

(1951) 10 RAJ CK 0005
In the Rajasthan High Court
Case No : Criminal Appeal No. 17 of 1951

Kanji	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 24-10-1951

Acts Referred:

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

Citation : AIR 1953 Raj 40 : (1952) RLW 145

Hon'ble Judges : Wanchoo, C.J.;Ranawat, J

Bench : Division Bench

Advocate : B.P. Agrawal, for the Appellant; R.A. Gupta, Government Advocate, for the Respondent

Judgement

Wanchoo, C.J.—This appeal is by Kanji, who has been sentenced to death by the Additional Sessions Judge of Jhalawar u/s 302 of the Indian Penal Code. The Judge has also made a reference to this Court for confirmation of the sentence of death.

2. The prosecution story was briefly this A Barat had come to village Patlai and was staying in a Bageechi there. In that connection a lot of drinking had been going on since the morning of 20th May, 1950. Among those, who are said to have taken part in this drinking, was Kanji appellant. 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 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 10 paces. Shiv Lal fell down and died shortly afterwards. Another boy who was near Shiv Lal also got slight injuries. After shooting Shiv Lal, the appellant went away. The matter was reported in the Thana next morning through one Pura Balai.

The appellant also surrendered himself in the Thana on the 21st of May and handed over the gun from which the shot was said to have been fired. Later, he was put up before a Magistrate for recording his confession and he made a

statement on the 3rd of June, 1950 to which he has more or less, stuck throughout the trial. The statement which he then gave was this. He said that he and others had been drinking from the morning in connection with that marriage party. Later he went away to the house of one Amera Kumhar and had more drink there. Thereafter he came to the Bageechi where the marriage party was staying. There 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 he cannot say how that happened. The shot hit the boy Shiv Lal. Thereafter the appellant says that he did not know what happened because he was not in his senses on account of intoxication. Next day when he regained his senses at about 8 A. M., he found himself lying in the jungle. He then came to the village and found that Shiv Lal was dead. Thereafter he went to the Thana and handed over the gun and said that Shiv Lal had been struck by a shot from that gun.

3. The main question, therefore, for decision in this case is whether the gun went off acci-dentally as alleged by the appellant or whether it was fired by the appellant himself. The prosecution has examined a number of witnesses whose evidence leaves no doubt in our mind, that the gun did not go off accidentally but was fired by the appellant at Shiv Lal. We may also mention that the appellant did not produce any evidence for defence to show that there had been a scuffle in the Bageechi and that his gun went off accidentally in that Bageechi. All the evidence that he produced was to the effect that he had been drinking since the morning on that day which is not in dispute because some of the prosecution witnesses also admit that drinking had been going on since the morning and the appellant had taken part in it.

4. We may briefly analyse the evidence of the prosecution witnesses about the incident itself. There is first the statement of Hari Singh, father of the deceased who actually saw the appellant aiming the gun at the deceased and firing it. Then there is the statement of Kachroo who was the father of the bride-groom to the effect that he heard a gun-shot and got up and then saw the appellant standing with a gun in his hand and with his hand on the trigger and the gun was pointing towards the boy who had been injured. Next is the statement of Sewa s/o Kachroo who saw the appellant actually firing the gun at a boy and saw two boys being hit and one of them was Shiv Lal. Sewa did not know the boy who was hit because he had gone there with the Barat.

Then there is the evidence of Shankar who arrived on the scene on hearing the gun-shot and saw the appellant going away at a distance of 20 paces with a gun in his hand. Then we come to the evidence of Ram Chandra who actually saw the accused shooting at the deceased. Lastly there is the evidence of Kalu Teli who also actually saw the accused shooting at the deceased. The appellant in his statement has said that he had no enmity whatsoever with any of the prosecution witnesses except Ram Chandra. Even if we ignore the evidence of Ram Chandra, there is, in our opinion, overwhelming evidence to prove that the.

boy was not hit by accident and that the appellant actually fired at him and killed him. We, therefore, hold that the deceased met his death by the shot fired by the appellant at him.

5. Learned counsel urges that in view of Section 86 of the Indian Penal Code, these facts make out a case u/s 304 of the Indian Penal Code only and not u/s 302. Section 86 reads as follows:

"In cases where an act done is not an offence unless done with a particular knowledge or 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."

