

Radha Kishan

Vs

State of Haryana

Criminal Appeal No. 236 of 1978

(S. Natarajan, V. B. Eradi JJ)

05.02.1987

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave is against the judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 1284 of 1974 confirming the conviction of appellant, Radha Kishan under Section 302, Indian Penal Code and Section 27 of the Indian Arms Act and the sentence of life imprisonment and three years' RI respectively awarded therefor.
2. Having regard to the evidence in the case and the defence taken by the appellant, the appeal raises a limited question viz. whether the appellant shot deceased Darya intentionally or accidentally.
3. Briefly stated the facts are as below. One Amar Singh, who was also tried with the appellant but acquitted of the charge under Section 302 read with Section 114, Indian Penal Code came from his village on December 5, 1973 and took the appellant and Darya for "shikar". Amar Singh was having a licensed gun. On December 5 and 6, the "shikar" party could not get any game and hence they started proceeding to another forest known as Papsar forest on the evening of December 7, 1973. While going along a "kacha" road from Ferozepur to Rasulpur they passed the fields of Pala Singh (PW 2). Pala Singh and his farm servants saw the appellant and his two companions arguing in loud tones when they went along the "kacha" road. After the party had covered a distance of about 30-40 "karams" the witnesses heard the noise of a gunshot. When they ran to the place to find out what the matter was they saw Darya staggering the falling down and the appellant and Amar Singh trying to run away. On being chased and caught the appellant was found having a gun in his hands and Amar Singh was having a bandolier with cartridges in it. Darya died instantaneously as a result of the gunshot injury.
4. Pala Singh (PW 2) went to the police station and gave a report. A case was registered and the police authorities came to the scene and arrested the appellant and Amar Singh and seized the gun and the bandolier. The dead body of Darya was sent to the hospital. The post-mortem examination revealed that Darya had been shot from behind and he had sustained an injury above the scapular angle on the right side of the back - 3 cm in diameter.
5. In the trial of the case the appellant admitted that he went along with Amar Singh and Darya for a "shikar" and that on the evening of December 7, 1973 they were going along the kacha road leading to Rasulpur. He then stated that all of them were drunk and that while he was carrying the gun on his shoulders it went off accidentally without his knowledge.

6. The Sessions Judge and the High Court did not accept the version of the appellant that the gun went off accidentally. Taking into consideration the site of the gunshot would and the conduct of the appellant and Amar Singh in trying to run away from the scene after Darya had been shot, they have held that the appellant must have deliberately shot Darya and hence he should be convicted under Section 302 IPC. Insofar as Amar Singh is concerned the Sessions Judge gave him the benefit of doubt and acquitted him and there was no appeal against his acquittal to the High Court.

7. Mr. R. C. Kohli, learned counsel for the appellant took us through the relevant portions of the evidence of the witnesses and the judgments of the Sessions Judge and the High Court and initially attempted to canvass the position that Darya's death was purely due to the gun going off accidentally. As the argument did not carry conviction he contended alternately that the Sessions Judge and the High Court should have convicted the appellant either under Section 304 Part II or under Section 304-A IPC. Mr. Kohli argued that the attempt of the prosecution to prove motive for the occurrence had failed because the Sessions Judge and the High Court have noticed that Darya had unhesitatingly joined the appellant and Amar Singh for the "shikar", and that for three days they had been going about together on friendly and cordial terms. The learned counsel, therefore, stated that the shooting incident should have occurred either due to a sudden quarrel or on account of grave and sudden provocation to the appellant or on account of culpable rashness or negligence on the part of the appellant. In support of his submission Mr. Kohli relied upon two factors viz, the boisterous argument carried on by the "shikar" party when they passed the land of PW 2 and the drunken state in which the appellant and Amar Singh were found when they were caught by the witnesses.

8. On a consideration of the matter we find substance in the contention of Mr. Kohli. We cannot, however, accept his plea that the appellant should have been convicted only under Section 304 Part II or under Section 304-A IPC. The appellant, in our opinion, should have been convicted under Section 304 Part I instead of under Section 302 IPC. The circumstances make it clear that the appellant would not have intentionally shot Darya with a view to kill him or even with a view to cause an injury which would be sufficient in the ordinary course of nature to cause death. For nearly three days the appellant was moving closely with Darya and if he had wanted to kill him he would have done so on the night of December 5 or 6 in a lonely place in the forest area. Furthermore, there is evidence that the appellant, Amar Singh and Darya were engaged in some heated argument when they passed the land of PW 2 a few minutes before the occurrence. It is also in evidence that the appellant and Amar Singh were found to have consumed liquor when they were apprehended. They had confessed to PW 2 and others that in their inebriated condition they did not know what had happened. No doubt they tried to run away from the scene but it must be more on account of fear than on account of any guilty mind. We, therefore, feel that the circumstances warrant the conclusion that the appellant must have shot Darya either on account of some grave and sudden provocation or in the course of a sudden quarrel attracting Exception 1 or Exception 4 to Section 300 IPC.

9. We, therefore, modify the conviction of the appellant from Section 302 IPC to Section 304 Part I IPC and award, for the said conviction a sentence of 8 years' RI. The conviction and sentence under Section 27 of the Indian Arms Act will stand confirmed. The substantive sentences will run concurrently. To the extent, the conviction and sentence are modified, the appeal will stand allowed. The appellant should surrender himself to custody forthwith for serving the rest of the sentence.

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