SUPREME COURT OF INDIA

Mahendra Singh

Vs.

State of Uttaranchal

Crl.A.No.889 of 2006

(Harjit Singh Bedi and Gyan Sudha Misra,JJ.,)

09.09.2011

ORDER

1. This appeal arises out of the following facts: 1.1 Janardhan Pathak, the deceased, was a Gate Keeper with the Peepal Parao Forest Range which fell within the jurisdiction of Police Station Lal Kuan. As the deceased was coming out from his hut and proceeding towards the tea shop, the appellant, Mahendra Singh, who was a Police Constable, fired a shot at him with his service rifle killing him instantaneously. The murder was apparently committed because the deceased had complained to the Head Constable at Police Station Lal Kuan about the nefarious activities of the appellant. The appellant then ran away from the spot and got a case registered at Police Station Rudrapur against the deceased for offences punishable Crl.A. No. 889 of 2006 REPORTABLE under Sections 342, 353, 332 of the Indian Penal Code and also deposited his rifle in Police Station Rudrapur vide Exhibit Ka 5 instead of P.S. Lal Kuan where the incident had happened. The post mortem revealed the presence of two gun shot injuries on the person of the deceased - one of entry and the other of exit, with the wound of entry having tattooing marks around it. 1.2 The trial court relying on the prosecution evidence convicted the appellant on a charge of murder and under the Arms Act and sentenced him accordingly. The matter was then taken in appeal to the High Court and the High Court has confirmed the judgment of the trial court and dismissed the appeal.

2. Before us, Mr. P.S. Narasimha, the learned Senior Counsel for the appellant, has not seriously challenged the conviction of the appellant and has pointed out that in the light of the prosecution evidence itself it was apparent that the appellant had first been attacked and had also suffered several injuries and that during the course of a scuffle which followed the rifle had accidentally gone off and that the appellant was at the most guilty of having exceeded the right of private defence and was, therefore, liable to be punished for an offence of culpable homicide not amounting to murder. The learned counsel has focused on the fact that the gun Crl.A. No. 889 of 2006 REPORTABLE shot injury had been caused to the deceased from a very close range and not from a distance of 12 or 15 feet as was the case of the eye witnesses and the prosecution.

3. Mr. S.S. Shamshery, the learned counsel for the State of Uttaranchal has, however, supported the judgment of the trial court as well as the High Court and has pointed out that the appellant, being a police official, was conscious of the fact that in order to get away from a case of murder he had to create a defence and for that reason had self-suffered some injuries and lodged a report in Police Station, Rudrapur instead of Police Station Lal Kuan.

4. We have considered the arguments advanced by the learned counsel for the parties.

5. It has to be borne in mind that the obligation to prove an exception lies on an accused but at the same time the onus of proof which the accused has to discharge is not as strict as in the case of the prosecution which had to prove its case beyond doubt. It has also to be borne in the mind that it is very difficult, and often suicidal, for an accused to raise a plea whereby he admits his presence but if the prosecution evidence itself shows that the defence taken by him is probable, the accused is entitled to claim the benefit of that evidence as well. It will be seen that the case of the appellant, as projected by Mr. Narasimha, during the course of the arguments, is that the appellants had first been attacked and some injuries had first been caused to him and in the scuffle that followed one shot had been fired. He has also pointed out that the presence of tattooing around the wound was clearly indicative that the prosecution story that the gun shots had been fired from a distance of 12 to 14 feet was obviously wrong and it was, therefore, plausible to suggest that shot had been fired from a much closer range. We notice from the evidence of P.Ws. 2,5 and 8, as also from the site plan, that the shot had been fired from 15 to 18 feet. The injuries found on the dead body are produced herein below:

> "1. Lacerated wound 1cm X .5cm X .5cm on dorsum of right thumb bleeding. Margins irregular.
>
> 2. Contusion 4cm X 2cm over bed of right shoulder. Colour was reddish.
>
> 3. Complaint of pain on back of neck but no external mark of injury and no tenderness was there.
>
> 4. Complaint of pain on right leg below knee joint. No external mark of injury. Shows tenderness."

6. Dr. Modi in his book, "A Text Book of Medical Jurisprudence and Toxicology" (24th Edition, page 543) has referred to the fact that signs of tattooing in the case of a rifle shot would NORMALLY be upto 75 cms. Obviously, in this situation the rifle could not have
Crl.A. No. 889 of 2006 REPORTABLE been fired from 15 to 18 feet. It is also clear that the appellant has sustained some injuries though simple in nature and they too are reproduced below:

> "(i) Abraded contusion just below the right eye (maxillary prominence) size 2cm X 2cm. Fresh oozing present.

(ii) Transverse incised wound lower part of right deltoid muscle 4cm X < cm X skin deep. Oozing present.

(iii) Vertical lacerated wound left chest between right nipple and sternum 7cm X < cm skin deep. Oozing present.

(iv) Lacerated wound left deltoid muscle (transversely oblique) 4 cm X 1/3 cm X skin deep. Oozing present."

7. It is, therefore, possible in the light of the aforesaid evidence, that the appellant had indeed been attacked and that he had caused one injury in self- defence from a short distance. We are, therefore, of the opinion that the appellant's involvement in a case of murder is not spelt out but as he has used a rifle from a very close range, his obvious intention was to cause death. He is, accordingly, convicted for an offence punishable under Section 304 Part I of the IPC.

8. We, accordingly, allow the appeal in the above limited terms acquit him of the offence under Section 302 of the IPC and award him a sentence of ten years rigorous imprisonment under Section 304(I) of the IPC.