

**Chander Pal Singh Vs. State of Delhi**

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**Court :** Delhi

**Decided On :** Jan-24-2014

**Judge :** Sanjiv Khanna

**Appellant :** Chander Pal Singh

**Respondent :** State of Delhi

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL  
No.383/1998 Reserved on:

10. h January, 2014 Date of Decision:

24. h January, 2014 % CHANDER PAL SINGH ..... Appellant Through Mr. K.B. Andley, Sr. Advocate with Mr. M.L. Yadav, Advocate. Versus STATE OF DELHI ..... Respondent Through Ms. Rajdipa Behura, APP for the State. CRIMINAL APPEAL No.450/1998 ANGREJ SINGH ..... Appellant Through Mr. L.K. Passi, Advocate. Versus STATE ..... Respondent Through Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P.MITTAL SANJIV KHANNA, J.: The appellants Chander Pal Singh and Angrej Singh by the impugned judgment dated 19th August, 1998 stand convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for murder of Harvinder Kataria on 13th May, 1994 at about 9.30 P.M. According to the prosecution, Chander Pal Singh had inflicted injury on the chest of the

deceased with a kripa, while Angrej Singh, the conductor restrained him on bus No.DL1 2941. Angrej Singh has been convicted by applying principle of common intention as per Section 34, IPC.

2. As far as involvement of the two appellants is concerned, we are satisfied with the reasoning and the findings recorded by the trial court. Rajesh Kumar (PW-1), brother of Harvinder Kataria has implicated both the accused though the roles and acts assigned were different. In his court deposition, PW-1 has stated that on 12th May, 1994 at about 9.30 P.M., Harvinder returned home and apprised them about the quarrel with the bus conductor bus No.DL1 2941 on route No.851. Similar statement has been made by another brother of Harvinder, namely, Vishal Kataria (PW-3). PW-3 has deposed that the cause of quarrel was buying of ticket. PWs 1 and 3 have stated that on 13th May, 1994, they alongwith Harvinder and a friend Satwant, had gone to Tagore Garden bus stop at about 8.30 P.M. and waited for the bus in question. PW-1 accompanied Harvinder upon his insistence that he wanted to teach the bus conductor a lesson. According to PW-1, at 9 or 9.15 P.M. and as per PW-3 at 9.30 P.M., Harvinder signaled the bus in question to stop. As per PW-1, deceased Harvinder and Vishal boarded the bus from the rear gate and Satwant entered from the front gate. PW-3 has deposed on similar lines. Rajesh Kumar (PW-1), however, stood outside the bus near its rear gate. PWs 1 and 3 identified the conductor as the appellant Angrej Singh. There was an altercation between the deceased and Angrej Singh. Following this Angrej Singh caught hold of the deceased and called out to Sardar. Appellant Chander Pal Singh came armed with a kripa and inflicted a blow on the left side of the chest of Harvinder. PW-1 has stated that Harvinder upon deboarding the bus, fell on the ground. Satwant rushed to the rear of the bus and pushed appellant-Chander Pal Singh out. PW-1 and Satwant over-powered Chander Pal Singh, while he was still holding the kripa. Angrej Singh, however, managed to flee from the spot. Vishal took deceased Harvinder to DDU Hospital. PW-3 has stated that after Chander Pal Singh had stabbed Harvinder, Angrej Singh left Harvinder and thereupon Harvinder came down from the bus. PW-3 thus deposed on similar lines as PW-1. PW-3 took Harvinder to DDU Hospital in a rickshaw where he was declared brought dead. There are minor and insignificant contradictions in the statements of PWs 1 and 3 as to the actual involvement of the two appellants in the said

incident, but these do not dent the core version of the two eye witnesses.

