

Balwan Singh and ors. Vs. State

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Court : Delhi

Decided On : May-13-2014

Judge : Sanjiv Khanna

Appellant : Balwan Singh and ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.480/1999 Reserved on :

16. h April, 2014 Date of Decision:

13. h May, 2014 % BALWAN SINGH AND ORS. Through Appellant Mr. Rajinder Kumar, Advocate. Versus STATE Respondent Through Mr. Rajat Katyal, APP with SI Satish Kumar, PS Alipur. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J: By the impugned judgment dated 7th September, 1999, Balwan Singh, his brother Sahib Singh and his relative Amardeep Singh stand convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC) for having committed murder of Karan Singh on 29th March, 1989 at about 10.30 a.m. By order on sentence dated 8 th September, 1999, they have been sentenced to undergo rigorous imprisonment for life and fine of Rs.500/- each. In default of payment, they have to undergo rigorous imprisonment for a further period of three months.

Benefit of Section 428 of Code of Criminal Procedure, 1973 was directed to be given.

2. On the question of involvement of the appellants, we are inclined and agree with the reasoning given by the Trial Court, which has relied upon testimonies of Tej Singh (PW-9) and Phool Singh (PW-12), who had testified that they were eye witnesses of the said occurrence. Statement of Bhuru (PW-11) can also be relied upon by the prosecution on the principle of *res gestae*.

3. Tej Singh (PW-9) has stated that the deceased was his brother and at about 10.30 a.m. on 29th March, 1993, when he was taking tea at a shop, he saw the three appellants beating his brother Karan Singh. Appellant Balwan Singh was carrying a knife and the other two appellants had iron rods in their hands. He, however, appeared to be little confused as he stated that appellant Sahib Singh inflicted injuries with knife, but he later, corrected himself and stated that the knife blow was given by Balwan Singh on the throat and chest of his brother Karan Singh. He asserted that Sahib Singh and Amardeep Singh caused injuries on the head of his brother with iron rods. On alarm being raised by PW-9, persons had gathered at the spot. He took Karan Singh to the hospital and made the complaint/report Ex.PW9/A. He further deposed about the evidence/material collected from the spot/place of occurrence etc. Tej Singh (PW-9) was with the deceased when he was taken to the hospital and admitted. However, as per the MLC Ex.PW22/A, the deceased Karan Singh was admitted there by his father on 29th March, 1989 at about 11.45 a.m. We will be referring to the MLC subsequently while examining the question whether the appellants have been rightly convicted under Section 302 IPC.

4. Phool Singh (PW-12) deposed on similar lines and stated that on 29th March, 1989 at about 10.30 a.m. when he was returning from the field with fodder, he saw appellants Sahib Singh and Amardeep Singh assaulting Karan Singh with iron rods and Balwan Singh was assaulting Karan Singh with a knife. He even alleged that Sahib Singh was shouting loudly that today they would take the life of Karan Singh. However, it is noticeable that PW-12 in his cross-examination has stated that upon hearing the exhortation, he came to the spot with the bundle of fodder

and threw the same at the spot itself. He raised alarm, but did not chase the appellants. They had taken Karan Singh to their house. The Police arrived at their house after 10-15 minutes and took Karan Singh to the hospital on a cot. He had helped in lifting Karan Singh and in this process his clothes became blood stained, but they were not taken into possession by the police.

5. Bhuru (PW-11) stated that about 8-9 years back at about 11 A.M. or 12 noon (his deposition in the court was recorded on 14th October, 1997), when he was returning after cutting fodder from his fields, he saw the three appellants present in the Court running away. Amardeep had a knife and the other two appellants had rods. Clothes of all the appellants were blood stained. He saw a crowd near the chowpal and Karan Singh was lying there injured in a pool of blood. Shortly thereafter, police from control room arrived at the spot. During the cross-examination conducted by Additional Public Prosecutor, PW11 deposed that Amardeep was wearing a green shirt and the other two appellants were in white shirts. In the cross-examination by the counsel for the accused/appellants, he accepted that the deceased Karan Singh was his nephew.

6. Learned counsel for the appellants is right in his submission that Pyare Lal (PW-16), father of the deceased Karan Singh might not have seen the occurrence, though he has so stated in his examination-in-chief. PW-16 in the cross-examination by the counsel for the appellants had stated that the occurrence took place about 70 yards away from his house. He was present in his house when he was informed about the altercation/fight. On reaching the spot, he saw 5060 persons present there. His son was taken to the hospital in a PCR van. He deposed that his elder brother Bhuru (PW-11) was present with him.

