

State Of Madhya Pradesh vs Digvijay Singh on 10 November, 1978

Equivalent citations: AIR1981SC1740, 1981CRILJ1278, (1979)4SCC92, AIR 1981 SUPREME COURT 1740, 1979 (4) SCC 92, 1979 SCC(CRI) 717, (1980) SC CR R 157

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Bench: O. Chinnappa Reddy, P.N. Shinghal

JUDGMENT

P.N. Shinghal, J.

1. This appeal by special leave is directed against the appellate judgment of the Madhya Pradesh High Court dated October 26, 1971, by which the conviction of respondent Dig vijay Singh for an offence under Section 302 I.P.C. has been set aside and he has been acquitted.

2. The respondent used to live with his wife Smt. Tulsa Bai in village Man kapur, where he looked after the cultivation of his cousin Jaswant Singh (P.W. 13) who lived elsewhere and occasionally visited Mankapur to supervise the cultivation. Jaswant Singh came to Manka pur on January 8, 1968, in the evening. He found that his niece Smt. Tulsa Bai, wife of respondent Digvijay Singh, was unwell and was resting in a verandah. She was shifted to her room in the house. Respondent Digvijay Singh was also in the house. He said that he was also not feeling well. A cot was provided for him near the cot of his wife in the same room. Smt. Gomti Bai (P.W. 1), who was serving as maid servant in the house, took tea to the room in which Smt. Tulsa Bai and her husband respondent Dig vijay Singh were resting. She found that the door of the room had been closed from inside. She knocked at the door and called twice that it may be opened, When she called a third time, she heard a gun shot. It is alleged that Digvijay Singh opened the door immediately thereafter and ran out. Smt. Gomti Bai (P.W. 1) and Prem Lal (P.W. 2) ran after him and informed Jaswant Singh that the respondent had run away after shooting his wife. Shobha Ram (P.W. 3), village Patel, who lived nearby, came to the place of occurrence on hearing the gun shot and heard Smt. Gomati Bai (P.W. 1) telling Jaswant Singh that the respondent had run away after shooting his wife. Jaswant Singh asked Shobha Ram to go in the direction in which the respondent had gone. He did so. He found the respondent at the house of Bhaiya Lal (P.W. 8) in village Ramkhiriya, which was close by. He tried to bring back the respondent, but he refused. He therefore told Ram Narain (P.W. 7), son of Bhaiya Lal, to see that the respondent did not abscond, and came back to Mankapur. He sent report Ext. P-1 to police station Udaipura, which was at a distance of 10 miles, the same night, at about 10-30 p.m. It was mentioned in the report, inter alia, that Smt. Tulsa Bai had succumbed to the gun shot injury

and her dead body was lying on the bed in the room. The respondent, in the meantime, tried to run away from the house of Bhaiya Lal (P.W. 8), but he was brought back and was ultimately taken to Mankapur and kept confined in a room. The police arrived at Mankapur at about 2 a.m. , when the respondent was taken out for answering the call of nature. He however managed to escape and jumped into a nearby well. He was taken out and the investigation of the case was commenced on the arrival of the Station House Officer. The dead body was found lying on the cot and was sent for post-mortem examination. The post mortem was performed by Dr. S.L. Sharma (P.W. 14) whose report (Ext. P-11) has been placed on the record. The police also recovered a gun (article 'C') from the house of the respondent vide memorandum Ext. P-4. It was sent for examination to the ballistic expert whose opinion Ext. P-10 is also on the record. It was a muzzle-loading gun of which the respondent held licence Ext. P-15. The respondent was challaned on completion of the investigation.

3. He did not plead guilty to the charge under Section 302 I.P.C. in the trial Court, and contended that he had been falsely implicated by Jaswant Singh. He admitted that he was looking after Jaswant Singh's cultivation at Mankapur and stated that Jaswant Singh rebuked him on January 8, 1968, and that when he had gone out to answer the call of nature, he heard the gun shot. He returned to his house and saw Jaswant Singh standing in front of his room with a gun in his hand, and it was he who informed the respondent that the gun was fired accidentally. The respondent however admitted that he was kept inside the room throughout the night.

4. The Sessions Judge placed reliance on the statements of Smt. Gomti Bai (P.W. 1) and Prem Lal (P.W. 2), and the other circumstantial evidence on the record, as well as the conduct of the respondent, and reached the conclusion that, the chain of circumstantial evidence was complete and the defence taken by the respondent was false. He therefore convicted the respondent of the offence of murder under Section 302 I.P.C. and sentenced him to imprisonment for life.

5. The High Court took notice of the contention of the respondent's learned Counsel that he was not in a position to support the version of the respondent about the incident, but held that it would be reasonable and proper to conclude, on a consideration of the circumstances, that the gun went off accidentally and the respondent had no intention of killing his wife. The High Court therefore proceeded to consider the question whether the respondent was entitled to the benefit of the exception under Section 80 I.P.C. In that connection the High Court made a reference to the statements of Jawahar Lal (P.W. 6) and Ram Narain (P.W. 7) who had stated that the respondent told them that when he wanted to go out to the field, his wife Smt. Tulsa Bai prevented him from going and in the "Jhuma Jhatki" (scuffle) which followed, the gun went off and his wife was hurt.

