

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2008
(Arising out of SLP (Crl). No. 1050 of 2008)

Shambhoo Singh

....Appellant

versus

State of Rajasthan

....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. The appellant questions legality of the judgment rendered by a Division Bench of the High Court of Rajasthan at Jodhpur Bench. The learned Additional Sessions Judge No.2, Udaipur found the accused guilty of offence punishable

under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced him to undergo RI for life and to pay a fine with default stipulation. He was also convicted for offence punishable under Section 447 IPC and sentenced to undergo 15 days' RI. Additionally, he was convicted for offence punishable under Section 307 IPC and sentenced to undergo 10 years RI and pay a fine of Rs.100/-. Similarly, in respect of offence punishable under Section 324 IPC he was sentenced to undergo RI for one year. In appeal, by the impugned judgment, High Court confirmed the judgment of conviction and sentence.

3. Prosecution version as unfolded during trial is as follows:

On 3.8.1999, Vaje Singh (PW-1) lodged a First Information Report at Police Station Pahara stating, inter-alia that in the morning at about 9.00 a.m. his brother Jawan Singh (hereinafter referred to as the 'deceased') was ploughing

the field. He alongwith his father Gulab Singh and elder brother Ram Singh was working in the field. At that time, his neighbour appellant Shambhoo Singh, his father Som Singh and mother Smt. Jeevi arrived there abusing them. Appellant Shambhoo Singh was carrying knife in his hand. Som Singh and Smt. Jeevi were carrying lathis. They challenged them and questioned as to how they were ploughing the field of their possession. There ensued a quarrel and exchange of hot words. Appellant Shambhoo Singh stabbed the knife on the chest of Jawan Singh. He caused another injury by knife on the stomach. On intervention by his father, appellant Shambhoo Singh caused injury by knife. He also caused injuries to his mother Smt. Shanta and elder brother Ram Singh. Appellant Shambhoo Singh also caused injuries to him. Jawan Singh succumbed to the injuries on the spot. It was stated that there was a land dispute between them, which led to the unfortunate incident.

On this information, police registered a case and proceeded with the investigation. The post-mortem of the

dead body was conducted by Dr. Mahendra (PW-17) on the spot vide Ex.P-42. He noticed the following injuries on his person:

1. An incised stab wound - 2.0 cm x 1.0 cm x perforating up to chest cavity placed in 6th intercostal space below left Nipple place obliquely.

On exploration - There is a wound of 1.55. cm x 1.0 cm x 2 cm deep left ventricle of the Heart. Cavity full of Blood.

2. An incised stab wound - 1.5 cm x 1.0 cm x thoracic cavity deep 5 cm lateral to injury No. 1 placed obliquely.

On exploration of wound - There is a wound of 1.0 cm x 2 cm lung tissue deep placed on the left lung. Thoracic cavity was full of blood.

3. An incised stab wound - 2.0 cm x 1.0 cm x abdominal cavity deep. On exploration of wound - There was no injury to any Abdominal Viscera. Intestinal loops are protruding through this wound.

4. Abrasion- 2.5 cm x 1.0 cm placed on upper 1/3rd on medial side of right leg.

The cause of death was shock due to severe bleeding following stab wound to chest and abdomen. The injured persons namely PW-1 Vaje Singh, PW-10 Gulab Singh and PW-3 Smt. Shanta were sent to the hospital. Their injuries were examined by PW-1 1, Dr. B.P. Verma. He examined the injuries of PW-1 Vaje Singh vide Ex. P-12 and noticed the following injury on his person:

Incised wound 4 x 2 x 1 1/2 cm on left gluteus.

He also examined the injuries of PW-10 Gulab Singh vide Ex.P -11 and noticed the following injuries:

Stab wound transversely with bleeding on left intra mammary region 4x 1 x plural cavity deep surgical empug sema left side.

He also examined the injuries of PW-3 Smt Shanta vide Ex. P-13 and noticed the following injuries:

Incised wound $1\frac{1}{2}$ x $1\frac{1}{2}$ x $\frac{1}{2}$ cm on
Right arm M/3rd Ant.

After usual investigation, the police laid charge sheet against appellant Shambhoo Singh, his father Som Singh and mother Smt. Jeevi for offence under Sections 302, 307, 326, 324, 447/34 IPC. The accused persons pleaded not guilty of the charges levelled against them and claimed trial.

The trial Court placing reliance on the evidence of PWs 1, 2, 3 and 10 found the evidence to be credible and cogent. It found the evidence of the injured witness to be without any blemish. Accordingly, the trial Court recorded the conviction and sentence as afore-noted.

In appeal before the High Court, the primary stand taken was that the ocular evidence does not inspire corroboration. It was submitted that in any event offence punishable under Section 302 IPC is not made out as the occurrence occurred in

course of sudden quarrel. The High Court did not find any substance and dismissed the appeal.

4. In support of the appeal, learned counsel for the appellant submitted that the occurrence took place during the course of sudden quarrel and, therefore, Section 302 IPC has no application.

5. Learned counsel for the respondent-State supported the judgments of the trial Court and the High Court.

6. For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

7. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case

of prosecution not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight

suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question

of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

8. In the background facts as considered in the light of evidence the inevitable conclusion is that the appropriate conviction would be under Section 304 Part I, IPC. Custodial sentence of 10 years would meet the ends of justice. The conviction in respect of other offences and the sentences imposed do not suffer from any infirmity to warrant interference. The sentences shall run concurrently.

9. The appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
July 22, 2008