A. N. Chandra

Vs

State Of U. P.

Criminal Appeal No. 470 of 1978

(S. R. Pandian, K. Jayachandra Reddy JJ)

14.09.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. –

1. The appellant was tried for an offence punishable under Section 302, IPC for committing the murder of one Sani alias Dal Bahadur on October 2, 1969 at about 7.30 p. m. in Kothi Rajni Kunj, Mauza Ballupur, in Dehradun District by shooting the deceased with a gun. The trial court acquitted him holding that the appellant filed the shot in exercise of his right of private defence. The State preferred an appeal against the said order of acquittal. The High Court reversed the findings of the trial court and convicted the appellant under Section 302 IPC and sentenced him to imprisonment for life. Aggrieved by the judgment of the High Court, the appellant has preferred the present appeal.

2. Learned counsel for the appellant submitted that the version given by the two eye-witnesses is discrepant and is conflicting regarding the place of occurrence and that the witness have not come out with the whole truth regarding the genesis of the occurrence. He further submitted that the High Court erred in reversing the order of acquittal inasmuch as the injuries found on the accused appellant would themselves go to show that the violence was used against him and the appellant only acted in exercise of his right of self-defence. Lastly, he contended that only one injury was inflicted and therefore the offence will not amount to murder.

3. The prosecution case is as follows. The appellant and PW 2 John Daniel had their quarters in the same building known as 4, Ballupur Road, Dehradun. The appellant occupied his quarter about 3-4 months before the occurrence. PW 2 was living in his quarter along with his wife PW 1, and his brother-in-law the deceased. PW 2 was employed at Dalanwala and in his absence the accused used to cut jokes with PW 1. On October 2, 1969 at about 7.30 p. m. while PW 1 was waiting for her husband at the gate the appellant teased her and addressed her as prostitute. After PW 2 her husband, her father and brother-in-law, the deceased returned. PW 1 complained to them. Thereupon her father PW 2 and the deceased chastised the appellant and a scuffle ensued. The appellant apologised for his mistake. Then the accused went into his house and came back with a gun and shouted that he would teach a lesson to them. The deceased tried to pacify him but the appellant fired his gun. The deceased was hit on the chest and a grazing pellet caused injury to PW 2 below the left eye. PW 2 took the deceased to the hospital in a scooter. At about 11 o'clock he died. PW 5 the Head Constable of the local police station on receiving the information went to the place of incident. He arrested the appellant from his quarter and recovered a gun. There was an empty shall of cartridge in the gun. He took the appellant as well as the recovered articles to the police station. PW 3 the Head Moharrir at the Cantonment Police Station registered the case. PW 14

the Medical Officer, Doon Hospital examined the injured and found one lacerated injury on the chest and an abrasion on the stomach. PW 7, another Head Constable on receipt of the information of the death, made an entry in the general diary and PW 12 the Sub-Inspector of Police reached the hospital and held the inquest. The post-mortem was conducted by Dr. R. P. Srivastava, PW 11. He found one lacerated wound 11/2" x 11/2" chest cavity deep just interned to right nipple. The wound was between 4th and 5th ribs and multiple gunshot wounds some separate and some coalescing extended from the right clavicle up to 2" below the joint of the midbone of the chest and then up to 9 1/2" below the midline of the right maxilla. Another gunshot would 1/10" in diameter x skin deep. 1" to the left of umblicus and another gunshot wound 1/10" in diameter above the middle of right inguinal ligament. On internal examination he found multiple lacerated wound. There was a lacerated wound 1/10" x 1/10" cavity deep on the right upper part of the chest (auricle). There was another lacerated wound 1/10" x 1/10" cavity deep on the anterior surface of the lower part of the heart (on the right ventricle). There was a gunshot wound on the right surface of the stomach which was cavity deep. He also found six lacerated wounds 1/5" x 1/5" in the liver. The doctor opined that the death was due to shock and haemorrhage and the injuries were sufficient in the ordinary course of nature to cause death. After completion of the investigation the chargesheet was laid.

4, The prosecution examined 15 witnesses. When examined, the accused denied the offence. He stated that PWs 1 and 2 and the deceased named their hen after the name of my wife and they used to abuse it by her name and when he remonstrated PW 2 and the deceased entered his house and beat him with fists and kicks and felled him on the ground and also pressed his throat and the deceased leaving the appellant picked up the latter's gun and rushed towards him. The appellant caught hold of him and there was a struggle between him and the deceased and all of a sudden a shot was fired from the gun which hit the deceased. Therefore, according to the accused, it was only an accident.

5. The accused was examined by PW 4 another doctor on October 4, 1969. He found the following injuries on him :

1. Abrasion (day scale) 1/10" x 1/10" on the right side of forehead.

2. Bruised swelling (blue) 1" x 1" round about injury No. 1.

3. Bruised swelling (blue) 1 1/2" x 1" on the left side of upper nose adjoining cheek.

4. Bruised swelling (blue) 2" x 1 1/2" on the left side of neck.

5. Nail scratch (dry scale) 1/10" x 1/10" on the left side of neck outer side.

6. Nail scratch (day scale) 1/10" x 1/10" on the left side of neck just above the middle of left clavicle about 1 1/2" below injury No. 5.

