

PETITIONER:
THE STATE OF PUNJAB, SUKHJINDER KAUR ETC.

Vs.

RESPONDENT:
JASWANT SINGH & OTHS.

DATE OF JUDGMENT: 10/09/1997

BENCH:
M. K. MUKHERJEE, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble Mr. Justice M.K. Mukherjee
Hon'ble Mr. Justice M. Jagannadha Rao

Ujagar Singh, Sr. Adv., (R.K. Talwar) Adv. for Goodwill
Indeever, (Ms. Geetanjli Mohan) Adv. for R.S. Sodhi, (Girish
Chandra) Adv. for Ms. Naresh Bakshi, Adv./Advs. with him for
the appearing parries.

J U D G M E N T

The following Judgment of the Court was delivered:

WITH

CRIMINAL APPEAL NO 594 OF 1996

J U D G M E N T

M.K. MUKHERJEE, J.

Jaswant Singh, the respondent in these two appeals, was convicted by the Sessions Judge, Ferozepur under Sections 302 I.P.C. and 27 of the Arms Act for committing the murder of Harnek Singh on August 24, 1990 by firing at him. For the conviction under Section 302 I.P.C. he was sentenced to imprisonment for life and fine, and for the other conviction he was sentenced to rigorous imprisonment for three years and fine with a direction that the substantive sentences shall run concurrently. In the appeal preferred by him the High Court set aside his above convictions and instead thereof convicted him under Section 304 (part I) I.P.C. For the conviction so recorded he was sentenced to rigorous imprisonment for seven years and fine. Assailing his acquittal of the offences under Section 302 I.P.C. and 27 of the Arms Act these two appeals have been filed: one by the wife of the deceased and the other by the State of Punjab.

2. At the material time Balkaran Singh (P.W.2) was the principal of the Government Senior Secondary School, Talwandi Bhai and Harnek Singh (the deceased) and the respondent were teachers of that school. Sometimes before the death of Harnek Singh (the deceased) and the respondent were teachers of that school. Sometimes before the death of Harnek Singh, the respondent had sent a letter (Ext PE) to Smt. Prithpal Kaur, wife of P.W.2, bringing to her notice that her husband was having illicit relations with some lady teachers of the school and that the deceased and one Rajinder Singh (another teacher) were working as his pimps.

On August 24, 1990 P.W.2 had convened a meeting of the staff members of the school in the school premises to remove the misunderstandings that might have arisen from the above letter of the respondent.

3. According to the prosecution case when the meeting was in progress with the deceased and other members of the staff present there Darshan Singh (P.W.3), brother of the wife of the deceased, came there to meet him. A little later the respondent, who was not invited to attend the meeting appeared on the scene. When the deceased took exception to his such uncalled for presence the respondent took out his revolver from the pocket of his trousers and fired three shots aiming at him, as a result of which he fell down dead. The respondent then made good his escape with the revolver. Leaving P.W.3 to guard the dead body P.W.2 proceeded on foot to lodge a report at the police station. On his way he met S.I. Sukhwinder Singh, in-charge of Police Post Talwandi and handed over to him a written report of the incident. On that report a case was registered and S.I. Sukhwinder Singh took up investigation. He held inquest upon the dead body of Harnek Singh inside the school premises and onwards it for post mortem examination. In course of the investigation he arrested the respondent on August 27, 1990 and from his person recovered a .32 bore revolver, with its license and five live cartridges. He sent those seized articles to the Forensic Science Laboratory for examination by an expert. On completion of investigation he submitted charge-sheet against the respondent.

