

State of Haryana

Vs

Mewa Sing

Criminal Appeal No. 419 of 1990

(M. M. Punchhi, Faizanuddin JJ)

03.02.1997

JUDGMENT

PUNCHHI, J.

1 This appeal is directed against the judgment and order of a Division Bench of the Punjab and Haryana High Court dated 10-8-1984 passed in Criminal Appeal No. 106-DB of 1984, acquitting the accused-respondent Mewa Singh of the charges under Section 302 of the Indian Penal Code and Section 25 of the Arms Act; the appellant being the State of Haryana.

2. The victim of the crime was one Ram Kumar, said to have been killed by a pistol shot fired by Mewa Singh, the respondent. The cause of the crime was that the deceased had a first paternal cousin Tara Chand whose wife Smt. Om Devi, about six months prior to the occurrence was said to have developed illicit connections with the accused-respondent. The deceased Ram Kumar as well as his brothers Narsi, PW 6 and Ved Parkash, PW 7 and other members of the family as also Tara Chand and other members of his family objected to this connection and had time and again warned the accused-respondent against maintaining it and visiting the house of Tara Chand in order to meet Smt. Om Devi. This group of people live in a cluster of houses in Village Thana Gujran, the focal point of which was a place meant for housing their cattle (nohra) where their womenfolk would often converge. This was a place of rendezvous for the accused-respondent and Smt. Om Devi where they had often been seen together by members of the complainant party.

3. On the day of occurrence i.e. 28-8-1983 at about 6.30 p.m. the accused-respondent was seen having entered the house of Smt. Om Devi in the absence of her husband and was heard cutting jokes with Om Devi in the courtyard, while members of the extended family of her husband were in and about in their respective houses. At that juncture Ved Parkash, PW 7 and his brother Ram Kumar, the deceased, went there and sought explanation of the accused-respondent as to why he had come to the house of Om Devi when they had dissuaded him from doing so. Such stand had been taken up by the complainant party because the said illicit connection had become a talk in the village and the family members had occasionally been taunted in that behalf. Thereupon, the accused-respondent arrogantly replied that he would continue visiting Om Devi and nobody could stop him. Upon this, Ved Parkash, PW 7 and the deceased on the one hand and the accused-respondent on the other started exchanging abuses, slaps and fist-blows and in the process were drawn to the street. While so the accused-respondent is said to have run and gone inside the room of one Sadhu Ram situated close by and immediately thereafter to have come out armed with a pistol with which he fired a shot on Ram Kumar, the deceased, as a result of which he fell in the street and died thereat. Ved Parkash, PW 7 with the help of Narsi, PW 6 who too had witnessed the occurrence, and their brother Kartara removed the deceased to their nohra and placed his dead body

on a cot. Narsi, PW 6 thereafter lodged the first information report at 9.45 p.m. at Police Station Pehowa at a distance of 13 kilometres from the village, to Sub-Inspector Sadhu Ram, PW 10. The special report reached the Magistrate concerned at midnight at Kaithal, at a distance of 25 kilometres from Police Station Pehowa.

4. Necessary investigation thereafter followed. The accused was not immediately available but was later arrested on 30-8-1983. On arrest he made a disclosure statement leading to the recovery of a country-made pistol from the specified place of concealment suggesting that he had committed the offence punishable under Section 25 of the Arms Act. The autopsy of the deceased was conducted by Dr K. B. Jam, PW 1. An extensive injury caused by means of firing of a pistol was noticed on the dead body of the deceased which was sufficient to cause death in the ordinary course of nature. On the other hand the accused-respondent on the following day of the occurrence i.e. on 29-8-1993 at 5.30 p.m., while not arrested, was found to have a lacerated wound 1/2 cm x 1/2 cm x 2 cm on the left forearm and an abrasion 1-1/2 cm x 1/2 cm on the left side of the head, close to the hairline, both injuries being simple, caused by a blunt object, as per statement of Dr Dhawan, PW 2, to whom the accused of his own had approached. Neither of these injuries had any pellets underneath, as medically opined later.

5. When put to trial the accused-respondent had to face the ocular testimony of Narsi, PW 6 and Ved Parkash, PW 7, besides the medical evidence corroborative thereof and other evidence regarding investigation. The accused-respondent made a cross-version in his statement under Section 313 CrPC. It was not denied by him that he had visited the house of Tara Chand about half an hour prior to the occurrence but, according to him, for a different purpose. And when he was going back to his house, Ram Kumar, the deceased, along with one Sikh gentleman, unknown to him, accosted him in the street both of them being armed with "lathi" and "bhala" respectively. Further these two persons gave him a blow each and that is why he received two injuries found on his person. Still further he claims that out of fear he ran to the room of Sadhu Ram and bolted it from inside whereat he was followed by some persons who started breaking the door of the room and others climbed the roof thereof. It was then claimed by him that he heard a fire shot from outside but he had not fired that shot and that the dead body of Ram Kumar, the deceased, was then removed to his house.

