

(1959) 04 SC CK 0036

In the Supreme Court Of India

Case No : Criminal Appeal No. 1 of 1959

Shibraj Singh and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 14-04-1959

Acts Referred:

Evidence Act, 1872 — Section 105

Penal Code, 1860 (IPC) — Section 302, 304A, 326, 338, 80

Citation : AIR 1959 SC 1173

Hon'ble Judges : Wanchoo, J;Sinha, J;Gajendragadkar, J

Bench : Full Bench

Advocate : Ram Lal Anand and S.N. Mukhejee, for the Appellant; D.N. Mukherjee, P.K. Ghosh, for P.K. Bose and M.K. Ramamurthy, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, J.—This is an appeal by special leave against the judgment of the Calcutta High Court in a criminal matter. The case relates to the murder of one Sk. Manzoor at Bagmari Road, Calcutta, on 7 9-1956 and to the causing of grievous hurt at the same time and place to Ranjit Pal. It was tried by a jury before the Addl. Sessions Judge at Alipore.

2. The prosecution story was briefly this. There is a manufacturing concern at Bagmari Road, which is known as Oriental Rubber Works. Of the three accused, Kaizar Ali is the manager of the concern, Santosh De the chemist and Shibraj Singh a darban. The incident took place on 7-9-1956, but the genesis of the trouble started earlier. It is said that there was discontent among the workers of the Concern and there was strike which began on 13-8-56. This strike came to an end on 21-8 56, on the basis of an agreement arrived at between the labour union and the concern with the assistance of the Assistant Labour Commr. On 24-8-55, seventeen workmen were suspended. The workmen alleged that this amounted to victimization, which was against the terms of the agreement. Consequently, a fresh strike began on 20-8-56. Thereupon the concern tried to

carry on work by recruiting fresh labour. The striking workmen resented this and used to assemble at the factory gate and check all vehicles going in or coming-out of the factory, with the intention of preventing fresh labour being taken inside the factory and also preventing the taking of manufactured goods. In view of this action of the strikers, the management sought the help of the police and two constables from Manicktolla police station used to be on duty continuously at the factory gate to prevent breach of the peace. There is no serious dispute as to the facts up to this stage.

3. The prosecution case with reference to the incident of 7-9-56, is that a truck came out of the factory at about 11 a.m. and was going towards west on Bagmari Road. Kaizar Ali, Santosh De and Shibraj Singh who are the three accused and two Nepali darbars were sitting in the truck. Shibraj Singh was armed with a gun. The truck proceeded some distance before it could be stopped by two of the strikers, namely Sk. Manzoor and Taiapada Biswas. As soon as the truck stopped, one of the Nepali darbars began to brandish his bhujali. Sk. Manzoor protested about this. Thereupon Kaizar Ali said that he would shoot them, if necessary and then Kaizar Ali and Santosh De ordered Shibraj Singh to open fire. Shibraj Singh fired two shots from his gun in quick succession. The first shot hit Sk. Manzoor on the left thigh while the other struck a boy named Ranjit Pal who had nothing to do with the strike and was a passer-by on the road. Thereafter the truck moved off and the manager Kaizar Ali went on it to Manicktolla police station, where he made a report against the strikers. In the meantime an ambulance was sent for to carry the two injured persons to the hospital. The police was also informed of this through a report made by one Dharendra Nath Ganguly, who happened to be present when the incident took place. The two injured persons had in the meantime reached the hospital. The injury of Sk. Manzoor was serious and he died the same afternoon at 3.40 p.m. It was found that his thigh bone was broken and the femoral artery cut. Three pieces of wads were recovered from the soft tissues. But there was no exit wound and no pellets were found in the body of Sk. Manzoor. His death was due to shock and haemorrhage from the injury on his thigh. The injury on Ranjit Pal was not so serious. An operation was performed on him and a pellet was extracted. He recovered and was discharged from the hospital on 11-9-56.

