

State of U.P.

Vs

Ram Niranjana Singh

Criminal Appeal No. 256 of 1968

(C. A. Vaidialingam, A. N. Ray JJ)

16.04.1971

JUDGMENT

VAIDIALINGAM, J. -

1. In this appeal, by special leave, by the State of Uttar Pradesh, the question that arises for consideration is whether the acquittal, by the High Court, of the respondent for the offence under Section 302, I.P.C. is correct.
2. The respondent is a lawyer and was residing at the material time in Mohalla Dunkinganj in a three-storeyed house. He and his family occupied first and the second floors in that they had to use the water tap and the latrine on the ground floor. The ground floor rooms had been let out to several persons including Smt. Keshar, P.W. 24. She was living in the rooms for over six years and was paying rent to the respondent. But the respondent was taking steps to evict her and had also asked her to vacate the rooms. P.W. 24 appears to have represented about this to several people in the locality including Munder. On the evening of December 6, 1965 the respondent again asked P.W. 24 to vacate the rooms and actually threw out her household articles on the road. At that time Munder came to that place and protested against the conduct of the respondent in throwing out the articles of P.W. 24. An altercation ensued between the respondent and Munder, but an adjoining shop-keeper Ram Prasad, P.W. 4, intervened and separated them, as a result of which P.W. 24 took back the articles to her house.
3. According to the prosecution, on December 7, 1965, at about 9 a.m. the respondent sent his nephew Babbu, D.W. 1, to bring Munder. When Munder came near the house of the respondent, the latter immediately shot him with a single barrel breach loading gun, Ex. 2. On being hit by the gun-shot Munder instantly fell down and died on the spot. On hearing the news about the shooting incident, the neighbours including one Sri Ram, who was a friend of Munder and Bhola Nath (P.W. 3) came near the house of the accused. Sri Ram began to abuse the accused for killing an innocent person. On this the accused fired with the same gun another shot at Sri Ram, who fell down dead. One of the pellets from the gun-shoot hit Bhola Nath who sustained an injury and ran away crying that he had been injured by the accused. Several people came to the scene and infuriated at the conduct of the accused began to throw stones and empty bottles towards his room. The police, who had been informed by P.W. 5 by telephone that shooting was taking place in the area, immediately arrived on the scene headed by the Sub-Inspector, P.W. 25. On seeing the police party, the crowd stopped pelting stones and throwing empty bottles towards the house of the respondent. The accused was arrested with the gun and taken to the police station. His wife and child were also taken away by the police party so that no harm may be caused to them by the crowd which had assembled there.

4. P.W. 3, who had sustained an injury was examined by the doctor P.W. 2, and he has issued the wound certificate Ex. Ka-4. The injury has been described as follows :

"An abrasion 1/2" X 1/4" together with traumatic swelling 1 1/4" x 3/4" located 3/4" below the antero-superioriliac spine and in front of the upper part of the thigh."

The doctor has stated that the injury might have been caused by friction against a hard object, which could have been the gun shot. But he has nevertheless stated that the injury was simple.

5. P.W. 14 performed the post-mortem on the bodies of Munder and Sri Ram. The post-mortem certificates in respect of Munder and Sri Ram are Exs. Ka.-19 and 20 respectively. With reference to Murder, it stated that he had received a circular gun-shot injury 1 1/2" in diameter and that there was no burning or charring around the wound. It is further noted that on internal examination the right 6th and 7th ribs of Munder on the anterior side for about 2" were found almost wholly absent, and the missing pieces were found embedded in lungs and liver. According to the doctor death was caused by hemorrhage due to injury sustained by the gun-shot. The doctor has further opined that the gun must have been fired from a distance of more than four feet and possibly six feet from the deceased.

6. On the body of Sri Ram, the doctor found the injuries noted in Ex. Ka-20. The injuries were on the left side of the chest and on the right scapular region. According to the doctor death had been caused due to the injuries caused by the gun-shot. It is the opinion of the doctor that the injuries must have been sustained by Sri Ram from the gun-shot from a distance of more than four feet.

7. It is not necessary to give details about the nature of the injuries described on the bodies of the two deceased as well as the injury found on P.W. 3 because the accused has admitted shooting with the gun both Munder and Sri Ram and he has further stated that Bhola Nath sustained an injury when he fired at Sri Ram.

8. The accused was charged under Section 302, I.P.C. for causing the death of Munder and Sri Ram by shooting them with a fire-arm. He was also charged with the offence under Section 307, I. P.C. for causing injuries to Bhola Nath P.W. 3, with such intention or knowledge that if the shooting had caused the death of Bhola Nath he would be guilty of murder.

