

Ram Pal Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Mar-12-1996

Reported in : 1996CriLJ2374

Judge : Kamlesh Sharma and; Arun Kumar Goel, JJ.

Acts : Evidence Act - Section 27; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300, 302, 304, 307 and 324; ;Code of Criminal Procedure (CrPC) - Sections 154, 161 and 313

Appeal No. : Cr. Appeal No. 219 of 1994

Appellant : Ram Pal

Respondent : State of H.P.

Advocate for Def. : C.L. Sharma, Addl. Adv. General and; M.L. Chauhan, Assistant Adv. General

Advocate for Pet/Ap. : Jagdish Vats, Adv.

Judgement :

Arun Kumar Goel, J.

1. Appellant is aggrieved by his conviction and sentence for having committed offences under Sections 302 and 324, IPC ordered by the Sessions Judge,

Bilaspur in sessions trial No. 3/7 of 1992 on 27-10-1994, whereby he has been convicted for both the said offences and has been directed to undergo life imprisonment and to pay a fine of Rs. 2,000/- under Section 302, IPC and in default of payment of fine has been directed to further undergo rigorous imprisonment for a period of four months. He has also been directed to undergo sentence of one year imprisonment under Section 324, IPC. Both the sentences have been ordered to run concurrently.

2. Facts giving rise to the present appeal are that the appellant and his father were charged Under Section 302 read with Section 34, IPC and under Section 307 read with Section 34, IPC for having inflicted injuries upon one Shri Jaiwant, who later on succumbed to those injuries in the hospital and also having attempted to commit murder of Shri Hoshiar Singh (PW-3). Both these acts were attributed to the two accused in furtherance of their common intention to commit the said offences. This incident is stated to have taken place at about 7-8 a.m. on 9-10-1991 at village Sunhani, where the deceased suggested that they should consume liquor and for this purpose, half bottle of liquor was purchased which was consumed by PW-3, Hoshiar Singh, PW-4, Hukam Singh and the deceased along with one Sadiq, who also came there. The deceased is stated to have informed PW-3 and PW-4 that the appellant owes some money to him and he left the place, while both these witnesses remained sitting there. Verbal altercation between the deceased and Chaudhary Ram, father of the appellant is stated to have taken place, who is further stated to have brought a 'Danda' and tried to hit on the head of the deceased. However, PW-3, Hoshiar Singh is stated to have caught hold of the same. Again, Chaudhary Ram wanted to snatch the said 'Danda' to hit. However, it was snatched by PW-3 who threw it on the ground. Appellant, Ram Pal is stated to have taken out a knife from his shoe and hit PW-3, Hoshiar Singh on his chest and when Jaiwant asked Ram Pal as to what he was doing, Ram Pal gave two knife blows on the back of Jaiwant, who fell down and on seeing Ram Pal coming towards him, PW-3, Hoshiar Singh ran away from the spot. PW-4, Hukam Singh also ran away from the spot. He is stated to have informed the family members of Jaiwant as well as his uncle PW-1, Kripal Singh, who came there and took both PW-3, Hoshiar Singh and Jaiwant to Barthin hospital from where they were sent to District Hospital, Bilaspur. It is further revealed from the

record of the case that A.S.I. Manjhel Singh, City Incharge of Police post, Bilaspur was informed of the incident. He reached District Hospital, Bilaspur on the intervening night of 9th and 10th October, 1991 and recorded the statement of Hoshiar Singh, who was in injured state at that time under Section 154, Cr. P.C., which was sent to Police Station, Talai through Jagat Ram, Constable for registration of the case. A.S.I. Manjhel Singh, PW-6 is stated to have filled in the pro formas of Inquest Report (Exts. PB and PB/1). At the same time, he applied for conducting the post-mortem to the Civil Hospital authorities on the body of the deceased vide application (Ext. PL) and consequently, Dr. K.L. Gupta (PW-12) conducted the post-mortem on 10th October, 1991 and in his opinion the death was the result of hypovolemic shock. Jaiwant who was in injured State had died in the hospital after he was brought there and on the request of the police, postmortem was conducted at 1-00 p.m.

3. Investigation was taken over by Sub-Inspector, Duni Chand, the then S.H.O. (PW-14). FIR was recorded on the basis of the statement under Section 154, Cr. P.C. made by Shri Hoshiar Singh (PW-3) and the said FIR is Ext. PD/1. PW-14, Shri Duni Chand, S.I. is stated to have taken into possession the shirt of Hoshiar Singh, injured (Ext. P-I) vide memo Ext. PB in the presence of the witnesses and had prepared the site plan (Ext. P5). Samples of blood stained soil from the place of occurrence were also taken into possession and put in tin box (Ext. P-7), which were taken into possession vide recovery memo (Ext. PB). This was witnessed by two witnesses, one of whom was produced and is Tulsi Ram, PW-5. During the course of investigation, police photographer, Prem Lal (PW-11) had taken the photographs Exts. P-11 to P-21 and negatives of which are Ext. P-22 to P-32.

