
(2005) 05 P&H CK 0124

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 190-DB of 1997

Chet Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 19, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Citation: (2005) 13 CriminalCC 851

Hon'ble Judges: Surya Kant, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Jai Vir Yadav, for the Appellant; S.K. Garg Narwana, A.A.G., Haryana and Mr. Ravi Dutt Sharma, D.A.G., Haryana, for the Respondent

Final Decision: Dismissed

Judgement

Surya Kant, J.

Having been convicted u/s 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs.5,000/- in default whereof to further undergo RI for six months by the Additional Sessions Judge, Rewari in Sessions Case N6.25 of 1996 decided on January 3, 1997, the appellant-Chet Ram has filed this appeal.

2. As per the prosecution case, the informant Pitambar Dutt (PW-9), who was working as a Peon in the Syndicate Bank, Railway Road Branch, Rewari, made the statement that on 24th April, 1996 the Bank opened at about 8 a.m. and at about 10 a.m. when all the employees including Raj Singh Yadav, the Manager of the Bank, were sitting at their respective seats, Jagmal Singh Yadav, Assistant Manager of the Bank asked the informant to accompany him to the strong room to take out cash and when the informant and the said Jagmal Singh Yadav went into the strong room, the appellant (Chet Ram son of Rakhal Ram), who was a retired military personnel and working as a Guard in the Bank, also accompanied them to the strong room while holding 12 bore double barrel gun provided to him by the Bank

for duty purposes. While they were in the strong room, Mohinder Kumar Gupta, Assistant Manager of the Bank also joined them. Meanwhile, Chet Ram pointed his gun at Jagmal Singh and despite Mohinder Kumar Gupta warning to the appellant as to what he was doing, the appellant fired a shot with his gun which hit Jagmal Singh on the right side of the chest due to which he fell down in the strong room and blood started oozing out. Said Jagmal Singh was rushed to the General Hospital, Rewari where he died. The aforementioned information led to the registration of the FIR (Ex.PO/1) at 10.50 a.m. in the Police Station City Rewari, a special report of which was received by the Chief Judicial Magistrate, Rewari at 1.30 p.m. on the same day.

3. In order to lend support to its case, the prosecution examined as many as 18 witnesses including Dr.Sudarshan Kumar Panwar(PW-8), Dr.M.K.Garg(PW-14), Pitambar Dutt-eye witness (PW-9), M.K.Gupta-eye-witness (PW-10), Raj Singh Yadav-Manager of the Bank (PW-3), Bimla Devi-a Class IV employee of the Bank (PW-11) as well as ASI Gianender Singh-the investigating officer (PW-17).

4. P.W.8 Dr.Sudarshan Kumar Panwar, who had conducted the post-mortem examination on the dead body of the deceased Jagmal Singh, found that rigor mortis was present in upper limb and on local examination, the following wounds and injuries were there: -

Local Examination of wounds and injuries:

Oval shaped punctured wound present right side of middle chest 1.5cms. above and lateral to right nipple. The size was 2.5cms. x 2cms. Margins were irregular with

blackening all around. More in the upper outer half. The wound was going posteriorly. On dissection:

The wound was going posteriorly damaging totally lung tissue of lower lobe and middle of upper lobe with fracture right third and fifth rib interiorly and there was hemothorax upto 2/3 of plural cavity and fracture of poste 4th, 5th, 6th, 7th and 8th rib. There were five wound of exist size .2 to 5 cms x 1 to 5 cms on the posterior chest. 22 pellets were traced from posterior thoracic wall which were sealed and sent to Madhuban. 11 clothes were also sealed and sent for examination, handed over to the police.

5. There was no injury on scalp, skull and vertebra. The membrane of brain and spinal cord were normal. Wall and cartilage of throx-: injury and chest wall was present as described above. Plura: Fracture of right side of plura.

3. Larex and takia: Takia was fractured at three places size .3 x .5 cms.

4. Injury on right lung: Right lung was totally ruptured in lower and middle lobe was described above. On out section of lung, it was pale.

