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STATE OF PUNJAB

v.

AJAIB SINGH

JANUARY 20, 1995

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[P.B. SAWANT AND R.M. SAHAI, JJ.]

Penal Code 1860—Section 100 First and Secondly—Exercise of right of private defence resulting in death—Two policemen killed in altercation between police officers on authority to check trucks—Whether accused entitled C *to use of firearm where he was attacked by dandas—Held, whether assault such as to cause reasonable apprehension that death would otherwise be the conseqence depends on facts of each case—In the facts of the case, held, interference with acquittal by High Court not warranted—Dependants of deceased to be compensated from Rs. 5 lakhs which accused had offered out* D *of remorse—S. 302—Criminal appeal—Compensation.*

Criminal Jurisprudence—Speedy trial, early hearing and quick disposal, held, sine qua non of criminal jurisprudence—Mechanism to clear backlog or to dispose of criminal appeals pending for more than reasonable time in higher courts recommended—Further, reinstatement and promotion of police E *officer during pendency of appeal on charge of murder deprecated—Sealed cover procedure, held, should have been adopted—Service law.*

Criminal Trial—Appeal against acquittal—Held, duty of court hearing appeal against acquittal is to satisfy itself whether view of acquitting court a possible view—Finding of High Court neither perverse nor infirm nor palpably F *erroneous—Acquittal upheld—Section 100, First and Secondly, IPC.*

An altercation between two officers of the Punjab Police on the authority to check trucks on the GT Road resulted in the death of an ASI and a Constable. The trial court convicted the respondent under S. 302 G **IPC and S.27 of the Arms Act 1950. In revision, the High Court accepted his plea of private defence, and acquitted him.**

There was no dispute about the time, date or place of the incident.

The trial court did not credit the version of the prosecution, but H **based its conviction on the injuries found on the person of the respondent**

which, it held, did not justify exercise of the right of private defence. A

The High Court, while agreeing with the findings of the trial court, further held that the prosecution story explaining the presence of the deceased did not inspire confidence, and concluded that the deceased and his companions were checking trucks and extracting money from the truck drivers; therefore the respondent must have felt offended as it amounted B to unnecessary interference in his jurisdiction and even to an illegal act of extracting money from the drivers. The High Court also reversed the finding of the trial court that the injuries were self- inflicted.

In appeal before this Court, the right of private defence was urged C on behalf of the respondent. It was contended that it was a case of mistaken identity for which the deceased himself was responsible. Arguing that the delay in criminal cases should not be lost sight of, and that at this distance of time it was just and expedient to compensate the deceased family monetarily instead of entering into whether the respondent was liable to be convicted, counsel for the respondent offered Rs. 5 lakhs as a genuine D feeling of remorse for what had happened under mistaken belief.

For the appellant it was urged that once the incident was admitted, the burden was on the respondent to establish that he acted in exercise of the right of private defence; that where no firearm had been used by the E deceased party, the respondent was not justified in shooting and killing two persons; and that it was apparent from the nature of injuries that it was a cold- blooded murder.

Dismissing the appeal, this Court

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HELD : 1. It shall depend on the facts of each case whether the assault was such as could cause reasonable apprehension that death would otherwise be the consequence of such assault. The respondent had nine injuries. They have been found not to be self-inflicted. He was attacked by the deceased and his companions. The trial judge found that there was no G previous enmity. The submission that the respondent was not entitled to use firearm as he was attacked with dandas only cannot be accepted. That is not what is provided by clauses (I) and (II) of Section 100 IPC.

