
(2009) 05 SC CK 0034

In the Supreme Court Of India

Case No : Criminal Appeal No"s. 178-179 and 180 of 2009

State of Punjab

APPELLANT

Vs

Gurlabh Singh and Another
Rajesh Narang Vs State of Punjab

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Arms Act, 1959 — Section 29
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 34, 93

Citation : AIR 2009 SC 2469 : (2009) AIRSCW 4596 : (2010) 1 ALT(Cri) 118 : (2009) 8 JT 487 : (2009) 7 SCALE 601 : (2009) 13 SCC 556 : (2009) 9 SCR 853 : (2009) 1 Supreme 539

Hon'ble Judges : S. B. Sinha, J;H. S. Bedi, J;Aftab Alam, J

Bench : Full Bench

Advocate : K.B. Sinh, Aishwarya Bhati A.C., Sweta Rani, Kuldip Singh Singh, Kawaljit Kochar, Kusum Chaudhary, Yunus Malik and Vijay Shree, for Praveen Swarup, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Rajesh Narang and Gurlabh Singh stood trial for commission of an offence for causing death of one Karanjit Singh, a student of D.A.V. College, Abohar. He was a resident of village Burj Muhar. He used to go to the college by bus.

2. The prosecution case is that on 7th February, 1995 at 8.00 a.m., Bakhtaur Singh (informant), a student of B.A. Part I in D.A.V. College, Abohar and a resident of village commonly known as Dharangwala, alongwith Gagandip Singh son of Gurbans Singh and Mohinder Singh son of Simarjit Singh residents of the same village reached the bus stand of their village. They boarded a bus bearing registration No. PB-05- 9710. Deceased Karanjit Singh, who was a resident of Village Burj Muhar and student of the same College was also travelling in the same bus. When they crossed octroi post situated at Malout Road they found a

Gypsy bearing No. HNX - 5000 standing on the road. Raju Narang @ Rajesh Narang armed with a DBBL gun signaled the bus to stop. When the bus stopped, Raju Narang and Gurlabh Singh entered into the bus and allegedly dragged the deceased out of it, whereafter on being asked by Raju Narang, Gurlabh Singh fired a shot from his .12 bore DBBL gun which hit the deceased. On alarm being raised, the appellants are said to have run away in the said gypsy.

3. Karanjit Singh was taken to the hospital in the same bus. On their way, they met Paramjit Singh son of Balwant Singh, resident of Dharangwala. The motive for commission of the offence is said to be that few days prior thereto a quarrel had taken place between accused and the deceased and the latter was threatened by the accused that he would be taught a lesson.

On the basis of the abovesaid statement made by Bakhtawar Singh a First Information Report was recorded at 10.30 a.m. on the same date. A special report was also sent to the Judicial Magistrate Incharge, Abohar on the same date at 6.05 p.m.

4. The prosecution in support of its case examined the first informant Bakhtawar Singh as PW-1; Mohinder Singh, PW-2 and two doctors, who examined the deceased and conducted the post-mortem examination on his dead body, namely - Dr. Lal Chand Thakral, as PW-3, and Dr. Daljit Singh Kochar as PW-4.

5. One Mahabir Singh, who was said to be the gunman of Rajesh Narang was also arrayed as an accused. He was, however, discharged during trial.

6. The learned Sessions Judge, Ferozepore by his judgment and order dated 8th August, 1997 while convicting accused Gurlabh Singh u/s 302 of the Indian Penal Code, convicted accused Rajesh Narnag u/s 302/34 thereof. Both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 3,000/- each in default to further undergo rigorous imprisonment for one year each. Accused Rajesh Narang was also convicted u/s 29 of the Arms Act and was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default to further undergo rigorous imprisonment for three months.

7. On appeals being preferred thereagainst, the High Court of Punjab and Haryana at Chandigarh by reason of the impugned judgment, while opining that the accused had merely exceeded their right of private defence and thus the offence committed by them is one u/s 304 Part I IPC, convicted Gurlabh Singh u/s 304 Part I and Rajesh Narang u/s 304 Part I read with Section 34 thereof. Both of them were sentenced to undergo rigorous imprisonment for eight years.

8. The gun in question was a licensed gun of Rajesh Narang. Mahabir Singh was appointed by him as his gunman. The fact that incident had taken place on 7th February, 1995 at about 8.00 a.m. is not in dispute. The fact that the death of Karanjit Singh was caused upon receipt of a gun shot injury is also not in dispute.

