

Punjab-Haryana High Court

State Of Haryana vs Puran Chand on 19 December, 2000

Author: H Bedi

Bench: H Bedi, A Garg

JUDGMENT H.S. Bedi, J.

1. This judgment shall dispose of Murder Reference No. 3 of 2000 and Crl. Appeal No. 261-DB of 2000. Both the matter arise out of the following facts :

2. At about 5.30 P.M. on 2.6.1997, P.W.4-Naresh Kumar (the complainant) and his cousin Pardeep Kumar were cutting fodder with the help of a machine in their kotha constructed in their gher in village Damla Kishanpura. P.W.5- Mahanto Devi (Naresh Ku-mar's mother) was close by placing cow-dung cakes along the side wall of their gher, whereas his uncle Ram Sarup and his brothers Ramesh and Surinder (all three deceased) were sitting on a bullock-cart parked in the gher. P.W.13-Jaswanto Devi, wife of Ram Sarup aforesaid, and her son Sanjiv Kumar, were putting fodder to the cattle tethered in the gher. Mahanto Devi came up to Naresh Kumar and told him that Puran Chand (Fauji), the accused, had told her not to place the cow-dung cakes near the wall and had threatened that he would shoot her. A short while later, the tranquillity of this pastoral setting was horrendously and for ever shattered when Puran Chand climbed on to the roof of the house of the complainant Naresh Kumar and fired a shot at Ram Sarup with his shotgun. On hearing the noise, Naresh Kumar and Pardeep Kumar immediately rushed out of the kotha and found Ram Sarup lying on the ground at some distance from the Cart. They also observed the accused firing two more shots directly at Ramesh and Surinder Kumar, whereas some of the pellets also hit Jaswanto Devi and her daughter P.W.12-Tarsem Kaur. On seeing what had happened, Naresh Kumar and the others went inside the kotha and hid themselves and on finding after some time that Puran Chand had run away, they came out and noticed that Ram Sarup, Ramesh and Surinder had all succumbed to their injuries. Information about the murders was given to the po-

lice-on telephone by Muni Lal Sarpanch, on which P.W.18-Sub Inspector Dhanna Ram reached the place of incident at about 8.00 p.m. and recorded the statement of P.W.4-Naresh Kumar at the spot and, on its basis, the formal first information report was registered at 8.20 P.M. at Police Station Sadar Yamunanagar, with the special report being delivered to the Illaqa Magistrate locally at 9.00 p.m. The police officer then made the necessary inquiries at the spot and amongst other things, recovered three empty cartridge cases from the roof of the house of the complainant. Accused Puran Chand was arrested on 5.6. i 997 and on a disclosure statement made by him, his licensed DBBL gun was recovered. Accused Raj Kumari was arrested two days later as it transpired during the investigation that she had given a lalkara that the three persons be done to death. On the completion of the investigation, a charge for the substantive offence under Section 302 of the Indian Penal Code was framed against Puran Chand, whereas Raj Kumari (his wife) was charged with the aid of Section 34 of the Indian Penal Code.

3. The prosecution in support of its case examined 18 witnesses in all, some of them being P.W.1-Vinod Kumar (Arms Cierk) who proved the licence Exhibit P-1 to show that the murder weapon, the DBBL shotgun was the weapon of Puran Chand, P. W.3-Dr. Vijay Mohan Atreja,

Medical Officer, Civil Hospital, Yamuna Nagar, who had on 2.6.1997 at 6.15 p.m. examined Tarsem Kaur, daughter of Ram Sarup, and had found three gun shot injuries on her person; P.W.6-Dr. Dinesli Goel, Medical Officer, Civil Hospital, Yamuna Nagar who, with the assistance of Dr. B.S. Deswal, had conducted the post mortem examination on the dead bodies and had observed various gunshot injuries . thereon; P.W.9-Constable Dinesh Kumar who tendered his affidavit deposing to the de-livery of the special report to the Illaqa Magistrate at 9.00 a.m.; P.W. 17-Dr. Deepan Jain another Medical Officer in the said Civil Hospital, who had at 10.30 P.M., the same evening, examined Jaswanto Devi, widow of Ram Sarup and had found one injury on her person; the four eye-witnesses, P.W.4-Naresh Kumar, P.W.5- Mahanto Devi, P.W.12-Tarsem Kaur and P.W.13-Jaswanto Devi, the last two being injured, and P.W. 18-Sub Inspector Dhanna Ram, the Investigating Officer. The report of the Forensic Science Laboratory was also tendered in evidence.

