Raza Pasha Alias Kamar Miyan

Vs

State of Madhya Pradesh

Criminal Appeal No. 305 of 1976

(A.P. Sen, V.B. Eradi JJ)

04.03.1983

JUDGMENT

BALAKRISHNA ERADI, J. –

1. Dhabla is a small village in Raisen District of Madhya Pradesh. At about 7.30 a.m. on July 19, 1969, Mohammad Naim, a resident of this village, died as a result of gunshot injuries sustained by him. The appellant before us, who belongs to the same village, was charged under Section 302, Indian Penal Code, with having committed the murder of deceased Naim. That the fatal injuries suffered by the deceased were caused by a shot fired from a gun held in the hands of the accused was not disputed. The plea put forward by the accused in defence to the charge was mainly that he had acted in the exercise of his right of private defence. An alternative case was also faintly urged by him, namely, that the shot was not fired by him deliberately but the gun might have gone off accidentally. This plea was not, however, seriously pursued. The learned Sessions Judge accepted the plea of private defence put forward by the accused with the result that he was acquitted.

2. The State carried the matter in appeal before the High Court of Madhya Pradesh. The High Court considered the oral and documentary evidence with great care and thoroughness and ultimately held that the only conclusion that could reasonably be arrived at on the basis of the evidence adduced in the case was that there was absolutely no act on the part of the deceased and his companions which could have reasonably given rise to any apprehension in the mind of the accused of present and imminent danger to his person and hence there was no scope at all for upholding the plea of private defence put forward by him. In the light of the said conclusion, the High Court set aside the order of acquittal passed by the Sessions Judge and convicted the appellant under Section 302, Indian Penal Code, for having committed the murder of deceased Mohammad Naim. He was accordingly sentenced to undergo imprisonment for life. The accused has come up to this Court by filing this appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellant Jurisdiction) Act, 1970.

3. The counsel appearing on both sides have taken us through the entire oral and documentary evidence. On our independent review of the evidence adduced in the case in the light of the arguments addressed to us by both sides, we have unhesitatingly come to the conclusion that the High Court was right in holding that the accused has totally failed to make out his plea of private defence and that he was liable to be convicted under Section 302, Indian Penal Code.

4. From the evidence of the three eye witnesses, Sarfraj (PW 3), Naseem (PW 4) and Aziz (PW 14), it is established beyond doubt that the accused had fired the gunshot at the deceased and it resulted in the instantaneous death of the deceased on account of multiple pellet injuries suffered by him.

The evidence of Dr Gurjar (PW 2), who conducted the post-mortem over the dead body of the deceased, and of the ballistic expert, Yadav (PW 12) fully corroborates the testimony of the aforesaid witnesses. Though a faint plea had been put forward by the accused in the trial court that the gun had gone off accidentally, that was rightly rejected by the learned Sessions Judge in view of the uncontradicted evidence of PW 3, PW 4 and PW 14 that the accused had deliberately taken aim at the deceased and fired the shot.

5. The only question that remains to be considered is whether there was reasonably ground for any apprehension being generated in the mind of the accused that he was in imminent danger of being killed or being subjected to grievous hurt at the time when he fired the gun. It has come out in the evidence that shortly before the occurrence, a quarrel had taken place between the accused and Sarfraj (PW 3) on one side, and the deceased Naim, Aziz (PW 14) and Naseem (PW 4) etc., on the other, at or near the house of Jaskaran (PW 7). In the course of the said quarrel, the accused, who was armed with a lathi, inflicted some injuries on the deceased Mohammad Naim and ran away from the place. The distance from that place to the house of the accused was about 725 feet. The accused was pursued for some distance by deceased Mohammad Naim, Sarfraj (PW 3), Naseem (PW 4) and Aziz (PW 14). While so, the accused who was running ahead of his pursuers picked up a stone and threw it towards them and as a result, Neseem (PW 4) was hit by the stone and he sustained some injuries on his hand. These facts are fully established by the evidence. According to the evidence of PW 3, PW 4 and PW 14, they thereafter gave up the chase and started walking towards their fields. For reaching their fields, they had to pass along the lane in front of the house of the accused. These witnesses have sworn that while they along with the deceased were walking along the lane in the direction of their fields and were near the gate of the house of the accused, they found that the accused, who had earlier run ahead and gone inside his house, had picked up a gun and was standing in the Bada of his house pointing the gun towards the gate. These witnesses have deposed that the accused then shorted to them and when, on hearing the short, the deceased turned and looked towards the house, the accused fired the shot from his gun and the deceased collapsed instantaneously on the road. The testimony of these witnesses has been accepted by the High Court as truthful and we also do not see any reason whatever to doubt their veracity. The plea put forward by the accused is that the deceased along with PW 3, PW 4 and PW 14 and one or two others armed with ballam, lohangis and lathis had chased him, that they had tried to attack him by entering his house and this had led to a reasonable apprehension in his mind that he would be killed or wounded grievously and it was in that situation that he had fired the gunshot to avoid that attack in exercise of his right of private defence. There is absolutely no evidence to show that either the deceased or any of the persons accompanying him had entered the compound of the house of the accused.

