

Pyarasingh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-08-1976

Reported in : 1976WLN729

Judge : V.P. Tyagi, Actg. C.J. and; R.L. Gupta, J.

Appeal No. : D.B. Criminal Appeal Nos. (sic) and Revision No. 382 of 1974

Appellant : Pyarasingh

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

V.P. Tyagi, Actg. C.J.

1. Both these matters namely, D.B. Criminal Appeal No. 310 of 1974 Pyara Singh v. State filed by accused Pyara Singh and D.B. Criminal Revision No. 362 of 1974 filed by the complainant arise out of the judgment of the learned Sessions Judge, Sri Ganganagar dated 23rd April, 1974. Appellate Pyara Singh has been convicted for an offence under Section 302 I.P.C. and sentenced to imprisonment for life. The complainant's revision has been filed with a prayer that in the circumstances of this case the sentence of imprisonment for life awarded to Pyara Singh is not an adequate sentence and, therefore, it should be enhanced to the penalty of death. Notice of this revision was served on the appellant. We propose to dispose of

these two matters by a common judgment.

2. Pishora Singh and Pyara Singh belonged to one family and it is not disputed that those two families were not on good terms. They were residents of village 18 P.S. in the district of Sri Ganganagar. On April 20, 1973 Pishora Singh along with his uncle Dhyan Singh came to Raisinghnagar Mandi to dispose of his produce of barley. The produce was taken to the shop of Baldevraj who was Pishora Singh's commission agent. It is said that Pishora Singh had unloaded his trolley in front of the shop of Baldevraj and thereafter Pishora Singh and Dhyan Singh sat down in the shop of Baldevraj Jarnail Singh who was also the resident of 18 P.S., joined Pishorasingh and Dhyan Singh at the shop of Baldevraj. Gurmukh Singh who was also known to Pishora Singh came to the shop of Baldevraj and started talking with each other. The prosecution case is that Pishora Singh slept on a wooden Takhat which was lying in the Verandh of the shop. At about 12 O'clock Pyara Singh's elder brother Sucha Singh came to the shop of Baldevraj and he after having seen Pishora Singh sleeping on the Takhat went away from the shop Soon thereafter Pyara Singh came with a 12 bore gun in his hand and entered the shop. Pishora Singh was sleeping on the Takbat with his back to the persons entering the shop Pyara Singh opened a fire with his gun which hit Pishora Singh on hit back. Pyara Singh immediately ran away from the shop. Dhyan Singh rushed to the police station which was hardly a for long away from the shop and lodged the first information report Ex. P9. The incident is alleged to have taken place at 12.15 pm The first information report was lodged at 12.30 p.m. The report was taken down by Hari Singh under the instruction of the S.H.O. PW. 9 Inder Singh. After taking down the report Inder Singh immediately rushed to the place of occurrence. While the first information report was being written, Inder Singh sent a man to call a doctor. A about 12.50 pm. the police party reached the shop of Baldevraj and simltar eposly it is said that Dr. A.R. Das also reached that place. The doctor was about to administer some injection to Pishora Singh but before he could so, Pishora Singh breathed his last. Pishora Singh's body was then taken to the hospital & the post mortem examination was performed on the dead body of the deceased by Dr. Das, who found the following external and Internal injuries on the body of Pishora Singh:

1. Lacerated wound (wound of entrance) $1\frac{3}{8}$ ' x 1' x $2\frac{1}{4}$,' oval in shape on the back side of the body- 2' below the level of left Iliac crest and $\frac{3}{4}$ ' left to mid line. The wound is directed forward and slightly upwards. The margins of the wound are bruised acchymosed and inverted.

2. Lacerated wound (wound of exist) $\frac{3}{8}$ ' x $\frac{1}{4}$ ' abdominal wall (whole) $1\frac{1}{4}$ ' left and $\frac{1}{2}$ ' below the umblicus.

3. Lacerated wound (wound of exist) $\frac{3}{8}$ ' x $\frac{1}{4}$ " x whole Abdominal wall (2) 2' below the umblicus.

4. Lacerated wound (wound of exit) ' x $\frac{1}{4}$ ' whole Abdominal wall 4' below the umblicus.

3. According to the Doctor the pellets passed forward and caused fracture of left iliac bone upper part of sacral bone 4th lumber vertebrae and 5th number vertebrae, and lacerated of spinal cord along with Its membranes, laceration of large intestine with peritoneum measuring 4' in length on opening the Abdominal cavity, it was found full of blood. In the opinion of the doctor Pishora Singh died of shock and hemorrhage due to the gun short injury.

