

Bawa Singh

Vs

State of Punjab

Criminal Appeal No. 655 of 1981

(M. M. Punchhi, B. P. Jeevan Reddy JJ)

26.03.1992

JUDGMENT

1. Two points arise in this appeal. The first one is whether the appellant had a right of private defence when causing the death of Kaka Singh in order to save his mother Gurnamo and the second one is if he had no such right, what is the nature of offence committed by him. Mr. A. N. Mulla learned counsel for the appellant has taken us through the entire evidence of the prosecution as well as the findings recorded by the High Court. After doing so and having canvassed fairly on the first point he has chosen to abandon the plea of private defence and has mainly confined to the nature of the offence committed by the appellant. This alone would need elaboration.

2. The occurrence took place on the morning of October 2, 1979 in a street in Village Dhandyal, District Sangrur, Punjab in which the houses of the deceased as well as that of the appellant are situated. The deceased Kaka Singh was seen by the appellant coming and the latter along with three others, since acquitted, surrounded him. Firstly, the deceased was felled down and then two blows with sharp pointed and cutting weapons were inflicted on him. One was on the chest and abdomen and the other was on the back of the deceased near the first lumbar vertebrae close to the mid line. The first injury was attributed to the appellant and the second one to Dev Singh accused since acquitted.

3. The deceased when injured was taken to the hospital and remained an indoor patient for seven days thereafter and in the meantime was operated upon. He made a statement to the police which forms his dying declaration to the effect that the appellant was the author of the injury on his chest and abdomen. In his statement under S. 313, Cr. P.C. at the trial the appellant admitted having warded a blow towards the deceased but does not own the result. The trend in cross-examination of the prosecution however was to own the injury but in the right of private defence. Now this injury, though serious in nature, no medical expert has opined to be individually sufficient to cause death in the ordinary course of nature. Rather the opinion of Dr. S. K. Singal P.W. 3 who conducted the autopsy of the deceased was that the death of the deceased was caused due to shock, and haemorrhage resulting both from injuries Nos. 1 and 2 collectively.

4. It would thus be difficult to attribute to the appellant alone the blame of both the injuries caused to the deceased which cumulatively led to his death or any intention in that respect reflective from a single blow. Having regard to these circumstances and more so on the medical opinion, we are inclined to scale down the offence of the appellant from one under S. 302, IPC to one under S. 304, Part-II, IPC. This would require imposition of some sentence and since we are told that the

appellant has undergone a little over 3 years rigorous imprisonment and was released on bail under orders of this Court dated 22-11-1982, the ends of justice would be met by reducing it to the period already undergone. Ordered accordingly. The appeal is allowed partially to the extent aforesated.

Appeal partly allowed.

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