SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State Vs. Ram Singh

State Vs. Ram Singh

SooperKanoon Citation : sooperkanoon.com/890033

Court : Himachal Pradesh

Decided On : Aug-04-1972

Reported in : 1973CriLJ150

Judge : D.B. Lal and; R.S. Pathak, JJ.

Appellant : State

Respondent : Ram Singh

Judgement :

D.B. Lal, J.

1. This was an appeal by Ram Singh Constable of the Treasury Guard Police Station Rohru. against the order of his conviction sentencing him to death, for the offence of murder punishable under Section 302. I.P.C. There was the usual Reference by the State for the confirmation of the death sentence. After hearing the learned Counsel and after a careful perusal of tile record, we have maintained the conviction, but have altered the sentence by reducing it to life imprisonment. We accordingly rejected the reference for confirmation of death sentence. We pronounced the judgment and proposed to give our reasons at a later date. We are now giving our reasons for the judgment which we have already pronounced.

2. The prosecution case was, that Ram Singh was posted as Constable of the Treasury Guard at Police Station, Rohru. and on 17th of July. 1970, his duty hours

were 9. 00 p.m. to 12.00 mid. night, one of the rooms in the premises of the Police Station was utilized for the Treasury and the Guard was required to be on his beat within the verandah which is in front of the treasury room. Ram Singh had taken charge of the rifle (Ex. P-1) of 303 bore, and 25 rounds from Cheori Ram Constable whose duty hours were 6.00 p.m. to 9.00 p.m. According to the prosecution one and the same rifle along with 25 rounds used to pass on from one constable to another although the rule was that every constable was to be issued a separate rifle with a separate set of 25 rounds. This practice was followed to meet the convenience of the constables who were otherwise to be made responsible for individual rifle and rounds issued to them and as such Could not move about freely during off duty hours. Biri Singh deceased was posted on that day as Moharir Head Constable and had gone to his room which existed over the upper storey of the Police Station Building. In front of the room of Biri Singh a verandah existed and inside this verandah a window was opening towards the compound of the Police Station. The prosecution case is, that Biri Singh had stood by the side of the window and urinated from there. The urine came down to the compound of the Police Station. Bam Singh was patrolling inside the verandah. Kanshi Ram Constable was deputed for night duty and he was available in the office of the Police Station. He had in fact spread out his charpoy inside the very verandah. Upon seeing Biri Singh urinating in that condition, Ram Singh abused him and remarked that donkeys and horses were not residing underneath and that he should not urinate from above, meaning thereby that insanitation should not be caused within the compound of Police Station. It is nobody's case that the urine had actually splashed over Ram Singh. After this talk which took place between Ram Singh and the deceased Biri Singh, they started abusing each other. It is stated that filthy abuses were exchanged and they went on abusing each other for about 20 or 25 minutes. During this interval, Kanshi Ram wanted to intervene and to stop them from abusing each other. When they did not desist Jagat Ram Constable was summoned by Kanshi Ram, He was available inside his room and was playing a radio. He came out and intervened. He asked both of them to stop abusing each other. It is stated that Ram Singh pointed the rifle towards Biri Singh and stated that he would shoot Mm with that rifle. Still Biri Singh went on abusing and when Jagat Ram wanted to snatch the rifle, he was threatened by Ram Singh

who said that in case he would interfere he would also be shot. Jagat Ram once again made an attempt to snatch the rifle but Ram Singh pushed him aside. All along the abuses continued and it is stated that Ram Singh took out five rounds from his charger. dip and loaded the rifle. Thereafter he aimed the rifle towards BM Singh and fired from the compound. The bullet hit Biri Singh on the chest near the right nipple and passed through the body causing his instantaneous death. Sant Ram Constable had his room adjoining the room of the deceased and he came out after hearing the shot of the rifle. He summoned Vermani and Ishwari Singh of the Forest Department. They resided in front of the Police Station and were noticed in their house by Sant Ram. Those two witnesses came to the spot and went near the body of the deceased. Kanshi Ram and Jagat Ram Constables narrated the entire story to them as to how the murder was committed.

