

Kishan Chand Vs. State

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Court : Delhi

Decided On : Oct-03-2013

Judge : Veena Birbal

Appellant : Kishan Chand

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % +1. Date of Decision: October 3, 2013 Crl.A.717/2000 KISHAN CHAND Through : Appellant Mr.Sachin Chopra, Amicus Curiae Through : Respondent Ms.Jasbir Kaur, APP Through : Appellant Mr.Sachin Chopra, Amicus Curiae Through : Respondent Ms.Jasbir Kaur, APP versus STATE + 2. Crl.A.653/2000 MOHAN SINGH versus STATE CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

* 1. By this common judgment, Crl.A.717/2000 filed by appellant Kishan Chand and Crl.A.653/2000 filed by appellant Mohan Singh are being decided.

2. In the aforesaid two appeals, the appellants-Kishan Chand and Mohan Singh have challenged the judgment dated 16th October, 2000 and order of sentence dated 19th October, 2000 passed by the learned Additional Sessions Judge, Delhi whereby the appellants have been found guilty for the offence punishable under Section 307/34 IPC and have been sentenced to undergo RI for three years and to

pay a fine of Rs.3000/- and in default of payment of fine to further undergo RI for three months. The benefit under section 428 Cr.P.C. has been given to them.

3. The case of the prosecution is based on Ex.PW6A i.e., statement of Dayanand Tyagi, PW-6 made to SI Mool Chand, PW-10 wherein it is alleged that on 24th march, 1994, he along with his brother Dushyant Tyagi, PW-3 had gone to DDA office, Vikas Minar, for submitting tender. After submitting the tender, when they were standing near Vikas Minar, the appellants-Kishan Chand and Mohan Singh along with co-accused Sunil Kumar came there and asked them as to why they had submitted the tender. His brother Dushyant Tyagi, PW-3 asked them as to why they were objecting. Hearing that co-accused Sunil Kumar told that he would teach him a lesson. On that very day, when they were returning after submitting tender, both the appellants and co-accused Sunil Kumar were found standing near the Vikas Minar. It was 3 pm at that time. The appellants Kishan Chand @ Kallu and Mohan had caught hold Dushyant Tyagi, PW-3 and co-accused Sunil Kumar @ chinnu took out a buttondar knife from his right dub and gave knife blow on his chest. However, that blow could not be inflicted on the chest and was inflicted on the left thigh of Dushyant Tyagi, PW-3. Thereafter, co-accused Sunil Kumar gave two knife blows on the hips of Dushyant Tyagi, PW-3. An alarm was raised by Dayanand Tyagi, PW-6 and the injured Dushyant Tyagi, PW-3. The appellant Mohan Singh was apprehended at the spot by the complainant Dayanand Tyagi, PW-6 while the appellant Kishan Chand and co-accused Sunil started running. While running, they were caught by two police constables who were present there. The injured Dushyant Tyagi, PW-3 was taken by a contractor Subhash, PW-2 in his car to JPN Hospital. The appellant Mohan Singh was handed over to the police and Dayanand Tyagi, PW-6 also reached the hospital.

4. The aforesaid statement Ex.PW6/A was recorded by SI Mool Chand PW10 who had gone to the spot on getting DD No.12A along with Constable Naresh. There he had left Constable Naresh at the spot and had gone to JPN Hospital where Dushyant Tyagi PW3 was found admitted and was stated to be unfit for statement. There Dushyant Tyagi PW6 i.e. brother of injured had met him. He along with Dayanand Tyagi, PW-6 had come to the spot and recorded his statement Ex.PW6/A and put his endorsement Ex.PW10/A and got registered FIR Ex.PW5A

by sending the rukka to Police Station through Constable Subey Singh PW8. Both the appellants and co-accused Sunil were already there at the spot as they were secured by Constable Subey Singh PW-8 and Dhaneshwar, PW-11. SI Mool Chand, PW-10, IO had arrested them and conducted their personal search by memos Ex.PW8/A and PW8/C respectively. Constable Dhaneshwar, PW-11 produced a knife which was seized by IO, PW-10 vide memo Ex.PW6/A after completing necessary formalities. During investigation, IO, PW-10 seized the clothes of the injured from the hospital vide memo Ex.PW9/B and had also recorded the statement of injured, PW-3. The site plan was also prepared at the spot.

5. After completion of investigation, a report u/s 173 of the Cr.P.C. was filed against the appellants and co-accused Sunil Kumar before the concerned Id.M.M, Delhi. After supplying the documents to the appellants, the case was committed to the Sessions Court. A charge u/s 307/34 IPC was framed against the appellants and co-accused Sunil Kumar. A separate charge u/s 27/54/59 of the Arms Act was also framed against co-accused Sunil Kumar.

6. In trial, the prosecution in all had examined 11 witnesses i.e., Dushyant Tyagi, PW-3 injured, Dayanand Tyagi, PW-6 an eye witness to the occurrence and Subhash, PW-2 who had removed the injured to the hospital. Dr.Vikas Ram Pal, PW-4 had examined the injured in the LNJP hospital vide MLC ExPW4/A. The remaining evidence relates to police witnesses.

