

Surender Singh Vs. State

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Court : Delhi

Decided On : May-18-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Section 302, 307; Code of Criminal Procedure (CrPC) (CRPC) - Section 313; Evidence Act - Section 114

Appeal No. : CRL.A. 202/2008

Appellant : Surender Singh

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Advs.

Advocate for Pet/Ap. : Mr.Ajay Verma; Mr.Gaurav; Ms.Swati, Advs.

Judgement :

1. The instant appeal was dismissed vide judgment dated 18.3.2010 and since the appeal was decided, although on merits, after going through the evidence and with the assistance of the learned Additional Public Prosecutor for the State, but without any representation from the side of the appellant, vide order dated 7.1.2011 passed by the Supreme Court on the sole ground that the appellant was not heard the decision dated 18.3.2011 was set-aside and the matter remanded for fresh adjudication. The present decision decides the appeal after hearing learned counsel for the appellant and the State.

2. Vide impugned judgment and order dated 28.1.2008, the appellant has been convicted for the offence punishable under Section 302 IPC inasmuch as the learned Trial Judge has held that the evidence establishes that on 30.6.2002, using the SAF carbine issued to the appellant on duty at the gate of PS Mayur Vihar, the appellant fired indiscriminately at Satish with the intention of causing the death of Satish and that Satish died as a result of bullet injuries suffered by him and thus the appellant was guilty of having committed the offence of murder. The learned Trial Judge has also convicted appellant for the offence punishable under Section 307 IPC for the injuries suffered by HC Panwati who was injured due to indiscriminate firing by the appellant. The appellant has been sentenced to undergo imprisonment for life.

3. Before we note the evidence on record, to focus on the issue which we have to decide, we begin by noting the appellants version pertaining to the incident when he was examined under Section 313 Cr.P.C. To Question No.48: Do you want to say anything about this case? The appellant replied:-

"Ans.: I was doing my duty as a santari. At about 11.40 AM Satish (deceased) who was my relative came there. I had half closed the doors of PS as per directions of SHO. He opened the doors by hitting car against these. He parked his car inside the PS. He started shouting at me. I took him towards near police quarters. He pounced at me. I forbade him from doing so. I took him towards duty officers room. I tried to snatch my carbine from his hands. In that process to pick it up and fit in the carbine. In that process it fired four five times in air. Satish tried to snatch said carbine from me and in that process was hit by bullets. The carbine fired in rapid action from gate of PS up to police quarters. When we were near duty officers room the carbine was set at automatic mode. It fired which hit deceased Satish as well as walls, tube lights and windows of duty officers room."

4. To a person having even rudimentary knowledge of the principles of criminal law, from the answer given by the appellant, it is apparent that an attempt has been made by the appellant to explain the incriminating evidence which has surfaced against him at the trial and needless to state the incriminating evidence was:-

(a) The SAF Carbine issued to the appellant when he was to discharge his duty as a guard at the gate of the police station was the weapon from which bullets issued to the appellant had been fired from.

(b) Satish having died as a result of firearm injuries caused by the bullets fired from the SAF Carbine.

(c) HC Panwati receiving injuries caused by the bullets fired from the SAF Carbine issued to the appellant.

(d) Empty cartridge shells being recovered from near the gate of the police station and from within the police quarters.

(e) Appellant being seen in the company of Satish at the gate of the police station a few minutes prior to the firing.

5. Indeed, if the version given by the appellant is a possibility and fits into the scheme of the event unfolding through the evidence led at the trial, the appellant would be entitled to the benefit of his version for the reason law requires evidence at a criminal trial to not only reach the standard of proof wherefrom the guilt can be safely inferred but even the innocence ruled out.

6. Let us have a look to the scene of the crime through the eyes of the rough site-plan Ex.PW-27/B and the site-plan to scale Ex.PW-12/A, which documents were proved at the trial through the testimony of Insp.Mahesh Tholia PW-27 the then SHO of PS Mayur Vihar i.e. the police station where the firing took place who has deposed of having prepared the rough site plan at the pointing out of HC Panwati PW-2 i.e. the person in respect of whose injuries appellant has been convicted for the offence punishable under Section 307 IPC and in respect of which site plan we find that the testimony of Insp.Mahesh Tholia in examination-in-chief has not even

been challenged when he was cross-examined and through the testimony of Sonu Kaushik PW- 12 the draughtsman who prepared the site plan to scale Ex.PW-12/A at the instance of HC Panwati.

