

Pawan Vs. State

Pawan Vs. State

SooperKanoon Citation : sooperkanoon.com/978674

Court : Delhi

Decided On : Jul-18-2013

Judge : Pradeep Nandrajog

Appellant : Pawan

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: July 12, 2013 Judgment Pronounced on: July 18, 2013 + CRL.APPEAL 255 1998 PAWAN Represented by:Appellant Ms.Saahila Lamba, Advocate versus STATE Represented by: Respondent Ms.Richa Kapoor, Advocate with Ms.Karuna Chhatwal, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR.JUSTICE V.KAMESWAR RAO PRADEEP NANDRAJOG, J.

1. Believing Ram Gopal PW-1, Ct.Rajbir Singh PW-9 and HC Hanuman Singh PW-21 to be truthful eye witnesses, vide judgment dated May 29, 1998, appellant Pawan has been convicted for having committed an offence punishable under Section 302 IPC but has been acquitted of the charge of having committed an offence punishable under Section 307 IPC. Vide order on sentence dated May 13, 1998 the appellant has been sentenced to undergo imprisonment for life.

2. Appellant was charged for having murdered one Rakesh, by causing fatal injuries with a chopper (Gandasa) on July 17, 1993 at 6.40 PM at Sealing Point, Sadar Thana Road and for having attempted to murder HC Hanuman Singh using the same chopper (Gandasa).

3. We are not concerned in the instant appeal with appellant being acquitted for the charge of having attempted to murder HC Hanuman Singh because the State has not challenged said part of the decision impugned in the appeal by Pawan, but would be noting that the reason why Pawan has been acquitted from the charge of having attempted to murder HC Hanuman Singh is that there was no evidence of he having attempted to murder HC Hanuman Singh. As we would be noting from the facts hereinafter recorded, the only evidence was that when HC Hanuman and Ct.Rajbir Singh attempted to over power Pawan he lunged at HC Hanuman.

4. That a person had caused fatal injuries to another person near Sealing Point Sadar Thana Road was recorded by ASI Bharat Singh PW-15 vide DD No.16-A, Ex.PW-15/B at 6.45 PM and in respect of which fact we find that the testimony of ASI Bharat Singh remains unchallenged. Copy of DD No.16-A was handed over to ASI Pankaj Singh PW-23, who reached the spot where he found HC Hanuman Singh, who informed him that while on duty at the Sealing Point Sadar Thana Road with Ct.Rajbir (examined as PW-9), at 6.40 PM they saw a man being chased by another man who was having a Gandasa in his hand and the said man caused injuries to the man he was chasing. That Ct.Rajbir fired a shot from his licensed stengun at the assailant to disarm him and since the shot missed the assailant, he i.e. HC Hanuman Singh used his service revolver to fire a shot at the assailant because the assailant attempted to assault him with the Gandasa.

5. Aforesaid facts were noted in the statement Ex.PW-21/A of HC Hanuman Singh and beneath the statement an endorsement Ex.PW21/B was made by ASI Pankaj Singh recording therein that a person seriously injured was lying on the road and the assailant who had been apprehended, and was injured, was at the police booth. That both persons i.e. the seriously injured person lying on the road and the injured assailant were sent to Hindu Rao hospital under supervision of SI Ram Niwas (examined as PW-12). It was noted that the Gandasa having blood stains

was lying at the spot. And needless to state, neither testimony of SI Pankaj Singh PW-23 nor the testimony of HC Hanuman Singh PW-21 with respect to the contents of the rukka and the tehrir i.e. statement Ex.PW-21/A and the endorsement Ex.PW-21/B have been challenged.

6. The seriously injured person was Rakesh Kumar and the MLC Ex.PW-25/A records that he was brought to Hindu Rao hospital at 7.15 PM by SI Ram Niwas and was declared dead by Dr.Anil Sahni PW26. MLC Ex.PW-25/B of appellant Pawan records that he was brought to Hindu Rao hospital at 7.10 PM by SI Ram Niwas and had a simple cut injury on the little finger of his hand.