4. It may be mentioned here that the prosecution doubted the involvement of Sucha Singh also and, therefore, Sucha Singh who was present at the shop of Baldevraj was arrested then and there. Pyara Singh who after the incident bad left far his village 18 P.S. was arrested from his house. A 12 bore gun was recovered at his instance along with certain cartridges including one empty cartridge But the gun is not connected by any evidence with the commission of the crime. The report of the Ballastic Expert also does not throw light on the use of this gun in killing Pishora Singh.

5. In the absence of any circumstantial evidence the case rested entirely on the oral testimony of the eye-witnesses. P.W. 1 Dhyan Singh the author of the first information report was the person who had accompanied Pishora Singh to the Mandi. JarnailSingb PW. 2 and Gurmukh Singh PW. 3 who bad joined Pishora Singh at the shop of Baldevraj are the two other eve-witnesses who were

examined by the prosecution. Baldevraj was examined at the stage of commitment proceedings but he was suspected by the prosecution to have joined hands with the defence and therefore he was not produced (sic) prosecution witness at the trial.

6. In His statement under Section 342 Cr.P.C. accused Pyara Singh admitted this fact that he was the author of the fatal injury on the body of Pishora Singh but he came out with a parallel theory. His plea was that his brother Sucha Singh was sleeping in the shop of Baldevraj and when he went to that shop to meet his brother, Pishora Singh told him that why he was carrying a gun like a brave man when his wife was having illicit intercourse with him (Pishora Singh) and other persons of the village. These words enraged him and he called bad names to Pishora Singh. On this Pishora Singh put his hand on his pistol. At that time, according to the version given by the accused, Pishora Singh apprehended a danger to his life and therefore he opened fire all of a sudden at the deceased which resulted in his death. He expressed his great regret for this incident in his statement.

7. The learned trial Judge after carefully weighing the testimony of the eye-witnesses came to the conclusion that the prosecution has established that the parties were not on good terms and that Pishora Singh was killed by Pyara Singh at the shop of Baldevraj by using his 12 bore gun as an act of revenge and, therefore, found him guilty for an offence under Section 302 I.P.C. and sentenced him to Imprisonment for life. Sucha Singh was however acquitted by the trial court.

8. Learned Counsel appearing on behalf of the appellant urged that the witnesses examined by the prosecution are not reliable witnesses as they are highly interested persons. According to Mr. Bajwa the only eye-witness which could be called an impartial and reliable witness was Baldevraj, but this witness has been purposely and deliberately left out by the prosecution and, therefore, it is vehemently urged that an adverse inference be drawn against the prosecution for not examining an interested and reliable witness. He further argued that the Court should not have taken note of the statement of the accused under Section 342 Cr.P.C. admitting that the accused was the author of the fatal injury because the

exculpatory part of the statement has not been relied upon by the trial court. Relying on *Hanumant Govind Hargundkar and Anr. v. State of Madhya Pradesh* : 1953 CriLJ129 and *Palvinder Kaur v. The State of Punjab* : 1953 CriLJ154 it was vehemently argued that the court below has committed gross error in law in holding on the basis of the admission of the accused that the accused had caused gun shot injury on the person of Pishora Singh. In the opinion of Mr. Bajwa the prosecution has failed to prove by reliable and independent evidence that the gun shot injury was caused by Pyara Singh. In the alternative it was also argued that even if the circum-stances on which reliance has been placed by the prosecution, are taken to have been proved, the case cannot go beyond Section 304 Part II as it was never the intention of the accused that he should have caused such an injury which could cause in the ordinary course of nature the death of deceased. According to Mr. Bajwa if Pyara Singh had any intention to kill Pishora Singh, then it was not impossible for him to have aimed his gun at the vital portion of the body of Pishorasingh. Since the injury was caused on the back of the deceased, it should be taken that the accused never intended to kill him. In support of his contention reliance has been placed by Mr. Bajwa on *Virsasingh v. State of Punjab* : 1958 CriLJ818 and *Laxman Kalu Nikalje v. The State of Maharashtra* : 1968 CriLJ1647 .