7. Learned counsel for the appellants has submitted that statements of the relatives i.e. Tej Singh (PW-9), Bhuru (PW-11) and Phool Singh (PW-12) should be disbelieved as they were interested witnesses. However, this contention has to be rejected as the law on the issue is well settled that statement of witnesses cannot be rejected merely on the ground that they were related to the deceased, but care and caution should be taken to ensure whether they were present at the place of occurrence and had actually seen the occurrence and also to rule out

possibility of false implication of third persons i.e. relatives or friends of the actual culprits. Learned counsel for the appellants also submitted that there was delay in recording of FIR as it was registered at about 2 p.m. We do not think that there was substantial delay in recording of FIR as the deceased was first taken to the hospital and was admitted there at about 11.45 A.M. Subsequently, police came and recorded the statement of Tej Singh (PW-9) and then registered the FIR. Hospital apparently was at some distance from the place of occurrence and inspite of the urgency and swift action it took about 45 minutes to reach the hospital.

8. Learned counsel for the appellants submitted that in the present case the Trial Court had also acted as an investigator and directions/instructions were issued. Our attention was drawn to the order sheet dated 10th May, 1999 wherein reference was made to the statement of Pyare Lal (PW-16) that the occurrence had taken place in front of a bank, however, the said bank was not mentioned in the site plan. Accordingly, Head Constable Khem Singh (PW-13) and SI Ram Phal (PW-20) and Ramesh Chand (PW-1) were recalled for depositions on 18th May, 1999. Subsequently, another order dated 5th July, 1999 was passed recording that SI Ram Phal (PW-20) was not able to give the correct location of the bank and it would be proper to obtain a scaled site plan clearly showing the position of the bank and the bus stand in relation to the tea shop. Accordingly, the case was adjourned to 9th July, 1999, and Insp. Devender Singh who had prepared the scaled site plan was summoned. It was directed that accused need not be present on the said date. On 9th July, 1999, Inspector Devender Singh was present and was directed to note position of the bank situated on the main road and also to note its distance from the tea shop. The original site plan Ex.PW17/A was given to Inspector Devender Singh and was directed to note additional points in the light of the directions given. The case was adjourned to 21st July, 1999 and the modified site plan was to be submitted on the same date. On the said date, Inspector Devender Singh submitted that because of power failure he could not prepare the modified site plan. Thereby, he was directed to submit the same by 29th July, 1999. On 29th July, 1999, supplementary statement of Inspector Devender Singh (PW-17) was recorded and the modified site plan Ex.PW17/B was taken on record.

9. As we perceive, the Trial Court was extra careful in the present case because in the statement of Pyare Lal (PW-16) reference was made to a bank but in the scaled and unscaled site plans Ex.PW17/A and Ex.PW20/C, respectively, the place/location of the bank was not indicated. But, the location of the tea shop, where Tej Singh (PW-9) was having tea and other details were mentioned/stated. In the modified scaled site plan Ex.PW17/B, the place/location of the bank has been clearly indicated. The aforesaid direction given by the Trial Court was for elucidation and clarification of doubts. They were not instructions to Insp. Devender Singh (PW-17) to prepare a site plan in a particular way, but was in fact directed to ascertain the correct factual position. The contention of the appellants on the said aspect is thus, rejected. We further reject the contention that Tej Singh (PW-9) may not have seen the occurrence because the place of occurrence was not visible from the tea shop as per the site plans and his court deposition. We believe that the said contention has been rightly rejected by the Trial Court.

10. The next material contention and issue, which arises for consideration, is whether the appellants have been rightly convicted under Section 302 read with Section 34 IPC. At this stage, we may note that learned counsel for the appellants has drawn our attention to the findings recorded by Trial Court wherein, SI Ram Phal (PW-20), the Investigating Officer had admitted that the deceased had 3-4 stabbing cases against him. The appellant also gave suggestions to Tej Singh (PW-9) that the deceased was involved in FIR No.237/87 under Section 25 of Arms Act, FIR No.850/85 under Section 307 IPC, FIR No.115/85 under Section 25 of the Arms Act and FIR No.210/83 under Sections 341/323/307 IPC. It had also been suggested by the appellants that the deceased had teased a girl in the college and some students had come to his house protesting against his behaviour. The assertion, it is apparent, is correct, but the Trial Court has rightly observed that this would not make or undo the crime/offence and that this was not relevant for the purpose of deciding whether offence under Section 302 read with Section 34 IPC was made out or not. However, there are other aspects, which compel us to convert the conviction of the appellants from under Section 302 read with Section 34 IPC to Section 304 Part-I read with Section 34 IPC. As noticed above, the deceased Karan Singh was admitted to the hospital on 29 March, 1989 at about 11.45 a.m. He died on the 7th day of hospitalization i.e. 4th April, 1989 as

