

Sehaj Ram

Vs

State of Haryana

Criminal Appeal No. 28 of 1982

(V.B. Thakkar, M.P. Thakkar JJ)

24.03.1983

JUDGMENT

THAKKAR, J.-

1. Whether the offence committed by the appellant, a Constable of Haryana Police Force who fired his rifle at another Constable, Kaptan Singh of the same Force, as a result of which Kaptan Singh succumbed to the injuries sustained by him on the spot would fall under Section 302 of the Indian Penal Code or would constitute a lesser offence is the limited question which is posed in this appeal by special leave.

2. The learned Sessions Judge at Rohtak convicted the appellant for an offence under Section 302 of the Indian Penal Code in connection with the 'on the spot' death of Constable Kaptan Singh on September 23, 1979 at about 8.30 p.m. by gunshot injuries inflicted by the appellant. By his judgment and order dated June 14, 1980 the learned Sessions Judge convicted the appellant and sentenced him to suffer imprisonment for life. The High Court of Punjab and Haryana confirmed the order of conviction and sentence rendered by the learned Sessions Judge and dismissed the appeal preferred by the appellant on April 30, 1981.

3. This court granted special leave "confined to the question of nature of offence and sentence" by an order passed on January 18, 1982.

4. The only question that arises before us is, therefore, whether having regard to the facts and circumstances of the case the offence would fall under Section 302 of the Indian Penal Code as held by the learned Sessions Judge and confirmed by the High Court or whether it would constitute a lesser offence. In a sense the question is merely academic. Having regard to the facts and circumstances of the case even if the offence does not fall under Section 302, IPC as held by the Sessions Court and the High Court but falls under Section 304 Part I, IPC as contended by the learned counsel for the appellant, the sentence of imprisonment for life imposed by the lower courts deserves to be maintained. That is why the question as regards the nature of the offence loses its importance. Even so since we are seized of the matter we propose to deal with the said question briefly.

5. The following facts have been established by overwhelming evidence and are incapable of being disputed :

(i) The appellant was armed with a 303 rifle in his capacity as a Constable of the Haryana Police Force;

(ii) When the victim of the assault, Kaptan Singh, who was also a member of Police Force, came out from his office at the Police Post at about 8 p.m. the appellant fired at him with his rifle;

(iii) He fired several shots at Kaptan Singh who was trying to run away towards his office in order to save his life;

(iv) One shot hit him just beneath the knee of his right leg and Kaptan Singh collapsed on the floor inside the office;

(v) Even after Kaptan Singh collapsed in the office the appellant fired another shot at him though the shot did not hit him;

(vi) The total number of used cartridges which were recovered from the scene of offence were five;

(vii) The Ballistic Expert has expressed his opinion that all the five cartridges were fired from the rifle which was seized from the appellant;

(viii) Evidence revealed that the victim had sustained 10 injuries which have been described by the Medical Officer as under :

(1) An oval lacerated wound with inverted margins running obliquely in its width through and through the tissues of the right leg on the medial surface of the right leg 2" below the right knee joint, measuring 1 1/4" x 3/4". There was an abraded area around the wound and up to 1 per cent above the wound which was black in colour.

(2) An irregular vertical lacerated wound on the posterior surface of the right leg in the middle one-third running through and through the leg, measuring 7 1/2" x 4", all deeper muscles, fascia, blood vessels, nerves were torn. There was commuted fracture of the right fibula at the middle of the shaft.

(3) A vertical lacerated wound on the outer surface of the right leg in the middle one-third measuring 5" x 1 1/2" muscle deep.

(4) A through and through vertical lacerated wound on the medial surface of the right leg in the middle one-third measuring 5 1/2" x 2"

(5) A vertical lacerated wound on the medial surface of the right leg at the junction of upper one-third and lower two-third measuring 2" x 1" bone deep.

(6) An oblique abrasion on the right maxillary region of the face measuring 1 1/2" x 1/2" which was light blue in colour.

(7) A vertical abrasion on the left side of the forehead just above the left eyebrow, measuring 3/4" x 1/4" which was bluish black in colour.

(8) A circular abrasion 1" above the outer end of the left eyebrow measuring 1/4" x 1/4" which was black in colour.

(9) A vertical abrasion on the outer surface of the right elbow measuring 1" x 1/4" which was light blue in colour.

(10) An irregular abrasion on the outer surface of the left elbow measuring 1" x 3/4" bluish black in colour.

(ix) Through Kaptan Singh was shot five times only one bullet hit him. The medical evidence shows that there was one entry wound but there were four exit wounds [injuries (2), (3), (4) and (5)];

(x) Injuries (1), (2) and (3) were sufficient in the ordinary course of nature to cause his death, in the opinion of the doctor.

6. In the background of these facts it has been contended that the intention to cause the death of Kaptan Singh cannot be attributed to the appellant particularly in view of the fact that the bullet hit him just below the knee of his right leg. It is argued that the intention was merely to frighten him or to cause grievous hurt. And the offence would at the highest fall under Part I of Section 304 of the Indian Penal Code.

7. Having given our anxious consideration to this submission urged by learned counsel for the appellant we are unable to accede to it. Having regard to the fact that the appellant had used a dangerous weapon like a rifle (being a police constable he must have known that it was a dangerous weapon) and having regard to the fact that he had fired at Kaptan Singh as many as five shots, one of which was fired after Kaptan Singh was hit by a bullet and collapsed on the ground, it is impossible to accept the contention that the appellant had not done the act with the intention of causing his death. It is naive to argue that the intention was merely to frighten him or to cause grievous hurt for it overlooks the two salient features viz. (1) as many as five shots were fired from his 303 rifle and (2) that he fired a shot even after Kaptan Singh had collapsed on the ground having been hit by one of the shots. A bare glance at Section 300 of the Indian Penal Code would show that if the act is done with the intention of causing death, culpable homicide would be murder. Under clause Secondly of Section 300 if the act is done with the intention of causing death, culpable homicide would be murder. Under clause Secondly of Section 300 if the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused it would amount to murder. When the appellant, a police constable fired from his 303 rifle (he must have known that it was a deadly weapon) no other inference is possible but that he intended to cause such bodily injury as he knew to be likely to cause death of the person to whom the harm was caused. Clause Thirdly of Section 300 provides that if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death it would amount to murder. Again having regard to the facts narrated hereinabove no other conclusion is possible except that the appellant intended to inflict such bodily injuries to the deceased which were sufficient in the ordinary course of nature to cause death. In any view of the matter it would fall under clause Fourthly which provides that if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid it would amount to murder.

8. Illustrations (a), (c) and (d) to Section 300, IPC reading as under may be flashed on the mental screen in order to reinforce this conclusion :

(a) A shoots Z with intention of killing him. Z dies in consequence. A commits murder.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

9. We have therefore no hesitation in holding that the courts below were right. The appeal therefore fails and is dismissed. The appellant is presumably in jail as no bail was granted by this court. The appellant shall serve out the remaining part of sentence in accordance with law.

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