

(1986) 02 DEL CK 0057

In the Delhi High Court

Case No : Criminal Appeal No. 268 of 1982

Jaspal Singh and Tripat Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-02-1986

Acts Referred:

Citation : (1986) 10 DRJ 332

Hon'ble Judges : R.N. Aggarwal, J; M. Sharief-ud-din, J

Bench : Division Bench

Advocate : D.R. Sethi and R.P. Lao, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) Jaspal Singh aged 27 and Tripat Singh aged 22, sons of Surjit Singh Along with Joginder Singh (since acquitted) were tried on the charge of murdering Surjit Singh son of Avtar Singh (the name of the deceased and the name of the father of the appellants is the same). The trial Judge found both Jaspal and Tripat guilty of the offence charged with and sentenced each one of them to imprisonment for life. They were also charged u/s 27 of the Arms Act and were convicted and sentenced to 3 years" rigorous imprisonment on the said charge.

(2) The accused have come in appeal against their convictions and sentences.

(3) A short pedigree table will be useful in appreciating the evidences and understanding the motive for the crime :

Harnam Singh (died in 1970 | | = Har Kaur (died in 1975) | Surjit Singh | =
Pritam Kaur (P.W. 1)

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| | Jaspal Singh, Tripat Singh, Karam- Gurdyal Trilok (appellant) (appellant) jit
(P.W. 4) Singh (P.W. 6)

(4) Pritam Kaur also has a daughter who was studying in 5th class at the time of the occurrence. Pritam Kaur was married to Surjit Singh about 30 years ago.

Jaspal Singh appellant is the eldest aged about 27-28, Tripat Singh was aged about 22, Trilok Singh 17 or 18 years old. Gurdyal Singh was studying in 8th class.

(5) About 10 years before the occurrence Pritam Kaur separated from her husband. She lived Along with her children at 16/16, Ashok Nagar, Jaspal Singh some time before the occurrence started living separate from the mother. The rest of the family lived together. According to Pritam Kaur the deceased Surjit Singh was on friendly terms with Harnam Singh and Harnam Singh almost treated him like his son. The accepted case of Pritam Kaur is that Surjit Singh advised him on all family matters and he would come whenever she needed his advice. A few months before the occurrence Pritam Kaur sold the house at Ashok Nagar and purchased the house B-152, Ganesh Nagar, where Pritam Kaur Along with her children started residing. Pritam Kaur in the report Ex. Public Witness 1/ A stated that the house at Ashok Nagar was sold for Rs. 1,00,000.00 but in court she stated that the house was sold for Rs. 48,000.00 . She admits that the house at Ashok Nagar was sold under the advice of the deceased Surjit Singh. The further case of Pritam Kaur is that Jaspal Singh wanted Rs. 20,000.00 out of the sale proceeds of the house but she had refused to. give any money to Jaspal Singh. The further admitted part of the case is that the house at Ashok Nagar belonged to Harnam Singh. Harnam Singh gifted the house to his wife Har Kaur and Har Kaur transferred the house in favor of Pritam Kaur. The reason for this stated is that Surjit Singh husband of Pritam Kaur was a drunkard and not of a good character and, Therefore, Har Kaur transferred the house in favor of Pritam Kaur.

(6) As regards the occurrence the case for the prosecution is that on the night of 13th-14th March, 1981 Public Witness I was in the house Along with her children. The deceased Surjit Singh was also in the house. At about 110 clock in the night Tripat Singh came. Gurdyal Singh asked him as to where he had been during the last 4 to 5 days. There was exchange of hot words between Tripat Singh and Gurdyal Singh and Karamjit Singh. Surjit Singh intervened and pacified both the sides. After sometime Tripat asked the mother to give him some clothes as he wanted to go to Jagadhari. Tripat after packing his clothes in a bag left. At about 1.30 a.m. the call bell rang. Public Witness I went and opened the door and she found Tripat Singh. Tripat told the mother that as he did not get the bus he had returned. After sometime Jaspal Singh came with a Kirpan in his band.