9. Regarding the incident, the prosecution mainly relied on the evidence of P.Ws. 1, 3, 4, 5, 12, 15 and 24. P.Ws. 1,4 and 24 speak to the quarrel that took place between the respondent and Munder in consequence of the articles of P.W. 24 being thrown out of her room. According to these witnesses, on the evening of December 6, 1965, the respondent in a high-handed manner threw out the articles of P.W. 24 on the road with a view of making her vacant the rooms. At that time Munder, who came there protested against the action of the respondent. The respondent remarked that Munder had no business to interfere in his affairs and that if he continues to interfere the consequence will have to be borne. Munder replied that whatever happens will be faced by him. The accused asked Munder to get away. At that time P. W. 4 intervened and advised Munder to go away.

10. P.Ws. 1 and 4 speak to the shooting by the accused on both Munder and Sri Ram. According to their evidence, they saw in the morning of December 7, 1965, at about 9 or 9.30 a.m. both Munder and Babbu D.W. 1 coming together to the house of the accused. On seeing Munder coming, the accused came armed with the gun and advanced towards Munder abusing him in vulgar language. After coming near Munder he fired his gun at Munder and the latter fell down dead. After Munder

had fallen down, the accused reloaded his gun. In the mean while Sri Ram accompanied by P.Ws. 3, 15 and others came to the place on hearing about the shooting at Munder. Sri Ram seeing the dead body of Munder, abused the accused for killing an innocent man. At this respondent rebuked Sri Ram and asked him to get away on pain of being shot. As Sri Ram persisted in abusing the respondent, the latter fired the gun at Sri Ram, who fell down dead. Bhola Nath also received an injury and was crying that he had been shot by the accused. Both these witnesses have admitted that after the shooting incident several people assembled at the place and getting excited started pelting stones and throwing empty bottles in the direction of the house of the respondent. No doubt they have denied that both Sri Ram and Munder came together with a number of people and threatened to kill the respondent and the members of his family and it was in such a situation that the accused fired in self-defence.

11. P.W. 5, speaks to having seen the shooting of Munder and so far as that shooting is concerned, his evidence is similar to that of P. Ws. 1 and for. On seeing the said shooting he informed the police by telephone that shooting was taking place in that area. He has not spoken to anything about the shooting of Sri Ram.

12. P.W. 15, who was at that time an M.L.A. speaks to having heard the sound of a gun-shot and when he came to the place he found Munder already lying dead. He further deposed that Sri Ram came there and abused the respondent for having shot dead Munder for no purpose. The respondent shot at Sri Ram and killed him P.W. 3 Bhola Nath has deposed to the effect that he was on his way to fetch his father's sister on the morning of December 7, 1965, when he heard the sound of a gun-shot coming from the direction of the house of the respondent. He met Sri Ram who was then near about that place and both of them went near the house of the respondent and saw the corpse of Munder lying near the house of the respondent. When Sri Ram started abusing the accused the later fired at Sri Ram and killed him. In that shot which was fired, he also sustained an injury and ran away from the place due to pain and fear.

13. P.W. 12 is the father of Munder. He has deposed that on the morning of December 7, 1965, Babbu D.W. 1, nephew of the respondent, came and called his son Munder saying that he was wanted by his uncle, the respondent. Both Munder and Babbu left the house and within 20 or 25 minutes the witness was informed by a stranger that Munder had been shot dead by Vakil Saheb. On hearing this he ran towards the house of the accused and saw the dead body of Munder and also of Sri Ram lying dead.

14. P.W. 24 has spoken to the persistent attempts made by the respondent to turn her out of the room. She has also spoken about the incident on the evening of December 6, 1965, and the quarrel that took place between Munder and the respondent. Regarding the shooting of Munder and Sri Ram, she has given the same evidence as that of P.Ws. 1 and 4. She has denied the suggestion that she was having an old husband and she was living in illicit intimacy with Munder. She has further denied that on the morning of December 7, 1965, the wife of the respondent seeing Munder sitting close to P.W. 24 in her room remarked that Munder had converted the house into a Sarabkhana and a Bhatiarkhana and in view of this a quarrel ensued between the respondent and Munder and Munder was pushed out of the house by the respondent and his nephew D.W. 1. She has further denied that Munder on being so humiliated left the house threatening the respondent with dire consequences and that shortly thereafter Munder returned with Sri Ram, P.W. 15 and very many other people and began to throw stones and empty bottles towards the room where the respondent was sitting. She has also denied the suggestion that there was an attempt by Munder to kill the respondent with a knife when the accused opened fire against Munder. She has also denied the further suggestion that

Sri Ram led a crowd into the house of the respondent for the purpose of killing the respondent and the other members of his family and when so advancing there was very heavy pelting of stones and that in order to save his life as well as the lives of the members of his family, the respondent opened fire against Sri Ram.

