

Thakar Das Vs. State

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Court : Jammu and Kashmir

Decided On : Apr-18-1960

Reported in : 1960CriLJ1080

Judge : J.N. Wazir, C.J.

Appellant : Thakar Das

Respondent : State

Judgement :

J.N. Wazir, C.J.

1. This is an appeal by Thakar Das accused against his conviction for an offence Under Section 307 of the Ranbir Penal Code for which he was sentenced by the Additional Sessions Judge, Jammu, to undergo four years rigorous imprisonment with a fine of Rs. 25/- and in default of payment of fine to undergo fifteen days rigorous imprisonment.

2. The prosecution story briefly stated is as follows : On the night of the 27th Jeth, 2016, at about 9 O'clock Altaf Hussain returned from a certain village where he had gone to purchase some poultry and eggs for his shop. The accused met Altaf Hussain near his shop and demanded the money due from him. Altaf Hussain told him that he had no money on him and, therefore, was not able to pay him. At this the accused was exasperated and pointing his pistol towards Altaf Hussain told him that he would recover the money due to him. Altaf Hussain, it is alleged,

handed over Rs. 60/. to the accused and asked him to retain the money due from him and return the rest.

The accused is alleged to have told Altaf Hussain that he would recover five hundred rupees from him. Altaf Hussain was unable to pay and the accused is alleged to have fired two shots which, missed the mark but the third shot fired by the accused hit him on the back of his right shoulder. and the bullet passed through his body injuring his lung, Altaf Hussain fell down on the ground wherefrom he was removed to Batote Hospital on a charpai with the help of some coolies arranged on spot by Habib Ullah. The Medical Officer attended upon him and prepared his examination report and informed the Sub-Inspector of Police about his precarious condition.

Mohd, Aslam, Station House 'Officer, at. once came to the Hospital and recorded the dying declaration of Altaf Hussain. Tehsildar Magistrate Ram-ban was informed of this occurrence and he also came to the Hospital and recorded the statement of the injured person on 10-6-1959. The blood-stained garments on the person of Altaf Hussain were seized by the Police and the pistol and a belt of 12 live cartridges were seized from the house of the accused. The accused was arrested on that very evening. He was committed to Sessions by the Munsiff Magistrate first class Ramban for an offence Under Section 307 R. P. C.

3. The prosecution has produced Habib Ullah, Gulab Bibi wife of Altaf Hussain, Begum, his sister and Ali Mohd. husband of Begum and brother-in-law of Altaf Hussain and Samad Batt, father of Altaf Hussain. There is no eye witness of the occurrence. All these prosecution witnesses came on the spot soon after the occurrence and saw Altaf Hussain in an injured condition. Out of the prosecution witnesses Habib Ullah alone is a disinterested witness and the rest of them are all complainant's relations, It is also in evidence that there have been strained relations between the accused and Altaf Hussain complainant.

4. Habib Ullah is working under a contract and is incharge of labour. According to him he was sleeping in his hut when Sat Pal, son of the accused, came to call him. He was told that the accused wanted him to come on spot as he was required to write the names of some persons there; At first the witness was not

willing to go but on Sat Pal's insistence, he accompanied him and took along with him two or three coolies. On reaching Altaf Hussain's shop he found Altaf Hussain lying, injured.

In his statement before the committing Magistrate this witness stated that he did not enquire from Altaf Hussain as to how he received the injury but before the Sessions he deposed that he enquired from Altaf Hussain and he was told that the accused had fired at him with a pistol and had injured him. He was confronted with his previous statement made before the committing Magistrate, but without giving any satisfactory explanation he mentioned that his statement before the Sessions was correct. In his previous statement he had given a different version of the occurrence.

According to him, the accused told him that he fired at some persons who were setting fire to the jungle and by accident Altaf Hussain was hit. He denied having enquired from Altaf Hussain about the cause of the injury.

5. The learned Counsel appearing for the accused appellant has challenged the testimony of this witness and has argued that it is highly unsafe to rely on his testimony in view of the fact that he has given different versions of the occurrence at different times.

