SUPREME COURT OF INDIA

Sat Narain

Vs.

State of Haryana

C.A.No.38 of 2008

(C.K. Thakker and Dalveer Bhandari,JJ.)

08.01.2008

JUDGMENT

C.K. Thakker, J.

1. Leave granted.

2. The present appeal is filed against the judgment and order passed by the Addl. Sessions Judge, Sirsa on May 5, 2004 in Sessions Case No. 140 of 1999/2003 and partly confirmed by the High Court of Punjab & Haryana on August 17, 2006 in Criminal Appeal No.533-DB of 2004.

3. The case of the prosecution was that the occurrence took place on June 17, 1999 at about 3.30 a.m. In the said incident, one Chhotu Ram @ Lal Bahadur was killed and PW14- Ravinder Kumar-real brother of deceased Chhotu Ram, as also PW15-Sakeela-wife of deceased Chhotu Ram sustained injuries. According to the prosecution, on that day, a telephonic message was received from Civil Hospital, Sangaria Police Station by ASI Hari Ram relating to the incident. He, therefore, reached Civil Hospital, Sangaria to find out whether injured Ravinder Kumar, Chhotu Ram and Sakeela were in a position to give statements. ASI Hari Ram also sent wireless message to the Police Station, Sadar Dabwali. After some time, he received an information that Chhotu Ram, injured had succumbed to the injuries. Meanwhile, PW18-ASI Umed Singh of Sadar Dabwali Police Station reached the hospital at Sangaria and recorded the statement of injured Ravinder Kumar, resident of Village Chamar Khera, Police Station Sadul Shahar, District Ganga Nagar, Rajasthan wherein he stated that he was the resident of Village Chamar Khera. His sister, Sunita Devi, got married to one Darshan Singh, resident of Dhani Choutala. On the previous day, i.e. on June 16, 1999, at about 8 p.m., the complainant had gone to see his sister Sunita Devi at Dhani Choutala where there was a quarrel between his brother-in- law-Darshan Singh and Bablu, son of Sat Narain (appellant herein). Darshan Singh then went to call Chhotu Ram (deceased)-brother of the complainant, from Village Chamar Khera in a jeep. In the night at about 1.30 a.m., Darshan Singh returned with deceased Chhotu Ram and his wife Sakeela. At about 3.30 a.m. on June 17, 1999, Sat Narain (appellant herein) armed with a gun, his son Bablu

armed with a gandasi, his wife Savitri armed with a kasoli and Avtar Singh armed with lathi came in a Maruti car at Dhani of
Darshan Singh and stopped the car on the way. They started abusing Darshan Singh, his wife and complainant Ravinder Kumar. Chhotu Ram (deceased) asked Sat Narain to go back, saying that they would talk in the morning. The complainant Ravinder Kumar with his brother Chhotu Ram (deceased) and Sakeela-PW15 then boarded a jeep and all of them started for Village Sangaria. The deceased Chhotu Ram was on the steering wheel of the jeep, complainant Ravinder Kumar was sitting by his side and Sakeela was sitting on the back seat. When their jeep reached near the car of the appellant, all accused raised a lalkara to teach a lesson to the complainant party for siding with Darshan Singh.

4. The appellant *Sat Narain* fired a shot at Chhotu Ram from his licensed gun with intention to kill him and the pellets hit the right shoulder of the deceased. Sat Narain fired another shot towards the complainant Ravinder Kumar but he saved himself by taking shelter behind the jeep. The appellant fired third shot towards Sakeela and the pellets hit on her right hand. Accused Bablu, Savitri and Avtar Singh also caused injuries with their respective weapons to the complainant party. The pellets also hit on front portion of the jeep of the complainant party. They raised alarm and on hearing the noise, Darshan Singh, Vikram Singh and Sunita came running and raised a lalkara that complainant party need not be frightened and they had come. On seeing those persons coming near the scene of offence, the accused fled away with their respective weapons. The injured were then shifted to Civil Hospital, Sangaria. Chhotu Ram, however, succumbed to the injuries and died. The motive behind the attack was the dispute between Darshan Singh on the one hand and his brother Sat Narain on the other hand and complainant party was supporting the case of Darshan Singh.

5. After the usual investigation, charges were framed against three accused persons-Bablu (A1), son of Sat Narain (appellant), Sat Narain (appellant) (A2) and Avtar Singh (A3). Savitri was declared as proclaimed offender and the case could not be preceded against her.

