
(2009) 05 P&H CK 0210

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 377 DB of 2000

Rajiv Kumar and another

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: May 5, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2009) 3 RCR(Criminal) 361

Hon'ble Judges: Nawab Singh, J; K.S. Garewal, J

Bench: Division Bench

Advocate: S.P.S. Sidhu, for the Appellant; Gurveen Singh, Additional A.G., for the Respondent

Judgement

K.S. Garewal, J.

Rajiv Kumar son of Babu Lal and Rajesh Kumar son of Chiman Lal both residents of Ferozepur City were tried before Sessions Judge, Ferozepur for the murder of Amarjit Singh and for voluntary causing hurt to Kulwinder Singh. The learned Sessions Judge convicted Rajiv Kumar and Rajesh Kumar u/s 302 read with Section 34 IPC and sentenced them to rigorous imprisonment for life vide judgment dated July 3, 2000. There were lesser sentences of imprisonment and fine. Sonu alias Sunil was a third accused who was acquitted.

2. The incident occurred on January 4, 1998 at 8.15 p.m. when Amarjit Singh deceased came out of the house of Kulwinder Singh PW-4. The three accused were standing waiting for him. An electric light was on in the street. Sunil Kumar alias Sonu raised a lalkara that Amarjit Singh be taught a lesson for appearing as a witness against Rajesh. All three were armed with kirches. Kulwinder Singh raised an alarm to defend his uncle, this brought Kulwinder Singh's father Gurcharan Singh out of the house. Rajesh Kumar stabbed Amarjit Singh with a kirch on the left flank. Rajiv Kumar also gave a kirch blow on the left flank. Sunil Kumar hit Amarjit Singh on

the forehead. Rajesh Kumar also stabbed Kulwinder Singh on the ankle. When an alarm was raised, all the accused escaped with their respective weapons.

3. Amarjit Singh and Kulwinder Singh were evacuated to Civil Hospital, Ferozepur City by Gurcharan Singh and Haquikat Rai. Amarjit Singh was medico- legally examined at 8.50 p.m. by Dr. Jujbir Singh and was found to have the following injuries :-

1. An incised wound 3cm x 1cm on left side at middle of abdomen, just lateral of midline. Fresh bleeding was present. Probing was not done. Injury was kept under Surgeon's opinion.

2. An incised wound 3.5cm X 0.5 cm on left side middle of abdomen, 14 cm lateral to injury No.1, wound was freshly bleeding, probing was not done. Injury was kept under Surgeon's opinion.

3. An incised wound 0.75 cm x 0.25 cm on anterior hair line in its middle. Fresh bleeding was present. Corresponding cuts were present on sweater, shirt and banyan with injuries No. 1 and 2.

4. Later at 9.40 p.m. Kulwinder Singh was medico-legally examined and found to have the following injuries :-

1. Reddish swelling 5cm x 3 cm on outer side of left eyebrow.

2. An incised wound 2cm x 0.5cm on medial aspect and lower part of right leg. Fresh bleeding was present.

5. Amarjit Singh succumbed to his injuries at 11.40 p.m. Report of Amarjit Singh's death was sent to the Police Station whereupon SI Sukhjinder Singh, SHO, P.S. City, Ferozepur reached the Civil Hospital and recorded the statement of Kulwinder Singh. His statement was completed at 1.15 a.m. and on its basis FIR was registered at Police Station City at 1.30 a.m. on January 5, 1998. Special report was delivered to the Magistrate at Ferozepur at 7.45 a.m. Dr. Jujbir Singh conducted postmortem examination on the dead body of Amarjit Singh. The medical officer found a fourth injury on the deceased in addition to the three he had earlier observed, which is given below :-

Incised penetrating wound 3.5 cm X 1.5 cm on upper part of left chest, just below axilla, 17 cms from left nipple.

6. During postmortem the Medical Officer probed two injuries on the abdomen of Amarjit Singh. Injury No.1(as per MLR and PMR) on exploration revealed its track leading to mesentery and gut injuring both. Peritoneal cavity was full of clotted blood. Track of injury No.2 led to spleen which was also injured.

7. In the opinion of the Medical Officer, cause of death was shock and hemorrhage, resulting from sharp edged penetrating weapon causing injuries to spleen, gut and

mesentery. All the injuries were ante-mortem in nature which were sufficient to cause death in the ordinary course of nature.

8. Dr. Jujbir Singh had also medico-legally examined Rajesh Kumar at 9.20 p.m. on January 4, 1998 and found the following injuries :-

1. An incised wound 4cm x 0.5cm on front of chin horizontally placed. Fresh bleeding was present.

2. A lacerated wound 0.5cm X 0.25 cm on upper part of left lip. Fresh bleeding was present.

3. An incised wound 0.5 cm X 0.25 cm on bridge of nose right side.

4. Incised wound 1cm X 0.12 cm on proximal inter phalangeal joints of left little ring and index fingers. Fresh bleeding was present.

5. Superficial incised wound 1cm x 0.25 cm on left side of lower part of cheek.

6. Swelling 10 cms x 8 cm on left temporal region. X ray was advised. Injury No.6 was kept under observation while other injuries were declared simple.

