

HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU

Cr. Appeal no. 20/2006
And
Confirmation Ref. no. 12/2006

Date of Decision: 27.04.2009

Hem Raj vs. State of J&K
State vs. Hem Raj

CORAM:

MR. JUSTICE NIRMAL SINGH, JUDGE.
MR. JUSTICE J.P.SINGH, JUDGE.

Appearing counsel:

For Appellant(s) : Mr. H. A. Sidiqi, Amicus Curiae.

For Respondent(s) : Mr. S.C.Gupta, AAG.

i) Whether approved for reporting in Press/Journal/Media : Yes

ii) Whether to be reported in Digest/Journal : Yes

J.P.SINGH-J

Hem Raj, a Member of the Village Defence Committee constituted by the State Government for defence purposes, killed his son Anchal Singh by firing at him on December 18, 2000 at about 9 p.m at his house with.303 Rifle, which had been supplied to him by the State Government. The bullet fired by him hit Anchal Singh on the right side of his chest below the right axillary region and exited close to the vertebra column

on the right side, in the intercostal space, as a result whereof he succumbed to the injury.

Investigation carried out in this behalf pursuant to the registration of FIR no. 33 of 2000 at Police Station Basant Garh, resulted in the filing of Final Police Report with the Judicial Magistrate 1st Class Ramnagar, who committed it to Sessions Court, Udhampur, where the appellant was charged under Section 302 RPC.

Pleading ~~Not Guilty~~ to the charge, the appellant claimed to be tried.

The prosecution story, as reflected in the report under Section 173 Cr.P.C, goes like this:-

Anchal Singh, married a year ago, had been putting up at the appellant's house with his mother and other brothers at village Sia Mere Bagan, indicated his intention to have a separate house and was in the process of making such house. This was not liked by the appellant, who time and again told him that until he liquidated the money which had been spent on his marriage, he would not be given land for constructing his separate house. In this background, during the process

of an altercation between the appellant and his son Anchal Singh on December 18, 2000, at about 9 p.m., they are stated to have abused each other, when, picking up his .303 rifle, the appellant fired at Anchal Singh, who died on spot as a result of the injury received from the gun fire.

The appellant was found to have committed the offence punishable under Section 302 RPC by the police on the basis of the evidence collected during the investigation of the case.

The prosecution produced 15 out of 17 witnesses listed as such in the report under Section 173 Cr.P.C.

Entering upon his defence and projecting his innocence, the appellant, produced DWs Sham Lal and Raj Pal, to support his story that the deceased had been killed by the militants, who had attacked the village on December 18, 2000.

After appreciating and evaluating the evidence of the witnesses produced during the trial of the case and rejecting the defence story, the trial court, found the

prosecution to have established its case against the appellant.

Holding him guilty, the trial Court, accordingly, convicted and sentenced the appellant to Imprisonment for Life and a fine of Rs. 5000/- under Section 302 RPC, vide its judgment of October 8, 2005, and order of October 11, 2005, making reference to this Court for Confirmation of the sentence.

Aggrieved by the judgment and order of the trial Court, the appellant has approached this Court, seeking his acquittal and setting aside the judgment and order of the trial Court.

We have heard Mr. Sidiqi, the Amicus Curiae and Mr. S. C. Gupta, learned Additional Advocate General.

Looking to the nature of the occurrence which had taken place in appellant's house in presence of PW-2 Godawari Devi, the mother of the deceased, PW-3 Gayatri Devi, the wife of the deceased, PW-7 Mrs. Neelma, PW-1 Mohan Singh's wife, PW-6 Kunta Devi, the sister of the deceased and PW-1 Mohan Singh, the brother of the deceased, who had, in unequivocal

terms, supported the prosecution story of appellant's firing at his son Anchal Singh from a very close range during the course of an altercation between them and the available evidence on records in the shape of the testimony of PW-14 Dr. Sardari Lal, who had conducted the autopsy of the deceased, and there being no acceptable evidence in support of the appellant's story of his son having been killed by the militants, Mr. Sidiqi, the learned Amicus Curiae, concentrated on a short submission, in support of appellant's appeal, to urge that, in the facts and circumstances of the case, when the appellant had not been proved to have any pre-meditation to fire at the deceased, which occurrence had taken place on spur of the moment, the appellant cannot be said to have committed the offence of murder punishable under Section 302 RPC. Learned counsel submitted that appellant's case was covered squarely by the provisions of Section 304- Part II RPC.

