

SUPREME COURT OF INDIA

Sada Ram

Vs

State of Haryana

Criminal Appeal No. 300 of 2006

(B. P. Singh and Altamas Kabir, JJ)

01.08.2006

JUDGMENT

B. P. SINGH, J.

This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana, Chandigarh in Criminal Appeal No. 534-DB of 1996 dated February 8, 2005 whereby the High Court upheld the conviction and sentence passed by the Trial Court against the appellant herein who was found guilty of the offence punishable under Section 302 and 307 of the Indian Penal Code and Section 27 of the Arms Act. The appellant was sentenced to undergo life imprisonment and to pay a fine of Rs. 1, 000/-, for the offence punishable under Section 302IPC, to undergo seven years imprisonment and a fine of Rs. 500/- for the offence punishable under Section 307 IPC and for the offence punishable under Section 27 of the Arms Act to undergo one year rigorous imprisonment.

2. The case of the prosecution is that an occurrence took place at about 6.00 p.m. on June 26, 1994. The appellant shot at his father and brothers as a result of which one of the brothers namely, Ram Dass succumbed to his injuries while his father Arjun Singh (P.W. 2) received serious gun shot injuries. The appellant pleaded a right of private defence which has been disbelieved by both the Courts below.

3. We may only briefly notice the facts of the case. The appellant herein had six brothers including the deceased Ram Dass and Ram Avtar (P.W. 1). The appellant lived on the outskirts of the village while his father and brothers lived in the Abadi. Two of his brothers namely, the deceased Ram Dass and Satbir Singh had also raised some minor construction adjoining the house of the appellant though they also lived in the village Abadi. On the date of occurrence Arjun Singh (P.W. 2), the father of the appellant and his two brothers had undertaken some earth work in front of their kothas adjoining the appellant's property. It appears that on account of rain, the mud had come on the road near the house of the appellant. At about 6.00 p.m., Arjun Singh (P.W. 2) attempted to repair the earth work to which the appellant protested and an altercation followed between the father and the son which attracted to the place of occurrence his other sons including Ram Avtar (P.W. 1) as also the wife of the deceased Ram Dass. On seeing that they were coming towards him, the appellant is alleged to have pushed and dragged his father Arjun Singh into his courtyard. When Ram Avtar (RW. 1) and Ram Dass (the deceased) came rushing to prevent any serious injury to their father, the appellant released his father in the courtyard and went inside his house. He picked up his 12 bore licensed single barrel gun and fired a shot from the window of the room. He had taken precaution of bolting the door to provide himself sufficient protection. The shot fired by him hit Ram Dass (the deceased) on his right side Chest and arm and some of the pallets caused injuries to the right arm of his father Arjun Singh (RW. 2). Both the injured were put in a tractor and taken to the Bus Stand from where they left for General Hospital at Rewari. Ram Dass succumbed to his injuries on the way, but Arjun Singh was removed to the Safdarjung Hospital at Delhi.

4. Ram Avtar (RW. 1) stayed back at the General Hospital, Rewari. The hospital authorities had sent a memo to the police authorities pursuant to which ASI Man Singh reached the General Hospital, Rewari and recorded the statement of Ram Avtar (P.W. 1). At about 10.00 p.m. on the basis of the said report, a formal first information report was drawn up at 0.15 hours on the same night and the special report was dispatched at the Illaqa Magistrate at Jhajjar which was received by him on the same day at 2.00 A.M. ASI Man Singh inspected the place of occurrence and picked up blood stains, pieces of card board wads and a fired cartridge. It was later confirmed that the cartridge had been fired from the licensed gun of the appellant.

5. At the trial, the appellant took up the plea of right of private defence. According to him, he had been discharged from the military service on medical ground whereafter he came and settled down in his village. He was deprived of his share in the landed properties by his father and brothers. This gave rise to some bitterness between him and his brothers and therefore he started living separate from them in a house constructed by him just outside the village. According to him, his father Arjun Singh was lifting earth in front of his house and was digging pits. He objected to his doing so which gave rise to altercation between him and his father. At about that time, his brothers Ram Das (the deceased), Indraaj and Satbir also came there. According to him, Indraaj and Satbir were carrying lathies and his brothers started beating him with lathies. Getting scared, he rushed inside his house to save himself. He closed the door of the courtyard of his house but his brothers pushed open the door and followed him. All his brothers ran after him but he managed to reach inside his house and closed the door. He warned his brothers that they were trying to kill him but that had no effect and his three brothers attempted to break open the door with a view to attack him. To save himself, he picked up his licensed gun and fired from the window.

