

# SUPREME COURT OF INDIA

Narinder Kumar

Vs.

State of Jammu & Kashmir

CrI.A.No.2093 of 2008

(Aftab Alam and T.S.Thakur JJ.)

21.07.2010

## JUDGEMENT

### **T.S.Thakur, J.**

1. This appeal by special leave arises out of an order passed by the High Court of Jammu and Kashmir in Criminal Appeal No.9 of 1996 and confirmation No.21/1996 whereby the appellant's conviction and sentence for an offence punishable under Section 302 RPC has been upheld and the appeal filed by the appellant dismissed.

2. Briefly stated, the case of the prosecution is that on 13th April 1992, the deceased Shri Kola Ram along with his brothers, Shri Balwant Raj and Tirath Ram the appellant and a large number of other people belonging to Village Nagri Parole, Tehsil and District Kathua were returning home after celebrating Baisakhi Mela at Arawan a village at a distance of a few kilometers from Nagri. The mela goes from the village had it appears formed a small procession and were dancing their way back to the beats of a drum. The prosecution case is that when the participants reached near a rice mill, owned by one Shri Dharampal, the deceased, Kola Ram who was also one of the revellers trampled the foot of the accused-appellant, Narinder Kumar. This led to exchange of hot words and abuses between the deceased and the appellant. Other members of the party intervened to cool the tempers but the appellant left the spot in anger only to return a short while later with a 12 bore gun in his hand. By that time the dancing party had reached a place near the shop of Vijay Kumar in Nagri Parole. The appellant is alleged to have pushed aside the brother of Kola Ram with the barrel of his gun, fired at the deceased from close range and fled from the spot carrying the weapon with him. The deceased fell to the ground after receiving the gunshot injury and was quickly removed to Kathua hospital where he was declared dead.

3. On receipt of information from the hospital regarding the arrival of a medico legal case, Shri Darbari Lal Sharma, ASI swung into action and rushed to the hospital along with other police personnel only to be told that the deceased had already passed away. The assistant sub-inspector recorded the statement of Balwant Raj, PW which was taken as the FIR

regarding commission of the offence that kick started investigation into the whole episode. A challan was eventually filed before the Illaqa Magistrate against the appellant who committed him to the Court of Sessions for being tried for offences punishable under Sections 302/323 RPC and Section 3 read with Section 25 of Arms Act. Before the Sessions Court the accused pleaded not guilty to the charges and claimed a trial. A trial accordingly followed at which the prosecution examined as many as 20 witnesses including PWs Balwant Raj, Khazan Chand, Babu Ram, Tirath Ram and Jia Lal who had, according to the prosecution, witnessed the incident. Among the others examined by the prosecution were Dr. K.P. Singh who conducted the post- mortem of the deceased, Dr. J.L. Fotedar, the forensic expert and the police officer who conducted the investigation. In his defence the appellant examined DWs Ashok Kumar, Ravindra Kumar and Ajay Sharma alia Bilu and Dr. Daljeet Singh as his witnesses.

4. Appreciation of the evidence adduced before it led the trial court to hold that the prosecution had established the commission of an offence punishable under Section 302 RPC against the appellant beyond any shadow of doubt. The Court, however, found no evidence to support the charge regarding the commission of the offence punishable under Section 3 read with Section 25 of the Arms Act and Section 323 of the RPC. The appellant was accordingly acquitted on those counts. By a separate order appellant was sentenced to undergo imprisonment for life and a fine of Rs.5,000/- subject to confirmation by the High Court.

5. Aggrieved by his conviction and sentence the appellant preferred criminal appeal no.9 of 1996 which was heard along with confirmation reference No.21 of 1996 received from the Sessions Court. By the judgment impugned in this appeal the High Court has dismissed the appeal filed by the appellant and confirmed his conviction and sentence as already noticed earlier.

6. Having heard Mr. Gupta, learned senior counsel for the appellant and counsel for the respondent - State at length we are of the view that there is no room for our interference with the judgment and order passed by the Courts below.

“The trial Court as well as the High Court have in their respective judgments critically evaluated the evidence adduced by the prosecution and the defence and correctly arrived at the conclusion that the prosecution had succeeded in bringing home the charge of culpable homicide amounting to murder against the appellant beyond any shadow of doubt. In the course of the hearing before us the entire evidence available on record was once again read out by learned counsel for the appellant in an attempt to show that the appellant had been falsely implicated and that there were serious flaws in the prosecution story that entitled the appellant to the benefit of doubt. We regret our inability to accept that submission. In our opinion, the prosecution case stands proved on the basis of the testimony of four out of five eye witnesses examined at the trial. The fifth witness namely Khazan Chand did not support the prosecution version and was declared hostile. The deposition of Shri Balwant Raj, the first

informant which was recorded before the trial Court gave a graphic account of the genesis of the incident leading to the death of the victim Kola Ram. This witness happens to be the younger brother of the deceased.