[505-D-C]

2. The finding of the High Court is neither perverse nor infirm nor H

palpably erroneous. While a court hearing appeal against acquittal is not prevented from examining and reappreciating the evidence on the record, the duty of such court is to satisfy itself whether the view taken by the acquitting court was possible view or not. The prosecution case has not been found authentic even by the trial judge being solely based on failure to establish that the respondent had not exceeded his right of self-defence. The order of acquittal passed by the High Court upheld. [504-H, 505-E]

3. Speedy trial, early hearing and quick disposal are *sine qua non* of criminal jurisprudence. Keeping an accused in custody for a day more than necessary is constitutionally impermissible and violative of human dignity. The overcrowded court dockets, the phenomenal rise of public interest litigation, duty to ensure enforcement of fundamental rights undoubtedly keeps this court under stress and strain. But that cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. If the courts have been rendered helpless and the exasperating delay is threatending to eat away the system then the government may consider either to increase the strength to clear the backlog or devise some mechanism by which criminal appeals pending for more than reasonable time in higher courts should stand disposed of. [504-A-D]

4. The manner in which the government not only reinstated, but promoted the officer when the appeal by it against his acquittal was pending in this Court is disapproved. The government would have been well advised to adopt the sealed cover procedure, a firmly established and well known practice in service law. Murder by a police officer is provocative. The confidence of the common man is shaken when a person who is standing trial in appeal is promoted. [505-G-H, 506-A]

5. The respondent shall deposit Rs. 5 lakhs within a period of one month as was offered on his behalf. Out of this amount, Rs. 3,50,000 will be paid to the dependants of ASI Gurnam Singh, and Rs. 1,50,000 to the dependants of constable Paramjit Singh. [506-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 754 of 1980.

From the Judgment and Order dated 21.5.80 of the Punjab & Haryana High Court in Crl. A No. 738 of 1978.

Sushil Kumar, R.S. Suri and Ms. Amita Gupta for the Appellant. A

U.R. Lalit, M.C. Dhingra and R.P. Wadhwani for the Respondent.

The Judgment of the Court was delivered by

R.M. SAHAI, J. In this appeal by grant of special leave under Article B 136 of the Constitution of India the question that arises for consideration is whether the Order of acquittal passed by the High Court of Punjab & Haryana is so palpably erroneous or perverse that it is liable to interference in the exercise of extraordinary jurisdiction by this Court.

In an unfortunate incident which took place at 11 P.M. on 16th C December, 1976 on the G.T. Road just in front of Sat Kartar Cold Storage, Phagwara, two police officers of the Punjab Traffic Police appeared to have fallen out on the authority to check the truck on the G.T. Road resulting in death of one Assistant Sub-Inspector of Police and one constable and conviction of the respondent under Section 302 IPC who was Sub-Inspector D of Police at the time of incident, but since the date of acquittal he has now become Deputy Superintendent of Police. There was no dispute about the time, date and place of incident. Nor there was any dispute that Assistant Sub-Inspector Gurnam Singh and constable Paramjit Singh died as a result of shooting from the service revolver by the Sub-Inspector Ajaib Singh. The E dispute, mainly, was whether the incident took place as stated by the prosecution and the shooting and killing by the respondent was unwarranted, unjustified and deliberate or it was, as claimed by the respondent, in exercise of right of private defence. The respondent was tried and convicted under Section 302 for committing murder of ASI Gurnam Singh and constable Paramjit Singh and sentenced by the trial judge to undergo F life imprisonment. He was also convicted under Section 87 of the Arms Act and sentenced to undergo two years' rigorous imprisonment. All the sentences were to run concurrently. His co-accused Balbir Kumar was tried under Section 302 but convicted under Section 383 IPC for causing simple hurts to constable Jit Ram, P.W. 10 and Channan Singh, P.W. 13. He was G directed to be released on probation. Another accused constable Jit Singh was acquitted of all charges. The State did not file any appeal either against release of Balbir Kumar on probation or acquittal of Jit Singh. But revision was filed by one Sukattar Singh for enhancing the sentence of respondent from life imprisonment to death and convicting others suitably. The High H

A Court dismissed the revision for enhancing sentence and further acquitted the respondent. The State is aggrieved by acquittal of the respondent. Since both the trial judge and the High Court have considered the evidence in detail, it does not appear necessary to refer to them, except the findings arrived by them on which there is not much dispute. The findings recorded
B by the trial judge were summarised by the High Court as under :-

"(1) That the incident took place at about 10 P.M. on 15th December, 1976, on the G.T. Road just opposite to the Sat Kartar Cold Storage at Phagwara;

C (2) That all the three accused (Ajaib Singh and Balbir Kumar appellants and Jit Singh acquitted accused) were present at the spot and they had arrived there from the side of Ludhiana in jeep No. PUJ 250.