4. The respondent pleaded not guilty to the charges levelled against him; and in his examination under Section 313 Cr.P.C. stated, inter alia, as under:

"I treat the wife of Balkaran Singh as my sister and on coming to know about the bad acts of Balkaran Singh I wrote a letter to his wife which is Ex.PE, the contents of which were disclosed by Balkaran Singh to Harnek Singh prior to the date of occurrence. On 24.8.90, when I came to school premises at about 7.15 A.M. Harnek Singh had an altercation with me. He was in great rage and fury. He abused me and then there was exchange of abuses. Harnek Singh caught hold of a hockey stick from a student, named Chamkaur Singh s/o Harnek Singh and started giving the blows with it, which hit on the upper part of thigh, fore-head and other part of body while I kept on retreating to ward off the blows. My turban also fell on the spot. I took out the revolver, which I used to keep with me loaded as I had earlier been threatened by the militants. First of all, I fired a shot in the air to desist Harnek Singh from giving blows to me, and when he did not stop and was going to give me another blow, wielding the hockey from his right side and the hockey being aimed at my head, apprehending danger to my life I then fired at him in self defence

but realised later that two shots had been fired in quick succession in the tension of moment. I then went to the Police Post Talwandi Bhal and apprised the officer there with the facts of the occurrence who detained me there and did not record my statement nor get me medically examined. I was examined by the doctor in the afternoon."

5. In support of their respective cases the prosecution examined four witnesses and exhibited affidavits of the formal witnesses, while the respondent examined five witnesses in his defence.

6. In the context of the respective cases of the parties and the admitted facts, the only question that fell for determination before the trial Court was whether the respondent fired at the deceased without any provocation whatsoever as alleged by the prosecution or such firing was resorted to by him in exercise of his right of private defence. The trial Court discussed the entire evidence including that of the two eye witnesses, namely, P.Ws. 2 and 3 and the five defence witnesses threadbare and accepted the case of the prosecution in preference to that of the respondent. In appeal the High Court found that the plea of right of private defence taken by the respondent was probable and convincing but as, according to it, he did not stop firing after the first shot, held that he exceeded his such right. With the above finding the High Court recorded the impugned order of conviction and sentence.

7. Having perused the entire evidence in the light of the judgment of the High Court, particularly, its finding that P.W.2 was a natural and probable witness and that his evidence was convincing, we are constrained to say that the High Court was not at all justified in disturbing the convictions recorded by the trial Court against the respondent.

8. It appears that the High Court was much impressed by the fact that when the respondent was examined by the doctor on August 28, 1990 (four days after the incident) he was found to have the following injuries on his person:-

"1. An abrasion, covered in its upper half by a brown scab and with scab detected in its lower part which was partially healed over the right side of fore head immediately above the outer one third of right eye brow. It was 1.5 cm x 1 cm.

2. An abrasion partially covered by brown scab in its centre with rest of part partially hesled it was measuring 1 cm x 0.75 cm. It was 2 cm above injury No. 1.

3. A bluish black contusion 35 cm x 20 cm over the front outer and posterior aspect of upper part of left thigh. The wound was extending upto left buttock. The contusion was super imposed by scabbed abrasion".

9. According to the High Court the existence of the above injuries on the person of the respondent probalised his version that he was first assaulted by the deceased with a hockey stick and apprehending danger to his life thereby he fired at him in self defence. Apart from the fact that no

evidence was laid by the respondent to prove that he sustained those injuries at the time of the incident on being assaulted by a hockey stick as alleged by him, the doctor, who examined him categorically stated that the injuries were simple in nature and could be self inflicted or self suffered. It is pertinent to point out here that though the respondent examined five witnesses none was examined to testify about his claim of having been hit with a hockey stick and for that matter about his right of private defence. The witnesses were examined by him only to prove that after the incident he had surrendered before the Police on the same day but he was not produced in the Court within 24 hours as statutorily required. We hasten to add that the trial Court found even such evidence unsatisfactory and unreliable - a finding with which we are in complete agreement - and the High Court did not at all advert to this aspect of the matter. Incidentally it may be mentioned that even proof of the above fact would not have in any way improved the defence version nor impaired the prosecution case. Having gone through the entire record we are constrained to say that there is not an iota of material from which it can be even remotely said that the respondent had a right of private defence of his person.

10. In the result we allow these appeals, set aside the judgment and order of the High court and restore those of the trial Court. Since from the record it is not clear as to whether the respondent has already served out the sentence imposed by the High Court, we direct that if e is now out of jail he shall be re-arrested and remanded to jail for serving out the remainder of the sentence imposed by the trial Court. In case, however, he is still in jail he shall continue to remain there for the self same purpose.