

PETITIONER:
JANGEER SINGH & ORS.

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 26/08/1998

BENCH:
M.K. MUKHERJEE, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

D.P. Wadhwa, J.

Appellants Jangeer Singh and Harbans Singh have filed this appeal against the judgment of the Division bench of the Rajasthan High court convicting the appellant Jangeer Singh for an offence under section 326 read with Section 34 Indian Penal Code (for short 'IPC') and appellant Harbans Singh under Section 302 IPC. While Harbans Singh has been sentenced to imprisonment for life and a fine of Rs. 200/- and in default thereof to undergo simple imprisonment for two months, Jangeer Singh has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 200/- and in default of payment of fine to undergo simple imprisonment for two months.

Both the appellants were tried by the Sessions Judge, Sriganganagar, for an offence under Section 302 read with Section 34 IPC. Sessions Judge, however, acquitted both the appellants. Against that judgment State of Rajasthan filed an appeal in the Rajasthan High Court challenging their acquittal. By the impugned judgment High Court allowed the appeal convicting and sentencing the appellants as aforesaid.

On report lodged with the police by Kashmir Singh, brother of deceased Jeet Singh, case under Section 302/34 IPC was registered against the appellants. The report was lodged at 9.45 p.m. on November 9, 1981 within fifteen minutes of the occurrence. The appellants were prosecuted on the allegation that on November 9, 1981 at about 9.20 p.m. Jeet Singh along with Balvindra Singh and Narendra Pal Singh was going to his house. On the way he passed through the house of the appellants. At that time both the appellants were standing in front of the gate of their house and they called out Jeet Singh to go to them. When Jeet Singh went near them the appellants got hold of him and told him that he had got the jeep repaired from them but did not make full payment of the repairing charges and yet he was raising a dispute and that the appellants would teach him a lesson that day. It is alleged that appellant Harbans Singh was holding a 'barchha' in his hand and he started causing injuries to Jeet Singh while appellant Jangeer Singh

continued holding Jeet Singh. Balvindra Singh and Narendra Pal Singh, who appeared as prosecution witnesses and had watched the occurrence, rushed to the house of Jeet Singh and told his brother Kashmir Singh as to what had happened. They said that because of fear they did not go near the appellant while they were attacking Jeet Singh and told his brother Kashmir Singh as to what had happened. They said that because of fear they did not go near the appellants while they were attacking Jeet Singh as both of them were having weapons in their hands. Kashmir Singh along with Balvindra Singh rushed to the house of the appellants and saw that Jeet Singh was lying dead in the court-yard of their house. Post-mortem examination of the deceased showed that he suffered as many as 40 injuries, many of which were caused by sharp edged weapon and rest by blunt weapon. All injuries were ante-mortem. According to Dr. M. P. Aggarwal, who examined the dead body of Jeet Singh, two injuries on the body of Jeet Singh were sufficient to cause death of a person in the normal course. In the opinion of Dr. Aggarwal death was caused due to bleeding and shock caused to the liver, stomach, kidney and intestines of the deceased.

The appellants did not deny the death of Jeet Singh in their house on the fateful day. Their defence was that on that day at about 8.00 p.m. appellant Harbans Singh took his bath and was preparing to take dinner. Appellant Jangeer Singh at that time was lying on the cot and was listening to the news on the radio. They heard the cry of Balvindra Kaur, wife of the appellant Harbans Singh, who was working outside the house, calling for help and shouting "bachao, mer izzat loot lia hai". On this Harbans Singh came out and saw that Jeet Singh was holding his wife and was putting his hands over her breasts and was touching his face with her face. Harbans Singh tried to separate them on which Jeet Singh slapped him 3-4 times. Harbans Singh also gave him slap and fight between the two started. Jangeer Singh tried to separate them but was unsuccessful. According to Jangeer Singh he rushed to the police station and when police came there he and Harbans Singh were taken to the police station. As per version of Harbans Singh come tools were lying in the nearby straw room and he picked up one tool and then stabbed Jeet Singh. First he stabbed Jeet Singh 2-3 times and then he lost his senses and stabbed him number of times. When the police arrested them it also took away the weapon with which Jeet Singh was killed by Harbans Singh. Presence of Balvindra Singh and Narendra Pal Singh at the time of the incident was denied by the appellants.

Prosecution case depended on the statements of Balvindra Singh (PW-1), Narendra Pal Singh (PW-2), Kashmir Singh (PW-5), Dr. M. P. Aggarwal (PW-6) and the investigating officer, Jai Narayan, SHO (PW-8). Learned sessions Judge did not give credence to the prosecution person. He did not accept the presence of Balvindra Singh and Narendra Pal Singh at the site and said they were interested witnesses. He held that injuries caused to the deceased Jeet Singh were given by the appellants in the heat of passion. According to him the situation of the case possibly tallied with the case of self-defence and in fact stood corroborated with the prosecution version. he, therefore, held that the prosecution had not proved that it was a case beyond doubt and possibility could not be ruled out that Harbans Singh caused the death of Jeet Singh in grave and sudden provocation. Giving benefit of doubt to the appellants, Sessions Judge acquitted them.