6. The High Court was in no doubt that the death of Smt. Tulsa Bai was "homicidal", by gun shot injury, and that the plea of the accused that Jaswant Singh (P.W. 13) was responsible for the crime was absolutely without merit. The High Court however took the view that the false pleas were taken by the respondent out of "fear of admitting that it was his own hand which was responsible for the death of the deceased". It therefore proceeded to examine whether the death was caused intentionally, or by accident, without any criminal intention or knowledge. In doing so the High Court placed reliance on the statements of Jawahar Lal (P.W. 6) and Ram Narain (P.W. 7) about what the respondent had told them about the incident, and took the view that although the

respondent must be presumed to know that his gun was loaded, he did not know that his wife would catch hold of him and would grapple with him in her attempt to prevent him from going to the field. The High Court therefore held that the interruption by Tulsa Bai was an "unexpected situation" and that if the gun, which could be fired at half cock position, went off, it could not be held that the necessary elements of the offence of culpable homicide amounting to murder had been established. The High Court made a reference to some decided cases, and held that as the respondent had succeeded in raising a reasonable doubt as to his guilt, he was entitled to its benefit. In that view of the matter, the High Court held that looking to the position of the injury and the absence of any motive, the respondent could not be held guilty of the murder, and acquitted him as aforesaid.

7. The only question for consideration is whether the evidence on the record could justify the finding of the High Court that the gun went off accidentally, or whether it was fired intentionally to commit the murder of Smt. Tulsa Bai. In this respect the following facts and circumstances have been fully established.

8. It has been proved by Bhanwar Singh (P.W. 22), who was the Station House Officer of police station Udaipura and investigated the case, that he recovered a muzzle-loading gun (article 'C') from the room where the dead body was lying on the bed with pellet injuries and that its licence Ex. P-15 was in the name of the respondent. It cannot therefore be doubted that the gun belonged to the respondent and was in his possession as it was recovered from the room where his wife died of gun shot in his presence, It will be recalled that the High Court had no hesitation in rejecting the respondent's defence that his wife had been killed by Jaswant Singh when he had gone out to answer the call of nature,

9. It has also been satisfactorily established by the evidence on the record that Smt. Tulsa Bai was unwell and was resting on cot inside the room of the respondent. This has been proved not only by the statement of Smt. Gomti Bai (P.W. 1) but also by the statements of several other prosecution witnesses including Prem Lal (P.W. 2) and compounder Hari Om (P.W. 4). The compounder not only gave a coramine Injection to Smt. Tulsa Bai shortly before the incident, but he also gave medicine to the respondent who said that he too was not feeling well. It has been proved by the statements of Smt. Gomti Bai (P.W. 1) and Prem Lal (P.W. 2) that the respondent also stated that he would take rest in the same room with his wife, and both of them stayed in it. Smt. Gomti Bai has clearly stated that the room was closed from inside and only the respondent and the deceased were there.

10. It appears from the statement of Smt. Gomti Bai that when she took tea to the room of the respondent, she found that the door was closed from inside. She knocked at the door to get it opened, and called twice. When she called a third time, she heard the report of gun fire in the room. Immediately thereafter she saw the respondent opening the door, and coming out of the room. When he began to run away, she and Prem Lal went after him and informed Jaswant Singh who was near the house at that time.

11. It has been proved by the statement of village Patel Shobha Ram (P.W. 3) that when he reached the place of occurrence after hearing the gun shot and shouts, he was asked by Jaswant Singh to go

in the direction in which the respondent had run away. He did so, and reached village Ramkhiriya where he found the respondent at the house of Ram Narain (P.W. 7). He told the respondent that he had been called by Jaswant Singh, but he refused to go. He therefore informed Ram Narain that the respondent had come after shooting his wife and should not be allowed to escape. The statements of Ram Narain and his father Bhaiya Lal (P.W. 9) corroborate the statement of Shobha Ram. The statements of these two witnesses as well as the statement of chowkidar Jawahar Lal (P.W. 6) show that while the respondent was under their watch, he rushed out of the house on the pretext of making water and was caught and brought back. He was ultimately taken to Mankapur and kept inside a room until the arrival of the police at about 2 a.m. The evidence on the record further shows that the respondent went out on the pretext of easing himself and jumped into a well from which he was rescued and taken in police custody.

12. The gun (article 'C') which was recovered from the room of the respondent near the dead body and was taken in police custody, was sent for examination by the ballistic expert S. D. Gandha (P.W. 19). He has stated that he found the gun in working condition and that its barrel showed signs of discharge. He has also stated that the pellets which were recovered from the dead body could have been fired from it.

13. The above facts and circumstances are themselves quite sufficient to prove, beyond any doubt, that Smt. Tulsa Bai died as a result of gun shot injury from the gun of the respondent and in no other manner.