7. We note that contents of neither MLC have been challenged.

8. We need not note the testimony of various formal witnesses associated with the investigation in the form of those who witnessed various seizure memos being prepared, the exhibits being kept in the Malkhana and taken to the forensic laboratory, for the reason presence of the appellant at the spot with injury on his person and deceased Rakesh Kumar lying seriously injured at the spot stands established by the rukka itself and learned counsel for the appellant fairly conceded that so overwhelming was the evidence, both documentary and ocular, being the oral testimonies of HC Hanuman Singh PW-21, the complainant, who had risen to the rank of ASI when he deposed, Ct.Rajbir and an independent eye witness Ram Gopal examined as PW-9 and PW-1 respectively.

9. Further we note that when examined under Section 313 Cr.P.C. and incriminating circumstances put to him the claim that it was he who was running on being chased by Rakesh who had a Gandasa in his hand and that it was Rakesh who assaulted him and injured him. In said defence he retaliated. This is apparent from the answers to questions No.1 to 4 given by him.

10. That an incident in which deceased Rakesh Kumar died took place at 6.40 PM at the Sealing Point Sadar Thana Road in which appellant participated was not questioned. But it was urged that a microscopic perusal of the deposition of Ram Gopal PW-1 and especially a statement made by him during cross-examination would reveal that it was the deceased who chased the appellant with a Gandasa in

his hand and the appellant grappled with the deceased and in the process received injuries and fortunately for the appellant he managed to disarm the deceased and in said defence caused the injuries to the deceased as a result of which the deceased died. Alternatively it was pleaded that from the testimony of PW-1 it would be apparent that it was a case of sudden quarrel entitling appellant to the benefit of exception 4 to Section 300 of the Indian Penal Code.

11. Ram Gopal PW-1 deposed that he was a book binder having a shop at Pahar Ganj in Gali Tel Mill, and on July 17, 1993 at 6.45 PM he saw two persons running from the side of Edgah towards Jhandewalan Road. The person who was in front was not carrying anything but was raising an alarm and the person following him was carrying a Gandasa and the person following inflicted stab injuries with the Gandasa on the other person who raised an alarm. The person carrying the weapon was the appellant. A havaladar and a police constable was present at the police booth in front whereof the injured fell. Appellant was shouting in anger as if possessed by a demon. The appellant attacked the Head Constable. A shot was fired by the Constable from the stengun and then by the havaladar from his revolver. The Head Constable and the Constable caught the appellant. The Gandasa fell down. Later on more police force came.

12. We note the exact testimony of Ram Gopal PW-1 pertaining to what he saw. It reads: The persons (sic. Should read person) who was in front was not carrying anything but was raising alarm and the person following him was carrying a gandasa type thing. The fact about gandasa was confirmed by me later on. The person following gave one or two stab injuries with that weapon on the person who was raising alarm when they had reached near Police Booth. The person carrying the weapon is present in the court (correctly identified). One Hawaldar and a police constable were present at the police booth. The injured person fell down. The accused present in the court was also shouting in anger (Jaise bhoot sawar hota hai), I saw accused raising his hand with the weapon towards the Head Constable. I heard a shot fired at the spot again. (sic) Said constable was carrying a sten gun. He (sic) tried to fire but could not and then the hawaldar fired a shot from his revolver. I am not sure whether he fired once or twice. Person carrying gandasa was hit by bullet.

13. During cross-examination, PW-1, as his testimony stands recorded, stated as under: I had seen one person with a gandasa in his hand and he was running. Two persons were running at that time. One person was running ahead of that person having gandasa and the other person was running behind him. The person who was running behind the person having gandasa and the person having gandasa grappled with each other. The persons (sic. Should read person) having gandasa assaulted the person who had grappled with him. I cant say clearly if the gandasa was snatched by that person from person having gandasa.