15. The Police Officer, P.W. 25, has spoken to the fact that brick-bats and stones and broken pieces of broken glass bottles were seen on the road, in the verandah of the house of the respondent as well as near his room and on the roof of the house.

16. The plea of the accused was as follows : He denied the incident spoken to by the witnesses stated to have taken place on the evening of December 6, 1965. Regarding the incident on the morning of December 7, 1965, he admitted firing two shots, the first of which killed Munder and of the second killing Sri Ram and he claimed that he had shot them to save not only his life but also the lives of his wife and child, as Munder was armed with a knife and was advancing for the purpose of killing him. Sri Ram also was shouting that the respondent and the members of his family should be killed. The big crowd was very heavily throwing stones towards his residential room and the crowd itself was advancing headed by Munder and Sri Ram. Bhola Nath was also with Munder and Sri Ram aggressively threatening the respondent and pelting stones. It was under those circumstances that he had to open fire and the moment the police party came he voluntarily gave the gun to the police officer and requested him to give protection not only to him but also to his wife and child. Accordingly, they were all taken by the police officer to the police station. Therefore, he pleaded that what he did was by way of private defence and that he was not guilty. He had also examined his nephew Babbu, D.W. 1 to speak to the fact that the respondent never asked him to go and bring Munder on the morning of December 7, 1965, and also to speak to the further fact that when the crowd was threateningly advancing towards his house led by Munder and Sri Ram and pelting stones, the respondent asked D.W. 1 to go and fetch the police D.W. 2's evidence is not very material.

17. The learned Sessions Judge noted the discrepancies in the evidence of P. Ws. 1, 4 and 24 regarding the incident on the evening of December 6, 1965, but nevertheless held that something of the sort spoken to by the prosecution must have occurred on the evening between Munder and respondent that the said incident ultimately led to the gun play on the next morning. Regarding the shooting of Munder and Sri Ram on the morning of December 7, 1965, the learned Sessions Judge after considering the prosecution version and the defence plea, is of the opinion that the story of the prosecution is by the large a correct one. The learned Sessions Judge accepted the evidence of P.W. 12 that on the said morning D.W. 1 came and took Munder on the ground that the respondent wanted to see him and that both of them left towards the house of the respondent. The learned Judge rejected the plea of the respondent that there was an attempt by Munder and Sri Ram led by a big mob to kill the respondent and the members of his family. The learned Judge notes that the Superintendent of Police and the District Magistrate, who visited the scene and had noticed much quantity of brickbats and glass pieces lying on the roof of the verandah, on the floor and in the room of the respondent, but merely brushed aside this consideration on the ground that it is not necessary to be taken into account to do justice in the case. The learned Judge has divided the incident which took place on December 7, 1965, into two parts. According to the learned Judge, Munder was shot in the first instance by the respondent when his nephew Babbu brought him. The learned Judge has accepted the evidence of P. Ws. 1, 4 and 12 that Munder came to the house of the respondent on having been informed by D.W. 1 that his uncle wants to meet him. Munder came to meet the respondent, when the later shot him dead. When Munder was shot, under those circumstances, the respondent had no right of the private defence and it was a cold-blooded murder. The second part of

the incident, according to the learned Judge, was when Sri Ram came on the scene on hearing about the shooting of Munder and started abusing the respondent and throwing stones along with several other people. After having exhausted the throwing of one heap of stones Sri Ram was actually picking up stones from another heap to be hurled against the respondent and his family members, and it was then that the respondent shot dead Sri Ram. The death of Sri Ram, under those circumstances, by the respondent was perfectly justified and it was only in the exercise of his right of private defence to save his life and the lives of the members of his family. Therefore, the respondent was not guilty of murder of Sri Ram under Section 302, I.P.C. though he shot him with the intention of killing him. Similarly, as Bhola Nath was also aggressive like Sri Ram and got injured by the shot fired by the respondent against Sri Ram in exercise of his right of private defence, the respondent is not guilty of any offence under Section 307, I.P.C.

18. The learned Judge in consequence acquitted the respondent of the charge of murder under Section 302, I.P.C. of killing Sri Ram and he also acquitted him of the offence under Section 307, I.P.C. for the injury caused to Bhola Nath P.W.3. But so far as the offence of causing the death of Munder was concerned, the learned Sessions Judge convicted the respondent under Section 302, I.P.C. and sentenced him to death.

