

Nihal Singh Vs. State of Rajasthan

Nihal Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/766416

Court : Rajasthan

Decided On : Oct-11-1985

Reported in : 1986(1)WLN762

Judge : Milap Chand Jain and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 812 of 1980

Appellant : Nihal Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. D.K. Purohit

Judgement :

Milap Chand Jain, J.

1. The appellants have been convicted and sentenced by the learned Additional Sessions Judge, Nohar by his judgment dated October 29, 1980 as under:

(1) Nihal Singh Under Section 148, IPC Six months' R.I. and a fine of Rs. 100/-, in default of payment of fine to further undergo 15 days simple imprisonment; Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/-, in default of payment of fine to further undergo 4 months' simple imprisonment; Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo 3 month's simple imprisonment; Under

Section 27, Arms Act One year's simple imprisonment and a fine of Rs. 500/-, in default of pay-ment of fine to further undergo 3months simple imprisonment;Under Section 25, Arms Act Six months' simple imprisonment and a fine of Rs. 300/- in default of pay-ment of fine to further undergo 2months imprisonment;(2) Pratap Under Section 148, IPC Six months' R.I. and a fine of Rs.100/-, in default of payment of fine to further undergo 15 days simpleimprisonment;Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/-, in default of payment of fineto further undergo 4 months' simpleimprisonment;Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3 month's simple imprisonment;Under Section 27, Arms Act One year's simple imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3months simple imprisonment;(3) Baldeva Under Section 148, IPC Six month's R.I. and a fine of Rs.100/-, in default of payment of fine to further undergo 15 days simpleimprisonment;Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/- in default of payment of fine to further undergo 4 months' simpleimprisonment;Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3 months' simple imprisonment;Under Section 27, Arms Act One year's simple imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3months simple imprisonment;(4) Dharma Under Section 148, IPC Six month's R.I. and a fine of Rs.100/-, in default of payment of fine to further undergo 15 days simpleimprisonment;Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/- in default of payment of fine to further undergo 4 month's simpleimprisonment;Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3months' simple imprisonment;Under Section 25, Arms Act Six months' simple imprisonment and a fine of Rs. 300/-, in default ofpayment of fine to further undergo 2month's simple imprisonment;Under Section 27, Arms Act One year's simple imprisonment and a fine of Rs. 500/-, in default ofpayment of fine to further undergo 3months simple imprisonment;(5) Jag Ram Under Section 148, IPC Six months' R.I. and fine of Rs.100/-, in default of payment of fine to further undergo 15 days simpleimprisonment;Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/-, in default of payment of fineto further

undergo 4 month's simple imprisonment; Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo 3 months' simple imprisonment; (6) Raju Under Section 148, IPC Six month's R.I. and a fine of Rs.100/-, in default of payment of fine to further undergo 15 days simple imprisonment; Under Section 302/149, IPC Life imprisonment and a fine of Rs.1000/-, in default of payment of fine to further undergo 4 months' simple imprisonment; Under Section 307/149, IPC One year's rigorous imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo 3 month's simple imprisonment.

2. The incident in this case is said to have taken place on 8-5-79 at about 8-9 p.m. and the report of the occurrence was lodged by Patram father of the deceased Kartar on that very night at about 4 a.m. at the police station Bhirani District Sriganganagar. It is said that the accused-persons Nihalsingh, Dharma, Pratap, Baldeva, Raju and Jagram gave 'Lalkara' outside the house of Patram addressing as enemies and asking them to come out and they huried abuses to them. His son Kartar was prepared to take bath, Kartar proceeded towards the lane. Although he asked not to proceed ahead. Kartar was followed by his wife Lichhma (PW5) in order to bring him back. Patram self, Mehar Chand, Phoola and Purna also went towards the lane in order to bring back Kartar and his wife. When they reached the main entrance of the house, Kartara had already reached on the lane. Seeing Kartara, first of all, Pratap fired a shot. Thereafter, the the same was followed by Nihalsingh, Dharma and Baldeva, Pratap, Nihalsingh and Dharma were armed with guns, Baldeva was armed with pistol, Raju was armed with spear and Jagram was armed with Gandasa. Kartar after receiving the gun-shot injuries, fell down and his wife Lichhma also sustained gun shot injuries whereby she fell down. Thereafter, the members of the complainant party gave Lalkara, then they ran away but they continued firing from near the neem tree. While so firing, they proceeded towards the main entrance. In this manner they fired 10-15 shots. Thereafter, Meharchand, Puran & Phoola lifted Kartar and his wife and brought them inside the Bakhal of the house. Kartara succumbed to his injuries. It may be stated that Nihalsingh's father Udami was also mudered before some years ago. In that case, Patram and his sons were acquitted. On the report lodged by Patram, case under Section 302, 307, 149, 148 IPC and 27 Arms Act was registered and

