IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Darshan Singh v. State of Rajasthan

D.B. CRIMINAL APPEAL NO.28/2001
against the judgment dated 18.12.2000 passed by Additional Sessions Judge, Anoopgarh, District Sriganganagar in Sessions Case No.22/99, State of Rajasthan v. Darshan Singh & another.

Date of Judgment : 29th January, 2005

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.S.S.Kharlia, for the appellant.
Mr. V.R.Mehta, Public Prosecutor for the State.
Mr. R.K.Singhal, for the complainant.

BY THE COURT :

The instant appeal is preferred by accused Darshan Singh assailing validity and correctness of the judgment dated 18.12.2000 passed by learned Additional Sessions Judge, Anoopgarh in Sessions Case No.22/99 whereby learned trial court convicted accused appellant for commission of an offence under Section 302 IPC and awarded sentence of imprisonment for life term with a fine of Rs.500/- and in default of which accused is liable for further rigorous imprisonment for a period of three months. Learned trial court also convicted accused appellant for commission of offence under Section 27 of Arms Act and awarded sentence of rigorous imprisonment for

three years with a fine of Rs.500/- and in default of which accused is held liable to undergo three months further rigorous imprisonment.

The facts of the case, as unfolded by the prosecution, are that at the instance of statements given by one Shri Gurmukh Singh s/o Jaswant Singh at 4.45 AM on 3.1.1999 a criminal case was registered as CR No.3/99 at police station Anoopgarh contemplating the offence under Section 302 IPC read with Section 27 Arms Act against accused Darshan Singh. Shri Gurmukh Singh stated that Mukhtiar Singh happens to be his "TAYA" in relation. Aforesaid Mukhtiar Singh and he visited chak 22-A on 1.1.1999 to meet Shri Lakhbir Singh, brother-in-law of Mukhtiar Singh. While on way to visit Lakhbir Singh, Darshan Singh met to them and made a request to Mukhtiar Singh to have a cup of tea with him. Mukhtiar Singh being in hurry refused for the same, however, assured him to see him later on. On 2.1.1999 Gurmukh Singh and Mukhtiar Singh hired a jeep owned by Sewak Singh and again went to the residence of Lakhbir Singh. Lakhbir Singh, Sarjeet Singh, Mukhtiar Singh and Gurmukh Singh on that day remained busy in search of some appropriate land sought to be purchased for Lakhbir Singh. In the evening of 2.1.1999 all the above named persons had their food at the residence of Lakhbir Singh. Mukhtiar Singh and Gurmukh Singh then left house of Lakhbir Singh to proceed for 10K. Mukhtiar Singh while going to 10K instructed Sewak Singh to stay at the residence of Darshan Singh. Sewak Singh stopped the jeep at the distance of about 10-15 steps from the house of accused Darshan Singh. Mukhtiar Singh

then gave a call to Darshan Singh. Darshan Singh came out from his room and fired upon Mukhtiar Singh, as a consequence of which Mukhtiar Singh fell down and died. According to the statements given by Gurkukh Singh on the basis of which first information report was lodged an another gun shot fire was made by Darshan Singh, a pallet of which injured himself too. Gurmukh Singh immediately thereafter ran away from the place and proceeded for 10K.

On basis of this statement, a criminal case was lodged against Darshan Singh contemplating offences under Sections 302 and 307 IPC read with 27 Arms Act. During investigation inquest of the dead body was made which was found lying within the court yard of the house of accused Darshan Singh. Accused Darshan Singh was arrested from his house. The investigating agency prepared panchnama, site plan and also collected blood stained earth and simple earth.

Dr. O.P. Mahayach, who conducted postmortem of the person of Mukhtiar Singh reported following injuries:-

"बाहय चोटें व घाव:- {विस्तृत विवरण}

1. कूचला हुआ घाव दाहिनी तर्जनी के आधार पर {डोरसम} 1x1/4x1/6 इंच, कुन्दाले जैसे हथियार से आया हुआ ।

2. कुचला हुआ घाव दाहिने अंगूठे के सीरे पर, 1x1/4x3/4 इंच, कुन्दाले जैसे हथियार से कारित किया हुआ ।

3. बहुसंख्यक वूण्ड ऑफ एन्टरी दाहिनी तरफ गर्दन और गर्दन के अग्रभाग में थायोरेड कार्टिलेज के नीचे एवं सुपरा स्ट्रनम के ऊपर लूई के कोण तक पाए गए । इन घावों की किनारे काले पाए गए और दिशा कुछ टैडापन लिए