4. Disclosure statement under Section 27 of the Evidence Act is also stated to have been made by the appellant regarding the concealment of the knife at his 'Jhugi' in grass vide Ext. PG, which was also witnessed by Tulsi Ram and another witness. Pursuant thereto, the appellant is stated to have led the police to his 'Jhugi' and got recovered the knife (Ext. P-6). The same is stated to have been taken into possession vide Ext. PH and the sketch of this was prepared which is Ext. PJ. All these memos and sketches were prepared by Sub Inspector, Duni Chand (PW-14). According to prosecution, the appellant is stated to have

produced his clothes (Exts. P-8 to P- 11) and these were taken into possession vide memo Ext. P-11. The case property is stated to have been deposited in the 'Malkhana' with PW-8. All these articles were sent for examination by the Forensic Science Laboratory by the police through Ram Dass, PW-9, who is stated to have deposited those. At the same time, viscera of the deceased was also sent by Tara Chand, PW-8 for chemical examination to the office of Chemical Examiner, Patiala through Mansha Ram (PW-10) and the same is stated to have been deposited on 25-10-1991. After examination of the viscera report of the Chemical Examiner (Ext. PB) was received. So far as injured Hoshiar Singh is concerned, he was examined by Dr. V.V. Verma(PW-13).

5. In the aforesaid background, accused were committed by Sub Divisional Judicial Magistrate, Ghumarwin and were charged by the learned Sessions Judge for the aforesaid offences to which they pleaded not guilty and claimed trial. After recording prosecution evidence as well as statements of the accused under Section 313, Cr. P.C. the learned Sessions Judge below acquitted Chaudhary Ram and convicted the appellant as aforesaid.

6. To bring home the guilt against the appellant, the prosecution has examined as many as 14 witnesses. The material witnesses in this case are PW-1 Kripal Singh, uncle of Jaiwant deceased, PW-2, Pratap Singh, father of the deceased, PW-3, Hoshiar Singh and PW-4, Hukam Singh. Besides this, other witnesses are PW-12, P-13 and PW-14. The stand of the appellant was that on the night intervening 9th and 10th October, 1991 at about 8-30/8-45 p.m., when he was putting grass to his cattle in the back room of the 'J ugi' (where this incident is stated to have taken place), he heard the cries of his father and alarm raised by him 'Maar Dia, Maar Dia, Bachao'. On hearing this, he is stated to have run to the front room of the 'Jhugi' and he saw Jaiwant with a knife and Hoshiar Singh with a 'Danda'! According to the appellant, his father was lying on the ground and both the deceased as well as Hoshiar Singh, PW-3 tried to attack the appellant and were smelling of liquor in the melee. Small lamp fell down from the level and got extinguished. According to the appellant, both tried to catch hold of him, but he ran away and they got entangled in the fight between them and according to him, they may have sustained injuries. The learned Sessions Judge while rejecting the stand

of the appellant, accepted the version of the prosecution regarding inflicting of knife blows by the appellant numbering two on the back of the deceased after he had inflicted one knife blow on the chest of Hoshiar Singh and resultantly convicted the appellant and sentenced him to undergo the imprisonment as aforesaid. From the evidence on record as well as the trend of cross-examination of the witnesses, it is clear that both the appellant and his father Chaudhary Ram were present on the scene of the occurrence as also the deceased and PW-3, Hoshiar Singh was also there. The deceased as well as PW-3, Hoshiar Singh sustained injuries. This fact is not seriously disputed. The only thing that is disputed is that these injuries, according to the appellant, were not inflicted by him, but may have been the result of scuffle between these two persons i.e. the deceased and Hoshiar Singh.

7. Shri Jagdish Vats, learned counsel appearing for the appellant has raised the following points in support of the appellant and has prayed for allowing the same:-

(a) This is a case of exercise of right of private defence by the appellant, as according to him, the deceased and PW-3, Hoshiar Singh were the aggressors who had come to their 'Jhugi' under the influence of liquor and had tried to attack his father;

(b) Alternatively, he submits that in the event of his first submission being not accepted, then in that event, this is a case of sudden provocation as his father had been attacked and beaten and lastly;

(c) If both the above pleas fail, then this is a case which is covered under Section 304, Part-I of the IPC and no case under Section 302, IPC is made out against the appellant. In such an event, he has submitted that the appellant having been in custody from 10-10-1991 to 6-7-1994 and thereafter from 27-10-1994 to date, he may be allowed to reform him if by sentencing him for the period he has already undergone keeping in view the present trend of penology to give a chance to the appellant to improve.

