

Jagtar Singh

Vs

State of Punjab

Criminal Appeal No. 251 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ

11.02.1992

JUDGMENT

1. The appellant, Jagtar Singh was tried along with two others for an offence punishable under Section 302, IPC read with Section 34, IPC. The accusation against him was that he caused the death of Balkar Singh and Nirmal Singh by firing at them with a gun. The prosecution examined some eye-witnesses. Doctor's evidence also proved that, the two deceased died of gun shot injuries. The accused, Jagtar Singh also had injuries which were caused by a fire arm. He pleaded in his statement under Section 342, Cr.P.C. before the trial Court that two deceased and other persons armed with guns shot at him and he in his self defence had shot at them and that resulted in causing injuries to the deceased persons, who died. The trial court acquitted the other two accused, but convicted the appellant under Section 304, Part I, IPC and sentenced him under each count to ten years imprisonment, but directed the sentences to run consecutively. He was further convicted under Section 27 of the Arms Act to two years rigorous imprisonment and to pay a fine of Rs. 500/-.
2. The State preferred An. appeal and the High Court held that the offence committed by the appellant was one punishable under Section 302, IPC and under each count, namely, causing the death of two persons, sentenced him to imprisonment for life, This appeal is preferred against the said Judgment of the High Court.
3. The learned counsel for the appellant submits that the High Court has not properly appreciated the right of the self defence and that the injuries found on the appellant would go to show that he was shot at and, therefore, .his plea that in exercise of right of self-defence, he shot at the two deceased persons should have been accepted and he should have been acquitted completely.
4. From the above stated facts it can be seen that the case lies in a narrow compass. While according to the prosecution the accused intentionally caused the death of two persons, the defence case is that in exercise of self-defence he caused the death of the deceased persons.
5. Dr. Pritam Singh, who examined the appellant on the same day found as many as 8 injuries and all of them were caused by a fire arm and they were fresh. Some of the injuries were on the chest. The prosecution came forward with an explanation that another person, by name, Kartar Singh, P.W. 11, who was in the company of the two deceased persons shot at the appellant and caused those injuries and, therefore, the deceased were not responsible for those injuries. On the other hand, the appellant has taken a specific plea of right of self-defence. He stated before the trial Court that on the day of occurrence the two deceased armed with guns along with another person broke into his

house and the deceased Balkar Singh opened fire at him as a result of which he (the appellant) sustained fire arm injuries, and in order to defend himself he fired a shot in the air in spite of that the assailants did not retreat. Thereupon in order to defend his own person he fired at the assailants, who at that time were at a short distance and on his firing the two deceased persons received injuries and dropped on the ground. The appellant further stated that he went to the police station to give a report, but he was taken to the hospital where he was examined by the doctor. The doctor who had been examined as a witness supports his defence. The accused has taken a specific plea of right of self-defence and it is not necessary that he should prove it beyond all reasonable doubt. But if the circumstances warrant that he had a reasonable apprehension that death or grievous hurt was likely to be caused to him by the deceased or their companions, then if he had acted in the right of self-defence, he would be doing so lawfully. The plea of the appellant in the circumstances of the case cannot altogether be rejected. It is plausible. The occurrence had taken place in front of the house of the appellant. He had categorically stated that two deceased persons along with another person came and opened fire at him. The doctor had found quite a number of gun shot injuries on the person of the appellant. These circumstances probablise his version. Even if the explanation given by the prosecution has to be accepted, even then the fact remains that the accused received gun shot injuries at the hands of one of the companions of the two deceased persons. In that event also he could exercise his right of self-defence to the extent of protecting his own person. However, in view of the specific plea of right of self-defence and the attendant circumstances, the plea set up by him appears to be probable. Therefore, he is entitled to the benefit of doubt. However, we are of the view that there was no necessity for the accused to cause the death of two persons. In that view of the matter, it has to be held that he exceeded his right of self-defence in which case the offence, as rightly held by the Sessions Court, would be one punishable under Section 304, Part I, IPC. Accordingly, we set aside the conviction of the appellant under Section 302, IPC and instead convict him under Section 304, Part I, IPC and sentence him to undergo 10 years' rigorous imprisonment under each count and the sentences are to run concurrently. Further the conviction and the sentence awarded under Arms Act and the fine along with the default clause are confirmed. In the result, we set aside the Judgment of the High Court and confirm the Judgment of the trial Court with this modification, namely, that the sentences shall run concurrently. Like-wise, the sentence awarded under Section 27 of the Arms Act shall also run concurrently. The appeal is allowed to the extent indicated above. Appeal allowed.

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