BALWANT SINGH

v.

STATE OF PUNJAB AND ANR.

FEBRUARY 18, 1994

[K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

Indian Penal Code, 1860—Section 304A—Police party on duty—Clash—Constable firing without any aim to scare away people including attackers—Shots hitting by-standers—Death—Nature of offence—Held guilty of offence under Section 304-A and not under Section 299 or 300.

'Rash Act'—What is.

The appellant, A-2, a Police Constable, was tried under Section 302 I.P.C. and alongwith him two other Constables A-1 and A-3, were also tried under Sections 302/34 I.P.C. on the basis of a Complaint filed by P.W.5, brother of one of the deceased. The complainant's case was that on 13.9.93 at 9 P.M. he heard the alarm of deceased No.1 and 2 from the side of a nearby flour mill of his house. On going to the scene of occurrence he saw that A-1 and A-3, who were beating PW-11, instigated the appellant to shoot the deceased saying that they had come to help PW-11. Immediately thereafter the appellant fired two shots from his service rifle, first of which hit deceased No.1 and the second hit deceased No.2 resulting in their death. The third shot fired by the appellant did not hit anyone. In the meantime PW-10 reached the spot and when PW-5 and PW-10 tried to overpower the appellant, A-3 attacked them with a danda and in self-defence PWs 5, 10 and 11 inflicted injuries on the accused with sotas. The appellant also received injuries at the hands of the complainant.

The version of the accused was that they went to the place of occurrence in connection with law and order problem and they had also to serve a challan on PW-11 and his brother They met PW-11, near the flour mill, who was armed with Gandasa. An altercation took place between them and in the meantime brother of PW-11 also came there armed with Gandasa and assaulted A-3, while PW-11 assaulted A-1. Thereafter the appellant fired a shot in the air in order to scare them away but when they did not stop assaulting he fired another shot in the air and then brother of PW-11 gave a blow on appellant's head while PW-11 grappled with him.

A In that process a shot went off from the rifle which hit two persons who were coming towards the place of occurrence in line one behind the other.

The Trial Court acquitted all the three accused. On appeal the High Court confirmed the acquittal of A-1 and A-3 but set aside the order of acquittal of the appellant and convicted him under Section 302 and sentenced him to undergo imprisonment for life holding that (i) there was no probability of accidental firing; (ii) both the by-standers-deceased were hit by two separate shots and; (iii) the right of private defence was not available to the appellant as against innocent by-standers.

C In appeals to this Court it was contended on behalf of the appellant that under the circumstances the appellant was only discharging his duty and he cannot be held guilty of any offence or at the most he was punishable under Section 304-A I.P.C. On behalf of the complainant it was contended that the appellant must atleast be attributed knowledge that the act committed by him was imminently dangerous; therefore, the offence D committed by him was punishable under Section 302 I.P.C.

Allowing the appeals in part, this Court

HELD : 1. The appellant had no cause to intentionally shoot at the E deceased persons. As found by the High Court the appellant started firing indiscriminately only after the clash took place between PW-11 and the A-1. The accused including the appellant were also attacked by PW-11 and his brother and they received injuries at their hands. If, in such a situation, the appellant as ordered by A-1 fired it cannot be said that he intentionally did so nor he could be attributed definite knowledge that he was likely to F shoot some by-standers. In such a situation any of the clauses of Section 299 or 300 I.P.C. is not clearly attracted. [15-G, 17-A-B-C]

2. The provisions of Section 304-A apply to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. Therefore, this provision is directed at offences G outside the range of Sections 299 and 300 I.P.C. and obviously contemplates those cases into which neither intention nor knowledge enters. The words 'not amounting to culpable homicide' in the Section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The H Section applied only to such acts which are rash or negligent and are

directly the cause of death of another person. [17-D-E] A

2.1. A rash act is primarily an over hasty act as opposed to a deliberate act but done without due care and caution. [17-F]

