SUPREME COURT OF INDIA

Anil

Vs

State of Haryana

Appeal (Crl.) 178 of 2007

(S. B. Sinha and Markandeya Katju, JJ)

10.05.2007

JUDGMENT

S. B. SINHA, J.

1. Appellant is before us aggrieved by and dissatisfied with a judgment and order dated 6.11.2006 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 372-DB of 2003 and Criminal Revision No. 1475 of 2003 affirming the judgment and order dated 27.03.2003 convicting him for commission of an offence under Section 302 of the Indian Penal Code, 1860 and Section 27 of the Arms Act, 1959.

2. The family of the appellant and the family of Dinesh (deceased) were residents of the same village. Their houses are intervened only by a road. The deceased and Manjit, brother of the appellant, were studying together in the same college. They were, however, not on speaking terms. Altercations had also taken place between the deceased and the appellant during Panchayat elections. Appellant thereafter had allegedly been threatening him. A First Information Report was lodged by Rajpal Singh, uncle of the deceased to that effect. The wedding of his niece had been fixed on 17.02.2002. The marriage celebrations had been going on. Appellant and Manjit, however, took objections to the singing etc. by the ladies, and they used to threaten them. On that account their festive mood would be turned into grief. On 14.02.2002 at about 8 p.m. Rajpal came out of his house. Appellant accosted him asking why such a noise in the neighbourhood was being made. He

ignored him and continued walking. Dharmpal father of the appellant made a remark that it did not matter as he would come back by the same way. He was returning home at about 11 p.m. when Dharmpal caught hold of him. Appellant came at the spot armed with a gun. They started beating him. Rajpal called out for his nephew (Dinesh) and as soon as he opened the door, a shot was fired by the appellant at him. Almesh, another nephew (PW-10) of the first informant was also following Dinesh. He also witnessed the occurrence. Appellant, his father and brother went inside his house. After some time, however, the appellant came out with his brother Manjit and started walking. Dharmpal fired shots in the air.

3. Rajpal started proceeding to the police station which was about 11 kms. from the village. On his way, however, he met Satpal Singh Sub- Inspector of Police at about 2.00 a.m. and informed him about the incident. The First Information Report was recorded at about 3.10 a.m.

4. In the trial, the prosecution inter alia examined Rajpal (PW-8) and Almesh (PW-10). On the basis of the evidence brought on record by the prosecution, while acquitting Dharampal and Manjit, the learned Sessions Judge found the appellant guilty of committing murder of Dinesh. He was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5, 000/-. He was also sentenced to undergo imprisonment for a period of two months and to pay a sum of Rs. 1, 000/- as fine under Section 27 of the Arms Act, 1959. As noticed hereinbefore, the High Court has affirmed the said judgment of conviction and sentence

5. Mr. Jawahar Lal Gupta, learned senior counsel appearing on behalf of the appellant, took us through the First Information Report, the depositions of PWs 8 and 10 as also the medical evidence. It was contended that the medical evidence does not corroborate the ocular evidence. The learned Senior Counsel urged that from a perusal of the injuries noticed by the Autopsy Surgeon, it would appear that the entry point of the bullet was 12 cms from the right nipple and the exit point was on the left side, whereas Rajpal in his deposition categorically stated that the deceased suffered fire arm injuries near the right nipple.

6. The learned counsel submitted that as the shot was allegedly fired when Dinesh was opening the door when he was very much inside the house, it is improbable that he received gun shot injury from a fire from a distance of about 15 feet, particularly, when the appellant was not said to be standing just in front of the door. He further contended that Almesh could not be an eye-witness to the occurrence as he was following Dinesh and, thus, could not have seen as to who had fired the shot. The prosecution story having been disbelieved in part insofar as Manjit and Dharmpal having been acquitted, the courts below misdirected itself in convicting the appellant for murder of the deceased. In any event, the learned counsel urged that as nobody could anticipate that the fired shot would hit Dinesh; Exception 4 to Section 300 of the Indian Penal Code, 1860 is attracted in their case.

7. Mr. Rajeev Gaur, learned counsel appearing on behalf of the State, however, on the other hand, submitted that the doctrine of falsus in uno, falsus in omnibus is not applicable in India. It was contended that the discrepancy between the medical evidence and the ocular evidence is not such which would lead to the conclusion that the appellant was innocent.

