
(2003) 10 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Case No. Cr. Ist. Appeal No. 20 of 2002, Cr. Acquittal Appeal No. 54 of 2000 And Cr. Reference No. 29 of 2000

Randhir Singh

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 08-10-2003

Acts Referred:

Ranbir Penal Code, 1989 — Section 300, 302, 304(1)

Citation : (2004) 1 JKJ 295

Hon'ble Judges : Yash Paul Nargotra, J; R.C. Gandhi, J

Bench : Division Bench

Advocate : R.P. Sharma, for the Appellant; S.C. Gupta, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Y.P. Nargotra, J.—Four accused namely Randhir Singh (A1), Jageer Singh (A2), Kartar Singh (A3) and Ajit Singh (A4) were put on trial

for commission of the offences u/s 302/34 RPC and 4/27 Indian Arms Act before the Court of Sessions Judge, Udhampur. Learned Sessions

Judge did not accept the case of the prosecution against three accused (A2 to A4) and acquitted them but convicted the accused Randhir Singh

(A1) for commission of the offences u/s 302 RPC and 4/27 Indian Arms Act by his Judgment dated 29.8.2000. Learned Sessions Judge by his

order dated 31.8.2000 sentenced accused Randhir Singh (A1) to life imprisonment and a fine of Rs. 5000/- for commission of the offence u/s 302

and in default of payment of fine directed the accused for undergoing further simple imprisonment for a period of six months. Learned Sessions

Judge also sentenced the accused Randhir Singh for undergoing imprisonment of four years and a fine of Rs. 1000/- for the offence u/s 4/27 Indian

Arms Act and in case of default in the payment of fine directed for further simple imprisonment of two months. Both the sentences however were made to run concurrently.

2. Accused Randhir Singh(A1) has filed Criminal Appeal No. 20/2000 for challenging his conviction and sentence. The State has filed Acquittal

Appeal No. 54/2000, for challenging the acquittal of the accused Jageer Singh (A 2), Kartar Singh (A 3) and Ajeet Singh (A 4). Learned

Sessions Judge has made Criminal Reference No. 29/2000 seeking confirmation of the sentence u/s 374 Cr.P.C. The Criminal Appeal, Acquittal

appeal and Criminal Reference arise out of the same Judgment, therefore, are being taken together and disposed of by this Common Judgment.

3. Briefly put the story of the case of the prosecution is that P.W Deep Kumar was a drop out of the School situated at village Bodola, on

5.6.1998, along with his three friends, Sham Lal (Deceased), Gobind Ram (P.W) and Rajesh (P.W) went to the School for obtaining discharge

certificate, which he needed for obtaining admission in another School at Udhampur. He approached (P.W) Kapoor Chand, teacher for issuance

of the certificate, who told him that as the Schools were about to close for Summer Vacations from 6.6.1998, so he should come after vacations

and then all the four of them returned.

It is the case of the prosecution that when they reached a place called Kamal Dange, all the four of them were intercepted by the four accused.

Accused Kartar Singh (A3), who is the father of Accused Randhir Singh (A1), enquired from (deceased) Sham Lal as to why he was blaming his

son (A1) unnecessarily for teasing (P.W) Kamlesh Kumari. The deceased Sham Lal denied this but accused Kartar Singh, was not satisfied from

his reply. It is also the case of the prosecution that then Kartar Singh (A3) caught hold of the right arm of the deceased while Jageer Singh (A2)

held him of his left arm while Ajit Singh (A4) gave a Khokri to Randhir Singh (A1) for attacking the deceased. Kartar Singh (A3) then exhorted his

son Randhir Singh (A1) to kill the deceased on which Randhir Singh (A1) inflicted a blow of the Khokri on the chest of the deceased causing a

serious injury in consequence of which deceased fell down injured and bleeding profusely and died on spot. The companions of Sham Lal

deceased when tried to intervene they were threatened, so they ran away.

4. P.W Gobind Ram went to the Numberdar, P.W Om Parkash and informed him about the occurrence, who was found sitting on a shop near the

place of occurrence where water was being offered to people as on that day it was 'Akadashi'. P.W OM Parkash rushed to the place of

occurrence. The deceased was lifted and kept under the shadow of a tree and then P.W Om Parkash went to Police Station, Udhampur and

lodged the report of the occurrence. EX.P.W OP, on the basis of which FIR Ex.P.WOP1 was registered at 13.15 for commission of the offence

u/s 302/34 RPC and 4/27 Indian arms Act and investigation was commenced.

