

Narendra Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-07-2002

Reported in : 2003CriLJ703; RLW2003(2)Raj1098

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : [Arms Act, 1959](#) - Sections 27; Indian Penal Code (IPC) - Sections 300, 302 and 304

Appeal No. : D.B. Cr. Appeal No. 235 of 1997

Appellant : Narendra Singh

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : S.R. Bajwa, Sr. Adv.,; V.R. Bajwa and; Mahesh Gupta,

Judgement :

Sharma, J.

1. The appellant who was the accused on the file of learned Special Judge SC/ST (Prevention of Attrocity Cases) Baran bearing Sessions Case No. 86/95, found guilty and convicted and sentenced under Section 302 1PC and 27 of the Arms Act vide judgment dated April 24, 1997 as under.

u/S. 302 IPC

to undergo imprisonment for life and fine of Rs. 500/- in default to further suffer six months imprisonment.

u/S. 27 Arms Act

to undergo three years imprisonment and fine of Rs. 500/- in default to further suffer six months imprisonment.

The sentences were directed to run concurrently.

2. In short the prosecution case is that at the Government Hospital Baran a written report (Ex.P.1) was submitted by informant Brij Raj Singh Hada, Advocate (PW.11) at 8.30 p.m. to Hamir Singh SHO P.S. Kotwali Baran (PW.8) on November 30, 1997 with the averments that around 7.30 a.m. on the same day the appellant alongwith Virendra Singh and Laxmi Narain-Advocate came to the house of the informant and Laxmi Narain-as well as Virendra Singh exhorted the appellant to fire. The appellant opened fire from the Topidar Gun, the pellets of which hit on the chest, stomach and right hand of Gajendra Singh. After the gun was fired the appellant and his other two companions took to their heels. Injured Gajendra Singh, informant Brij Raj Singh, his wife, daughter Nirmala and Surendra Singh chased the accused persons but when Gajendra Singh reached at the railway track he fell down and became unconscious. Gajendra Singh was removed to the Hospital where he was declared dead. There was bad blood between the accused persons and the informant on account of land dispute and because of that Gajendra Singh was liquidated. The report was sent to P.S. Kotwali through constable Nand Singh. Case No. 431/94 under Section 302/34 IPC was registered, formal FIR (Ex.P.2) was drawn and investigation commenced. Site plan and inquest report were prepared. Statement of witnesses under Section 161 Cr.P.C. were recorded. Necessary memos regarding seizure of blood smeared soil from the place of incident, blood stained clothes of the deceased, arrest of appellant, information supplied by him under Section 27. Evidence Act and recovery of Topidar Gun allegedly used in commission of offence were drawn. After completion of investigation charge sheet was laid. In due course the case

came up for trial before the learned trial judge. Charges under Sections 302 IPC and 27 of the Arms Act were framed against the appellant who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Section 313 Cr.P.C. the appellant discerned that the accused party and complainant party entered into compromise in regard to their land dispute on Sept. 26, 1991. A complaint was made by him against the informant Brij Raj Singh Advocate in the Bar Council on the basis of which Brij Raj Singh was debarred from legal practice for six months. In defence one witness was examined. On hearing final submissions learned trial judge convicted and sentenced the appellant as indicated hereinabove but acquitted the co-accused Virendra Singh and there was no appeal against his acquittal.

3. Mr. S.R. Bajwa, learned Senior Counsel for the appellant took us through the relevant portions of the evidence of eye witnesses Brij Raj Singh (PW.11), Nirmala (PW.12), Surendra Singh (PW.13) and Santosh Bai (PW. 14) and the judgment of the learned trial judge and initially attempted to canvass that the presence of these witnesses at the time of the incident was highly unnatural. They did not see the incident but because of enmity they had implicated the appellant. The site plan does not corroborate the ocular testimony and the prosecution failed to spell out the genesis of the occurrence. As the argument did not carry conviction learned counsel contended alternatively that the circumstances made it clear that the appellant would not have intentionally shot the deceased with a view to kill him or with a view to cause an injury which would be sufficient in the ordinary course of nature to cause death but must have shot the deceased on the account of some grave and sudden provocation as is evident from the testimony of the eye witnesses that after hurling abuses the appellant went away from the house of the complainant party but he was chased by the deceased and the eye witnesses therefore the case does not travel beyond Section 304 Part-1 IPC. Reliance was placed on various authorities that shall be considered at appropriate juncture.

