

Surinder Kaur Vs. State and ors.

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Court : Delhi

Decided On : Mar-04-2013

Judge : Sanjiv Khanna

Appellant : Surinder Kaur

Respondent : State and ors.

Judgement :

\$~2. * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL NO. 245/2012 Date of decision:

4. h March, 2013 SURINDER KAUR Appellant Through Mr. Shailender Dahiya & Mr. Pradeep Ahlawat, Advocates along with appellant in person. versus STATE & ORS. Respondents Through Mr. Sanjay Lao, APP for the State. Mr. Anish Dhingra, Advocate for respondent No.

2. Mr. Deepak Vohra, Advocate for respondent No.

3. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE SIDDHARTH MRIDUL SANJIV KHANNA, J.

(ORAL):

1. Surinder Kaur, mother of the deceased-Darshan Singh, has filed the present appeal impugning the judgment dated 29th October, 2011 and order of sentence dated 9th November, 2011 passed by the Additional Sessions Judge in the charge

sheet emanating from FIR No. 266/2005, Police Station Nangloi, under Sections 302/34 of the Indian Penal Code, 1860 (IPC, for short).

2. By the impugned judgment, the respondent No. 2 Randhir Singh @ Dhira has been convicted under Section 304 Part-I read with Section 326 and 34 IPC and sentenced to Rigorous Imprisonment of five years and fine of Rs.1 lakh. In default of payment of fine, the appellant has to undergo Simple Imprisonment for a period of six months. The other co-accused Jaspal Singh has been convicted under Section 326 read with Section 34 IPC and sentenced to Rigorous Imprisonment for a period of one year and six months. He has also been directed to pay fine of Rs.1 lakh and in default of payment of fine to undergo Simple Imprisonment for six months. The entire fine amount has been directed to be given to Jagjit Kaur, the wife of the deceased as compensation under Section 357 of the Code of Criminal Procedure, 1973.

3. At the outset, we record that the State has accepted the judgment and the order on sentence and has not preferred any leave to appeal.

4. Learned counsel for the appellant impugning the judgment and order on sentence has raised three contentions; (i) the conviction should have been under Section 302 IPC; (ii) the sentence under Section 304 Part-I IPC for five years and fine of Rs.1 lakh is inadequate and (iii) Jaspal Singh was wrongly convicted under Section 326 IPC and should have been convicted under Section 302 read with Section 34 IPC. An additional prayer is made with regard to compensation, which was directed to be paid to the wife, i.e., Jagjit Kaur. The appellant being the mother, it is stated she is entitled to compensation 5. The three contentions are somewhat inter-connected and, therefore, have to be examined together. The trial court judgment is lucid and elaborate and sets out the circumstances why respondent No. 2 has been convicted under Section 304 Part-I IPC and not under Section 302 IPC. The judgment also explains why respondent No. 3 has been convicted under Section 326 read with Section 34 IPC and not under Section 304 Part-I IPC.

6. We have examined the reasoning given by the trial court judgment and also the statements of the relevant witnesses, namely, Jagjit Kaur (PW-6) wife of the

deceased, Dr. Vivek Bindal (PW-12), Dr. Kulbhushan (PW-13) and Dr. Manoj (PW-9). We note here that the learned counsel appearing for the respondents have relied upon statement of ASI Dharam Singh (PW-8).

