

SUPREME COURT OF INDIA

Manke Ram

Vs.

State of Haryana

Crl.A.No.928 of 2002

(N. Santosh Hegde and B.P. Singh JJ.)

10.04.2003

JUDGMENT

Santosh Hegde, J.

1. The incident which gives rise to this appeal took place on 17th of November, 1993 at the residential part of the appellant's quarters in Sangatpura where the appellant was In-charge of the Police Post. At about 9.30 p.m. on that day, the appellant came back from his duty at that time it is stated that Suraj Mal the deceased who was a Head COnstable in the Sangatpura Police Outpost was standing near the quarters of appellant invited the deceased for a drink in his room. Therefore, the deceased went with the appellant to this room leaving PW-5 outside. It is an admitted case that while appellant and Suraj Mal were drinking in his room at about 9.45 p.m., PW-5 Raj Pal went into the room and asked Suraj Mal acceded to this request, because of which the appellant got annoyed and abused the deceased in filthy language to which the deceased objected, which further annoyed the appellant and he picking his service revolver fired two shots at Suraj Mal, hitting him on the right side of the neck and left side of his thigh. The prosecution case further proceeds by stating that the two of them grappled with each other and came outside the room. On hearing the sound of gun shots, PW-6 Satbir Singh, PW-9 Constable Hari Ram and Ram Kumar, came rushing out and over-powered the accused and snatched the weapon. Soon after Suraj Mal succumbed to the injuries suffered by him. It is further stated that on receiving a wireless message at Police State, Kaithal, PW-10 Inspector Sube Singh accompanied by a police party reached Police Post at Sangatpura and recorded the statement of PW-5 (Raj Pal) at 11.50 p.m., and registered the FIR at 12.15 a.m., on November 18, 1993 for an offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. The accused was arrested and after completion of the investigation was charged for the above said offences before the Additional Sessions Judge, Kaithal who after trial came to the conclusion that the prosecution has established its charge against the appellant hence, convicted him for an offence punishable under Section (sic) IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 2000/-, in default of payment of fine, to suffer further RI for two months. He further sentenced the appellant for an offence punishable under Section 27 of the Arms Act and to pay a fine of Rs.

1000/-, in default of payment of fine to suffer further RI for one month and directed the substantive sentences to run concurrently.

2. In appeal, the High Court of Punjab and Haryana has confirmed the said judgment of the Additional Sessions Judge by dismissing the appeal.

3. It is consequent to the said judgment of the High Court the appellant is before us in this criminal appeal.

4. The only point urged on behalf of the appellant in this case is that even if the prosecution case is to be accepted as presented, the appellant can only be held guilty of an offence punishable under Section 304 Part II of the IPC and the courts below have erred in not accepting this argument addressed on behalf of the appellant before them. In this regard, learned counsel for the appellant contended that the appellant had absolutely no motive whatsoever to commit the murder of the deceased and as a matter of fact he had invited deceased to his room for a friendly drink and it is at that time because of the intervention of PW-5 who was younger to the appellant and the deceased and lower in rank, the appellant got enraged, because of which a fight started and in that fight the incident in question took place without premeditation in the heat of passion in which fight the deceased suffered fatal injuries. Learned counsel submitted that both the appellant and the deceased were inebriated, therefore, there is every possibility of their actions being beyond their control. In such circumstances, it is submitted that the offence would be one falling under Exception 4 to Section 300 hence will be a culpable homicide not amounting to murder which is punishable under Section 304 Part II of IPC.

5. Learned counsel appearing for the State, however, contended that the courts below have rightly come to the conclusion that the appellant did commit the murder of Suraj Mal may be without any motive but he had certainly taken an undue advantage of having a service revolver with him and fired the same knowingly that it might cause death, therefore, the action of the appellant would fall outside Exception 4 to Section 300 and would amount to murder which would attract the punishment under Section 302 of the IPC.

6. Having perused the material on record and considering the arguments of the parties, we are inclined to agree with the argument addressed on behalf of the appellant. There is no doubt that Suraj Mal met a homicidal death on 17.11.1993 at Sangatpura Police Outpost consequent to gun shot fired by the appellant. The question, for our consideration, is whether this action of appellant which caused the death of Suraj Mal would amount to murder or culpable homicide not amounting to murder. It is an admitted fact that there was no enmity between the appellant and the deceased and a few days before the incident in question the appellant was promoted to the rank of Assistant Sub-Inspector of Police and he was put In-charge of Sangatpura Police Station wherein the deceased was also posted as Head Constable. It is also the case of the prosecution itself that on the fatal day when the appellant came back from the duty to his quarter he invited the deceased to his room to have a drink which was accepted by the deceased and both of them were drinking in the room of the appellant. It is at that point of time PW-5 who happened to be the nephew of the deceased

came into the room and interrupted their drinking sessions by asking his uncle to get up and join him for dinner which was obviously not liked by the appellant who being offended by said interruption started abusing in a language which was not to the liking of the deceased who protested against such abuses. It is also the prosecution case that it is sequel to this interruption of PW-5, a physical fight started between the appellant and the deceased in which, of course, the appellant used his service revolver causing fatal injuries. While PW-5 states that there was no physical fight between the deceased and the appellant, the appellant contends that there was such physical fight in which he was sought to be strangled by the deceased because of which he used the service revolver to protect himself. The fact that there was physical fight between the deceased and the appellant, though not admitted by PW-5, the same cannot be denied because it has come in the evidence of PW-6 and 9 that when they came to the spot the appellant and the deceased were grappling outside the room and they over-powered the accused and snatched the weapon. In such circumstances, we will have to examine the prosecution evidence whether the appellant had taken an undue advantage or acted in a cruel or unusual manner so as to deprive him of the benefit of Exception 4 to Section 300. As noted above, there is no motive for killing the deceased. The drinking session in the room of the appellant was by mutual consent and admittedly the fight started because of the intervention of PW-5. From these circumstances, it can be very clearly held that the incident in question took place in a sudden fight in the heat of passion. The next question, therefore, for our consideration, is whether the appellant did take an undue advantage of the said fight or acted in a cruel or unusual manner. Keeping the fact that both the appellant and the deceased had consumed considerable amount of alcohol which is established from the evidence of the doctor and the service revolver being next to the place where the fight took place and was not kept there by a planned act by the appellant, it cannot be altogether ruled out that the shots were fired not with an intention of taking any undue advantage by the appellant. It is probable that in an inebriated condition the appellant used the service revolver because of the physical fight between the two. We do not think the two courts below have properly appreciated this aspect of the prosecution case when it found the appellant guilty of murder and punished him under Section 302 IPC. Having considered the material on record, we are of the opinion that the appellant could only be found guilty of an offence punishable under Section 304 Part II.

7. Therefore, we allow this appeal to that extent and set aside the judgment and conviction imposed by the courts below on the appellant under Section 302 IPC and award a sentence of 5 years RI. We maintain the fine of Rs. 2000/- imposed on the appellant by the trial court, as also the conviction and sentence awarded on the appellant for an offence punishable under Section 27 of the Arms Act. The sentence of imprisonment under both the counts shall run concurrently. The appellant shall be entitled to remission of the period of sentence already undergone. The appeal stands allowed to the extent mentioned above.