

Darshan Singh Vs. State of Rajasthan

Darshan Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/761298

Court : Rajasthan

Decided On : May-18-1984

Reported in : 1984WLN(UC)339

Judge : M.C. Jain and; S.S. Byas, JJ.

Appeal No. : D.B. Cri. Appeal No. 6 of 1978

Appellant : Darshan Singh

Respondent : State of Rajasthan

Judgement :

S.S. Byas, J.

1. By his judgment dated November 17, 1977 the learned Additional Sessions Judge (1), Hanumangarh convicted and sentenced the appellant Darshan Singh as under:

S. No. Offence under Section Sentence awarded(1) 302, IPC Imprisonment for life with a fine of Rs 1000/- in default of the payment of fine to further undergo one year's r.i.(2) 307, IPC Six years' rigorous imprisonment with a fine of Rs. 500/-, in default of the payment of fine to further undergo six months' like imprisonment(3) 27 of the Arms Act Two years' rigorous imprisonment

2. Substantive sentences were directed to run concurrently while those in default of the payment of fine consequently. The accused has come up in appeal to challenge his conviction.

3. Briefly stated, the prosecution case is that the deceased-victim Samouran Singh and Pritamsingh (co-accused acquitted by the Court below) were real brothers. The partition of agricultural land situate in Rohi Dholipal in the district of Ganganagcr took place between them. PW. 2 Tejasingh is the son of the deceased-victim Sampuransingh while PW. 3 Nanak was a co-sharer in the crops of Tejasingh. Tejasingh had raised a Dbani in this field where he was living with his family. The deceased Sampuransingh used to live in village Gilpati (Punjab) but had come to his son Tejasingh when the occurrence took place. At about 10.00 a.m. on September 73, 1975, Tejsingh (PW

2) and Nanak (PW

3) were cutting the Jawar crops standing in their portion of 13 Biswas in field Keela No 24. Teksingh i PW

8) Jagroop-singh (PW

9) and deceased Sampuransingh were sitting under a tree standing in the same field. The accused Darshansingh accompanied with his father Pritamsingh and one Bantasingh (co-accused also acquitted by the Court below) came there where Tejasingh (PW

2) was cutting the crop. They asked Tejasingh to leave the cutting of the crop and go away. Tejasingh asserted his right to cut the crop since it was standing in his portion of the field. Accused Darshansingh had a 12-bore DBBL gun with him. He fired two shots of his gun at Tejasingh which hit him on his back and left hand. Thereafter accused Darshansingh fired one more shot at Sampurnasingh which hit him in his abdomen causing some injuries including one exit wound. Accused Pritamsingh and Bantasingh struck blows to Sampuransingh with their Gandasis which they had brought with them. There was profuse bleeding from the wounds of Tejasingh and Sampuransingh and the clothes they were wearing got drenched

with it. The ac used thereafter went away. Tejasingh went to his Dhani Some persons took him and his father Sampurnasingh to Sangariya Hospital. Since the condition of Sampurnasingh was getting precarious every moment, the lady doctor on duty advised them to go to General Hosnital, Ganganagar. However, Sampurna Singh and Tejasingh were taken to General Hospital, Bhatinda (Punjab) for treatment. Teksingh (PW 8), immediately after the occurrence went to Police Station, Sadulsahar and verbally lodged report Ex P 3 of the occurrence at about 5.00 p.m. on the same day The police registered a case under Sections 307, 324 etc of the Penal Code against the three accused viz, Darshansingh, Pritamsingh and Banta Singh. Despite the surgical operation, Sampuransingh did not survive and passed away in the night between 14th and 15th September, 1975 in General Hospital; Bhatinda. Before his death, his injuries as well as the injuiies of Tejasingh were examined by PW. 10 Dr. S.R. Singhal, the then Medical Officer, Civil Hospital, Bhatinda. The post-mortem examination of the dead body of Sampurna Singh was conducted at about 4.00 P.M. on September 15, 1975 PW. 4 Dr. Vijay Kumar Gupta, who was also a Medical Officer in Civil Hospital, Bhatinda. Dr. Singhal (PW