3. The appellant did not aim at the two deceased persons who were away. It was night time and it cannot definitely be said that the appellant B could have seen them. In fact PW-11 and his brother who started assaulting A-1 and the appellant were not hit by the shots fired by the appellant. That itself shows that the appellant fired his rifle without any aim and obviously to scare away the people including PW-11 and his brother and he did so as directed by A-1 who was in command of the police party. C However, even in such a situation, he had to act in a prudent manner. But when he acted in such a haste, rashly and without circumspection and due care and caution with regard to the safety of other innocent people, then the only inference is that his rash act amounted to culpable rashness attracting the provisions of Section 304-A IPC. [18-H, 19-A-B]

D

Sadhu Singh Hamam Singh v. *State of Pepsu*, A.I.R. (1954) S.C. 727; *Mrs. Meera Puri* v. *State of Nagaland*, 1971 Crl. L.J. 539; *In Nga San Win*, A.I.R. (1933) Rangoon 326 and *Emperor* v. *Morgan and Anr.*, (1909) 9 Crl. L.J. 393, referred to.

E

3.1. The conviction of the appellant under Section 302 IPC and sentence of imprsionment for life awarded thereunder are set aside. Instead he is convicted under Section 304-A IPC, and is sentenced to undergo two years' rigorous imprisonment. [19-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal F Nos. 8 and 9 of 1984.

From the Judgment and Order dated 12.10.83 of the Punjab & Haryana High Court in Crl. A. Nos. 664-DBA & 356-DBA of 1981.

G

M.S. Gujral, Ms. Mana Chakraborty and R.K. Mehta for the Appellant.

Ranbir Yadav, R.S. Suri and P.N. Puri for the Respondents.

The Judgment of the Court was delivered by H

A **K. JAYACHANDRA REDDY, J.** The appellant Balwant Singh, Police Constable No. 822, Police Lines, Ferozepur (original accused no.2) was tried for offence punishable under Section 302 I.P.C. and alongwith him two other Constables (original accused nos. 1 and 3) were also tried for offence punishable under Sections 302/34 I.P.C. on the basis of a complaint
B filed by Sohawa Ram, P.W. 5, brother of Pahalwan Ram, one of the deceased in the case. The police, however, challanged the appellant under Section 304-A I.P.C. The trial court acquitted all of them. The State of Punjab as well as the complainant filed two separate appeals in the High Court against the order of acquittal. The High Court by a common judgment in the two appeals set aside the order of acquittal of the appellant
C and convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life. The acquittal of the other two accused was confirmed. Hence the present appelas under Section 2 of the Supreme Court (Enlargment of Criminal Appellate Jurisdiction) Act, 1970 read with Section 370 Cr. P.C.

D The complainant's case is as follows :

On 13.9.83 at about 9 P.M. Sohawa Ram, P.W.5 was present in his house in Village Sajhrana. He heard an alarm from the side of a nearby flour mill and he went towards that side and found that Pahalwan Ram
E (deceased No. 1) and Karnail Singh (deceased no. 2) were running towards the flour mill raising alarm of *'Na Maro, Na Maro'*. At that time Head Constable Sat Pal, A-1 and Constable Nirmal Singh, A-3 were beating Bhagwan Singh, P.W.11 in front of the flour mill. Then, according to the complainant, both of them instigated the appellant Balwant Singh to shoot
F the deceased saying that they had come to help P.W.11. The appellant immediately fired two shots from his service rifle. The first shot hit deceased no. 1 and the second shot hit deceased no. 2. Both of them fell down and died. It is alleged that the appellant fired another shot but it did not hit anyone. P.W.10 Mehtab Singh and Bhagwan Ram, a member of the Panchayat also reached the spot and witnessed the occurrence and when
G P.Ws. 5 and 10 tried to over-power the appellant, Nirmal Singh, A-3 attacked them with a danda and in self-defence P.Ws. 5 and 10 and Bhagwan Ram inflicted injuries on the accused with Sotas. The appellant also received injuries at the hands of the complainant party. P.W. 10 accompanied by the Sarpanch went to the Police Station and lodged a
H report before S.I. Jagir Singh, P.W.13, who registered the crime, went to

the place of occurrence at 12.45 A.M. on the same night and found the dead bodies of deceased nos. 1 and 2. He also found the appellant having injuries who gave a report against P.W.11 and his brother Fauja Singh. The rifle of the appellant was seized. P.W.13 held the inquest and sent the dead bodies for post-motem. He also recovered empty rounds from the spot and seized them. The Doctor, P.W.1, who conducted the post-mortem on the two dead bodies found fire-arm injuries and he opined that both of them died because of those injuries. P.W..2, another Doctor, examined the appellant and found 10 injuries on him including an incised injury. On Nirmal Singh, A-3 the same Doctor found 11 injuries. When examined under Section 313 Cr.P.C. the accused denied the prosecutiog version and gave their own version of the occurrence which is as under :