14. We have carefully examined the question whether the gun could have been fired in the scuffle to which reference was made by the respondent to Jawahar Lal (P.W. 6) and Ram Narain (P.W. 7). It is important to remember that Smt. Tulsa Bai was unwell and had been administered an injection of coramine a little while ago. She was lying on her bed. The respondent also gave out that he was unwell and was lying on an other bed nearby. It is difficult to understand why he, in that situation, should have thought of going to the field at that hour. Even if he wanted to go to the field, there was no necessity for him to load the muzzle-loading gun inside his room, and to ignore his wife's protests against his going when she was ill and did not want him to go. But apart from this, there are two important facts which completely disprove the theory of accidental firing which was set up by the respondent's counsel in the High Court.

15. Firstly, we find from the statement of Dr. S. L. Sharma (P.W. 14) that there were two apertures on the posterior fold of the left axilla of the deceased with blackening of the skin around them and the apertures were in the nature of wounds. On internal examination, he found that there was fracture of two ribs of the left side on the back. The two apertures were side by side. If it had been true that the gun went off accidentally during a scuffle with the wife, the injuries would not have been on the back of her body but on some such part as could possibly come within the range of the gun during the scuffle. The position of the gun shot injuries therefore disproves the theory of accidental firing and shows that the shot was fired while Smt. Tulsa Bai was lying with her back towards the respondent. It is also significant that Dr. S. L. Sharma was not even asked whether the injury could be caused in a scuffle by accidental firing. On the other hand, we find that the statement of the medical officer that if the fire-arm had been discharged very close to the body, the pellets

would have entered the body en masse causing one wound, and not two apertures side by side, was allowed to go unquestioned.

16. Secondly, if there had been a scuffle, and if the shot had been fired while Smt. Tulsa Bai was preventing the respondent from going away, her dead body would not have been found lying on the cot. As it is, it has been stated by S. I. Bhanwar Singh that the dead body was lying on the bed as shown in map Ex. P-5.

17. We are therefore satisfied that the High Court misread the evidence in arriving at a contrary conclusion. It is true that both Jawahar Lal (P.W. 6) and Ram Narain (P.W.?) had stated that the respondent told them about accidental firing during a scuffle with his wife, but it was not the respondent's own case during the trial that the gun went off accidentally. On the other hand, he took the plea that he heard the gun shot while he had gone out to answer the call of nature and that it was Jaswant Singh who was responsible for the firing. It was only when the courts did not accept that version, that the respondent's learned Counsel thought of turning round and making his contention about accidental firing even though the respondent did not find it possible to set it up as a plea in his defence. The High Court also lost sight of the fact that the story of scuffle was not corroborated by the evidence on the record, and it erred further in stating, without any reason, that statements of Jawaharlal and Ram Narain were sufficient to discharge the onus of proving accidental firing. The High Court tried to explain away the incapacity of Smt, Tulsa Bai to have any scuffle with her husband by saying that a stiff opposition need not have been offered by her and that "by touching the gun or any other part of the body of the accused the deceased may have desired the accused not to go to the field." But if there had been some such touching, it could not be called a scuffle and would not have led to the firing of the gun. In this respect also, the High Court misread the evidence on the record. The High Court has stated further that the "position of the injury" also showed that the injury "suffered by the deceased was not intentionally caused by the accused". It has further been stated by the High Court that "if the accused wanted to kill her, it is not likely that he would have caused the injury on the arm near the axilla". The record however reads otherwise for, as has been pointed out, the position of the injury was at the back and was by itself sufficient to exclude any possibility of accidental firing during the course of a scuffle. It is difficult for us to appreciate what exactly is meant by saying that if the accused wanted to kill his wife, it was not likely that he would have caused the injury on the arm near the axilla. The report of Dr. S. L. Sharma (P.W. 14) shows that the gun shot caused apertures on the posterior fold of the left axilla and fractured two ribs on the left side on the back. The High Court therefore misread the evidence in holding that the injury was caused on the arm near the axilla. What the medical officer had stated was that he found charring on the left arm, and not that the injury was located there. Moreover, the High Court did not appreciate that even a gun shot' injury on the arm on the axilla would; have been sufficient to cause death and that, as it happened, the injury on the back did prove fatal.

18. It may be that the prosecution was not able to prove the motive for the crime, but that could not possibly matter when the circumstantial evidence on the record was sufficient to prove, beyond any doubt, that it was the respondent and no one else who intentionally caused the death of Smt. Tulsa Bai.

19. For the reasons mentioned above, we are constrained to allow the appeal. The acquittal of the respondent is set aside and he is convicted of the offence under Section 302 I.P.C. for causing the murder of his wife Smt. Tulsa Bai. The sentence of imprisonment for life awarded to him by the trial court is ~~reversed~~. His bail bond is cancelled and the Chief Judicial Magistrate, Raisen, is directed to arrest him and send him to jail to serve out the sentence,