3. Meantime it is stated, Ram Singh went inside the room of Sis Ram Constable who was to resume duty from 12-00 mid. night. He woke him up and stated that he should take the rifle and the rounds and resume his duty immediately although the time was only 10-00 P.M. Sis Ram accordingly took the rifle and file rounds. Before that, it is stated Ram Singh had entered his own room and there he met Bhim Singh Constable who was his friend and colleague. He took out something from his box and passed on the same in a polythene envelope to Bhim Singh Constable telling him that his life was in his hands. Sant Ram had already deputed Sher Singh and Roshan Lal Constables to arrest the accused. These two constables went to the room of the accused and hand, cuffed him there. These two constables also saw the polythene envelope being handed over to Bhim Singh.

4. It is stated that the accused made confessions of his crime before Sis Ram, Sher Singh. Roshan Lal and Bhim Singh Constables. He also made conversion before Sant Ram when the latter wanted to telephone the Superintendent of Police and the accused stated that he would himself tell his superior officer that he had killed Biri Singh by firing a shot by his rifle.

5. Sant Ram summoned Dr. Mohinder Singh of Rohru who arrived at the scene of occurrence. He declared Biri Singh dead. The necessary inquest and injury reports

were prepared. The two Sub-inspector deputed at this police station, had gone out on official duties. The Constables were sent to inform Gian Chand, A.S. I. who arrived at 1-30 A.M and gathered information from other people and wrote down the F.I.R. (Ex. P-U) which gives details of the occurrence.

6. The post. mortem examination of the dead body was performed by Dr. Mohinder Singh on the next day i.e. cm 18th July, 1970, at 10-20 A.M. The doctor found one wound of entry and two exit wounds. A. metallic piece was found embedded in one of the wounds. One wound of exit was in direct communication with the wound of entry, meaning thereby that a portion of a bullet had passed through that exit wound. The doctor also discovered fractures in the first and second ribs on the right side and irregular broken pieces of the bone were noticed at that spot. The upper part of the pleurae on the right side along with the right upper lobe of the lung were destroyed completely. This resulted in the death which according to doctor must have taken place 'suddenly' after the injuries were received. The time noticed by the doctor between the death and the post-mortem examination tallied With the time of the occurrence.

7. The room of the deceased was searched and a fragment of bullet was found lying there. Sub-sequent this fragment of bullet along with the other metallic piece which was really another fragment of the same bullet were sent to the Ballistic Expert. The Expert was however unable to connect the two fragments with the bullet that was fired from that rifle.

8. The box of the accused Earn Singh was searched on that very night and two bandoliers (Exs. P-13 and P-14) and one charger. clip were recovered from it. The accused in fact gave 25 rounds to Sis Earn and the prosecution case is that he replaced the empty rounds by one undercharged round which he possessed from before. In fact the accused had replaced two rounds of 1964 make, because the remaining 23 rounds were of 1963 make. This the accused did to create evidence that he could not have fired any shot. According to the prosecution the accused was already keeping ammunition and other articles connected with ammunition Including bandoliers and a charger. clip In his box and there was every probability that he substituted those two rounds.

9. The prosecution produced 23 witnesses including Constables Kanshi Ram (PW-16) and Jagat Ram (FW-17) the two eye. witnesses. Besides them Constables Sant Ram (PW-21). Sis Ram (PW-20). Sher Singh (PW-18) and Roshan Lal (P W-19) also gave their statements, Vermani (PW-10) and Ishwari Singh (PW-13) were also examined. Cheori Ram (PW-8) came to state about the rifle and rounds which he handed over to the accused. Doctor Mohinder Singh (PW-11) of course, stated about the injuries.

10. In his defence, the accused Ram Singh admitted that he was posted on guard duty that night. He was patrolling inside the verandah. He denied that he possessed the rifle (Ex. P-1) or 25 rounds alleged to have been given by him to Sis Ram Constable (PW-20). He further denied that Biri Singh had urinated or that there was any exchange of abuse in that connection. He stated that he never shot at Biri Singh. He did not state that anybody else shot at him but confined himself to saying that Biri Singh was shot at and he made enquiry to that effect from Sant Ram Constable (P W-21) but at his instance Kanshi Ram Constable (PW-16) arrested him. He denied the recoveries that were made from his box. He further denied that he woke up Sis Ram (P W-20) or gave the polythene bag to Bhim Singh. The accused asked before the Magistrate about Sis Ram (PW-20) whom he woke up and about the search made from his box. Similarly he was asked about the polythene bag which probably contained the empty round which he took out of the rifle and passed it on to Bhim Singh concealing it in that bag. The accused at that stage could only state that he did not read the challan and could not know about those facts and his counsel might be knowing about them. However, in the Court of Sessions he made a bare denial of these facts.