High Court, in the impugned judgment, noticed that there were following 11 factors which lead the Sessions

Judge to come to the conclusion that the prosecution failed to prove the charge against the accused appellants beyond all reasonable doubt:

" (i) Narendra Pal Singh being the resident of village 14-0 had no reason to be present in village Karanpur of the deceased and the appellants;

(ii) Both these witnesses did not try to intervene in the occurrence and they even did not shout for help;

(iii) Narendra Pal Singh and Balvindra Singh did not accompany kashmir Singh to the police station;

(iv) The witnesses have not been able to state as to what was done by Jeet Singh to save himself when both the accused caught hold of him;

(v) Jeet Singh also sustained blunt weapon injuries but both the witnesses did not explain as to how he happened to receive those injuries;

(vi) The F.I.R. was not sent to the Magistrate immediately after its registration and was sent on the second day which shows that the FIR was ante timed and ante dated after introducing two persons as eye witnesses;

(vii) There was no adequate motive for the accused to commit the murder of Jeet Singh;

(viii) Narendra Pal Singh, Jeet Singh and kashmir Singh all the three are drivers and as they belong to one special fraternity and had reason to give false statement;

(ix) Balvindra Singh had served Harbans Singh, accused and he was removed by the accused (which fact the witnesses had denied) and, therefore, Balvindra Singh had animus against them;

(x) Accused Jangeer Singh is 70 years old and it could not be possible for him to keep a young man of 22 years of age in holding;

(xi) The fact that Jeet Singh was murdered brutality indicates that there was immediate provocation to the accused and this fits in the defence version that the deceased was molesting the wife of accused Harbans Singh."

High Court considered each of the above grounds and disagreed with the reasoning given by the Sessions Judge for disbelieving the evidence of the two witnesses and throwing out the case of the prosecution. We agree with the High Court that there was nothing unnatural in the conduct of both the eye witnesses and their evidence could not have

been discarded by the Sessions Judge. High Court also commented adversely on the reasoning of the Sessions Judge in disbelieving the evidence of Kashmir Singh and that of the Investigation Officer. FIR in this case was lodged without any loss of time and the names of the eye witnesses find mention in that. The police moved immediately in the matter, arrested the accused and took possession of material evidence.

High Court has rightly held that the defence version does not appeal to the reason. Appellants in their defence had examined Balvindra Kaur (PW-1), wife of appellant Harbans Singh, whose honour was allegedly being violated by the deceased Jeet Singh and had shouted to that effect. Jeet Singh was repeatedly stabbed and mercilessly beaten. Out of 40 injuries, which he suffered, 30 were caused by sharp edged weapon. It was a brutal attack on him.

High Court considered law laid by this Court as to when it should interfere in the case of acquittal by the trial court. Considering the relevant facts and law on this subject High Court found that judgment of the trial court was perverse and set aside the same. It then considered the question as to whether Jangeer Singh was also liable for the act of the Harbans Singh and if so to what extent and held that there was no clear evidence that all the time Jangeer Singh was holding Jeet Singh he in any way facilitated the murder. High Court was of the view that it was Harbans Singh, who had called Jeet Singh at the door of his house while standing along with Jangeer Singh. Both the appellants caught hold of Jeet Singh and said that they would teach him a lesson. when Jeet Singh was called by Harbans Singh he was having a 'barchhi blade' in his hand which fact Jangeer Singh knew. High Court was, therefore, of the view that it could safely be presumed that both the appellants shared common intention of at least causing grievous hurt to Jeet Singh and that it was difficult to hold that the appellant Jeet Singh had shared common intention to cause the death of Jeet Singh. Thus considering the role played by Jangeer Singh High Court said that he could be convicted only under Section 326 read with Section 34 IPC.