5. Left lung: Left lung was pale on out section.

6. Pericardium, heart and large vessels: Heart and pericardium was normal and pale. Large vessels were empty.

7. Examination of abdomen: 1. Wall of abdomen: Abdominal wall was normal. II. Peritonium: Peritonium was normal.

8. Mouth, farange, isofragus, stomach, small intestines, large intestines and internal all were normal and pale.

6. In the opinion of the Doctor, the cause of death was gun shot injury leading to hypovalunic shock due to haemorrhage which was ante mortem in ordinary course of nature and was sufficient to cause death.

7. PW-9-Pitamber Dutt, the Peon of the Bank and an eye-witnesses, deposed that Jagmal Singh deceased, Assistant Manager of the Bank, asked him and Mohinder Kumar Gupta to accompany him to the strong room to take out the cash etc. and Chet Ram-appellant also accompanied them. The witness has further deposed that the appellant was working as a guard of the Bank and while carrying a gun in his hands, he aimed it at the chest of the deceased and when Mohinder Kumar Gupta wanted to stop the appellant from doing all this, the appellant fired a gun shot which hit the deceased in his chest and he fell down there only. Jagmal Singh was then taken to General Hospital, Rewari but he died. In his cross-examination, P W-9 has categorically stated that when Mohinder Kumar Gupta and the deceased were opening the "safe" with the help of their respective keys that the appellant hit the deceased by gun fire from a distance of about 4-5 feet. There is nothing in his cross-examination which can cause dent to the credibility of this witness.

8. PW-10 - Mohinder Kumar Gupta was also working as Assistant Manager in the Bank and has deposed that he along with Jagmal Singh (deceased) and Pitamber Dutt-Peon (PW-9) went to the strong room to take out cash where the appellant, who was working as a guard in the Bank, also reached. He has further deposed that they opened the cash-box and handed over the key of the gun-box to the appellant and simultaneously the appellant was instructed by Jagmal Singh (deceased) to make entry regarding gun and attendance in the concerned register. The appellant, however, took out his gun and aimed it at Jagmal Singh, the witness was taken back by his act and stated as to what he was doing but the appellant fired a shot at Jagmal Singh at his chest. The witness has further deposed that when he tried to escape, Chet Ram-appellant pushed him also due to which he fell down and suffered injuries though he managed to run away from the spot. Thereafter, the witness was taken to the hospital and was got medico-legally examined. This witness has further categorically deposed that "Jagmal Singh Sub-Manager was the Incharge of Administration and used to Instruct Chet Ram to do his duty properly and not to take drink etc." and may be due to this reason that Ghet Ram-appellant was annoyed with Jagmal Singh deceased. In his cross-examination, the witness has meticulously narrated all the factual events with full justification with regard to his

own presence as well as that of Pitambar Dutt (PW-9) in the strong room of the Bank where the occurrence took place. According to this witness, the appellant was at a distance of about 6-7 feet from the deceased when the gun shot was fired.

9. Dr.M.L.Garg (PW-14) who conducted post-mortem examination on the dead body of Jagmal Singh deceased along with Dr.Sudarshan Kumar Panwar, had also conducted medico-legal examination on the person of Mohinder Kumar Gupta (PW-10) at 11.30 a.m. on the same day and found that the afore-mentioned witness had suffered following injuries:-

1. Two reddish abrasions of 1 x 1cm. x 1.5cms. on front of right knee.
2. Abrasion of 1 cm. x .5cm on front of left knee.
3. Patient complained of pain and tenderness on the theanar eminence of left hand. Advised X-ray left hand.
4. Patient complained of pain and tenderness of Lumbo Sacral area. Advised X-ray Lumbo Sacral spine. AP internal view.

10. In his cross-examination pertaining to the post-mortem on the dead body of Jagmal Singh, Dr.M.K.Garg deposed that some blackening was noticed around the whole near nipple while conducting post-mortem on the dead body of Jagmal Singh and that since most of the pellets scattered were inside the body and only five pellets crossed the body which can be said to be "exit wounds" which was obviously not bigger than the "entrance wounds".

