
(1955) 05 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 93 of 1954 and Criminal Rev. No. 274 of 1954

Basdev

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 10-05-1955

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304, 392, 86

Citation : (1955) 05 P&H CK 0012

Hon'ble Judges : Mehar Singh, J;Gurnam Singh, J

Bench : Division Bench

Advocate : Jagan Nath in Cri Appeal No. 93/54, for the Appellant; Moti Ram for the State in Cri. Revn. No. 274/54, Amar Singh Ambalvi for Gajjan Singh and Jagan Nath (Vasdev), for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, J.—Vasdev accused has been convicted for the murder of Maghar Singh, of village Harigarh, a boy of 15 years of age, and has been sentenced to transportation for life, with a recommendation to the Government for reduction of his sentence to seven years rigorous imprisonment and a fine of Rs. 100/- by the Sessions Judge of Barnala. The accused appeals against his conviction and sentence and there is a revision petition by the father of the deceased for deletion of the recommendation for reduction of the sentence passed on the accused.

2. A marriage-parry, in connection with the marriage of Joginder Singh of Harigarh, was at village Sanghera, on 11-3-1954. It had come to the house of Natha Singh P.W. 12. At about 12 noon, the members of the marriage-party started arriving in his darwaza for meal. A white sheet had been spread on the ground for them to sit on. Some of the party had Already taken seats and others, including Partau Singh P.W. 8. Nek Singh P.W. 9. Jaggar Singh P.W. 10. Ram Singh P.W. 11, and Maghar Singh deceased, were standing, still waiting to take seats. Vasdev accused, who is a retired Jamadar from the Army, was also one of

the marriage party.

He arrived in the darwaza, with a pistol, in a case slung by his side. He asked Maghar Singh deceased to move aside as he wanted to sit where the deceased was standing. Maghar Singh deceased, however, took no notice of what he said and did not move. The accused drew out his pistol, took an aim at Maghar Singh deceased, and fired a shot at him, hitting him in the abdomen, the shot passing right through the body. The accused was then about two yards from Maghar Singh deceased and the distance was shortened as he stretched his hand to fire the shot.

Maghar Singh deceased slumped to the ground. Vasdev accused tried to get away and moved out of the darwaza. He had not gone a few karams out when he was secured by Ram Singh P.W. 11. and then Partap Singh P.W. 8, Nek Singh P.W. 9. and Jaggar Singh P.W. 10. joined in overpowering him. The accused immediately said that he should be forgiven as it so happened that he shot at the deceased (methon lag gaya).

The pistol was taken from him. Chowkidar Chanan Singh P.W. 14 and lambardar Wazir Singh P.W. 15 of Sanghera were near and the accused was immediately made over to them. The witnesses told them that he had shot at the boy. Partap Singh P.W. 8 also picked up the spent cartridge from the place of occurrence.

3. The accused was then taken to police station Barnala, where Partap Singh P.W. 8 lodged the report at about 2-10 P.M. Maghar Singh deceased was taken to Barnala Hospital and his injury was examined by Dr. Tilak Ram P.W. 1. A dying statement, Ex. P.M., of the deceased was taken by a Magistrate S. Bakhtawar Singh P.W. 13, in which the boy narrated the facts substantially as given above. He died in trio hospital on 12-3-1954 at about 3-10 P.M. The doctor performed the post-mortem examination on the same afternoon at about 4-40 P.M.

4. There was one injury on the body of the deceased and when examined by the doctor, before the death of the deceased, it is described as:

A gun shot round wound inlet with inverted margins 1/4" X 1/4" in right hypochondriac area with direction from front backwards, and with it wound in the right back 1/2" x 1/2" with averted margins. The shot had passed through all structures present in the area. The same injury was found on post-mortem examination and the distance between the inlet and the exist wounds was 4 1/2". The peritoneum had been pierced under the injury and showed, signs of peritonitis. The stomach and the liver had also been pierced through and through. Death was due to peritonitis and internal hemorrhage due to the fire arm injury to the stomach and liver. The injury was sufficient in the ordinary course of nature to cause death of the deceased.