7. The site plan to scale is on the scale 1 cm: 1 mtr. 10 points have been marked on the site-plan as A to J. Point A is the entry to the precincts of the Police Station and is at the southern corner of the entry which we find has a width of 3.5 m. The entry-point is akin to a narrow alley, having a length of about 8 metres and it opens into a compound. The building housing the Police Station within the compound has an entry at point B which is at a distance of about 32 metres from point A. Towards the west of point B is the room of the Station House Officer and opposite point B is a big room, akin to a hall, and further down the said hall is the room of the Duty Officer. Towards the room of the Duty Officer, at a distance of about 3 metres is point J, where a chappal of the deceased was recovered at and point C, further down 2 metres from point J towards the Duty Officers room, is the place where Satish fell and died. The distance between point B and the door of the Duty Officers room is about 9 metres and points D, E, F and G in the Duty Officers room are the places where HC Panwati was injured and wherefrom HC Ompal PW-1, Ct.Vinod and Ct. (Delhi Home Guards) Jai Singh PW-5 saw the incident. Point I is in the lawn of the Police Station adjoining point A, wherefrom 1 live cartridge was lifted and point H is within the precincts of the Police Station just next to where the alley we have referred to hereinbefore leads into the compound of the police station where a Maruti Car No.DL-6CC-8506 of Satish was parked. 16 empty cartridge shells have been shown at the point EC-1 to EC-16 wherefrom they were lifted, and we need to highlight that EC-1 was lifted from near point A. EC-2 was lifted at a distance of about 22 metres from point A and is a point just outside the wall of the room of the SHO. In other words the distance between EC- 1 and EC-2 is about 25 metres and the direction is from point A towards point B. Points EC-3, EC-4 and EC-5 are at a distance of 1.5 metres, 3 metres and 5 metres respectively from point EC-2 and move in the direction towards point B. Points EC-6 to EC-14 are in an area of about 1.5 metres by 4 metres, and are dotted at points between point mark B and C on the site-plan and reveal bullets sprayed in all directions.

8. HC Panwati PW-2 who got injured and at whose statement Ex.PW-2/A the FIR Ex.PW-1/D was registered at the instance of Insp.Mahesh Tholia and was scribed by ASI Ompal PW-1, has deposed in complete harmony with her statement Ex.PW-2/A. She deposed that when she reached the police station for duty at 11:35 AM on 30.6.2002 she saw the accused speak to a person near the corner of a flat and when she was in the duty room in the company of Ct.Vinod, Delhi Home Guard Ct.Jai Singh, HC Ompal and Munshi Gulzari Lal she heard sound of firing at around 11:40 AM and saw that the person whom she had seen a few minutes earlier talking to the accused was bleeding and running with the accused firing and chasing him. Even she received bullet injuries. SI Tej Singh, HC Surender Pal and HC Jai Prakash reached soon thereafter. She was taken by HC Jai Prakash to Lal Bahadur Shastri Hospital where her statement Ex.PW-2/A was recorded and that Insp.Mahesh Tholia prepared the site plan at her instance.

9. Ct.Delhi Home Guard Jai Singh PW-5, whose name finds a mention in the statement of HC Panwati as 1 of the 4 persons present with HC Panwati in the Duty Officers room, deposed of being in the room at 11:30 AM on 30.6.2002 when accused was a guard at the police station and his having heard noise of firing and seeing a person lying unconscious in front of the Duty Officers room and HC Panwati receiving injuries and that accused was dragging the deceased towards the Duty Room with a firearm in hand.

10. We have noted herein above the testimony of HC Panwati PW-2 that as the firing stopped, SI Tej Singh, HC Surender Pal and HC Jai Singh reached the spot.

11. SI Tej Singh PW-10 deposed that along with HC Surender and HC Jai Prakash he overpowered the appellant and seized the carbine and 3 live cartridges as per memo Ex.PW- 10/D. 16 used cartridges were seized vide memo Ex.PW-10/A. 1 live cartridge was seized vide Ex.PW-10/B and 5 used bullet heads were seized vide Ex.PW-10/C. HC Jai Prakash PW-11 corroborated SI Tej Singh.

12. Ct.Harish Kumar PW-15 deposed that he had handed over guard duty to the petitioner and the official SAF Carbine along with a magazine having 20 cartridges were handed over by him to the appellant.

13. Ct.Devinder Kumar PW-21 deposed that he was on duty at PS Mayur Vihar on 30.6.2002 and when he came to the police station he saw the accused near the police quarters talking angrily with some unknown person and as he was changing his dress, to take over duty, he heard firing and saw that the person whom he had seen talking with the accused was lying smeared in blood in front of the Duty Officers room and by that time the SAF Carbine of the accused had been taken over by the Duty Officer.

