

Hakim Singh Vs. State

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Court : Jammu and Kashmir

Decided On : Dec-03-1957

Reported in : 1958CriLJ883

Judge : J.N. Wazir, C.J. and; M.A. Shahmiri, J.

Appellant : Hakim Singh

Respondent : State

Judgement :

M.A. Shahmiri, J.

1. This is an appeal against an order of the Sessions Judge, Jammu, by which the appellant has been convicted under Section 302, R. P.C. for causing the death of Prem Singh deceased and sentenced to imprisonment for life. The case la also before us on a reference under Section 374, Criminal P. C, by the Sessions Judge for confirmation of the sentence.

2. The prosecution story, as disclosed by the four eye witnesses, Mst. Tej Kaur, P.W. 4, wife of the appellant, Bhagwan Singh, P.W. 3, Puran Singh, P.W. 4 and Arjan Singh, P.W. 7, is that Bhagwan Singh and Puran Singh, paternal uncles of Mst. Tej Kaur, Arjan Singh.p W 7 and Hari Singh, father of the appellant, 'who were refugees from Maira Khurad, District Muzaf-ifarabad, were allotted land in the village, Karwai at a distance of about 12 miles from Jammu where they had built

four small huts known as Kulis which were quite adjacent to one another.

The appellant, a youth of 20, had been married to Mst. Tej Kaur for the last three years. Their married life during this period was on the whole normal, though occasionally there were petty quarrels between them. On the evening of. 22-7-1957, the appellant began to abuse his wife Mst. Tej Kaur, because, as stated by her, he and his mother thought that she had cooked rice in excess. At that time it is stated that most of the inmates of the four huts were sitting on their cots in the open compound adjoining their houses.

The appellant losing his temper not only hurled abuses at his wife but also at her parents and other relations. Prem Singh deceased, a first cousin of Tej Kaur, who was sitting on cot in the compound got up and intervened in the quarrel. He remonstrated with the appellant that, while he had every right to reprimand his wife, he should not hurl filthy abuses against her parents and other relations.

This gave umbrage to the appellant who went into his hut and brought out a Balam Or Burchi (spear) Ex. P. 1 from there and, while Prem Singh was arising from his cot to defend himself, pierced his belly with the double-edged blade of the Balam. Prem Singh at once fell down and Bhagwan Singh P, W. 3, Puran Singh P.W. 5 and Arjan Singh, P.W. 7 administered first aid by bandaging the wound with the turban of Bhagwan Singh.

They then took him to Prahladpur where they were able to catch hold of a Tonga in which-they took the deceased to the Civil Hospital, Jammu, where he was attended to by Dr. Nirmal Bose, P.W. 2, who finding the case critical at once rang up the Police Station, Saddar, Jammu. The doctor then started preparing saline injection, but in the meanwhile the patient expired.

This was at about 3.30 a. m. on 23-7-1957. In consequence of the telephonic message when Sub-Inspector Punnumal reached the hospital Prem Singh had breathed his last and the Sub-Inspector took down the statement of Bhagwan Singh, P.W. 3, which contains, more or less, the same story as set forth in this paragraph.

3. The post mortem examination of Prem Singh deceased was performed by Dr. Parmanand, Civil Surgeon Jammu, P.W. 1, at the State Hospital on 23-7-1957 at 8 a. m. This examination corroborates the statement of the eye-witnesses that Prem Singh died of an injury to the liver which was the consequence of a wound in the abdominal region of Prem Singh's body and this, according to the doctor, could have been caused by a double-edged sharp-pointed long weapon like the spear Ex. F. 1. The doctor has also testified that the Injury was ante mortem and not self-inflicted. The age of the deceased was 25 years.

4. On account of the floods the police could not reach the place of the occurrence till 2B-7-1957 when the appellant was arrested and at his Instance the spear, Ex. P. 1, was recovered from a distributory of the Canal. The spear had broken into two pieces, but both the pieces including the double edged blade were recovered.

5. The appellant has pleaded not guilty, tout he has not out and out denied the occurrence. In his statement before the Committing Magistrate, which has been tendered by the Public prosecutor in evidence, Ex. P J., the appellant has stated that when after attending to his field he returned to his hut in the evening of 7th Sawan at about 11-30 p. m. he found Prem Singh deceased and his wife Mst. Tej Kaur lying on a cot outside his hut in flagrant delict and thereupon he inflicted two blows with a Sota which he had in his hand at the time on the person of the deceased.

The wife escaped and brought Bhagwan Singh, Puran Singh, Arjan Singh and Sohan Singh to the spot. Prem Singh also wanted to escape but the appellant grappled with him. Bhagwan Singh then began administering blows but the appellant could not see on whom he inflicted these blows as it was dark. In his statement before the learned Sessions Judge the appellant has denied that he made this statement in this manner before the Committing Magistrate.