5. The defence of the accused in the Court of the committing Magistrate and at the trial was that he was at Sanghera in the marriage party of Joginder Singh, but he could not say that he went to the house of Natha Singh along with the

marriage party as he was heavily drunk, the drinking having started at 9 A.M. that day, and thus he was not in his senses. He admitted that he had no enmity with any person in the marriage party. However, he explained that, the witnesses were deposing against him to save their skin, and because they knew that he had a license for the pistol. Certain people of his village, who were prejudiced against him and were themselves of bad character, seemed to him to have persuaded the witnesses to implicate him.

6. In the cross-examination of the witnesses of the occurrence, three defences were suggested on behalf of the accused. The first defence was that the accused was being implicated by the witnesses simply because the pistol belonged to him. The second defence was that the members of the marriage party had taken liquor and were drunk at the time of the occurrence and some persons, though later it was particularized as Ram Singh P.W. 11, snatched the pistol from the accused and in the struggle following, it went off accidentally and hit Maghar Singh deceased.

The third defence was that immediately on being secured the accused told the witnesses that he was not aware that the pistol was loaded. In support of the second defence, four witnesses, namely, Jang Singh D.W. 1, Hardial Singh, D.W. 2, Mehar Singh D.W. 3, and Harbans Lal D.W. 4 have been examined by the defence.

7. Of the witnesses to the occurrence, Partap Singh P.W. 8 is related in the third or fourth degree to Maghar Singh deceased. Nor Singh P.W. 9 and Ram Singh P.W. 11 are the sons of Partap Singh P.W. 8 Jaggar Singh P.W. 10 is the brother of the deceased. The witnesses are undoubtedly relations of the deceased, but no conceivable reason has been suggested why they have involved the accused in this case if it was not he who shot at the deceased. Even the accused admits that he has no enmity with anybody.

The testimony of the witnesses is consistent and the facts of the case being simple, there is next to nothing that can be or has been said against their veracity. The only fact upon which the Learned Counsel has laid some stress in attacking the testimony of these witnesses is their denial that anybody was drunk in the marriage party. It will be presently shown that at least some, if not all, members of the marriage-party had taken liquor, and there is nothing unusual in this. The accused was also under the influence of drink. But denial in this respect alone is not enough to discredit the witnesses, when nothing else can be said against their testimony.

8. The accused was secured by these witnesses as he was trying to get away and immediately made over to chowkidar Chanan Singh P.W. 14 and lambardar Wazir Singh P.W. 15. These witnesses belong to village Sanghera and not a word can be said against them. They have supported the witnesses named above in this respect and also to the effect that those witnesses informed them at once that the accused had shot at the boy. Their testimony is almost a part of the very

transaction of the occurrence. The evidence of the eye-witnesses is strongly supported by the testimony of these two witnesses.

9. Then come the report lodged by Partap Singh P.W. 8 at the police station and the dying statement of the deceased. Both give the facts substantially as have been deposed to by the eye-witnesses and the genuineness of the documents is not open to doubt. They also corroborate those witnesses. There is thus overwhelming evidence to prove the facts as given above and there is strong corroboration of the witnesses deposing to those facts.

10. The version of the first defence comes out of the testimony of lambardar Munshi Singh P.W. 6 of Barnala. When the accused was being taken to Barnala police station, the party met this lambardar at the Bus stand at Barnala. He says that there the witnesses told him that the deceased had been injured by a pistol shot and the pistol was with no other person but the accused in the marriage party and they were, therefore, going to attribute the firing to the accused. On being pressed, the witness admitted that it was Partap Singh P.W. 8 alone who told him so.

