

Karan Singh and anr. Vs. State

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Court : Allahabad

Decided On : Sep-15-1964

Reported in : 1966CriLJ823

Judge : M.H. Beg, J.

Appellant : Karan Singh and anr.

Respondent : State

Judgement :

M.H. Beg, J.

1. The two appellants in this case, father and son, were fighting a man named Sri Ram in a lane in front of the house of Nathu Lal (P.W. 1), in village Tikuri in the district of Bareilly, on 30.1.1962, at about sunset. At that time, Nathu Lai was sitting on a chabutara on the southern side of the entrance to his house, and he was holding his infant daughter Shakuntala, aged about nine months, in his lap. On the northern chabutara by the side of the entrance to the house, Munshi Lal (not produced) and Pyarey Lal (P.W. 8) were sitting. Sri Ram, who was being beaten by the two appellants, was said to be drunk. Possibly the appellants were also inebriated. Nathu Lai objected to a fight at his door. Thereupon, Karan Singh appellant asked his son Dhanvir Singh to teach Nathu Lai a lesson for sympathizing with Shri Ram. Then, Dhanvir Singh attacked Nathu Lal with his lathi, Karan Singh joined him in the attack. As a result of the attack, Nathu Lal

sustained three injuries, one of which was a lacerated wound on his forehead on the right, and the other two were simple injuries on the left arm. After the blow of Dhanvir Singh on Nathu Lal, his lathi is said to have slipped and fallen on the head of the infant girl who was also injured. It was as a result of this blow that Nathu Lal also lost his balance and fell from his chabutara into the lane and the baby in his lap was also dropped by him while falling. The baby sustained two injuries, one of which caused a fracture on the right side of the head and another caused a slight swelling of the upper lid of the right eye, The infant expired on 2.2.1962 as a result of the injury on the head. On these facts, which are not seriously disputed before me in appeal, Dhanvir Singh alone was convicted Under Section 304, Part II, I.P.C. and sentenced to five years R.I., and both the and Karan Singh were convicted under Section 323, I.P.C. and sentenced to one year's R.I. the sentences of Dhanvir Singh running concurrently.

2. It has been argued in appeal that the learned Sessions Judge erred in convicting Dhanvir Singh under Section 304, I.P.C. and sentencing him to five years' R.I. Reliance was placed on Chatur Nath v. Emperor AIR 1920 Bom 224 : 21 Cri LJ 85 where it was held by a Division Bench of the Bombay High Court that in a case in which a woman, who was holding a child in her arms, intervened unexpectedly in a scuffle between the accused and her husband on a dark night, and the accused directed a blow at the husband with his stick which struck the child accidentally and caused its death, the accused was guilty only of the offence of causing simple hurt inasmuch as he could not have intended to cause the death of the child and could not have known that he was likely to cause either death or grievous hurt by the blow struck at his adversary. That was a case where the accused had not aimed a blow at a person who was holding a child. The wife who rushed in to intervene, holding her child in her arms, was herself guilty of rashness and lack of ordinary care. Their Lordships had also held that the stick used was not proved to be more than an ordinary stick. In the dark, the accused thought that he was dealing an ordinary blow to the man who was his adversary and who, if hit, would have sustained a simple injury. The intervention of the woman was quite unexpected, fortuitous, and unforeseeable I am, therefore, of the opinion that the ratio decidendi of that case is not applicable to the case before me.

3. The learned Sessions Judge held that, although Dhanvir Singh had no intention to kill the child or to cause any hurt to it, yet, owing to the operation of Section 301, I.P.C. Dhanvir Singh was guilty under Section 304, Part II, I.P.C. I am afraid, the reasoning adopted by the learned Sessions Judge is strained. The learned Judge held that the appellant Dhanvir Singh had given as lathi blow on the head of Nathu Lal which caused a lacerated wound upon the forehead, and, after that, the fatal injury to the child in the lap of Nathu Lal. As the death of the child was thus caused in the opinion of the learned Sessions Judge, the appellant Dhanvir Singh was saddled with the knowledge that his act was likely to cause death. The learned Sessions Judge overlooked that the blow on the head of Nathu Lal had had its full intended or known to be likely effect upon Nathu Lal, who did not die as a result of it. Section 301, I.P.C. applies only to a case where, an act fails to have its full intended or known to be likely effect upon the victim aimed at, but has that very effect upon another unintentionally.