4. The prosecution story was then put to the accused. Pursan Chand accused admitted that he had fired the fatal shots, but had done so in self-defence when he had been chased by the three deceased with the object of causing him serious injury. In elaboration, he" stated as under :-

"I am innocent and is a victim of fabrication. As a matter of fact, about a week prior to the present occurrence when my elder daughter Suman was all alone at our home and she was taking bath at that time, Surinder, since deceased, came down from the staircase of our house with a bad intention and on seeing him my daughter Suman started raising alarm upon which Surinder fled away from the same staircase. Thereafter, on the next day or day after I convened a panchayat in which Surinder deceased was summoned and there in the Panchayat I rebuked and abused Surinder for his misconduct. On the next day of it my wife along with my children went to village Hamirpur at the house of my in-laws as schools were closed during those days. On 2.6.1997, I returned to my work from Yamuna Nagar and reached my house at 3 p.m. and when I was all alone inside my house deceased Ram Sarup, Ramesh and Surinder along-with some other persons came outside my house at about 4 p.m. and started hurling abuses and threats to me and they also started hitting the door of my Baitliak which was bolted from inside and in that situ-ation, I got frightened and in that situation after picking up my gun I opened the door of the other gate of my house and through that gate I started running in the street to save my 'life but Surinder etc. named above, started running after me and they also tried to cause injuries to me and in that situation out of apprehension of danger to my life I took a turn and fired in a huff which hit Surinder, Ramesh and Ram Sarup and thereafter I fled away out of fear. Had I not acted in right of my self-defence Surinder etc. would have liquidated me. From there 1 straightaway went to the Police Station Yamuna Nagar and narrated the whole occurrence to the SI IO concerned. I was illegally detailed in the police Station upto 5.6.1997 and then recovery of gun etc. were planted on me. No occurrence took place in the Bara as stated by the prosecution witnesses. I have been falsely fas-

tened in the present case."

5. The trial Court observed that the primary issue that would require determination was as to whether the accused had the right of self defence and whether there was a motive for the accused to have caused the death of three persons on the exhortation of his wife, co-accused Raj Kumari. On a consideration of the evidence on record, the trial Court observed that there was no evidence to prove

that Puran Chand had caused the injuries in the right of private defence as there was no apprehension that he would otherwise have been caused serious injury by the three deceased. The Court further observed that the evidence of the four eye-witnesses inspired full confidence and that their statements were fully corroborated by the medical evidence. The trial Court also observed that from the evidence of the aforesaid witnesses the motive for the offence stood proved. The Court, however, held that the involvement of accused Raj Kumari was clearly not spelt out as there was no conclusive evidence to that effect and, as a matter of fact, in the initial statements made to the police by the eye-witnesses, she had not been assigned any role in the incident. The trial Court accordingly acquitted Raj Kumari but made an order of conviction against Puran Chand.

6. The trial Court then went to the question of sentence and after examining a large number of judgments, observed that Puran Chand had caused three deaths without any serious provocation and over a very petty matter and, as such, was a menace to society and that in case he was not severely punished, the common-man would lose faith in the judicial system. The trial Court accordingly held that the matter fell within the category of the 'rarest of rare cases' which called for the death penalty. He was accordingly sentenced to death under Section 302 of the Indian Penal Code and also made liable to pay a fine of Rs. 2,000/-. The reference has been filed for the confirmation of the death sentence, whereas the appeal has been filed by Puran Chand challenging his conviction.

7. In the course of arguments before us today, Mr. R.S. Cheema, the learned senior Counsel, has not seriously disputed Puran Chand's conviction. He has, however, made a serious challenge to the award of the death penalty to him and has urged that the facts of the case clearly precluded it. In this connection, he has also pointed out with some vehemence that from an analysis of the scaled site plan (Exhibit PW) it appeared that only one shot had been fired by the accused which had resulted in three deaths with stray pellets hitting Jaswanto Devi and Tarsem Kaur and the prosecution story that this was a case of repeated firing on the three deceased, was not spelt out. In elaboration, he has urged that from the nature and dimensions of the injuries on the deceased as also on the injured witnesses, it appeared that buck shot had been used from a distance of about 67 feet and it, thus, appeared that one cartridge had claimed three lives.

8. Mr. Ram Avtar Singh, the learned Additional Advocate General, has however pointed out that the evidence of four eye-witnesses, two of them being injured, and the medical evidence clearly proved the prosecution case, as the number of wounds of entry and the pellets recovered from the bodies of the deceased would show that, in fact, three shots had been fired by Puran Chand.

