

Chuhar Singh

Vs

State of Punjab

Criminal Appeal No. 757 of 1979

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

12.12.1990

JUDGMENT

1. This appeal is directed by Chuhar Singh canvassing the correctness of the judgment made in Criminal Appeal No. 842 of 1977 on the file of the High Court of Punjab and Haryana at Chandigarh, dismissing the appeal and affirming the judgment of the trial Court convicting the appellant under Section 302, I.P.C. and sentencing him to undergo imprisonment for life and also to pay a fine of Rs. 2,000/- in default to undergo further imprisonment for two years and also to undergo imprisonment for one year for the conviction under section 27 of the Arms Act with a direction that both the sentences are to run concurrently.

2. Along with the appellant, there was one other appellant namely Karaj Singh who was convicted by the trial Court under Section 302 read with Section 34, I.P.C. but he has been acquitted by the High Court. The facts of the prosecution case in brief are as follows:-

On 18-1-1977 at about 5.30 p.m. while the deceased and his father (PW 1 1) were unloading the wooden planks from a tractor at their house, the two accused came there raising Changers. On hearing the noise, the deceased and his father turned round and saw the appellant coming armed with a gun while the acquitted accused Karaj Singh was armed with a gun while the acquitted accused Kehar Singh was armed with asota. The acquitted accused raised Ialkara and exhorted the appellant not to allow the deceased to escape. The father caught hold of the deceased by his arms and asked him to go home. When the deceased raised his arms, suddenly the appellant fired a shot at him with his gun which hit him in the right arm pit. On receipt of the injury the deceased fell unconscious. Both the appellants ran away from the spot. This incident, according to the prosecution was witnessed by the mother of the deceased. The motive alleged for the occurrence related to the purchase of a piece of land of the uncle of the appellant by the father and uncle of the deceased. During the course of the occurrence it is stated that one Shubegh Singh also received some injuries from the shot fired by the appellant. P.W. 2 the Medical Officer has deposed that the dead body of the deceased . as brought to the hospital at about 9.15 p.m. and the same night at about 11.24 p.m. Shubegh Singh appeared before the medical officer with injuries on his person. The medical officer sent an intimation to the police guard in the hospital regarding the incident. PW 27 who was in charge of the police guard at the hospital received the said intimation at about 9.15 p.m. and sent this information to the SHO of Lopoke Police Station. On receipt of

the intimation the Sub-Inspector came to the hospital and recorded the statement EX.PT from PW 11 on the basis of which he registered the first information report. The Sub-Inspector held inquest and sent the dead body to the mortuary for autopsy. The appellant was arrested from his village on the next morning i.e. on 20-1-77. On interrogation by the Sub-Inspector, the appellant produced his licensed gun Ex.P-8 from the place of concealment. It is seen from the evidence of the medical officer, PW 3 that the appellant was medically examined by him even at 1.45 a.m. on 19-1-77. The medical officer found an incised wound measuring 6 cms x 2 cms over the right hip along with the iliac crest of right hip bone. The injury was simple in nature. On the same day the same " medical officer examined Maqbool Singh, the brother of the appellant and found on his person four injuries of which injuries Nos. 1 and 2 were incised wounds, and the third one was a lacerated wound and the fourth one was a superficial cut. PW 1 conducted autopsy on the dead body of the deceased and found one gun shot injury on the right axilla of the deceased with 20 wounds of inlet and this injury in the opinion of the medical officer was sufficient to cause death. After completing the investigation the Sub-Inspector filed 'the charge sheet.

3. The appellant during the course of his examination under Section 313, Cr. P.C. came forward with the defence case that he and his brother were attacked by the deceased and that he in exercise of the right of private defence of his person and his brother shot at the deceased. The High Court accepted the evidence of PWs 11 and 12 and confirmed the conviction of this appellant but acquitted the other accused Kehar Singh, hence this appeal.

4. The learned counsel on behalf of the appellant, after taking us through the recorded evidence and the impugned judgment has urged that the appellant is entitled for a complete acquittal on his plea of self defence as facts and circumstances would justify the action of the appellant.

5. It cannot be denied that the appellant and his brother Maqbool Singh DW 7 received injuries during the course of the occurrence. There is absolutely no explanation on the side of the prosecution as to how these two persons have sustained the injuries except the medical officer opining that it was possible for this appellant and his brother DW 7 to have self inflicted these injuries. This explanation of the prosecution, in our view, cannot be accepted. The very fact that the appellant and DW 7 have received injuries would show that they were the victims of attack at the hands of the prosecution party. As the prosecution has come forward with a specific case that the deceased fell down unconscious, on receipt of the gun shot injury the appellant and his brother DW 7 should have received the injuries earlier to the attack perpetrated on the deceased. If the case of the appellant is accepted, then we have to hold that the appellant and his brother have received these injuries on their persons at the hands of the deceased. There is one significant circumstance which would lend support to our view, that being, the father of the deceased held his son (the deceased) and asked him to go home which indicates that there was some quarrel between the deceased on one side and the appellant on the other.

6. Now the question that arises for our consideration is whether the appellant would be entitled for a complete acquittal on the plea of right of private defence of his person. We have no hesitation in coming to the conclusion that the appellant had exceeded his right of private defence of his body when causing the death of the deceased by using the dangerous weapon, namely, the gun and hence he is not entitled for complete acquittal but would be liable to be convicted under Section 304, Part-1, I.P.C. In the result we set aside the conviction under Section 302, I.P.C., instead convict the appellant under Section 304, Part 1, I.P.C. and sentence him to undergo imprisonment for a period

of five years. The conviction under Section 27 of the Arms Act and the sentence"of one year is confirmed. Both the sentences are to run concurrently. The fine amount of Rs. 2,000/- imposed by the trial Court is also retained. Subject to the above alteration of the conviction and modification of sentence, the appeal is dismissed.

7. The appellant is entitled to claim that the period of detention undergone by him during the investigation, inquiry or trial of the case should be set off against the terms of imprisonment imposed upon him and he should be required to undergo only the remainder of the term of imprisonment.

Appeal dismissed.

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