8. The following injuries were found on the person of the deceased:

"1. Lacerated wound 2.5 cms x 1.5 cms was present over right lateral chest wall in the mid aillary line, 12 cms from right nipple. Margins of the wound were inverted. On dissection under lying muscles were lacerated. There was fracture of 6th, 7th and 8th ribs on right side. Right pleura was lacerated. Track of the wound was going medially, downwards and anteriorly. Middle and lower lobes of right lung were lacerated extensively. Right pleural cavity was full of blood. Extensive lacerations were present in heart, middle and lower lobes of left lungs. Left pleural cavity was full of blood. Pericardium and left pleura were lacerated.

2. There was a oval shaped lacerated wound present over left anterior aspect of chest wall 4 x 3.5 cms margins were inverted, 3 cm below and medial to left nipple, 7.5 cms lateral to mid line. Clotted blood was present. Intercostals muscles were lacerated"

9. The cause of death in the opinion of Dr. A.S. Ahlwat (PW-9) was extensive haemorrhage and shock as a result of the injuries which were ante- mortem in nature and sufficient to cause death in normal causes of nature. According to his opinion, "the injuries had been caused by firearm".

10. The death of Dinesh being homicidal in nature is not in dispute. In a case of this nature, the evidence of the prosecution witnesses, in our opinion, should be considered keeping in view the backdrop of events.

11. It is not in dispute that there was a marriage in the family. Marriage of Manisha was fixed on 17.02.2002. It has also not been disputed that as of custom the ladies sing songs and play music for the ensuing marriage in the family. Objections thereto were taken by the appellant and his family.

12. The incident had taken place at about 11 p.m. The First Information Report was recorded at about 3.10 a.m. A death had occurred. The dead body was lying in the house. The first informant and other had also been threatened.

13. In the aforementioned situation, the First Information Report must be held to have been lodged without any delay. A First Information Report, as is well-known, should be treated to be an encyclopaedia. Satpal Singh, Sub- Inspector (PW-12) came to the village immediately. He conducted the proceedings under Section 174 of the Code Of Criminal Procedure, 1973 and recorded the statements of the witnesses. According to the said witness, they reached Mahra turning at about 1.45 a.m. and the complainant came to the said place almost immediately thereafter.

14. Mr. Gupta contended that the investigating officer had not pointed out the spot from where the witness saw the occurrence in the site plan. This may be so. The site plan, however, shows all other details. It is not of much dispute that Rajpal was being assaulted on the way. There was a cattle

shed. The house of the appellant is by the side of the house of his brother Inder Singh. The distance between the door of the complainant's house and that of Dharmpal was about 20 feet.

15. There is furthermore no dispute that the informant could see the incident. Appellant alone was armed with the gun. The other accused Dharmpal and Manjit were not.

16. As Rajpal was being assaulted, it was natural for him to give a call to his nephews. It is also but natural that they would respond to his call. Nobody could have thought that the appellant would fire a shot at Dinesh. Both the eye-witnesses had stated about firing of the shot. Almesh might not have seen the actual firing a shot but as soon as Dinesh had fallen down on receipt of the fire arm injury, he could have seen the appellant with a gun. Appellant, his father and brother went inside their house which is almost opposite to theirs. There is no reason as to why we should disbelieve the testimonies of PWs 8 and 10.

17. Rajpal might have stated that the deceased received bullet injuries on the left side of his body. The injury on the left side of the body of the deceased was apparent. When a shot is fired all of a sudden, it is difficult for anybody to give a vivid description of the entire incident. One should not forget that he was being assaulted. Dinesh answered to his call and as soon as he opened the door after he received the gun shot injury. In what position Dinesh was standing at the fateful moment can only be a matter of guess. It could not have been noticed by PW-8. In our opinion, it was also not possible.

