

Satyavir Singh Rathi Vs. State

Satyavir Singh Rathi Vs. State

SooperKanoon Citation : sooperkanoon.com/699028

Court : Delhi

Decided On : Jul-30-1997

Reported in : 68(1997)DLT234; 1997(42)DRJ565

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Miscellaneous Appeal No. 1979 of 1997

Appellant : Satyavir Singh Rathi

Respondent : State

Advocate for Pet/Ap. : K.T.S Tulsi,; R.S. Malik,; Vikas Pahwa,;

Judgement :

Jaspal Singh, J.

(1) Satyavir Singh Rathi is an Assistant Commissioner of Police. He has applied for anticipatory bail in a case registered by the C.B.I. under sections 302, 307 read with section 34 of the Indian Penal Code.

(2) Exordial speaking, the point for discussion is short but its legal import and human portent are deep meriting examination in some detail. However, before I

proceed to do so, a thumb nail sketch of the sequence of events would be necessary to get a hang of the core of the case. And, before that too what needs to be noticed is that the investigation was first conducted by the Delhi Police and then taken over by the C.B.I. I have thought it fit to mention it since the Delhi Police has come up with its own version which the C.B.I. paints as palpably false. I shall be dealing with both the versions in their necessary detail.

(3) First, the version of the Delhi Police.

(4) The Delhi Police was on the look out for a person by the name of Mohd. Yasin who was wanted in as many as twenty criminal cases of serious nature like robbery, dacoity, murder and attempted murder. On March 31, 1997 a police party headed by Inspector Anil Kumar spotted a bearded person resembling Mohd. Yasin. He was in a Maruti Esteem car and had two more persons as his company. The car was trailed. In the meanwhile the petitioner also Along with other police officials joined the Inspector. The car was finally intercepted near the red light of Barakhamba crossing in Connaught Place. Soon thereupon, the police party was fired upon by the occupants of the Maruti Esteem causing injuries to two constables and 'in self-defense and with a view to immobilize the occupants' the police party too fired 'on the Maruti Esteem' resulting in injuries to the occupants of the said car.

(5) And, what about the version of the C.B.I.

(6) The C.B.I., on investigation, found that the bearded person was one Jagjit Singh who, Along with one Tarun Preet Singh, had gone to Patparganj to meet his friend Pradeep Goyal and that from there all the said three persons had first gone to Dena Bank building in Connaught Place in their Maruti Esteem Car. At the Dena Bank building Jagjit Singh had kept sitting alone in the car for about 20 minutes. At about 2.20 p.m. Pradeep Goyal and Tarun came back from the Bank and then the car, which was being driven by Jagjit Singh, started moving towards the Statesman building. At this stage the petitioner too with police force joined Anil Kumar who, all along, had been trailing the three unfortunate young men. When the Maruti Esteem car reached the traffic signals of Barakhamba Road crossing the traffic lights turned red. This made Jagjit Singh stop the car. And, as soon as

the car stopped, it was not only surrounded from all sides by the police personnel led by the petitioner and Inspector Anil Kumar but was also fired at indiscriminately and 'without any provocation' and with the common intention was 'to kill the occupants'. The firing did result in the death of Pradeep Goyal and Jagjit Singh. As for Tarun, he received grievous injuries. The C.B.I. reveals that as many as 34 bullets were fired by the Police party at the occupants of the car and that at no stage had the police party been fired upon from inside the Maruti Esteem. The C.B.I. also found that the claim of the Delhi Police that two of its Constables had sustained gun shot injuries as a result of firing from inside the Maruti Esteem was 'false' and further that 'in order to justify the firing on the Maruti Esteem car and knowing that an offence had been committed by them and with a view to screen themselves from legal punishments, the police party planted one 7.65 mm pistol and seven live cartridges and prepared false records.'

(7) Having provided above a brief resume' of what emerges out from the investigation conducted not only by the Delhi Police but also by the C.B.I., I think it is time to deal with the arguments advanced.

(8) It was contended by Mr.K.T.S.Tulsi, the learned counsel for the petitioner, that as the police officers were all along labouring under the bonafide belief that the person spotted and trailed was none other but Mohd. Yasin and as they were fully within their legal right to arrest him, therefore, it could not be said tht the petitioner was not protected under section 79 of the Indian Penal Code read with section 46 of the Code of Criminal Procedure. In support reliance was sought to be placed on a judgment of a learned single Judge of this court in Shri D.N.Srivastava vs. Shri Parthajoy Das & Ors. 1983 Crimes 248. Ofcourse, Mr.Tulsi, during the course of arguments, also referred to a judgment of the Supreme Court in Vadilal Panchal v. Datatraya : [1961]1SCR1 . Reference was made to it to show that recourse can be had to section 79 of the Penal Code even while seeking anticipatory bail under section 438 of the Code of Criminal Procedure.

