

Ajit Singh

Vs

State of Punjab

Criminal Appeal No. 233 of 1985

(S. Natarajan, K. Jagannatha Shetty, Kuldip Singh JJ)

28.03.1989

ORDER

1. Criminal Appeal No. 233 of 1985 has been filed by the appellant Ajit Singh, who has convicted by the Sessions Judge, Ferozpur under Section 302 IPC (two counts) and sentenced to death subject to confirmation of the sentence by the High Court. Besides he was also convicted under Sections 307 and 426 IPC and sentenced to RI for five years and one month respectively and also under Section 27 of the Arms Act and sentenced to RI for six months. For the conviction under Section 307 IPC he was also sentenced to pay a fine of Rs. 1000 in default to undergo RI for two years. In the reference under Section 366 CrPC made by the Sessions Judge and the appeal preferred by the appellant, the High Court modified the convictions under Section 302 IPC to convictions under Section 304 Part I IPC and substituted the sentence of death with a sentence of RI for ten years on the ground the appellant had caused the death of his wife Swarno and his neighbour Gurbux Singh under grave and sudden provocation. The convictions and sentences under the other counts were however confirmed.

2. In the appeal preferred by Ajit Singh, he seeks relief confined only to the question of sentence. The other two appeals have been filed by Amarjit Singh, the son of deceased Gurbux Singh for restoration of the convictions of the appellant under Section 302 IPC and for appropriate sentence being awarded therefor.

3. We have heard the learned counsel for the appellants in the respective appeals. Inasmuch as the occurrence is not disputed by appellant Ajit Singh, the only question for consideration is whether he had shot his wife Swarno and the other deceased Gurbux Singh under grave and sudden provocation or deliberately so as to constitute the offence one under Section 300 IPC. According to the prosecution, there was a quarrel between the appellant and his wife Swarno at about 10.00 a.m. on the day of occurrence and attracted by the noise of the quarrel, the deceased Gurbux Singh, along with his son PW 3 Amarjit Singh and daughter PW 13 Amarjit Kaur, went to the house of the appellant to see what the matter was and Gurbux Singh advised the appellant not to quarrel with his wife. Enraged by his intervention, Ajit Singh is said to have taken his gun and fired a shot at Gurbux Singh but because his wife Swarno tried to shield Gurbux Singh she got shot on her chest. She then ran inside the house and fell down and the appellant followed her inside and fired another shot at her. Thereafter the appellant is said to have come out of the house and fired a shot at Gurbux Singh who by then had taken shelter behind a buffalo tethered in the courtyard. The gun shot hit a ten month old grandchild which Gurbux Singh was carrying. Thereafter when Gurbux Singh tried to run into the house, the appellant fired again and this time Gurbux Singh was hit. He was rushed to the hospital but he succumbed to his injuries. Amarjit Singh lodged the first information report. To prove its case the prosecution relied on the testimony of PW 3 and PW 13, the son and daughter of

Gurbux Singh.

4. The appellant's plea before the Sessions Judge was that he had left the house on that morning to visit his sister but after going some distance, he realised that he had not brought his money purse and hence he came back to the house. On reaching home, he found Gurbux Singh and his wife in a compromising position and acting under grave and sudden provocation he had fired the shots at his wife and Gurbux Singh.

5. Though the Sessions Judge refused to give credence to the defence version, the High Court gave credence to it as the events pertaining to the occurrence gave a high degree of probability to the version. The High Court has set out fully the reasons for giving acceptance to the version put forward by the appellant and for holding that the accused had caused the death of the two persons under grave and sudden provocation.

6. After having considered the evidence and the arguments of the learned counsel for the parties, we are of the view that the High Court was justified in holding that the appellant should have acted only under grave and sudden provocation, when he fired the shots at Swarno and Gurbux Singh. The prosecution version that Ajit Singh tried to shoot Gurbux Singh in the first instance and that his wife intervened and tried to shield Gurbux Singh and had got shot first does not sound probable. If that was how she got hit in the chest, there is no explanation why Ajit Singh should have followed Swarno into the house and again fired at her and thereafter come out and fired at Gurbux Singh. We are, therefore, in agreement with the view taken by the High Court regarding the nature of the offence and therefore we see no reason to restore the convictions awarded to the appellant by the Sessions Judge under Section 302 IPC.

7. Consequently, Criminal Appeal Nos. 497-498 of 1984 filed by Amarjit Singh are dismissed.

8. Coming to the appeal of the appellant for reduction of sentence, we are of the opinion that since the appellant had acted under grave and sudden provocation and the offences committed by him are punishable only under Section 304 Part I IPC, a sentences of seven years RI under each of the two counts would meet the ends of justice. Consequently, the sentence of RI for ten years awarded to the appellant for his convictions under Section 304 Part I IPC will stand reduced to RI for seven years under each count, the sentences to run concurrently. The convictions of Ajit Singh under the other charges and the sentences imposed therefore are left undisturbed. To the extent the sentence is modified, Criminal Appeal No. 233 of 1985 will stand allowed.

</html