10) found one bruise and 9 lacerated wounds on the person of Tejasingh. The injury report issued by him is Ex. P.17. Dr. Singhal found one incised wound, one abrasion and six lacerated wounds on the person of Samournasingh. The injury report pertaining to Sampurnasingh is Ex. P.16. The nature of injuries and the weapon with which they were caused to the two victims could not be determined by Or Singhal and he reserved his opinion on the receipt of surgical report and X-ray examination report. The Investigating Officer reached Bhatinda and recorded the dying declaration Ex. P 30 of Sampurnasingh in which he narrated how the incident had taken place. On the death of Sam-furansingh, Section 302 IPC was added during investigation. Dr Gupta (PW.

4) who conducted the post-mortem examination of the dead body of Sampurnasingh noticed the following injuries on his person:

(1) A lacerated wound 1.5 c m. x 1.5 cm. irregular in shape in the epigastrium 4 cm. left in the mid line and 9 cm. above the umbilicus.

(2) Stitched wound 25 c.m length extending from epigastrium to the bypogastrium on left side of the mid line.

(3) One bruise 17 cm. x 8 cm. on the left side of the abdomen. Colour was bluish-black.

(4) An abrasion 5 cm. x 0.5 cm. on obliquely placed in the lumber region on the left side in the area of injury No. 3 in its lateral part.

(5) An abrasion 1 cm. x 0.5 cm. at the lower and lateral end of injury No. 4.

(6) A lacerated wound 1.5 cm. irregular in shape on the left lateral side of abdomen 2 cm. above the ilias crest. Drain tube was put in.

(7) A lacerated wound 1 cm. x 1 cm. rounded in shape just below injury No. 6.

(8) A lacerated wound 1.25 cm. x 0.75 cm. oval in shape on the iliac crest 4 cm. inferior and posterior to injury No. 7.

(9) A lacerated wound 1 cm. x 0.75 cm. oval in shape 3.5 cm. below injury No. 8.

(10) A lacerated wound 0.5 cm. x 0.75 cm. oval in shape 3.5 cm. from injury No. 8 placed postero-superidrlly.

(Note:--There was no blackening scorching or tatooing in injuries No. 1,6,7,8,9 and 10).

(11) An incised wound 2.5 cm. x 0.75 cm. muscle deep on the lateral aspect of left thigh 10 cm. above the knee joint with 1.5 cm. abrasion on the lateral side and 3.5 cm. abrasion on the medical side. These abrasions were continueus with injury No. 11.

(12) An abrasion 3 cm. x 0.5 cm. on the medical aspect of the left leg 12 cm. below the knee joint.

Abdomen:--External injuries have already been described Subcutaneougus bleeding present corresponding to injuries No. 1 arid 3, arid could be traced to injury No. 7. One piece of pellet recovered from the abdominal will. Peritoneus was

injured and stitched at various sides on the left side. Mesentery was injured. One piece of pellet was recovered from the iliac crest area and another one from the area about the descending colon.

Small intestines were injured and stitched at multiple places. Descending colon injured and stitched.

Left hip bone fractured at the iliac crest.

All the injuries were ante-mortem Injury No. 2 was a therapeutic incision by the doctor giving the treatment. Injuries No. 3,4,5 and 12 were caused by blunt weapon while injury No. 11 was caused by some sharp weapon. The remaining injuries No. 1,6,7,8,9 and 10 were caused by some fire arm. In the opinion of Dr Gupta the cause of death of Sampuransingh was haemorrhage and shock as a result of injuries. He was also of the opinion that the injuries sustained by Sampuransingh were sufficient in the ordinary course of nature to cause the death. The post mortem examination report issued by him is Ex.P 2.