7. The incriminating evidence was put to the appellants and the co- accused in their statement u/s 313 Cr.P.C. wherein they had denied the same. The stand of the appellants was that they were innocent persons and were falsely implicated. However, no evidence in defence was led by them.

8. After hearing learned counsel for the parties, the learned Additional sessions Judge convicted the appellants and the co-accused under section 307/34 IPC and sentenced them as has been stated above. Aggrieved with the same, present appeals are filed by appellants Kishan Chand and Mohan Singh.

9. Mr.Sachin Chopra, Amicus Curiae appearing for the appellants has contended that as per prosecution case, the role assigned to the appellants is that they had caught hold of injured Dushyant Tyagi, PW-3 at the time of incident. He has contended that there is no sufficient evidence on record to prove the alleged role of the appellants. It is further contended that common intention of the appellants having committed offence punishable under section 307 IPC is not made out as the appellants never knew that coaccused Sunil Kumar was having a knife. It is further contended that in any event offence u/s 307 IPC is not made against the appellants. It is contended that injury was on the lower part of the body i.e., thigh and hips. It is further contended that the evidence on record does not establish that the act was done with an intention to cause death. It is contended that assuming that occurrence is established, at the most offence u/s 324/34 IPC is made out against the appellants.

10. On the other hand, Ms.Jasbir Kaur, learned APP for the State has argued that as per evidence on record, stabbing was repeatedly done by the co-accused Sunil Kumar and the evidence on record establish that at that time, appellants had caught hold of common intention. the injured and all were sharing The appellants did not leave the injured PW-3 when stabbing started. In these circumstances, it cannot be said that they were not aware that co-accused was carrying knife. The injuries were caused by a sharp weapon and the injuries inflicted has been opined as dangerous to life and the same are corroborated by medical evidence. Learned APP further submits that a clear case u/s 307/34 IPC is made out against the appellants.

11. I have considered the submissions made and perused the material on record.

12. The material witnesses of the prosecution is injured Dushyant Tyagi, PW-3 who has deposed that on the day of occurrence i.e., 24th March, 1994, he had gone to DDA office, Vikas Minar along with his brother Dayanand Tyagi, PW-6 for submitting the tender form. Both the appellants as well as co-accused Sunil Kumar were present there. Crl.As.653 & 717/2000 as had seen them earlier. At the time of submission of tender, appellants and co-accused Sunil Kumar had asked him not to submit the tender but he told him that he would submit the same at any cost.

When after submitting the tender, he had come out, both the appellants along with co-accused Sunil Kumar were standing outside the boundary of Vikas Minar. His brother Dayanand Tyagi, PW-6 was also with him. The appellants and co-accused Sunil had started questioning him as to why he had submitted the tender. Before he could say anything, both the appellants had caught hold of him and co-accused Sunil Kumar stabbed him after taking out knife first on the interior side of left thigh and then 2-3 times on the left side of his hip. Thereafter, he fell down on the ground and became unconscious. Later on he had come to know that he was removed to the hospital by one Subhash, PW-2. He has deposed having made statement to the police during the investigation. He has identified his blood stained clothes which were seized during investigation i.e., shirt Ex.P1, pant Ex.P2 and underwear ExP3 which he was wearing at the time of incident. The above witness was cross- examined by both the appellants. His deposition that appellants had caught hold of him at the time of incident is not challenged in cross-examination. He had denied that he had named the appellants at the instance of IO. He has given the timings as to when he had reached DDA office, Vikas Minar at the time of incident. He has also stated in the cross-examination that his brother, PW-6 was also with him and they had gone on a scooter.

13. Dayanand Tyagi, PW-6 has deposed that he along with his brother Dushyant Tyagi, PW-3 had gone to DDA office, Vikas Minar for submitting tender where the appellants and co-accused Sunil met them. He has deposed that appellants and co-accused had called his brother and asked him as to why he was submitting the tender. However, despite the objections, his brother had submitted the tender. At about 3.30 pm, when they had come out of DDA office, appellants and co-accused Sunil Kumar took his brother to a corner and asked as to why he had submitted his tender. Thereafter, the appellants caught hold of his brother and the co-accused had stabbed him 3-4 times on his front waist and buttocks. Thereupon, he had apprehended appellant Mohan Singh and police officials had apprehended the other two co-accused persons. The police officials had taken knife from co-accused Sunil Kumar. Thereafter, his brother was taken to the hospital. His statement Ex.PW6A was recorded on the same day. He has identified his signature on it.