4. Per contra Mr. S.S. Rathore learned P.P. and Mr. Mahesh Gupta, learned counsel for the complainant contended that from the evidence it was established that the appellant intended to cause a particular injury which was objectively found to be sufficient in ordinary course of nature to cause death therefore clause thirdly

of Section 300 IPC was attracted and the appellant was rightly convicted under Section 302 IPC. Merely for the reasons that only one injury was inflicted the case would not come under Section 304 Part I IPC. In support of the submission various judicial pronouncements were cited that shall be discussed in the later part of this judgment.

5. Having closely scrutinised the testimony of eye witness we find the following facts established beyond reasonable doubt-

(i) All the four eye witnesses consistently deposed at the trial that the appellant on November 30, 1994 around 7.30 a.m. came armed with S.B.M.L. gun in front of their house and hurled abuses to them thereafter he went away and proceeded towards the railway track.

(ii) Brijraj Singh Advocate, his wife Santosh, daughter Nirmala, brother Surendra Singh and deceased Gajendra Singh rushed after the appellant and implored him not to hurl abuses.

(iii) The appellant then opened single fire with his SBML gun aimed at the complainant party, the pellets of which hit Gajendra Singh who was ahead and caused as many as twelve injuries at various part of his body. Cause of death was injuries to heart and lungs leading to haemorrhage and shock.

6. It thus appears that although the appellant went to the house of the complainant party armed with the gun, he only hurled abuses and did not open fire despite Gajendra Singh (deceased) and his other family members came out of the house and after hurling abuses the appellant went away from the house. It was only when Gajendra Singh and his family members chased the appellant upto the railway track, he opened single fire at the complainant party the pellets of which hit Gajendra Singh, who was ahead of all other members.

7. Two Judge Bench of Hon'ble Supreme Court in A.N. Chandra v. State of U.P. (1), indicated that the single injury theory cannot be made applicable to a case where a deadly weapon like a fire arm is used. Even a single injury caused by a fire arm would only lead to the inference that death was caused intentionally. In

State of Karnataka v. Vedanayagam (2), Bench of Hon'ble two Judges again expressed the same view.

8. In Pappu v. State of U.P. (3), it was held where the accused deliberately caused the injury on the chest of the deceased and the injury was found sufficient in the ordinary course of nature to cause death, the case did not come under any of the exceptions of Section 300 IPC and the conviction under Section 302 IPC was found proper.

9. Jagat Singh v. State of Haryana (4), was the case wherein Umed Singh a student of Sir Chhotu Ram College of Education, Rohtak was hit on the chest and right thigh in the College premises by two shots fired in quick succession by the accused Jagat Singh from his gun. Umed Singh died on way to hospital. Bench of Hon'ble Three Judges of the Supreme Court indicated that it would seem that faced with the fury of the students, the accused lost nerve and fired from the gun and the case was one under the first part of Section 304 IPC and not Section 302 IPC.

10. In the instant case in all probability something appears to have happened while the appellant was chased by Gajendra Singh (deceased) and other members of complainant party, which annoyed the appellant and he shot at complainant party the pellets of which hit Gajendra Singh who was ahead of all other members of complainant party. Thus no inference can be drawn that the death of Gajendra Singh was caused intentionally by the appellant. Had the appellant intended to kill Gajendra Singh he could have shot at him when he came out of the house after hearing the abused hurled by the appellant. The appellant although had gun with him he decided to go away from the house. It was when the complainant party rushed after him up to railway track the shooting incident occurred probably on account of sudden and grave provocation. The circumstances available on record make it clear that the appellant would not have intentionally shot Gajendra Singh with a view to kill him or even with a view to cause an injury which would be sufficient in the ordinary course of nature to cause death. We find that Exception I of Section 300 IPC is attracted in the facts and circumstances of the case. Following the ratio indicated by the Bench of Hon'ble Three Judges of the Hon'ble

Supreme Court in Jagat Singh v. State of Haryana (supra) we hold the appellant guilty under Section 304 Part-I IPC.

11. We therefore modify the conviction of the appellant from Section 302 IPC to Section 304 Part-1 IPC and award for the said conviction a sentence of 10 years Rigorous Imprisonment and fine of Rs. 1000/- in default to further suffer six months R.I. The conviction and sentence under Section 27 of the Arms Act will stand confirmed. The substantive sentence will run concurrently. To the extent the conviction and sentence are modified, and the appeal will stand partly allowed.

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