8. In support of his first plea regarding right of private defence, Shri Vats has submitted that in this case, the explanation put forth by the appellant in his

examination under Section 313, Cr. P.C. as well as on the basis of the cross-examination of the prosecution witnesses, it is established that he and his father were not the aggressors, but it was the deceased and PW-3, Hoshiar Singh, who were the aggressors and had come fully armed with a 'Danda' and knife and it were they who had attacked the father of the appellant and in these circumstances, he was well within his right to have inflicted injuries on the aggressors, namely, the deceased as well as PW-3, Hoshiar Singh. He submits that in order to save his father that too in their 'Jhugi' wherein in the front portion they were running their tea stall and in the back side they had their cattle-shed. In these circumstances, they had no option but for dealing with the aggressors at that particular moment. In support of this submission, he has placed reliance on the fact that the father of the appellant had received simple hurt and has further placed reliance on portion B to B of Ext. DE, the statement of Hukam Singh, PW made under Section 161, Cr. P.C. He further submitted that it has also come in the statement (Ext. DE) that the deceased had attempted to catch hold of the appellant from head when he ran away.

9. This plea of the appellant does not hold good for the simple reason that there is clinching evidence to suggest that so far as the appellant is concerned, he had taken knife (Ext. P-6) from his shoe and after having inflicted one injury on the chest of PW-3, Hoshiar Singh, he further inflicted two injuries on the back of the deceased. In this behalf, reference can be usefully made to the statement of PWs. 3 and 4 and this Court does not accept the explanation put forth by the appellant in his examination under Section 313, Cr. P.C. We are further of the view that the explanation given by the appellant is purely an afterthought and the same deserves to be rejected. In fact, there was no occasion for exercise of right of private defence available to the appellant as the knife (Ext. P-6) belonged to the appellant and he had taken it out from his shoe. In the ordinary course of things, knives like Ext. P-6 are not kept handy and more especially in shoes from where it was taken out and which fact stands fully established from the prosecution evidence. Accordingly, point No. 1 is hereby rejected.

10. Shri Vats has further submitted that there was sudden and grave provocation to the appellant inasmuch as that the deceased along with his accomplice had

come to his 'Jhugi' and not only started abusing, but were also beating his father, Shri Chaudhary Ram, who raised alarm 'Maar Dia Maar Dia, Bachao Bachao'. Then the appellant was forced to come to the scene and when the appellant came to the scene of occurrence, the lamp got extinguished and according to him, the deceased and PW-3, Hoshiar Singh might have got entangled. This theory is also rejected in the face of the direct evidence of the eye-witnesses, PW-3, Hoshiar Singh and PW-4, Hukam Singh. Shri Vats has placed reliance on Bhagwan Swaroop v. State of Madhya Pradesh, 1992 Cri LJ 777 : (AIR 1992 SC 675), wherein it has been held by the Hon'ble Apex Court that :.It is the scenario of a father being given lathi blows which has to be kept in mind and we are of the view that in such a situation a could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified....

11. As has been observed above, it was not the deceased and PW-3, Hoshiar Singh, who were the aggressor party and who had attacked the father of the appellant which part of the defence version is not supported by the evidence on record and, therefore, the appellant cannot derive any benefit from the observations made in this judgment which is not applicable in the facts and circumstances of the case, although on the proposition of law, there is no dispute. From the facts and circumstances of the case as well as from the prosecution evidence which is on record, it is manifestly clear that there was no occasion for sudden and grave provocation as submitted on behalf of the appellant. Therefore, this plea of the appellant is negatived. In support of this submission, Shri Vats has placed reliance on the judgment of the apex Court reported in AIR 1987 SC 1289 : (1987 Cri LJ 1058), Seriyal Udayar v. State of Tamil Nadu and has further submitted that even if the right of private defence is not established, from the evidence on record, it is established that the incident had taken place in the manner suggested by the accused i.e. the father of the appellant was being attacked by the deceased and PW-3, Hoshiar Singh and on his having raised alarm, in order to save his father, the appellant was forced to go to the scene of occurrence where he saw his father being assaulted by both of them. As pointed out earlier, this part of the defence theory is not supported by any evidence. So, the appellant cannot take any benefit from this judgment which is wholly

inapplicable in the facts and circumstances of the case.