19. There was no appeal by the State against the acquittal of the respondent of the offence of murder under Section 302, I.P.C. regarding the death of Sri Ram nor against his acquittal under Section 307, I.P.C. for the injury caused to Bhola Nath.

20. The respondent filed criminal appeal No. 57 of 1967 before the High Court challenging his conviction and the sentence of death for causing the death of Munder. The High Court by its judgment under appeal has upheld the plea of self-defence even in respect of the death caused to Munder and acquitted the respondent. In coming to this conclusion the High Court has held that the finding of the learned Sessions Judge that the incident of December 7, 1965 took place in two distinct parts was erroneous. On the other hand the High Court has felt considerable doubt regarding the incident spoken to by the witnesses as having taken place on the evening of December 6, 1965. In fact the High Court has held that the evidence of P.Ws. 1, 4 and 24 cannot be accepted because they spoke about that incident for the first time only in the Sessions Court and they spoke nothing about the same when they were examined in the committing court. The High Court has accepted the defence version that there was a quarrel between the accused-respondent and the deceased Munder on the morning of December 7, 1965, in view of the observations made by the respondent's wife that Munder was converting the house into a Sarabkhana and a Bhatiarkhana. The High Court has also held that as a result of this quarrel Munder was pushed out of the house by the respondent and his nephew D.W. 1 and that Munder along with Sri Ram and Bhola Nath and several others came in a body hurling abuses against the respondent and threatening to kill him and the members of his family. The High Court has also found that there was very heavy stone throwing and throwing of empty bottles by Sri Ram, Munder and other members of the crowd and they were advancing into the house of the respondent menacingly and uttering cries that he and the members of his family should be killed. When Munder was advancing towards the respondent armed with a knife and followed by Sri Ram and the crowd, the respondent fired against Munder as he apprehended danger to his life as well as to the lives of the members of his family. The shooting of Munder, under those circumstances, according to the High Court was in exercise of the right of private defence by the respondent. The High Court has held that the shooting of Munder and Sri Ram and causing injury to Bhola Nath were parts of one and the same incident and there was absolutely no justification for dividing it into two parts as was done by the learned Sessions Judge. The High Court has not believed the evidence of P.W. 12, the father of Munder that on the morning of the occurrence, his

son was sent for by the respondent through his nephew D.W. 1 and that Munder left the house to meet the respondent alongwith D.W. 1. This means that the High Court was not prepared to accept the evidence of P. Ws. 1, 4 and 24 that Munder came to the house of the respondent accompanied by Babbu D.W. 1 and that he was straightway shot. Similarly, the High Court has not accepted the prosecution evidence that Munder had no part in throwing of stones against the respondent and that he did not attempt to attack the respondent with the dagger. On this reasoning the High Court, differing from the Sessions Judge, acquitted the respondent of the offence of causing the death of Munder.

21. On behalf of the State Mr. O. P. Rana, learned counsel, has very strenuously attacked the judgment of the High Court on the ground that the High Court has not considered the evidence of the prosecution witnesses, who have clearly deposed the circumstances under which Munder was shot dead by the respondent. He quite naturally relied upon the reasons given by the learned Sessions Judge for holding the respondent guilty under this head and contended that the High Court has not in any way held that the finding of the Trial Court in this regard is fallacious. He particularly emphasised that the incident took place not as pleaded by the respondent but as spoken to by the prosecution witnesses. According to him Munder was sent for by the respondent to meet him on the morning of December 7, 1965, through his nephew D.W. 1 and that Munder came unsuspectingly near the house of the respondent when he was shot dead by the respondent who had already armed himself with the gun to kill Munder. The counsel urged that the accused had no right of private defence. Under those circumstances, the order of acquittal passed by the High Court is erroneous.

22. Mr. Nuruddin Ahmed, learned counsel for the respondent, has relied on that part of the judgment of the learned Sessions Judge for acquitting the accused for causing the death of Sri Ram and also for causing injury to Bhol Nath. Those circumstances, the counsel pointed out, existed even when the respondent shot Munder, who was aggressively proceeding armed with a dagger to attack the respondent. Therefore, the counsel urged that the High Court has considered the entire evidence and came to the conclusion that the respondent is not guilty.

