of Block No.5, Nehru Nagar, New Delhi. On June 10, 1983, he had a quarrel with one Ishwar in front of the house of Ishwar. They were exchanging abuses and the time was about 10.15 P.M. The appellant-Gurdeep Singh, who is also known as Bhola Along with Ram Saroop reached the place and they were all known to each other and Bhola had made efforts to pacify the said two quarrelling persons. Even Ram Saroop also asked them not to exchange abuses and Ishwar was pacified and he went away to his house, whereas Murlidhar did not reconcile to the efforts made by the appellant in pacifying Ishwar. He caught hold of the appellant from his collars and started abusing him asking as to who he was to intervene and helped in getting released Ishwar. In that position Murlidhar and the appellant proceeded towards Block No.2 .while exchanging abuses and hot words and Murlidhar and the appellant grappled and thereupon the appellant is stated to have taken out his kirpan and stabbed Murlidhar in his stomach and as Murlidhar fell down the appellant landed eleven more blows on different parts of the body of Murlidhar. The occurrence is stated to have been witnessed by PW8 Jai Parkash, PW9 Harkesh Kumar and PW14 Ram Sarup and some other persons. On being informed of stabbing of his son Murlidhar, Kishan Chand PW1 came to the spot and he Along with Manjeet Singh PW12 took the injured Murlidhar in the three wheeler scooter to the hospital and on his way Murlidhar made a dying declaration that he had been stabbed by Bhola-appellant. Murlidhar was declared 'drought dead' at the hospital and his postmortem was done by Dr.Chander Kant PWIO. He found 12 injuries possible with the kirpan recovered from the appellant and held the injuries to the lung of the deceased sufficient to cause death in the ordinary course of nature vide Ex.PW10/C. The fact that Murlidhar had been killed at the said time, place, by the appellant is not challenged. Even the appellant in his statement under Section 313 of the Code of Criminal Procedure admitted all the material facts as to how the quarrel took place but he came out with the version that someone had taken out a knife and tried to attack the appellant and he snatched that knife and inflicted injuries on Murlidhar and he had no intention to kill Murlidhar as he had lost self control when he was being not only beaten by the deceased but also was being

given filthy abuses involving his mother and sister. He took the plea of self-defense. The learned Additional Sessions Judge has rejected the plea of self-defense and has held the appellant guilty of offence of murder under Section 302 of the Indian Penal Code.

(3) The appellant could not engage a counsel to argue the appeal before us and on his request, we had requested Mr. Rajiv Awasthi, Advocate, to represent the appellant on State expense as *amices Curiae*. We have heard the arguments in detail. We must express our appreciation for the hard work done by Mr. Awasthi in advancing quite able arguments.

(4) Ram Saroop PW14, who is author of the Fir, had come to the spot along with the appellant when deceased and Ishwar were quarrelling, had given the same facts to some extent as appeared in the Fir which is based on Rukka Ex. PW14/A which is the first statement given by Ram Saroop to the police but he turned hostile to the prosecution when he expressed his ignorance as to how the deceased came to receive the injuries. According to him, he could not notice as to who stabbed the deceased. This part of the statement of Ram Saroop appears to be made perhaps to help the accused but in the present case, it is not disputed even by the appellant in a statement under Section 313 of the Code of Criminal Procedure that he had caused the fatal injuries to Murlidhar. However, we have independent evidence of Jai Prakash and Harkesh PW8 & PW9 that the appellant had caused the fatal injuries to the deceased. There is no reason to doubt the statements of the said two witnesses on this aspect of the case.

(5) The learned counsel for the appellant has tried to argue that perhaps those two witnesses were not the eye witnesses as their names do not appear in the FIR. It is not necessary in law that names of all the eye witnesses must find mention in the FIR. The Fir is based on the version given by Ram Saroop. It may be that Ram Saroop may not have noticed the presence of other two eye witnesses at the time he gave the statement to the police. As we know from the facts that a large number of people had collected at the spot during the course of the occurrence. Those two eye witnesses had no axe of their own to grind by falsely implicating the appellant in this case. So, we hold that the said two persons were the eye

witnesses of the occurrence.