According to him, he along with his brothers Tirath Ram and Kola Ram, the deceased and Jia Lal had gone to village Arwan to see the Baisakhi Mela. On their way back the participants were dancing Bhangra. When the bhangra party reached a place near the flour mill of Dharampal, the deceased trampled the foot of the appellant leading to exchange of hot words and abuses between the two. The appellant thereafter went away from the bhangra party to his house while the remaining members of the bhangra party continued dancing their way back to their houses.

When they arrived near the shop of Vijay Kumar the appellant returned to the spot with a gun, pushed the witnesses aside and fired at the deceased. The gun shot struck the deceased in the belly and chest. He started bleeding, and collapsed to the ground. The appellant ran away from the place of occurrence with the gun. The deceased was taken to the Nagri Hospital from where he was referred the hospital at Kathua. On his way to Kathua the deceased breathed his last. Police from Kathua came to the hospital and recorded his statement marked Ex. PW BR.”

7. In cross-examination of this witness, a number of suggestions were put to him like whether the bhangra party members had consumed alcohol, which suggestion was denied by the witness. The witness further stated that within two to four minutes of the skirmish between the deceased and the appellant, the appellant had returned to the place opposite to Vijay Kumar's shop where the dancing party had reached in the meantime. Despite extensive cross- examination on various other aspects nothing, that could possibly shatter his testimony, was extracted by the defence. The witness denied the suggestion that he and his brothers were armed with Takwas (sharp edged weapons).

“The suggestion that the deceased and Jia Lal had beaten Anju and Billo on the spot was also denied. So also the suggestion that some one from the crowd had fired a shot which hit the deceased was denied by this witness. The witness stuck to his version that it was the appellant who had fired at the deceased leading to his death.”

8. The statement made by PW 4 Tirath Ram, is also to the same effect. This witness has, like PW Balwant Raj, narrated the sequence of events that led to the incident resulting in the death of the deceased. According to this witness when the bhangra party reached near the shop of Vijay Kumar, the appellant came with a gun, pushed aside Balwant Raj the younger brother of the deceased with the barrel of the gun, aimed the gun at the deceased and fired at him as a consequence whereof the deceased collapsed to the ground. He was taken to the Nagri Hospital who referred him to Kathua Hospital where he was declared dead. The cross-examination of this witness has also been extensive but nothing that could affect the credibility of this witness or the truthfulness of the version of the prosecution has been extracted by the defence.

9. That brings us to the deposition of Babu Ram, the third eye witness examined by the prosecution in support of its case. This witness is not related to the deceased or his family in any way and, cannot, therefore, be described as partisan in any manner. This witness too has given a similar account as the one given by Balwant Raj about the genesis of the incident that led to the death of the deceased. The cross-examination of this witness has like the other two eye witnesses been extensive but there is nothing worthy of any criticism for the defence as regards his credibility or the truthfulness of his version. This witness has also denied the suggestion that the deceased was armed with any weapon or he had caused any injury to Anju or Billo nor some unknown person had fired at the deceased from the crowd.

“The witness was firm that it was the accused who had fired at the deceased.”

10. To the same effect is the statement of Jia Lal, PW who has testified that consequent to the event, the deceased received gun shot injury at the hands of the appellant.

“There is nothing in the cross-examination to discredit his version either.”

11. In the light of the consistent version given by all these eye witnesses, both the Courts below were justified in holding that the prosecution had beyond any shadow of doubt proved the guilt of the accused appellant especially when there was no prior enmity between the appellant and the witnesses or their respective families to even suggest the possibility of false implication.

12. Two other aspects need to be noted at this stage. The first is that the ocular evidence of the witnesses mentioned above gets fully corroborated by the medical evidence adduced in the case. Dr. K.P. Singh, Registrar in the Government Medical College, Jammu, who conducted the post mortem examination and reported the gun shot injury to be the cause of death. The witness reported as under:

“A gun shot wound in the epigastria below the Xyphi sternum on the right side 3 cm from midline. Wound in the round from measuring circular with lacerated and avverted margins with charring of skin in 1 cm area around it and black suiting around the skin. No wound of exit seen. On opening abdomen peritrium ruptured irregularly 12 about 2 area below wound of entry of gun shot. Liver ruptured in the form of laceration all over Gall Bladder also was ruptured and pellets were recovered. Upper pole of right kidney was ruptured and pellets were recovered Funds of stomach having perforations 4 in number and pellets were recovered.”