7. As per the prosecution case, the respondent Nos. 2 and 3 in furtherance of common intention had committed murder of Darshan Singh on 23rd March, 2005 at his house RZ-S-285, Nihal Vihar, Delhi at about 9/9.15 P.M. PW-6 claims and has stated that she was an eye witness to the occurrence. She has deposed that respondent Nos. 2 and 3 had come to her house and had asked for a knife for cutting salad. She gave them the knife and thereafter respondent Nos. 2 and 3 sat in the open portion of the plot and started consuming liquor. She did not approve of this. When her husband, the deceased Darshan Singh, returned home, she expressed her grievance and annoyance to her husband. Darshan Singh started speaking to respondent Nos. 2 and 3 and PW-6 went to the kitchen for preparing food. PW-6 has deposed that she did not know what discussion took place between Darshan Singh and the respondent Nos. 2 and 3. During the discussion, Darshan Singh and the respondent Nos. 2 and 3 entered into fisticuffs and she came out after hearing the commotion. She was pushed by the respondent Nos. 2 and 3 and she tore the clothes worn by them. Respondent Nos. 2 Randhir Singh @ Dhira gave a couple of stab blows by knife to the husband in his abdomen but she was not able to state the total number of stab wounds given. She called the police by making a call at telephone No. 100 and in the meanwhile respondent Nos. 2 and 3 ran away from the spot. She took the deceased to Sanjay Gandhi Memorial Hospital. There he was treated and his statement (Exhibit PW-6/A) was recorded. Thereafter, on 24th March, 2005, the respondent Nos. 2 and 3 were arrested from a liquor shop at Nihal Vihar. She had witnessed their arrests. She deposed that respondent Nos. 2 and 3 had started grappling with her husband and when she tried to save him, the two respondents had pushed her. She further deposed that respondent No. 2 had stabbed her husband, whereas respondent No. 3 kept watching the occurrence. She deposed that she knew Randhir and identified him. She also identified respondent No. 3 who was present in the court and had stated that she did not know his name. PW-6 was cross-examined by the Public Prosecutor.

8. Learned counsel for the appellant has submitted that the deceased had not participated and indulged in drinking liquor with the respondent Nos. 2 and 3. It is submitted that when the deceased objected to the conduct of the respondent Nos. 2 and 3, he was stabbed without any cause and reason. It is argued that Explanation 4 to Section 300 IPC has been wrongly applied. We have considered the said contention but do not find any merit in the same. PW-6 in her cross-examination has deposed that she did not know respondent No. 3-Jaspal but she had given a knife to the respondent Nos. 2 and 3 for cutting salad. She has stated that these persons had come to their house at 8 P.M. on 23rd March, 2005, whereas her husband arrived at the house at 8.30 P.M. The occurrence in question as per the telephone call made to the police control room phone had taken place between 9 to 9.12 P.M. The PCR form (Exhibit PW-15/B) records that a telephone call was made to the control room at 9.12 P.M. stating that in the house RZ-285, S Block, Munna Property Dealer, there was a quarrel and exchange of blows. Thereafter, DD entry No. 26 was recorded at P.P. Nihar Vihar, Police Station Nangloi at 9.15 P.M. (Exhibit PW-7/A). PW-6 is clear and categorical in her examination-in-chief and cross-examination that after her husband came back at 8.30 P.M. she had gone to the kitchen to prepare food. She has also deposed that she did not know about the conversation which took place between the deceased and the respondent Nos. 2 and 3. It is, therefore, clear that there was a time gap between the deceased coming back to the house and the occurrence, i.e., the fight which took place. The deceased Darshan Singh in his statement (Exhibit PW-6/A), which has been treated as a dying declaration by the trial court, had stated that he had come back home at about 8.30 P.M. on 23rd March, 2005. He had claimed that earlier he had liquor with the respondent Nos. 2 and 3 at bus stand and thereafter had travelled with the respondent Nos. 2 and 3 on the scooter but had got dropped at a location before his house. The deceased was admitted to Sanjay Gandhi Memorial Hospital at about 10.30 P.M. on 23rd March, 2005 as per MLC (Exhibit PW-9/A). In these circumstances, we are inclined to discount the dying declaration of the deceased, as purportedly recorded in Exhibit PW-6/A that the deceased had objected to drinking of respondent No. 2 and 3 in the open portion of his house, after returning home at 8.30 P.M. One of the reasons we are inclined to disbelieve the deceased's statement to the said

effect is that PW-6 has stated that she on request of the respondent Nos. 2 and 3 had given them a knife for cutting salad. This shows that PW-6 at least knew the respondent No. 2 fairly well. As per PW-6 and the dying declaration of the deceased (Ex. PW-6/A), the respondent Nos. 2 and 3 were already drunk when they came to the house and after that they had asked for the knife. The aforesaid conduct of the said two respondents and PW-6 shows that she was acquainted and knew drinking habits of the respondent No. 2 and her husband, deceased Darshan Singh.