The version of the appellant with regard to the incident, however, is somewhat different as would appear from the statement made by Gurlabh Singh u/s 313 of

the Code of Criminal procedure, which reads as under:

Buses ply in the morning and students both boys and girls travel in the bus in order to attend to their school and colleges. A bus in the morning also plies through my village in which boys and girls students go to Abohar to attend their school and colleges. Karanjit Singh used to tease the girls. On the preceding Saturday Karanjit Singh teased girls in the bus which was objected by me which resulted in an altercation and Karanjit Singh threatened to eliminate me.

On the day of occurrence at 8.15 A.M., I was standing near the octroi post Abohar along with Raju Narang and Mahabir Singh, Gunman of Raju Narang. Raju was talking with one Sat Pal. Karanjit Singh deceased along with other alighted from the bus and started giving injuries to me and Mahabir with sharp and blunt weapons and tried to snatch the gun from Mahabir. As the gun was loaded I too resisted the snatching of the gun and during this snatching process barrel of the gun touched the ground and the gun went off suddenly and barrel was smashed and again during this snatching process, the second shot also went off and hit the deceased in the head. I went to police station to lodge the report where I was made to sit. I was produced in the court on 14.2.1995 and I made application through my lawyer Shri Harbhagwan Kamboj, Advocate for my medico legal examination, but the same was dismissed by the Committee Court. I had 10/12 injuries on my person. I am innocent.

9. Mr. Kuldeep Singh, learned Counsel appearing on behalf of the State, would urge:

i) Keeping in view the facts and circumstances of the case, the High Court committed a serious error in holding that accused merely exceeded their right of private defence, as a clear case of conviction u/s 302 of the Indian Penal Code has been made out.

ii) The right of private defence being within the purview of general exceptions contained in Section 96 of the Indian Penal Code, the burden was on the accused to prove the same, which having not been discharged, the High Court judgment is unsustainable.

10. Mr. K.B. Sinha, learned senior counsel appearing on behalf of Rajesh Narang and Ms. Aishwarya Bhati, learned amicus curiae appearing on behalf of Gurlabh Singh, would contend:

i) That the version of the accused is more probable as it was found by the High Court that the first shot, which was fired, did not have any space to exist from the barrel and thus it got burst at the end and it was the second shot, which had hit the deceased.

ii) Mahabir Singh having not been named in the first information report and the prosecution having not explained several injuries suffered by him, it must be held to have withheld the genesis of the occurrence.

iii) The incident, if considered, from the point of view of the accused would clearly show that the accused as also the said Mahabir Singh suffered injuries and while an attempt was made to snatch away the gun, the first shot which came out from one of the barrel of the gun hit the ground as a result of which the one of the barrel was burst, the second shot had accidentally hit the deceased.

iv) In any event, keeping in view the injuries sustained by Mahabir Singh, the accused was entitled to exercise their right of private defence.

11. The fact that the deceased along with the other students had boarded a bus and were going to their college is not in dispute. PW-1, Bakhtawar Singh in his evidence clearly stated that the bus was stopped by the accused persons, who were traveling in a gypsy and the deceased was dragged out.

We have noticed hereinbefore that the accused, however, contended that deceased not only alighted from the bus but assaulted them and Mahabir Singh with a sharp edged weapon and tried to snatch the gun from him.

12. With a view to appreciate the rival contentions of the parties we may notice the injury report as also the post mortem report of the deceased, which are as under:

Injury Report

1. A lacerated wound 16 cms x 2 cms anteriorly and 8 cms posteriorly, present on the right side of skull involving frontal, parietal and part of occipital region. The margins of the wound were inverted anteriorly and everted posteriorly. The width of the wound was increasing anterior-posteriorly. The bones were partly missing and were fractured. Brain matter was lacerated and coming out of the wound. Fresh bleeding was present and was profuse. Margins were blackened anteriorly.

2. An abrasion 2 cms x 1.5 cms present below the right knee anteriorly.

According to the doctor, the patient was unconscious, his B.P. and pulse were unrecordable. Injury No. 1 was declared dangerous in nature while injury No. 2 was declared as simple in nature. The probable duration of the injuries was within six hours and injury No. 1 was caused by fire arm while injury No. 2 was the result of blunt weapon.

Post-mortem examination

1. Surgical stitched wound 'U' shaped starting from right frontal region and going to right parietal and occipital region on upper part and coming back to left parietal and frontal region. The length of the wound was about 15", underneath surgical drain was out. Portions of right temporal parietal and right occipital bones were missing. Haemotoma was present. Membranes were missing underneath the fractures sides and brain matter was badly lacerated and brick red blood clots were present. Pieces of skin graft were present over brain matter.