3. We are inclined to accept the versions of PWs 1 and 3 on the question of involvement of the two appellants on 13 th May, 1994 at about 9 to 9.30 P.M. However, as to the actual role of Angrej Singh, there is some dispute, which we will refer to subsequently. The main issue and question, we feel is whether the appellants have been rightly convicted under Section 302 IPC or they should be convicted under Section 304 Part-I or II. To be fair to the counsel for the appellant on behalf of Chander Pal Singh, this was the main contention, whereas the counsel for Angrej Singh has in addition argued that common intention under Section 34 for conviction under Section 302 IPC or other offences was missing.

4. Angrej Singh, as noticed above, had escaped from the spot as per the statements of PWs 1 and 3. Appellant Chander Pal Singh was, however, detained at the spot and subsequently arrested by the police as is clear from the testimonies of Constable Satbir Singh (PW-10), Constable Narender Kumar (PW-14) and Inspector Raj Kumar (PW15).

5. According to the statement of Rajesh Kumar (PW-1), Angrej Singh was arrested vide memo (Exhibit PW-1/G) from his house on the 14th May 1994 at about 12 midnight. PW-1 and Satwant, had accompanied the arresting officers SI Raj Kumar and accused Chander Pal Singh. PW-3 has deposed that he informed his parents of the death of Harvinder only after the doctor at DDU hospital declared him to have been brought dead. Thereafter, he went back to the hospital and subsequently to the police station where the two accused, including Angrej Singh were present. He identified both of them.

6. The deceased Harvinder was examined by Dr. Uttam Singh (PW-4), who has stated that Harvinder was brought dead. He was found to have stab injury on the left side of the chest over the nipple. There were no other bruises on the body as was recorded in the MLC (Exhibit PW-4/A). In the cross-examination, PW-4 has stated that chances of survival of a person having injury on his chest were very rare. This statement in view of the post mortem report and evidence of Dr. L.K. Barua, is debatable and questionable. Dr. L.K. Barua, DDU Hospital (PW-6) had conducted the post-mortem. He has testified that the deceased Harvinder, aged

20 years had stab injury on his chest. There was incise wound of 2cm x 1 cm x ?. It was over the left nipple and the injury placed was vertical. No other external injury was present on the body. The weapon had entered the chest cavity between the second and third rib and had cut the medial border of the left lung and continued and pricked the base of the aorta, the main artery of the heart by about 0.2 cm. He, however, accepted that the weapon of offence was not shown to him before post-mortem.

7. It would be important here to refer to the rukka (Exhibit PW- 1/A) dated 13th January, 1994, which was recorded on the statement made by PW-1 Rakesh Kumar. In the rukka, it is recorded that deceased Harvinder on 12th May, 1994 had complained about a quarrel with the conductor of a blue line bus No.DL1 2941 of route No.851 on the issue of ticket. On 13th may, 1994, Harvinder, PW-1, his brother Vishal and one friend Satwant had decided to teach a lesson to the bus conductor and had gone to Tagore Garden Bus Stand at 8.30 P.M. Number of buses were stopped to make inquiry about the bus in question. At about 9.30 P.M. bus No.DL1 2941 came from Raja Garden side and Harvinder gave a signal for the bus to stop. Harvinder and Vishal got into the bus from the rear and Satwant got into the bus from the front gate. Harvinder then challenged the conductor as to how he had dared to ask him for a ticket on the previous day. Thereupon, the conductor (Angrej Singh) had replied that he had spared him yesterday but he would not be able to save himself on that day. He caught hold of Harvinder and called Sardarji. Thereupon, Chander Pal Singh took out his kirpan and inflicted injury on the left side of the chest. Harvinder fell down after alighting from the bus and was taken to the hospital by Vishal. He and Satwant, however, overpowered Chander Pal Singh. The diagram of the kirpan (Exhibit PW-1/B) shows that it was 27 cm in length with blade of 17cm, which is normal and many Sardars carry such kirpans with them.