6. It is true that Habib Ullah is not a reliable witness and his evidence is not convincing. At one stage he denied having enquired from Altaf Hussain about the cause of the injury and before the Sessions Court he stated that he was informed by Altaf Hussain, on his arrival on the scene or, occurrence, that the accused had fired at him with a pistol and had thus injured him,

7. There is the statement of Ali Mohd. who deposed that Altaf Hussain was lying in an injured condition and when he reached the spot he was told that the accused had hit him with a pistol shot Gulab Bib, Begum and Samad Batt corroborate the statement made by Ali Mohd. As pointed out above, all these witnesses are not the eye-witnesses of the occurrence but they had arrived on the scene immediately after the occurrence,

8. Dr. Koul had examined the complainant at the hospital in the early hours of the morning and finding his condition precarious had called Mohd. Aslam Sub Inspector Police. In his dying declaration the complainant stated that he had received injury at the hands of the accused.

9. The accused had stated in defence that the complainant had stolen some timber and was carry-tag it in a Truck. He stopped him on the way and then he noticed that some 32 persons had set fire to the forest. The accused asked the complainant to accompany him in order to catch the forest offenders. He declined to move from that place and the accused ran towards the forest in order to note down the names of the persons who had entered the forest. According to the accused the complainant was fired at by the persons in the forest and was lying injured. On hearing his cries the accused went to the spot and brought him near his shop with the help of Habib Ullah and his coolies and after arranging transport he was taken to the Hospital at Batote.

10. The version put forward by the accused was that the complainant was fired at by some people who had entered the forest for the purpose of setting fire to it. He has examined some witnesses but the evidence produced by the accused is by no means convincing and has been rightly discarded by the learned Addl. Sessions Judge.

11. From the statement of the complainant it appears that the accused demanded money from him and at first he flatly refused to pay the amount as he thought that the accused was joking with him but when he found that the accused was serious, he took out Rs. 60/- from his pocket and handed over the money to the accused and asked him to retain the amount due and return the balance. But the accused wanted five hundred rupees from him which he could not pay and there was a scuffle between him and the accused.

The accused had a pistol in his hand with which he wanted to shoot but as the complainant caught hold of the arm of the accused, the pistol was fired in the air. The second shot fired also missed him and when he tried to jump in order to save himself he was fired at and the bullet bit tiro On the right side of the shoulder and pierced through his lung. This is what the complainant stated before the Sessions

Court.

12. It is in evidence that Rs. 50/- were recovered from the waist-coat which was worn by the complainant at the time of the occurrence. The complainant himself had stated that he had only Bs. 60/- with him and if he had given Rs. 60/- to the accused it is not clear how these fifty rupees were left with him. The complainant has admitted that there had been a scuffle between him and the accused for about half an hour.

13. The complainant also has not given, the correct version of the occurrence. As pointed out above, according to him Rs, 60/- were paid by him to the accused which he had in his possession and we have it from the evidence that Rs, 50/- were recovered from his own waist-coat. It is, therefore, not correct that he paid Rs. 60/- to the accused when the accused demanded, money front him. Only this much is clear from the statement of the complainant that there has been a quarrel between him and the accused. What was the cause of that quarrel is not known.

While they were grappling with each other the accused fired shots and one of the shots hit the complainant. The fact that the accused hit the complainant is clear from the testimony of the witnesses produced by the prosecution who reached the spot immediately after the occurrence. The accused accompanied the complainant to the hospital and while he was in the hospital the complainant stated in his dying declaration that he received injury at the hands of the accused by a pistol shot. From the statement of the complainant it appears that the injury was caused while they were grappling with each other.

14. The next question arises as to whether or not the accused is guilty Under Section 307. There is no evidence produced by the prosecution to show that the accused had any intention of causing death by firing at the complainant. In order to bring home the offence Under Section 307 the prosecution must show that the accused had done an act with such a guilty intention and knowledge, that but for some intervening fact the act would have amounted to murder in the normal course of events. There is not an iota of evidence that the accused had fired at the complainant with an intention of killing him but due to some intervening circumstances the complainant was saved.

On the other hand, as appears from the complainant's own statement, there was a scuffle going on between him and the accused and while grappling the accused fired a pistol shot which caused the injury. In these circumstances, the offence does not fall within the purview of Section 307 R. P. C. The learned Advocate General has frankly conceded that the evidence produced by the prosecution is not sufficient to bring home the guilt Under Section 307 to the accused.

