

Ram Pal Singh and ors. Vs. State

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Court : Allahabad

Decided On : Nov-09-1992

Reported in : 1993CriLJ2715

Judge : G.P. Mathur and ;A.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 1, 39, 299, 300, 302, 304, 319, 320, 322, 323, 325, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 161, 319 and 376

Appeal No. : C.A. No. 2557 of 1979

Appellant : Ram Pal Singh and ors.

Respondent : State

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : P.C. Chaturvedi, ;G.S. Chaturvedi and ;P.K. Misra, Advs.

Judgement :

G.P. Mathur, J.

1. This appeal has been filed against the judgment and order dated 27-8-1979 of V Addl. Sessions Judge, Bijnor in Sessions Trial No. 144 of 1978. By the aforesaid order the appellant No. 1 Ram Pal Singh has been convicted under Section 302,

IPC and has been sentenced to imprisonment for life. Appellants Nos. 2, 3 and 4 namely, Smt. Ram Kali, Smt. Prakshi, and Bhishan have been convicted under Section 323, IPC and sentenced to pay a fine of Rs. 25/- each and in default to undergo one month's Section 1.

2. The case of the prosecution, in brief, is that Ram Pal Singh accused is son of Bishan accused and Smt. Prakashi is his wife while Smt. Ram Kali is his mother. The houses of the accused and the complainant Smt. Savitri are adjoining to each other in village Pundri Kalan. At about sun set time on 9-10-1977 the accused started constructing a 'Manger' in the open land which is in front of both the houses. Smt. Savitri came out of her house and made a protest. Ram Pal Singh accused abused her and then snatched her six years' old daughter Km. Sarita from her lap and threw her on the ground. The remaining accused beat her by kicks and fists. Smt. Savitri lodged a first information report of the incident at 11.10 p.m. on 9-10-1977 at police station Nagal where a non-cognizable report under Section 323/504/506, IPC was taken down. Km. Sarita was medically examined at 10.30 a.m. on 11-10-1977 in the District Hospital but she succumbed to her injuries at 8.40 p.m. Thereafter the accused case was converted into one under Section 304, IPC on 13-10-1977.

3. After investigation chargesheet was submitted only against Ram Pal Singh accused. The case was committed to the court of session by the C. J. M. Bijnor on 29-5-1978 and Ram Pal Singh was charged under Section 302, IPC. After statement of P.W. 1 Smt. Savitri had been recorded, the prosecution moved an application for summoning the remaining three accused, who were summoned by the court under Section 319, Cr.P.C. The Prosecution in support of its case examined 7 witnesses including three eyewitnesses. The accused denied the prosecution case and stated that they had been falsely implicated. They, however, did not lead any evidence in support of their defence. The learned Sessions Judge believed the prosecution case and convicted and sentenced the accused as mentioned earlier.

4. P.W. 1 Smt. Savitri has given the details of the prosecution case in her statement. She has stated that at the time of the incident her husband and son

were in the fields. When she objected to the construction being made by the accused they all abused her and assaulted her with kicks and fists. Ram Pal Singh accused snatched her daughter Km. Sarita and dashed her on the 'Kharanja' (bricks floor). After sunset her husband and son returned from the fields and they then went to the police station to lodge the report. The police did not get her daughter medically examined as the accused had bribed them. When her condition deteriorated on the third day, she was taken to hospital in Bijnor and the same night she died. She subsequently gave two applications to Superintendent of Police Bijnor which are Exs.Ka 2 and Ka 3. In her cross-examination she stated that she had told the Sub Inspector that girl was dashed on the 'Kharanja'. However, if it was written in the first information report and in her statement to Sub Inspector that girl was snatched and thrown by the accused then she had to say nothing. She has further stated that she had lodged an oral protest when Ram Pal caught the girl and dashed on the Kharanja. He had caught both the legs of the girl and then she was dashed on the 'kharanja' Before that all the accused had assaulted her with kicks and fists and she was also dashed to the floor. We have carefully examined the statement of this witness. Nothing material has come out in her cross-examination to discredit her testimony. It is fully established from her statement that Ram Pal Singh accused snatched the girl Km. Sarita and threw her on the ground.

5. We would consider the question as to whether the girl was thrown or dashed to the ground with force, later on. It is also established that all the four accused assaulted P.W. 1 with kicks and fists.