6. At the trial, the prosecution examined the complainant PW14-Ravinder Kumar, brother of deceased Chhotu Ram, first informant and an injured eye- witness, Sakeela-PW15-wife of deceased Chhotu Ram, another injured eye- witness. It also examined PW12-Darshan Lal and PW13-Vikram to prove the motive on the part of the accused persons in committing the crime.

7. In the statement under Section 313 of the Code of Criminal Procedure, 1973, accused Nos. 1 and 3 pleaded not guilty. Their case was of total denial. According to them, they were falsely implicated in the incident. So far as appellant Sat Narain-accused No.2 is concerned, he admitted his presence at the scene of offence. His defence, however, was that after taking the turn of water in his field he was returning with his licensed gun in the car. There the complainant party surrounded him and threatened to finish him. The appellant got frightened and ran to save himself but the complainant party chased him and stopped him by striking the jeep against his car. The complainant party was armed with deadly weapons. The appellant-accused, in the circumstances, fired a shot in his defence which hit the deceased Chhotu Ram and on seeing the injuries on the person of Chhotu Ram, the complainant party ran away from the spot. It was, therefore, his case that he had committed no offence and should be acquitted.

8. The trial Court, on the basis of prosecution evidence and considering the defence version particularly of accused No.2 (appellant herein), held that the prosecution was successful in proving the incident in question. It was also established from the evidence that the complainant party was not the aggressor. No right of self defence was, therefore, available to appellant Sat Narain. From the injuries sustained by the deceased Chhotu Ram, PW14-Ravinder Kumar (complainant) and PW15-Sakeela, it was proved beyond reasonable doubt that the appellant accused had used gun which caused death of deceased Chhotu Ram and injuries to Sakeela. Accused Bablu and Avtar Singh had also caused injuries to deceased Chhotu Ram, Ravinder Kumar and Sakeela. Accordingly, the trial Court convicted the appellant herein for an offence punishable under Section 302 of Indian Penal Code (`IPC' for short) for causing death of deceased Chhotu Ram and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default of payment of fine, to further undergo imprisonment for two years. It also convicted the appellant for an offence punishable under Section 307, IPC for attempt to commit murder of Sakeela, wife of deceased Chhotu Ram, and ordered him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo imprisonment for one year.

9. The Court also convicted the appellant for an offence punishable under Sections 323 and 324 read with Section 34, IPC for causing injuries to Ravinder Kumar and Sakeela. Accused Avtar Singh was thus convicted for an offence punishable under Sections 302 and 307, IPC substantively. He was also convicted and sentenced for committing offences punishable under Sections 323 and 324 read with Section 34, IPC. Accused Nos.1 Bablu and 3 Avtar Singh were also convicted by the trial Court.

10. Being aggrieved by the order of conviction and sentence, all the three accused preferred Criminal Appeals before the High Court. The State of Haryana and complainant Ravinder Kumar filed Revision Petitions. All the matters were taken up by the High Court together. The High Court, by the impugned order, dismissed both the Revisions filed by the State and the complainant. It allowed Criminal Appeals of accused No.1-Bablu and accused No.3-Avtar Singh and held that it was not proved beyond reasonable doubt that they had committed the offences with which they were charged. Hence, by giving benefit of doubt, the High Court acquitted them.

11. So far as the appellant is concerned, the High Court, in the light of acquittal recorded in favour of accused Nos. 1 and 3, acquitted him for the offences punishable under Sections 323 and 324 read with Section 34, IPC. But the High Court held that the appellant was rightly convicted by the trial Court for offences punishable under Section 302, IPC substantively as also under Section 307, IPC substantively. Accordingly, the order of conviction and sentence recorded by the trial Court against the appellant in respect of those offences was confirmed.

12. Against the order passed by the High Court acquitting Bablu and Avtar Singh, complainant Ravinder Kumar had approached this Court by filing Special Leave to Appeal (Criminal) No. 1274 of 2006 which was dismissed on January 15, 2007. In the present matter by accused No.2-Sat Narain, notice was issued on March 7, 2007. Records and proceedings were thereafter called for and the matter was ordered to be placed for hearing on a non- miscellaneous day.

We have heard learned counsel for the parties.