11. The accused did not produce any defence.

12. The learned Sessions Judge believed the prosecution evidence and convicted the accused for murder and sentenced him to death under Section 302, I.P Code.

13. The foremost argument advance. ed by the learned Counsel for the applicant accused was that the two eyewitnesses should not have been believed. The learned Counsel emphasized that as cording to rules different rifles and different sets of rounds were required to be distributed to each constable. Ordinarily this

should have been done. But the prosecution alleged that only one rifle and one set of rounds were passed on from one Constable to another. Sis Ram (PW-20) gave a detailed statement in this respect. He very much affirmed that this facility was extended to the constables who were put on guard duty. If individual constables were issued separate rifles and rounds they felt difficulty in movements as they were required to keep guard of their weapons. One rifle and one set of rounds were in fact, issued. The other constables could freely move out and hence they preferred this arrangement. There is obviously some logic in this statement. About this facility of passing on one rifle and one set of rounds from one constable to another Cheori Ram Constable (PW-80 Gopal Datt Constable (PW-9), Jagata Ram Constable (PW-7). Sher Singh Constable (PW-18). Sant Ram Constable (PW-21) and Gian Chand A.S.I.(PW-22) have stated. The learned Sessions Judge could not but believe this overwhelming evidence. The appellant was unable to explain as to where his own rifle and 25 rounds had gone and no cross. examination was directed on his behalf towards that end. It was. therefore, established beyond doubt that the rifle (Ex. P-1) the bandolier (Ex. P-11) and 25 rounds (Ex. P-12) were recovered (from the accused.

14. Gian Chand. A.S.I. (PW-22) had checked up the Malkhana of the Police Station at about 1-30 A.M. and he found that the remaining rifles and rounds were lying intact in the Malkhana. This eliminates the possibility of any other rifle or round having been used for the firing at the deceased.

15. The learned Counsel then urged that the empty round could not be procured from anywhere and that is a circumstance in favour of the appellant. Iqbal Singh District Inspector of Police (PW-23) who is a responsible Police Officer stated that the appellant was formerly employed in the S.S.B. Battalion. The witness had at one occasion investigated a case of that Battalion wherein the allegation was that some live rounds were stolen and were passed on to unauthorized persons. From this an inference could be drawn that the appellant as well, could have procured for himself the two bandoliers and the one charger clip along with a few rounds. That is why he was possessed of the two rounds of 1964 make and replaced them and completed the number 25 and passed on the set of rounds to Sis Ram Constable (PW-20). In this connection a reference could be made to the

statements of Gian Chand (PW-22). Shyam Lal (PW-6) and Bam Singh (PW-7) witnesses who have stated about the search of the box belonging to the accused and the two bandoliers and one charger clip which ware recovered from it. In this connection reference is also to be made to the statements of Sher Singh Constable (PW-18) and Ros-han Lal Constable (PW-19) who have stated about the polythene bag which was given by the appellant to Bhim Singh and the latter even stated that he suspected that the empty round was passed on to Bhim Singh in that envelope. All this evidence was rightly believed by the learned Sessions Judge and there is every probability that the empty round was replaced by two live rounds by the appellant and the one empty round and one live round of 1963 were passed on to Bhim Singh In the polythene bag.

16. It was stated that the exit wound was somewhat larger than the wound of entry and that the bullet could not have got fragmented. All these are unacceptable suggestions. It Is categorically stated by Dr. Mohinder Singh (P. W-11) that the bullet got fragmented as it was stuck within the ribs which were fractured and the metallic piece was found in the wound itself. The two fragments caused two exit wounds. The piece of bullet had obviously become deformed and that was the cause of a larger exit wound. According to the doctor such bullets do fragment and cause several exit wounds. Therefore, there could be no difficulty in believing that the bullet of 303 rifle caused the wound over the person of Biri Singh.