हुए ऊपर की दिशा में थी । इसी प्रकार के घाव दाहिनी तरफ छाती में और दाहिने कन्धे के सीरे तक पाए गए और इनके किनारे भी काले पाए गए । और इन सब की दिशा वो ही थी जो ऊपर बतायी गई है । जहां ये घाव पाए गए वहां त्वचा के नीचे खूब सारा खून पाया गया और अधो त्वचा ऊत्तक में खून पाया गया व कटा-फटा पाया गया । यह रक्त मांसपेशियों में भी पाया गया । कुछ काले धब्बे {वूण्डस ऑफ एन्टरी} दाहिने गाल पर भी पाए गए व नाक पर भी पाए गए । वूण्ड ऑफ एक्जिट नहीं पाए गए । इन घावों की आकार 1/10 x 1/10 इंच था तथा गहराई अलग-अलग थी । अर्थात् कुछ त्वचा तक गहरे थे, कुछ त्वचा के नीचे ऊत्तक तक थे जबकि अन्य मांसपेशी तक पहूंचे हुए थे जिनकी वजह से मांसपेशियों में रक्त स्त्राव होना पाया गया ।

4. वूण्डस ऑफ एन्टरी:- दाहिनी तरफ छाती में चौथे और पांचवे इन्टरकोस्टल स्पेश में नीपल के नीचे व पार्श्व साईड में पाए गए, यह बहुत बड़ा घाव है:- डेढ़ इंच गुना डेढ इंच साईज में और इसके किनारे अन्दर की तरफ मुडे हुए पाए गए । एक झलक में ऐसा लगता है जैसे यह घाव कुचला हुआ हो । दाहिनी तरफ पांचवी पंसली टूटी हुयी पायी गयी तथा छाती को खोलने पर पल्यूरा कटा-फटा पाया गया और छर्रे इसके अन्दर से फेफड़ों के अन्दर गहराई तक नीचे की दिशा से पश्च भाग में पाए गए । तथापि फेफड़े का ऊपर का हिस्सा इससे बचा हुआ पाया गया । यह छर्रे फेफड़े में से होते हुए डायफ्रान तक पहूंचे और फिर यकृत तक पहूंच गए, इनकी गहराई अलग-अलग पायी गयी, कुछ छर्रे छाती के पश्च भाग तक पहूंचे हुए थे जबकि अन्य पंसलियों के जोड़ तक और वर्टिबरा के ट्रांसफर प्रोसेस तक पहूंचे हुए पाए गए, यहां वर्टिबर्रा से तात्पर्य स्पाइन के ट्रांसफर प्रोसेस से है । काफी छर्रे बरामद किए गए और एफ.एस.एल. के लिए रख लिए गए यानि एफ. एस. एल.परीक्षण के लिए रख लिए गए । एक गोली का {कार्टरीज} की टोपी इस घाव में से बरामद की गई जो कि सील की गई और एफ.एस.एल. परीक्षण के लिए रखी गई ।

5. वूण्ड ऑफ एन्टरी:- बांयी छाती में स्ट्रनन के बोर्डर के नजदीक तीसरे इन्टर कोस्टल स्पेश में । इसका साईज डेढ इंच गुना डेढ इंच था और किनारे काले थे । छाती पर बाल झूलसे हुए पाए गए जबकि पाउडर आदि नहीं पाया गया । इसकी गहराई काफी थी और बांये फैफड़े को पार करते हुए और इसको कुचलते हुए {चिरते हुए} कुछ छर्रे यकृत में बांयी तरफ पहुंच गए । ये छर्रे डायफ्रान के अन्दर से यकृत तक पहूंचे । बांयी तरफ भी रक्त का इकठठा होना पाया गया ।

ये सभी घाव और चोटें जिनका वर्णन किया गया है मृत्यु पूर्वक आयी हुई थी । जितने छर्रे बरामद किए गए वो एक शीशी में सील करके एफ.एस.एल. परीक्षणं के लिए भेजे गए और ऐसा ही मृतक के जैकेट, कमीज और चददर को भेजा गया ।