8. Decision of the Supreme Court in Virsa Singh versus State of Punjab, AIR 1958 SC465 elucidates difference between murder under Section 302 covered under Part-III of Section 300 and Section 304 IPC:

14. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 thirdly; 15. First, it must establish, quite objectively, that a bodily injury is present; 16. Secondly, the nature of the injury must be proved; These are purely objective investigations.

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and, 19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

20. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

9. In the facts of the present case, there cannot be any doubt that the appellants did not have any intention to cause death or even intention to cause injury of the kind that was sufficient to cause death in ordinary course of nature. We do not think the case is covered under the fourth limb and the appellants, it cannot be

said, had knowledge that the act would in all probability cause death. The question and issue is whether the accused had intended to cause bodily injury, which was inflicted. This is subjective and depends upon the evidence of the witnesses, who had seen the occurrence and in some cases also on the basis of the medical evidence, including post-mortem report relating to the injuries suffered by the deceased. While we agree with the counsel for the State that single injury may not by itself displace/ dislodge the case from the purview of Part-III of Section 300, but it is one of the factors which should be noticed. Reference is also required to be made to Exception 4 to Section 300 IPC. In light of the facts of the present case, there are sufficient reasons and grounds to convert the conviction from Section 300 IPC to Section 304 Part-I. There are number of reasons for the same. What had transpired and happened was at the spur of the moment. It was sudden and not premeditated or planned in advance. Chander Pal Singh, it is apparent was the person, who had the kirpan, whereas Angrej Singh was performing his duty as a conductor. Harvinder along with three others had gone to the bus stop to teach a lesson to Angrej Singh. Three of them had boarded the bus, including the two from the rear gate and had confronted the appellant Angrej Singh, the conductor. Harvinder had objected and protested why the conductor Harvinder Singh had asked for the bus ticket. Appellant Angrej Singh had caught of Harvinder and as per the rukka had called Chander Pal Singh, who was sitting in front seat of the bus. Chander Pal Singh came and he gave a blow. It was a sudden fight/quarrel and whatever happened was in the heat of passion. Only one blow was given and as noticed, the actual external injury was very small 2 cm x 1 cm and depth of which has not been indicated. The injury was over the left nipple and unfortunately had prickled the base of aorta by 0.2 cm. We also have considerable doubt and it cannot be said with certainty that Chander Pal Singh intended to cause that particular injury and strike on the left side of the chest. There was no pre-meditation, there was no malice and the quarrel in question was a trivial one.

10. The case of appellant Angrej Singh is on even better footing. Angrej Singh had only called Chander Pal Singh, who was sitting in front of the bus to come to the rear side. As per the rukka (Exhibit PW-1/A), appellant Angrej Singh had not urged or instigated Chander Pal Singh to kill or stab the deceased Harvinder Singh on his chest. It, however, does appear that he caught hold of the deceased Harvinder

but it must be remembered that he was alone, whereas Harvinder was there with Vishal and Satwant had also climbed on to the bus from the front door. Common intention can very well develop at the spot and just before the incident. Appellant Angrej Singh did share the common intention to cause injury, in holding the deceased while Chander Pal Singh inflicted the stab injury.

11. In view of the aforesaid discussion, conviction of the appellants is converted from Section 302 to Section 304 Part 1, IPC.

12. On the question of sentence, as a per the nominal rolls available on record, Chander Pal Singh has suffered incarceration of about six years and Angrej Singh had suffered incarceration of about five years. They were released on suspension of sentence vide order dated 10 th February, 1999. They are not involved in any other criminal case. We are, therefore, inclined to reduce the sentence to the period undergone. However, we are inclined to enhance the fine of Rs.10,000/- each imposed on appellants- Chander Pal Singh and Angrej Singh to Rs.50,000/- each. The said fine will be paid within a period of 60 days from today, failing which the two appellants shall undergo simple imprisonment for a period of two months. The appeals are accordingly partly allowed and disposed of in the aforesaid terms. (SANJIV KHANNA) JUDGE (G.P. MITTAL) JUDGE JANUARY24h, 2014 VKR

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