13.The learned counsel for the appellant contended that both the Courts were wrong in convicting the appellant. It was submitted that when the other two accused were acquitted by the High Court, the appellant could not have been convicted on the basis of the same evidence. Acquittal of other accused goes to show that the case of the prosecution was not reliable and it was not proved that the incident took place in the manner as described by the prosecution. The appellant, in the circumstances, ought to have been granted benefit of doubt. It was urged that the case of the appellant was that the complainant party was the aggressor and in exercise of right of private defence, the appellant was compelled to use licensed fire arm. Only one shot was fired which resulted into unfortunate death of Chhotu Ram and injuries to Sakeela. The fire arm, however, was used because there was reasonable apprehension in the mind of the appellant that if he would not use it, he would either be killed or seriously injured. Both the Courts were, therefore, wrong in not giving benefit of right of self defence. Finally, it was urged that on the facts and in the circumstances of the case, at the most, it was a case of exceeding of right of self defence.

14. The Courts ought to have considered the facts of the case and ought not to have convicted the appellant for an offence punishable under Section 302, IPC for causing death of deceased Chhotu Ram and ought not to have awarded imprisonment for life. The Courts were also in error in convicting the appellant for an offence punishable under Section 307, IPC for attempt to commit murder of PW15-Sakeela, wife of deceased Chhotu Ram and in awarding imprisonment for life which is the maximum penalty. It was, therefore, submitted that in any case, the conviction of the appellant should be converted for an offence punishable under Section 304, Part II or under Section 304, Part I and to that extent, the appeal deserves to be allowed.

15. The learned counsel for the respondent-State submitted that murder of deceased Chhotu Ram was committed by the appellant-accused No.2 when the members of the complainant party, who were unarmed, were going to their village in a jeep. According to the counsel, they were prevented from proceeding towards the village by putting Maruti car in the way which caused obstruction and the complainant party was attacked by the accused party. The counsel submitted that the appellant herein had fired three shots, out of them one injured deceased Chhotu Ram who succumbed to the injuries, the second shot was aimed at complainant Ravinder Kumar but he escaped it by taking shelter behind the jeep and the third shot injured Sakeela, wife of the deceased. The trial Court, after appreciating the evidence, believed the story of the prosecution witnesses so far as the role of the appellant is concerned and convicted him. The High Court confirmed the view taken by the trial Court. In the circumstances, acquittal of other two accused by the High Court would not make conviction and finding recorded against the appellant vulnerable. It was also submitted that in the totality of facts, both the Courts were right in convicting the appellant for an offence punishable under Section 302 as also under Section 307, IPC and in imposing imprisonment for life and the order does not suffer from any infirmity.

16. Having heard learned counsel for the parties, in our opinion, no case has been made out for interference by this Court against the order passed by the trial Court and confirmed by the High Court so far as the present appellant is concerned. As already noted by us, both the Courts

believed the story of the prosecution, particularly evidence of PW14-complainant Ravinder Kumar, real brother of the deceased and injured as also PW15-Sakeela, wife of deceased Chhotu Ram, another injured eye-witness. The Courts rightly held that the appellant fired three times. The resultant effect was loss of life by Chhotu Ram and injuries to Sakeela, wife of Chhotu Ram. The appellant also tried to hit the complainant Ravinder Kumar but he could escape himself by taking shelter of his vehicle (jeep) and thus could avoid injury by a fire arm. From the evidence, it is also clearly established and believed by the Courts that the appellant had re- loaded his gun which proves his intention to kill Chhotu Ram and attempt to kill other members of the complainant party.

17.So far as right of self defence is concerned, in our opinion, both the Courts were right in holding that the complainant party was not the aggressor. It is also clear from intrinsic evidence and circumstances, viz. (i) presence of Sakeela at the time of occurrence at 3.30 a.m.; (ii) complainant side was unarmed and empty handed; (iii) all the injured persons were from complainant's family, etc. It has also come in evidence that it was the accused side who abused the complainant party. Deceased Chhotu Ram tried to pacify the accused stating that they would discuss the matter in the morning. Accused party, however, did not oblige the deceased and the complainant party and did not allow them to leave. When the complainant party left the place for going to their village in a jeep, they found Maruti car of the accused in the way which prevented them from proceeding towards their village and at that stage, the accused attacked them. In the circumstances, in our opinion, it cannot be said that either the trial Court or the High Court had committed any error of fact or of law in convicting the appellant.