6. P.W. 2 Rajendra has stated that at about 5 p.m. he was returning to his house when she saw all the four accused raising construction. Smt. Savitri lodged a protest when the accused started abusing her and when she objected to the abuse being given to her, all of them assaulted her with kicks and fists. Ram Pal Singh accused snatched the girl from her lap and dashed her on the 'Kharanja'. In his cross-examination he stated that 'Kharanja' is made of Pucca bricks. The girl had fallen on the 'Kharanja'. If in his statement under Section 161, Cr.P.C. it was not written that the girl was dashed on the Kharanja then he had to say nothing. In para 3 of his cross-examination he has stated that Ram Pal threw the girl after

giving her a swing over his head. We have carefully scrutinized the evidence of this witness. He is a wholly independent witness and nothing has come out in his cross-examination which may discredit his testimony. His statement proves that all the four accused assaulted Smt. Savitri with kicks and fists when she lodged an oral protest regarding the constructions being made by the accused. It is also proved that Ram Pal snatched Km. Sarita who was in the lap of her mother and then she was either thrown or dashed on the ground.

7. P.W. 3 Ram Saran who is elder brother of the husband of Smt. Savitri has also supported the prosecution case in his statement. However, the learned Sessions Judge has discarded his testimony on the ground that though he was a close relation of the complainant but he remained a mute spectator at the time of the occurrence and, therefore, it was doubtful whether he was really present and had seen the occurrence. In our opinion even if the testimony of this witness is excluded the statements of P.W. 1 Savitri and P.W. 2 Rajendra are enough to establish the prosecution case.

8. P.W. 6 Dr. Harish Chandra Dua medically examined Km. Sarita at 10.30 a.m. on 11-10-1977 in the District Hospital Bijnor and found the following injuries on her body.

'Injuries (1) Traumatic swelling over scalp middle part measuring 9 cm. x 6 cm. Anterior posterior 7 cm. above the upper and of Rt. ear. He has proved the injury report Ex.Ka. 4.

9. P.W. 7 Dr. S. B. Misra performed the post mortem examination on the body of the deceased at 4 p.m. on 12-10-1977 and found the following ante mortem injuries:

'Contusion 12 cm. x 10.2 cm. on the upper part of the Head extending up to the root of hairs in the front.'

10. Internal examination showed that there was fissured fracture of the skull on the upper part. The membranes and brain were congested. In the opinion of the doctor the injury was sufficient in the ordinary course of nature to cause death. He has

stated in cross-examination that if during scuffle the child had fallen from the lap of her mother, there was very little possibility of receiving the type of injury which had been sustained by the deceased.

11. P.W. 4 K. P. Singh proved the inquest report and P.W. 5 Harish Chandra Saxena S.I, Police Station Nagal has stated that the case had been registered on 9-10-1977 and was converted under Section 304 IPC on 13-10-1977. He commenced investigation on 14-10-1977 and after recording statements of the witnesses submitted chargesheet against Ram Pal Singh, accused on 25-12-1977. He has proved 161 statements of Smt. Savitri and Rajendra who had both stated that Ram Pal Singh snatched the girl and threw her 'on the ground.

12. The testimony of P.W. 1 Smt. Savitri and P.W. 2 Rajendra conclusively establishes that the occurrence took place when P.W. 1 lodged an oral protest against the construction being made by the accused in the open land in front of their houses. The accused abused her. When she objected to the abuses being given to her, all the four accused assaulted her with kicks and fists. Ram Pal accused then snatched Km. Sarita aged about six years from the lap of her mother Smt. Savitri and threw her on the ground. Km. Sarita died on 11-10-1977 on account of the injury namely fracture of skull bone which had been sustained by her. The medical evidence on the record completely corroborates the prosecution case. Thus the prosecution case is established beyond any doubt against all the four accused.

13. In their statements in court both P.W. 1 and P.W. 2 have stated that the girl was dashed on the 'kharanja' with some force. P.W. 1 has said that 'Ram Pal ne kharanja par maar diya' In her cross-examination she has stated 'kharanje par patak kar maar diya'. Similarly P.W. 2 has stated 'Laraki ko chheen kar kharanje par de marra'. In his cross-examination he has stated that 'kharanje par patakane wali baat bhi batai thi'. Hindi words 'Phekana' and 'Patakana' connote different meanings. While the former denotes throwing without using force, the latter denotes throwing or dashing coupled with application of force. The latter act is done intentionally with some force while the former may be done casually and in a light way without application of force.