2. Surgical wound in an area 7" x 5" on the front and middle of right thigh and skin was removed.

3. Abrasion >" x 1/2" on right knee lower part. Clotted ooze was present.

13. The injuries sustained by the deceased would clearly show that the place of injury on the deceased was on his head starting from right frontal region and going to right parietal and occipital region on upper part and coming back to left parietal and frontal region being 'U' shaped.

14. We would assume that a scuffle ensued between the accused on the one hand and the deceased and the prosecution witnesses on the other. It, however, stands admitted that the barrel of the gun was towards the earth. The first shot which was fired, did not have any space to exist as a result whereof it bursted. While the scuffle was going on to snatch the gun, it would be wholly unlikely that the second shot would hit the top of head of the deceased in such a manner. The Autopsy Surgeon, PW-4 in his report showed the place where the deceased suffered the gun-shot injury, in the sketch attached thereto. The place of injury was the top of the head. If the barrel of the gun was facing the ground any accidental fire could have hit the lower part of the body and not the head of the deceased.

15. We, therefore, could not persuade ourselves to agree with the contention of Mr. Sinha.

Both the courts below have relied upon the depositions of Bakhtawar Singh (PW-1) and Mohinder Singh (PW-2). No inconsistency in their statements having been pointed out and even otherwise having regard to the defence raised by the accused, we do not find any reason to differ therewith.

The first informant was a student. He even, as stated by the Investigating Officer, was very perplexed and made his statement when asked to do so very hurriedly. A supplementary statement was also prepared but the same was not signed by him. If, therefore, injuries sustained by Mahabir Singh had not been disclosed, the same in our opinion would not make much difference for the purpose of arriving at a different conclusion.

16. Mahabir Singh was examined by Dr. Lal Chand Thakral (PW-3) who found on his person the following injuries:

1. An incised wound 5 cms x 1.4 cms present on the right front to parietal region, 5 cms above the eye brow. Fresh bleeding was present.

2. A lacerated wound 5 cms x 1 cm x bone deep present on the right parietal region, present transversely 10 cms above the right ear pinna. Fresh bleeding was present.

3. A lacerated wound 4.5 cms x 1 cm x bone deep present on the right parietal region posteriorly crossing mid line. Fresh bleeding was present.

4. A lacerated wound 6 cms x 1 cm x bone deep present on the left parietal region posteriorly 12 cms above the left ear pinna. Fresh bleeding was present.

All the injuries were simple in nature. They were, therefore, no such which would have prompted the accused to take recourse to their right of private defence.

17. Mr. Sinha, however, has relied upon the decision of this Court in *Raj Pal and Another Vs. State of Haryana*, wherein this Court after noticing *Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal*, , opined:

22. While there is no absolute rule that merely because the prosecution has failed to explain the injuries on the accused ipso facto the prosecution case should be thrown out, the non-explanation of the injuries on the accused is certainly an important circumstance which has to be taken into consideration by the Court in deciding whether the benefit of doubt should go to the accused. In *Bishna's case (supra)* the entire law on the point has been discussed in great detail, and hence it is unnecessary to repeat it here.

23. The injuries on the accused include an injury on the head, which is a vital part of the body. Ordinarily self-inflicted injuries are on non-vital parts. The injury on the head of the accused *Jai Pal* required stitches. It is difficult to believe that this was self-inflicted. Moreover, in the present case, as noticed above, there are very important discrepancies in the prosecution version. It is true that minor discrepancies will not necessarily lead to the rejection of the prosecution case, but when there are major discrepancies and unexplained injuries on the accused it is an important factor to be taken into account.

The issue in regard to exercise of right of private defence was determined on the fact of the said case.

Mr. Sinha had also placed reliance on a decision of this Court in *Babu Ram and Others Vs. State of Punjab*, wherein it was observed:

19. Further, it is important to point out that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

18. In that case both the accused and his wife suffered grievous injuries. They were arrested while having been admitted in the hospital. In the facts of that case it was held that the version of the defence that the accused inflicted a single blow on the person of the deceased in exercise of his right of private defence of his body as also of his wife who had suffered several injuries at his hands with a weapon called *kappa*, were not inflicted with an intention of causing death of the deceased.