18. The trial Court considered the defense of the appellant and his right of self defense. Dealing with the evidence on record and negating the defense theory, it observed;

> "There is no reason to disbelieve the oral assertions of the prosecution witnesses which has been well corroborated from the medial evidence. Even the occurrence has been admitted by the accused. Even the accused Sat Narain has taken the plea of self defence. The accused have also admitted the presence of the witnesses Ravinder Kumar Sakila, Vikram Singh, Darshan Lal and deceased Chhotu Ram at the place of occurrence. The defence version of the accused is that the complainant party was the aggressor. They attacked accused Sat Narain and the accused Sat Narain in his self defence opened fire but except the suggestion put to the prosecution witnesses there is no evidence on behalf of the accused to prove that the complainant party ever chased accused Sat Narain armed with deadly weapons with intention to harm his person and property. So, the plea of self defence set up by the accused fails. There is specific evidence against the accused that accused Sat Narain was armed with the double barrel licensed gun, accused Bablu was armed with a gandasi, accused Avtar Singh was armed with a Lathi and accused Savitri (since declared proclaimed offender) was armed with a kasuli. They all came to the Dhani of Darshan Lal at 3.30 a.m. at night. So, their common intention can be inferred. Had they no common intention to cause the death of Chhotu Ram, they might not have come to the Dhani of Darshan Lal (PW12) at odd hours armed with deadly weapons. Specific injury and role has been attributed to each of the accused. The testimony of the witness namely Darshan Lal (PW12), Vikram Singh (PW13), Ravinder Kumar, complainant/injured

(PW14) and Sakeela, injured (PW15) is well corroborated by Dr. R.C. Ola (PW7) and medico legal reports Ex.PE, Ex.PG and Ex.PH and post mortem report Ex.PM. Hence, it is proved that the accused on 17.6.1999 in the area of village Choutala accused Sat Narain in furtherance of common intention of his co-accused Bablu, Avtar Singh and Savitri (proclaimed offender) caused the death of Chhotu Ram alias Lal Bahadur by firing shot at him and he also fired at Sakeela in furtherance of common intention of his remaining accused with the intention to cause her death and accused Avtar Singh and Bablu in furtherance of common intention of his co-accused Sat Narain, and Savitri (since declared proclaimed offender) caused simple hurt with sharp and blunt weapon to Ravinder Kumar. Therefore, the accused committed offences punishable under Section 302, 307, 323 and 324 read with Section 34 of the Indian Penal Code. So, accused Sat Narain is held guilty for the commission of offences punishable under Section 302 and 307 of the Indian Penal Code whereas accused Bablu and Avtar Singh are held guilty for the commission of offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and accused Bablu and Avtar Singh are further held guilty for the commission of offences punishable under Sections 323 and 324 of the Indian Penal Code and accused Sat Narain is held guilty for the commission of offences punishable under Sections 323 and 324 read with Section 34 of the Indian Penal Code and are convicted ther eunder accordingly".

19. It is no doubt true that the High Court allowed the appeals of the other two accused, i.e. accused Nos. 1 and 3 extending benefit of doubt to them observing that they might have been roped belatedly. But to us, the High Court was wholly right in holding that when accused No.2 (appellant) had admitted his presence at the scene of offence as also use of fire- arm and pleaded the right of self defence, there was no question of his alibi. It was, therefore, for him to place before the Court the circumstances in which he exercised the said right. We are conscious and mindful that a right of private defence cannot be weighed in a `golden scale' and even in absence of physical injury, in a given case, such right may be upheld by the Court provided there is reasonable apprehension to life or grievous hurt to such person. We are equally aware of settled legal position that the onus of proof on the accused as to exercise of right of private defense is not as heavy as on the prosecution to prove guilt of the accused and it is sufficient for him to prove the defence on the touchstone of preponderance of probability. But in the instant case, from the facts and evidence on record, the right of self defense was not at all available to the appellant. The complainant party was unarmed and also not an aggressor. It was the appellant, who came with a loaded gun and fired shots one after the other which resulted in death of Chhotu Ram, injury to Sakeela, though Ravinder Kumar could avoid the shot and remained unhurt. The gun was re- loaded by the appellant which goes a long way to exhibit his intention to finish the complainant side.

20. The trial Court, in the light of the evidence, did not grant benefit of private defence to the appellant. The High Court again considered the plea of the accused and negatived it by observing as under;

"If we take the plea as set up by Sat Narain to be true then in that eventuality some one else along with Chhotu Ram, Sakeela and Ravinder would have certainly received some

injuries. It is not so. The hired persons do not come without any weapon. Sat Narain does not say a word about any weapon being carried by the complainant side. He simply states that he was attacked by them. This goes to show that at the time of occurrence there was no one else except Chhotu Ram, his wife and Ravinder who were going to village Babrian from Dhani of Darshan Lal. If the entire scene is visualized in the present set of circumstances, it can be said that the plea raised by Sat Narain to the effect that he was called in the Dhani and threatened by Chhotu Ram and others goes against him for the reason that in any case he had the grudge in his bosom against Chhotu Ram (since deceased) an outsider for extending help to Darshan Lal. Chhotu Ram in any case would not be the aggressor".

