
(1981) 12 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 15 of 1980

Shri Karam Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-12-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 229, 304, 304(1), 304(2)
Evidence Act, 1872 — Section 27
Himachal Pradesh Legal Aid to Accused at State Expense Rules, 1979 — Rule 5, 6
Penal Code, 1860 (IPC) — Section 300, 302

Citation : (1982) ShimLC 171

Hon'ble Judges : V.P. Gupta, J; T.R. Handa, J

Bench : Division Bench

Advocate : D.K. Khanna, Amicus Curie, for the Appellant; Malkiat Singh, General, for the Respondent

Final Decision : Allowed

Judgement

T.R. Handa, J.—The Appellant Karam Singh was charge sheeted by the Additional Sessions Judge, Dharamsala u/s 302 of the Indian Penal Code for having Committed the murder of one Mohinder Singh on 1-11-1979 at Kopahri. The Appellant plead guilty to that charge. The learned Additional Sessions Judge accepted the plea of guilty put forward by the Appellant and vide his order dated 20-2-1980 convicted the Appellant of the offence u/s 302, I.P.C. Later after hearing the Appellant on the point of sentence the learned Judge sentenced him to undergo life imprisonment and to pay a fine of Rs. 5,000 or in default of payment of fine to undergo further rigorous imprisonment for two years.

2. The Appellant has in this appeal challenged the above mentioned order of his conviction and sentence. The Appellant now denies if he committed the murder of Mohinder Singh or if he pleaded guilty to any charge of murder before the Additional Sessions Judge. His contention is that he suffers from mental disorder and on that score he often used to talk irrelevant.

3. This appeal was received from Jail and was put up before us on 20-11-1981. Since the Appellant was not represented by any counsel and was reported to be an indigent person, we requested Shri D.K. Khana, an Advocate of this Court to argue this appeal on behalf of the Appellant. Shri Khana very Kindly offered to appear and argue for the Appellant as amicus curiae. He was allowed enough time to inspect the record and prepare the Case.

4. The short question which arises for consideration in this appeal is whether the Additional Sessions Judge was justified in accepting the plea of guilty put forward by the Appellant and to convict him on the basis of such plea.

5. At this stage it may be pointed out that there is no eye witness to the alleged occurrence. The dead body of Mohinder Singh was detected by certain villagers lying in the field of one Udho Ram in the morning hours of 1-11-1979. A report to that effect was sent to the police which reached the scene of occurrence the same day. The police prepared the Inquest Report and then sent the dead body for postmortem examination. The police investigation revealed that the Appellant had made an extra judicial confession before certain respectable persons of the locality. It was on that ground that the Appellant was arrested on the very day of occurrence. After his arrest the Appellant made a disclosure statement u/s 27 of the Evidence Act. This disclosure statement led to the recovery of a Darat, the alleged weapon of offence. The clothes on the person of the Appellant were also taken into possession by the police. The Darat as also the clothes found on the person of the Appellant were sent for chemical analysis and as per report of the Chemical Analyst, the same were found to contain blood stains. The report with respect to the origin of the blood found on these articles was still awaited when the police presented the charge sheet in Court. After the charge sheet was filed against the Appellant in the Court of the Chief Judicial Magistrate, the learned Chief Judicial Magistrate vide his order dated 30-1-1980 committed the Appellant to the Court of Session to face his trial. The Appellant appeared before the Sessions Judge on 15-2-1980 when the learned Sessions Judge transferred this case to the Additional Sessions Judge with the directions that the Appellant be produced in that Court on 20-2-1980.

6. Immediately after the Appellant was produced before the Additional Sessions Judge on 20-2-1980, he moved an application before the learned Judge praying that a counsel be engaged for his defence at State expense inasmuch as he being a poor man was not in a position to engage a counsel to defend him. What happened thereafter in the Court of the Additional Sessions Judge reflects not only the hot haste but also the indiscreet and blunt manner in which the learned Judge proceeded to dispose of this Sessions case involving a capital charge of murder. We can do no better than to quote the proceedings recorded by the learned Judge himself in support of our above observations:

The accused is not represented by a pleader or Advocate and he states that he has no sufficient means to engage a Pleader or an Advocate for his defence. He has also moved an application in this respect. Keeping in view the above said

facts the application is allowed and Shri S.D. Mahajan, Advocate who is on the panel of the list of Advocates, is appointed as a defence counsel on behalf of the accused. As I am satisfied that the accused has no sufficient means to engage a Pleader or Advocate, Shri S.D. Mahajan Advocate has accepted the brief but he states that as the offence is a grievous one u/s 302 I.P.C. he be paid reasonable fee in lump sum. Keeping in view all the circumstances the fee of the learned defence counsel is assessed at Rs. 500.