23. We are not impressed with the contention of Mr. Rana, learned counsel for the appellant, that the High Court has not considered the material evidence in the case when it differed from the conclusions arrived at by the learned Sessions Judge in respect of the shooting of Munder. We have in the earlier part of the judgment referred rather exhaustively to the nature of the evidence adduced by the prosecution, the plea of the accused as well as the findings of the learned Sessions Judge and the High Court. In our opinion, the learned Sessions Judge was not justified on the evidence, in proceeding on the basis that the incident took place on the morning of December 7, 1965, in two parts. In this connection it may be noted that even if the evidence of P.Ws. 1, 4 and 24 is accepted, it is clear that in the incident which is stated to have happened on the evening of December 6, 1965, the accused and Munder have parted swearing vengeance against each other. This aspect, which has been missed by the learned Sessions Judge does assume considerable importance in considering whether Munder would have quietly walked into the house of the respondent like a lamp on the morning of December 7, 1965, as urged by the prosecution. The attempt of the prosecution to divide the incident into two parts; one relating to Munder and the other relating to Sri Ram is only to deprive the respondent of any possible right of private defence that he may plead. Even according to the prosecution version in respect of shooting of Sri Ram, that was done when the latter was withdrawing after merely abusing the respondent for killing Murder. That case has miserably failed. It is clear from then findings of the learned Sessions Judge that Sri Ram was actively participating in throwing stones and endangering the lives of the respondent and the members of his family. In fact the respondent has been given a clean acquittal by recognising his right of private defence

regarding the shooting of Sri Ram. We will assume that an incident as spoken by P.Ws. 1, 4 and 24 did take place on the evening of December 6, 1965. We have already referred to the nature of the incident spoken to by them. P.Ws. 1 and 4 are very categorical in their statements that when Munder intervened on behalf of P.W. 24, the respondent resented the same and found fault with Munder for interfering in his affairs and Munder replied that he is prepared to face any consequence. P.W. 4 has gone further and stated that he separated the respondent and Munder and advised the latter to go away. When such an incident has happened and when the respondent and Munder have parted on very unfriendly terms is it likely that the accused-respondent on the morning of December 7, 1965, would send his nephew to ask Munder to come and meet him? And is it probable that Munder would quietly agree to come and meet the respondent on his being so called? In our opinion, it is highly improbable that Munder would have been either sent for or that the latter would quietly come to meet the accused when a bitter incident had taken place on the previous evening. If the respondent would not have sent for Munder and the latter would not have come of his own accord on the morning of December 7, 1965, the circumstances under which the shooting took place assume a different shape and must have happened only in the circumstances pleaded by the respondent. It is beyond imagination that the respondent would have been quietly waiting to shoot dead Munder when he walks into his house on being requested to come and meet him.

24. Though P.W. 24 has denied that there was any quarrel on December 7, 1965, between Munder and the respondent, in view of the statement made by the wife of the respondent, the High Court was perfectly justified in not believing her evidence. It is in evidence of the police officers and the Superintendent of Police and the District Magistrate that when they visited the scene there was a large quantity of brickbats and glass pieces on the street, near the verandah and inside the room of the respondent and on the roof of the house. This circumstance though taken into account by the learned Sessions Judge for holding the respondent not guilty so far as the death of Sri Ram is concerned, has been brushed aside when the case against the respondent regarding Munder's death was being considered. The learned Judge was not justified in ignoring this very vital circumstance which corroborates the plea of the respondent that there was very heavy stone throwing and throwing of empty bottles by the crowd headed by Munder and Sri Ram. In fact, even the prosecution witnesses admitted that there was heavy stone throwing and throwing of empty bottles towards the room of the respondent, but have stated that this took place only after Munder was killed.

25. The learned Sessions Judge has disbelieved the evidence that Sri Ram was shot deliberately by the respondent when Sri Ram was quietly attempting to go away from that place after abusing the respondent for killing Munder. On the other hand the learned Sessions Judge has held that Sri Ram was actively participating in throwing of stones and hurling of empty bottles and was also threatening that the respondent and the members of his family should be killed. The court has further found that Sri Ram had exhausted throwing of one pile of stones. It was when he was again picking up stones from another heap to be hurled against the respondent that he was shot by the respondent. If once it is held that the incident relating to the death of Munder and Sri Ram was an integrated one and cannot be divided into parts, it follows that the same right of private defence that the respondent had for causing the death of Sri Ram was available to him even in respect of Munder. While holding that the respondent has acted in private defence when he shot dead Sri Ram, the learned Judge was not justified under more or less the same circumstances, in not recognising the right of private defence in the respondent regarding Munder. The High Court quite rightly corrected this serious error in the judgment of the learned Sessions Judge.

26. To conclude the High Court was right in acquitting the respondent of the offence under Section

302, I.P.C. for causing the death of Munder.

27. The appeal is dismissed.

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