(3) That at that time A.S.I. Gurnam Singh along with Constables
D Paramjit Singh and Jit Ram was present at the spot. According to the prosecution version, Constable Chanan Singh, P.W. was also with them. However, that fact is denied by the accused.

E (4) That before the main incident took place, a verbal altercation took place between A.S.I. Gurnam Singh deceased and S.I. Ajaib Singh accused and thereafter they also grappled with each other for some time.

(5) That S.I. Ajaib Singh fired three shots with his service revolv-
F er, one of which hit A.S.I. Gurnam Singh and another hit Constable Paramjit Singh and as a result thereof both of them had died at the spot. The third shot hit the shutter of the cycle shop of Subhash Chand situated near the place of the occurrence."

G Apart from these findings, the trial judge held that the delay in lodging the FIR was not satisfactorily explained by the prosecution. He did not believe that the two constables who had accompanied the deceased would have hid themselves in the nearby field for the whole night and then lodged the report at 8.40 A.M. in the morning only after they came out from the field.
H The trial judge was not convinced that any reasonable person could have

remained in the field in the wintery night on 16th December without any covering when the accused undisputedly left the place immediately after the incident. Another important finding recorded by the trial judge was that the version of the origin of the incident, as given by the accused, was acceptable in preference to one put forward by the prosecution. The trial judge did not believe that the deceased was caught hold of by Balbir Singh and Jit Singh and thereafter the respondent fired the shot. Nor did it find any truth in the version of the prosecution that Paramjit Singh was thrown down on the ground by Balbir Singh and Jit Kumar and then a shot was fired at him from point blank range by the respondent. But the conviction was based as the injuries found on the person of the respondent did not justify exercise of right of private defence.

The High Court while agreeing with the findings of the trial judge on these aspects further held that the story given by the prosecution that the deceased had gone to the spot for nakabandi for apprehending the robbers did not inspire confidence as there was no entry to that effect in the Rojnamacha (daily diary) of the Police Station, Kapurthala. The High Court held that no material was brought on record to prove the First Information Report of the case in which those robbers were wanted. Further, according to the High Court, it was not reasonable to believe that Assistant Sub-Inspector Gurnam Singh accompanied by constables would have gone on such a dangerous mission without any arm, except the service revolver with him. The High Court categorically concluded that the deceased and his companions were checking the trucks on the G.T. Road and extracting money from the truck drivers, 'therefore the respondent must have felt offended because it amounted to not only an unnecessary interference in the sphere of his jurisdiction but even to an illegal act of extorting money from the drivers of the vehicles by them. In this situation, when Ajaib Singh, accused, questions A.S.I. Gurnam Singh regarding his and his companions' misconduct, an altercation must have ensured between both of them which was the cause of the main occurrence. Thus, the version of the origin of the occurrence as given out by the accused appears to be more probable than the version of the same as put forth by the prosecution. It has been even so held by the trial court in its impugned judgment'. The High Court reversed the finding of the trial judge that the injuries on the person of the respondent were self inflicted as reference in this behalf be made to the statement of Dr. Ashwani Kumar, P.W. 3. The aforesaid injuries received by the members of the either party do not