The case has been entrusted to this Court by the learned Sessions Judge Kangra at Dharamsala with a direction to the accused to appear today in this Court. Shri S.D. Mahajan, the learned defence counsel is ready with the arguments on the charge. Let the arguments be heard.

Upon consideration of the record of the case, and the documents submitted therewith and after hearing the submission of the Ld. P.P. and the learned defence counsel in this behalf I am of the opinion that there is ground for presuming that the accused has committed prima facie an offence u/s 302, I.P.C. Accordingly the charge for the said offence be framed. The charge u/s 302, I.P.C. framed which is read over and also explained to the accused. The accused pleads guilty to the charge vide his statement recorded in Hindi.

7. We may also reproduced the language in which the learned Additional Sessions Judge framed the charge u/s 302, I.P.C. against the Appellant as also the statement made by the Appellant in answer to the said charge:

I, D.P. Sood, Addl, Sessions Judge Kangra Sessions Division at Dharamsala, charge you Karam Singh as follows:

That you on or about 1-11-1979 at Kopahri Rakba Bhaeth tika Sanokh committed murder by intentionally or knowingly causing the death of Mohinder Singh and you thereby committed an offence punishable u/s 302 of Indian Penal Code and within the cognizance of this Court.

Statement of Shri Karam Singh son of Mast Ram resident of Sanorath Band Tehsil Nurpur aged 26 years, Without Oath.

Q. 1. Have you heard and understood the charge framed u/s 302, I.P.C. which has been read over and explained to you in Hindi?

Ans. Yes.

Q. 2. Do you plead guilty to the charge of murder of Mohinder Singh which you committed on 1-11-1979 at 7.30 a.m. in Tika Sanorath by inflicting injuries with "Drati" (Sickle)?

Ans. Yes. I plead guilty to the charge. I have committed the murder of Mohinder Singh deceased by inflicting injuries on his person with "Drati" (Sickle) at about 7.30 a.m. though I do not remember the exact date. I was all alone and none else participated or assisted me in this crime.

Q. 3. Do you want to say anything else?

Ans. Yes. Four years prior to the occurrence Mohinder Singh deceased had mercilessly beaten me and my parents on account of the deceased having cut our trees. I had left my village and had started residing at Jullundur. I returned to my village from Jullundur 20 days prior to the date of occurrence and started residing at my home. After my return Mohinder Singh deceased and others did not allow me to plough my fields or to cultivate my land. I had requested them that if they do not allow me to cultivate my land, they should give me some other land in exchange but they did not accede to my request. On the date of occurrence I was brushing my teeth and "Drati" (Sickle) was lying by the side of the place where I was brushing my teeth. The deceased came from the opposite side and seeing him I attacked him with the said "Drati" which resulted into his death because even after my return at my home said Mohinder Singh deceased had started cutting mango trees. I am making the above statement voluntarily and without any pressure in this Court. I know that the offence of murder is punishable with death and sentence of death can be imposed upon me.

Extracted above is the complete record of the proceedings conducted by the learned Additional Sessions Judge right from the time when the Appellant was produced before him and till the learned Judge recorded the conviction of the Appellant. In the face of this record we entertain no doubt whatever that the Appellant was neither afforded any legal assistance to which he was entitled under the law nor did he put forward any valid plea of guilty to the charge of murder which could form the basis of his conviction and that for either of these reasons, the order of the Addl. Sessions Judge convicting and sentencing the Appellant deserves to be quashed.

8. It need not be emphasised that in our system of criminal justice replete with technicalities of law and procedural intricacies, no person held into a Court, especially when he is poor and illiterate, can be assured a fair trial unless he is assisted by a legal practitioner of adequate competency. Thus due representation of an accused by a counsel is one of the basic ingredient of a fair criminal trial. This has since been given statutory recognition in the form of Section 304 of the Code of Criminal Procedure, 1973. Sub-section (1) of Section 304 reads:

304 Legal aid to accused at State expense in certain cases.- (1) Where, in a trial before the Court of Sessions, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

9. The Appellant who admittedly had no sufficient means of his own to engage a counsel was under the above provisions as of right entitled to the services of a pleader at State expense and in making an application to that effect before the trial Court, he had asked for no favour. The trial Court was under a legal obligation to assign a pleader for the defence of the Appellant at State expense.

