
(2002) 04 DEL CK 0094
In the Delhi High Court
Case No : Criminal A. 473 of 1999

Sukhdev Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 173, 299, 300, 302, 304

Citation : (2002) 4 AD 944 : (2002) CriLJ 3964 : (2002) 97 DLT 969

Hon'ble Judges : Vinod Sagar Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Rachna Joshi, for the Appellant; Ravinder Chadha, for the Respondent

Judgement

V.S. Aggarwal, J.—The appellant Sukhdev Singh was attached with Mangat Ram as a Personal Security Officer. Mangat Ram was a Municipal Councillor and was also working as Chairman, Works Committee. The appellant has been held guilty by the learned trial court vide the judgment and order of 17th August, 1999 for the offence punishable u/s 302 Indian Penal Code and Section 307 of the said Code. On 18th August, 1998 he was sentenced to undergo rigorous imprisonment for life and a fine of Rs.200/- for the offence punishable u/s 302 Indian Penal Code and for two years rigorous imprisonment and a fine of Rs.200/- for the offence punishable u/s 307 Indian Penal Code, in default of payment of fine he was to undergo further rigorous imprisonment for two months. The substantive sentences of imprisonment were directed to run concurrently.

2. The facts of the prosecution case were that Devender Singh had parked his three wheeler scooter bearing no. DIB 1805 opposite the gate of Mangat Ram's office. He opened the lid of the engine. Appellant objected to it and asked Devinder Singh to go away from there. Devinder Singh had ignored the objection of the appellant. There was an altercation. The appellant threatened to take the said three wheeler scooter to the police station. Thereupon the

deceased retorted that he would see as to what the appellant could do. The appellant boarded the scooter and asked the deceased to take the scooter to the police station Adarsh Nagar. The driver of the three wheeler scooter did not follow the right way but tried to proceed in a wrong direction. The appellant asked him to stop and a scuffle took place. During the course of scuffle the appellant took out his pistol and fired at the driver. The bullet missed the target and hit the thigh of Vijay Kumar who was standing nearby. The appellant fired again and this time it had hit the deceased Devender Singh, driver of the three wheeler scooter and Devender Singh collapsed. The appellant, Devender Singh and Vijay Kumar were taken to Hindu Rao Hospital. Devender Singh was declared to be dead while Vijay Kumar was admitted in the hospital.

3. Though the report u/s 173 Indian Penal code with respect to the offence punishable u/s 304/308 Indian Penal code the charges were framed against the appellant for offences punishable u/s 302 and 307 Indian Penal Code. The appellant pleaded not guilty and claimed a trial.

4. The defense of the appellant in this regard was that besides the three wheeler driver, there was another person. He asked them to remove the three wheeler scooter for security reasons. The driver and his companion picked quarrel with the appellant. They dragged the appellant to a distance of about 20 feet. Thereafter three or four three wheeler scooter drivers joined the deceased and his companion. He was assaulted by them. The shirt of the appellant was torn and his pistol was snatched. He grappled with them to recover his pistol. In this process the pistol went off. He went on to state that he stated all these facts to Mangat Ram Municipal Councillor.

5. The learned Trial Court closely examined the statements of the witnesses recorded and held that it was the appellant who had fired the pistol as a result of which injury was caused to Vijay Kumar and it also caused the death of Devender Singh. The learned trial court rejected the version that three wheeler scooter driver snatched the pistol of the appellant or that the deceased had been joined by three or four other three wheeler scooter driver. The learned trial court rejected the version that the present case would fall within the exceptions 1, 2 and 4 of Section 300 of the Indian Penal Code. It was held that there could be no loss of self control on the part of the appellant in the facts, his action was out of proportion to the gravity or magnitude of the provocation. It was further held after holding that the report of the forensic expert also establishes the nexus between the pistol of the appellant and the empty seized from the spot. In these circumstances the appellant was held guilty of the above mentioned offences followed by the order of sentence. Hence the present appeal.

6. The first and foremost question that comes up for consideration is as to wheeler to prosecution has successfully proved that it was the appellant who had fired from his pistol causing the injury on the person or Vijay Kumar and the death of Devender Singh. Mangat Ram, PW3 was the then Municipal Councillor and Chairman of Works Committee. He deposed that it was the appellant himself

who stated to him and in the words of the witness the statement reads:-

"On 14.6.89, at about 8.30 pm I was present in my office, at Azadpur, Sukhdev Singh and Chand Kiran both were present outside my office. Sukhdev Singh was in civil dress and Chand Kiran was in uniform. On hearing a noise, and Sukhdev Singh came to me. He met me outside the office. He was carrying a pistol which he used to keep with him. Sukhdev Singh told me that he had one scooter-wala not to park his scooter at the place near my office at which an altercation took place and while he was taking the scooter-wala in the scooter to the PS, Scooter-driver did not follow the right way to the PS and tried to proceed in the other direction. He tried to stop the scooter-driver and then a scuffle took place and in that scuffle, the scooter-driver tried to snatch his pistol and he fired at the scooter-driver. He did not tell me, as to how many shots he fired."