mentioned in the death summary report Ex.PW21/A proved by Dr. R.N. Bansal (PW-21). The death summary report records that the patient was admitted with stab wounds on neck and face with history of being hit by iron rods. He was given blood transfusion and other supportive therapy. Exploration of one stab wound was undertaken as remedial action, and another stab wound was stitched. The patient remained unconscious and was treated for head injury and kept in ICU. However, he could not be saved and was declared dead.

11. As per the MLC Ex.PW22/A, the patient suffered the following injuries:

i) One inch long sharp incised wound one finger breadth below right side of mandible on right sub-mandibular region, depth of wound could not be ascertained. ii) Two cm long sharp incised wound around two finger breadth lateral to right side of chin, skin deep on right body of mandible. iii) V shaped lacerated wound 3 cm long each limb below right eye and involving the lower eye lid of right eye. iv) 1 cm circular penetrating wound near right border of sternum around four finger breadth above xiphisternum. A linear abrasion extending above this injury side. Depth of penetrating wound could not be ascertained. v) 1 cm circular penetrating wound on right side of abdomen around four finger breadth below the right costal margin and medial to mid clavicular line. Depth of wound could not be ascertained.

Dr. Umesh Notiyal (PW-22), who had examined the deceased, opined that injury Nos. (i), (ii), (iv) and (v) were caused by a sharp edged weapon and injury No.(iii) was caused by a blunt object.

12. Regarding the reason and cause of death, we refer to the testimony of Dr. L.T. Ramani (PW-10), who had conducted the post mortem and given the report Ex.PW10/A. As per PW-10, the deceased had the following external injuries:

1 Bruise purplish in colour with superficial abrasion & scabbing on the tip of left shoulder 21.

2. Stitched wound 3/4" long just below the right lower eye-lid, skin edges were partly united.

3. Stitched wound 1/2" long on the under surface of chin.
4. Stitched wound 4 long extending from right angle of mandible to the right side of thyroid cartilage.
5. Haematoma over left parietal area of 32 size.
6. Linear abrasion 5 long on the left side front of chest.
7. Superficial scratch abrasion on the front of left fore-arm.

13. On internal examination, it was noticed that there was blood clot over left parietal region, but the skull bones were intact. The brain was edematous and showed subdural haemorrhage. Neck tissues showed massive blood clot in the superficial and deeper neck layers on the right side. Lungs were pale. Heart was normal. Liver was enlarged and fatty, but other abdominal organs were normal. Dr. L.T. Ramani (PW-10) deposed that injuries were antemortem and injury Nos.1, 5 and 7 were caused by a blunt object and injury Nos.2, 3, 4 and 6 were caused by a sharp edged weapon. Injury No.5 was sufficient in the ordinary course of nature to cause death. Injury No.4 involving right external carotid artery possibly could have also caused death in the ordinary course of nature. On exploration of injury No.4, external carotid artery was found to be divided and both ends were ligated. Cause of death as opined was Coma resulting from injury No.5.

14. Opinion of Dr. L.T Ramani (PW-10) shows that injury No.5 to the skull was sufficient in the ordinary course of nature to cause death, but about injury No.4 which was caused by a sharp edged weapon, he was circumspect and had stated that this injury only possibly could have caused death in the ordinary course of nature. Therefore, as far as injury No.4 is concerned, there was hesitation and not assuring certainty. Injury No.5 on the skull as per the post mortem report over the left parietal area was 32 in size. However, in the MLC Ex.PW22/A, the said injury has not been specifically indicated, but there was only one injury due to blunt force, the V shaped lacerated wound below the right eye and involving the lower eye lid of right eye.

15. Tej Singh (PW-9) in his cross-examination has admitted that before any knife injury was inflicted on Karan Singh, he had dashed against a wall and when he saw the occurrence, Karan Singh was running away from the side of the bridge. He accepted as correct that Karan Singh had injuries before he dashed against the wall. The site plan Ex.PW17/A shows the side wall and indicates blood stains on the same. It is apparent from the statement of PW-9 that the deceased Karan Singh while running away hit the wall and fell down. The MLC does not indicate that the deceased had any external wound on the parietal region on being hit by an iron rod. The possibility, therefore, of the deceased having died as a result of injury received when he was running and upon accidentally hitting the wall is rather plausible, if not apparent. At this stage, we record that there is nothing on record to show that the deceased had suffered injuries on his shoulder as a result of dashing against the wall. The said position merits acceptance in view of the medical evidence, nature of injuries as recorded in the MLC and also the testimony of Tej Singh (PW-9). It is obvious that the knife wounds given by the appellants were not deposited to as sufficient in the ordinary course of nature to cause death and none of the injuries caused by iron rod were sufficient in the ordinary course of nature to cause death.