5. During the course of investigation, the police went on spot, prepared site plan, took the possession of the dead body of the deceased, blood

stained Bajri and plain clay were seized from the spot. Dead body of the deceased was sent for post mortem. The autopsy was conducted by P.W

Dr. Romesh, who found single injury i.e. a sharp incised well defined edges of incised wound in the left infra clavical gone measuring 2"x3"x 2" with

a distinct proliferative Vascular changes with Vascular buds on microscopical lens. The Doctor also found that left lung was perforated through and

through into middle 2"x3"x2". Left pleural cavity was found full of blood. In the opinion of the doctor the deceased had died due to cardio-

respiratory failure because of syncope (hemorrhagic shock) as the result of sharp penetrating weapon culminating into death.

After post-mortem, clothes and other items mentioned in ExPWHR were also seized. The statements of the witnesses u/s 161 Cr.P.C were

recorded. The accused could be arrested on 15.6.1998 where after accused Randhir Singh(A1) made a disclosure statement in pursuance

whereof weapon of offence and clothes of the accused were recovered and seized. After completion of the investigation the charge sheet was filed

against the accused before the learned Chief Judicial Magistrate, Udhamour on 21.7.1998, who committed the case to the Court of Sessions

Judge, Udhampur for trial of the accused.

6. Learned Sessions Judge, Udhampur framed the charges for trial of the accused for commission of the offences u/s 302/34 RPC and Section

4/27 Indian Arms Act. The accused on being asked to plead took up the plea of not guilty.

7. The prosecution examined P.Ws Deep Kumar, Gobind Ram, Rajesh Kumar, Om

Parkash, Mangat Ram, Angrez Singh, Sham Raj, Jai Krishan,

Sanjeev Kumar, Chuni Lal, Kamlesh Kumari, Ved Parkash, Kapoor Chand, Dr. Romesh Chander, Goverdhan Singh and Sardar Khan.

8. The statements of the accused have been recorded in which accused Randhir Singh has stated as follows:-

Whereas other accused have pleaded that they have been falsely implicated.

9. The prosecution sought to prove its case by proving the fact that accused had the motive to kill in pursuance whereof with a common intention

they caused the death of the deceased Sham Lal in the manner already described.

10. The learned trial court analyzed the evidence on record and found that motive to commit the crime was not proved by the prosecution. The

motive alleged by the prosecution was that the accused Randhir Singh has been teasing P.W Kamlesh Kumari, who was 'Dharam Behan' of

deceased, so deceased Sham Lal has been blaming the accused which was to the annoyance of the accused. P.W Kamlesh Kumari when came in

the witness box, she totally denied the fact of ever being teased by the accused. She also asserted that she has no relationship with the deceased.

During the trial though some of other prosecution witnesses stated that accused Randhir Singh was teasing P.W Kamlesh Kumari but in cross-

examination have categorically admitted that Kamlesh Kumari had not ever complained about any such teasing and that they had come to know

about this fact only after the death of the deceased. Thus, no trust-worthy evidence is available on record to prove the alleged motive.

11. It is however a settled Principle of law that failure of the prosecution to prove motive, is of no consequence where direct evidence has been

led.

In 1992 (1) C.C.R SC 4 Ganeshi Lal v. State of Maharashtra, it was held:--

Men do not act wholly without motive. Failure to discover motive of the offence does not signify the non-existence of the crime. The failure to

discover motive by clinching evidence may be a weakness in the proof of the case, but not necessarily fatal as a matter of law. Proof of motive is

never an indispensable factor for conviction.

The prosecution mainly relied on the direct evidence of eye-witnesses P.Ws Deep Kumar, Gobind Ram and Rajesh Kumar for proving its case

against all the four accused. Learned Trial Court after critically appreciating and evaluating the evidence of these witnesses arrived at the conclusion

that their evidence was not acceptable, so far as it pertains to accused other than Randhir Singh and disbelieved the case of the prosecution that

three accused namely, Jageer Singh, Kartar Singh and Ajeet Singh were involved in the crime. However, learned Trial Court accepted the

evidence of the prosecution against the accused Randhir Singh.