9. Mr. Than Chand who has been permitted by the Public Prosecutor to represent the complaint party urged that the question of law raised by Mr. Bajwa that the statement of the accused admitting a particular fact cannot be taken into consideration without relying upon the exculpatory part of the statement, is no longer a good law as the authorities of the Supreme Court cited by Mr. Bajwa no longer hold field in view of the later Supreme Court case of the 5 Judges reported in *Nishi Kant Jha v. State of Bihar* : 1969 CriLJ671 . He also urged that recently the Supreme Court has reiterated the principle followed in *Nishi Kant Jha's case* : 1969 CriLJ671 , as is evident from the case reported in AIR 1976 SC 1997. According to Mr. Thanchand if the exculpatory portion of the statement stands falsified by other circumstances taken on the record then the court can ignore that exculpatory portion of the statement and take into consideration the exculpatory portion thereof without committing violence to the principle laid down by the Supreme Court. A revision application has also been filed by Mr. Thanchand on

behalf of the complainant & it is prayed that circumstances of this case warrant the enhancement of the sentence and therefore he urged that death sentence is the proper sentence in this case as fire arm was used to kill a person who was lying asleep and in a helpless condition, In support of this contention Mr. Thanchand cited a Supreme Court authority in Lajar Masih v. State of U.P. : 1976 CriLJ580 .

10. Before examining the question of law raised by the parties we would like to see whether the statement of the eye-witnesses can be relied upon by us or not.

11. Dhyan Singh PW. 1 is the uncle of the deceased. It is in his statement that he came to Raisinghnagar Mandi with the deceased because Pishora Singh had requested to accompany him to Raisinghnagar as he was going to dispose of his barely produce. Being a near relation of the deceased it was not unnatural for him to have acceded to the request made by the Pishora Singh and, therefore, it can safely be taken that the witness came to Raisinghnagar Mandi in the natural course of circumstances. The incident took place at 12.15 pm. and within 15 minutes of the incident this very witness Dhyan Singh lodged the first report Ex. P9 at the police station. This shows that the witness was present at Raisinghnagar at the time of the incident. A person who deliberately accompanied his nephew cannot be said to be a chance witness as he had gone with a purpose of giving company to the deceased.

12. It is argued that Ex. P9 the first information report is a post investigation document and, therefore, this circumstance that Dhyan Singh lodged the report within 15 minutes of the incident cannot lend any credence to the witness. According to Mr. Bajwa Dhyan Singh was called from the village after the incident had taken place and he lodged the report after the investigation had actually started. We regret we cannot accept this contention of the learned Counsel because we find that there are other facts on the file to show that first information report was immediately taken down by the S.H.O. PW. 9. After recording the first information report the S.H.O. went to the place of occurrence and the first document that he prepared at the spot was the inquest report Ex. P3 This is not denied by the defence that this report Ex. P3 was prepared at 12.50 p.m. i.e; within 20 minutes of the writing of the first information report. The very first

sentence of this document Ex. P3 shows that the case was registered at 11.30 pm. at the instance of Dyansingh. This reiteration of the fact that the case was registered at 12.30 pm. demolishes the entire argument of Mr. Bajwa that the first information report was a post investigation document and that Ex. P9 cannot be pressed into service to lend corroboration to the testimony of Dhyan Singh. We have carefully pursued the statement of Dhyan Singh and we do not find any infirmity in his statement. He was subjected to a searching cross examination but his testimony could not be demolished at the altar of cross-examination.

13. PW. 2 Jarnail Singh and PW. 3 Gurmukh Singh who have been examined by the prosecution as eye-witnesses have categorically stated that they were sitting at the shop of Baldevraj when Pishora Singh was sleeping on the Takhat in the Verandah of the shop. The presence of these two witnesses finds a mention in the first information report Ex. P9. It is true that these two witnesses did not belong to Raisinghnagar but that fact alone cannot discredit the witnesses. There is no intrinsic infirmity in the testimony of these two witnesses who have supported Dhyan Singh on all counts and, therefore, we feel that the testimony of these 3 eye-witnesses has established, beyond all reasonable doubt that the author of the fatal injury on the body of Pishora Singh was none but Pyara Singh.