14. The evidence of injured Dushyant Tyagi, PW-3 on material points is in consonance with his brother Dayanand Tyagi, PW-6. No material contradictions in the evidence of aforesaid two PWs is pointed out by the Id.Amicus Curiae. Despite lengthy cross-examination his evidence is not shaken in cross-examination. There is nothing on record to show that he is not a reliable witness. Both the appellants were apprehended at the spot. The evidence of PW-3 and PW-6 stands corroborated with medical evidence i.e. MLC Ex.PW4A of Dushyant Tyagi PW3 which shows injuries on left thigh and left hip. From their evidence, it clearly stands proved that both the appellants had caught hold of Dushyant Tyagi, PW-3 and co-accused Sunil Kumar @ Chintu stabbed him on his front thigh and left buttock. The appellants were also apprehended at the spot.

15. There is nothing on record to show that when co-accused Sunil Kumar @ Chintu had stabbed Dushyant Tyagi, PW-3, the appellant had tried to dissuade him from the attack. They also kept on holding the injured PW-3 when co-accused was stabbing him. As per evidence, he had stabbed the injured PW-3 three times. Further, it has also come in the evidence that prior to incident both the appellants had gone with co-accused Sunil Kumar @ Chintu to the office of DDA where Dushyant Tyagi, PW-3 and his brother Dayanand Tyagi, PW-6 had also gone to submit tender and asked him not to submit tender. It has also come in the evidence that when they had come out after submitting tender, appellants and co-accused had taken Dushyant Tyagi, PW-3 into one side and asked him as to why he had submitted the tender. As per evidence, the appellants caught hold of Dushyant Tyagi, PW-3 and co-accused Sunil Kumar @ Chintu had stabbed him. In these circumstances, it cannot be said that appellants were not sharing common intention with co-accused Sunil Kumar @ Chintu in causing injuries to Dushyant Tyagi, PW-3 with knife. Reference is made to judgment of Supreme Court titled Major Singh vs. State of Punjab: (2002)10 SCC60 16. Reading the evidence of injured Dushyant Tyagi, PW-3 and eye witness PW-6, it cannot be said that appellants were not sharing the common intention with the co-accused Sunil Kumar in causing injuries with knife to injured Dushyant Tyagi, PW-3 as is contended. The contention raised in this regard is rejected.

17. The question for consideration is whether in the facts and circumstances the nature of assault and the injuries bring the application of section 307/34 IPC or section 324/34 IPC.

18. In *Hari Singh vs. Sukhbir Singh and Others*: (1988) 4 SCC 551 the Supreme Court has discussed as to what the court has to see in order to bring the offence under Section 307 IPC. The relevant portion of the judgment is as under:

Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempt to murder. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

19. The Supreme Court in *the State of Maharashtra vs. Kashirao and others* reported in AIR 2003 SC 3901 has discussed the essential ingredients required to be proved u/s 307 IPC. The relevant para of the judgment is as under:

(i) That the death of a human being was attempted; (ii) That such death was attempted to be caused by, or in consequence of the act of the accused; (iii) That such act was done with the intention of causing death; or that it was done with the intention of causing bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability (a) cause death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

22. In offence under Section 307 all the ingredients of offence of murder are present except the death of the injured. For the application of Section 307 it is not necessary that the injury capable of causing death should have been actually inflicted.

20. In the present case, as per MLC Ex.PW4A, the following injuries had been inflicted with a sharp edged weapon i.e., knife:(i) (ii) (iii) 21. 2 cms. stab wound on the left hip on the interior and medial side; 4 cms stab wound on the left hip on lateral side; 3 cms. stab wound on left thigh and hip back. The injuries in MLC Ex.PW4A have been opined as dangerous to life. The injuries are on the vital part of the body. Dr. Vikas Ram Pal PW4 who had examined the patient vide MLC Ex.PW4/A has also deposed that injury sustained by injured were dangerous in nature and he could have died had he not received the medical intervention at the appropriate time. The evidence on record clearly establishes that injuries have been caused with an intention of causing death of injured Dushyant Tyagi, PW-3. The stand of the appellants is that they are falsely implicated but there is nothing on record to substantiate the same. They have also not explained as to how the injured sustained injuries. The evidence also establishes that they had motive to commit the crime as they never wanted injured Dushyant Tyagi, PW-3 to submit the tender. Repeated stab injuries have been inflicted upon the injured Dushyant Tyagi, PW-3.

22. The trial court has rightly analyzed the evidence. In view of the above discussion, appellants have been rightly convicted by the learned Additional Sessions Judge u/s 307/34 IPC. Their conviction u/s 307/34 IPC is upheld.

23. As regards quantum of sentence, the learned ASJ has awarded sentence of RI for three years and to pay a fine of Rs.3000/- and in default of payment of fine to undergo to further undergo RI for three months. It is stated that appellants are poor persons and their family is dependent on them. It is prayed that their sentence be reduced to already undergone. Considering that the incident is of 1994 and both the appellants have faced agony of trial for 19 years, their substantive sentence of RI of 3 years is reduced to RI for two years. The sentence of fine shall remain the same and in default of payment of fine, to further undergo

SI for one month. The appellants shall surrender before the concerned trial court within one week from today to serve the remaining sentence. Both the appeals stand dismissed with the above modification in the order of sentence only. VEENA BIRBAL, J October 3, 2013 ssb

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