"On the day of occurrence Nirmal Singh, H.C. Sat Pal and myself left the police station under the instructions of S.H.O., who had requisitioned our services, for patrolling Fazilka-Abohar Road as there was agitation of farmers relating to short supply of diesel. In the evening, on our way back, we went to Village Sanjhrana as I was to intimate Bhagwan Singh and his brother Fauja Singh against presentation of challans against them in the court on the next day. Santa Singh was also to be intimated about this fact. We first of all went to the house of Santa Singh. After having our meals there when we were going to the house of Bhagwan Singh and Fauja Singh, Bhagwan Singh and Balvinder Singh were seen standing near the flour mill of Madan Lal. Bhagwan Singh was armed with a *gandasa* at that time. H.C. Sat Pal asked Bhagwan Singh that he should either accompany them to the police station or give some surety for appearance in court on the following day as challan under the Excise Act was to be presented in Court against him and his brother Fauja Singh. Bhagwan Singh refused to accompany to the police station and to give surety. He rather started quarrelling with Sat Pal. We tried to apprehend him as a result of which my turban as well as that of Nirmal Singh fell down on the ground. In the meantime, Fauja Singh, brother of Bhagwan Singh also came there, armed with a *gandasa*. Fauja Singh gave a *gandasa* blow from its reverse side on the head of Nirmal Singh. Bhagwan Singh wielded his *gandasa* towards H.C. Sat Pal but he escaped the blow by retracing his steps. I fired one round from my service rifle in the air in order to scare them away but Bhagwan Singh and his

companions did not stop assaulting us upon which I fired another shot in the air. Fauja Singh them gave a *gandasa* blow from its sharp side on my head. Bhagwan Singh then grappled with me. In that process a shot went off from my rifle which hit two persons who were coming towards the place of occurrence in a line, one behind the other. Later on, I came to know the names of those persons as Karnail Singh and Pahalwan Ram. I again operated the bolt of the rifle as a result of which the empty round also fell down. My rifle was snatched by Bhagwan Singh and I was given more injuries by Bhagwan Singh and his companion. In the meantime, Sarpanch also came there. He rescued me from my assailants. He took me to the house of Guranditta along with my rifle. The S.I. came there and I narrated the whole occurrence to him."

In defence they examined D.W.1, A.S.I. Mukhtiar Singh and D.W.2, Harnam Singh, Sarpanch. It can therefore be seen that there are two rival versions.

The version of the complainant party is given by P.Ws.5 and 11. According to them three shots were fired by the appellant and the first shot hit deceased no. 1, second shot hit deceased no. 2 and the third shot did not hit anyone and the said shots were fired at the instigation of other two accused and that the appellant was apprehended on the spot and in the scuffle he received injuries at their hands and that Nirmal Singh, A-3 fell down and received some injuries in the process. According to the defence version H.C. Sat Pal, A-1, Constable Nirmal Singh, A-3 and the appellant, A-2 left the police station under the instructions of the S.H.O. on the day of occurrence for patrolling as there was agitation of farmers and they went to Village Sanjhrana to intimate P.W.11 and his brother Fauja Singh regarding the presentation of challan against them in the court on the next day and when the accused were going to their houses they saw P.W.11 armed with a gandasa standing near the flour mill. H.C. Sat Pal asked P.W.11 either to accompany them to the police station or to give some surety for appearance in the court on the following day. He refused to accompany them or to give surety and when they tried to apprehend him, the turbans of A-2 and A-3 fell on the ground. In the meantime, Fauja Singh, brother of P.W.11 armed with a gandasa also arrived there. He gave gandasa blow from its reverse side on the head of Nirmal Singh, A-3 and P.W.11 wielded his gandasa towards H.C. Sat Pal but he escaped. At that