9. We have examined this aspect of the matter and find that the prosecution story that three shots had been fired is based on unimpeachable evidence of injured witnesses. We have no reason to disbelieve them. In this connection, it is to be further noted that there were two wounds of entry .5 cm x .5 cm each on Tarsem Kaur, one wound of entry 2 cm diameter on the dead body of Ramesh and two pellets were also recovered from the abdominal cavity. Likewise, two wounds of entry were found on the dead body of Ram Sarup, both being 4 mm in dimension, and six pellets were recovered from the dead body. The post mortem examination of Surinder Kumar's dead body revealed that there were multiple 3 mm to 4 mm round size injuries scattered all over the chest,

abdoment including pericardial region and that two pellets had been recovered and that there was serious external injuries on the dead body. It is also probable that some-pellets would have gone astray keeping in view the dispersal of pellets and the range in question. We are, therefore, of the opinion that considering the number of injuries and the pellets recovered, the possibility that less than three shots had been fired was remote. We accord-

ingly reject this ptea raised by the learned Counsel.

10. We have (with reference to the above findings) examined the question of the gravity of the offence. In this connection, Mr. Cheema argued that the number of dead was not always a true indicator in this regard and the more significant factors were the motive which had led to the murders and the actual execution of the murders and if both these aspects were truly reprehensible that it could safely be said that the accused had forfeited his right to life as he was amenance to society, only then was the death penalty called for. He has primarily referred to the observations pf the Hon'ble Supreme Court in Allaud-din Mian and others v. State of Bihar, AIR 1989 Supreme Court 1456; Panchhi and others v. State of U.P., 1998 Supreme Court Cases (Crl.) 1561; Sheikh Abdul Ahmed and another v. State of Madhya Pradesh, 1998 Supreme Court Cases (Cri) 726; Om Parkash v. State of Haryana, AIR 1999 Supreme Court 1332; Sheikh Ishaque and others v. State of Bihar, 1995 SCC (Cri) 534; Shamshul Kanwar v. State of U.P., 1995(4) Supreme Court Cases 753; Bachan Singh v. State of Punjab, 1980 SCC (Cri) 580 and Vithal v. State of Maharashtra, 1994 SCC (Cri) 629 in support of his contention.

11. We have gone through the judgments cited by the learned Counsel. The broad ^principles that can be culled out therefrom are that it is not necessarily the number of deaths that must determine the gravity of the offences and ipso facto the quantum of sentence as what is perhaps of more importance is the motive for the murder and the manner in which it has been executed. If the motive was debased and obnoxious and the deaths caused in a particularly gruesome manner which indicate that the accused was a menace to ordered society and had, on that account, forfeited his life to be its member, can the death sentence be awarded. This question must be judged within these parameters, but on the facts of each case. We have accordingly examined this aspect very carefully. We find that there are no previous animosity between the parties and that a petty argument between neighbours had led to three unfortunate deaths. The motive was particularly trivial and a small altercation that had taken place between Mahanto Devi and the deceased just before the incident stands established from the evidence on record. We also observe that Puran Chand was an ex-serviceman, whose training would have imparted him a sense of discipline and acapacity to follow orders and to conceal his emotions, and it does appear that the prosecution has not fully brought out the motive and that something far more provocative and serious had happened, and that there might be something in his plea that an attempt had been made to molest his daughter a few days earlier. We also find that the distance from which the shots had been fired i.e. 67 feet would have ordinarily been at the extreme effective range of a shotgun using bird-shot but as buck shot had been used, the effective range had been substantially increased and it was this factor that led to three deaths. We are, therefore, of the opinion that though the murders were unfortunate and cruel, as all murders are, yet there was no premeditation nor were they perpetrated in a particularly cruel manner. In this view of the matter, the mere fact that the three persons were shot in cold blood,

would not bring the case within the category of the rarest of rare case as held by the Supreme Court in Bachan Singh's case (supra). We also find from the statement made by the accused, Puran Chand, before the Sessions Judge on 13.5.1999 that he was the father of small children and married to an ailing wife and that he was an ex-serviceman and that his tenure of service had been without blemish. We are, therefore, of the opinion that for the reasons recorded above, the award of the death penalty was not called for. We, therefore, decline the reference but sentence Puran Chand accused to undergo imprisonment for life and to pay a fine of Rs. 30,000/- and in default of payment of fine to undergo further R.I. for three years. The fine, if realised, shall be shared equally by the legal representatives of the three deceased.

12. Appeal dismissed.