In my opinion, the effect or known to be likely effect, for which the accused can be held liable, has necessarily to be judged with reference to the intended and not the unintended victim. The accused's intention or knowledge of the effect of his act in relation to the unintended or accidental victim is presumed not to exist at all in a case to which Section 301, I.P.C. can apply. It cannot be held that because the child died, as the learned Judge held, from the blow which had already had its major effect upon Nathu Lal, the blow which the child received would have had the same effect upon Nathu Lal as it had on the child. In my opinion, the learned Sessions Judge clearly misunderstood Section 301, I.P.C. by judging the degree of intent or knowledge of Dhanvir Singh from the actual effect of the act upon the child which was unintended.

4. I also find it difficult to accept the learned Sessions Judge's view that the child's death was caused by the lathi blow falling directly on the child and not by the fall from the lap of its father. Three out of four prosecution eye witnesses stated that the only lathi injury upon the child resulted from the blow of the lathi which fell upon Nathu Lal first and, after that, slipped and fell upon the child. Only Nathu Lal stated that the lathi blow which missed him completely struck the child, but this was most unlikely. The learned Sessions Judge himself accepted the version that

the lathi which first hit Nathu Lal also struck the child after that. If this finding was correct, the force of the lathi blow which first fell upon Nathu Lal must have been broken or considerably lessened when the lathi struck the child.

5. In my opinion, there is considerable force in the argument advanced by Mr. S.N. Mulla that it was more likely that the child died as a result of the injury sustained by its fall from the lap of Nathu Lal. It is true, that the child had sustained two injuries mentioned above, but the injury on the eye lid is very minor and could be the result of grazing with the lathi after it had hit Nathu Lal, whereas the injury on the child's head which caused the death was more likely to be caused by the fall from the lap of Nathu Lal, from the height of the chabutara into the paved lane below. What practically concludes the matter is that the infant's fall from the lap of the man who himself fell into the lane from the chabutra simultaneously was bound to result in injury to the child, and the only injury, out of the two, of the kind which could result from such a fall was on the head and not on the eye lid of the child. The doctor's evidence supports this inference and not the one arrived at by the learned Sessions Judge.

6. Whether it was the lathi injury or the subsequent fall which had actually caused the death of the child it would be a case of death caused by a rash and negligent act in the circumstances stated above. In my opinion, the offence of Dhanvir Singh was punishable neither under Section 304, Part II, I.P.C. nor under Section 323, I.P.C. only, but it was punishable under Section 304a, I.P.C. He took the risk of serious injury to the child both by the impact of the lathi as well as by its fall from the lap of its father sitting on a chabutra raised from the lane. Both these possibilities could be foreseen by a person of ordinary intelligence.

7. I, therefore, partly allow this appeal. I set aside the conviction and sentence of Dhanvir Singh under Section 304, Part II, I.P.C. and I convict him under Section 304A, I.P.C. and sentence him to rigorous imprisonment for one-year and to pay a fine of Rs. 100. In default of payment of fine, Dhanvir Singh will undergo-further rigorous imprisonment for a period of four months. The appellant Karan Singh has been rightly convicted under Section 323, I.P.C. and sentenced to one year's R.I. Dhanvir Singh appellant has also been rightly convicted under Section 323, I.P.C.

and sentenced to one-year's R.I. I dismiss the appeal of Karan Singh, and modify the conviction and sentence of Dhanvir Singh as indicated above. The sentences of Dhanvir Singh, under Sections 323 and 304A, I.P.C. will run concurrently. The appellants are on bail. They will surrender forthwith and serve out the remaining periods of their sentences. A period of three months is given for the deposits of the fine by the accused Dhanvir Singh.

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