

Kamal Singh vs State Of Haryana on 29 July, 2010

Bench: Chandramauli Kr. Prasad, Harjit Singh Bedi

CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1670 OF 2010
[ARISING OUT OF SPECIAL LEVE PETITION (CRL.) NO. 3244 OF 2009]

KAMAL SINGH

VERSUS

STATE OF HARYANA

O R D E R

1. Leave granted.

2. Ten persons in all, Kamal Singh the appellant herein and his brothers, Randhir Singh, Attar Singh & Baljeet Singh, Anees, son of Attar Singh, Ramrati wife of Kamal Singh, Maya wife of Attar Singh and Urmila wife of Baljeet Singh along with two others were brought to trial for offences punishable under Sections 148, 302, 307, 149 for the first eight persons and for the other two under Sections 420, 467, 468, 471, 120B and 200 of the IPC. Of the ten persons aforesaid, only Kamal Singh, the appellant was armed with a licensed shot gun which is the alleged murder weapon. As per the prosecution story, Wazir Singh, P.W. 7, resident of Village Khatiwas had two sons Phul CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE Kumar deceased and Anil Kumar, whereas Sumer Singh, Rakesh and Chhatar Singh were the brothers of Wazir Singh. A piece of shamlat land in front of the house of Rakesh, Ramesh and Sumer Singh, was being used by the latter to tether his cattle. Kamal Singh's house was also close by. On the 9th of May, 2002, Manti, wife of Rakesh was tethering her cattle in this plot of land when Ramrati accused hit a buffalo with a stick and also warned Manti not to tie the cattle at that place. A quarrel soon ensued but the matter was ultimately settled. On the 10th of May, 2002 i.e., on the very next day, at about 6:00p.m. the appellant armed with his .12 bore licensed gun along with the other accused climbed up to the roof of his house and

started abusing the complainant party. Wazir Singh, Sumer Singh, Abhimanyu son of Sumer Singh, Phul Kumar, Maya Ram and Chhatar Singh attempted to pacify him but without success. On the contrary, Randhir Singh, Baljeet Singh and Attar Singh raised a lalkara calling upon the appellant to sort out the other party once and for all. The appellant thereupon fired a shot at Phul Kumar into the left side of his chest on which he fell down and as Randhir Singh and Chhatar Singh came forward to assist Phul Kumar, the appellant again fired two shots hitting them as well. All the accused CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE also hurled brick bats and caused several injuries to the witnesses and as Maya Ram, Indrawati and Phulwati came forward to rescue the injured, the appellant again fired from his gun hitting them as well. On hearing the sound of the gun shots a number of persons rushed to the spot on which all the accused came down from the roof and ran away. They also found that Phul Kumar and Maya Ram had died of their injuries. Chhatar Singh and Indrawati were, however, shifted to the PGI, Rohtak whereafter Wazir Singh PW 7, lodged a report at police station Sadar, Dadri. Chhatar Singh also died a short time later. The accused were arrested over several days and on the statement made by the appellant, the weapon of offence i.e., his licensed shot gun along with some catridges was taken into possession. On the completion of the investigation, the accused were brought to trial. The trial court relying primarily on the statements of P.W. 7-Wazir Singh and PW 16 - Indravati and PW 17 - Ravinder, injured and PW - 18 Umed Singh convicted and sentenced eight of the accused viz., Kamal Singh, Randhir Singh, Baljeet Singh, Attar Singh, Ramrati, Mayaram, Urmila and Anil for offences punishable under Sections 148, 302, 307 read with Section 149 of the IPC and also for the offence punishable under Section CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE 27 of the Arms Act with respect to the appellant. Urmila, Dr. Surya Prakash Singh and Ram Chander were, however, given the benefit of doubt and were acquitted of all charges levelled against them.

3. An appeal was thereafter taken to the High Court. The High Court acquitted all but the present appellant on the plea that no injuries had been caused by any of them which revealed that their common object was not to cause the death of anybody and it also appeared that the entire family of the appellant had been implicated for reasons of enmity. The plea raised by the appellant that his case fell within Exception II to Section 300 was repelled for the reason that there was no evidence to show that the conduct of the complainant party had resulted in some apprehension in his mind of serious injury at their hands and the story that he had been first attacked with brick bats and lathis could not be believed as he had no injuries on his person.