12. Now, coming to the third submission of the learned counsel for the appellant, it was submitted that this is a case which is fully covered by Exception 4 of Section 300, IPC. Shri Vats has forcefully submitted that the present is not a case of culpable homicide amounting to murder and has submitted that the offence, if any, was committed without any premeditation in the heat of passion upon a sudden quarrel and without the appellant's having taken undue advantage or acted in a cruel or unusual manner. He submitted that the appellant had no intention and had not pre-meditated for committing the offence in question and in these circumstances, his case is fully covered by Section 304, Part-I and, therefore, if at all his client is to be punished, then in such an eventuality, no case under Section 302, IPC is made out against his client and the case deserves to be examined by the Court from this point of view as well.

13. We find some force in the submission of the learned counsel for the appellant that there is nothing on record to establish the pre-meditation on the part of his client. To the contrary, he submits, it is proved on record that the father of the appellant i.e. Chaudhary Ram had been injured by the deceased as well by Hoshiar Singh (PW-3). Evidence on the record suggests that the injuries inflicted upon the deceased as well as PW-3, Hoshiar Singh were the result of sudden quarrel and in the heat of passion by the appellant. There is nothing to suggest that the appellant had taken undue advantage or acted in any cruel manner much less in an unusual manner. In this behalf, explanation of the appellant in his statement under Section 313, Cr. P.C. (Ex. DE) can usefully be referred to. In this, Hukan Singh (PW-4) has categorically stated that:--

Hoshiar Singh Nein Chaudhary Say Danda Chhudaya Aur Usi Laathi Ki Chot Chaudhary Ko Mari. Chaudhary Chot Lagne Say Zameen Par Gir Gia.

14. This is the first version given by this witness to the police and PW-14, S.I. Duni Chand has categorically stated in his cross-examination that Ext. DE has been recorded by him and he has neither added nor omitted anything from the said statement. Looking to the totality and facts and circumstances of the case, we are of the view that the case is fully covered by Explanation (4) of Section 300, IPC as

submitted by the learned counsel for the appellant and we uphold this contention accordingly.

15. In support of his submission, Shri Jagdish Vats, learned counsel for the appellant has placed reliance on 1989 Cri LJ 883 (SC): (AIR 1989 SC 1094) Surinder Kumar v. Union Territory, Chandigarh and submits that the conviction and sentence deserve to be altered from Section 302, IPC to Section 304, Part I, IPC. Relevant observations of the Hon'ble apex Court are reproduced here which are to the following effect:-

To invoke Exception 4 to Section 300 four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no pre-meditation, (iii) the act was done in a heat of passion; (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. Thus where in a case of quarrel between the deceased and the accused regarding possession of premises, was reasonable to infer from the facts that the deceased must have intervened on the side of his brother and in the course of the scuffle he received injuries, one of which proved fatal, the accused would be entitled to the benefit of the Exception 4 to Section 300. Merely because three injuries were caused to the deceased during the scuffle it could not be said that he had acted in a cruel and unusual manner. Under such circumstances, the accused could be convicted under Section 304, Part. I.

16. We are of the considered view that on the evidence on record, the case of the appellant is squarely covered by the aforesaid judgment. As being held under point No. 3, the conviction of the appellant is altered from Section 302, IPC to

Section 304, Part I.

17. Shri Jagdish Vats has lastly contended that looking to the present trend of penology, his client who was 21 years of age at the time of commission or the offence and is now about 24 years and 9 months old, should be given a chance to reform himself and rehabilitate so as to become a law-abiding citizen. He further submits that his client may be punished for the offence by inflicting sentence upon him for the period he has already undergone which comes to more than four years and one month. In addition to this, according to the learned counsel for the appellant, the appellant must have earned some remissions for good conduct as per policy of the Govt. announced from time to time.

18. As a result of the above discussion, the appeal is partly allowed to the extent that the conviction and sentence of the appellant is altered from Section 302, IPC to Section 304, Part I and he is sentenced to punishment he has already undergone i.e. 10-10-1991 to 6-7 1994 and 27-10-1994 to date under Section 304, Part I, IPC. However, fine is increased from Rs. 2,000/- to Rs. 5,000/- and in the event of default of payment of fine, the appellant will further undergo rigorous imprisonment for a period of six months. In the event of fine being recovered, Rs. 3,000/- would be paid to the family of the deceased. So far as the sentence under Section 324, IPC is concerned, the same is upheld and the conviction and sentence of the appellant under Section 324, IPC is maintained. With the aforesaid modification, the appeal is disposed of.