(7) Pritam Kaur, Gurdyal Singh, Karamjit and Surjit Singh were sitting on separate cots in the room and were chatting. After entering the house Jaspal gave a kirpan blow on the shoulder of Surjit Singh. Pritam Kaur, Gurdyal Singh and Karamjit tried to save Surjit Singh. Tripat threatened that if any one intervened he shall be done to death. Tripat had a small kirpan with him. Thereafter Jaspal gave more injuries with the sword. Surjit Singh ran upstairs to save himself. Jaspal and Tripat ran after him to the roof and gave further injuries. Both the accused after inflicting number of injuries on Surjit Singh ran away.

(8) The police was informed of the occurrence. Sub Inspector Shankar Singh (P.W. 23) was entrusted with the investigation. Public Witness 23 reached the spot and recorded the statement Ex. Public Witness I/A of Pritam Kaur. The crime team was sent for and the scene of crime was photographed. Surjit Singh Was removed to the hospital where he was pronounced dead.

(9) Public Witness 2 Dr. Bharat Singh performed post-mortem on the dead body of Surjit Singh and he found more than 28 incised wounds on the various parts of the body of Surjit Singh. The doctor gave the opinion that all injuries except injuries Nos. 19, 20 and 22 were possible with a sword and injuries Nos. 19, 20 and 22 were possible by adagger. The doctor further opined that injuries 19, 20 and 22 were sufficient to cause death in the ordinary course of nature.

(10) On 14th March, 1981 both the accused were arrested by Public Witness 17 Ram Saran and Public Witness 18Bhagat Saran. A sword was recovered from the possession of Jaspal Singh and a small kirpan (dagger) from Tripat The clothes worn by Jaspal and Tripat were found to be stained with blood and they were also seized. On Chemical examination both the sword and the dagger were found to be stained with human blood. The clothes worn by both the accused were also found to be stained with human blood.

(11) Both the accused in their statements u/s 313 of the Code of Criminal Procedure denied the prosecution case. Jaspal Singh stated that his mother had sold the house and she wanted to deprive him of his share in the property and she had involved him falsely in the case. Tripat Singh took a plea similar to his brother. The accused in defense examined two witnesses, namely, D.W. 1 Piara Singh and D.W. 2 Gurnam Singh.

(12) We may say at the outset that Mr. D.R. Sethi, learned counsel for the appellants, with his usual fairness and candidness stated that he is not challenging the prosecution case that it were the two appellants who had on the night of 13th-14th March caused injuries to the deceased Surjit Singh resulting in his death. Mr. Sethi contended that the crime was committed under a grave and sudden provocation and the offence would fall under Exception I to Section 300 of the Indian Penal Code.

(13) The occurrence took place in the house of Public Witness 1 Pritam Kaur, mother of the appellants. Pritam Kaur and her two sons Public Witness 4 Gurdyal Singh and Public Witness 6 Karamjit Singh are eye witnesses to the occurrence, Public Witness s 1, 4 and 6 have in unison testified that Jaspal armed with a kirpan and Tripat armed with a dagger (small ki"ipan) had caused injuries to Surjit Singh resulting in his-death. We have carefully perused the testimony of the aforesaid witnesses and we find that they had no motive to implicate falsely the two appellants. Their depositions regarding the actual assault are substantially true. The kirpan and the dagger were seized from the two appellants on the next day and they were found to be stained with human blood. The clothes Worn by the accused were also found to be stained with human

blood of "AB" group which is the blood group of the deceased. The sword and the dagger were also found stained with human blood of "AB" group. The aforesaid recoveries fully corroborate the prosecution case. We, thus, agree with the trial Judge that it were the appellants who had caused the injuries resulting in the death of Surjit Singh.

(14) The Supreme Court in the famous case of K.M. Nanavati Vs. State of Maharashtra, , had the occasion to consider and deal with Exception I to Section 300 of the Indian Penal Code. Their Lordships held as under :

"THE test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India, words and gestures may also under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300. The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly attracted to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