juncture the appellant fired one round from his service rifle in the air in order to scare them away but P.W.11 and Fauja Singh did not stop assaulting them upon which the appellant fired another shot in the air and Fauja Singh gave a gandasa blow on the head of the appellant and P.W.11 grappled with them. In that process a shot went off from the rifle which hit two persons who were coming towards the place of occurrence in a line one behind the other. From these two rival versions it can be seen that the place and time of occurrence are not in dispute and that the shots emnated from the rifle of the appellant resulted in the death of two persons. But the question is which of the versions is true namely whether it was accidental as pleaded by the defence or whether the deaths were caused intentionally as alleged by the complainant ?

The High Court ruled out the possibility of accidental firing as alleged by the defence and also held that the right of private defence is not available to the appellant as against innocent by- standers. The High Court, in other words, accepted the defence version to the extent that the accused received injuries at the hands of P.W. 11 and his brother Fauja Singh. One of the findings given by the High Court reads as under :

> "It seems that some altercation took place between Bhagwan Singh (P.W.11) and Head Constable Sat Pal respondent and thereafter Balwant Singh respondent started firing indiscriminately at the by-standers also, which is not permissible under the law."

The High Court having examined the medical evidence also held that both the deceased were hit by two separate shots fired by the appellant. We agree with the High Court that the two deceased persons died as a result of two separate shots fired by the appellant and that the two deceased were only by-standers. The actual quarrel and fight was between P.W.11 and his brother Fauja Singh on one hand and H.C. Satpal as well as appellant and Nirmal Singh, A-3 on the other and the appellant had no cause to intentionally shoot at the deceased persons. In this context one other finding given by the High Court is very significant which reads as under :

> "Therefore, it is clear from the evidence on the record that Balwant Singh respondent had deliberately indulged in reckless firing thereby causing the death of two innocent persons, namely Karnail Singh and Pahalwan Ram."

A Having given these findings the High Court, however, convicted the appellant under Section 302 I.P.C.

Learned counsel for the appellant submits that under these circumstances the appellant was only discharging his duty and he can not be B held guilty of any offence or at the most as challaned by the police he shall be deemed to have committed only an offence punishable under Section 304-A I.P.C. The learned counsel appearing for the complainant, on the other hand, contended that the accused had no right of self-defence and having regard to the fact that two persons were killed, it can not be held C to be a rash and negligent act on the part of the appellant. The learned counsel for the complainant or for the State, however, did not contend that the appellant intentionally caused the death of these two persons but added that he must atleast be attributed knowledge that such an act committed by him was imminently dangerous. Therefore from that point of view also the offence committed by him would be punishable under Section 302 D I.P.C.

Though the appellant has taken a specific plea that during the grappling the rifle went off accidently, in view of the medical evidence and also in view of the fact that three empty cartridges that were found, the E theory of accident can not be accepted. However, the presence of injuries on the accused supports part of the defence version namely that P.W.11 and his brother Fauja Singh inflicted injuries on them. Even in the earliest bail application filed by the appellant, he mentioned that he received injuries at the hands of these two persons. It can therefore be seen that the F accused who belong to the police force went to the Village in connection with law and order problem and also had to serve the challan on P.W. 11 and his brother and it was in that process that this unfortunate occurrence took place. They had no animosity against P.W. 11 and his brother. However, it is clear that P.W. 11 and his brother defied the accused and also inflicted injuries on them but neither of the accused tried to shoot at G P.W. 11 or his brother. Admittedly the two deceased persons had nothing to do with the occurrence and as held by the High Court they were only by-standers and if they were hit by the shots fire by the appellant it only shows that there was rash and reckless shooting by the appellant into the air or side-wards without aiming against anybody and must have been with H a view to scare away P.W. 11 and his brother or their other supporters.

