

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1622 OF 2011

BALDEV SINGH

Appellant(s)

VERSUS

STATE (NCT OF DELHI)

Respondent(s)

O R D E R

1) This appeal is directed against the judgment and order dated 09.03.2001 passed by the Division Bench of the High Court of Delhi, whereby the High Court partly allowed the appeal filed by the appellant and converted his conviction under Section 302/34 of the Indian Penal Code, 1860 (in short 'the Code') to one under Section 304, Part I of the Code and altered his sentence from life imprisonment to one of Rigorous Imprisonment for seven years with default stipulation.

2) The relevant facts which are necessary for the purpose of deciding this appeal are narrated hereunder:

3) On 11.04.1993 at about 10.50 PM, a DD entry was recorded at Police Station Adarsh Nagar, to the effect that Kashmira Singh (the deceased) had been brought to Hindu Rao Hospital by one Nirmal Singh and that he was declared dead when brought to the hospital. Police swung into action and during the course of investigation one Mangal Pandey (PW-10) made a statement to the effect that on 11.04.1993, at about 9.00 p.m., after having his dinner at the dhaba of Raju, he noticed that three Sikhs were

taking liquor while sitting on a takhat near A-20, Sari Peepal Thala and were gossiping. An altercation took place amongst them and thereupon, the deceased started hurling filthy abuses at them. Nirmal Singh slapped the deceased resulting into grappling between the two. Nirmal Singh caught hold of the deceased. Baldev Singh picked up an iron rod lying there and hit on the head of the deceased. Nirmal Singh exhorted Baldev Singh to give another blow so that the deceased is finished and his account is finally settled. According to the prosecution, Baldev Singh exclaimed that he had already given him such a blow. The deceased fell down. Nirmal Singh and public persons removed the deceased from the spot in a cycle rickshaw.

4) Police recorded the statements of Rattan Singh (PW-1) and Karnail Singh (PW-2), eye witnesses of the occurrence and arrested Baldev Singh and Nirmal Singh and held inquest on the dead body. In pursuance of the disclosure statement of Baldev Singh, police recovered a blood stained iron rod. Autopsy was conducted on the dead body and as per the serologist report, the blood on the rod tallied with that of the deceased.

5) In support of the case, prosecution examined as many as 17 witnesses out of which PWs 1,2 and 10 are the eye witnesses.

6) PWs 1 and 2 supported the prosecution version, whereas PW-10 claimed that he did not know anything about the case.

7) PW-1 deposed that he knew Kashmira Singh (the deceased) who was the owner of a truck. He used to come in his truck to Subzi Mandi, Azadpur. He also knew accused Nirmal Singh and Baldev

Singh. He testified that on 11.04.1993, he came to Delhi in truck No.PH-06-2104. Karnail Singh was also with him as a co-driver of the truck. They took their meals at a dhaba. In the evening, when they came out of the dhaba, they noticed the accused persons and Kashmira Singh taking liquor near the dhaba. Some altercation took place between Kashmira Singh on the one hand and Baldev Singh and Nirmal Singh on the other. They abused each other. Nirmal Singh slapped Kashmira Singh and they started grappling with each other. The turban of Kashmira Singh fell down. Baldev Singh hit Kashmira Singh with an iron rod on his head. Kashmira Singh fell down on the ground and started bleeding. Nirmal Singh exhorted Baldev Singh to hit Kashmira Singh again and finish him. Baldev Singh replied that he had already given such a blow that he would not survive.