11. PW-3 Raj Singh Yadav was working as Manager of the Bank at the relevant time. He too has deposed that the gun belonging to the bank was with the appellant who was on duty on the Bank on 24.4.1996 when at about 10 a.m. the witness heard a loud voice and immediately thereafter Pitambar Dutt Peon (PW-9) came to him and informed that the appellant had fired at Jagmal Singh from the gun. This witness then immediately went to the spot and found the appellant also present there with the gun in his hand who of course was meanwhile overpowered by the staff of the Bank and later on was handed over to the police. The witness has further deposed that "a number of times Jagmal Singh scolded the accused for coming late to the Bank and even action was also taken against the appellant (Chet Ram) by the witness". PW-11 is SmtBimla Devi who was working as a Sweeper in the Bank at the relevant time. She has deposed that on 24.4.1996 she reached the Bank at around 8 a.m. whereas the appellant came to the bank at about 9.30 a.m. and asked her to do the work quickly as "he would do dhamaka today". She also witnessed Jagmal Singh (deceased), Mohinder Kumar Gupta (PW-1) as well as Pitambar Dutt (PW-9) coming to the Bank and going to the strong room.

12. PW-17 ASI Gianender Singh - the investigating officer of the case has deposed that the gun (Ex.P-1) and the cartridges (Ex.P-2 to P-8) were produced before him by the Manager of the Bank when he visited the spot of occurrence and were taken

into possession by him vide memo Ex.PD. He also took some blood-stains from the spot and empty cartridges (Ex.P-9) as well as some pellets vide memo Ex.P-1 and prepared the rough site plan Ex.PF. No dent could be caused to the statement of this witness by the defence in cross-examination.

13. As per the FSL Report (Ex.P&), on laboratory examination of the gun, the cartridge, the empty cartridge and the pellets, the result of the analyses were as under-

1. The 12 bore DBBL gun marked W/1 is a firearm as defined in Arms Act, 54 of 1959. Its firing mechanism was found in working order.
2. The 12 bore fired cartridge case marked C/1 has been fired from 12 bore DBBL gun W/1 and not from any other firearm even of the same make and bore, because every firearm has got its own individual characteristic marks.
3. Holes in shirt and banian contained in parcel No.1 have been caused by pellet projectiles.
4. Pellets contained in parcel "No.II were found to be fired lead pellets of size BB and usually loaded in 12 bore cartridges.
5. Out of four number of lead chips contained in parcel No.V, three were found to be fired lead pellets of size BB and one was found to be fired lead chip of weight 0.08 gm.
6. Card-board pieces contained in parcel No.V were found to be the pieces of wad of shot gun cartridge.

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14. The appellant in his statement u/s 313 Cr.P.C. claimed that he was innocent and was falsely implicated and stated that he would lead defence evidence. However, no defence evidence was led by him despite opportunity.

15. The appellant, however, was held guilty for the offence punishable u/s 302 IPC vide judgment dated 3.1.1997 and was sentenced to undergo imprisonment for life with a fine of Rs.5,000/- vide a separate order dated 4.1.1997 passed by the learned Additional Sessions Judge, Rewari.

16. We have heard Shri Jai Vir Yadav, learned counsel for the appellant and Shri Ravi Dutt Sharma, learned Deputy Advocate General, Haryana and have perused the record with their assistance.

17. Shri Yadav has contended that the appellant was working as a Guard in the Bank at the relevant time and in terms of the instructions issued by the Bank, the weapon, namely, the gun was required to be issued to him by the competent authority under signatures. He contends that the official gun of the Bank was never issued to the appellant before the alleged occurrence as admitted by the Manager of the Bank Raj