6. At the trial, Ram Avtar (P.W. 1) and Arjun Singh (P.W. 2) fully supported the case of the

prosecution. The medical evidence on record also establishes beyond doubt that the deceased as well as Arjun Singh (P.W. 2) received the gun shot injuries. The Trial Court as well as the High Court finding their evidence to be reliable and further finding the defence to be untrue, convicted and sentenced the appellant as earlier noticed.

7. It was sought to be argued before us on behalf of the appellant that the prosecution witnesses and others were aggressors and they had in fact, entered the courtyard of the house of the appellant which gave rise to a reasonable apprehension in his mind that grievous hurt, if not death, may be caused. It is the assertion of the appellant that he had been assaulted with lathies by at least two of his brothers.

8. This plea has been negated. It was found that the appellant had not suffered any injury, even though he was arrested on the very next day of the occurrence. The Courts below have also accepted the prosecution version of the incident to the effect that it was the appellant who has pushed his father to his courtyard. In a situation like this it was normal for the brothers of the appellant to come to the rescue of their father who was admittedly in the courtyard of the house of the appellant. If the brothers came to rescue their father, it cannot be said that they were guilty of criminal trespass. The absence of any injury on the person of the appellant clearly negated the theory propounded by the appellant that he had been assaulted by his brother. Counsel for the appellant submitted that the appellant had suffered 40% disability as a result of which he had been released from the military. It is not disputed that he was released from the military sometime in the year 1981 and the last medical test was done sometime in the year 1987. His submission is that a person who had such disability could not have enough strength to push his father to the courtyard of his house. We are not persuaded to accept his submission because apart from the evidence on record, the Court itself noticed the movement of the appellant inside the Court room and did not find any trace of such disability as would have disabled him from pushing his father into his courtyard. Moreover, as stated by the appellant himself, his father was trying to do some earth work in front of his house and therefore the distance may not have been much between the place where his father was working and his courtyard. We find no reason to take a different view. There is no evidence to establish that the appellant was at all assaulted with lathies by his brothers or that he had not pushed his father into his courtyard. In fact, the appellant admits in his statement under Section 313 of the Criminal Procedure Code that he had an altercation with his father just in front of his house. The prosecution evidence is thus convincing and there is no reason to doubt the testimony of the two eye-witnesses who were no other but the brother and father of the appellant.

9. Counsel then submitted that the appellant had suffered reasonable apprehension that if he did not take preventive steps, his brothers may assault him causing grievous hurt or even death. According to Counsel, the appellant had fired only to scare them away and not to cause any injury to the appellant. It is not possible to hold that he apprehended any serious injury to himself. His brothers rushed to his courtyard only with a view to rescue their father. Their conduct was natural. The submission that the appellant fired from his gun only to scare away his brothers is ill founded. He could have fired in the sky if he really intended to scare away his brothers, but the facts disclose that he aimed his gun at one of his brothers causing injury to him and also injuring his father who was just next to Ram Dass (the deceased).

10. We also cannot accept the submission urged on behalf of the appellant that in the facts and

circumstances of the case the appellant did not intend to kill his brother or to cause any injury to him which, in the ordinary course of nature, would have caused his death. A person aiming a gun at another and firing from the gun causing injury to a vital part of the body must be presumed to intend to cause the death of that person. It is not possible to infer any other intention in the facts and circumstances of the case, having regard to the fact that the injury was caused on the chest of the deceased and not on any non vital part of the body. The premeditation is writ large on the face of the record. The appellant first secured himself inside his house then brought his gun and fired. This cannot be said to be an unpremeditated act.

11. Having regard to all the facts and circumstances of the case, we are satisfied that the Courts below have not committed any error in convicting the appellant of the offences punishable under Sections 302, 307 of the Indian Penal Code and Section 27 of the Arms Act.

We find no merit in this appeal and the same is accordingly dismissed.

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