He has in this statement denied that he gave any Sota blows to the deceased. But he sticks to the portion of his statement in which he has stated that he saw Prem Singh and his wife having sexual intercourse when he returned from the field at 11-30 p. m. He, however, admits that he caught hold of Prem Singh and they grappled with each other. He also says that his wife escaped and the eye-

witnesses referred to above came to the spot.

He is, however, unable to explain how Prem Singh met his death. He has produced four defence witnesses, Surjan Singh, D. W. 1, Rangil Singh, D. W. 2, Deva Singh, D. W. 3 and Attar Singh, D. W. 4. Surjan Singh, D. W. 1 does not support the defence at all. All that he says is that he went to the hut of the appellant at 10 in the night and did not find him there.

He then heard some noise coming from the hut, went to the spot and found there that Prem Singh had been wounded. He, however, denies knowledge of any other matter, but adds that he was not told on the spot that there was any dispute regarding any woman there. Rangil Singh, D. W. 2, is the first cousin of the appellant. He says that when he came to the spot he saw the appellant and the deceased grappling with each other and at that time Prem Singh was absolutely naked.

He was not wearing even a Kachha and Mst. Tej Kaur was also naked. Deva Singh, D. W. 3, is the real brother of the appellant. He also saw Prem Singh naked but Mst. Tej Kaur had covered herself up with a Chadar. He, however, says that he does not know why the appellant and the deceased quarrelled with each other. Attar Singh, D. W. 4, is the paternal uncle of the appellant. According to him Prem Singh was wearing a Kachha when he and the appellant were fighting with each other.

6. We have heard Mr. Inder Das who appeared as amicus curiae. He has quite properly conceded that on the evidence that has been produced in this case it is established that the appellant had caused the death of the deceased. He, however, contends that the learned Sessions Judge should have convicted the appellant under Section 304 and not under Section 302 R. P.C. He also admits that the defence has not been able to establish that when the appellant arrived on the spot he found the deceased having sexual intercourse with Mst. Tej Kaur.

But he argues that there are indications in the prosecution evidence to support the theory that there was something wrong between Prem Singh deceased and Mst. Tej Kaur and this might have caused the appellant to lose all control of himself. He

submits that the cause of the quarrel between the appellant and Ms wife, as stated by the wife, is too insignificant and the mere intervention of Prem Singh in this quarrel could not have led the appellant to commit this crime.

It is difficult to accept this argument. Sometimes husband & wife do quarrel over very trivial and petty affairs and if the appellant exceeded certain limits and abused the parents and other relations of his wife and the deceased, being the son of the paternal aunt of the wife intervened, there was nothing unexpected and unjustifiable in this intervention. This intervention may not lead a sensible person to such an excess. But; there is nothing inherently improbable if it leads to such a catastrophe in the case of a rough and uncouth youth like the appellant.

I am not, however, inclined to reject the argument altogether that the immediate cause of the quarrel may not be what has been stated by Mst. Tej Kaur. It may be that the appellant became furious because he saw the deceased in Kachha sitting somewhere near his wife. This is to what Attar Singh, D. w. 4. has referred in his statement. He says that the appellant while grappling with the deceased was asking him why he was sitting near his wife.

It may as well be that the appellant suspected illicit intimacy between his wife and the deceased. But this would not reduce the offence from Section 302 to Section 304, R. P.C. In this matter we cannot go by mere surmises. If an accused person wants to take benefit of one of the Exceptions provided to Section 300, R. P.C., he has not only to state his case with clarity but also to establish it.

Here the two statements of the accused in this respect are, to a large extent, destructive of each other and the defence evidence does not in any way establish the specific allegations made by the appellant. The defence evidence consists of very near relations of the appellant. It is also highly discrepant and does not carry conviction. The learned Sessions Judge has quite properly and for good reasons rejected this evidence. It is also urged by Mr. Inder Das that all the eye-witnesses produced by the prosecution are the near relations of each other and belong to one group.

This is so, but this fact alone is not sufficient to discredit their testimony. These are natural witnesses. Their presence on the spot is not denied by the appellant. They have not enmity with him. Their statements bear the impress of truth and they have stood the cross-examination very well.

It may be added that neither the prosecution evidence nor the defence evidence nor any other matter on the record discloses the existence of any circumstances which can bring this case within the Exception pleaded by the appellant. In making this observation I also take note of the trend of the judicial authority in recent year that even if an exception is not specifically pleaded by an accused person, he would be entitled to the benefit thereof, if upon the consideration of the evidence as a whole a reasonable doubt is created in the mind of the Court whether the accused is not entitled to the benefit of this exception.

7. For the foregoing reasons we agree with the finding arrived at by the learned Sessions Judge and affirm the conviction of the appellant under Section 302, R. P.C. The sentence is also quite appropriate. Apart from the youth of the appellant, the quarrel appears to have been sudden and the act of the deceased does not appear to have been premeditated. The appeal is, therefore, dismissed and the sentence of life Imprisonment confirmed.