

(2007) 03 DEL CK 0091

In the Delhi High Court

Case No : Criminal Appeal No. 338 of 2003

Nafe Singh

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 19-03-2007

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 95 DRJ 338

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : B.S. Rana and M.K. Kuhar, for the Appellant; Ravinder Chadha, APP and Jagdish Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—Criminal Appeal No. 338/2003 seeks to challenge the judgment and order dated 03.05.2003 in Sessions Case No. 32/2001 arising out of FIR No. 56/2001 police station Kapashera whereby learned Sessions Judge has held the appellant guilty for an offence of murder and convicted him u/s 302 IPC as also u/s 27 of Arms Act and has sentenced the appellant for life imprisonment u/s 302 IPC together with fine of Rs. 10,000/- and in default rigorous imprisonment for one year. He also sentenced the appellant for three years rigorous imprisonment u/s 27 Arms Act along with fine of Rs. 3,000/- and in default further rigorous imprisonment for six years.

2. Brief facts as have been noticed by the Additional Sessions Judge are as under:

Mother of accused Jagmal had died at very old age. It is customary in some parts of our country that when a man or woman dies at very old age, it is celebrated and a function is organized. Jagmal had organised a similar function after death of his mother and on 28.04.2001 there was a programme of music arranged by Jagmal. Nafe Singh other accused is related to Jagmal and lives in the same

village, Kapashera, where Jagmal used to live Babu Lal also lived in the same village. It is the prosecution case that Babu Lal attended the music programme on the night of 28.04.2001. He was drunk at that time and in the drunken state he had an altercation with Jagmal and his relatives with the result Jagmal became angry from Babu Lal. On the next day i.e., 29.04.2001, Jagmal went to Babu Lal's house, called him from his house and took him to Chaupal and Nafe Singh was already at Chaupal with his single barrel gun. To take revenge of previous night Nafe Singh shot dead Babu Lal at Chaupal. An information of accident was given by somebody to PCR, PCR people and local police reached on the spot and found dead body of Babu Lal. Rajender who is cousin brother of deceased Babu Lal, gave statement to the police about killing of Babu Lal by Nafe Singh on the basis of which FIR was registered against Nafe Singh and Jagmal. Police apprehended Jagmal and Nafe Singh of the same day.-SBBL gun and two live cartridges were recovered at the instance of Nafe Singh. The spent cartridges was lying on the spot which was seized and sealed by investigation officer. The doctor who conducted post mortem on the body of Babu Lal recovered some pellets from the body. These pellets were given to the investigation officer. Pellets, spent cartridges, gun recovered from accused Nafe Singh and live cartridges were sent to CFSL. The expert gave opinion that the pellets were of the cartridges fired from the gun and the spent cartridges recovered from near the body was also fired from the same gun. After completing investigation challan was filed and accused persons were sent for trial before this court.

3. To bring home the guilt of the accused, the prosecution has examined 19 witnesses of which PW-1 is Phool Wati, wife of the deceased Babu Lal who testifies that a programme on the demise of the mother of Jagmal (the other accused who was also tried with the appellant but was finally acquitted) was arranged by Jagmal on 28.04.2001 and her husband had gone to attend the same. She testifies that liquor was served and when her husband came back he told her that an altercation had taken place between Jagmal and him (the deceased). She goes on to depose that on 29.04.2001 i.e., the following day Jagmal came to their house at about 8/9 a.m. and called her husband. In spite of her warning, her husband left along with Jagmal. Shortly thereafter she heard a commotion in the gali and came out to learn that Nafe had shot her husband.

4. PW-12 is the star witness of the prosecution who is stated to be an eye-witness. He testifies that Harijan Chaupal is about 500 yards away from his house. A function of last rites of aged mother of Balbir had taken place on the night of 28.04.2001 at which function Balbir had arranged for singing etc. During the function Babu Lal had abused the guests of Balbir. At that function, Nafe, a relative of Balbir was also present. An altercation had taken place between Babu Lal and the accused persons who were also under the influence of liquor. On the following day i.e., 29.04.2001 while the witness was going to the barber shop, he reached near Harijan Chaupal and found that an altercation was going on between Babu Lal on the one hand and Balbir and Nafe on the other hand. Nafe