7. Abrasion (dry scab) 1/4" x 1/10" on the back of thumb on its base.

8. Abrasion (dry scab) 1/2" x 1/2" on the back of the proximal inter phalangial joint of left index finger.

9. Abrasion (dry scab) 1/10" x 1/10" at the back and outer side of the left thumb at its root.

10. Abrasion (dry scab) 1/2" x 1/10" vertically on the outer side of the middle phalanx of left thumb.

6. He opined that all the injuries were simple and injuries Nos. 5 and 6 were caused by scratches with nails and other injuries were caused by fist blows. These injuries were 1 or 2 days old.

7. The prosecution case mainly rested on the evidence of eye-witnesses PW 1 and 2. The learned trial Judge more or less accepted their evidence. However, regarding the motive the evidence of PW 1 was not fully accepted. The learned trial Judge also pointed out that in respect of place of occurrence the testimony of the two witnesses is conflicting. PW 1 stated that the 'marpeet' was on the passage and not near the 'takht' and at another place it was stated that the 'takht' was in front of the residential room of the accused. PW 2 stated that the accused was sitting on the 'takht' which was lying by the passage and that the 'takht' was in front of the kitchen of the accused and that the 'marpeet' was on the 'takht'. There is no dispute that the occurrence has taken place in the building only. The learned Sessions Judge, however, having held that there is a discrepancy regarding the place of occurrence, held that in view of this conflict in the evidence of these two witnesses, the story of the accused has to be accepted. Having discussed the medical evidence and the nature of the injuries he was, however, not prepared to accept the theory of the struggle and of accident put forward by the accused. Then he proceeded to consider the right of private defence and ultimately held that the accused was entitled to the right of private defence even to the extent of causing death. The High Court accepted the evidence of the two eye-witnesses. Regarding the discrepancy about the place of occurrence, the learned Judges observed that there was not much distance between the takht and the place shown 'A', 'B', and 'C' in the plan. The learned Judges also pointed out that there could have been an altercation during which the accused received the accused received the minor injuries. But they gave a clear finding that the accused went inside, brought the gun and deliberately fired at the deceased and therefore he had no right of private defence.

8. In this appeal, as mentioned above, the learned counsel contended that firstly the evidence is discrepant. The presence of PW 1 and 2 are not in dispute and their version is consistent from the beginning. As rightly held by the High Court the so-called discrepancy regarding the actual place of occurrence is not at all material. Even according to the defence, the occurrence has taken place near the quarters. PW 2 also received gunshot injuries and PW 1 and 2 deposed that after the scuffle, the accused apologised but went inside and brought the gun immediately and fired. The medical evidence rules out the theory of scuffle. The doctor, PW 11 who conducted the post-mortem having regard to the nature of the injuries deposed that the deceased must have been at a distance of 10-12 feet from the barrel of the gun. In the cross-examination he admitted that there were cardboard pieces inside the injuries. Relying on this admission the learned counsel contended that the gun must have been fired from a short distance i. e. close to the body and that supports the theory of the accused. We see no force in this submission. If the gun was fired from such a close range, there should have been blackening and tatooing but the doctor has not noted any such sign around the injuries. Further the direction of the injuries was from upside to downward and there was a dispersal of the wounds. If the gun was fired from a close, range there could not have been such dispersal of the wounds. Further, we are unable to understand as to why the gun was kept loaded already. The story of the accused is that the deceased picked up the gun which was lying there and when the accused struggled with him it went off. It is a matter of common knowledge that nobody would keep the gun loaded. If it is the case of the accused that the deceased picked up the gun with a view to attack it is unimaginable as to how he could have known that the gun was already loaded so that he could use it. Further unless one pulls the trigger fully and releases the same by pressing the catch the gun would not fire and if it was a mere struggle all these things could never have happened.

There is not even a single valid circumstance which would support the theory of accident during scuffle. Therefore, the prosecuting case namely that the accused went inside, came with a loaded gun and shot at the deceased has to be accepted unhesitatingly. Under these circumstances, the plea that the accused had a right of self-defence is wholly unacceptable.

9. The learned counsel, however, submitted that there is only a single gunshot injury and therefore it cannot be said that the accused intended to cause death. According to the learned counsel, the occurrence was due to a quarrel and the accused in the heat of passion without knowing what he was doing, must have inflicted the single injury and therefore it is only a culpable homicide. We see absolutely no force in this submission. The single injury theory cannot be made applicable to a case where a deadly weapon like firearm is used. Even a single injury caused by a firearm would only lead to the inference that death was caused intentionally. This aspect does not warrant any further discussion. We see absolutely no merit in this appeal. It is, therefore, dismissed.

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