4. The three accused admitted that Sk. Manzoor and Ranjit Pal were injured by shots which came out of the gun in the hands of Shibraj Singh. But they gave a different version as to what actually happened on 7-9-56. They said that the management had given notice on 6-9-56, that if the strikers did not report on duty on 7-9-1956, their services would be terminated. This caused much excitement amongst the strikers who had assembled at the factory gate on 7-9-56. When the truck carrying the officials of the company was going into the factory at about 10 a.m. was stopped and the constables on duty could not give any help. A police van, however, arrived with more police-men and then the truck managed to go in. After this the crowd of strikers swelled further and they tried to enter the factory premises by forcibly opening the factory gate and by making

a hole in the compound wall. The management asked the constables on duty to inform the thana but they did nothing. In consequence, Kaizar Ali and Santosh De started for the thana in the truck with some darbans. One of the darbans was Shibraj Singh who was armed with a gun. The truck was first stopped at the gate but the constables persuaded the strikers to let it proceed. The truck had however proceeded only a short distance when a bigger crowd surrounded it and stopped it. Some members of the crowd got into it while others began to throw stones and brick-bats. The men who had boarded the truck tried to pull down Kaizar Ali and Santosh De and also made an attempt to snatch the gun from Shibraj Singh. It was in the course of the scuffle between Shibraj Singh and those who were trying to snatch the gun from his hand that the trigger was touched and the gun went off twice. Kaizar Ali and Santosh De denied that they had ordered Shibraj Singh to fire. Their case was that the firing was accidental due to scuffle between Shibraj Singh and those who were trying to snatch the gun from him.

5. The charge against Shibraj Singh was u/s 302 of the IPC with respect to the murder of Sk. Manzoor and u/s 326 with respect to the injury to Raniit Pal. Kaizar Ali and Santosh De were charged with abetting the commission of the above offences by Shibraj Singh. The trial Judge delivered an elaborate charge to the jury in which he explained the case against the accused as well as the evidence both for and against them carefully. He also explained the various sections of the IPC under which the accused were charged as also Section 80 of the same Code, on account of the plea of accident taken by the accused. The jury then retired and brought a unanimous verdict of not guilty against all the accused on all the charges within forty minutes. The trial Judge was of the view that the verdict was not against the weight of evidence and he, therefore, accepted it and acquitted the three accused.

6. There was no appeal by the State Govt. against this order of acquittal. One Mohd. Zephyr who is the brother of Sk. Manzoor deceased filed a revision in the High Court and he complained of misdirection and non direction amounting to misdirection in the charge to the jury. He also complained that the trial Judge was wrong in excluding from evidence the report made by Kaizar Ali in the thana on 7-9-56. When the case came to be heard by the High Court, the State Government also intervened and the stand taken by it was that a retrial should be ordered in the case of Shibraj Singh only. The State did not thus assail the acquittal of the other two accused, namely Kaizar Ali and Santosh De. The main contention on behalf of Mohd. Zephyr before the High Court was that as the accused had set up the defence of accident it was the duty of the trial Judge to explain not only Section 80 of the IPC but also Sections 304A and 338 of the same Code. Section 304A provides punishment for causing death by rash and negligent act and Section 338 provides punishment for causing grievous hurt by doing any act so rashly or negligently as to endanger human life or the personal safety of others. On the other hand, it was contended on behalf of the accused that this was a cure and simple case u/s 302 and 326 of the IPC and there was

no question of an offence u/s 304A or Section 338 of the same Code having been committed. The High Court accepted the view that it was the duty of the trial Judge to explain not only Section 80, once the defence of accident was raised, but also to explain Sections 304A and 338 as the jury might have come to the conclusion that an offence u/s 304A or Section 338 had been made out. The High Court, therefore, held that there was misdirection in the summing up. It also held that in the circumstances it could not be said that the erroneous direction had not resulted in a perverse verdict. In consequence, it held that there was failure to justice and remanded the case for a fresh and fair trial against all the three accused. Thereupon the three accused applied to the High Court for leave to appeal to this Court, which was refused. They then filed a petition for special leave before this Court, which was allowed; and that is how the matter has come up before us.