Singh Yadav (PW-3). According to Shri Jai Vir Yadav, the occurrence appears to have taken place accidentally and merely because the appellant was working as a Guard in the Bank, he has been made a scape-goat. We, however, do not find any merit in this submission. Mohinder Kumar Gupta (PW-10) an Assistant Manager of the bank has categorically deposed that he along with the deceased went to the strong room; opened the locks and handed over the gun-box to the appellant to whom instructions were also issued by the deceased to sign the register. However, even before signing the register, the appellant aimed the gun at the deceased and fired the shot. Immediately after the occurrence, the appellant along with the Bank's gun in his hand was seen by the Manager of the Bank Raj Singh Yadav (PW-3) also. There is, thus, overwhelming evidence on record to suggest that the official gun of the Bank was in the physical custody of the appellant at the time of occurrence and he fired the fatal shot from that gun only. Though there appears to be some procedural irregularity in maintenance of the register regarding issuance of the gun to the appellant, it, however, does not improve his case in any manner. It may be mentioned here that as per the FSL Report (Ex.PY), the empty cartridge handed over to the investigating officer at the spot has been found to have been fired from the same gun which was handed over to the investigating officer by the Manager of the Bank and which undisputedly is the Bank's official gun. On an examination, it has also been found that the empty cartridge could not have been fired from any other fire arm even of the same make and bore as every fire arm has got its own individual characteristic marks.

18. The contention of Shri Yadav that the occurrence appears to be accidental and the appellant has been falsely implicated merely because he was working as a Guard, also does not impress us for the simple reason that PW-9-Pitambar Dutt a peon of the Bank, P W-10-Mohinder Kumar Gupta-the Assistant Manager of the Bank or PW-3-Raj Singh Yadav, Manager of the Bank as well as P)W-11-Smt.Bimla Devi-a Sweeper in the Bank have no animosity with the appellant to falsely implicate him. There is no even a whisper what to talk of any suggestion against these witnesses that the appellant was falsely named on account of some enmity and/or for any other reason.

19. Shri Yadav then contended that the prosecution has miserably failed to establish any "motive" behind the offence. We, however, find from the statement of Mohinder Kumar (PW-10) that the deceased was in-charge of the administration of the Bank and he used to rebuke the appellant for his habit of coming late and or taking drinks etc., while on duty. Similar statement has been made by the Manager of the Bank (Raj Singh Yadav PW-3). It thus appears that the deceased while looking after administration of the Bank used to discipline the appellant on account of which the appellant developed a revengeful disliking against the deceased and bore a grudge which premeditated him to kill the deceased by using his official weapon. This conclusion of ours is strengthened by the statement of Smt.Bimla Devi (PW-11) who has deposed that on the fateful day, the appellant, after reaching the Bank at

around 9.30 a.m., had asked her to finish the cleaning work quickly as he was going to do some dhamaka on that day. It was within half an hour of these utterances that the appellant immediately on getting possession of the official gun of the bank fired the fatal shot at the deceased. The appellant thus came to the Bank with a pre-planned mind to kill the deceased.

20. Shri Jai Vir Yadav wants us to believe that the occurrence did not take place in the strong room of the Bank as according to him, in the absence of any lalkara which is not attributed to the appellant, he could not have fired at the chest of the deceased if the latter along with Mohinder Kumar Gupta was busy in opening the almirah in the strong room. The way the events took place has been well explained by both the eye-witnesses, namely, PW-9 and PW-10. According to these witnesses, the shot was fired by the appellant from a distance of 4-5 or 6-7 feet. Keeping in view the size of the 12 bore double barrel gun especially when the appellant had aimed the same at the chest of the deceased, there is no substance in the contention that it was impossible to fire the shot on front side of the deceased.

21. According to Shri Yadav, blood was not lifted by the investigating officer from the place of occurrence, namely, the strong room, therefore, the place of occurrence is also not established. The submission appears to be contrary to the record. The investigating officer (PW-17) has categorically deposed that the blood stains were taken from the place of occurrence and as per the FSL Report, the sample was sent for expert opinion though it is a different matter altogether that the material was found to have disintegrated. No lapse can be attributed to the prosecution on this count.

