

Vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 616 OF 2009

Yatendrasingh Ajabsingh Chauhan

... Appellant

Vs.

The State of Maharashtra

... Respondent

Mr. Niteen Pradhan i/b. Ms. S.D. Khot, Advocate appointed for the appellant.

Mrs. U.V. Kejriwal, APP for the Respondent/State.

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **JUNE 23, 2016**

JUDGMENT (Per Mrs. Mridula Bhatkar, J.)

This Appeal is directed against the judgment and order dated 4th/ 5th May, 2009 passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No. 1003 of 2006 thereby convicting the appellant for the offences punishable under section 302 of the Indian Penal Code for life imprisonment and fine of Rs.5,000/-, in default, to suffer S.I. for one month.

2. It is the case of the prosecution that the appellant was working in the company known as “Top security” and was posted as a security guard at Mannat bungalow owned by Actor Shahrukh Khan. Deceased Chandrapratap Singh and other security guards also deploy at the bungalow on the night of 14th August, 2006. Deceased Chandrapratap Singh

questioned accused why he was sitting in the chair and whether his revolver is filled with bullets or not. He also told the accused whether his fire arm is working or not. The accused, in anger, held Chandrapratap Singh with collar and then pulled the trigger of the revolver pointing at his chest, due to which Chandrapratap Singh fell down. PW-1 Sandeep Dharmaji Lakhan was also another security guard posted at the bungalow, who witnessed the incident. After hearing the firing sound, security guards and other persons came running at the spot. Chandrapratap Singh was shifted to the hospital, however, he succumbed to the bullet injuries. At the instance of the information given by Sandeep Lakhan, the offence of murder under section 302 and under the Arms Act was registered at C.R. No. 398 of 2006 against the accused. Postmortem was conducted by PW-9 Dr. Gajanan Sheshram Sawant. The police drew spot panchnama and recorded the statements of the witnesses. The appellant/accused was arrested. After completion of the investigation, the charge sheet was filed in the Court of Additional Metropolitan Magistrate, 9th Court, Mumbai. The case was committed to the Sessions Court. The learned Sessions Judge framed charge against the accused under section 302 of the Indian Penal Code. The accused pleaded not guilty. After considering the oral as well as documentary evidence, the learned Sessions Judge convicted the accused as mentioned above. Hence, this Appeal.

3. We went through the evidence of the witnesses, especially we have considered the evidence of PW-1 Sandeep Lakhan, PW-3 Baburao Shivaji Naik, PW-8 Dr. Hemantini Arvind Deshpande and PW-9 Dr. Gajanan Sheshram Sawant. After going through the evidence, we found that it is a full proof case.

4. The learned senior counsel Mr. Pradhan submitted that the case is based on uncorroborated evidence of single eye witness. He submitted that the evidence of PW-1 Sandeep Lakhan is not cogent and consistent with the evidence given by PW-9 Dr. Gajanan Sheshram Sawant and PW-8 Dr. Hemantini Arvind Deshpande on the point of the manner in which the deceased was shot. He submitted that PW-1 Sandeep Lakhan has admitted in the cross-examination that it was a contact shot and the accused had touched the revolver to the body of the deceased when he fired at him. However, the evidence of PW-9 Dr. Gajanan, who conducted postmortem, has given admission in the cross-examination that it was not a contact firing. The learned senior counsel further relied on the evidence of PW-8 Dr. Hemantini and similar admission is given by PW-8 corroborating evidence of PW-9 that the shot which was fired was not a contact firing. The learned senior counsel, on the basis of this discrepancy, tried to build up the defence that if the experts have specifically stated that it was not a contact firing,

then the evidence of PW-1 that accused touched the revolver to the body of deceased when he fired is false. The learned senior counsel have submitted that the opinion of two experts has nullified the statement or evidence of eye witness PW-1 Sandeep in what manner the revolver was fired at the deceased. This creates doubt whether PW-1 Sandeep was really present at the time of the incident; whether PW-1 has really seen the actual firing or not? The learned senior counsel submitted that the benefit of this doubt is to be given to the accused. He further argued that it was not a premeditated attack. The accused had no intention to kill the deceased. The action was sudden without any intention. He argued that thus the case falls not under section 302 but it is a case of culpable homicide not amounting to murder falling under section 304 Part I or II of the Indian Penal Code.

5. Learned APP, in reply, has submitted that the applicant/accused is rightly convicted under section 302. It is not a case of lesser degree offence. She submitted that there may not be premeditation to commit the crime, however, there was intention to kill deceased Chandrapratap Singh. She argued that though the experts opinion is different than the evidence of PW-1, the Court may consider the evidence of eye-witness, whose evidence is fully reliable and consistent with the circumstances which are brought on record by the prosecution.