7. A perusal of the judgment of the High Court shows that if it had not come to the conclusion that the trial Judge committed serious non direction which amounted to misdirection with respect to explaining Sections 304A and 338 of the IPC to the jury it would not have interfered with the verdict of the jury. The High Court does not say in its judgment that there was any serious non direction amounting to misdirection by the trial Judge in so far as the charges against the accused were concerned. It was certainly urged on behalf of Mohd. Zephyr that the trial Judge did not explain Section 326 of the IPC at all to the jury and did not properly explain Section 80 of the same Code and did not refer to Section 105 of the Indian Evidence Act in that connection. This contention, however, was not accepted by the High Court which only held that in explaining Section 80 of the IPC, the learned Judge had definitely misdirected the jury in not explaining two other sections, namely, Sections 304A and 338. The High Court also said nothing about the non admission of Kaizar Ali's report. Learned Counsel for the Appellants urges before us that the High Court was in error in holding that this was a case where it was the duty of the trial Judge to explain Sections 304A and 338 'ibid' and that non direction in this respect amounted to misdirection and led to a perverse verdict by the jury. But for this finding on the part of the High Court, the judgment shows that there was no such other defect in the charge to the jury as would have led to the conclusion that the verdict of the jury was perverse and that there had been failure of justice calling for interference with the unanimous verdict of acquittal.

8. The short point therefore that falls for consideration is whether the High Court was right in the view that failure to explain Sections 304A and 338 'ibid' amounted to such misdirection as called for interference with the unanimous verdict of acquittal. We have already set out the two versions for the prosecution and the defence and we cannot see how a case of death by rash and negligent act u/s 304A or of causing grievous hurt by doing any act so rashly or negligently as to endanger human life or the personal safety of others u/s 338 can arise at all in the circumstances of this case. The prosecution case was a straightforward one of murder and of causing grievous hurt and there was no question of death

or grievous hurt being caused by any rash or negligent act so far as the prosecution case was concerned. The defence case was of accident, We asked the learned Counsel for the Respondents how a case of death or grievous hurt by a rash or negligent act can be made out at all in this case and what act of Shibraj Singh can be called rash or negligent on either of the two versions given in the trial Court. All that the learned Counsel could say was that taking the gun loaded was a rash act in the circumstances. We cannot accept this. If there was a crowd outside which had already tried to interfere with the truck when it came in and which was in an excited mood and if a gun had to be taken by Shibraj Singh-- obviously for protection--,there would be no sense in taking it unloaded. It would only be useful in an emergency if it was taken loaded to be available for use instantly, as otherwise the time taken in loading it may make all the difference for the purpose of protection. We cannot therefore accept that merely because Shibraj Singh was carrying a loaded gun he was doing a rash act. Besides this, learned Counsel for the Respondents were unable to point out anything which would even remotely suggest the possibility of the commission of a rash or negligent act by any member of the party which was in the truck. In these circumstances, we cannot with respect agree with the High Court that because the accused had put forward a case of accident, it was incumbent upon the trial Judge to explain Sections 304A and 338 of the IPC to the jury and in so far as he failed to do so there was misdirection which resulted in a perverse verdict occasioning a failure of justice. As we have pointed out above, this is not a case where there was any question of an offence u/s 304A or Section 338 'ibid'.

9. Unfortunately the High Court does not appear to have considered this aspect of the matter. We think it would be difficult to state as a matter of law, as the High Court seems to do, that whatever, in a murder case tried by a jury, the accused makes a plea u/s 80 of the IPC, the presiding judge must invariably refer to Section 304A and Section 338. In the present case, even if the prosecution case is believed and the defence plea of accident is rejected, the result would be conviction either u/s 302 or Section 326 and there would be no scope for the application of Section 304A and Section 338. We have no doubt that if the attention of the High Court had been drawn to this aspect of the matter it would not have held that the charge in question suffers from a serious misdirection on the only ground that it did not explain to the jury the ingredients of the offences Under Sections 304A and 338. Therefore, in our opinion, the main basis on which the High Court has set aside the unanimous verdict of acquittal by the jury and ordered retrial fails. Under these circumstances we think it is necessary in the interest of justice to allow the appeal and set aside the order of the High Court directing retrial and we accordingly do so.