The learned Trial Court refused to accept the prosecution evidence against the said three acquitted accused for the following reasons:--

(a) There is absence of motive for committing the crime. According to learned Trial Court, there was no reason why all the accused who are

members of the same family should have assaulted and attacked the deceased. Why all of them should have accompanied accused Randhir Singh

on the day of occurrence, who was a student of 10th Class and going to School?

(b) The witnesses of occurrence have given inconsistent account of the role played by Kartar Singh accused, who is none else but father of

accused Randhir Singh. Why he would have accompanied Jagir Singh and Randhir Singh at the time of occurrence. Why would he exhort his son

to kill the deceased? According to learned Trial court, it is rather proved from other witnesses of the prosecution especially Investigating Officer,

Goverdhan Singh Jamwal that all the three eye witnesses and deceased had some enmity with Randhir Singh accused and all of them had planned

to kill Randhir Singh and on the day of occurrence while Randhir Singh accused appeared in the way and on finding opportunity may have

assaulted the accused.

(c) The prosecution has not examined any independent witness in the case, who would have established the presence of the said three accused on

the spot.

(d) No recovery has been made at the instance of these three accused.

(e) Only one injury has inflicted on the person of the deceased. This injury, as per the case of the prosecution was caused by accused Randhir

Singh. If all the accused had participated in the crime then why more injuries were not caused, if the intention of the accused was to kill the

deceased.

12. From the critical examination and evaluation of the prosecution, in our considered opinion, learned Trial Judge was justified in disbelieving the story of the prosecution regarding the involvement of the three acquitted accused in the commission of the crime. The accused Randhir Singh being the student of 10th Class, was going to School. His going to the School is, therefore, natural. He in his defence, has also not disputed his presence on the scene of occurrence but the arrival of the deceased and his companion eye witnesses could not be the knowledge of the accused. As the accused could have not known in the natural course of things that on the day of occurrence the deceased and his companions would be going to the School for collecting Discharge Certificate of Deep Kumar, there was no possible reason for the other accused to accompany accused Randhir Singh. In this view of the matter, the involvement of the said three accused appears to be highly doubtful. Learned Trial Court has recorded weighty and sufficient reasons for not believing the story of the prosecution regarding the complicity of the said three accused in the crime, therefore, no exception can be taken to the findings recorded in this behalf. Learned Additional Advocate General has not been able to put forth any convincing reason to challenge the view expressed by the learned Trial Court.

13. Learned Trial Court has accepted the case of the prosecution as against accused Randhir Singh. All the three eye witnesses have consistently deposed that accused Randhir Singh had caused the Khokri blow on the chest of the deceased. P.W. Doctor Romesh Chander, who conducted the post-mortem, has opined that the injuries mentioned in the post-mortem certificate were sufficient in the ordinary course of nature to cause the death of the deceased. Therefore, the question arising for determination is; Has the prosecution succeeded in proving cogently, completely and beyond all reasonable shadow of doubt that the accused caused the injury on the chest of the deceased and if the answer comes into affirmative then which offence he committed.

14. Indisputably the deceased Sham Lal has died un-natural death. The cause of the death undisputedly is the sharp edged weapon injury found on the chest of the deceased. The eye-witnesses P.Ws Deep Kumar, Gobind Ram and Rajesh have testified that injury was inflicted by the accused Randhir Singh because deceased Sham Lal was un-necessarily accusing the

accused that he was teasing Kamlesh Kumari, Dharam Behan of the deceased. The motive suggested has not been accepted by the learned Trial Court and rightly so because if Kamlesh Kumari was being teased by the accused, it would have given a cause for attack to the deceased and his friends and not to the accused.

15. From the careful scrutiny of the evidence of the eye witnesses and keeping in mind the circumstance of the case and alleged motive what

emerges out is that the deceased and his companions/ eye witnesses met the accused Randhir Singh. Some scuffle must have ensued between them

in which the accused inflicted the khokri blow to the deceased causing injury which resulted into his death.

16. From Where the Khokri came into the hands of the accused. He was a 10th Class student and going to School. If he apprehended assault at

the hands of the deceased he may have already kept the same with him, is one of the possibilities. The case of the prosecution has been that

accused Ajeet Singh gave it to him for inflicting the blow on the person of the deceased. This story cannot be accepted because presence of the

accused Ajeet Singh on spot has already been ruled out. Learned Additional Advocate General has argued that as the same was recovered in

pursuance of the disclosure statement of the accused, therefore, it should be accepted that it was with the accused. Be it so, the fact remains that

there is no reason to disbelieve the eye witnesses that it was the accused who inflicted the injury on the person of the deceased.