19. We may, however, notice that recently this Court in *Bhanwar Singh and Others Vs. State of M.P.*, held as under:

51. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. Necessity must be present, real or apparent.

52. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot, his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence. {See *Dharam and Others Vs. State of Haryana*, }.

20. These authorities, therefore, have clearly laid down the legal proposition that right of private defence cannot be raised because one of the accused had suffered some minor injuries or the prosecution has not explained the same.

21. Our attention, however, has been drawn to an application filed by one of the accused, namely Gurlabh Singh, on 14th February, 1995 in the Court of Shri Jatinder Paul Singh Wehniwal, PCS Judicial Magistrate, First Class, Abohar, for getting himself examined in the Civil Hospital stating:

It is submitted that in the above noted case, accused Labh Singh alias Gurlabh Singh son of Naib Singh r/o. Gobindgarh has been produced today in your Hon'ble Court. Injuries on his person are visible. Therefore, his medico legal examination is necessary to be conducted. Permission may please be granted for conducting his medico legal examination from Civil Hospital, Abohar. The applicant is ready to deposit the requisite fee. So, in view of the above facts the order for conducting medico legal examination of accused Labh Singh may please be passed.

The said application was dismissed. It itself goes to show that the learned Magistrate did not find any truth therein.

22. Moreover, the occurrence took place on 7th February, 1995. Although the accused raised a plea that they also intended to lodge the first information report

but the same was not proved. It may be true that Mahabir Singh was discharged during the course of trial but that should not have deterred accused persons from examining him, particularly when they examined Sat Pal as DW-2. Mahabir Singh was the gun man of Rajesh Narang. He, therefore, was on the side of the accused. He could have been examined to prove the plea of right of private defence taken by the accused. DW-2 in his evidence stated as under:

On the road 30 to 40 boys had collected. There is a gypsy bearing No. HNX 5000 came which was being driven by Raju Narang. Two boys were sitting at the back side of the gypsy, one was Mahabir and other was Labh Singh. The boys who were standing on the road dragged the boys who were sitting at the back side of the gypsy and gave them beating. The boys were armed with dangs, kirpans, hockies etc. There was a gun with Mahabir. During the scuffle the barrel of the gun was towards the earth and was touching a earth and a fire was shot. At that time Raju ran away with the gypsy. The second fire hit Karanjit Singh deceased. When the fire hit the earth, one of the barrels of the gun exploded.

23. The statement of the aforementioned witness does not fit in with the case of the defence. The learned trial judge, in our opinion, rightly did not place any reliance thereupon particularly having regard to the fact that the ocular version given by PW. 1 and PW-2 was not only found to be trust worthy but the same was found to have been corroborated by the medical evidence given by Dr. Lal Chand Thakral (PW-3) and Dr. Daljit Singh Kochar (PW-4).

24. According to Gurlabh Singh, he was arrested on 7th February, 1995. It, in absence of any other evidence, cannot be believed that he has been kept in police custody for 7 days without any order of the Court. If he was arrested on 7th February, 1995 and not on 14th February, 1995 or prior thereto, he should have got himself examined by any doctor, even assuming that the first information report was not recorded by the Officer Incharge of the police station. There is nothing on record to show that even while he was in judicial custody, he got himself treated by the jail doctors.

25. The High Court, in our opinion, furthermore committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the accused never put forth the case of exercise of right of private defence. According to them the deceased was accidentally hit while the scuffle was going on. The question of considering their case as if the accused had exercised their right of private defence or exceeded the same, therefore, in our opinion, could not have been gone into.

26. The High Court unfortunately even failed to consider that accused Rajesh Narang was a holder of a licensed gun. He kept the gun loaded. It was in possession of a third party. It was used for a wrongful purpose. He, therefore, had also been found guilty of commission of offence u/s 29 of the Arms Act by the trial Judge. That part of the finding of the trial court was not set aside by the High Court, nor was any reason assigned therefor.

27. The bus did not have a regular stop at the place of occurrence. It was stopped by the accused which came in a gypsy. The defence that 30- 34 students surrounded the accused and inflicted injuries on the person of Mohinder Singh cannot be believed at all. Their travel to the place of occurrence in a gypsy and stopping the bus had not been explained. The likelihood, therefore, that the students who were traveling in the bus, finding the shots having been fired, manhandled Mahabir Singh at a later stage cannot be ruled out. It is, therefore, a case which comes within the purview of Thirdly of Section 300 of the Indian Penal Code.

28. The result is that the appeals of the State are allowed and that of the accused is dismissed.