the investigation was undertaken by Ramjilal (PW 11). He visited the spot and conducted the spot investigation. He prepared the site plan (Ex. P/2). The dead body of Kartara was lying on the cot at point No. 5. From Points No. 3 and 4, the pellets and wads were recovered, Point No. 3 is inside wall of Darwaja. In Ex. P/2. the Darwaja has been shown bounded by four walls having an entrance and the outer wall of this Darwaja is in the lane. Point No. 4 is the eastern wall of the kitchen, which is at a distance of 20 ft. from the Darwaja. In all, ten wads, 1 rubber, one metal cap and 95 pellets were recovered, A gunshot mark was found on the wall of the kitchen. On 9-5-79, the Deputy Superintendent of Police Shri J R. Malhotra inspected the spot and prepared another site-plan Ex. D/2 and site-note Ex. D/3. In that plan, besides the house of Patram, the house of Nihalsingh is also shown and the site of his house was also inspected. From the house of Nihalsingh, at different points, various things were shown. The blood was recovered from point No. 3 and a broken wooden piece of the gun was recovered. At point No. 9 it was observed that there was gun-shot marks in the eastern wall of the house of Nihal Singh at a distance of 14-1/2 ft. from point No. 7. In the eastern wall, the gun shot marks were found. From point No. 9, he recovered three pellets, and one rubber wad. From point No. 11, six wads were recovered. From point No. 10, six pellets were recovered from the southern wall after scratching it. At point No. 12, one wad was found at the entrance. In connection, with these recoveries, he prepared the recovery memos Ex. D/4, Ex. D/5 and Ex. D/6. Autopsy on the dead-body was got conducted. The accused-persons were arrested and recoveries were made on the information and at the instance of the accused. After completion of the usual investigation, charge-sheet was presented against the accused-persons. The accused-persons ultimately were committed to the court of the Additional Sessions Judge, Nohar for trial. The accused-persons were charged, for which they pleaded not guilty and claimed to be tried. The prosecution examined in all 12 witnesses. The statements of the accused-persons were recorded, in which they denied the prosecution case. It was pleaded by them in defence that Patram and his son Kartar and others fired the shots at them at their house, at about 8-9 p.m. In the murder of Kartara, they have been falsely implicated. As regards the witnesses they stated that they have come out against them due to enmity. No evidence was led in defence. The learned Additional

Sessions Judge believed the prosecution story placing reliance on the testimony of Patram and Lichhma and so, he convicted the appellants of the aforesaid offences and sentenced them as stated above.

3. We have heard Mr. M.L. Garg and Mr. D.K. Purohit learned Counsel for the appellants and L.S. Udawat, learned Public Prosecutor for the State.