17. The accused in his defence has not denied the occurrence. He has put up the version that he was attacked with a knife and not with the seized

weapon by the deceased and in his defence when he tried to snatch knife from the deceased, it struck him. Defence evidence to prove the fact that

there was scuffle has also been led.

18. The contention of the learned Additional advocate General is that the plea advanced by the accused is a made up defence where in fact the

prosecution has proved that it was the accused who inflicted the fatal injury on the vital part of the deceased, therefore, necessary intention to

commit murder cannot be ruled out and therefore, he has been rightly convicted by the Trial Court.

Per contra the learned counsel for the accused has argued firstly, that the

accused cannot be held guilty for murder of the deceased because he had acted in his right of private defence and Secondly, if it was not so even then offence u/s 302 RPC cannot be made out because necessary intention to commit murder cannot be attributed to the accused in the given circumstances of the case.

19. The accused has come up with the plea that weapon with which the injury was caused, as per the case of the prosecution, was possessed by

the deceased. According to him the deceased was having a knife with which fatal injury came to be caused. P.W. Dr. Romesh Chander has

testified that the injury was possible by the weapon EXP1 seized during investigation. There was no suggestion of the defence that the injury was

possible with a knife. The use of knife for causing the injury cannot thus be accepted. The deceased was not found to be having any weapon. The

accused has pleaded that there was scuffle. The ensuing of scuffle between the accused and the deceased has not been ruled out by the learned

Trial Court and We also find no reason to hold otherwise. Thus, it appears that the accused was confronted by the deceased and his three

companions eye-witnesses. The deceased and eyewitnesses were empty handed. Though the scuffle ensued but no injury was caused on the

person of the accused. Therefore, there was no such real threat to his safety which can justify him to take the Khokri out and inflicted the injury on

the chest of the deceased and even if taking the number of the assailant in view if he had any such defence, it did not extend to the causing of the

serious injury on the vital part of the deceased by using a deadly weapon. Even otherwise, the incident appears to have occurred suddenly

between the parties. None of them had gone in the look out of the other. The accused was alone while the opposite party consisted of four

members. In the scuffle, which ensued, the accused used the weapon and caused the said injury. There is no material available on the record to

suggest that the accused intended to cause the injury on the vital part of the deceased with the intention of causing his death. In these

circumstances, in our view, the offence u/s 300 punishable u/s 302 RPC is not constituted.

In our considered opinion the offence, which is made out, falls u/s 304 I RPC.

20. The recovery of the weapon in pursuance of the disclosure statement was

found by the learned trial Court to have been proved by the prosecution. The contention of the learned counsel for the accused is that as per the statement of Investigating Officer, the accused made the disclosure statement at the spot where the accused were arrested and from there the police party along with accused had gone to the house of the accused to effect recovery. Whereas according to the witnesses the accused had made disclosure in the police Station from where they had gone to effect recovery. Learned counsel for the accused argues that in view of this contradiction, the disclosure and recovery have been rendered doubtful.

We are unable to accept the contention. The contradiction, in our view, is not so material as to make the disclosure and recovery doubtful.

21. Therefore, for the reasons stated above, We set aside the conviction of the accused for commission of the offence u/s 302 RPC and sentence

imposed thereon by the learned trial court and convict the accused for commission of the offence u/s 304 -I RPC and by taking into consideration

the fact that at the time of offence the accused was a student of 10th Class, he is sentenced to undergo rigorous imprisonment of five years and a

fine of Rs. 5000/- and in default of payment of fine, the accused shall further undergo simple imprisonment of three months. The conviction and

sentence of the accused for commission of offence u/s 4/27 Indian Arms Act is also maintained because in our view the fact of recovery of the

weapon the possession of which is prohibited, at the instance of the accused has been proved by the prosecution. Both the sentences shall run

concurrently. The period for which the accused has been in custody shall be set off in computation of the period of the sentence.

22. Therefore, Criminal Appeal No. 20/2000 of the accused is partly allowed, Criminal Reference No. 29/2000 made by the learned Sessions

Judge, Udhampur is accordingly disposed of and the Criminal Acquittal Appeal No. 54/2000 of the State is dismissed.