21. The High Court rightly concluded;

> "Therefore, in our considered view, it is a clear case of murder for which he deserves to be punished under Section 302, IPC".

22. Regarding an offence punishable under Section 307, IPC, the High Court stated;

> "We have also appreciated the case of the prosecution with regard to charge of Section 307 IPC qua Sat Narain appellant. We do find some discrepancies in the eye-version account vis-a-vis the investigation conducted but the same is of no help to him. The case set up by the prosecution is that Sat Narain had fired three shots; one at Chhotu Ram hitting on his right side; second at Ravinder, who incidentally escaped unhurt and the third at Sakeela causing her injuries, who was sitting behind Chhotu Ram on the back seat of the jeep. The substantive evidence before us is that the gun was reloaded by Sat Narain. The argument advanced by Mr. Ghai is that only one shot was fired by Sat Narain and a crude padding has been done by the investigating agency in connivance with the complainant side in order to project it as a case of repeated firing of shots is of no consequence as we have already held him guilty for the charge under Section 302 IPC substantively for causing murder of Chhotu Ram. Still after rescanning the entire case in its right perspective, we are of the firm view that it is a case of more than one shots, causing pellet injuries to Sakeela PW also. Therefore, the conviction of Sat Narain appellant under Section 307 IPC also deserves to be re-affirmed. Resultantly his conviction under Sections 302 IPC and 307 IPC is upheld".

23.. It may be mentioned here that the trial Court had convicted accused Nos. 1 and 3 also but the High Court felt that they were entitled to benefit of doubt and hence they were ordered to be acquitted. But that does not mean that the appellant who had used his gun, killed deceased Chhotu Ram and also attempted to kill Sakeela and Ravinder Kumar is entitled to acquittal or that his conviction and sentence was not in consonance with law.

24.. We are also not impressed by the argument of the learned counsel for the appellant that no case for an offence punishable under Section 302 or 307, IPC was made out against the appellant and at the most he could beconvicted for an offence punishable under Section 304 Part II or Part I, IPC.

25. The counsel drew our attention to a decision in Chanan Singh v.State of Punjab, (1979) 4 SCC 399. In that case, reversing the order passed by the High Court and extending the benefit of right of self defence, this Court set aside the conviction of the appellant-accused. In our opinion, however, the facts of Chanan Singh were totally different. As observed in the decision, even the High Court had observed in the order that it was difficult to hold that the eye-witnesses in the case had given true version of the fight. The presence of injuries on the persons of the accused went to show that there was a quarrel between them on one side and the complainant party on the other and the prosecution did not put forward the genesis and the origin of fight correctly. Obviously, therefore, this Court held that the High Court was wrong in convicting the accused.

26. In the instant case, both the Courts believed the prosecution version and we are satisfied that the Courts were right in relying on the evidence of prosecution and in holding that they were not aggressors and theappellant could not have claimed right of private defence.

27. *Partap v. State of Uttar Prades*[1] also does not take the case of the appellant anywhere. There it was held that burden to prove plea of self defence on the accused is not as onerous as that which lies on the prosecution. We are in respectful agreement with the said proposition of law. It is settled law that the prosecution has to prove its case beyond reasonable doubt. But it is sufficient if the accused, when he is called upon to take a defence, proves it on the basis of reasonable probability. He need not prove it beyond reasonable doubt. But in the instant case, complainant party was not the aggressor and the right of self defence was not available to the appellant and hence he could not have committed death of Chhotu Ram nor could have caused injuries to Sakeela.

28. *State of U.P. v. Ram Swarup & Anr*[2] is again on a question of law and as stated by us, law is well settled on the point and even the State counsel has not disputed the availability of right of private defence to accused under the IPC.

29. Since both the Courts were right in believing prosecution witnesses who were injured at the time of incident and since the appellant had used fire arm which caused death of deceased Chhotu Ram and injuries to PW15- Sakeela without there being aggression by them, the order of conviction and sentence recorded by the trial Court and confirmed by the High Court against the appellant cannot be said illegal or contrary to law. The appeal, therefore, deserves to be dismissed.

30. For the foregoing reasons, the order of conviction and sentence recorded by the trial Court and confirmed by the High Court against the appellant is legal, valid and in consonance with law and calls for no interference. The appeal is, therefore, dismissed.

Cases Referred

[1]*(1976) 2 SCC 798*
[2]*(1974) 4 SCC 764*