As noted above the High Court found that the appellant started firing indiscriminately only after the clash took place between P.W.11 and the H.C. Sat Pal and he must have done it only to scare away the villagers from the point of view of maintaining law and order. Added to that, the accused including the appellant also were attacked by P.W. 11 and his brother and they received injuries at the hands of P.W. 11 and his brother. If, in such a situation, the appellant as ordered by H.C. Sat Pal fired, it can not be said that he intentionally did so nor he could be attributed definite knowledge that he was likely to shoot some by-standers. It must be remembered that the occurrence itself took place at about 9 P.M. when it was dark. Though, according to the prosecution, there was an electric bulb burning at some distance, however, since it was night time, the appellant could not have noticed clearly whether there were any by-standers. In such a situation any of the clauses of Sections 299 or 300 I.P.C. is not clearly attracted.

Then the question would be whether an offence under Section 304-A I.P.C. is made out? The provisions of this section apply to cases where there is no intention to cause death and no knowledge that the act done in all probablities will cause death. Therefore this provision is directed at offences outside the range of Sections 299 and 300 I.P.C. and obviously contemplates those cases into which neither intention nor knowledge enters. The words "not amounting to culpable homicide" in the Section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The Section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an over hasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case.

Sadhu Singh Harnam Singh v. *The State of Pepsu,* AIR(1954)SC 727 is a case where a Mahant went to the house of the accused who was having a drink party and the accused was respectful to him and was very anxious to show all hospitality to him. He wanted that the Mahant should not go away from his house without taking meals and spending the night with him.

A But seeing that the Mahant was going away, the accused fired his gun without aiming at the Mahant just to prevent him from leaving his place by terrifying him to some extent but unfortunately the shot hit the Mahant and he died. This Cout held that on the materials placed it was not proved that the accused had an intention of firing at the Mahant but it was a wholly rash and negligent act on the part of the accused and accordingly convicted B him under Section 304-A I.P.C. In *Mrs. Meera Puri* v. *The State of Nagaland*, 1971 Crl. L.J. 539, the facts were that the accused fired a rifle with knowledge that the children and others were near about and it unfortunately resulted in the death of a child. The Court also noted that the accused did not aim at the child or fired at the party. Goswami, C.J., as he then C was, who spoke for the Bench, held as under :

> "By her act in firing form the rifle in the way she did with the full knowledge of the children and others nearabout, she has done a rash and negligent act, which, although does not amount to culpable homicide, brings her within the mischief of S. 304-A, Penal D Code. We consider her rash and negligent act in firing in that way as culpable rashness and negligence and act merely an error of judgment or defect of (sic) intelligence."

In *Nga San Win*, AIR(1933)Rangoon 326, the accused, a Sub Inspector of E Police while pursuing a party of gamblers fired four shots in the air but a person was injured and died. Noting that the Sub Inspection fired from a short distance from the crowd, the Court observed that if he had only taken sufficient care and caution he would not have fired the four shots, while running, even into the air from such a short distance and that he acted with F overhastiness and held him guilty under Section 304-A I.P.C. In *Emperor* v. *Morgan and another*, (1909) 9 Crl. L.J. 393 two accused belonging to light infantry were practising at target shooting at a place by the side of a public road and a man was fatally wouded. A Division Bench of the Calcutta High Court found them guilty under Section 304-A I.P.C. holding that they fired the rifles without having taken any precaution or use of slightest cir- G cumspection with regard to the safety of others.

In the instant case, as held above the appellant did not aim at the two deceased person who were away. It was night time and it can not definitely be said that the appellant could have seen them. In fact P.W. 11 H and his brother Fauja Singh who started assaulting H.C. Sat Pal and the

appellant were not hit by the shots fired by the appellant. That itself shows that the appellant fired his rifle without any aim and obviously to scare away the people including P.W. 11 and his brother and he did so as directed by H.C. Sat Pal who was in command of the police party. However, even in such a situation, he had to act in a prudent manner. But when he acted in such a haste, rashly and without circumspection and due care and caution with regard to the safety of other innocent people, then the only inference is that his rash act amounted to culpable rashness attracting the provisions of Section 304-A I.P.C.

In the result, the conviction of the appellant under Section 302 I.P.C. and sentence of imprisonment for life awarded thereunder are set aside. Instead he is convicted under Section 304-A I.P.C. and is sentenced to undergo two years' R.I. The appeals are partly allowed to the extent indicated above.

T.N.A. Appeals allowed.