6. A perusal of the spot map (Ex. P-11) shows that the house of the accused has a fairly large compound and there is a distance of about 40 to 50 feet between the Bada of the house of the accused and the gate opening out into the road. The ballistic expert (PW 12) has opined in his report (Ex. P-12) that, judging from the area of dispersion of the pellet holders on the shirt and body of the deceased, the gun must have been fired from a distance of 10 to 15 yards. He has further stated in the report that if the gun had been fired from a distance of 8 to 10 feet, as contended by the accused, some type of blackening would have been present on the shirt; but he did not find any blackening on the shirt (Article E), which the deceased was wearing. In his report as well as in his testimony, PW 12 has expressed the opinion that the distance from which the shot was fired at the deceased would not be less than 10 to 15 yards. In spite of elaborate cross-examination, nothing whatever has been brought out to discredit the testimony of this witness or to doubt the soundness of the opinion expressed by him. It is, no doubt, true that Dr Gurjar (PW 2) has stated in his evidence that he had found burn marks at five places on the shirt of the deceased and that in view thereof, he was of the

opinion that the distance between the assailant and the victim, at the time when the gun was fired, was not more than 10 feet. Significantly, no mention whatever has been made by PW 2 in the post-mortem report that there were any burn-marks or charring marks on the body of the deceased at the places of entry of the pellets. Nowhere, in the course of his observations concerning the external appearance of the body of the deceased, do we find any mentioned by the medical officer of burn-marks. It is only in the concluding portion of the post-mortem report, under the heading "remarks regarding articles sent for examination along with the dead body" that there is a description of the shirt of the accused as having been burnt in about five places. The said shirt which the deceased had been wearing at the time of the occurrence had been forwarded to the ballistic expert also, and after examining it PW 12 has clearly stated in the report (Ex. P-12) as follows :

> Shirt S-1 having blood stains and holes 5 on the front left side (three of big size and two of small size). There is no blackening present around the holes.
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> PW 12 has confirmed the truth of this observation in the oral testimony given in Court. We are satisfied that the adverse comments made by the High Court against the conduct of the medical officer (PW 2) are fully justified. In our opinion, the High Court acted rightly in disbelieving the evidence given by PW 2 on this aspect and accepting as true the observations made by PW 12 in his report (Ex. P-12). The expert opinion given by him in the said report as well as in his oral testimony was rightly relied on by the High Court.

7. From the above discussion, it is clear that the distance between the accused and the deceased, when the gunshot was fired, must have been about 45 feet. The place where the deceased had fallen down as a result of the fatal gunshot injury has been marked in the spot map. The evidence of head constable Mohammad Ahmed (PW 15) and the Seizure Memo (Ex. P-5) prepared by him on the date of occurrence go to prove that the body of the deceased was lying on the lane in front of the house of the accused and the earth at the spot was smeared with blood. It has also come out in the evidence that there were no blood-stains anywhere inside the compound of the house of the accused. It is, therefore, clear that the deceased was shot at while he was in the lane which passes in front of the house of the accused. We may also mention that there is absolutely no evidence on record to show that the deceased was armed with a ballam as contended by the accused. In these circumstances, it is impossible to believe the story put forward by the accused that the deceased along with his companions had entered into the compound of his house and were menacingly approaching towards him at a distance of 3 to 4 paces brandishing ballams etc., and that he fired the shot in self-defence apprehending imminent danger to his life.

8. The only conclusion that can reasonably be reached on the evidence that we have summarised above is that the deceased and the three eye witnesses, Sarfraj (PW 3), Naseem (PW 4) and Aziz (PW 14) were in the lane in front of the gate of the house of the accused when the accused fired at the deceased with his gun. The accused has totally failed to establish that there was any overt act on the part of the deceased or the three witnesses aforementioned which could have generated any reasonable apprehension in his mind that he was in imminent or present danger of being killed or subjected to grievous hurt. On the other hand, the evidence of the eye witnesses PW 3, PW 4 and PW 14 which the High Court has, in our opinion, rightly accepted as true is that they along with the deceased were passing the lane towards their fields and when they reached in front of the house of the accused, they were shorted at by the accused-respondent and when they turned and looked in his direction, they found the accused standing in his Bada taking aim at them with his gun and immediately the gun was fired by the accused hitting the deceased. Such being the factual situation,

the evidence adduced in the case is reasonably capable of leading only to one conclusion, namely, that there was absolutely no act on the part of the deceased and his three other companions which could have caused any reasonable apprehension in the mind of the accused of immediate danger to his life or grievous injury to his person so as to justify his firing the gun in exercise of the right of private defence. We hold that the High Court acted rightly in setting aside the order of acquittal passed by the Sessions Court, and convicting the accused under Section 302, Indian Penal Code. This appeal is accordingly dismissed.

9. The bail bond of the appellant will stand cancelled and the appellant will forthwith be taken into custody to serve out his sentence.

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