He denied the suggestion that appellant told him that bullet went off in the process of struggle and snatching. In this regard the evidence finds corroboration from the statement of Vijay Kumar who was injured and had received the first shot fired by the appellant. He deposed that he was going to fetch vegetables from the market. He says that a passenger was having an altercation with three wheeler driver a little away from Akash cinema. There was a scuffle between the appellant and the three wheeler driver. Thereupon appellant took out a revolver. He did not know from where he had taken it out and fired at the driver. He missed the target and it hit the witness on his thigh. It was fired again and had hit the deceased. During cross-examination by the public prosecutor he admitted that crowd had collected there and during the defense cross-examination he admitted further that when he received the injury he had fallen unconscious. The only other witness in this regard examined was Chander Shekher, PW 10 but he totally resiled from his earlier statement made to the police and stated that his signature were obtained on certain papers by the police.

7. As already pointed out above even the appellant admitted that the bullets had been fired from his pistol. The cross-examination of the witnesses did not even indicate that there was any denial in this regard. This fact gets corroboration from the facts of Roop Singh, Principal Scientific Officer, PW 27 who even added that from the pistol of the appellant which was seized empties had been fired. Taking totality of these facts which was unchallenged it is patent that from the pistol of the appellant the said shots had been fired.

8. The main argument advanced by the learned counsel for the appellant in this regard however was that in any case no offence u/s 302 and 307 Indian Penal Code would be attracted and that in the facts of the case at best it would be an offence punishable u/s 304 and with respect to the death of the deceased and Section 308 with respect to the injuries on the person of Vijay Kumar could be drawn.

9. The whole edifice of the said argument is built on exception 1 to Section 300 of the Indian Penal Code, which runs :-

"Exception 1 - When culpable homicide is not murder. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly - That the provocation is not given by anything done in the lawful exercise of the right of private defense.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

10. It was urged on basis of the same that there was grave and sudden provocation and consequently even if the appellant is stated to have fired as a result of which it caused the death of one person and injured another no offence punishable u/s 302 Indian Penal Code can be stated to have been drawn.

11. Perusal of exception 1 clearly show that it is not each and every provocation that will reduce the crime from murder to culpable homicide not amounting to murder. To take benefit of the provision it must be shown that act committed by the accused was a simultaneous reaction to the grave as well as sudden provocation. There should be sudden loss of control.

12. The Privy Council in the case of Mancini v. Director of Public Prosecutions 1942 Appeal Cases 1 was considering the similar controversy as to in what circumstances grave and sudden provocation contemplated will take out the case from an offence punishable with murder. It was held:

"It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self control, as the result of which he commits the unlawful act which causes death. "In deciding the question "whether this was or was not the case, regard must be had to "the nature of the act by which the offender causes death, "to the time which elapsed between the provocation and the "act which caused death, to the offender"s conduct during "that interval, and to all other circumstances tending to show "the state of his mind": Stephen"s Digest of the Criminal Law, Article 317. The test to be applied is that of the effect of the provocation on a reasonable man, as was laid down by the Court of Criminal Appeal in Rex v. Lesbini (I), so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular

importance (a) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool, and (b) to take into account the instrument with which the homicide was effected, for to retort, in the heat of passion induced by provocation, by a simple blow, is a very different thing from making use of a deadly instrument like a concealed dagger. In short, the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

13. Similarly in the case *Holmes v. Director of Public Prosecutions* 1946 (1) All ELR 124 the House of Lords once again concluded that the doctrine relating to provocation depends on the fact that it causes or may cause, a sudden and temporary loss of self-control whereby malice which is the formation of an intention to kill or to inflict grievous bodily harm is negated. Consequently where provocation inspires an intention to kill or to inflict grievous bodily injury, doctrine that provocation may reduce the murder to manslaughter seldom applies. Both these decisions had been looked with approval by the Supreme Court in the famous case of *K.M. Nanavati Vs. State of Maharashtra*, . The Supreme Court further went on to consider as to what would be grave and sudden provocation contemplated u/s 300 of the Indian Penal Code. It becomes totally necessary to have a glance at the facts of the case. The accused Nanavati was serving in the Indian Navy. His wife Sylvia had confessed to her husband that she had illicit intimacy with Ahuja. At that time Ahuja was not present. The Supreme Court said that even if the accused has lost self control but if he had committed the offence it would not be grave and sudden provocation because thereafter he had driven his wife and children to cinema and then caused the offence, namely murder of Ahuja. Certain guide-lines were provided which reads :-

"The Indian Law, relevant to the present enquiry may be stated thus: (1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control. (2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Indian Penal Code. (3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation."