Partap Singh P.W. 8 has denied this. No question was put on this aspect of the defence to any other witness excepting Jaggar Singh P.W. 10 who has also denied any such statement by Partap Singh P.W. 8, If there was any substance in this suggestion, it must have been put to chowkidar Chanan Singh P.W. 14 and lambardar Wazir Singh P.W. 15, unquestionable independent and unconcerned witnesses. I find that there is no truth in this allegation and it was just thrown as a suggestion to the witnesses in the remote hope of bringing out something favourable to the accused.

11. It was only to Nek Singh P.W. 9 that the suggestion of the third defence was put that when secured, the accused gave out that he was not aware that the pistol was loaded. No other witness was questioned with regard to any such statement by the accused. Nek Singh P.W. 9 gave a denial to it and there is absolutely nothing on the record to support it. This defence was not even referred to during the arguments by the Learned Counsel.

12. The main Reliance of the Learned Counsel for the defence has been upon the second defence. Not only have defence witnesses been produced in support of it, but it was also put to all the witnesses of the occurrence. When it was put to Partap Singh P.W. 8 and Nek Singh P.W. 9, the only suggestion was that members of the marriage party were drunk, they were proceeding to the house of Natha Singh P.W. 12, on the way some members snatched the pistol of the accused, and, in the struggle ensuing, it went off and hit the deceased.

This was improved upon when Jaggar Singh P.W. 10 and Ram Singh P.W. 11 came in the witness-box and it was for the first time that a specific allegation was made that the pistol was snatched by Ram Singh P.W. 11, and when some other members of the marriage party tried to take it away from him, it went off and hit the deceased. It has to be kept in mind that it was Ram Singh P.W. 11

who first secured the accused as he tried to escape, before the other witnesses could reach and overpower him.

Subsequently of the four defence witnesses, the first three have more or less adhered to the allegation concerning Ram Singh P.W. 11. Their version is that about three or four karams short of the darwaza of Natha Singh P.W. 12, Ram Singh P.W. 11, in a lark, pulled the pistol of the accused and the sling broke. Ram Singh P.W. 11 took, out the pistol and the others rushed upon him to take the pistol from him. It was then that it went off and the shot hit Maghar Singh deceased.

They are definite that the shot was not fired in the darwaza of Natha Singh P.W. 12. They then say that the accused was not made over in their presence to Chowkidar Chanan Singh P.W. 14 and lambardar Wazir Singh P.W. 15. They admit that about fifteen minutes after the occurrence the witnesses caught the accused but they never inquired, why they were doing so. These three defence witnesses have further stated that they had supported the accused to the house of Natha Singh P.W. 12 because all of them were drunk and the accused was rather heavily drunk.

13. The story of the defence in regard to the part attributed to Ram Singh P.W. 11 is an obvious development during the trial and did not exist earlier. The witnesses have not told the truth in suppressing that the accused WM\$ made over to the chowkidar and the lambardar immediately after the incident. Their version that he was secured by the witnesses after fifteen minutes is obviously not a true statement, and no such suggestion was made to the prosecution witnesses.

No doubt, all the three defence witnesses were also members of the marriage party, but they have deposed to facts that have completely changed the facts and the place of the occurrence and the circumstances as brought out by the evidence go to discredit their testimony. They were also examined by the investigating officer, who has deposed that they have not been shown in the calendar of witnesses because they were not eye-witnesses, but such a statement, I consider, is not admissible in evidence, though it gives an adequate reason for their non-production by the prosecution.

The fourth defence witness was inside the house of Natha Singh P.W. 12 and says that he saw the incident outside in the lane through the holes in the wall. But curiously enough he is definite that it was not the accused who was with the pistol but it was some other fat person, otherwise he tends to support the other three defence witnesses. It is more than obvious that this is a mendacious witness and not only does his story discredit him but also the other three defence witnesses. The learned trial Judge was right in discarding this defence version and the evidence of the defence witnesses.

14. It has been pointed out that the eyewitnesses have not admitted that either they or the accused were drunk at the time of the occurrence, but it is in the

evidence of Natha Singh P.W. 12, in whose house the marriage party had arrived, that some members of the party had taken liquor and were not behaving properly. It is also consistent with probability that they did so, because on such occasion villagers do take to drinking.