9. The PW-6 has clearly deposed that there was a sudden quarrel between the deceased and the respondent Nos. 2 and 3, who were otherwise drinking together. The cause of the quarrel is not known. However, the consequences can be ascertained from the medical records. The MLC (Exhibit PW-9/A) records that the patient was conscious and oriented and had one stab wound 3 cm x 1 cm on epigastric region. At another portion in the MLC (Exhibit PW-9/A) it is mentioned that stab wound of 3 x 3.5 cm was present in epigastric region to the right side of the middle line. We note that there was only one stab wound. The patient was declared fit for statement. The aforesaid MLC was proved by Dr. Manoj (PW-9) but the said doctor had not personally examined the deceased. PW-9 has deposed that Dr. Deepak had initially examined Darshan Singh and thereafter he was examined by Dr. Vivek, Senior Resident, Surgery. Dr. Deepak and Dr. Vivek were not produced.

10. ASI Dharam Singh (PW-8) in his testimony has deposed that the deceased Darshan Singh was discharged from the hospital on 25th March, 2005 and had gone to his house. He has stated that he had visited Darshan Singh in his house on 26th March, 2005 and at that time Darshan Singh had complained about pain in stomach. PW-8 did not record any statement to the this effect. Later on he came to know on 1st April, 2005 at 12.45 at night that Darshan Singh had expired at LNJP Hospital. Information about death of Darshan Singh was received in the intervening night between 31st March, 2005 and 1st April, 2005. Thus, there is dispute, whether the deceased Darshan Singh was discharged from Sanjay Gandhi Memorial Hospital on or about 25th March, 2005 or was referred to LNJP Hospital for further treatment without being discharged as such. In the MLC death

summary prepared by LNJP Hospital dated 31st March, 2005 (Exhibit PW-12/A), it is clearly mentioned that the patient, i.e., the deceased Darshan Singh was referred from Sanjay Gandhi Memorial Hospital after exploratory lapratomy was done under general anaesthesia on 23rd March, 2005. In these circumstances, we are inclined to disbelieve the statement made by PW-8 and accept the position as contended by the appellant that the deceased was referred from Sanjay Gandhi Memorial Hospital to LNJP Hospital. The medical records in the present case, which have been recorded contemporaneously, support the said contention.

11. The cause of death as recorded in Exhibit PW-12/A was hepatic failure with acute renal failure with metabolic acidosis with septicemia. The post-mortem report was proved by Dr. Kulbhushan (PW-13). He has stated that the post-mortem was conducted by one Dr. Rohit but he has left the hospital and his whereabouts were not known. As per the post-mortem report (Exhibit PW-13/A) the cause of death was haemorrhage and shock consequent upon injury on the liver vide injury No.

1. We may note that two injuries were noticed in the post-mortem and they are as under:

1) Contusion 25x10 cms present on right chest region and upper front of abdomen on ..side.

2) Stab wound 2x0.5x3 cms present on right upper abdomen 11 cms above the umbilicus and 2.5 cm to the right of midline.

12. As already recorded above, it is not injury No. 2 but as per the post-mortem report, injury No. 1 was the cause of death. PW-13 in his deposition in the court has stated as under: Injury No. 1 is antimortum, around 1 week in duration and could be caused by blunt force impact. Injury No. 2 is caused by sharp edged weapon. Injury No. 1 is sufficient to cause death in ordinary course of nature.