Now a mere order of appointment of a defence counsel would not amount to an effective compliance with the above quoted provisions of Section 304(1). The appointment of a defence counsel would be futile so far as the accused is concerned unless the counsel so appointed is furnished with a copy of the police report as also the documents accompanying it, allowed enough time to study the same and prepare the defence in consultation with the accused. In case the defence counsel is called upon to argue for the accused immediately after his appointment without affording him copies of the above mentioned record or even inspection thereof and without affording him any opportunity of consulting the accused, it would obviously amount to a denial of his legal right to the accused. The natural consequence of this is a denial of a fair trial to the accused. The need of supplying the requisite documents and to provide enough opportunity to the defence counsel to take necessary instructions from the accused was emphasized in the rules made by this Court in exercise of its the conferred on it by Sub-section (2) of Section 304 Code of Criminal Procedure. These rules are known as the Himachal Pradesh Legal Aid to Accused at State Expense Rule, 1979. Rule 5 deals with the facilities to be extended to the Advocate engaged for the defence of an accused. This rule reads:

The appointment of an Advocate as defence counsel shall not be deferred until the accused has been called upon to plead. He shall always be appointed well in advance to enable him to study the case, contact the accused and take necessary instructions, if necessary. He shall be furnished free of costs copies of depositions, if any, and those of necessary documents which the Court deems fit before the commencement or during the trial. He shall be allowed free inspection of the record of the case without charging any fee.

These rules were intended to serve no other purpose except furnishing guidance to the Court in the matter of achieving the objective behind Section 304(1) Code of Criminal Procedure. In view of the provisions of Rule 5 (supra) and even otherwise, after the learned Additional Sessions Judge had appointed the defence counsel, the only course open to him was to adjourn the case to enable the defence counsel to inspect the record and take necessary instructions from the Appellant. The defence counsel also in our view could not justify his appointment unless he had been allowed enough time for the aforesaid purpose. It is rather strange that neither the Court considered it advisable to adjourn the case nor the defence counsel after his appointment made a request to that effect. The defence counsel as the record reveals was more interested in his fee than in the defence of the Appellant. This is obvious from the order of the Additional Sessions Judge where he states: "Shri S.D. Mahajan, Advocate has accepted the brief but he states that as the offence is a grievous one u/s 302, I.P.C. he be paid reasonable fee in lump sum. Keeping in view all the circumstances the fee of the learned defence counsel is assessed at Rs. 500. (emphasis supplied). At this stage we may extract Rule 6 of the Himachal Pradesh Legal Aid to Accused at State Expense Rules, 1979. It reads:

6. (1) The ordinary fee payable to an Advocate, engaged for the defence of the accused charged with the commission of offence punishable with death or imprisonment for life shall be Rs. 60 per day and in other cases Rs. 50 per day, subject to maximum of Rs. 600, for the case, as the Sessions Judge may decide in each case tried by him or on the basis of the recommendations of the Additional Sessions Judge trying the case.

(2) In special cases the Sessions Judge may sanction more amount of fees than the maximum of Rs. 600 provided above, after recording reasons for the same but subject to prior approval of the High Court.

(3) No fee shall be payable on a day on which the case is adjourned without any proceedings being taken by the Court, except on the first hearing of the case when the accused appears or is brought before the Court in pursuance of the commitment of the case u/s 209 of the Code.

In terms of this rule the defence counsel was entitled to a fee at the rate of Rs. 60 per day subject to a maximum of Rs. 600. Inasmuch as the trial concluded the same day, the rules did not permit a fee exceeding Rs. 60 in all to the defence counsel. The demand of lump-sum fee made by the defence counsel was certainly pre-mature at that stage. Lump-sum fee could be settled by the Court only after assessing the quantum of labour put in by the defence counsel and which could not be done till after the conclusion of the trial. In any case to justify the sanctioning of a lump-sum fee of Rs. 500 for the defence counsel, both the defence counsel as also the Additional Sessions Judge should have entertained a reasonable and bona fide belief that the trial called for that much labour on the part of the defence counsel. The manner in which the trial proceeded, however, belies if either of them entertained any such belief or else there is no explanation why the learned Additional Sessions Judge did not adjourn the case and why the defence counsel made no request for adjournment. On the other hand from the proceedings recorded in the case we have every reason to presume that both the defence counsel as also the Additional Sessions Judge had pre-determined notions with respect to the fate of the trial. In these circumstances we are constrained to remark that the appointment of the defence counsel made in the instant case was more with a view to rendering undue financial aid to the defence counsel than rendering due legal aid to the Appellant. In fact the Appellant had been totally denied the assistance of an Advocate in the real sense and his trial stands vitiated on this count alone.

10. The next point to be considered is as to how far the learned Additional Sessions Judge was justified in accepting the plea of guilty put forward by the Appellant and to convict him thereon.

11. It is true that in terms of Section 229 of the Code of Criminal Procedure a plea of guilty put forward by an accused is required to be recorded by the Court as a matter of course. It is, however, not necessary for the Court to accept such a plea and to convict the accused thereon. Section 229 confers a discretionary

jurisdiction on the Court to accept a plea of this type and to act upon it. This discretion is certainly a judicial one and has to be exercised with care and circumspection and on sound judicial principles, bearing always in mind the ultimate objective which is to do justice to the accused. The more grievous is the nature of the charge to which the accused is required to plead guilty, the more care and circumspection is expected to be exercised by the Court in accepting and acting upon the plea of guilty.