राय :- मेरी राय में इसकी मृत्यु शिन्कोप की वजह से हुयी जो कि अत्यधिक रक्त स्त्राव से हुआ । मृत्यु का समय 24 घण्टे के अन्दर का पाया गया । तथा जो वूण्डस ऑफ एन्टरी वर्णित किए गए है वे आग्नेय अस्त्र से आए हुए थे । ये चोटें साधारण अनुक्रम में मृत्यु के लिए पर्याप्त थी।"

The investigating agency recovered two

empty cartridges of 12 bore gun, two pallets and four covers. The investigating agency also recovered a 12 bore gun, one empty cartridge and a cartridge belt with 22 cartridges from the house of accused Darshan Singh at his instance. During investigation it was found that 12 bore gun recovered was of Santok Singh s/o Ishwar Singh. A case under Section 30 Arms Act was, therefore, registered against Santok Singh also. The statements of Shri Gurmukh Singh were also recorded before the court of Additional Chief Judicial Magistrate, Anoopgarh under Section 164 Cr.P.C. After regular investigation challan was filed before the court of Judicial Magistrate, Ist Class, Anoopgarh. However, all the charges being triable by the court of Sessions, therefore, the case was transferred to the court of Sessions Judge, Sriganganagar and the same was transferred for its adjudication to the court of Additional Sessions Judge, Anoopgarh. Learned trial court after hearing Public Prosecutor as well as counsel for accused persons framed charges under Sections 302, 307 IPC read with Section 27 Arms Act against accused Darshan Singh and also framed charge for commission of an offence under Section 30 of Arms Act against Santok Singh. The charges so framed were read before the accused persons and after understanding the same the accused persons denied the allegations levelled against them and made a request for holding trial.

During trial prosecution deposed 13 witnesses to substantiate their case. Statements of the accused persons were recorded under Section 313 Cr.P.C. Accused Darshan Singh in his statements

under Section 313 Cr.P.C stated that the statements given by PW-1 Gurmukh Singh, PW-2 Gurusewak Singh, PW-3 Jogendra Singh and PW-4 Jeewan Ram are false and concocted. He shown ignorance with regard to the statements made by other prosecution witnesses. Accused Santok Singh shown ignorance with regard to the statements made by prosecution witnesses. He also denied the charge levelled against him. No evidence was produced by defence.

The trial court on the basis of evidence available framed an issue as under:-

> "आया अभियुक्त दर्शनसिंह ने दि. 2-1-99 को शाम के समय बंदुक से फायर करके मुख्तयारसिंह की हत्या कारित की, गुरमुखसिंह पर उसे मारने के आशय से बंदुक से फायर कर हत्या कारित करने का प्रयास किया तथा संतोखसिंह की लाईसेंसशुदा बंदुक अपराध में काम में ली तथा अभियुक्त संतोखसिंह ने अपनी लाईसेंसशुदा बंदुक को शर्तों के विरूद्ध दर्शनसिंह को अपराध हेतु काम में लेने की अनुमति दी ?"

The trial court considered the evidence available on record and found accused Darshan Singh guilty for an offence under Section 302 IPC as well as for an offence under Section 27 Arms Act. However, the trial court on basis of report given by Forensic Science Laboratory to the effect that pallets recovered may not have been fired from the gun recovered at the behest of accused Darshan Singh, acquitted Santok Singh from the allegations under Section 30 Arms Act. Accused Darshan Singh being convictged for offence under Section 302 IPC read with Section 27 Arms Act was sentenced as stated above. Being aggrieved by the same, the present appeal is preferred.

We have heard the learned counsel for the parties and have given our thoughtful consideration.

The trial court after considering the evidence of the parties came to the conclusion that the evidence of P.W.1 Gurmukh Singh has been believed. Support has been drawn by the trial court from the medical evidence and the other witnesses and has held the accused appellant Darshan Singh guilty of offence u/s 302 I.P.C. The trial court also observed that the fire arm injuries as alleged to have been sustained by P.W.1 Gurmukh Singh, have been deposed by the medical evidence to be injuries not attributable to fire arm. Therefore, the offence u/s 307 I.P.C. has not been made out against this accused. The accused Darshan Singh has further been held guilty of offence u/s 27(1) of the Arms Act because he has used a fire arm illegally to commit the crime of murder.

Assailing the findings of the trial court, the learned counsel for the appellant has urged that the trial court has erred in relying upon the witness Gurmukh Singh. Because the same witness has been disbelived by the trial court for the injuries sustained by himself. It cannot be considered proper to believe the same witness for the injuries sustained by the deceased Mukhtiar Singh.