6. It may be accepted that the appellant was intoxicated at the time when the incident took place. One of witnesses has said that he was staggering when he was going to the Bageechi. But the drink was not administered to him without his knowledge or against his will and, therefore, he must be deemed to have committed this act with the same knowledge as he would have had if he had not been intoxicated. The case, therefore, in our opinion, is clearly covered by the fourth clause of Section 300, which is as follows:

"If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

Learned Counsel, however, relies on -- *Pran Krishna Chakravarty and Others Vs. Emperor*, and urges that as the shot struck the abdomen of the deceased round about the umbilicus, it cannot be said that the act of firing the gun at the boy was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death.

7. In the Calcutta case mentioned above there was a dacoity in which the dacoits shot down one of the villagers. That villager Kali Charan had two wounds on the upper part of the right forearm which might have been caused by one shot and fifteen other wounds, 8 on the right side in the lower part of the chest and abdomen and 7 on the back of the right side. There was also evidence that Kali Charan was shot after one of the dacoits had focussed the rays of the electric torch upon him to enable another dacoit to fire the gun. The learned Judges were of the opinion that in these circumstances, as the intention of the dacoits appeared to be to fire on the lower part of the body to disable the villagers from offering resistance, it cannot be said that the act of firing in this case, was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death.

8. With all due respect to the learned Judges. we find ourselves unable to agree with this conclusion. We may point out that the learned Judges did not refer to

illustration "d" to Section 300 which reads as follows:

"A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual."

This illustration shows that it is not even necessary to aim the gun at any particular person in order to bring the case under the fourth clause to Section 300, provided the nature of the act is such that it is so imminently dangerous that any man should know that it will, in all probability cause death or such bodily injury as is likely to cause death. Unless it can be proved that the person shooting is such a crack-shot that his aiming at a particular part of the body, would result in an injury there and nowhere else, it seems to us difficult to hold in an ordinary case that shooting with a gun is not such an imminently dangerous act that it must in all probability cause death or such bodily injury as is likely to cause death. Even in the Calcutta case, though the aim of the dacoits was to shoot at the lower part of the body, some of the shots caused injuries on the lower part of the chest.

In the case before us, the evidence is that the appellant took aim, and shots struck near about the umbilicus. The, evidence further is that the appellant was intoxicated and it cannot be predicated that his intention was to hit the boy so carefully that it might not cause death. We are, therefore, of the opinion that where a person takes the risk of shooting at another, the act would ordinarily be an imminently dangerous act which must in all probability cause death or such bodily injury as is likely to cause death and the case would be covered by the fourth clause to Section 300. We have, therefore, no hesitation in agreeing with the Court below that the appellant is guilty u/s 302 of the Indian Penal Code.

9. We next come to the question of sentence. In this connection motive and intention are of great importance. The only evidence of motive is that which is given in the statement of Hari Singh, father of the deceased. He says that the deceased told him the day before the incident that he had accidentally found the appellant having sexual intercourse with his widowed sister-in-law. Even if that statement is admissible in evidence, we find that there is no mention of it in the First Information Report which was made in the Thana on the morning of the 21st of May. We do not see why, if that was the reason for the shooting, it was not mentioned to Pura Balai who had been sent to make the report. Under these circumstances, we are hesitant in accepting this as the motive for the murder. Thus, it seems that there is no clear motive for the murder in this case and that may be explained by the fact that the appellant was intoxicated at the time of the incident and might have shot at the boy without actually having any intention of murdering him.

He is, however, responsible for the natural consequences of his acts and as we have already said, he is clearly guilty u/s 302 of the Indian Penal Code. But in view of the circumstances, we think that ends of justice would be met by

awarding the lesser penalty in this case. We may in this connection refer to two cases where, in similar circumstances, the lesser penalty was awarded. These are (1) -- "Pal Singh v. Emperor" AIR 1917 Lah 226 ; and (2) -- Judagi Mallah Vs. Emperor, . In the former case it was held that although Section 86 attributes to a drunken man the knowledge of a sober man when judging of his action, it does not give him the same intention, and therefore, drunkenness or a state of intoxication affords a sufficient excuse for not exacting the extreme penalty of the law. In the latter case drunkenness of the accused at the time of the murder was taken into account and the sentence was reduced to transportation for life. In the case before us, there is no evidence of motive and the appellant was certainly drunk at that time. We, therefore, think that we, should reduce the sentence from death to transportation for life.

10. The appeal is hereby dismissed with this modification that the sentence of death is set aside and the appellant is sentenced to transportation for life instead. The reference is rejected.