15. From the evidence it is established that the complainant received injury at the hands of the accused who had fired a pistol shot while grappling with the complainant. According to the medical evidence the injury is not a grievous one as no such mention has been made by the Doctor in his statement. In these circumstances, the offence, in my opinion, would fall Under Section 324 and not Under Section 307 R. P. C. as has been held by the Additional Sessions Judge.

16. The learned Counsel for the appellant has argued that the trial was vitiated because the appellant was not given opportunity to produce evidence in defence in the committal proceedings as required Under Section 208 of the Cr.PC. In support of this contention reliance was placed on *Chhftdnmial Jain v. State of Uttar Pradesh* : 1960 CriLJ145 .

17. I have gone through this ruling but in my opinion it does not help the appellant. In this Supreme Court case it has been held as under :-

It is open to a Magistrate to hold an enquiry from the beginning under Ch. XVIII in a case not exclusively triable by the Court of Sessions. But the mere fact that the Magistrate has such power does not necessarily indicate to the accused that he is holding an inquiry under Ch. XVIII rather than a trial before himself. If the Magistrate intends to use his powers Under Section 207 and hold an inquiry from the beginning in a case not exclusively triable by the Court of Session, the only way in which the accused can know that he is holding an in-'quiry and not a trial is by the Magistrate informing the accused that he is holding an inquiry under Ch, XVIII and not a trial. If he fails to do so, the accused can reasonably conclude that a trial is being held. The fact that in the complaint Section 467, Penal Code which is exclusively triable by a Court of Session is mentioned is of no consequence when the summonses to the accused were only for a trial Under Section 406 of the

Penal Code.

The words 'under the provisions herein be fore contained' mean that if the Magistrate decides at some stage of the trial to commit the accused he has to follow the provisions contained in Ch. XVIII. This of course does not mean that the Magistrate must begin over again from the beginning. All that he has to do when he decides that the case ought to be committed is to inform the accused and see that the provisions of Ch. XVIII are complied with so far as they have not been complied with upto the stage at which he decides that there ought to be a commitment. The procedure under Ch. XVIII is laid down in Sections 208 to 213 of the Code. It is necessary that the accused should know when the Magistrate makes up his mind to commit, so that their right Under Section 208 to produce defence, if any, before commitment is made is safeguarded. , If the accused is denied the opportunity of leading V evidence which he has a right to do Under Section 208, the denial of such right is sufficient to cause prejudice to the accused and Section 537 would have no application to such a case.

18. In this case their Lordships have very clearly brought out the distinction between cases which are exclusively triable by the Court of Session and those triable by the Magistrate or the Court of Session. In the former cases, i.e. where the cases are exclusively triable by the Court of Session, it is not necessary for the Magistrate to inform the accused Under Section 208 Cr.PC. that he may adduce evidence in defence, if he so desires. Section 208, Cr.PC. runs as follows:the Magistrate shall proceed to hear the complainant and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused or as may be called for by the Magistrate.

19. It was open to the appellant to adduce evidence in defence and the committing Magistrate could not refuse to record the statement of the defence witnesses. The accused appellant was defended by a counsel. No prayer was made before the committing Magistrate that opportunity to lead evidence be afforded to the appellant. Even before the Sessions the accused did not make a grievance of the fact (hat he was not afforded an opportunity by the committing Magistrate to lead evidence in defence. In these circumstances, the contention of the learned

Counsel that opportunity to lead defence evidence was not given to him by the committing Magistrate has no substance and the trial of the accused is by no means vitiated.

20. From the prosecution evidence an offence Under Section 324 R. P. C is fully brought home to the accused. The appeal of the accused is allowed and while altering the conviction of the accused from Section 307 to one Under Section 324 R. P. C. his sentence is reduced from four years to six months rigorous imprisonment. The accused shall pay a fine of Rs. 200/- and in default of payment of fine, he shall undergo three months further rigorous imprisonment. Out of the fine realised, Rs. 100/- shall be paid to the complainant as compensation. The accused is on bail. He shall surrender to his bail bonds and undergo the remaining portion of the sentence.

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