4. Mr. Sushil Kumar, the learned senior counsel, has confined his submission only to the plea that the appellant had exceeded the right of private defence although it has also been submitted that as there was CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE no charge under Section 302 simplicitor against the appellant, he could in fact claim an outright acquittal. The learned counsel has submitted that in the circumstances he would not go into the technicalities of the matter and confine himself only to the benefit of Exception II to Section 300. The learned counsel has brought to out notice the findings of the trial court in this matter which we reproduce hereunder:

"Moreover, defence taken by accused Kamal Singh quits fanciful imaginary and without any basis. His defence is that when he was coming back to his house and was

passing in front of the house of PW Ramesh, he was encircled by the complainant party. Phul Kumar (since deceased) tried to inflict lathi blow to him and other PWs gave him beatings, then in order to save himself, he fired a shot upon Phul Kumar from his gun, then he rushed inside his house, closed the door and went up stairs. The complainant party then broke open the door of the house and broke his window panes then he fired shots only to scare them away. But accused Kamal Singh was not having even a scratch on his person. All the three deceased persons and other three injures Pws, were quite empty handed. There is nothing to presume that any one of them was having any lathi or that Phul Kumar tried to inflict lathi blow to Kamal Singh. In the circumstances, how Kamal Singh would have right to kill Phul Kumar by firing a shot from his licensed gun. Even if, he was tried to be inflicted lathi blows, he could have used his gun lathiwise from its butt side. There is also nothing on record to prove or to presume that doors or window panes of his house were broken. Moreover, had door of CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE his house been broke open then, in all probabilities he would not have gone unhurt. Certainly he would have been thrashed very well by so many persons. Further, if he had gone to safe place, then he had no right of self defence to fire shots to kill other two accused persons and to cause serious fire shot injuries to other Pws. Certainly, accused Kamal Singh had no right of private defence. Even if he was having, he had certainly exceeded the same, as he fired shot for killing as many as three accused persons and for causing fire shot injuries to other PWs."

It has been pointed out that even as per the findings of the trail court a case of exceeding the right of private defence was clearly made out and the appellant, was therefore, liable to be convicted and sentenced under Section 304 Part I of IPC and not Section 302 thereof.

5. Mr. Rao Ranjit, the learned counsel for the State has however, pointed out that the very basis of the argument made by Mr. Sushil Kumar was lacking as there was no evidence to indicate that any attack had been made on the appellant as there were no injuries on his person and the story that the door of his house had been broken by the complainant party was fallacious as there was no evidence to that effect. He has, further, submitted that the appellant had, without any basis and without any apprehension of CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE injury, caused the death of three persons.

6. We have heard and considered the arguments advanced by the the learned counsel.

7. As per the appellant's defence given in his examination under Section 313 Cr.P.C. he was returning from Siwani i.e. his place of employment and was going towards his house carrying his licensed gun and as he was passing by the house of Ramesh, he had been encircled by the complainant party and at that time Phul Kumar had tried to give him a lathi blow on which he had fired one shot from his gun killing him. He further stated that he had then run to his own house and closed the door but the complainant party had attempted to break open the door on which he had rushed to the roof and fired several shots in self defence resulting in two deaths and some injuries to the witnesses as well.

8. In this situation we are called upon to examine which of the two theories is correct.

9. We notice that there are three deceased in this matter. As per the admitted position the injury on CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE Phul Kumar had been inflicted from a very short range whereas the injuries to the others had caused from the roof of the house which would be 8 to 10 feet high. This fact is verifiable from the medical evidence as well. The post mortem examination of Phul Kumar's body revealed a rat hole injury 1" X .75" with inverted margins and tattooing and lacerations around it. It is evident from this injury that the pellets had entered the body enmasse and had exited from injury no.2 on the rear side of the body as the margins were everted. The premise that the injury had been caused from virtually point blank range is supported by the observations made in Modi's Medical Jurisprudence and Toxicology, Twenty Third Edition, under the Chapter 'Injuries by Mechanical Violence' at pp.722:-

"The effects produced by small shot fired from a shotgun vary according to the distance of the weapon from the body, and choking device. A charge of small shot, fired very close to, or within a few inches, of the body enters in one mass like a single bullet making a large irregular wound with scorched and contused edges, and is followed by the gases of the discharge which greatly lacerate and rupture the deeper tissues. Particles of unburnt powder expelled from the weapon behind the missile are driven to some distance through the wound, and some of them are found embedded in the wound and the surrounding skin, which is also singed and blackened by the flame and smoke of combustion. The exit wound CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE of a close range shot may show greater damage of tissues than the entrance wound, the margins are everted, but there is no evidence of blackening or singeing. At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enters as one mass, but are scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of powder. On the other hand, at a distance of six feet, the central aperture is surrounded by separate openings in an area of about two inches in diameter made by the few pellets of the shot, which spread out before reaching the mark. The skin surrounding the aperture may not be blackened or scorched, but is tattooed to some extent. At a distance of 12 feet, the charge of the shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin."