(6) From the facts as have come out from their statements, as also in the statement of Ram Saroop, it is quite evident that the appellant had no motive or any previous enmity which could have led him to kill Murlidhar on that date and time. The occurrence took place in a sudden manner. If we visualise the scene of occurrence, after the dinner time the deceased had come out on the road and had picked up some quarrel with Ishwar and they started exchanging abuses. The appellant admittedly had come to the spot while being attracted by the commotion raised by the said two persons and as any sane person would do, had tried to pacify the two quarrelling persons. Ram Saroop also pacified the said two persons and because of the said efforts of the appellant and Ram Saroop, Ishwar left the spot and went to his house. However, Murlidhar deceased for no reason whatsoever picked up the quarrel with the appellant, and he not only caught hold him by his collars but also gave him abuses. We must keep in view that these witnesses, appellant as well as deceased do not come from any higher strata of life. Deceased was only a three-wheeler scooter driver, so also the appellant. Normally mere exchange of some abuses may not lead to any person to lose his temper and furnish any grave and sudden provocation but in our society if some filthy abuses are given to a particular person that may lead to his losing his self-control. In the present case when the quarrel had been pacified between the deceased and Ishwar, it is the deceased who picked up the quarrel with the appellant for no rhyme or reason and questioned the appellant as to his role in separating him from Ishwar. Not only that he caught hold of the appellant from his collars and gave him abuses but the appellant who being a sikh gentleman was all the times armed with a kirpan had not used the weapon to cause any injuries to deceased at that time. The occurrence did not end there. It is clear from the occurrence, as is visualised from the site plan Ex.PWS/C, that the appellant and deceased while exchanging abuses had walked a sufficient distance and then there took place grappling between the two and the abuses were still continuing and the appellant then got enraged and took out his kirpan and attacked Murlidhar. If we visualise this scene, it is quite clear that the appellant had no motive and formed no intention to kill Murlidhar but having lost self-control due to filthy abuses being buried at him by the deceased that he attacked the appellant

and gave him random blows on different parts of the body of the deceased including some vital parts. The question, thus, arises, as argued by the learned counsel for the appellant, that whether the case falls under Section 300, Exception 1 of the Indian Penal Code or not? Section 300, Exception I reads as follows:

'300.Murder - Except in cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or 2ndly -If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or- 3rdly -If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or 4thly - If the person committing the act knows that is is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Exception 1 - When culpable homicide is not murder - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

(7) Number of judgments are brought to our notice by the learned counsel for the appellant which show in what circumstances the benefit of Exception 1 to Section 300 can be given. The first case cited is the wellknown case of K.M.Nanavati Vs State of Maharashtra, : AIR 1962 SC605 and in para 85 the Supreme Court has laid down the law in respect of this point as follows:

'THE Indian law, relevant to the present enquiry, may be stated thus: (1) The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, word's and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether

the subsequent act cause grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.'

(8) Reference is also made to Gurdip Singh & Anr. Vs State of Punjab, 1987 RLR 135. In the said case, seven injuries had been inflicted and one of them was sufficient to cause death in the ordinary course of nature but keeping in view the facts of the said case the Supreme Court held that such injuries had been caused by the convicted accused on being provoked and the provocation was sudden and he was convicted under Section 304, Part I and his conviction under Section 302 of the Indian Penal Code was quashed.

(9) It is not necessary to mention the various other judgments which also lay down the principles which have to be kept in view by the court while assessing evidence in order to decide whether Exception I to Section 300 becomes applicable or not. In the present case, keeping in view the salient facts, as proved on the record, it is evident that the appellant had committed this crime of killing Murlidhar when he was provided sudden and grave provocation by the deceased by hurling filthy abuses at him and also by grappling with him when the appellant had come to the scene only for pacifying the two quarrelling persons. In case the appellant had any intention to kill the deceased he could have easily taken out his weapon and killed Murlidhar when Murlidhar had caught hold of him from collars and had abused him but the appellant exercised self restraint and perhaps would have left the scene if the deceased had not continued to abuse him and had gone up to some distance and then ultimately had grappled with the appellant. It is true that the appellant also must have given abuses to the deceased but the nature of the abuses given by the appellant have not been indicated in evidence by the eye witnesses but the nature of the abuses given by the deceased as stated by the appellant in his statement under Section 313 Code of Criminal Procedure shows that they were filthy abuses attacking the honour of his mother and sister. The appellant comes from Sikh Community and such filthy abuses could, in our view, lead to his losing self-control for such sudden and grave provocation.

(10) We, hence, hold that the conviction of the appellant under Section 302 of the Indian Penal Code is not valid.

(11) We partly allow the appeal, modify the judgment and the order of the Additional Sessions Judge and convert the conviction of the appellant from Section 302 to Section 304 Part 1 of the Indian Penal Code and we set aside his sentence imposed under Section 302 of the Indian Penal Code and award him ten years rigorous imprisonment and his conviction and sentence under Section 27 of the Arms Act are maintained. The sentences shall run concurrently.

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