22. It has been argued that the appellant was not even present in the Bank premises at the time when the occurrence took place and has been subsequently implicated by the police at the behest of senior officials of the Bank. We are, however, not impressed by this submission. Apart from the fact that the occurrence has been witnessed by Pitambar Dutt (PW-9) and Mohinder Kumar Gupta (PW-10), the physical presence of the appellant in the Bank premises immediate before the occurrence was noticed by Raj Singh Yadav, Manager of the Bank (PW-3) as well as Smt. Bimla Devi (PW-11), the Sweeper of the Bank who has categorically stated that the appellant reached the Bank at 9.30 a.m. We are also unable to agree with Shri Yadav that from the memo Ex.PD, the very recovery of the weapon of the offence, namely, the gun becomes highly suspicious especially when no report from the finger print expert has been obtained by the prosecution. The Manager of the Bank Raj Singh Yadav (PW-3) has clearly deposed that "the gun Ex.P-1 and the cartridges Ex.P-2 to P-8 (one from the gun and the others from the belt) were taken into possession by the police by sealing them into parcel vide memo Ex.PD which bears my signatures". Similarly, the investigating officer, AS1 Gianender Singh (PW-17) has categorically stated that when he went to the spot, the Manager of the Bank produced before him the gun Ex.P-1 and the cartridges Ex.P-2 to P-8 which were

taken into possession by him vide memo Ex.PD. He has further identified the said gun while deposing before the Court.

23. Lastly, Shri Yadav argued that even if the appellant is held guilty, yet the case falls flat in Exception-4 to State Government 300 IPC thereby attracting sentence u/s 304 Part-I and not u/s 302 IPC. Shri Yadav has place reliance upon three Division Bench judgments of this Court in (i) Mala Ram v. State of Haryana, 1997(3) Recent Criminal Reports 484; (ii) Nirvair Singh v. State of Punjab, 1997(4) Recent Criminal Reports 739; and (iii) Sucha Singh v. State of Haryana, 1999(3) Recent Criminal Reports 403. According to Shri Yadav the alleged "motive" suggested by the prosecution is of trivial nature and wholly insufficient to prove any premeditation by the appellant to kill the deceased and that at best it was a case of sudden provocation caused to the appellant by the deceased by using some insulting language in reference to the non-satisfactory performance of duties by the appellant and as a result of some heated exchange of words, the appellants fired the single gun shot with no intention to cause death or the injury likely to cause death.

24. In Mala Ram's case (supra), the gun shot injury was caused in the thigh and it was found by this Court that the deceased could be saved by proper medical treatment. In Nirvair Singh's case (supra) the accused and deceased were serving as constables in police; they had a sudden quarrel between them and the deceased had hurled abuses as a result of which the accused got provoked and fired from his gun which hit the deceased on the chest and there was no evidence of premeditation, pre-planning or animosity. In Sucha Singh's case (supra), the dispute was over a small matter upon which the accused had fired one shot at the leg of the deceased.

25. On the other hand, as the evidence on record brings out, there was neither any provocation by the deceased on the date of occurrence, nor any altercation between the two had taken place. The appellant had come with a premeditated mind which he disclosed to Smt.Bimla Devi (PW-11) and it was only with an intent to kill the deceased that he fired the gun shot on the chest of the deceased from a distance of 4-5 or 6-7 feet, as explained by the eye-witness. The appellant who is an ex-army personnel knew the consequences of such a gun shot. No help can, thus, be extracted by the appellant from the judgments referred to above.

26. It is a well settled law that in order to attract Exception-4 to Section 300 IPC, following mandatory ingredients are required to be established:-

- (i) it was a sudden fight;
- (ii) there was no pre-meditation;
- (iii) the act was done in a heat of passion; and
- (iv) the accused had not taken any undue advantage or acted in a cruel manner.

27. It is equally well settled that all the four ingredients must be proved to claim benefit of Exception-4 to Section 300 IPC. We have already held that the appellant attacked the deceased by gun fire with a premeditated mind as he wanted to kill the deceased. There is no even an iota of evidence on record to suggest that the deceased had caused any grave provocation on the date of occurrence. Even if it is assumed that the deceased had warned the appellant for the latter's act of dereliction of duty or taking liquor during office hours, the deceased had performed his lawful duty as an administrative incharge of the Bank. I cannot be termed as a cause of provocation to the appellant so as to permit him to take shelter under Exception-4 to Section 300. Consequently, we reject this submission as well.

28. For the reasons aforementioned, we concur with the judgment dated 4.1.1997 passed by the learned Additional Sessions Judge, Rewari and consequently dismiss this appeal.