(9) I have no doubt that even while dealing with a petition seeking anticipatory bail under section 438 of the Code of Criminal procedure a Court is not precluded from taking into consideration a plea based on an exception. But then the court

venturing to take note of such a plea must have before it satisfactory and reliable materials.

(10) I feel, and I hope rightly, that this is no stage for a roving enquiry or for a meticulous analysis of the material on record. Stage for that is yet to come. However, all said and done, as Mr. Tulsi had strenuously tried to build a case for anticipatory bail on the basis of section 79 of the Indian Penal Code read with section 46 of the Code of Criminal Procedure, I am left with no option but to deal with the contentions raised at some length.

(11) Can one say, at this stage, that section 79 of the Penal Code protects the petitioner? Or, for that matter, can it be said that what is provided by section 46 of the Code of Criminal Procedure is of any help to the petitioner? I feel that prima facie neither the petitioner can take benefit of section 79 of the Penal Code nor, for that matter, can he take refuge under section 46 of the Code of Criminal Procedure.

(12) Section 79 of the Indian Penal Code provides that nothing is an offence which is done by any person who is justified by law, or who by reason of mistake of fact and not by mistake of law, in good faith, believes himself to be justified by law, in doing it. Thus under section 79 although an act may not be justified by law, yet if it is done under a mistake of fact, in the belief in good faith that it is justified by law it will not be an offence. And, what is good faith? As laid down in section 52 of the Indian Penal Code, nothing is said to be done or believed in good faith which is done or believed without due care and attention. In short thus 'good faith' requires not logical infallibility but due care and attention. As for 'mistake of fact' it can be admitted as a defense provided (1) that the state of things believed to exist would, if true, have justified the act done, and (2) the mistake must be reasonable and (3) that the mistake relates to fact and not law.

(13) In the case in hand even if the police version is accepted, the police party took Jagjit Singh as Mohd. Yasin merely because he was having a beard and resembled him. They had all the time to verify but made no effort in that regard. Jagjit Singh could be overpowered at Patparganj or even when he was sitting alone in the car outside Dena Bank and yet neither any effort was made to

apprehend him nor to verify his antecedents. There was thus total lack of due care and attention. Let us assume that the mistake was reasonable. Let us also assume that the police in good faith believed Jagjit Singh to be in fact Mohd. Yasin. But then, can the act of the police in resorting to indiscriminal firing and pumping 34 bullets and in the process killing two persons and grievously injuring the third be said to be justified by law or an act done in the belief in good faith that it was justified by law? Yes, according to Mr. Tulsi and in support he referred to section 46 of the Code of Criminal Procedure.

(14) Section 46 of the Code of Criminal Procedure reads as under: .Is1

'46, Arrest how made

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavor to arrest him, or attempt to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.'

(15) It was contended by Mr. Tulsi that as Mohd. Yasin was accused of having committed offences punishable with death or with imprisonment for life and as the police party were in good faith but mistakenly, of the view that Jagjit was none other but Mohd. Yasin, therefore, under sub-section (3) of section 46 of the Code the right extended to causing of death. However, I remain unpersuaded. Sub section (3) is to be read Along with sub-section (2) and not in isolation. Under sub-section (2) a police officer is entitled to 'use all means necessary to effect arrest' only when the person sought to be arrested 'forcibly resists the endeavor to arrest him', or 'attempts to evade arrest'. In the present case there was neither any resistance to arrest nor any attempt on the part of any of the victims to evade arrest. Sub section (3) thus would prima facie be of no avail.

(16) As noticed above, Mr.Tulsi had also placed reliance on a judgment of this court in Shri D.N.Srivastava's case (supra). I need not lose much breath on it. It was a case where under dire circumstances only minimal force was used to disperse an assembly bent upon disrupting the electoral process. In the case in hand neither there were any such compelling circumstances nor the force used was 'minimal'.

(17) Mr. A.K.Gupta who appeared for the C.B.I. drew my attention to a judgment of the Supreme Court in Pokar Ram v. State of Rajasthan : 1985 CriLJ1175 wherein it was held that while dealing with an application for anticipatory bail moved by a person accused of committing murder by firearm, the court's approach should be cautious and circumspect.

(18) This is a case where three unarmed innocent persons were pierced with bullets without provocation and by those who were supposed to protect them. Not only that. If the C.B.I. is to be believed the petitioner and his officers, in order to save their own necks, planted a pistol and seven live cartridges and put up a false story that they had been fired at and that their pumping of 34 bullets was an act in self defense. It is a tale of tyranny of power and if true, Hell need not be fabricated, it already exists here.

(19) I find no ground for the grant of anticipatory bail. The petition is dismissed. However, nothing said in the order shall be read as an expression of opinion on the merits of the case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com