16. Distinction between murder and culpable homicide not amounting to murder has addressed attention of the Supreme Court in several cases, but it remains in some cases a vexed question and can be difficult to answer. The following words in *Virsa Singh v. State of Punjab* AIR 1958 SC465 are most apt and reflect the legislative intent:

The prosecution must prove the following facts before it can bring a case under Section 300, thirdly. First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was 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.

17. In a later decision of *A.P. v. Rayavarapu Punnayya* (1976) 4 SCC382 difference between clause b of Section 299 and clauses 3 and 4 of Section 300 has been explained in the following words:

15. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

16. In clause (3) of Section 300, instead of the words likely to cause death occurring in the corresponding clause (b) of Section 299, the words sufficient in the ordinary course of nature have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word likely in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words bodily injury sufficient in the ordinary course of nature to cause death mean that death will be the most probable result of the injury, having regard to the ordinary course of nature.

Thereafter, the Supreme Court has so observed:

21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to culpable homicide as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in Section 300. If the answer to this question is in the negative the offence would be culpable homicide not amounting to murder, punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be culpable homicide not amounting to murder, punishable under the first part of Section 304, of the Penal Code.

18. In view of the aforesaid evidence, it cannot be said that the deceased had died as a result of inflicted injury perpetuated by the appellants, which was sufficient in the ordinary course of nature to cause death. Thus, Section 300 IPC (i.e. thirdly) would not be attracted. The injury, which had caused death or was sufficient in the ordinary course of nature to cause death, was neither the intended nor the inflicted injury. It is apparent that the deceased was running towards his house and in that process he hit his head against the wall. This resulted in the injury which was sufficient in the ordinary course of nature to cause death. The deceased had remained in the hospital for 7 days before he expired.

19. The next issue is whether the appellants have committed the offence under Section 299 IPC or a lesser degree, i.e., Section 320 read with the corresponding Section 325, etc. Section 299 IPC comes into operation when death is caused by doing an act with the intention of causing death; or by an act with the intention of

causing such bodily injury as is likely to cause death; or the act is done with the knowledge that it is likely to cause death. Intention and knowledge being the mens rea. Having considered the facts of the present case, we feel that Section 299 will be attracted as the injuries caused and intended were such bodily injury as were likely to cause death. The appellants had attacked the deceased with knife and iron rods and had inflicted as many as three injuries. Injury No.4, as mentioned in the post-mortem report (Exhibit PW-10/A) and deposed to by L.T. Ramani (PW-10) involving right external carotid possibly could have also caused death in ordinary course of nature. The said wound had been stitched as it was medically treated. Importantly, it was a dangerous injury with the sharp weapon and thus discloses probability of a stronger degree and satisfies the requirement of likelihood to cause death. Thus, the mental status and the requisite mens rea stand satisfied for invoking Section 299. Thus, we convert conviction of the appellants from murder to culpable homicide not amounting to murder.

20. The last question relates to quantum of sentence under Section 304 Part-I IPC. The appellant Balwan Singh had suffered incarceration of 6 years and 11 months as on 30th December, 2003, appellant Sahib Singh had suffered incarceration of 6 years and 5 months as on 14th July, 2003 and appellant Amardeep Singh had suffered incarceration of 6 years and 7 months as on 24th February, 2003. They were released on bail pursuant to different orders. In addition, the appellants had earned remission and it had been stated at bar that the total incarceration suffered including the remission earned by the appellants is about 8 years in each case.

21. Keeping in view the aforesaid facts, we feel that ends of justice would be met if the appellants are sentenced to period already undergone by them. The appellants need not be arrested in this appeal, which had remained pending since 1999. The appellants, however, will pay fine of Rs.500/- each, within a period of one month, if not already paid. In default, they shall undergo rigorous imprisonment of 15 days each. It is ordered accordingly. The appeal is disposed of.-.sd(SANJIV KHANNA) JUDGE -sd(G.P. MITTAL) JUDGE MAY13 2014 NA/VKR/kkb