12. The first duty of the Court before accepting a plea of guilty is to satisfy itself with respect to the voluntary nature of the plea. Probability of external factors influencing and inducing the accused to plead guilty cannot altogether be ruled out. It is, therefore, most desirable that the Courts do not show undue haste in accepting a plea of guilty. They must allow reasonable time to the accused to ponder and deliberate after the charge is framed and explained to him. Even if the accused makes a formal plea of guilty, prudence requires that the Court must adjourn the case especially when the accused is produced in custody and the offence involved is a serious one and more so in a case of murder. The Court must safeguard the interest of the accused as far as the law can provide and the sincerity and vigilance of the Presiding Officer of the Court can guarantee.

13. After the Court is satisfied that the accused is free from all external influence, it should explain the charge to the accused in simple and clear language and must ensure that the accused appreciates the nature of the offence to which he is required to plead guilty. A plea of guilty put forward to a charge of murder should not be accepted unless the meaning of this technical term as defined in Section 300 of the Indian Penal Code is explained to the accused and understood by him. It cannot be gainsaid that a mere causing of death of another person would not necessarily amount to murder. It will so amount only if it is caused with a particular intention or knowledge as mentioned in Section 300 of the Penal Code. The act of the accused resulting in death of another may in certain circumstances amount to culpable homicide not amounting to murder and yet in other circumstances it may amount to an offence of causing grievous hurt only, depending upon the intention and knowledge with which the act is committed. The intention or knowledge with which the act resulting in death is committed is neither constructive nor a presumption of law. It has to be proved in each case. Such intention or knowledge must, therefore, specifically find mention in the plea of the accused before the same is accepted concerning a charge of murder. We may remark that an accused may legitimately harbour under the impression that every type of homicide would amount to murder and if under that impression he pleads guilty to a charge of murder, it would be no plea in the eyes of law on which a conviction u/s 302 I.P.C. can be maintained.

14. Coming now to the facts of this case, we find that the Appellant was produced before the Additional Sessions Judge in custody on 20-2-1980 on which date the learned Sessions Judge recorded his plea of guilty and proceeded to convict him on that plea. As already observed immediately after his appearance

in Court, the Appellant moved an application praying that his case be defended at State expense. He had thus no intention to plead guilty or else there was no fun in his asking for legal aid at State expense to defend him. Now something must have happened after the making of that application by the Appellant and before his plea was recorded, which made him change his mind. It was certainly the duty of the Additional Sessions Judge to enquire of the Appellant of the reasons which made him change his mind. In any case the Additional Sessions Judge should have enquired of the Appellant as to why he had applied for legal aid at State expense if he was to plead guilty to the charge. The learned Additional Sessions Judge, however, in his own wisdom did not consider it advisable to do so. Such an omission on the part of the Additional Sessions Judge cannot be countenanced. In these circumstances the possibility of the Appellant having changed his mind under some external influence or inducement cannot be ruled out and it would not be safe to call his plea as a voluntary one.

15. We further find that the learned Additional Sessions Judge did not apply his mind to the facts of the case before accepting the plea of guilty put forward by the Appellant. In answer to question No. 3 the Appellant had stated before the Additional Sessions Judge that four years prior to the occurrence Mohinder Singh deceased had mercilessly beaten him and his parents. According to the learned Additional Sessions Judge it was to avenge that beating, that the Appellant had attacked the deceased. In column No. 6 of the Inquest Report prepared by the police, the age of Mohinder Singh at the time of his death is recorded as 17-18 years. It would mean that four years prior to the occurrence Mohinder Singh deceased was only 13-14 years of age. It is beyond our comprehension as to how a child of 13 or 14 years could mercilessly beat the Appellant and his parents when admittedly the Appellant at that time was in the prime of his youth running his 22nd or 23rd year. This also was sufficient to cast a doubt with respect to the voluntary nature of the statement made by the Appellant.

16. Again all that the Appellant had pleaded was that he had attacked the deceased with a Darat which resulted into the death of the deceased. The Appellant never admitted if he had attacked the deceased with the intention of knowledge which are the necessary ingredients of the offence of murder. His mere admission that he attacked the deceased with a Darat and the deceased died would not by itself constitute the offence of murder for which the learned Additional Sessions Judge has convicted him. Even if this plea of the Appellant was a voluntary one, it could not form the basis of conviction on a charge of murder.

17. For the reasons stated above we accept this appeal, quash the order dated 20-2-1980 passed by the learned Additional Sessions Judge convicting and sentencing the Appellant for the offence u/s 302 I.P.C. and remand the case back to the trial Court with the direction to hold trial of the Appellant as if he had pleaded not guilty to the charge.