The argument sounds attractive but in the case of the fire arm, the projecticles thrown by it cannot be observed by naked eye. In the instant case, the witness has spoken that he sustained the

injuries by the fire arm. Presence of injuries is there. As regards their nature, the medical evidence is not in conformity with the claim of the injured, saying that the injuries were of the fire arm. But then the injuries are deposed to be by a blunt weapon. The fire arm injury from the pellets after a distance would be like a small blunt weapon. Sometimes it becomes difficult for an opining doctor to conclusively say that the injuries are of the fire arm. Because the distance was more blackening and tutoring was not present. This discrepancy is of small dimension. In these circumstances, the evidence of the witnesses having been held to be inconclusive. I know him it does not mean that the witness has not spoken truth for what he has undergone for that moment.

Establishment of a fact in criminal trial depends on available proof. A fact which is capable of another interpretation in the instant case. Therefore, on this count the evidence of the eye witness cannot be thrown out, if it can otherwise be of some consequence. What is the value of the eye witness, will have to be examined critically and then only the circumstances urged and referred hereinabove by the learned consel for the appellant would be considered to be of any significance if the testimony of the eye witness otherwise falls to the ground.

The learned counsel for the appellant submitted that P.W. 1 Gurmukh Singh is a false witness. His conduct is unnatural. The occurrence had happened in the month of January, 1999, which is

a winter season. Nobody goes to the house of a person just for a cup of tea when it is cold enough. The conduct of this witness in claiming so that he went to the house of the accused to meet him for a cup of tea is not the normal human conduct.

We have given our thoughtful consideration to the arguments of the learned counsel for the appellant. It would be giving an extra premium to the presumed normal human conduct. A person who has been invited then claim of this witness that he went for that purpose, cannot be said to be an altogether improbable conduct of the party claiming the same. The argument of the learned counsel that the witness is false on this count and his conduct is unnatural, cannot be permitted to have any serious bearing on the prosecution case.

The learned counsel for the appellant has criticised the testimony of P.W.1 Gurmukh Singh by assailing that his testimony is not in consonance with the medical evidence and thus, he is a witness who tries to mold his evidence to oblige the prosecution. According to the learned counsel for the appellant in his examination in chief this witness says that Mukhtiar Singh entered into the house and then he proceeded further and then informed Darshan Singh that he i.e. 'Mukhtiar Singh' has come to meet him. At that time, the accused took 5-7 steps and then fired on the deceased. When this witness was confronted with his earlier statement u/s 164, this witness admitted that his statement that Mukhtiar Singh took 2-3 steps as narrated u/s 164 statement is wrong and his statement that he

proceeded for 45-50 feet is correct. Thus, the learned counsel for the appellant has submitted that this narration is enough to discard the testimony of this witness.

We have considered this aspect of the evidence and we are of the opinion that it is too small a circumstance to give weightage in the light of the statement of the accused himself. Accused has stated in his 313 statement that the accused had come to his place. They then grappled and someone, who was standing behind the accused, fired which fire hit the deceased. This explanation of the accused if taken into consideration then it shows that the visit was there. Thus, the occurrence took place when the deceased and accused were together. If the version of the accused is taken into consideration then that would be of no assistance to explain the injuries, which are in front of the body of the deceased. The accused has said that they grappled and the deceased was pushed by him at that time someome fired from the side from which the accused came. The injuries thus could not be sustained by the deceased on front side of the body. The injuries could be only on the back. That is not the case in hand. Therefore, the defence has tried to give an explanation, which is per se invalid, unbelievable. It sounds to be false also. This being the situation, the testimony of this witness, that a fire has hit the deceased, when he was entering the house cannot be said to be a testimony of no worth. It explains the prosecution case. He cannot be discarded simply because at one point of time he has given a distance which he

corrected laterly. The description of distance is generally tantative. A person refers it by memory alone. Definite distance can hardly be referred.

This witness is said to have deposed in his statement that no sooner the first fire hit the deceased, he fell down. The place where the deceased fell down is not the place where the dead body was found. The place from where the body was found and the place this witness says he fell down are no doubt two different places. But then this witness made his escape good and what happened thereafter is not coming forward. Because the dead body was within the confine of the accused. What happened thereafter would be anybody's guess and on the same count, the finding of pellets at a different place also are of no significance. On this count also, the testimony of this witness that the accused was the assailant cannot be found fault with.