14. Much stress has been laid by Mr. Bajwa that an independent eye-witness who was available to the prosecution has been purposely and deliberately withheld by the prosecution and, therefore, adverse inference should be drawn against the prosecution. Baldevraj was examined in the committing court as a prosecution witness but in his cross-examination he showed inclination in favour of the defence and by his replies he laid the foundation for the accused person to take a plea that the accused came to Baldevraj's shop to meet his brother Sucha Singh who according to Baldevraj was sleeping in his shop. This somersault on the part of Baldevraj at the stage of committing court reasonably created doubt in the mind of the prosecution that the witness was favourably inclined towards the defence. If such a witness was not examined at the trial then it cannot reasonably raise a presumption against the prosecution that the witness would have gone against it as he had already shown the sign of exhibiting a hostile attitude against the prosecution.

15. Now the question is whether the Court can take into consideration the statement of the accused recorded under Section 342 Cr.P.C. wherein it was admitted that he had fired a shot at Pishora Singh when sitting in the verandah of the shop of Baldevraj. It is true that the cause for opening a fire at Pishora Singh by him that a provocation was given by Pishorasingh a sarcastring remark as to why he (the accused) was carrying a gun with him like a brave man when his wife was having illicit deletions with others. This plea was taken by the accused in order to bring his case under exception given in Section 300 I.P.C. The court below has discarded this theory of giving provocation by Pishora Singh to the accused. If the exculpatory part of the statement was found by the court to be incorrect then there was no inhibition for the court to accept that part of the statement which involves him in the crime as he himself admitted that he had fired a gun at Pishora Singh. The plea taken by Pyara Singh that be opened fire because of the provocative language used by Pishora Singh stands demolished an we feel that the circum-stances of the case brought on the record do not lend support to the statement made by the accused. Even the medical evidence contradicts the theory of firing the gun while Pishora Singh was sitting on the Takhat. The nature of the injury falsifies the defence theory. The fact disclosed by Pyara Singh in his statement under Section 342 Cr.P.C. is that at the time when he entered the shop of Baldevraj, Pishora Singh was sitting on the Takhat but it cannot find support from the location of the injuries sustained by Pishora Singh. A man who was sitting on a Takhat cannot receive an injury of the nature sustained by the deceased Moreover a theory that the accused bad entertained apprehension in his mind by the action of Pishora Singh when he put his hand on a pistol hanging in his neck, cannot be accepted because at the time when the inquest report of Pishora Singh's body was prepared by the SHO it was discovered that the pistol of Pishora Singh was in his leather case. Unless the pistol was taken out by Pishora Singh from the leather case such an apprehension could never have been entertained by the accused. The plea of entertaining an apprehension by the accused cannot therefore stand on its legs. In these circumstances the exculpatory part of the statement of the accused under Section 342 Cr.P.C. cannot be given any credence by the court. In Nishikant Jha's case : 1969 CriLJ671 the learned Judges held that the exculpatory part of the statement

was not only inherently improbable but was contradicted by the other evidence and, therefore in those circumstances the learned Judges rejected the exculpatory part of the statement Ex. 6 and held that the High Court had rightly acted in accepting the exculpatory part and placing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime. This principle has been reiterated in a recent case in 1976 SC 1997. Authorities relied upon by Mr. Bajwa in support of this contention that the court below has erred in acting on the statement of the accused and held him responsible for causing the gun shot injury, were discussed by the Supreme Court in its latter judgment viz., Nishkant Jha's case and the law laid down therein was not affirmed by a Bench of five Judges. The correct law as it stands today is the law expounded by the Supreme Court in 1976 SC 1997. We, therefore, do not find any force in the argument of Mr. Bajwa that the statement of the accused could not be looked into to find support to the testimony of the eye-witnesses regarding the authorship of the fatal injury caused to the deceased.

16. On a careful perusal of the statement of the eye-witnesses and after properly weighing them in the light of the other circumstances, no doubt is it in our mind that Pyara Singh was the person who had caused the fatal injury on the body of Pishora Singh which resulted in his death and, therefore, the learned trial Judge has rightly held the accused responsible for the death of the deceased.

17. The next question that falls for our determination is whether in the circumstances of this case Pyara Singh can be held guilty for an offence under Section 302 I.P.C. or not According to Mr. Bajwa, Pyara Singh never intended to cause death of Pishora Singh by inflicting gun shot injury because he purposely did not choose the vulnerable portion of the body and, therefore, intention to kill cannot be attributed to the accused. He also contended that the case does not fall in clause Thirdly to Section 300 as the accused never intended to cause such bodily injury which in the ordinary course of circumstance could cause death of the injured.