Conceding that the appellant was not liable to be punished under Section 302 RPC, Mr. S. C. Gupta, learned Additional Advocate General, submitted that the

appellant was required to be punished under Section 304 RPC.

Concessions made by learned counsel for the parties notwithstanding, we considered it appropriate to scan the evidence produced during the trial of the appellant, to satisfy ourselves as to whether or not appellant's conviction by the trial Court was justified.

After going through the evidence of PW-1, Mohan Singh, PW-2 Mst. Godawari Devi, PW-3 Gayatri Devi, PW-6 Kantu Devi, PW-7 Mrs. Neelma, whose presence on spot, at the time of occurrence was most natural, being the inmates of the house who had every occasion to be there on spot, which had not been rightly disputed by the learned Amicus Curiae, we find the trial Court to have properly appreciated the evidence of these witnesses in establishing that the appellant had fired a bullet at the deceased hitting him on the right side of the chest which had exited close to the vertebra column, killing him on spot on December 18, 2000, at 9 P.M. The trial Court has given cogent reasons to discard the

defence story that the deceased had been killed by the militants.

The only question that, therefore, falls for consideration in this appeal is as to what offence had the appellant committed in firing at his son with .303 Rifle, from a close range, resulting in his death because of the bullet injury.

It is the admitted case of the prosecution that an altercation had taken place between the appellant and his son Anchal Singh, leading to hot exchanges over the dispute which had been going on between the two for quite some time, regarding appellant's refusal to provide him land and latter's insistence to construct a separate house. It was during the currency of the altercation and hot exchanges between the two, pursuant to aforementioned dispute, that the appellant had picked up .303 Rifle and fired at the deceased from a very close range of one to three feet, as reported by PW-14 Dr. Sardari Lal. It also comes out from the prosecution evidence and the findings recorded by the trial Court in this respect that there was no premeditation, and the

occurrence had taken place suddenly and at the spur of the moment when the appellant had lost his cool and fired at his own son.

Appellant's act of firing at his son from a close range with .303 Rifle, supplied to him for defence purposes by the State Government, cannot, but be described as his intentional act to kill his son notwithstanding the fact that there was no pre-meditation therefor. Appellant's act of firing in the neighborhood of the chest of his son supports the view of his having developed the intention of causing the death of his son on the spur of moment. The act committed by him, thus, falls squarely under clause firstly of Section 300 of the RPC.

There is, however, no denying the fact that appellant's act of firing at his son was preceded by immediate sudden provocation which he had taken during the course of his and deceased's indulging in altercation and exchange of hot words.

Looking to the facts and circumstances of the case and the way the occurrence had taken place on the spur

of moment, and in a sudden altercation, it appears that heat of passion had clouded sober reasons of the appellant and the deceased, impulsively urging them, to indulge in deeds and acts which they would not have, otherwise ventured upon. There being no time gap between the provocation and the act of firing by the appellant, his act, in the absence of any pre-meditation, to commit the act, would, in our opinion, certainly attract Exception-I to Section 300 RPC, bringing, his act within the definition of CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, punishable under Section 304 Part-I of R.P.C.

For all what has been said above, the impugned judgment of the trial Court, which does not deal with the applicability or otherwise of Section 300 RPC, is required to be modified.

Accordingly, while allowing the appeal partially and modifying the impugned judgment and order of the trial Court, we would convict the appellant under Section 304 Part-I RPC, sentencing him to imprisonment for eight years and a fine of Rs. 5000/. In default of payment of

fine, the appellant shall undergo further Imprisonment for six months.

Confirmation Reference no. 12/2006 is,
accordingly, declined.

(J. P. Singh)
Judge

(Nirmal Singh)
Judge

JAMMU
27.04.2009
Anil Raina, Secy