A appear to have been self suffered by them. The learned trial Court has found that the injuries of S.I. Ajaib Singh could be self suffered as deposed to by the doctor. But this finding appears to be incorrect because even with regard to the injuries of constables Jit Ram and Chanan Singh, the doctor has opined that those would also be self suffered. It is not understandable how the learned trial Court in spite of that medical evidence has held that B the injuries of Constiable Jit Ram and Chanan Singh P.Ws. could not be self suffered. The High Court found that it appeared that Sub-Inspector Balbir Kumar of the accused party and constables Paramjit Singh, Jit Ram and Chanan Singh of the deceased party were armed with dandas at the time of occurrence and they probably used the same against their op- C ponents. The High Court also placed reliance on the report of forensic expert that shots had been fired from the revolver of ASI Gurnam Singh. It did not believe the version of prosecution that in fact the revolver of Gurnam Singh was not taken out from the holster because when the investigating officer went at the spot he found it bolted with the belt inside the woollen overcoat. The High Court consequently was of the opinion that D the act of shooting was within the scope of Clauses I and II of the exception as contained in Section 100 of the IPC and, therefore, the respondent was entitled to acquital.

When this appeal was heard earlier, late Sri R.K. Garg, the senior E counsel who appeared for the respondent in absence of Sri Virender Kumar, the learned senior counsel who appeared for the appellant, placed the entire record and urged that no previous enemity between the respondent and the deceased was found even by the trial judge and it was a case of mistaken identity for which it was the deceased himself who was respon- F sible. The learned counsel had urged that even the trial Judge had found that the respondent had the right of private defence. But the conviction was founded as the deceased and his companions had used dandas whereas the respondent had used firearms. He argued that the delay in criminal cases should not be lost sight of. According to him, at this distance of time it was just and expedient to compensate the deceased family monetarily G instead of entering into whether the respondent was liable to be convicted. He even offered a sum of Rs. 5 lakh not as a cover or an excuse but as a genuine feeling of remorse for what happened under mistaken belief. But when the appeals were listed on the next date Sri Virender Kumar appeared and stated that his clients refused to be compensated in terms of H money. He urged that he would like to argue and convince that it was case

of cold blooded murder. We accepted his request and the appeals were fixed for hearing afresh. A

Sri Virendra Kumar, the learned senior counsel, vehemently argued that the High Court has acted perversely as once it found that the revolver of the deceased was in his holster, the entire defence version fell to the ground. Learned counsel urged that even if it is assumed as held by the B High Court that the respondent and the accused had grappled in which dandas were used which caused injuries to the respondent, it did not give him the right of private defence to shoot ASI Gurnam Singh and constable Paramjit Singh. The learned counsel urged that the report of the forensic expert could not be relied on as the mere fact that shots were fired from C it, could not establish that it was used at the time of the incident. According to learned counsel, once the incident was admitted the burden was on the respondent to establish that he act, in exercise of right of private defence. He vehemently urged that in a case where it was found that the deceased party had not used any fire arm the respondent was not justified in shooting and killing two persons. It was argued that it was a cold blooded D murder as was apparent from the nature of injuries. He urged that the shot in the forehead and that also through and through indicated that the firing was done from a close range when the deceased had been rendered helpless. On the other hand, Sri U.R. Lalit, the learned senior counsel for the accused, placed reliance on the findings recorded by the trial judge and the High Court and urged that once the prosecution version was dis- E believed, the respondent could not be convicted on the plea taken by him in defence. It was submitted that in any case it cannot be said that in the facts and circumstances of the case the finding recorded by the High Court was perverse or palpably erroneous. He urged that the incident was of 1976. The appellant was acquitted by the High Court in 1980. In conse- F quence of it he has been reinstated and is working as Deputy Superintendent of Police. He, therefore, pleaded for maintaining the order of the High Court.

Prior to adjudicating on the rival submissions, it appears necessary G to preface it with few observations general in nature but vital according to us. Although crime never dies nor there should be any sympathy for the criminal, yet human factors play an important role and reflect advertently or inadvertently in the decision making process. In this appeal there is a time lag of more than eighteen years from the date of incident and nearly fifteen years from the date of acquittal and its hearing. By any standard it H