14. Now other decisions from the Supreme Court can also be taken note of. In the case *State of Andhra Pradesh Vs. Rayavarapu Punneyya and Another*, when the same controversy arose for consideration and in paragraph 21 in this regard provided three stages in this regard. The same reads :-

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder" on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the First Part of Section 304, Penal code."

15. In the case of Dayal Vs. State of Madhya Pradesh, in the said case the brother of the accused was dying on account of consumption of liquor given by the deceased. There were indifferent remarks made by the deceased against the accused on being objected to the administration of liquor. The accused had attacked with knife which was lying nearby. It was held that the case would be covered by exception 1 to Section 300 or in other words the Supreme Court concluded that it would be culpable homicide not amounting to murder. Similarly in the case of Mst. Madani Vs. State of Rajasthan, was armed with lathi while the accused was armed with "gandasi". The occurrence was over the enjoyment of piece of land. The provocation was stated to have been caused because the deceased had come to the field where appellant was carrying on their agricultural operation. There were grave and sudden provocation and the accused had acted. the Supreme Court held that case would fall under exception 1 to Section 300.

16. In other words the inference are obvious. In order to bring home case within exception 1 of Section 300 following conditions must be satisfied. (i) deceased must have given the provocation to the accused (ii) provocation must be grave and sudden (iii) the offender by virtue of the grave and sudden provocation should be deprived of self control and (iv) it should cause the death of the person who gave the provocation.

17. With this backdrop one can revert back to the facts of the case in hand. It is an admitted fact that the appellant was on duty outside the office of the Municipal Councillor. It transpires in the evidence on the record that even as produced by the prosecution that Vijay Kumar, PW 7 saw that the appellant was

having an altercation with a three wheeler scooter driver and there was even a scuffle between them. The statement made by the appellant immediately to Mangat Ram, PW 3 the Municipal Councillor also indicates that he had told that three wheeler driver was not even ready to obey i.e. he had parked the scooter at the place near the office. He had tried to take away the scooter while he was told that it should be taken to the police station. This was the first version given immediately after the incident. It corroborates the statement of the injured eye witness Vijay Kumar, PW 7.

18. The conclusions are obvious. (a) the appellant had no enmity with the three wheeler scooter driver (b) there was an altercation and (c) it was followed by a scuffle between the two. The appellant adds that the three wheeler scooter driver with the help of others had snatched the pistol from him and Therefore he had taken it back after the scuffle. In addition to that it is in evidence of Dr. A K Pasreeja PW 11 that on the same day he had examined the appellant there was tenderness on his right thumb. A bruise over sterna clavicles joint. A bruise over the back of neck linear. It is true that the injuries were superficial and prosecution need not explain it the way a serious injury has to be explained on the accused/appellant, but keeping in view the version that indeed there was a scuffle it cannot be ignored. These injuries corroborates what has been recorded above.

19. These facts clearly show that the appellant had been provoked by the three wheeler scooter driver with whom he had no enmity. The three wheeler scooter driver was not even ready to take the three wheeler scooter to the police station and Therefore provided ammunition in the form of provocation which was grave and sudden to the appellant/accused, he even snatched his pistol. These facts how that grave and sudden provocation in the facts of the present case had been provided.

20. Learned counsel for the State had vehemently urged that in the present case after one even a second shot had been fired and this shows the intention to commit the offence and the murder. In normal circumstances when there is time to ponder this argument would hold good. But when in the momentary heat when it is so fired after the provocation had been given once again in the peculiar facts it cannot be stated that offence u/s 302 Indian Penal Code would be attracted. It would be clearly a case falling u/s 304 Part I of the Indian Penal Code so far as causing the death of the three wheeler scooter driver is concerned. It would fall in exception 1 to Section 300 of the Indian Penal Code.

21. Similar would be the position with respect to the injuries caused on Vijay Kumar, PW7. It is obvious that injury was caused to Vijay Kumar not intentionally by the appellant. It could only be attributed a knowledge and not the intention. As a consequence with respect to the said act, the appellant can be held guilty of the offence punishable u/s 308 of the Indian Penal Code.

22. No other argument was advanced.

23. For these reasons we partly modify the order of the trial court and hold the appellant guilty of the offence punishable u/s 304 Part I of the Indian Penal Code with respect to the death of the three wheeler scooter driver. He is also held guilty of the offence punishable u/s 308 of the Indian Penal Code. As a consequence thereto, appellant is sentenced for the offence punishable u/s 304 Part I of the Indian Penal Code and to undergo rigorous imprisonment for 10 years and a fine of Rs.200/-. In default of payment of fine he would undergo further rigorous imprisonment of two months. For the offence punishable u/s 308 Indian Penal Code his is sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 200/-. In default of payment of fine he would undergo further rigorous imprisonment of two months. The substantive sentences shall run concurrently.