was holding a gun. Jagmal was at a little distance from Babu Lal. Jagmal was telling Nafe that Babu Lal had spoiled the last night function and should be taught a lesson. On this Nafe told Babu Lal that he would put an end to Babu Lal's badmashi. Consequently, Nafe fired from his gun hitting Babu Lal as a result whereof Babu Lal fell on the ground and accused persons ran away towards the house of Nafe Singh. Someone reported the matter to the police. Thereafter the police reached the spot and recorded the statement of this witness Ex.PW-12/A. He deposes to the effect that the police seized spent cartridges from the spot and picked up blood stained earth as also chappals of Babu Lal. The witness is a signatory to the seizure memo Ex.PW-12/B. In cross-examination it has been put to the witness that Nafe Singh was doing customary firing and at that time Babu Lal grappled with him in an attempt to snatch the rifle which then accidentally went off hitting Babu Lal. The witness, however, denied this grappling. Most of the other witnesses are formal in nature except PW-7 who is Dr. M.M. Narnaware, CMO DDU hospital, New Delhi. He testifies that on 30.04.2001 he conducted the post mortem on the body of Babu Lal and found the following injuries:

1. Abrasion on right tibial shin 10 cm x 5 cm.
2. Abrasion of right ankle 4 cm x 03 cm.
3. Abrasion on left ankle size 3.5 cm x 3 cm.
4. One penetrating wound seen on right upper abdomen 3.5 cm from mid line and 14.5 below right nipple. 5 cm. X 4.5 cm x cavity deep. The omentum and loop of intestine was lying outside the cavity through its aperture. The upper border is abraded and lower border is inverted. There is cutting and blackening. Bone deficient of 8th rib. In the course of injury it penetrated the abdominal cavity, lacerated the liver and right kidney.

Lacerated and perforated the intestine and mesentery. Time since death was approximately one day and cause of death in my opinion was death due to fire arm injury. The post mortem report is Ex. PW-7/A.

This witness was not cross-examined.

5. The investigating officer is PW-17 Inspector Rajender Sharma, SHO Vasant Vihar police station who deposes to the investigative steps taken by him. His cross-examination also is more of a formality.

6. In statement u/s 313 Cr.P.C. of the accused Nafe, he states that:

I was on duty at Guru Teg Bahadur Hospital as nursing orderly. On 28.04.2001 from 2.00 P.M. to 8.00 P.M. I went at the function of co-accused at 10.00 P.M. Babu Lal was not there. I had no altercation with Babu Lal neither co-accused had any altercation with Babu Lal. At about 9.15 A.M. at 29.04.2001 I went to chopal to make a fire from my gun to the air for celebration of the function of Jagmal. There were several persons who had accompanied me to Chopal for this

firing in the air Jagpal was inside chopal. Babu Lal also reached chopal and he was drunk at that time. He tried to snatch gun from me and said that he would make fire in the air. In this snatching gun got fired and Babu Lal who was holding barral of the fun got injured due to accidental fire. Then I went to my house.

7. From the material adduced before us it appears that the case put up by the prosecution as also the defence narrows down to the presence of the accused Ngfe with the gun at the water well on 29.04.2001 which is the fateful day. It is also the admitted case that Nafe Singh's gun was instrumental in causing death of Babu Lal. It is, however, the version of the defence that it is during the grappling and snatching of the weapon by the deceased from Nafe Singh that the same went off accidentally, causing death of Babu Lal. This we find hard to believe inasmuch as post-mortem report does not indicate that the firing had taken place from close quarters. There were no traces of burning and tattering found on the clothes or the body of the deceased. There was only one empty recovered. The case put forth by the prosecution through its witness PW-12 to the extent that Nafe Singh fired upon Babu Lal when they were abusing each other appears to be the correct version. The trial court while appreciating the evidence on record has carefully examined the material and come to the conclusion that Nafe Singh fired from. 12 bore single barrel gun hitting Babu Lal which in result caused the death of Babu Lal. We see no reasons to come to a different conclusion. As already noticed, the case before us, has been placed on more or less admitted facts. There is little or no dispute that death was caused due to fire arm injuries. The defence version is not supported by any defence witness nor it is supported by the medical report on record. On the other hand, the prosecution version finds sufficient support from the version of PW-12 as also from the post-mortem report. The presence of the accused at the place of incident is admitted. The case of accidental firing is an after thought.

8. In this view of the matter, we see no reason to interfere in the reasoned judgment of the trial court. We, therefore, uphold the judgment and order dated 03.05.2003 and Criminal appeal No. 338/2003 stands dismissed.