14. Insp.Mahesh Tholia PW-27 deposed that he was at B- Block Ashok Vihar when at 11:46 AM on 30.6.2002 he got information of firing in his Police Station and thus he immediately returned to the Police Station. He deposed about the exhibits lifted at the spot and his preparing the rough site plan Ex.PW- 27/B.

15. The dead body of Satish was sent to the mortuary of Lal Bahadur Shastri Hospital where Dr.Vinay Kumar Singh PW-18 conducted the post-mortem and prepared the report Ex.PW-18/A as per which he noted 17 injuries on the person of the deceased and suffice would it be to state that there were 6 firearm entry and corresponding 6 firearm exit wounds and the remainder being abrasions; the firearm entry and exit wounds were in the front i.e. the chest and the back region of the deceased, evidencing that at some point of time the deceased was fired from the front and some time from the back. Only 1 firearm entry wound has blackening i.e. tatooing at the entry point evidencing that the same was fired from a close range i.e. the bullet was hot when it pierced the skin. All others do not have tatooing or blackening which shows that the firing was from a distance.

16. Dr.S.B.Jangpani PW-19 who had given emergency medical aid to HC Panwati at Lal Bahadur Shastri Hospital and had prepared the MLC Ex.PW-19/A not only proved the MLC but the fact that HC Panwati has suffered 2 gunshot injuries, one on the left shoulder which had penetrated at the lateral end of the cleical and the other just below injury No.1.

17. Satish Kumar PW-6, the brother of the accused deposed that Sujata, daughter of his paternal aunt, was married to the deceased Satish and it was a love marriage and that the accused was married to one Sunita and that the family, including the accused, learnt that the deceased was having illicit relations with

Sunita the wife of the accused and due to which there was tension. Deceased had clicked nude photographs of Sunita and used to blackmail her. Ram Kumar PW-7 the brother-in-law of the accused deposed in harmony with the testimony of Satish Kumar.

Sunita PW-25 the wife of the accused deposed that on the day of the incident the deceased had come to her house and had threatened that he would kill her husband at the police station.

18. The report Ex.PW-27/H of the ballistic expert proves that the empty cartridges EC-1 to EC-16 were fired through the carbine Ex.F-1 bearing No.16018296 i.e. the weapon admittedly in possession of the appellant and with respect to the 5 deformed bullets lifted from the scene of the crime, as deposed to by SI Tej Singh and as entered in the seizure memo Ex.PW-10/C, it establishes that striation marks on EB-2 and EB-3 evidenced the same being fired from the carbine and that on the remainder no opinion could be given due to insufficient striation marks.

19. This then is the evidence which we need to note and suffice would it be to state that the evidence has to be seen in light of the version given by the appellant.

20. With respect to the version given by the appellant that the deceased hit his car at the door of the police station where the appellant was on duty, suffice would it be to state that there is no evidence that the Maruti Car in which the deceased had come to the police station and which was found parked at the point marked H on the site plan had hit the door of the police station. Thus, the very introduction of a plausible version is ex-facie false. Explaining the carbine issued to the appellant being fired upon, the appellant stated that he tried to snatch his carbine from the hands of the deceased and we find that he does not even say that the deceased snatched the carbine from his hand but merely states that he i.e. the appellant tried to snatch the carbine from the hand of the deceased and in the process firing took place. The magazine fell down and in the process 4-5 times got fired and since the carbine was a rapid firing weapon, the shots reached the gate of the police quarters. In other words, according to the appellant the deceased died as a result of the weapon getting triggered when the deceased tried to snatch the same

from the appellant. This does not explain the empty cartridges being lifted from various points spread over a distance of 32 metres. This version does not explain the deceased being hit from the front and the back. This version does not explain the site plan which evidences that the deceased was chased and fired from behind and when cornered in front of point B, 10 bullets being sprayed. The version ignores that HC Panwati categorically deposed that she saw the accused chasing the deceased and simultaneously firing upon the deceased, which testimony has not even been challenged when HC Panwati was cross-examined. According to the appellants explanation pertaining to the bullets found in the Duty Officers room, he simply states that as the carbine got fired in rapid action at the gate of the Police Station the bullets reached the police quarter. He then says that when he and the deceased were near Duty Officers room, the carbine which was on automatic mode got fired. It is apparent that the appellant has tried to explain individual facts, ignoring that the explanation had to collectively satisfy the cumulative facts and not a plausible version to explain one fact individually and ignoring its conjunction with the others.

