

Suraj Mal

Vs

State of Punjab

Criminal Appeal No. 112 of 1980

(S. R. Pandian, K. Ramaswamy JJ)

25.10.1991

JUDGMENT

1. The appellant Suraj Mal who stands convicted under Section 302, TPC and sentenced to imprisonment for life has preferred this criminal appeal challenging the correctness and legality of the judgment rendered by the High Court of Punjab and Haryana in Criminal Appeal No. 1120 of 1977. According to the prosecution the deceased Rajbir was found lying in an injured condition at about 11.45 p.m. on 28-4-77 on the Sangrur-Dhuri Road by PW-5 and PW6, employees of the above said milk centre. PW-6 stayed there and PW-3 proceeded to the city to inform the police but on the way he met two constables near the civil hospital and brought them to the scene spot. As the condition of the injured was very serious, the injured was removed to the civil hospital, Sangrur. In the opinion of the Medical Officer, the injured was in a fit condition to make his statement. The Assistant Sub-Inspector of Police who had already been informed about this incident came to the hospital and recorded the statement of the injured Rajbir under Ex. PL at about 11.25 a.m. in the presence of the Medical Officer. The injured has stated in his statement which serves as a dying declaration in this case that it was his brother Suraj Mal, namely, the appellant herein stabbed him because of a land dispute between them. On the basis of the first information report a case was registered and the investigation proceeded.

2. PW-4 the Medical Officer, who examined the injured found only one injury on the person of Rajbir which is described as hereunder:

"Incised penetrating wound 3 cm x 1 cm on the right side of the abdomen 1 cm from the midline."

3. The injured was removed to the Rajindra Hospital, Patiala on April 30, 1977 where he succumbed to his injury on the very same day. The postmortem was conducted by PW1 who opined that the said injury was sufficient to cause death in the ordinary course of nature.

4. The appellant is none other than the brother of the deceased and was a driver in the Pepsu Roadways at the relevant time. He was arrested on 29-4-77. The weapon of the offence, namely, the knife Ex.P-2 was recovered in pursuance of his statement given to the police. After completing the investigation the police filed the charge-sheet. The accused has totally denied his complicity with the offence in question. The Trial Judge convicted and sentenced the appellant as aforementioned which conviction and sentence have been affirmed by the High Court.

5. Hence this present appeal. The learned counsel appearing on behalf of the appellant strenuously contended that the dying declaration said to have been given by the deceased under Ex. PL when

tested in the light of certain admission made by the Medical Officer PW-1 does not command acceptance and is liable to be rejected. According to him the statement of the deceased recorded under Section 161 of the Code of Criminal Procedure which is marked as Ex. PU as a dying declaration, ought not to have been accepted and acted upon. He further stated that even if the entire evidence is accepted the offence would not fall within the definition of murder punishable under Section 302, IPC but it would be one punishable either under Section 304, Part 1 or Part 11 as the facts and circumstances of the case attract the invocation of Exception 4 to Section 300.

6. To prove the charge levelled against the appellant, the prosecution has relied upon the dying declaration Ex. PL supported by the evidence of PWs 5, 6 and 17. Of the witnesses PW-5 has not supported the prosecution case as he has resiled from his earlier statement made under Section 161, Cr. P. C. and as such he has been treated as a hostile witness.

7. It is true that the Medical Officer PW-4 after supporting the entire prosecution version in his chief-examination, in the fag-end of his cross-examination stated that he did not know whether the statement recorded by the ASI was correct or not and he did not attest the same as he was not satisfied with the correct recording of the statement from Rajbir Singh. However, PW-4 has not stated that the deceased gave any other name except the name of the present appellant as the assailant in this case. Nor even a suggestion has been addressed to the Medical Officer or to any other witness that the deceased gave a different name, but the ASI recorded the name of the appellant as the assailant. As already pointed out, the assailant is none other than the brother of the deceased himself. Therefore, it is far-fetched to suggest or even to imagine that the ASI could have substituted the name of the appellant as the assailant leaving out the name of the real assailant. Under these circumstances, this sporadic admission made by the Medical Officer which in our opinion does not in any (way) affect the veracity of the dying declaration, cannot assume any significance. Hence we have no compunction to accept and act upon the dying declaration Ex. PL. For the above reason, the first contention of the learned counsel is rejected.

8. The next question that falls for our consideration is, what is the nature of the offence that the appellant has committed. Admittedly, the deceased was drunk. In the dying declaration Ex. PL the deceased has stated that he and his brother quarrelled and only in the course of the quarrel his brother stabbed in his stomach. The prosecution apart from this document Ex. PL has also relied upon another document Ex. PU recorded on 29-9-77 by the Investigating Officer under Section 161, Cr.P.C. which statement is marked as a subsequent dying declaration by the deceased. In this document the deceased has stated that he and his brother went to answer call of nature after taking alcohol together and on the way his brother questioned as to why he had decided to sell his property to which the deceased replied that it was his property and that he could dispose the same in any manner he liked and that this conversation led to a quarrel between the two and it was only during the quarrel that ensued between the deceased and the appellant the appellant stabbed the deceased once. A mere reading of Exs. PL and PU clearly shows that the appellant had caused this single injury without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. The various circumstances attending the case also indicate that the appellant cannot be said to have taken undue advantage or acted in a cruel manner when examined in the light of the decision of this Court reported in *Surinder Kumar v. Union Territory Chandigarh*, (1989) 2 SCC 217: (AIR 1989 SC 1094).

9. The totality of the evidence, in our considered opinion, leads to an irresistible conclusion that the offence that the appellant had committed is one punishable under Section 304, Part 1, IPC but not under Section 302, IPC (simpliciter), since Exception 4 is attracted to the facts of this case. In the

result, we set aside the conviction under Section 302, IPC (simpliciter) and the sentence of imprisonment for life imposed therefor, instead convict the appellant under Section 304, Part 1, IPC and sentence him to undergo rigorous imprisonment for a period of seven years. The appeal is disposed of subject to the modification of the conviction and the sentence as indicated above.

Order accordingly.

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