4. The Investigating Officer inspected the site and arrested all the three accused persons. In consequence of the information furnished by accused Darshansingh, one ,12 bore DBBL gun was recovered. In consequence of the informations furnished by Pritamsingh and Banta Singh, two Ganda-sis were recovered. The gun, the pellets, wad pieces, the head of 12-bore cartridges etc, were sent for examination to the State Forensic Science Laboratory, Jaipur. The left barrel of the gun was found serviceable while the other not. On the completion of investigation, the police submitted a challan against the three accused in the Court of Munsif and Judicial Magistrate, Ganganagar, who in his turn committed the case for trial to the Court of Additional Sessions Judge. The learned Additional Sessions Judge framed charges under Sections 302 and 307 IPC and 27 of the Arms Act against accused Darshan Singh while under Sections 302/34 IPC and section 30 of the Arms Act against accused Pritamsingh and under Section 302/14 IPC against accused Bantasingh. The accused pleaded not guilty and demanded trial. The defence taken by them was that of complete denial. It was alleged by them that due to their strained relations with the complainant party they have been falsely implicated. In support of its case the prosecution examined 14 witnesses and filed

some documents, in defence, the accused adduced no evidence. On the conclusion of trial the learned Additional Sessions Judge found no incriminating evidence against accused Pritamsingh and Bantasingh for the offence under Section 307/34, I.P.C. They were therefore, acquitted of the said offence. Accused Pritamsingh was convicted under Section 30 of the Arms Act. The prosecution case was taken substantially true against the accused-appellant Darshansingh. He was consequently convicted and sentenced as mentioned at the very outset.

5. We have heard Shri K.C Gaur, learned Counsel appearing for the accused appellant and Shri Niyazuddin Khan the learned Public Prosecutor We have also gone through the case file carefully.

6. Mr. Gaur did not challenge the finding of the Court below that the appellant Darshansingh was armed with 12-bore gun and he fired shots from it at PW 2 Jejasingh and the deceased victim Sampurnasingh. He also did not challenge the conviction of the appellant under Section 307, I.P.C. and Section 27 of the Arms Act. His submission is that no offence under Section 302 I.P.C. is made out against the appellant. It was argued that the deceased-victim Sampurnasingh was nearly 75 years in age. Dr. Gupta, who conducted the post mortem examination of his dead body did not state that the gun shot injuries caused to him by the appellant were sufficient in the ordinary course of nature to cause the death. It was argued that according to Dr Gupta, the cause of death was haemorrhage and shock as a result of all the injuries sustained by Sampurnasingh. Sampurnasingh sustained as many as 12 injuries. As per prosecution, the appellant is the author of only injuries No. 1,6,7,8,9. and 10 and was not the author of the other injuries. Injury No. 3 which was 17 c. m. x 6 cm. on the left side of the abdomen was in itself sufficient to cause haemorrhage and shock. It was urged that it was incumbent upon the prosecution to precisely show that the gun shot injuries caused by the appellant were sufficient in the ordinary course of nature to cause death. Dr Gupta (PW 4) does not say so. As such, the offence is not covered by Clause 3rdly of Section 302 I.P.C. The offence made out would therefore, fall either within the ambit of Section 326 or 304 Part IX, I.P.C.

7. In reply, the learned Public Prosecutor submitted that the appellant had fired the shots from his 12-bore gun at Sampuransingt. The shot hit him on his abdomen which is a vital part of the body. Though Dr. Gupta did not state that the gun-shot injury was sufficient in the ordinary course of nature to cause the death, the Court can examine this question independently. According to the learned Public Prosecutor, the gun shot injuries caused to the deceased-victim should be taken to be sufficient in the, ordinary course of nature to cause the death.

8. We have taken the respective submissions into consideration. The pertinent question is whether the case is covered by Clause 3rdly of Section 300 I.P C. as has been held by the learned Additional Sessions Judge.

9. Now, Clause 3rdly of Section 300 TPC is of two parts. The first part is a subjective one. Under this part, it has to be shown by the prosecution that there was an intention on the part of the accused to inflict the particular injury which was found on the body of the deceased. The second part is objective and it is incumbent on the prosecution to prove that the bodily injury inflicted on the victim's body is sufficient in the ordinary course of nature to cause the death. If these two things have been proved by the prosecution, the case falls within the four corners of clause 3rdly. If one of them is missing, clause 3rdly cannot be pressed into service. It is not sufficient for the prosecution that because the death had taken place, the injury must be taken to be sufficient in the ordinary course of nature to cause the death. Sufficiency is not established only because death of the victim had resulted. The sufficiency is required to be proved by the prosecution on the basis of evidence.