6. The Court of Session on such state of evidence convicted the accused-respondent under Section 302 IPC and sentenced him to life imprisonment. The conviction of the accused-respondent was also recorded under Section 25 of the Arms Act for which he was ordered to undergo one year's rigorous imprisonment, sentences to be running concurrently. The High Court reversed the verdict of the Court of Session on three grounds :

- (i) That the deceased was killed by the accused-respondent in the legitimate exercise of right of private defence of person and the presence of the unexplained two injuries on the person of accused respondent was proof of its justification;
- (ii) that there was unexplained delay in the lodging of first information report; and
- (iii) that all the eyewitnesses were partisan and inimical.

7. These three grounds on which the order of acquittal is based was seriously challenged before us by the appellant-State of Haryana and very ably by Mr. B. S. Chahar, learned counsel, who appeared on its behalf.

8. It is significant that the accused-respondent took up a positive defence plea to assert that the two simple injuries by means of blunt weapon found on his person were received by him from the deceased Ram Kumar and the unnamed Sikh gentleman. It was also his case that the gunshot was not fired by him but by someone else when he had taken refuge in the room of Sadhu Ram. It was never his plea that he had fired a gunshot at the deceased in the exercise of the right of private defence of person. That apart the suggestion put to Narsi, PW 6, during cross-examination was that the occurrence had taken place at about 9 p.m. when it was dark, and that Narsi had not witnessed the occurrence, and that attempt was then made to capture the accused in a bid to involve him in a false case and that he had taken shelter in the house of Sadhu Ram wherefrom he had fired a shot on the mob collected outside, but not at the deceased.

9. Keeping aside the fact as to what was projected as a defence in the cross-examination of Narsi, PW 6, which was given a go-by by the accused-respondent in his statement under Section 313 of Criminal Procedure Code, a it cannot be lost sight of the fact that the two simple injuries found on the person of the accused could have been self-suffered as was stated by Dr. N. K. Dhawan, PW 2. The High Court overlooked the statement of Dr. Dhawan, PW 2 and went erroneously to comment that it was nowhere suggested or contended that these injuries could be self-inflicted. It was the positive case of the prosecution that those injuries were never caused by the complainant party though it was admitted that slaps and fist-blows had been exchanged between PW 7 and the deceased on one side and the accused on the other. It doesn't otherwise stand to reason that these two injuries would give any right of private defence to the accused on his having receded and gone to the room of Sadhu Ram and then bringing a pistol in order to shoot dead the deceased, after he had been in criminal trespass over the complainant's house to their annoyance. The prosecution is thus on a surer footing to say that the accused ran inside the house of Sadhu Ram in order to bring a pistol which he employed to kill the deceased. It is not the prosecution case that the accused had the pistol right from the beginning, for were it so, he would not have had to wait to be hit first and then employ the weapon. Thus it appears to us that the prosecution was not obliged to explain the two simple injuries on the person of the accused as their dimensions suggest that those could well be self-inflicted or self-suffered and those were worth being suffered as such to facilitate answering to a charge of murder. Further, genus of the occurrence, in our view, was the one which the prosecution has put forth establishing the guilt of the accused. The defence story does not probables the way it has been put across.

10. The comment of the High Court with regard to the delay of the lodging of the first information report is also misplaced. The occurrence took place at 6.30 p.m. in Village Thana Gujran and the FIR was lodged at 9.45 p.m. at Police Station Pehowa 13 kilometres from the village of the occurrence. The special report was with the Magistrate at midnight at Kaithal distanced 25 kilometres from Police Station Pehowa. We fail to see in such timings any delay involved in taking these steps. The comment regarding the eyewitnesses being inimical towards the accused is also misplaced as the occurrence took place in the village itself in the vicinity where the complainant party was group-housed and therefore their presence thereabout at evening time at 6.30 p.m. was natural. Rather PW 6 and PW 7 had clearly stated that when the accused-respondent was seen entering the g house of Tara Chand, both the PWs were busy tending to their cattle giving them fodder. There is no suggestion offered for any previous hostility except to the amorous affair of the accused-respondent which could not have been invented and put forth by the PWs, had there been no basis for it. The Court of Session believed that part of the prosecution version and the High Court failed to comment thereon. Disclosure of that illicit connection cannot be viewed as the eyewitnesses becoming interested in nature. We are thus a clearly of the view that the High Court committed a grave error in upsetting the well-considered and well-reasoned judgment and order of

the Court of Session. We, on our part, are therefore expected to upturn it, as we do hereby.

11. For the foregoing reasons, this appeal is allowed, the judgment and order of the High Court is set aside and that of the Court of Session is restored. The accused-respondent be taken in custody forthwith to undergo the unexpired sentences imposed on him by the Court of Session.