14. In the F.I.R. lodged by Smt. Savitri it is mentioned that 'Meri Laraki umra 6 warsh ko gode men se chheen kar gode se phenk diya'. Translated into English it would mean that her daughter was snatched from her lap and was thrown. Both the witnesses in their statements under Section 161, Cr.P.C. had stated that 'Gode se chhen kar phenk diya'. Translated into English it would mean that the girl was snatched and thrown. Having carefully examined the whole matter, we are of the opinion that the version given in the F.I.R. as well as in statements under 161, Cr.P.C. is the correct version of the incident. The girl Km. Sarita was in fact snatched from the lap of her mother and was thrown by Ram Pal Singh, accused. She was not dashed to the ground with application of force as the witnesses have subsequently stated in court. The accused wanted to assault Smt. Savitri when she objected to the abuses being given to her. The intention of the accused can be judged from the act that they did not use any weapon but assaulted Smt. Savitri with kicks and fists. They had neither any intention nor motive to cause injuries to Km. Sarita. The object of Ram Pal Singh accused in snatching the girl and throwing her was to free her from the lap of her mother so that the latter could be given beating by kicks and fists may be this act was done so that Km. Sarita herself may not receive some blows when her mother was being beaten. When no weapon was being used to cause injuries to Smt. Savitri to whom the accused wanted to assault and when she actually did not receive any substantial injuries which is evident from the fact that there is no medical examination report of her on record, it is obvious that they had no intention of causing any injury to Km. Sarita. It is unfortunate that Ram Pal Singh accused instead of softly placing the child on the ground threw her which caused injuries to her head.

15. The question to be considered is what offence has been committed by the appellant Ram Pal. A person is not to be convicted for a crime unless he has by voluntary conduct, brought those elements which by statute constitute that crime. In general a person does not incur criminal liability unless he intended to bring about, or recklessly brought about, those elements which constitute the crime. Every crime requires a mental element, the nature of which will depend upon the definition of the particular crime in question. A person is not to be made criminally liable for serious crime unless he intends to cause or foresees that he will probably cause, or at the lowest, that he may cause, the elements which constitute the

crime in question. Taking into consideration the background in which the incident took place and the manner of assault upon Smt. Savitri, we are of the opinion that no intention or knowledge can be attributed to Ram Pal accused so as to bring the offence committed by him within the ambit of Section 299 IPC. It cannot be said that he had any intention of causing death or he had an intention of causing such bodily injury as is likely to cause death or that he had the knowledge that he is likely by such act to cause death. Knowledge is a strong word and imports a certainty and not merely a probability. The knowledge referred to in Sections 299 and 300, IPC is the personal knowledge of the person who does the act. Therefore, in our opinion it cannot be said that the appellant has committed culpable homicide.

16. Section 322, IPC provides that whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous' hurt, is said 'voluntarily to cause grievous hurt'. Hurt has been defined in Section 319, IPC which provides that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The word 'voluntarily' has been defined in Section 39, IPC and it lays down that a person is said to cause an effect 'voluntarily' when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. On the facts of the present case it can be safely inferred that at the time of throwing the child Ram Pal knew that he is likely to cause grievous hurt to the child. Km. Sarita sustained a fracture which is a grievous hurt as defined by clause seventhly of Section 320, IPC. The offence committed by the appellant would, therefore, be one under Section 325, IPC. A sentence of 3 years' R. 1 would meet the ends of justice.

17. So far as Smt. Ram Kali, Smt. Pra-kashi and Bishan accused are concerned, they have been convicted under Section 323, IPC and have been sentenced to pay a fine of Rs. 25/- only. In view of Section 376(b), Cr.P.C., the appeal filed by them is not maintainable as the fine imposed is less than Rs. 200/-. We have, however, considered their case treating their appeal to be a revision. In our opinion there is no ground for interfering with the order of conviction passed

against them by the learned Sessions Judge as the prosecution case is fully established.

18. The appeal filed by Ram Pal Singh accused is partly allowed. His conviction under Section 302, IPC and sentence of imprisonment for life imposed upon him is set aside. He is instead convicted under Section 325, IPC and is sentenced to 3 years' R. 1. He shall surrender forthwith to undergo the sentence imposed upon him. After he has surrendered his bail bonds and sureties shall stand cancelled. The appeal filed by Smt. Ram Kali, Smt. Prakashhi and Bishan is dismissed.

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