This witness does not particularly refer to the drunken state of the accused. Lambardar Wazir Singh P.W. 15, however, though he said nothing about the matter in his examination-in-chief, has stated in his cross-examination that the accused was heavily drunk and his gait was not steady even his turban was loosely tied. He was talking as if he was not in his senses, and sometimes he talked well. The only other witness on the point is Lambardar Munshi Singh P.W. 6 of Barnala.

He has not been believed with regard to the first defence suggested on behalf of the accused. He says that Partap Singh P.W. 8, Nek Singh P.W. 9, Jaggar Singh P.W. 10, and the accused were drunk when they met him at the Bus stand. They appeared to him to be sufficiently drunk. All that this evidence brings out is that probably the witnesses as also the accused had taken liquor. But it is clear that it does not establish that the accused was so drunk that his mind was obscured to the extent of mental incapacity.

It has to be borne in mind that the accused arrived at the darwaza of Natha Singh P.W. 12 by himself, that after the incident he tried to get away, and that when caught he realized what he had done and begged to be excused saying that it had happened from him. He was taken from village Sanghera to Barnala police station and not a single question was put to any witness that he had to be supported to that place. This is the state of the evidence.

15. The Learned Counsel for the accused has, in the first place, urged that the defence version is the correct version of what happened, but it has been found that the evidence about that version is not reliable and cannot be accepted.

16. The next and the only other contention by him is that, since the accused was drunk, he had no motive to do the deceased to death, and the whole incident was a sudden affair, so, having regard to the provisions of S. 86, I.P.C., all that can be said is that the accused had knowledge that his act, in shooting at the deceased, was likely to cause the death of the latter, and the offence of the accused falls under part II of S. 304, I.P.C.

17. On the other hand, the Learned Counsel for the State urges that the question of intention of a person under the influence of drink is not specifically covered by S. 86, I.P.C. and what intention such an accused had when doing the act must be decided upon the law and the facts and circumstances of the case, and that in this case (a) it is proved that the accused had the intention requisite under either, clause First or clause Third of S. 300, I.P.C., (b) and in any case even if only knowledge as contended is to be imputed to him, the case falls within the scope of Fourth clause of S. 300, I.P.C. because the act of the accused was so imminently dangerous that it must in all probability, have caused death of the

deceased, and he had absolutely no excuse for incurring the risk of causing the death of the deceased.

18. Section 86 of the Code says:

In cases, where an act done is not an offence-unless done with a particular knowledge of intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

19. The first part of this section refers to both "knowledge" or "intent", and the second part only to "knowledge". Where therefore, a person does an act, which is an offence because of particular knowledge, in a state of intoxication, it is the requirement of the section that in regard to the consequences of the act, he shall be dealt with as if he had the knowledge of a sober man in that respect. So that in this intoxication does no help him in the least as a defence. In regard to the consequences of his act, he shall be dealt with as if he had the same knowledge if he had done the act as a sober man.

The second part of the section does not refer to intention, but the omission does not mean that, even if as a fact particular intention requisite for the offence can be brought home to the accused, he is not to be imputed such an intention because he did the act under the influence of drink. The question of the intention of such a person in such circumstances is left to be dealt with according to the ordinary law and having regard to the facts and circumstances of a particular case. The section came for consideration of a Full Bench of the Lower Burma Chief Court in - "Nga Sun Baw v. Emperor", 17 Ind Cas 800 (LB) (FB) (A), in which, after review of the case law, the learned Chief Justice observed, at p. 804,:

A voluntary drunkard, like every other person, is in the first instance presumed to have intended the natural consequences of his act, but this presumption may be rebutted by his showing that at the time he did the act his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him. The result of such law is that the question of intention must be determined in each individual case according to the actual facts proved in the case according to the principles laid down.