14. Ct.Raj Singh PW-9 deposed that he was on duty at the police picket at sealing point Sadar thana from 8.00 PM to 8.00 AM on July 17, 1993 and saw two persons running from the side of Jhandewalan Motia Khan at around 6:40 PM. The person ahead was empty handed and the person following had a Gandasa in his hand. He and HC Hanuman Singh tried to stop the person chasing and having Gandasa in hand, but the person attacked the other person. Using a lathi they tried to prevent the assault. When the person with the Gandasa caused injury on the neck of the person he was chasing, he fired a bullet, which missed the assailant at which HC Hanuman Singh fired from his revolver. Police force came and took both persons to the hospital. Appellant was the assailant.

15. HC Hanuman Singh PW-21 deposed in sync with Ct.Rajbir Singh and identified the appellant as the assailant.

16. With reference to the line the person who was running behind the person having Gandasa and the person having Gandasa grappled with each other which we have underlined while reproducing the cross-examination of PW-1 as stands recorded, in paragraph 13 above, learned counsel, appointed as Amicus Curiae for the appellant, would urged that the same would reveal that the person running behind was not the one having the Gandasa, because the witness has said : the person who was running behind the person having Gandasa. Thus, learned counsel urged that it is apparent that it was the deceased who was running ahead with the Gandasa in hand and the appellant was chasing him. As they grappled, the appellant managed to snatch the Gandasa from the hands of the deceased and caused the injuries in self defence.

17. Suffice would it be to state that while recording the cross- examination, the learned Trial Judge has incorrectly translated what was deposed to by PW-1 who does not know English language. In Delhi, witnesses deposed in vernacular and the Court recording evidence translates the same. It could also be the result of an over whelmed witness speaking in confused language.

18. If we peruse the examination-in-chief of Ram Gopal, relevant part whereof we have extracted verbatim in paragraph 12 above we find that he has clearly stated that the person who was in front was not carrying anything and was raising an alarm and the person following him was carrying a Gandasa. He has clearly identified the appellant as the person carrying the weapon. That apart, the sentence preceding the sentence picked upon by learned counsel for the appellant cannot be ignored. The immediate preceding sentence to the sentence picked upon reads: one person was running ahead of that person having Gandasa and the other person was running behind him. The preceding sentence would show the confusion, probably caused when the witness was being cross-examined. As per the preceding sentence, one person was running ahead of the person having a Gandansa and the other person was running behind him. This means that there were three people running. One in the front and one behind the person having gandansa.

19. Testimonies of witnesses have to be appreciated not by picking up a sentence here or a sentence there. The testimonies have to be read as a whole and understood as a whole.

20. Besides, with respect to the post-mortem report Ex.PW-11/A which has not been challenged we find the following injuries caused upon the person of the deceased:1. One big chopping on right side of face placed obliquely extending from 1.5 cms. right side of nose to the right side back of neck below the mastoid area. The size of the injury was 8 inches x 2.5 inches. The borders of the wound are regular and caused by single blow.

2. Scattered abrasions were seen on the left eyebrow, forehead and lateral aspect of left eye area 3 inch x 2 inch.

3. On chopping on right side of forehead close to the hair line size 3.5 inch x 1 inch bone is cut.
4. One chopping on the back side of right shoulder size 7.5 inch x 3 inch x scapula is seen cut.
5. Incise wound on the right side back of abdomen in the lumbar region size 1 inch with scratch extending laterally for 2 inches.
6. Chopping on the right thigh back side size 6 inch x 3 inch bone deep.
7. One obliquely placed scratch of length 5 inches on the back of right thigh.
8. One chopping on the right leg middle size 3 inch x 1 inch x Tibia is cut.
9. Incise wound on the left leg size 1 inch x half inch muscle deep.
10. One scratch on the left thigh size 3 inches.
11. Chopping wound on the right middle, index, ring finger by one blow. The lower end of the ring finger is missing whereas middle and index finger are hanging. At this time one plastic packet brought by police contained the missing part of right ring finger and was having corresponding cut.
12. One bruise on the left arm size 3 inch x 1 inch.
13. One bruise size 3 inch x inches on the left arm.
14. Incise wound size 1 inch x 1/5 inch on the left shoulder top.
21. Assuming it was a case as projected by the appellant, he would be entitled only to reasonable self defence and not excessive force in retaliation. The extent of injuries and the indiscriminate manner of the assault evidenced by the injuries clearly establishes brutal force used far in excess of a reasonable right to self defence. Thus, the argument predicating the defence that the appellant acted in self defence has to fail on facts as also upon the assumption that the fact was as projected by the appellant.