(15) Now, reverting to the case in hand, the undisputed facts are that Pritam Kaur was married to Surjit Singh some 30 years before the occurrence, she gave birth to 7 children, out of which 6 are alive (5 sons and 1 daughter). The eldest son is Jaspal who may have been about 26-27 at the time of the occurrence, Tripat may be about 21; the rest are younger to Tripat. The daughter was aged about 11. Pritam Kaur separated from her husband some 10 years prior to the occurrence. She lived with her children at 16/16 Ashok Nagar. This house was owned by Harnam Singh who had gifted it to his wife Har Kaur who had further transferred it in favor of Pritam Kaur. Sometime before the occurrence Jaspal Singh had separated. The rest of the family continued to stay together. A few months before the occurrence Pritam Kaur sold the house at Ashok Nagar and purchased the house B-152, Ganesh Nagar and shifted to the said house. The deceased Surjit Singh was known to the family of Pritam Kaur and he would visit Pritam Kaur whenever she wanted his help. Surjit Singh was unmarried and was aged about 45. Pritam Kaur gave out her age as 45 years when she made the statement in court.

(16) The important admissions made by Public Witness . 1 in her deposition are

(1) that she is living separate from the husband for the last about 10 years, (2) that Surjit Singh deceased used to help them with money, (3) that she had sold the house at Ashok Nagar and purchased the house at Ganesh Nagar under the advice of Surjit Singh deceased, (4) that after the sale of the house her sons did not like her to meet Surjit Singh (5) that she had come to know Surjit Singh deceased through her husband some 15 to 16 years back and that whenever she

needed any advice in family matters she would consult Surjit Singh, (6) that on the night of the occurrence She had sent for Surjit Singh who had come at about 9.30 p.m. and he had stayed back on the request of her son Gurdyal.

(17) Public Witness . 1 in cross-examination stated that Surjit Singh had never stayed during the night at her house and that since the death of her mother-in-law he had visited her only 5 or 6 times. Public Witness . I in the first report Ex. Pw 1/A had stated that Jaspal and Tripat did not like Surjit to visit the house and that both of them had told her that she had been keeping Surjit at her house as per husband. Public Witness . 1, in court, also stated that after the sale of the house her sons did not like that she should meet Surjit Singh. Suggestions were made during the cross-examination to Public Witness . 1 that she had illicit relations with the deceased and that on the night of the occurrence also they were not fully dressed and the deceased was lying in bed with her, P.W. 1 refuted the said suggestions. We have carefully examined the record and we are of the view that the statement by Public Witness . 1 that" she had no illicit relations with the deceased Surjit Singh is not true. The deceased was a bachelor and he was visiting Public Witness . I after she had separated from her husband. During post-mortem examination alcoholic smell was found in the stomach contents of the deceased. The stomach also contained semi- digested food about 3 ounces in which solid yellow ghee was present. It was suggested to Public Witness . 1 that she had served Churri (wheat cooked in ghee) to the deceased which was denied by her. She stated that the deceased had come after taking his meals. We doubt the truthfulness of this statement of P.W.1. It seems to us that the deceased had liquor and food at the house of Public Witness . 1 or come after taking liquor. It is an admitted case that the deceased used to monetarily help Public Witness . 1 and her family. There must be some strong reason for the deceased to financially help Public Witness . 1. It is clear from the first report that Jaspal and Tripat suspected illicit relations between the mother and the deceased and they had objected to the deceased visiting P.W. 1. We may notice here that when Public Witness . 1 separated from her husband all the children were of young ages and they may not have fully realised the implications of the visits of the deceased to Public Witness .1 but after Jaspal and Tripat grew up they must have realised and found out that the deceased was having illicit relations with their mother and this must have been seriously resented to by them, specially when their father was alive.

(18) The statement of Public Witness . 1 that the deceased stayed back in the house at the asking of Gurdyal Singh (P.W. 4) does not seem to be correct. We are also not prepared to believe Public Witness . 1 that at 1.30 a.m. in the night she, the deceased, Gurdyal and Karamjit were Chatting sitting on their cots. Gurdyal is only aged 14-15 and he must have gone to sleep. The other children must also have gone to sleep. It is lately and possible that Public Witness . 1 and the deceased were sleeping together. Public Witness . 1 could not have expected Tripat and Jaspal at that late hour of night and it is possible that she went to open the door in semi-clad condition. On entering the house, it may be that the

deceased was also found in the bed in a semi-naked condition.