The Indian Law has in S. 86. Penal Code, made an express provision regarding the knowledge which should be imputed to a voluntary drunkard committing an act which is an offence when done with a particular knowledge or intent. The effect of the omission to make any express provision regarding the intention which is to be attributed to such a man, doing such an act, appears to me to be that the question of intention is left to be dealt with on the general principles of law....

The other learned Judges concurred with the dictum of the learned chief Justice and, if I may say so with respect, the learned Chief Justice has laid down the law correctly.

20. The question came up for consideration of the House of Lords in - "Director of Public Prosecutions v. Beard", 1920 AC 479 (B), and of the three propositions laid down by the House of Lords, the 2nd and 3rd are:

2. That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime shall be taken into consideration with the other facts proved, in order to determine whether or not he had this intent.

3. That evidence of drunkenness falling short of proved incapacity in the accused to form the intent necessary to constitute the crime and merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

The law as expounded by the House of Lords confirms the opinion of the learned Chief Justice in the Full Bench case in 17 Ind cas 800 (LB)(FB)(A). These two cases have subsequently been consistently followed in all or some of these cases - AIR 1926 428 (Lahore) "Nga Sein Gale v. Emperor", AIR 1934 Rang 361 (D),; "Nga Hpeik v. The King", AIR 1938 Rang 219 (E),; Dilmohammad @ Muslim Sheikh Vs. Emperor, AIR 1941 454 (Lahore) "In re In Re: Macherla Balaswamy of Guntur, and "in re Suruttayyan", AIR 1954 Mad 523 (I). In all these cases the view of the law taken in 17 Ind Cas 800 (LB)(FB)(A), and 1920 AC 479 (B)", has been consistently followed, and no authority has been cited at the bar for any view not consistent with that view.

21. The law being that even a drunken man is presumed to intend the natural consequences of his act, unless he proves incapacity in himself to form the intent necessary to constitute the crime, and the fact that his mind was merely affected by drink, that he readily gave way to some violent passion providing him no defence, what is to be seen in this case is whether the accused has established "proved incapacity" in himself to form the intent to murder the deceased.

22. The Learned Counsel for the accused urges that even if he was not under the influence of drink & took out a pistol and shot at the deceased suddenly and without motive as in the circumstances of this case, the intention on his part to murder the deceased could not be imputed to him. I must say I am unable to appreciate this argument. But assuming that there is any force in it, I do not see how the accused could, in such circumstances, escape the irresistible conclusion that he did the act with the intention of causing bodily injury to the victim and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death within the scope of Third clause of S. 300, I.P.C. that natural consequence of an act of shooting a person with a pistol in the abdomen is death and always certainly infliction of bodily injury sufficient in the ordinary

course of nature to cause death.

The accused must intend this natural consequence of his act and the only way he can escape this conclusion is to prove that he was so intoxicated as to be incapable of forming such intention. So that the question is whether in the present case the accused has proved such a state of drunkenness in him at the time of the occurrence as to show incapacity in him to form the intention that he intended by his act to cause bodily injury sufficient in the ordinary course of nature to cause death?

23. It has already been shown that although the accused was under the influence of drink, he was not under its influence to such an extent that his mind was so obscured by the drink that there was incapacity in him to form the intention as stated. All that the evidence shows at the most is that at times he staggered and was incoherent in his talk, but the same evidence shows that he was also capable of moving himself independently and talking coherently as well. At the same time it is proved that he came to the darwaza of Natha. Singh P.W. 12 by himself, that he made a choice for his own seat and that is why he asked the deceased to move away from his place, that after shooting at the deceased he did attempt to get away and was secured at some short distance from the darwaza, and that when secured he realized what he had done and thus requested the witnesses to be forgiven saying that it had happened, from him.

There is no evidence that when taken to the police station Barnala, he did not walk or go there just as the witnesses and had to be specially supported. All these facts, in my opinion, go to prove that there was no proved incapacity in the accused to form the intention to cause bodily injury sufficient in the ordinary course of nature to cause death. The accused had, therefore, failed to prove such incapacity as would have been available to him as a defence and so the law presumes that he intended the natural and probable consequences of his act, in other words, that he intended to inflict bodily injury to the deceased and; the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death. This brings the case of the accused under Third Clause of S. 300, I.P.C. and the offence proved against him is of murder under S. 302, I.P.C.