21. It is apparent that the version of the appellant is a cock and bull story and has to be rejected. It is a case where we have percipient evidence through the eyes of HC Panwati PW-2 and Jai Singh PW-5 who have categorically deposed that they had seen the appellant not only chase, but fire at the deceased, thereby causing the death of the deceased and in the process of indiscriminate firing injuring HC Panwati.

22. The only worthwhile argument which was advanced was that the testimony of PW-6, PW-7 and PW-25 established that the deceased was troubling the appellant. With reference to the testimony of Ct.Devinder Singh PW-21 who claims to have seen appellant and the deceased speaking angrily, learned counsel urged that it was apparent that upon a sudden quarrel, without any premeditation, appellant fired at the deceased and thus the appellant would be entitled to the benefit of Exception-4 to Section 300 IPC and thus pertaining to the death of Satish the offence committed by the appellant would be culpable homicide not amounting to murder punishable under Part-I of Section 304 IPC.

23. We reject the argument for the reason, in the instant case, the appellant has spoken of how the firing took place and has claimed that it was the deceased who tried to snatch his firearm and that in the said process the firearm which was a rapid fire weapon got triggered of has been found to be false. The appellant has chosen not to state that the deceased said something to him which triggered a sudden quarrel and in the heat of the passion, his emotions blurring his reasoning, led him into folly to fire.

24. The argument picks on the straws which are growing through the testimony of PW-6, PW-7 and PW-25 of there being past acrimonious relationship between the deceased and the accused and further straw through the testimony of PW-21 that soon before the incident he saw the accused and the deceased having an angry dialogue.

25. From the fact that the deceased had gone to the police station and was permitted to park his Maruti Car inside the police station where appellant was on guard duty is proof of the fact that the appellant gave a friendly entry to the deceased inside the police station and permitted the deceased to properly park his vehicle inside the police station. That the deceased went to the police station and had a dialogue with the appellant is proof of the fact that the deceased wanted to talk on some issue with the appellant. The appellant was a police officer and was in his territory i.e. the police station and was armed with a lethal and a deadly weapon. The deceased was unarmed and obviously was not a fool to challenge the appellant in the appellants territory where the appellant was armed and this refutes any plausible hypothetical argument that the deceased acted smart. (Colloquially speaking).

26. We do concede that something triggered the rage compelling the appellant to fire at the deceased, but unfortunately for the appellant it was for him to have disclosed what happened between the two inasmuch as it was a fact within his special knowledge and the mandate of Section 106 of the Evidence Act compels the one having special knowledge of a fact has to disclose the same under pain of an adverse inference to be drawn against the person by virtue of Section 114 of the Evidence Act.

27. That apart, as held by the Supreme Court in the decision reported as AIR 1993 SC 2426 Kikar Singh vs. State of Haryana, though it matters not what the cause of the quarrel was, whether real or imaginary, or who drew or struck first, but where two men start fighting and one of them is unarmed while the other uses a deadly weapon, the one who uses such deadly weapon and especially when the use is indiscriminate, it has to be held that the person concerned has taken undue advantage thereby denying the benefit of entitlement under Exception-4.

28. In the instant case it assumes importance that the appellant chased the deceased and continuously fired and in fact fired 16 rounds at the deceased. It may be true that the number of wounds may not be the criteria on which undue advantage has to be determined but the position of the accused and the deceased with regard to the arms used, the manner of combat are good empirical facts wherefrom the Court can determine whether the accused took undue advantage. Indeed, undue advantage is equated as akin to unfair advantage.

29. We concur with the view taken by the learned Trial Judge that the appellant is guilty of having murdered Satish. Pertaining to the injuries caused to HC Panwati, suffice would it be to state that as a police constable at the Police Station, petitioner knew that in the Duty Officers room at least 3 to 5 police officers are always on duty. Standing right opposite the Duty Officers room and firing shots indiscriminately and in fact spraying the shots as a spray while targeting the deceased, one can safely say that the appellant had knowledge that his acts were imminently dangerous and would in all probability cause death or such bodily injury as was likely to cause death of such persons who were nearby and could become the target of the indiscriminate firing and noting that HC Panwati received 2 gunshot wounds which fortunately for her, because of hitting her at a non-vital part of the body, proved to be neither dangerous nor grievous, we hold that appellants conviction for the offence punishable under Section 307 IPC is correct and in any case is irrelevant for the fact the sentence imposed to undergo 7 years RI is meaningless inasmuch as for the offence of murder the appellant has been sentenced to undergo imprisonment for life.

30. The appeal is dismissed.

31. Since appellant is in jail, a copy of this decision be sent to the Superintendent Central Jail Tihar for record and delivery to the appellant.

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