13. Deposition of Rajinder Singh Jamwal, Scientific Assistant, proved that the bore SBBL gun bearing No.5080 sent to the Forensic Science Laboratory for examination, was in normal working condition and had been fired through prior to its receipt in the lab and that cartridge case marked F/174/92 had been fired from the gun in question. The witness further deposed that the suspected holes present on the clothes of the deceased were gunshot holes. The

prosecution led evidence that the weapon in question was licensed in the name of the father of the appellant.

14. The second aspect which is equally significant is that the defence has not disputed the place of occurrence or the fact that the deceased died due to a gunshot injury. On the contrary, the suggestions made in the cross-examination of the prosecution witnesses and the depositions of the defence witnesses acknowledged that the deceased did collapse on the spot because of a gunshot injury received by him. All that was disputed was whether the appellant was the author of the injury. What is important is that the essential facts constituting the substratum of the story of the prosecution namely that the bhangra party had visited Aarwan in connection with the Baishaki Mela, that they were returning from Aarwan to Nagri Parole, that when the party reached a place near Vijay Kumar's shop a gunshot hit the deceased because of which he died are not in dispute. What the defence suggested was that the gunshot was fired by some one from the crowd and not the appellant which part of the version has been turned down by the trial Court as well as the High Court, and in our opinion, rightly so. It is true that Babu Ram and Tirath Ram are brothers of the deceased but merely because they were related to the deceased, does not make them unreliable witnesses particularly when in the statement recorded by the police at Kathua Hospital immediately after the occurrence, the version in all its essential details was given out by the witness attributing the gunshot injury to the appellant. In the absence of anything to suggest that Balawant Raj, Babu Ram, Tirath Ram and Jia Lal had any reason to screen the real offender and falsely implicate the appellant, the Courts below were justified in accepting their version and holding the charge against the appellant proved.

15. Mr. Gupta made a valiant attempt to argue that there was a grave suspicion about the truthfulness of the prosecution case on account of the delay in the dispatch of a copy of the FIR to the Illaqa Magistrate. The FIR was registered on 13th April, 1992 whereas a copy of the same was received by the Magistrate only on 15th April, 1992 at 11 a.m. This according to the learned counsel, cast a cloud over the veracity of the prosecution case. A similar contention was urged by the defence before the Courts below which was repelled. There is no doubt some delay in the dispatch of a copy of the FIR, but the same is not per se fatal to the case of the prosecution. It is fairly well settled that delay in the dispatch of a copy of the FIR to the jurisdictional Magistrate does not by itself render the case doubtful. What is important is whether there is an explanation for the delay and if so, how plausible it is any such explanation. Suffice it to say that whether or not delay has led to the false implication of an innocent person would depend upon and has to be determined in the context of the facts and circumstances of each case. No hard and fast rule can in that regard be prescribed. The explanation offered by the prosecution in the present case has been accepted by the Courts below. We see no reason to take a different view.

16. It was also contended by Mr. Gupta that statements of some of the eye witnesses were recorded belatedly. This aspect too has to be seen in the background of the facts and circumstances of the case. Whether or not delay has affected the credibility of the prosecution is a matter on which no strait-jacket formula can be evolved nor any thumb rule

prescribed for universal application. The Courts below have, in our opinion, correctly appreciated this aspect and rejected the contention that the delay in the recording of the statements of some of the witnesses was fatal to the case. That is specially so when the prosecution version, based on the statement made by Balwant Raj was known on the date of the incident itself. PW Balwant Raj had in the said statement attributed the gunshot injury sustained by deceased to the appellant. Delay in the recording of the statements of the other eye witness two of whom were brothers of the deceased was not, therefore, used to falsely implicate the appellant.

17. A feeble attempt was made by Mr. Gupta to argue that even if the appellant is proved to have fired at the deceased there was a possibility that any such gunshot injury was caused by him in private defence. The circumstances appearing in the case, argued Mr. Gupta, probablised that the injury inflicted on the deceased was in exercise of the right of private defence of the appellant. We have no hesitation in rejecting that submission also. The argument has, in our opinion, been made in total despair. We say this because there is nothing on record to suggest that the deceased had at any stage either assaulted the appellant or otherwise caused any injury to him to justify infliction of gunshot injury upon him in defence. The depositions of the witnesses examined at the trial are consistent that after the initial exchange of hot words and abuses on account of the deceased trampling the foot of the appellant, the appellant had left the place and re-appeared sometimes later with a gun in his hand. It also appears from the depositions of the witnesses that the appellant had without any provocation pushed the brother of the deceased with the barrel of the gun and shot the appellant. It is, therefore, difficult to appreciate how such an act could be described as one in self defence. The trial Court as also the High Court have come to the conclusion that the deceased was not armed nor was any attempt made by him on the life of the appellant. The plea of the private defence, therefore, fails and is hereby rejected.

18. In the totality of the above circumstances, we see no reason to interfere with the judgment of the High Court.

The appeal fails and is accordingly dismissed.