24. The Learned Counsel for the State has also relied upon Fourth clause of S. 300, I. P. C, in this case and refers to - Kanji Vs. State, , in support of his contention. In that case a marriage party had come to village-Patlai and was staying in a Bageechi there. There was drinking going on since the morning of 20-8-1950. The appellant Kanji was also drinking. At about 6 P. M. on that day, the deceased Shiv Lal a boy of 14, was picking raw mangoes in the bageechi along with another boy. The appellant Kanji: turned up in the bageechi carrying a gun with him. He went past the people who were, sitting there and suddenly shot at Shiv Lal from a distance of about ten paces. Shiv Lal fell down and died shortly afterwards. The appellant surrendered himself on the next day and handed over the gun to the police.

Later in his confession before a Magistrate he said that he had been drinking from the morning and later in the bageechi he found a number of persons grappling with one another. He asked them not to fight. The gun was in his hand at that time and was loaded. It went off somehow and hit the boy. He did not know what happened because he was not in his senses on account of intoxication. On the next day when he regained senses, he found himself lying in the jungle. He then came and surrendered himself. The version of the accused was, excepting that the accused was drunk, not accepted. The counsel on behalf of the accused in that case relied upon S. 86, I.P.C, to bring the offence under S. 304, I.P.C. but the learned Judges were of the opinion that the case was clearly covered by the Fourth clause of S. 300, I.P.C, and maintained conviction of the appellant for murder, though reducing the sentence to transportation for life. The case is on facts more or less parallel to the present case and upon this authority the act of Vasdev accused would appear to fall within Fourth clause of S. 300, I.P.C.

In the first place, this clause can only apply when the case is not covered by any one of the first three clauses of that section, and I have already stated above that in the present case the act of the accused falls under Third clause of that section. Secondly, in *Manindra Lal Das Vs. Emperor*, *Henderson J.*, with whom *Derbyshire C.J.* concurred, was of the opinion that the provisions in the Fourth part of S. 300, I.P.C. apply to a person who commits an act of that nature and has no intention of causing an injury to any particular individual, and that that part does not apply to a case where the accused deliberately fired shots at the deceased.

If that is the correct view of the scope and meaning of clause Fourth of S. 300, I.P.C, it is obvious that the case of the present accused cannot be covered by that clause. However, it is really not necessary to consider whether the case of the present accused falls under that clause, because it has already been found that it falls under Third clause of that section.

25. The conviction of the accused under 302 I.P.C, for the murder of Magher Singh, for I he reasons stated, is thus maintained.

26. In almost all the cases cited in this judgment where the accused under the influence of drink had shot at and murdered a person and without motive, the sentence was reduced to transportation for life. In this case also there was no motive- for the accused to shoot at the deceased and the whole affair appears to have been sudden. I think, the sentence of transportation for life awarded to the accused is appropriate and just in the circumstances of the case. The appeal of the accused fails and is dismissed.

27. The learned trial Judge has made certain remarks in his judgment recommending the case of the accused to the Government for reduction of the sentence to seven years rigorous imprisonment and a certain amount of fine, on the ground that the occurrence was sudden and that the accused acted under the

influence of drink. I do not consider that there was any justification for the learned trial Judge to make any such recommendation and the case really did not call for it. In none of the cases already referred to, which were more or less similar to the present, any of the learned Judges ever thought of making any such recommendation.

The father of the deceased has put in a revision petition that that recommendation from the judgment of the trial Judge should be expunged. I do not consider that any revision petition for that purpose was necessary or was called for, but I have no difficulty in saying that the remarks of the learned trial Judge were entirely unjustified and will be taken to be of no consequence in this case. With these remarks the revision petition of the father of the deceased is also dismissed.

Gurnam Singh J.

28. I agree.