

Jasbir Singh

Vs

State of Punjab

Criminal Appeal No. 165 of 1992

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

27.03.1992

JUDGMENT

1. The appellant, Jasbir Singh who stands convicted under S. 302, I. P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 3,000/- in default to undergo RI for three years and also convicted under S. 27 of the Arms Act, 1959 and sentenced to one year RI with a direction that the substantive sentences are to run concurrently, has preferred this criminal appeal challenging the judgment of the High Court made in criminal appeal No. 803 of 1975 whereby the High Court has confirmed the judgment of the trial Court.

2. The brief facts of the case of prosecution are as follows :

P.W. 2 and his brother Avtar Singh (the father of the appellant) owned a piece of land in common at a distance of about three quarter of a mile from their village Nanakpur. They had jointly installed a tubewell and used to take water by turn. On 7-9-1974 at about sunset time P. W. 2 and his son P. W. 4 went to their field for irrigating the same. There was no supply of energy and it was restored only by 9 p.m. Thereafter, P.Ws. 2 and 4 started pumping out the water and irrigating their paddy field. The appellant came there at about 11 p.m. and told P.Ws. 2 and 4 that he would not allow them to take water on that day since it was his turn. So saying he diverted the flow of water towards his own paddy field. P.W. 2 protested and left the place leaving his son P.W. 4 with an instruction not to pick up a quarrel with the appellant till he returned. P.W. 2 narrated the incident to his second son, Savinder Singh the deceased herein. The deceased told his father P.W. 2 that if the appellant were not allowed to usurp the turn of water he would feel encouraged to usurp his land as well. Then the deceased and P.W. 2 came back to the field. The appellant was found irrigating his field, P.W. 2 was sitting at the tubewell. The deceased diverted the flow of water towards his paddy field thereby blocking the course of water to the field of the appellant. The appellant on being aggrieved by the conduct of the deceased went to the village and appeared at the scene about half an hour later armed with his licensed gun. The appellant raised a lalkara and opened fire from his single barrel gun. The first shot missed the target. Then the appellant reloaded the gun and again fired a shot which hit the deceased on his abdomen. On receipt of this injury, the deceased fell down on the ground. P.Ws. 2 and 4 raised an alarm up which the appellant left the scene with his gun.

3. The injured victim was removed to the Primary Health Centre. As his condition was precarious, he was then removed from there to V. J. Hospital, Amritsar where he succumbed to the injuries at about 4 a.m. P.Ws. 2 and 4 taking the dead body went to the police station and lodged the first information report (Ex PD).

4. P.W. 6, the Sub-Inspector of Police registered a case and took up the investigation and proceeded to the spot. From the scene of occurrence, he recovered blood stained earth and two empty cartridges (Exs. P11 and P12). P.W. 16 prepared a site plan. The accused was not available.

5. The medical officer who conducted autopsy on the dead body of the deceased found a lacerated wound measuring 1 cm. x 1/3 cm. vertically based on the left side abdomen and two abrasions and six inverted lacerated wounds. According to the doctor, injury No. 4 could have been caused by a firearm and the remaining injuries by a blunt weapon. After completing the investigation, the charge-sheet was lodged. The trial Court accepting the oral testimony of P.Ws. 2 and 4 convicted and sentenced the appellant as aforementioned which was confirmed by the High Court. Hence this present appeal.

6. Mr. Harinder Singh appearing as amicus curiae after taking us through the recorded evidence submitted that both the Courts below was not correct in recording the conviction under S. 302, I.P.C. since the facts and circumstances of the case disclose that the appellant was well within his right of private defence of his person. In support of his submission, he drew our attention to the statement of the appellant given under S. 313, Cr.P.C.

7. Wherein the appellant admits of having fired at the deceased but puts forth his defence stating that he did so in the right of private defence of his person.

8. The only question that arises for our consideration is whether the appellant is guilty of the offence of murder punishable under S. 302, I.P.C. or whether he is entitled to complete acquittal on the plea of self defence or whether the appellant has exceeded the right of private defence.

9. The case of the appellant as disclosed from his statement is that on the night of 6-9-1974 about 11 p.m. while he and his brother were taking water from the tubewell to irrigate their paddy field the deceased came there during the mid night and declared that he would irrigate his land and would not allow the appellant to take water to his land. The deceased during the course of his insistence to take water to his land abused the appellant which led to a quarrel. According to him, when he and the deceased were grappled each other, the appellant's brother separated both of them. The deceased left the spot threatening that he would teach a lesson to the appellant. Therefore, the appellant fearing imminent danger to his life loaded his gun and sat there. Half an hour thereafter the deceased came with a gandasi and attacked the appellant. Apprehending danger to his life, the appellant fired a shot in the air to scare away the deceased and others but it did not have any effect. When the deceased again attacked with a gandasi, the appellant reloaded the gun and fired at the abdomen of the deceased for self defence.

10. Now let us analyse the evidence of P.Ws.2 and 4. According to P.W.2, he leaving his son P.W. 4 at the spot went to the house, narrated the incident to the deceased and brought him to the scene. It transpires from the evidence that even at the time when the deceased and P.W. 2 left the house, the deceased made a challenge that he would not allow the appellant to take water to his land. Thereafter, both P.W. 2 and the deceased came to the field. This circumstance indicates that P.W. 2 wanted to bring the deceased to the field only for the purpose of making a challenge to the appellant

and in fact, the deceased came to the spot declaring that he would not allow the appellant to take water to his land.

11. The medical evidence discloses that there was a contusion and two abrasions on the body of the deceased which injuries according to the medical officer could have been caused by any blunt weapon. It is not the case of the prosecution that the deceased was attacked by any blunt weapon. This fact indicates that the deceased had sustained these two injuries during the scuffle while they were grappling each other and rolling on the ground. In other words, the defence theory alone amply explains the injuries found on the deceased.

12. Admittedly, the first shot did not hit any one. Taking the overall picture of the entire prosecution case, we are left with an impression that the occurrence would not have taken place in the manner as spoken to by the prosecution but it would have happened when the deceased came to the field and picked up quarrel with the appellant by preventing the appellant from taking water to his land. It is pertinent to note in this connection that PW 2 himself has admitted that the turn of taking water on the day was that of the appellant.

13. Considering all the facts and circumstances of the case, we feel that the appellant has fired the shot in the exercise of his right of private defence but has exceeded his right in putting an end to the life of the deceased. On the strength of the above findings, we hold that the appellant would be liable to be convicted under Section 304 Part I and not under Section 302, IPC. In the result, we set aside the conviction under Section 302 and the sentence of imprisonment for life instead convict him under Section 304 Part I, IPC and sentence for 7 years' RI. The fine of Rs. 3,000/- as imposed by the Courts below is still retained with the default clause. The sentence of one year RI awarded for the offence under Section 25 of the Arms Act is confirmed with direction that the substantive sentences shall run concurrently. The fine amount, if realised, the whole of it shall be paid to the heirs of the deceased as directed by the Courts below.

14. The appeal is thus dismissed subject to the modification of the conviction and sentence as indicated above. Appeal dismissed.

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