17. In this connection the learned Counsel also suggested that somebody else could have fired from the gate of the Police Station. According to the doctor the angle at which the shot was fired, demolishes this suggestion. According to prosecution witnesses the direction of the window where the deceased was standing from the gate of tine Police Station was extremely oblique and the said window existed much towards the right side of the gate. That is why the doctor stated that the angle of the shot was different and the wound could not have been caused by firing from the gate. The Ballistic Expert could not connect the two pieces of the bullet with the riffle but nonetheless he opined that a shot was fired from this rifle and the weapon was a fit one and could be utilized for firing In these circumstances the inability of the Expert to connect the two fragments of the bullet with the rifle could not be a circumstance necessarily leading to the inference that

the said bullet was not shot from the rifle. Any Expert may be Ballistic or otherwise, can only give an opinion evidence. In a case where eyewitnesses are reliable and testify definitely to the weapon of attack, any opinion of an Expert even if it indicates a circumstance which does not exactly fit in the prosecution story, would be of no avail and can easily be ignored. All the same in the instant case, the opinion of the Expert cannot be stated to negative the prosecution version in any manner.

18. The learned counsel then argued that the two eye. witnesses. Kanshi Ram (P. W-16) and Jagat Ram (P. W-17) exhibited abnormal behaviour and they should not be believed. Again we are unable to persuade ourselves to accept this contention. In our opinion, no abnormal behaviour can be imputed against these witnesses. According to the learned counsel, they should have themselves snatched the rifle from the hands of the accused and should have assembled a number of other persons to do that work if they were unable to do it themselves. We do not consider that the two eye. witnesses could have gone any further than what they actually did in the case. Jagat Ram Constable (P. W-17) attempted to dislodge the position that was taken by the accused at two occasions. He was Pushed back and was even threatened to be shot at in return. What else could he have done Kanshi Ram was helpless and so he had summoned Jagat Ram and there was nothing wrong in his behaviour.

19. The accused is the own colleague of the Constable. witnesses. If Biri Singh was really fired at by some stranger where was the occasion to implicate Ram Singh. All of them would have run in one team in search of the real assailant. Why did the appellant hand over charge to Sis Ram Constable (P. W-20) immediately after the occurrence? There is a corroboration of the statements of the eye. witnesses, in the version given by Sant Ram Constable (P W-21) Vermani (P. W-10) and Ishwari Singh (P. W-13). There was no occasion to disbelieve all these witnesses.

20. Some controversy arose at the Bar as' to which document was to be considered as the F.I.R. in the case. As evident from Section 154 of the Cri.P.Code, the F.I.R. was required to be given 'to an officer in charge of a Police

Station.' Such an officer admittedly, could only be a person above the rank of Constable. In the present case., the Head. Constable Biri Singh was dead and the two Sub. Inspectors had gone out on official duties There was no Head. Constable present at the Police Station. These Constables, therefore, could not institute the F.I.R. to themselves, as none of them exceeded the rank of a constable. Sant Ram (P. W-21) made an entry (Ex PP) in the Daily Diary which related to the posing of Sis Ram Constable in place of Ram Singh. He further made a report (Ex. PQ) in the Daily Diary giving detail of the occurrence. The accused was also arrested at his instance. Any person who committed cognizable offence could be arrested by anybody and as such the arrest of the accused cannot be considered to be a prate taken during investigation. Since the event had occurred within the premises of the Police Station, and the persons involved were all officials of that Police Station, these entries were made in the Daily Diary as a matter of administrative routine. Similarly, Sant Ram Constable (P. W-21) sent a telegram (Ex. DB) to the Superintendent of Police informing him about the death of Biri Singh and that was again a step which he was required to take in administrative routine. Therefore, none of these documents, in our opinion, could be considered the F.I.R. in the case. When the A.S.I. Glan Chand (P. W-22) arrived at 1-30 A.M. he got information from others and then he instituted the F.I.R. (Ex-PU). Thereafter the investigation started' for which he specifically stated. Before this investigation commenced, the accused had made extra. judicial confessions to several witnesses and in our opinion these statements of the accused could be utilized against him. As evident from the language used in Section 162 Cr.P.C. a statement which is hit by this section is required to be made by a person to a police officer in the course of an investigation. When the accused made extra. judicial confessions to these witnesses, the investigation had not begun. Besides the statement was not made to a police officer conducting such investigation. Therefore, in our opinion, the extra. judicial confession was not hit by Section 162. Cr.P.Code. The witnesses who stated about these extra. judicial confessions are Sis Ram (P.W-20). Sher Singh (P. W-18) Roshan Lal (P. W-19) and Sant Ram (P. W-21). The last witness has stated about the confession made by the accused while the witness attempted to make a telephone call to the Superintendent of Police. The other three witnesses stated about the confession made by the