4. In the present case, the main question is as to whether the occurrence has taken place in the manner as alleged by the prosecution. It is true that Patram and Mst. Lichhma have come out with the version that all the six accused-persons came armed and those, who were armed with fire-arms started firing at them after giving Lalkara and abuses. At that time, Kartara came out from the house against the wishes of Patram and four other members of the family; Meharchand, Phoola, Puran and Lichhma. Thereafter he proceeded towards the lane. They also followed in order to bring him back but the shots were fired. The first shot was fired by Pratap at Kartara whereby he fell down. Thereafter, number of shots were fired. As a result of gunshots Kartara as well as his wife both fell down in the land. Patram father of the deceased has also narrated the occurrence in this very manner in FIR (Ex. P/I). As already stated above, the site of the house of Nihalsingh was also inspected from where the blood was recovered. Besides the blood, a piece of wood attached with the barrel of the gun, pellets, and wads were recovered. The pellet marks were also observed on the walls of the house of Nihalsingh. It is note worthy that no blood was found out side the house of Patram in the lane. Besides that no other marks of firing were found in the lane or on the door of the house of Patram. The pellets and wads were recovered inside the house of Patram. The absence of blood out side the house of Patram in the lane and absence of firing marks or signs of firing in the lane casts a serious doubt in the prosecution story. During the investigation, when the site of the house of Nihalsingh was inspected and firing marks and firing signs including blood were found at that spot, it was the duty of the prosecution to have explained as to how these signs appeared at the house of the accused. The prosecution has failed to explain it. The presence of blood at the house of Nihalsingh along with the other marks or signs of firing, in our opinion, is clearly indicative of the fact that some occurrence had taken place at the house of Nihalsingh. To us, it appears that

Patram and Mst. Lichhma have not come out with the complete and true story of the incident. If the whole incident would have taken place outside the house of Patram, then, in our opinion, some marks of firing including blood must have been found at that spot. This aspect of the prosecution case also appears to be highly doubtful. If viewed from the point of ballistics that the gun-shot marks were found in the kitchen wall shown at Point No. 4 in Ex. P./2 in a diameter of 4 inch. The distance between north wall and western wall of door is about 20 ft. and width of the door is also said to be 20 ft. It is not the prosecution case that the assailants had entered into the Darwaja. In the diameter of 4', the gun shot marks could not have appeared in the eastern wall, which could appear only when the gun was fired from inside the house and not from outside. It appears that the diameter of 4' is suggestive that the shot has been fired from a distance of 12 ft. so these, gun-shot marks, in our opinion, are fabricated or creation of the complainant party. Else these marks would not have appeared and the pellets and wads would not have been found at least at point No. 4. When the prosecution case becomes doubtful regarding the place of occurrence, then it can be said that the occurrence has not taken place in the manner as alleged by the prosecution and has taken place in some other manner. The prosecution story does not appear to be true, if viewed in that light. When number of shots have hit the person of Kartara and admittedly there was a profuse bleeding, it is not understandable that no blood would fall in the lane. The deceased received as many as 9 injuries and the cause of death was due to shock and haemorrhage resulting from the injuries on the vital organs. Beside the injuries on the right hand and right fore-arm, the deceased had the following injuries on the chest.

(1) A circular clean punched out wound of 0.4' in size on the right lateral side of chest (wound of entrance);

A circular lacerated wound in 0.4' size with bruised entroverted margins on the right posterior-lateral aspect of chest wall (wound of exit). The track joining the two wounds passes through posterior axillary fold:

(2) A circular clean punched out wound inverted margins of 0.3' in size on right side of chest 1' above the level of nipple (wound of entrance). On dissection a track

was found directed back wards and down wards leading towards a circular lacerated wound 0.3' size on right side of back in 5th intercostal space 2 1/2' lateral to midline. There was fracture of the 3rd rib anteriorly with injury to the right pleura and lung on the way of track. Pleural cavity containing blood and the lung was collapsed.

(3) Three circular clean punched out wounds on the left lateral aspect of chest two of them being at the level of 7th inter costal space 1/2' apart from each. Other and the Third being 1/2' below them. Each of them were of 0.3' circular in size (wound of entrance). 7th and 8th ribs were found fractured. On dissection separate tracks from the above described wounds could not be differentiated. Small and large intestines were perforated at places. Blood was present in peritoneal cavity. Second and third lumbar vertebrae were found fractured. On the back there were three holes each of size 0.3' circular lacerated and everted margins (wound of exit). Two of them were 1/2' left to the mid-line and 1' apart from each other at the level of 2nd and 3rd lumbar vertebrae respectively. The 3rd hole of same size was as the right side of back 1/2;' lateral to the mid line at the level of 2nd lumbar vertebrae;

(4) An abrasion of 1'x1/3'x skin deep size on the left lateral side of abdomen 1/2' above the level of highest point of iliac crest-simple-blunt;

(5) A circular clean punched out wound of 0.3' size 1/2' below and anterior to the injury No. 8 as a wound of entry. The track goes backward slightly down wards making wound of exit 0.3' size with everted and bruised edges 3' below and posterior to the injury No. 8.

