

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1117 OF 2006

SUKHLAL SARKAR

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

J U D G M E N T

K.S. Radhakrishnan, J.

1. We are in this case concerned only with the question whether Division Bench of the High Court in Writ Appeal No. 172 of 2001 was correct in holding that no case has been made out attracting the first exception to Section 300 IPC so as to convert the conviction under Section 302 to 304-I IPC

2. The Appellant Sukhlal Sarkar was working as a constable

in Border Security Force (BSF). He was convicted under Sections 302 and 307 IPC for offences committed in the intervening night of 13/14th July, 1996. The General Security Force Court (GSFC) after conducting the full dress trial convicted him under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life. The order was confirmed by Confirming Officer, Inspector General, (IG) BSF.

3. Dissatisfied with the order, the appellant filed the writ petition (W.P.(C) No. 562/1999) which was partly allowed by an order dated 13.09.2001 by the learned Single Judge by converting the conviction from Section 302 IPC to Section 304-I, IPC reducing the sentence from life term to 10 years rigorous imprisonment.

4. Aggrieved by the said judgment, Writ Appeal No. 172 of 2001 was filed by the respondent herein, which was allowed by the High Court vide order dated 9.2.2005 setting aside the judgment of the learned Single Judge and confirming the judgment of GSFC. Aggrieved by the said judgment, this appeal has been preferred.

5. Counsel appearing for the appellant confined her

submission only to the question whether the conviction under Section 302 IPC be converted to Section 304-I IPC, for which according to the counsel, sufficient grounds exist.

6. Counsel appearing for the appellant has further submitted that learned Single Judge of the High Court was justified in holding that there was no motive on the part of the appellant to do away with the life of his colleague Sanjay Kumar Dubey but it was due to grave and sudden provocation he opened fire from his rifle resulting in the death of Sanjay Kumar Dubey. Learned counsel for the appellant referred to the evidence of M. Robin, P.W 1, who was the sole eye witness to the occurrence. The relevant portion of the evidence of PW 1 was read over to us.

7. Learned counsel submitted that the evidence of P.W 1 would clearly indicate that the deceased Sanjay Kumar Dubey had slapped and pushed the appellant down and provoked him to open fire from his rifle. Further it was submitted that the evidence of P.W 1 would clearly indicate that the deceased shook the appellant's leg with his hand in order to wake him up and all those deeds committed by the deceased caused grave and sudden provocation to commit the offence. Counsel submitted that the learned Single Judge was justified in converting the

conviction of the appellant from Section 302 IPC to that of Section 304-I IPC.

8. Learned Senior Counsel appearing for respondents submitted that the Division Bench of the High Court had correctly appreciated the evidence of PW 1 and came to the right conclusion that ingredients of offence of murder punishable under Section 302 IPC were clearly made out. Learned counsel also referred to the evidence of PW 1 and submitted that there was no grave and sudden provocation for the appellant to claim the first exception of Section 300 IPC warranting conviction under Section 304-I IPC.

9. We have critically gone through the evidence on record especially the evidence of PW 1. Considerable thrust was made by the counsel appearing for the appellant on the following evidence of PW 1 which reads as follows: "Infuriated, Sanjay Kumar Dubey slapped and pushed the accused and the accused fell down". Learned Single Judge, it may be noted, had opined that the provocation was mild, but was sudden and hence the exception to Section 300 would apply.

10. The meaning of the expressions “grave” and “sudden” provocation has come up for consideration before this Court in several cases and it is unnecessary to refer to the judgments in those cases. The expression “grave” indicate that provocation be of such a nature so as to give cause for alarm to the appellant. “Sudden” means an action which must be quick and unexpected so far as to provoke the appellant. The question whether provocation was grave and sudden is a question of fact and not one of law. Each case is to be considered according to its own facts.

11. Under Exception 1 of Section 300, provocation must be grave and sudden and must have by gravity and suddenness deprived the appellant of the power of self-control, and not merely to set up provocation as a defence. It is not enough to show that the appellant was provoked into losing his control, must be shown that the provocation was such as would in the circumstances have caused the reasonable man to lose his self-control. A person could claim the benefit of provocation has to show that the provocation was grave and sudden that he was deprived of power of self-control and that he caused the death of a person while he was still in that state of mind.

12. We have critically gone through the evidence of PW 1, the eye witness, and we are of the considered view that the deceased had not provoked the appellant in inviting him to fire from his rifle so as to kill him. The deceased, it may be noted was unarmed. PW 1 was only trying to wake up the appellant so as to do patrolling duty. Assuming that the deceased had slapped and pushed the appellant, such an action of the deceased could not be characterized as grave and sudden, so as to provoke the appellant to fire at the deceased killing him at the spot.

13. We, therefore, find no infirmity in the reasoning of the Division Bench of the High Court in declining to convert the conviction to Section 304-I IPC. We, therefore, dismiss the appeal.

JUDGMENT

.....J
(K.S. RADHAKRISHNAN)

.....J
(DIPAK MISRA)

NEW DELHI
April 24, 2012