22. The alternative argument that the testimony of witnesses would reveal that the accused was running behind the victim and was armed with a gandansa at that time as if possessed by a demon, the expression used by PW-1, would make it clear that something happened between the deceased and the appellant which so infuriated the appellant that he chased the deceased in public and caused fatal injuries i.e. it is a case of appellant acting upon a sudden quarrel in the heat of the passion or a sudden fight without premeditation be now dealt with.

23. Now, what triggered the incident was not seen by any eye witness because the attention of the eye witnesses was drawn to the appellant and the deceased when they saw the deceased running on the road with appellant in pursuit, armed with a gandansa. The appellant had personal knowledge as what triggered the chase and he alone could speak about the same. Section 106 of the Evidence Act requires a person, having special and personal knowledge of a fact, to state the same and if he does not do so, requiring an adverse inference to be drawn. The appellant was thus obliged to state, at the first instance to the Investigating Officer as to what triggered the incident so that the Investigating Officer could investigate the truth thereof. Alternatively he had to speak when he was examined under Section 313 Cr.P.C. He lost the opportunity by not disclosing what triggered the incident and thus cannot build a presumptive and an imaginative case.

24. We note that when the incriminating circumstances were put to the appellant he did not deny his presence, but stated that it was the deceased who attacked him and for which he relied upon the MLC Ex.PW-25/B which records simple cut injury on appellants hand, which injury was obviously received by the appellant when he was hitting the deceased with the chopper and we find that in his testimony PW-21 has so deposed. The appellant did not disclose facts as to how the chase began.

25. We cannot lose sight of the fact that as per the post mortem report Ex.PW-11/A duly proved by the author thereof, Dr.L.K.Barwa PW-11, as many as 14 injuries were found on the person of the deceased, some of which were scattered abrasions, with the fatal being injury No.1, 3, 4, 5, 6, 8, 11 and 14 of which injury No.1, 3, 4, 6, 8 and 11 were opined to be individually and collectively sufficient to

cause death in the ordinary course of nature. The said injuries are directed towards the face and the forehead. The right maxilla and the right jaw bone as also the frontal bone had been cut with damage to major blood vessels. Right side of the neck had a deep cut. The fatal and the brutal attack evidences a clear intention to cause the death of the deceased using a chopper, and in any case, a person who launches such a brutal assault had to be attributed knowledge with reference to the imminently dangerous nature of the act committed that in all probability death would be the inevitable result.

26. Maintaining the conviction and the sentence imposed we dismiss the appeal. We are not directing the appellant to surrender because he is in Central Jail, Tihar on being charged for having committed another murder. This fact was disclosed to us when we had issued a bailable warrant to produce the appellant in Court when the appeal came up for hearing and there was no representation from the side of the appellant. The police, to execute the bailable warrant, found that the appellant was lodged in Central Jail Tihar from where he was produced in custody.

27. However, the surety bond furnished by the appellant when he was granted bail pending hearing of the instant appeal is discharged.

28. Copy of this order be sent to the Superintendent, Central Jail Tihar for necessary entries in the record. Another copy be sent to the Superintendent, Central Jail Tihar to be supplied to the appellant. (PRADEEP NANDRAJOG)
JUDGE (V.KAMESWAR RAO) JUDGE JULY 18 2013 skb/mamta

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com