A is shocking. And this has been aggravated by still more shocking behaviour of the Government which shall be adverted later. Speedy trial, early hearing and quick disposal are *sine qua non* of criminal jurisprudence. In some countries like England days are fixed statutorily for trial of cases. Keeping an accused in custudy for a day more than it is necessary, is constitutionally impermissible and violative of human dignity, freedom of life and liberty. B The overcrowded court dockets, the phenomenal rise of public interest litigation, duty to ensure enforcement of fundamental rights undoubtedly keeps this court under stress and strain. But that cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not do any credit rather makes one sad. If the C accused is not granted bail and serves out the sentence then the appeal is rendered academic for all practical purposes. And the right to establish innocence fades away in lack of enthusiasm and interest. If he is granted bail then long delay may give rise to humane considerations. Time heals the gravest scar and mitigates deepest injury suffered physically, mentally and emotionally. Therefore, if the courts have been rendered helpless and D the exasperating delay is threatening to eat away the system then the Governemnt may consider either to increase the strength to clear the backlog or devise some mechanism by which criminal appeals pending for more than reasonable time in higher courts should stand disposed of.

E That the incident was shocking admits of no doubt. May be sitting as the appellate court the task was not easy. But where the High Court has set aside the coviction under Section 302 IPC after delving in depth and discussing evidence in detail, should this Court interfere, merely, because there could have been other view? We agree that this Court is not F precluded or the Court hearing appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a court hearing appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order. What had G persuaded us to re-hear the appeal was that the revolver of the deceased was in the holster beneath the overcoat. At the first flush, it appeared to be a clinching circumstance. But even after accepting this and ignoring the opinion of forensic expert, the finding of the High Court is neither rendered perverse nor infirm nor palpably erroneous. It having been found H by both the High Court and the Trial Judge that the defence version that

the respondent received the information from a truck passing from that direction that some persons in the police uniform were forcibly collecting money from the truck drivers whereupon the respondent reached there, chellenged the deceased who did not disclose his identity rather tried to move towards the car giving an impression that he was about to run away whereupon the respondent rushed towards him, grappled with him and was injured with danda blows used by three companions of the ASI, it is very difficult to say, as held by the High Court, that he had not developed a reasonable apprehension that if fire arm was not used he was himself likely to be killed. The respondent had nine injuries. They have been found not to be self-inflicted. He was attacked by the deceased and his companions. The Trial Judge found that there was no previous enmity. The submission that the respondent was not entitled to use firearm as he was attacked by dandas only cannot be accepted. That is not what is provided for by clauses (I) and (II) of Section 100 of the IPC. It shall depend on facts of each case whether the assault was such as could cause reasonable apprehension that death would otherwise be the consequence of such assault. If the High Court found that the respondent was assaulted by three persons with dandas, and hence the accused developed a reasonable apprehension that if he did not use the firearm then death would be the consequence, it cannot be said that the High Court was guilty of taking palpably erroneous view. In any case, the prosecution could succeed on the strength of its own case and that, as observed earlier, has not been found to be authentic even by the trial judge. The conviction being solely based on failure to establish that the respondent had not exceeded his right of self-defence, it would not be an exercise of sound discretion to interfere with the order passed by the High Court.

Before closing this case, we shall be failing in our duty if we do not record our serious disapproval of the manner in which the Government not only reinstated but promoted the officer when the appeal by it against his acquittal was pending in this Court. In our opinion the Government would have been well advised to adopt the sealed cover procedure, a firmly established and well known practice in service law. Murder by a police officer is provocative. The trial of the officer and conduct of the Government both are in public glare. It is not the competency or efficiency of the officer but his conduct and behaviour and approach of the Government towards such officer which is measured in social scales. Such unwarranted actions of the Government shakes the confidence of common man in the

A system. He loses faith in it when a person who is standing trial in appeal is promoted.

For the reasons stated above this appeal fails and is dismissed. The respondent shall deposit a sum of Rs. 5 lakhs within a period of one month from today with the Registrar of the High Court as was offered on his B behalf earlier. Out of this amount, Rs. 3,50,000 will be paid to the dependents of ASI Gurnam Singh and Rs. 1,50,000 to the dependents of constable Paramjit Singh.

U.R. Appeal dismissed.