10. In the instant case the deceased Sampuransingh sustained as many as 12 injuries. Out of them one was incised wound and four were abrasions. The remaining six were the result of the gun shot. Three of the abrasions were on the victim's abdomen. Injury No. 3 which was a bruise was 17 x 6 cm on the left side of the victim's abdomen. Dr. Gupta (PW 4), who conducted the medico-legal autopsy of the victim's dead body simply stated that the cause of death was haemorrhage and shock as a result of injuries. By injuries he meant all the injuries and not only the gun shot injuries. As discussed earlier, in order to bring clause 3rdly into

mischievous, it was incumbent on the prosecution to establish that the gun-shot injuries No. 1, 6, 7, 8, 9 and 10 were sufficient in the ordinary course of nature to cause the death. Dr. Gupta did not state that these gun shot injuries were sufficient in the ordinary course of nature to cause the death. He also did not state that haemorrhage and shock were the result only of these gun-shot injuries. The opinion of a doctor is the most material evidence to establish the nature of the injuries. It cannot be left to imagination that the haemorrhage and shock were the results only of the gun-shot injuries. The prosecution evidence of the eye witnesses, which has been found true and acceptable by the court below is that after the shot was fired by the appellant at Sampuran Singh, the remaining two accused Pritamsingh and Bantasingh inflicted injuries to him with the Gandasis. Both these accused have been acquitted by the Court below. It is not the case of the prosecution that the appellant is the author of the injuries other than those caused by the gun-shot. In these circumstances, specially looking to the testimony of Dr. Gupta (PW. 4), it is difficult for us to agree with the learned Public Prosecutor that the victim died only on account of shock and haemorrhage caused by the gun-shot. At any rate, the testimony of Dr. Gupta (PW. 4) leaves a wide void in the prosecution case. We fail to understand that Dr. Gupta was not examined by the prosecution to elicit his opinion whether the injuries caused by the gunshot were sufficient in the ordinary course of nature to cause the death. The second part of Clause 3rdly, which is purely objective in nature requires that the matter should be examined in the light of medical evidence as to whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause the death. In the instant case, suffice it to say that the medical evidence of Dr. Gupta (PW. 4) is not at all helpful to the prosecution on this vital question. We have, therefore, no other alternative but to accept the contention of Mr. Gaur that the prosecution has failed to bring the case within the four corners of clause 3rdly of sec 300 IPC.

11. This is a case where the deceased-victim received only one gunshot. Though the injuries resulted from the gun-shot according to us were sufficient in the ordinary course of nature to cause the death, yet the fact remains that the death of the victim had taken place. In these circumstances, 'knowledge' at least can be imputed to him that by his act of firing shot he was likely to cause the death of

Sampuransingh. In as much as death has taken place, the case must come atleast within the ambit of Section 304, Part II, IPC. In Kahapan v. State of Tamil Nadu AIR 1976 SCC (Cri) 608 the victim received multiple injuries. Injuries caused by the accused could have been fatal but it was necessarily so. The victim had received four other injuries which were caused by some other persons. Their Lordships held that the injuries caused by the accused alone did not cause the death though it was likely to cause the death. The offence made out was taken to be under Section 304 and not under Section 302 IPC. More or less the same is the situation in the instant case. We may state at the fault of repetition that the two accused Bantasingh and Pritamsingh, who caused injuries on the abdomen of the deceased victim have been acquitted by the learned Additional Sessions Judge. The appellant is certainly not the author of those injuries which were not caused by his gun shot.

12. In the result, we partly allow the appeal of accused Darshansingh. His conviction and sentence under Section 302 are set-aside and instead he is convicted under Section 304, Part II, IPC and is sentenced to ten years' rigorous imprisonment. His conviction and sentence under Section 307 IPC and Section 27 of the Arms Act are maintained. The sentences shall run concurrently. In case the accused appellant Darshansingh has served out the full term of his sentence, he shall be at once set at liberty if not wanted in any other case. The appeal shall accordingly stand disposed of.