18. We feel that the argument of the learned Counsel is misconceived In a Supreme Court case : 1958 CriLJ818 relied upon by Mr. Bajwa the ingredients of

clause. Thirdly came for consideration before the learned Judges and their Lordships observed that in order to bring a case under Section 300 thirdly', it must be established quite objectively that a bodily injury was present and secondly, the nature of the injury must be proved. These two ingredients, according to the learned Judges were purely objective investigations. The third ingredient of this clause according to the Supreme Court was that it must, be proved that particular bodily injury, that is to say, that it was not accidental or unintentional. If this fact is proved that the injury was intentionally caused than we have to see whether the injury caused was sufficient in the ordinary course to cause death. The doctor has proved that the injury sustained by Pishora Singh was sufficient in the ordinary course of nature to cause death. This part of the injury is purely objective and has nothing to do with the intention if the offender. The close scrutiny of the circumstances of the present case in the light of the observations of the Supreme Court in *Virsa Singh v. State of Punjab* : [1969]2SCR73 leaves no room for doubt that the case squarely fell within the scops of clause 'thirdly' of Section 300 of the Indian Penal Code especially when we are convinced that the injury caused to Pishora Singh was not accidental but it was intentionally caused by accused Pyara Singh. The doctor has unequivocally expressed his opinion that this injury was sufficient in the ordinary course of nature to cause death. A person who uses a 12 bore gun to inflict a gun shot injury on the victim from such close range, cannot take a plea that an inference should not be drawn that such an injury was not sufficient in the ordinary course of nature to cause death when the victim died on the spot. The pellets that entered the dody of the deceased traveled in a manner so as to cause damage to 3 bones and to other vital parts of the body. It is no doubt true that the doctor has expressed his opinion that the death was caused due to shock and hemorrhage but such an injury will always cause such a shock which in the ordinary course of nature can cause death In these circumstances we are left with no alternative but to accept that the case of the accused facts in clause. Thirdly of Section 300 I.P.C. The case reported in *Laxman Kalu Nikalji's* 1968 3 SCR 685, in our opinion does not help the accused appellant.

19. While dealing with the revision filed by the complainant it its vehemently urged by Mr. Thanchand that a man who was lying asleep in a helpless state if shot dead then it is brutal action of a person who is seeking vengeance against his enemy

and, therefore, such an action must be met with a serve punishment of death as prescribed by the law. In support of his contention he placed reliance on a Supreme Court case in Lajar Masih's case : 1976 CriLJ580 .

20. Mr. Bajwa on the other hand contended that the State, which is the custodian for the law and order, has not found it a fit case to appeal for the enhancement of the sentence &, therefore, on a revision by a private party the sentence should not be enhanced He also contended that the judicial discretion when exercised by the trial court should not be interfered with unless gross injustice appears to have been done in the matter. According to Mr. Bajwa the learned trial Judge was swayed away by a spirit of repentance expressed by the accused which is evident from his statement under Section 342 Cr.P.C. and, therefore. it is not a fit case for the enhancement of the sentence.

21. The Supreme Court in Ram Narain and Ors. v. The State of Uttar Pradesh 1971 CAF 1 has unequivocally laid down that the question of sentence, as is now well settled, is always a matter of judicial discretion of the trial court within the statutory limits. In the case of murder the discretion is limited to two alternatives one of death and the other imprisonment for life. The proper exercise of discretion in this respect is generally a matter of some difficulty. This discretion has, however, like all discretions, to be exercised on a proper consideration of all the relevant facts and circumstances keeping in view the broad objective of the sentence being neither too severe nor too lenient.

22. We find that the accused is a man of forty. He has expressed his repentance before the trial court in an unequivocal tone. The learned trial Judge seems to have been moved by this spirit of repentance and therefore he chose to award a lenient sentence even though he could under the circumstances of the case, inflict extreme penalty of death. But he did not do so, Since the trial Judge has exercised his discretion in favour of awarding a lenient sentence it will not be in the interest of justice to interfere with the discretion of the court below.

23. The result is that the appeal of Pyara Singh fails and it is hereby dismissed, The revision also fails and it is also dismissed.