(19) In the above background, the crucial question arises whether it could be said that the appellants had acted on grave and sudden provocation. There is no plea by the accused that they had acted on a grave and sudden provocation. We may notice here two judgments of the Supreme Court (i) *Munshi Ram and others v. Delhi Administration*, AIR 1968 S C 702 and (ii) *State of U.P. Vs. Ram Swarup and Another*, .

(20) In the case of *Munshi Ram* (supra), the Supreme Court held :

"PLEA of private defense not taken in statement u/s 342- Necessary basis for that plea laid down in cross-examination of prosecution witnesses as well as by adducing defense evidence- Court can consider such a plea-Burden of establishing that plea is on accused and that can be discharged by showing preponderance of probabilities in favor of that plea on basis of material on record."

(21) In the case *Ram Swarup* (supra) Mr. Justice Chandrachud (as His Lordship there was) speaking for the court observed :

"SECTIONS 96 to 106 of the Penal Code which confer and define the limits of the right of private defense constitute a general exception to the offences defined in the Code. The burden which rests on the accused to prove that any of the general exceptions is attracted does not absolve the prosecution from discharging its initial burden and truly, the primary burden never shifts save When a statute displaces the presumption of innocence. The evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence. Unlike in a civil case, it is open to a criminal court to find in favor of an accused on a plea not taken up by him from the evidence of the witnesses examined by the prosecution and the circumstances of the case"

(22) It is clear from the above decisions that even if an accused does not take up the plea of private defense but the necessary basis for that plea is laid down in cross-examination, of the prosecution witnesses, the court can consider such a plea. We have earlier discussed the testimony of Public Witness . 1 and We find that the case put to P. W.I in cross-examination clearly is that she was having illicit relations With the deceased Surjit Singh and that on the night of the occurrence also they were sleeping together. The evidence brought on the record, in our View) proves," in any case, is strongly suggestive, that the deceased was having a liaison with Public Witness . 1 and on the night of the occurrence also the deceased had come to enjoy the company of Public Witness . 1.

(23) It is clear from the deposition of Public Witness . 1 in court, and from her statement Ex. Public Witness 1/A made before the police that the appellants Were objecting to her meeting the deceased. It is likely that for this very reason Jaspal started living separate from the mother. It is in evidence of Public

Witness . I that lately Tripat had started siding with Jaspal. This shows that both the appellants were mentally worked up and they did not like the deceased visiting their mother. The situation further got aggravated because Public Witness . 1 had completely gone under the influence of the deceased and she had sold the house at Ashok Nagat and purchased the house at Ganesh Nagar and shifted to that house under the advice of the deceased. The suggestion put to Public Witness . 1 for selling the house at Ashok Nagar and purchasing the house at Ganesh Nagar is that people from the neighborhood did not like the deceased visiting her and, Therefore, the house at Ashok Nagar was sold and the house at Ganesh Nagar was purchased. This suggestion of course, is refuted by Public Witness . 1. It may be difficult to express a definite view on this suggestion but it may have some truth in it. We further have in evidence that after the occurrence P.W. I had shifted to the house occupied by the deceased at Ashok Nagar. . This circumstance also shows the closeness between Public Witness . I and the deceased.

(24) The prosecution case is that Jaspal had come with a naked sword and after entering the house attacked the deceased. This would mean planned attack. But we are not convinced with the truthfulness of this part of the prosecution case. To us, it seems that the deceased and Public Witness . 1 were sleeping together when the two appellants came. It is possible that on seeing the deceased and their mother in semi clothed condition they suspected that they were sleeping together and on that the young blood which was already scathing with indignation and hatred towards the deceased completely lost self control and they committed the crime. The very fact that more than 28 incised wounds were inflicted on the deceased shows that the appellants had completely lost control over themselves and they kept on dealing blows indiscriminately.

(25) In our above view we find that the two appellants had acted under grave and, sudden provocation and Exception I "to Section 300, I.P.C., would be applicable. We set aside the conviction of the appellants tender Section 302 Indian Penal Code read with Section 34 of the Indian Penal Code and instead convict, them u/s 304 Part I read with Section 34 of the Indian" Penal Code and sentence each on 6 of them to rigorous imprisonment for 7 years") Their convictions and sentences u/s 27 of the Arms Act are maintained. The sentences of imprisonment under both the charge shall run concurrently.