18. We may notice that in Brij Lal v. State of Haryana [ ], this Court in almost similar situation held:

"3. We heard Mr Sushil Kumar, learned Senior Counsel for the appellant. Learned counsel for the appellant pointed out that PW 3 Mani Ram, who was an eyewitness and gave the FI statement, stated that Brij Lal fired a shot at Dharam Paul which hit the left eyebrow of Dharam Paul and as a result thereof his skull from behind was blown off at the exit point and it caused the instantaneous death of the deceased and this evidence, according to the appellant ' s counsel, is weak, false and discrepant and the occurrence might not have happened as alleged by the prosecution. It is argued that as per the inquest report the main injury on the deceased was shown to have been caused on the back side of the head, whereas the medical evidence showed that injury was caused by a firearm from the front side of the deceased. The investigating officer could not detect the entry wound possibly because the head must have been smeared with blood. The evidence of two eyewitnesses clearly showed that the appellant first shot the deceased Dharam Paul and there was a second shot at PW 4 Ram Kishan. It is true that PW 3 deposed that the appellant first shot his brother Dharam Paul on the back side of the skull. But the medical evidence shows that this shot hit on the eyebrow. Based on this, it was contended that it was not the appellant but somebody else hiding on the rear side who must have caused this injury. We do not find any force in this contention. The incident happened all of a sudden and when firing took place it would be difficult to state on which part of the body the bullet hit. In the instant case, the evidence of PW 4 shows that he himself sustained an injury at the hands of the appellant. It is clearly proved that it was the appellant and none else who was responsible for the crime. The minor discrepancies in the evidence only lend assurance to the

credibility of the prosecution case."

19. We, therefore, cannot accept the submission of Mr. Gupta that PWs 8 and 10 are not reliable witnesses.

20. Mr. Gupta has placed strong reliance on Pratap Singh and Another v. State of M.P. [•] wherein this Court was concerned with reversal of a judgment of acquittal by the High Court. The High Court, while reversing the judgment of acquittal, made certain comments about the investigating officer. In that case, it was opined that preparation of a site plan was necessary as the only eye-witness who had been cutting grass was at a distance of 105 feet from the place of occurrence alleging that he having noticed the appellants therein proceeding towards the deceased with barchhi and lathi not only started running towards the place of occurrence but in fact climbed upon a mound and saw the entire occurrence. It was in the aforementioned peculiar fact situation this Court observed:

"If a site plan has been prepared and if during the investigation it has been brought to the notice of the investigating officer that there were some other witnesses whose evidence would be material for the purposes of proving the prosecution case, namely, witnessing the occurrence by two independent witnesses; we do not see any reason why evidence of such witnesses should not have been recorded. It is correct that it is the duty of the investigating officer to produce the said statements with the charge-sheet but, if the same had not been done, the benefit thereof must be given to the defence and not to the prosecution"

21. It is, however, not a case where the site plan at all was prepared.

22. The site plan showed the material particulars. The place where the complainant was being assaulted has clearly been stated in the First Information Report as also in his deposition by Rajpal. Almesh admittedly was inside the house. We, therefore, do not see any reason to throw out the prosecution case only on the ground that in the site plan the investigating officer had failed to pinpoint the place where the witnesses were standing at the time of occurrence. The investigating officer had accepted that he failed to do it. This, however, does not take the defence case any further as it has been proved, it will bear repetition to state, that the appellant was armed with a gun and he was seen firing a shot and he has also been seen leaving the place of occurrence with the gun in his hand.

23. The High Court, in our opinion, cannot be said to be wrong in affirming the judgment of conviction of the appellant and acquittal of the other passed by the learned Sessions Judge. In a case of this nature, sharing of common intention with the appellant by Dharmpal and Manjit for commission of the murder of Dinesh cannot be held to have been established.

24. So far as submission of the learned counsel as regards applicability of Exception 4 of Section 300 of the Indian Penal Code, 1860 is concerned, the High Court had recorded an order of acquittal

not on the ground that Dharmpal and Manjit did not take part in the occurrence but proceeded on the basis that they did not share the common intention. It is, therefore, not a case where the statements of the witnesses were to be disbelieved by the courts.

25. The submission of Mr. Gupta that the appellant had no intention to commit murder cannot be accepted. He had fired a shot from the gun which he was carrying. There was no provocation. The shot was fired on a vital part of the body. Dinesh was not carrying any arm. He merely came out probably to ascertain what was happening.

26. There was no immediate provocation. As the deceased was not armed with a gun and was merely opening the door, the appellant must be held to have taken undue advantage of his position.