From the above injuries, there must have been profuse bleeding but the entire blood could not have been soaked by the clothes, which the deceased was wearing. The deceased was wearing shirt and Baniyan. Patram and Lichhma have avoided the answer to the question as to whether any blood was found on the spot or not. They have said that they did not care to see. When the blood has been found at the house of Nihalsingh, then it can be said that some occurrence had taken place at his house and it is quite probable that the injuries to the person of Kartara and Lichhma might have been caused there. Nihalsingh in his statement

has come out-with this version that the shots were fired by Kartara and Patram and others at his house. His version gets probalised from the documents Ex. D/2, D/3 and the recoveries effected at that place.

5. Mr. L.S. Udawat, learned Public Prosecutor submitted that the defence version has not been put to Lichhma and Patram in the absence of such cross-examination, the version given by Nihalsingh is of no value to the defence. In this connection, suffice it to say, that Patram has been questioned with regard to the investigation conducted by the Dy. S.P. at the house of Nihalsingh. Patram simply pleaded ignorance. So fas as Lichhma is concerned, a categorical question was put to her that they sustained the injury out side the house of Patram, but she denied. It is true that it was not put to both these witnesses; whether Kartara and others went armed and recorded to firing at the house of Nihalsingh. In the particular circumstances of the case in our opinion, non-questioning to Patram and Lichhma with reference to the defence version would be of no consequence. However, from the investigation it transpires that some occurrence had taken place inside the house of Nihalsingh. Then the prosecution story with regard to the place of occurrence is rendered doubtful, then the prosecution cannot succeed and it can not be found that Kartara and Lichhma sustained gunshot injuries in the manner as alleged by the prosecution. When the place of occurrence is changed, the Supreme Court in Birsingh v. State of U.P. 1977 Cr. LR SC 385. has observed that the fact remains that the prosecution has not been able to show that there was any blood at the place where PW 2 fell down which raised a reasonable suspicion that PW 2 may have been assaulted at some other place and once that is so, then the case regarding the assault of the deceased at the place of occurrence also automatically fails because the two incidents are parts of the same transaction.

6. Reference may also be made to a decision of this Court in Kalu Singh v. State of Rajasthan 1978 Raj. Cr. Cases 267. In the case is was observed that the absence of blood on the alleged scene of occurrence is suggestive of the fact that the prosecution witnesses have deliberately changed the site of the event with the ulterior motive of depriving the accused of the plausible plea of self defence.

7. In the light of the above-discussion, in our opinion, the appellants cannot be held guilty of the offence under Sections 148, 302/149, 307/149 and 27 Arms Act. So far as the appellants Dharma and Nihalsingh are concerned, they have been convicted for the offence under Section 25 Arms Act. Their conviction and sentence for the said offence have not been challenged before us. On this count, they have been sentenced to 6 months S.I. and to a fine of Rs. 300/-.

8. In the result, this appeal is partly allowed with regard to the appellant Dharma and Nihalsingh. Their convictions for the offence under Sections 148, 302/149, 307/149 and 27 Arms Act are set aside. Their convictions and sentences for the offence under Section 25 Arms Act are maintained. They have already remained in custody for a period of more than the maximum sentence which could be awarded to them. Dharma is still in custody. He shall be released forthwith, if not required in any other case. The accused Nihalsingh need not surrender to his bail-bonds. His bail-bonds are hereby discharged.

9. The appeal for Pratap, Baldev, Rajoo and Jagram are allowed. Their convictions and sentences are set aside on all the counts. The accused Pratap is in custody. He shall be released forthwith, if not required in any other case. The accused Baldev, Rajoo and Jagram are already on bail, so they need not surrender to their bail-bonds, which are hereby discharged.