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Dharam Pal Singh Vs. State

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Court : Delhi

Decided On : Jul-31-2000

Reported in : 2000(55)DRJ85

Judge : Arijit Pasayat C.J. and; D.K. Jain, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 300 and 302

Appeal No. : Crl. A. 18/1995

Appellant : Dharam Pal Singh

Respondent : State

Advocate for Def. : Ms. Seema Gulati Adv.

Advocate for Pet/Ap. : Ms. Ritu Gauba, amices Curia

Judgement :
ORDER

Arijit Pasayat, C.J.

1. For a princely sum of Rs. 5. Pintoo (hereinafter referred to as the deceased) lost his life as a result of stab injury and appellant, Dharam Pal Singh, (hereinafter referred to as the accused) is stated to be author of the crime.

2. Background facts which led to the trial of accused, his conviction for offence punishable under Section 302 of the Indian Penal Code, 1860, (in short IPC) and award of sentence for imprisonment for life and fine of Rs. 3,000/- with default stipulation of one year imprisonment is essentially as follows :

On 1.9.1990, the deceased a riksha puller was seen demanding his fare from the accused near Old Delhi Railway Station. Since the accused did not pay the fare, deceased stopped him in the verandah and again demanded Rs.5/- of his wages and when accused did not pay, the deceased caught hold of him by his collar and grappled with him. At this the accused uttered that he will soon be paid the money. Saying so, accused took out a vegetable knife from his right side pant pocket and gave a blow on the chest of the deceased. On account of the attack the deceased started bleeding and the accused started running away towards Railway Station. Deceased tried to stop him but the accused managed to run away. In the meantime constable Kuldip Singh (PW.16) apprehended the accused with the help of others. Accused was handed over to the special police officer. Sh Durga Prashad, PW2 took the deceased in an injured state towards road in front of passenger hall of the Railway Station. By that time deceased had lost his consciousness, and was removed in a three wheeler scooter to Hindu Rao Hospital, where he was declared dead. On receiving information from Vivekanand (PW.1), police registered FIR and investigation was undertaken and on completion thereof charge sheet was placed. Accused pleaded innocence and false implication. To further the prosecution version, 17 witnesses were examined. Placing reliance on the evidence of PWs 1,2,9 and 16, who claimed to be eye-witnesses to the occurrence, learned Addl. Sessions Judge found the accused guilty convicted and sentenced him as aforesaid.

3. In support of the appeal, learned counsel submitted that evidence of the witnesses suffers from infirmity of very vital nature, and should not have been relied upon. It is stated that there is gulf of difference between the time of alleged occurrence and reporting at the police station. The diary entry of 1.9.1990 at the police station reveals that at 2:40 pm deceased had been knifed by a Sardar and was removed to hospital. ASI Surat Singh and SHO M.S. Verma (PW. 13) were intimated. They reached Hindu Rao Hospital. The dead body of a boy of 25 year

was obtained who had been declared to have died by the time he was brought. Since there was nobody else there except Vivekanand (PW.1) had given the statement. If the prosecution version is accepted, then at 2:15 p.m. PW.1 claims to have seen the occurrence while he was talking to PW.2 near railway canteen in West passenger hall. It was his case that the deceased was earlier working at a tea stall. These factors do not appear to have been corroborated by the evidence on record. In essence the stand is that evidence tendered is not cogent and credible. Alternative plea of learned counsel for the accused was that the occurrence took place in the course of sudden quarrel, Exception 4 to Section 300 applies and thereforee Section 302 IPC had no application. It is also submitted that since only one blow was given Section 302 does not apply. According to the counsel for the State, the judgment of the learned trial Court suffers from no infirmity. A detailed analysis of evidence was done and a clear case for conviction under Section 302 is made out.

4. It is seen from the evidence of Vivekanand (PW.1) that he had stated in detail about the occurrence. Similar was the case of Durga Parshad (PW. 2), Balbir Singh (PW9) and Kuldip Singh, PW. 16. inspire of incisive cross-examination, nothing material has been brought out on record to discredit the testimony of these witnesses. Their evidence is credible and cogent. Merely because certain exaggerations and embellishments were highlighted they do not make the witnesses unreliable. Such exaggerations and embellishments are inconsistencies on the fringe, without materially affecting credibility of the evidence. Learned trial Judge was justified in placing reliance on the evidence of the witnesses.

5. Further question is about applicability of Exception 4 to Section 300 IPC. For bringing in its operation it has to be established that the act was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditations but while in the case of Exception I there is total

deprivation of self control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatsoever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A sudden fight implies mutual provocation and blow on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place for which both parties are more or less to be blamed. It may be that one of them starts it but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner, and (f) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the fight occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passion to cool down and the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provisions means 'unfair advantage'. Considering the background facts as indicated, inevitable conclusion is that the

requisite ingredients are present, and, thereforee, Exception 4 to Section 300 IPC has application to the facts of the case. It cannot be said as a rule of universal application that whenever one blow is given, Section 302 IPC has no application. It would depend upon the background facts, size and type of weapon used, place of body where the injury was inflicted and such other relevant aspects. That question is really of academic interest in view of our conclusion that Exception 4 to Section 300 applies. Conviction of the accused under Section 302 IPC is altered to one under Section 304, Part- II, IPC. Custodial sentence of eight years would meet the ends of justice. Appeal is allowed to the extent indicated.

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