Circumstances enumerated by the trial Judge in throwing overboard the case of the prosecution are not correct. His examination of the evidence appears to be rather too superficial. Narendra Pal Singh (PW-2) though was not resident of the village of the appellants and Jeet Singh but he explained his presence in that village along with the deceased Jeet Singh at the relevant time. He said he had gone to Ganganagar to collect money from one Diwan Chand, which money he was required to pay to Dilawar Singh of the village Karanpur of the appellants. Since Diwan Chand did not make any payment Narendra Pal Singh got down at Karanpur from bus in order to inform Dilawar Singh that money could not be arranged. He said while he was returning to his village, which is five kilometers away, he met Jeet Singh on the way. Jeet Singh asked him to accompany him to his house and offered him to drop him to his village in his jeep as night had already fallen. He was subjected to searching cross-examination but his testimony could not be shaken. One of the circumstances on the basis of which statement of another eye witness Balvindra Singh was rejected was that he had worked as an employee of appellant Harbans Singh, who had removed him from the service and thus he got animus against the appellants. Balvindra Singh denied that he was removed from the service and said that he voluntarily left the service. Presence of Balvindra Singh and Narendra Pal Singh (PWs) along with Jeet Singh and their all going to the

house of Jeet Singh was quite natural. It is not the law that if witnesses belong to same trade they would make false statements. Eye witnesses have explained their conduct as to why they did not intervene when Jeet Singh was being stabbed. They said that they were too afraid to do so when appellants were holding weapons in their hands. We do not think circumstances enumerated by the learned trial Judge either singly or cumulatively are enough to throw any doubt on the veracity of the statements of the eye witnesses and that of Kashmir Singh, the informant.

Appellants do not deny that Jeet Singh was killed in their House. They admit that Harbans Singh done him to death. In their defence in causing death of Jeet Singh and then shifted their stand to contend that death was caused by Harbans Singh due to grave and sudden provocation given by Jeet Singh. Section 100 IPC entails the circumstances when right of private defence of the body extends to causing death. this section is as under :-

" 100 . The right of private defence of body extends, under the restrictions mentioned in last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the description hereinafter enumerated, namely:-

Firstly - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly - An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust;

Fifthly - An assault with the intention of kidnapping or abducting;

Sixthly - An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

It is not the case of the defence that the assault was made on Balvindra Kaur by Jeet Singh with the intention of committing rape. No suggestion to that effect has been made. There, therefore, could not be any right of private defence to cause death of Jeet Singh. It was then submitted that the case of the appellants would fall under the first exception of Section 300 IPC. This exception is as under:-

" 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 too the following provisions:-

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 servant.

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

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

The question that arises for consideration is if the evidence shows that when wife of Harbans Singh was being molested by Jeet Singh could that cause grave and sudden provocation for Harbans Singh to be deprived of the power of self-control to cause death of Jeet Singh. The story narrated by Balvindra Kaur (DW-1) does not appear to be probable that Jeet Singh had come to their house and molested her. Balvindra kaur said that they were having two cows which had been tied outside and about 8.00 p.m. she had gone out to bring the cows inside. She said she hardly took two or three steps from the gate of her house when a man came and caught her all of a sudden and his intention was to molest her. Then she started shouting. On hearing her cries Harbans Singh came there and tried to release her from that man and then they slapped each other. She said when her husband came out that man was still holding her and was putting his hands over her breasts and touching her face with his face. At that time she felt smell of liquor coming out of the mouth of that man. medical Report does not show that Jeet Singh had taken any drink. There was, therefore, no question of any smell of liquor coming out of his mouth. It is also not probable that Jeet Singh would be standing there waiting for Balvindra Kaur to come out and then to molest her, particularly when her husband was in the house. That apart assuming what Balvindra Kaur said is true was the provocation given by Jeet Singh so grave and sudden as to cause Harbans Singh to lose his self-control and senses to commit murder of Jeet Singh.

In Aher Raja Khima vs. State of Saurashtra (AIR 1956 SC 217) the appellant had repudiated his confession. He offered explanation as to in what circumstances confession was given. This Court said:-

" Now it may be possible to take two views of this statement but there are two important factors in every criminal trial that weigh heavily in favour of an accused person; One is that the accused is entitled to the benefit of every reasonable doubt and the other, an

off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then, even though he cannot prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false."

We have examined the conduct of the appellants from the stand point of a reasonable man if he would have acted in the same manner as Harbans Singh did. We do not think so. Circumstances do not even remotely suggest that Harbans Singh could have possessed such uncontrollable impulse as to lose self-control to repeatedly stab Jeet Singh and kill him. From the evidence on record we do not think that any other view is possible except to hold that the appellants are guilty of the crime alleged against them. Circumstances clearly indicate that explanation offered by the appellants is palpably false. Here we apply the principles set out by this Court in Aher Raja Khima's case. It cannot be said that death of Jeet Singh was caused due to any grave and sudden provocation given by him so as to deprive Harbans Singh of the Power of self-control. Defence set up by the appellants is not true. Case of the appellants is not true. Case of the appellants does not fall in any of the exceptions to Section 300 IPC. High court has given due consideration to the view of the trial court in coming to the conclusion that its appreciation of evidence was rather perverse and it wrongly acquitted the appellants. We agree with the High Court.

We, therefore, do not see merit in this appeal and dismiss the same.