8) Similarly, PW-2 Karnail Singh testified that in the year 1993 he was employed as a driver with Shyam Golden Transport Company, Batala. He used to drive truck No.PB-06-2104 with Rattan Singh as a co-driver. On 11.04.1993 they had brought some machines from Batala, which were unloaded at Shalimar Bagh. After unloading the truck, they came to Sarai Peepal Thala and parked the truck in front of Raju's hotel. They took their meals and returned to their truck. They noticed Nirmal Singh, Baldev Singh and Kashmira Singh sitting on a bench in front of B.G.R. Transport Company. There was an exchange of hot words between them. Nirmal Singh slapped Kashmira Singh. The turban of Kashmira Singh fell down. Nirmal Singh caught hold of Kashmira Singh and exhorted Baldev

Singh to give him (the deceased) such a blow as to finish his accounts finally. On hearing this, Baldev Singh gave a blow with an iron rod on the head of Kashmira Singh. He started bleeding and fell down. Nirmal Singh took Kashmira Singh to hospital. While leaving the spot he asked his co-accused Baldev Singh to put earth on the blood lying on the ground.

9) The trial Court, after taking into consideration the evidence adduced and the fact that the deceased, Kashmira Singh had a dispute with accused Nirmal Singh on account of the payment for which accused persons had quarreled with him and the accused Baldev Singh had given head injury at the instance of accused Nirmal Singh with an intention to kill held that the prosecution had been able to prove the charge levelled against the accused persons and convicted them under Sections 302/34 of the Code and sentenced them to undergo imprisonment for life and also to pay a fine of Rs. 2000/- each, in default, to suffer two months SI.

10) Being aggrieved, both the accused persons preferred appeal before the High Court and the Division Bench of the High Court, after hearing the parties acquitted Nirmal Singh of the charge framed against him and converted the conviction of Baldev Singh under Sections 302/34 of the Code to one under Section 304 Part I of the Code and sentenced him to undergo RI for seven years.

11) We have heard Ms. Praveena Gautam, learned counsel appearing for the appellant and Mr. P.K. Dey, learned counsel for the State at considerable length.

12) Learned counsel appearing for the appellant contended that the

conviction and sentence of the appellant is against law and the evidence on record and the Courts below have erred in not properly appreciating the evidence and arrived at a wrong finding and thus the conviction and sentence is liable to be set aside. She also contended that the appellant is aged 46 years approximately and has two young daughters and old and aged parents to look after and that he has already undergone four years of incarceration during the trial. It has been submitted as well that ever since his release on bail during the pendency of appeal, he has never misused the liberty granted to him nor has he ever been involved in any other criminal case. On the other hand, learned counsel appearing for the State supported the case of the prosecution and contended that the judgment of the High Court does not suffer from any infirmity.

13) After hearing the contentions of both the parties and carefully perusing the records of the case and after going through the judgments of both the trial Court as well as the High Court, it appears to us that the High Court has elaborately dealt with the matter and appreciated the facts and the evidence placed before it. The High Court, after examining the evidence led before it and after taking into consideration the testimony of the eye-witnesses, in particular, PW Nos. 1 and 2, allowed the appeal with regard to Nirmal Singh by giving him the benefit of doubt and partly allowed the appeal of Bal Dev Singh and rightly altered the conviction under Section 302/34 of the Code to one under Section 304, Part I of the IPC and sentenced him to seven years RI.

14) In our opinion, the High Court correctly came to the conclusion and we cannot have any doubt in our mind with regard to the same.

15) In view of the above, we find no merit in the criminal appeal and the criminal appeal is dismissed.

16) Since the appellant is on bail, his bail bond is cancelled and he is directed to surrender before the concerned Court to undergo the remaining period of sentence.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(AMITAVA ROY)

NEW DELHI;
January 07, 2016.

ITEM NO.107

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1622/2011

BALDEV SINGH

Appellant(s)

VERSUS

STATE (NCT OF DELHI)

Respondent(s)

(with appln. (s) for bail)

Date : 07/01/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Ms. Praveena Gautam, AOR
Ms. Seema Gulati, Adv.
Mr. Shubhash Gulati, Adv.

For Respondent(s) Mr. P.K. Dey, Adv.
Mr. R.K. Rathore, Adv.
Mr. Sailender Saini, Adv.
For Mr. D. S. Mahra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The criminal appeal is dismissed.

Since the appellant is on bail, his bail bond is cancelled and he is directed to surrender before the concerned Court to undergo the remaining period of sentence in terms of the signed order.

(R.NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed order is placed on the file)