9. The spot was inspected by SI Sukhjinder Singh who prepared site plan of the place of the occurrence and then raided the houses of the accused and found them missing. Rajiv was arrested on January 10, 1998 and his interrogation led to the recovery of his kirch. Rajesh was arrested on January 14 and his interrogation led to the recovery of his kirch. After completion of the investigation accused were sent to face trial. At trial charge was framed u/s 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

10. Prosecution examined Draftsman Sunder Singh (PW-1), Lineman Babu Lal (PW-2), Dr. Jujbir Singh (PW-3), Kulwinder Singh (PW-4), Gurcharan Singh (PW-5), C. Sat Pal (PW-6), MHC Shiv Dyal (PW-7), HC Arpinder Singh (PW-8), HC Jagtar Singh (PW-9), SI Sukhinder Singh (PW-10), Constable Raj Pal (PW-11) and closed case.

11. Accused were examined without oath u/s 313 Cr.P.C. Rajiv Kumar pleaded innocence and stated that his family had opposed Babu Lal, Municipal Commissioner in the election so he was helping the complainant party. Names of Rajiv Kumar and his brother Sunil were introduced at the instance of Babu Lal, Municipal Commissioner.

12. On the other hand Rajesh Kumar pleaded the following counter story :-

I was going to my house and was attacked by Amarjit Singh, Lakhwinder Singh and Pritam Singh and they caused injuries to me. I picked up a knife from the fruit shop nearby and caused injuries to Amarjit Singh in self defence. This false case is fabricated against me by the complainant party in connivance with the police.

13. The prosecution had positively established that Amarjit Singh was attacked on the night of January 4, 1998 at 8.15 p.m. At this time he had emerged from the house of Kulwinder Singh (PW-4). Kulwinder Singh also received two injuries. Amarjit Singh was medico-legally examined at 8.50 p.m. Whereas Kulwinder Singh was examined at 9.40 p.m. Amarjit Singh succumbed to his injuries at 11.40 p.m. While all this was happening, Rajesh Kumar was also medico-legally examined at 9.30 p.m. There were injuries on his face and hands but what is surprising is that the prosecution has offered no explanation about the injuries received by Rajesh Kumar.

14. It is true that the prosecution version is supported by the evidence of an injured eye witness. What an injured person says is given more weight because his presence is seldom doubted. Kulwinder Singh had two injuries, he was present and whatever he testified at the trial was bound to be accepted. But what cannot be accepted is his failure to explain how the main accused Rajesh Kumar was injured. Such failure certainly detracts from the testimony of Kulwinder Singh and devalues it to some extent. One is made to sit up and listen to what Rajesh Kumar has to say.

15. According to Rajesh Kumar, he was attacked by Amarjit Singh and two others and he defended himself with a knife which he picked up from a nearby fruit shop. He stabbed Amarjit Singh in his self-defence. We are not really inclined to outrightly accept the self-defence plea of Rajesh Kumar. But we would like to highlight the failure of the prosecution to offer even a feeble explanation to the injuries received by Rajesh Kumar.

16. When Rajesh Kumar was lying admitted in the civil hospital, his statement was recorded by SI Sukhjinder Singh at 6.p.m. on January 5, 1998. Copy of the statement is exhibit D.3. According to the Investigating Officer, the statement disclosed offences under Sections 324/323/34 IPC but as FIR 6 had already been registered under Sections 302/324/34 IPC about this occurrence, the investigation into the complaint of Rajesh Kumar was to be with the main murder case.

17. The defence has relied upon the complaint made by Rajesh Kumar against Amarjit Singh and others dated May 31, 1997 exhibit D.4, a calendar u/s 107/151 Cr.P.C. against Amarjit Singh and others dated June 25, 1997 exhibit D.5 and the entries in the register of bad character maintained at Police Station City, Ferozepur from 1973 to 1984 mentioning cases against Balbir Singh. The defence also filed copies of FIR under Sections 61 of the Excise Act and 9 of the Opium Act registered between 1977 to 1980 against Kulwinder Singh's father Gurcharan Singh. The defence had tried to establish that the complainant party were a gang of liquor and opium smugglers.

18. One is not required to be swayed by everything that the defence pleads because an accused person gives his statement without oath and is not required to speak the truth. It is enough if the accused casts some doubt on the prosecution version

making the court examine the prosecution case with caution and not accept the eye witness account as it is.

19. In the present case, in the absence of an explanation regarding the injury on Rajesh Kumar, we are inclined to accept that Rajesh Kumar acted in self- defence when he stabbed Amarjit Singh but he exceeded this right. He had minor injuries on the face and simple superficial injury on the hand. These injuries show that he was present and had been attacked with some sharp edged weapons by the deceased. A person who receives simple injuries may inflict grievous injuries in self-defence but if he inflicts such injuries which lead to the death of the deceased, then he has exceeded the right of self-defence.

20. In view of the above discussion, we hold that Rajesh Kumar was not guilty of murder but guilty of offence u/s 304 Part-II IPC as he exceeded the right of private self-defence in causing injuries to Amarjit Singh. However, there is doubt regarding the participation of Rajiv Kumar @ Laddi in the occurrence, Rajiv Kumar @ Laddi is entitled to the benefit of doubt and he is acquitted of the charge. Rajesh Kumar is sentenced to rigorous imprisonment for five years u/s 304 Part-II IPC and to pay fine of Rs. 2 lacs. Fine shall be paid within two months from today. In default of payment of fine, Rajesh Kumar shall further undergone rigorous imprisonment for one year. Fine if recovered shall be paid to the heirs of the deceased.