6. There is only one eye-witness, i.e., PW-1 Sandeep Lakhan. He was given a duty on that night at Mannat bungalow along with the deceased and other security guards. PW-3 Baburao Naik is examined to prove the register maintained by the security guards. This register marked 'Exhibit 25' is produced before the Court where the guards have signed about their presence. Thus, there is no doubt that PW-1 Sandeep Lakhan, deceased Chandrapratap Singh and accused Yatendrasingh Chouhan were on duty at the relevant time at Mannat bungalow. The incident of firing has taken place at 11.45 p.m. at the gate. The complainant knew the deceased and the accused, as they were working together as security guards. In the evidence he has stated that Chandrapratap Singh asked Yatendrasingh why he was sitting on the chair and also asked whether bullets are filled in the revolver or not. It appears that accused lost his temper after hearing these questions and he told the deceased that he would know whether the revolver is working or not and he tested the revolver by firing at the chest of the deceased. In the cross-examination, it is brought on record that PW-1 Sandeep Lakhan was 2 feet away from the spot where the incident has taken place. Thus, the conversation between the deceased and accused was audible to the witnesses.

7. It is true that PW-1 Sandeep Lakhan while describing the assault has

stated in the chief that Yatendrasingh pointed revolver at the chest of Chandrapratap Singh and then opened the trigger of the revolver. However, in the cross-examination in paragraph 10 he gave admission that he asked the deceased as to what had happened. He further admitted that Yatendrasingh touched the revolver to the chest of Chandrapratap Singh and when it was fired, the revolver was touched to his body. PW-8 Dr. Hemantini was working in the Forensic Science Laboratory in Mumbai at the relevant time as Assistant Chemical Analyzer. She has examined six chambered .32 inches revolver, 5 intact revolver cartridges and revolver empty and also one lead bullet having rifling mark. She opined that empty which is Exhibit 3 is fired from the revolver Exhibit 1. She has stated that she has tested the bullets and then compared the lead bullet with test fired lead bullets and its marking parameters were similar and gave report dated 30th December, 2008. In the cross-examination in paragraph 19 she admitted that she gave opinion that the bullet must have been fired from the distance of one feet or less but the firing was not contact firing, i.e., touching the barrel of the revolver on the body of the victim. PW-9 Dr. Gajanan Sawant, who conducted postmortem, in paragraph 13 gave admission that firing by which the wounds were caused to the deceased was not contact firing.

8. Thus, the evidence of two experts corroborate each other that the

firing was not contact firing. However, eye-witness PW-1 Sandeep Lakhan gave admission in the cross-examination that Yatendrasingh touched the revolver to the chest of Chandrapratap Singh and when it was fired, it was also touched to the body. This admission prima facie appears contradictory to the opinion expressed by the experts on the point as to how the manner in which the bullet was fired. However, this minor inconsistency cannot nullify the presence of the eye-witness or his evidence. The witness in his examination-in-chief has stated that Yatendrasingh pointed revolver at the chest of Chandrapratap Singh. In examination-in-chief he has not stated that the accused has touched the revolver to the body of the deceased. He witnessed the incident when he was just 2 feet away. A possibility that the accused might have touched the revolver to the body of the deceased and at the time of actual firing, there could have been a gap of few inches between the body of the deceased and barrel of the revolver. It is not expected from the eye-witness, who has suddenly came such a shocking incident, to have a photographic memory of the minor details. For a witness, the accused pointed revolver at the chest of the deceased and fired very closely is a most significant fact which he has perceived and stated accordingly before the Court. We do not find any reason to disbelieve this witness. His evidence is natural, consistent and creditworthy. PW-9 Dr. Gajanan, who conducted postmortem, has opined that the cause of death was haemorrhage and shock

due to firearm injury (unnatural). The police witness who arrived there immediately, as information was given to them, and conducted the investigation, is also considered.

9. The submissions of learned senior counsel that it is a case of lesser degree offence than murder does not appeal to us. It is true that there was no premeditation, however, it is not a case of grave and sudden provocation. The intention does not require premeditation but intention can be formed within a couple of minutes. The intention can be gathered on the basis of the act itself. In the present case, the appellant/accused was working as a security guard. He was holding licence of revolver. He was fully aware of the power of the firearm. He pointed the revolver at the chest, i.e., vital part of the body of the deceased and fired the revolver. He was fully aware of the consequence of his act and the injury is fatal and sufficient to cause death. The deceased died instantaneously. Under such circumstances, we are of the view that the appellant/accused is rightly convicted under section 302 of the Indian Penal Code. We confirm the sentence. Appeal is dismissed.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)