13. As per the post-mortem, the deceased had sustained five external injuries, namely, (i) contusion 12x10 cms on right lower chest region and upper front of abdomen on right side (ii) stab wound of 2x0.5x3 cms on the right upper abdomen,

(iii) lapratomy, i.e., operation wound of 22 cms in front abdomen (iv) scabbed abrasion of .5x.5 cm on the left knee and (v) scabbed abrasion of 1x1 cm on left leg.

14. Medical evidence opines that injury No.1 contusion of 10x12 cms present on the right lower chest and the upper front abdomen, had caused the death and was sufficient to cause death in ordinary course of nature. The stab wound as per the post-mortem report and as per the testimony of PW-13 was not sufficient or the cause of death. Keeping in view the aforesaid facts, the trial court has rightly drawn the conclusion that during the scuffle which took place the deceased fell on his knees as is apparent from the injuries suffered on the legs of the deceased and in that process due to blunt force impact he had received injury No.

1. The said injury resulted in damage/injury to the liver and consequent thereupon Darshan Singh died after an operation. He had remained hospitalized for eight days. In these circumstances, we feel that the respondent No. 2 has been rightly convicted under Section 304 Part-I and not under Section 302 IPC. That apart, we also feel that Explanation 4 to Section 300 IPC would be applicable as there was a sudden quarrel and in that process there was a scuffle causing Injury No.

1. No doubt a kitchen knife, which was given by PW-6 for cutting salad, was used but then that would not draw or take the case out of Explanation 4 to Section 300 IPC. The stab wound was not the cause of death.

15. On the question whether the respondent No. 3 shared a common intention with respondent No. 2 for offence under Section 304 Part-I, we again are inclined to accept the judgment of the trial court that respondent No. 3 did not share the said common intention. For applicability of Section 34 IPC inference has to be gathered from the attending totality of circumstances of the case including the manner in which the accused arrived on the scene and the manner in which victim was attacked, the determination and concert with which the beating was given or the injuries, caused by one or both of them, in what manners they assisted each other in causing the injuries and the conduct of the accused. PW-6 in her testimony in the court has categorically stated that, at the time of attack when the stab wound was inflicted, respondent No. 3 stood by the side and had remained quiet though

in the beginning he had participated in the grapple and had also pushed PW-6. Neither was he found to be instigating the other respondent or goading him on. In view of the statement of PW-6, an eye witness to the occurrence who was deposing after the loss of her husband, it is held that respondent No. 3 has been rightly convicted under Section 326 read with Section 34 IPC and not under Section 304 Part-I read with Section 34 IPC. As an appellate court we do not think in the facts stated above, we should take a different view from the one taken by the trial court. The view taken by the trial court is well considered and takes into consideration the relevant facts and circumstances and the correct legal position.

16. In *Tota Singh and Anr. v. State of Punjab* (1987) 2 SCC 529, the Supreme Court has observed:

6. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.

17. The said position has been reiterated in *State of Rajasthan v. Raja Ram*, 2003 (8) SCC 18, wherein the Supreme Court has observed:

7. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra 1973 CriLJ1783 , Ramesh Babulal Doshi v. State of Gujarat 1996 CriLJ2867 and Jaswant Singh v. State of Haryana 2000 CriLJ2212 .

18. Similarly, on the quantum of sentence, we do not see any reason to interfere with the order passed by the trial court. The trial court while justifying the sentence has noticed several factors why sentence of five years and fine of Rs.1 lakh has been imposed on respondent No. 2 and why sentence of Rigorous Imprisonment of one year six months and fine of Rs. 1 lakh has been imposed on respondent No.

3. Both of them do not have any criminal background and the incident in question had occurred at the spur of the moment.

19. On the question of compensation, it is noticed that the compensation has been directed to be paid to the wife, i.e., PW-6. No compensation has been directed to be paid to the mother. We feel that the 25% of the unpaid compensation (i.e., fine recovered which has not been paid to PW-6) on account of fine recovered should be paid to the mother, i.e., the appellant. The appeal is accordingly disposed of. SANJIV KHANNA, J.

SIDDHARTH MRIDUL, J.

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