From the medical evidence, it is shown that there were three injuries on the persons of the deceased. One of them being 1”x1 1/2” and others were if same dimension 1 1/2”x1”. Effect of flame and carbon are available on the wounds. One of these wounds is from down side up. Generally it would not come if a man is hit in standing position. It could be a fire made while the body receiving it is lying down. Then there will be a natural slant in the entry would. The third injury which has not been spoken by this witness can be attributed to a fire made after this witness made his escape good. This explains that the fire was made when the body had fallen on the ground. May be that when this witness

saw the accused firing and the injured fell down as deposed by this witness, he had travelled another few steps thereafter which this witness had not seen as he made his escape good. So on this hypothesis also, the prosecution case stands explained.

The circumstances have to be defined in the manner in which they are available. The deceased was found murdered within the confine of the house of the accused. According to him some unknown person fired but then the accused is said to be present at that time. Finding of the dead body inside the house of the accused requires an explanation to be furnished. The explanation given by him in his 313 statement is not commensurate with natural happening, therefore, finding of the body in the house of the accused with no other person being established to be present, would lend support to the case of the prosecution. Therefore, it cannot be said that the prosecution is not coming out with a case which is truthful.

It would be worthwhile to notice that as and when a plea is taken by the accused in a statement u/s 313, that cannot make the basis of conviction and the law is well settled that the same can be used as an additional circumstance if the other part of evidence establish the case against the accused appellant. A reference in this connection may be made to the following observations of the Hon'ble Supreme Court in Tanviben Pankajkumar Divetia vs. State of Gujarat, AIR 1997 SC 2193 :-

> “The Court has drawn adverse inference against the accused for making

> false statement as recorded under Section 313 of the Code of Criminal Procedure. In view of our findings, it cannot be held that the accused made false statements. Even if it is assumed that the accused had made false statements when examined under Section 313 of the Code of Criminal Procedure, the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea may be considered as an additional circumstance if other circumstances proved and established point out the guilt of the accused. In this connection, reference may be made to the decision of this Court, in Shankerlal Gyarisilal v. State of Maharashtra, AIR 1981 SC 765."

In the aforesaid circumstance when the accused has himself admitted that the deceased had come to his house and had grappled with him, he pushed him aside at that time a fire was made from the back. This does not fit in the sequence of evidence as the fire had hit the deceased in front. Therefore, a false plea has been taken by the accused and that gives a reason to consider this plea of the defence against the accused.

In the aforesaid background, the recovery of payjama etc. which were pressed heavily by the learned counsel for the appellant loses significance. The learned counsel for the appellant has also relied on a judgment against Darshan Singh wherein he had been prosecuted for the offence u/s 302 I.P.C. and acquitted by the High Court after discussing the evidence of the prosecution. In that case the present deceased person was not the one who participated in the occurrence in any capacity. Therefore, acquittal of the accused in that case would not make any significant contribution to the facts of the present case.

To lend support, the learned counsel for the appellant relied on a case decided in the matter of Surjan vs. The State of Rajasthan, 1993 Cr.L.R. (Raj.) 600 and urged that when the witness speaks of two fires, the number of fires having not been in conformity with the medical evidence, the benefit of doubt should go to the accused. This case would not help the accused because the witness had made his escape good and the deceased was within the confines of the accused person, the discrepancy would not come to the aid of the defence. So also the case in the matter of Banwari Lal vs. State of Rajasthan, 1992 Cr.L.R. (Raj.) 92 wherein delay in filing the F.I.R. was considered by this Court. In the instant case, no delay is seen and no prejudice has been shown to have been caused to the defence by the alleged delay. In the same light, the case relied upon by the learned counsel reported in Meharaj Singh (L/Nk.) vs. State of U.P., 1994 SCC (Cri) 1390 is also of no significance.

From the aforesaid, we find that the deceased was found murdered in the house of the accused. The prosecution case that the deceased had come to the house of the accused, stands established by the fact that the deceased had in fact visited the house of the accused that night and has been found murdered there. The defence account also is to the effect that the fire was within the four corners of the house of the accused which hit the deceased. The prosecution case thus stands established. In these circumstances, we find that the trial court has committed no illegality in convicting and sentencing the accused appellant.

The appeal being meritless is hereby dismisssed.

(GOVIND MATHUR),J. (B.PRASAD),J.

thanvi/ps