accused while he woke up Sis Ram Constable (P. W-20) and handed over the rifle and ammunition to him and also while he gave the polythene bag to Bhim Singh during the course of his arrest by Sher Singh and Roshan Lal Constables. Vermani (P. W-10) also stated about the confession of the accused while Sant Ram (P. W-21) was attempting to telephone to the Superintendent of Police, In our opinion these extra. judicial confessions could be utilized against the appellant. These confessions are apparently corroborated by the two eye. witnesses as well as by other circumstances which have been established.

21. The suggestion made by the defence that the deceased got arrested one Sharamjit and also a few persons under Section 34 of the Police Act and so had other enemies held no water. The deceased was rather popular amongst the people and that is the evidence on the record. Several other suggestions were made which remained unsubstantiated. The accused even stated that he had enmity with Jagat Ram (P. W-17) but this witness was not put a single question regarding it was then stated that Sant Ram (P. W-21) could not hear the exchange of abuse and so he should not be believed. These are lukewarm suggestions directed to question the credibility of witnesses. Sant Ram might even be sleeping at that time as he already stated so that he could not hear the abuse. We are. therefore, of opinion, that he entire prosecution case was brought home to the appellant and he was Realty of committing the murder of Bin Singh.

22. Regarding the particular of. fence committed by the appellant the learned counsel suggested that the offence committed really fell under Section 304-A. or Section 304, I.P.Code. In our opinion, the plea is again not sustainable and the offence cannot be taken out of the ambit of Section 302. I.P.Code. The circumstances under which the appellant fired the shot do indicate that the intention was to cause death or at any rate to cause such bodily injury as the appellant knew to be likely to cause death. The case did not fall under any of the exceptions provide ed in Section 300. I.P.Code. It could not be stated that there was a grave and' sudden provocation so that the appellant was deprived of his power of self control. The exchange of abuse went on for 20 or 25 minutes. The urine neither splashed over the floor of the verandah nor fell over the appellant. There was no occasion for sudden provocation. The accused at first aimed the rifle

towards the deceased. He was interrupted by Jagat Ram at two occasions. He pushed him aside. Thereafter he took out five rounds from his charger. clip and loaded the rifle. He got down inside the court, yard, took aim and fired from there. The accused even stated that he would shoot down Jagat Ram In case he interfered. All along the indication is that he never lost self control and the provocation was never sudden. Sufficient time was taken by the accused and deliberation was all along there in his mind and he was planning to shoot at Biri Singh so that he might not abuse any further. As has been pointed out. the exchange of abuse went on over a fairly long period of time, and it is not possible to hold that the provocation was sudden. The death was never caused by rash or negligent act which did not amount to culpable homicide and therefore, the possibility of the application of Section 304-A is ruled out As we have already stated the offence is formulated under Section 302, I.P.C. and not under Section 304 or Section 304. A of that Code.

23. As to the sentence. In our opinion, the learned Sessions Judge failed to notice certain attendant circumstances. Admittedly the appellant had good relations with the deceased. Since filthy abuses were exchanged, some provocation was there. It was not a preplanned murder. The appellant himself had the feeling of remorse and he woke up Sis Ram Constable (P. W-20) and confessed the guilt before others. He voluntarily courted arrest immediately after the occurrence. We were, therefore inclined to hold that the lesser penalty of life imprisonment would serve the ends of justice.

24. Accordingly we convicted the appellant Ram Singh under Section 302, I.P.Code, and sentenced him to life imprisonment. We have already set aside the sentence of death and as a result rejected the reference made by the State for confirmation of death sentence.

R.S. Pathak, J

25. I agree with the reasons.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com