10. We further see that PW 12 Dr. U.S. Sisodia who had performed the post mortem examination on the dead appeared to have been caused by a single projectile from a very close range. It is nevertheless the admitted position that the weapon used by the appellant was his licensed shot gun is even otherwise proved as pellets had been recovered from the dead body of Maya Ram. The doctor, therefore, obviously CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE mistook a shot fired from point blank range, as being from a single projectile. When a comparison of

the injuries on Phul Kumar's body with those on the dead bodies of the other two victims ie. Chhattar Singh and Maya Ram is made it stands revealed that they had been shot from a distance of 10 to 12 feet which is the appellant's defence. Admittedly, in the case of Chhattar Singh also there appears to be blackening around the wounds but the distance is definitely much greater than that in the case of Phul Kumar as the dispersal of pellets would show. Likewise, in the case of Maya Ram, there were multiple pellet injuries but no blackening or scorching and on dissection several pellets had been located. To our mind, therefore, the story projected by the appellant that the injury caused to Phul Kumar was at ground level and from a very short distance when he had been attacked by him and that the injuries to the others had been caused when he had fired from the roof, is supported by the medical evidence. There is yet another circumstance which to our mind goes to the root of the matter. The positive finding of the High Court is that the story that the accused party had gone to the roof and thrown brickbats at the complainant party was incorrect and it is on that CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE basis that seven of the accused had been given the benefit of doubt and acquitted. The photographs which have been produced on record by the prosecution, however, clearly show the presence of a large number of brick bats lying around the house belonging to the appellant. The prosecution story, therefore, with regard to the brick bats having been disbelieved, the possibility that the story projected by the appellant could be the correct one, cannot be ruled out. We also notice from the record including, the FIR that there is no reference whatsoever to the pelting of stones by the accused.

11. In a matter relating to the right of private defence or exceeding the right of private defence some element of guess work based on common experience has indeed to come into play and it is for that reason that the Courts have gone so far as to rule that even though an accused may not stake a claim to the right of private defence, the Court can still give the benefit if it emanates from the evidence. In the case of a claim to the benefit of Exception II we feel that it is impossible to accept that a person who has been attacked, and in this case by several persons to know exactly where and when to stop and to use a hackneyed CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE expression, the evidence cannot be weighed in golden scales. The claim to this Exception is also perhaps the most risky and tenuous for an accused, although it is often the most appropriate one. The advice tendered by an experienced defence counsel is invariably ignored in favour of that of the co- prisoners who act as untrained legal advisors and warn an accused against taking such a plea. The defence version given by the appellant is that he had been attacked by half a dozen persons and he had managed to save himself as he was carrying his gun which he had used with telling effect. The trial court has given a somewhat unusual explanation by saying that though it could be a case of exceeding the right of private defence but the benefit could not be given to the appellant, the suggestion being that the gun ought to have been used not as a weapon but as a lathi. With great respect, to the learned judge, this observation belies logic and is absurd. It cannot be ignored that the appellant was a Commando and an ex-member of the National Security Guard and had been trained in the use of weapons, and was at the relevant time employed as a security guard in a bank premises and to expect a person like him when attacked, and that too by six or seven persons, to cover in fear and to use the weapon CRL.A. NO. OF 2010 @ SLP(CRL.) 3244 OF 2009 REPORTABLE as a lathi, cannot be countenanced.

12. We are, accordingly, of the opinion that Mr. Sushil Kumar's plea that the appellant had exceeded the right of private defence must be accepted. We make an order in the above terms and allow the appeal to this limited extent. We also direct that the conviction against the appellant be modified from one under Section 302 to 304 Part I and the sentence is also modified from life to ten years rigorous imprisonment; all other parts of sentence being maintained as it is.

.....J [HARJIT SINGH BEDI]J [CHANDRAMAULI KR. PRASAD] NEW
DELHI JULY 29, 2010.