27. In Narayanan Nair Raghavan Nair v. State of Travancore Cochin [•], this Court opined:

"It was then argued that this was a case of a sudden fight and so the case falls within the fourth Exception to Section 300 of the Indian Penal Code, 1860. It is enough to say that the Exception requires that no undue advantage be taken of the other side. It is impossible to say that there is no undue advantage when a man stabs an unarmed person who makes no threatening gestures and merely asks the accused's opponent to stop fighting. Then also, the fight must be with the person who is killed. Here the fight was between Velayudhan (PW 1) and the appellant. The deceased had no hand in it. He did not even try to separate the assailants. All he did was to ask his son-in-law Velayudhan (PW 1) to stop fighting and said that he would settle their dispute."

28. In Subhash Shamrao Pachunde v. State of Maharashtra [•], this Court observed:

"15. The ingredients of the said Exception 4 are (i) there must be a sudden fight; (ii) there was no pre- meditation; (iii) the act was committed in a heat of passion and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. In the event the said ingredients are present, the cause of quarrel would not be material as to who offered the provocation or started assault. Indisputably, however, the occurrence must be sudden and not pre-meditated and the offender must have acted in a fits of anger.

16. In Rajendra Singh and Ors. v. State of Bihar, this Court held:

"So far as the third contention of Mr. Mishra is concerned, the question for consideration would be as to whether the ingredients of Exception 4 to Section 300 of the Indian Penal Code, 1860 can be said to have been satisfied. The necessary ingredients of Exception 4 to Section 300 are:

(a) A sudden fight;

(b) Absence of premeditation;

(c) No undue advantage or cruelty. but the occasion must be sudden and not as a cloak for pre-existing malice. It is only an unpremeditated assault committed in the heat of passion upon a sudden quarrel which would come within Exception 4 and it is necessary that all the three ingredients must be found. From the evidence on record it is established that while the prosecution party was on their land it is the accused who protested and prevented them from continuing with ploughing but when they did not stop the accused persons rushed to the nearby plot which is their land and got weapons in their hands and assaulted the prosecution party ultimately injuring several members of the prosecution party and causing the death of one of them while they were fully unarmed. In this view of the matter on scrutinizing the evidence of the four eyewitnesses PWs 2, 4, 7 and 8 who have depicted the entire scenario it is not possible for us to agree with the submission of Mr. Mishra, learned Senior Counsel appearing for the appellants that the case is one where Exception 4 to Section 300 would be applicable. We, therefore, reject the said submission of the learned Counsel."

17. Even if it be assumed that responses to the questions put to the deceased or the complainant caused provocation, the same evidently was because of the pre-existing malice and the bias which the Appellant had against them. Moreover, the manner in which the deceased and the complainant were assaulted show that the assailants took undue advantage of the situation as they fell into the gutter and were, thus, in a helpless condition.

18. In Prabhu and Ors. v. State of M.P. [illegible] three Judge Bench of this Court rejected a similar contention in a case where the accused inflicted more than one injury stating : "...The evidence, of PW 4, Dr. C.K. Datal, however, shows that the deceased was belaboured mercilessly. There were innumerable contusions on the entire body of the deceased from head to toe. The wrist, humerus, etc. were fractured and the whole body was full of rod marks. There were several contused lacerated wounds on the entire face and the left eye was bleeding. The totality of the injuries caused to the victim clearly supports the finding of both the courts below that the appellants went on belabouring the deceased till he died on the spot.

19. In Thangaiya v. State of T.N., relying upon a celebrated decision of this Court in Virsa Singh v. State of Punjab [illegible] 1958 SCR 1495, the Division Bench observed:

"17. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case for the applicability of Clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under Clause "thirdly" of Section 300 Indian Penal Code, 1860. culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to, because death viz. that the injury found to be present was the injury that was intended to be inflicted.

18. Thus, according to the rule laid down in Virsa Singh case even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of

nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point" Therein it was held that there is no fixed rule that whenever a single blow is inflicted Section 302 would not be attracted.

20. No hard and fast rule, however, can be laid down as different situations may arise having regard to the factual matrix involved therein."

29. Having regard to the ratio laid down in the said decisions, we cannot accept Mr. Gupta's second submission also.

30. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.