

State of U.P. Vs. Prem Singh

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Court : Allahabad

Decided On : Apr-01-1982

Reported in : 1982CriLJ1982

Judge : P.N. Goel and ;S.J. Hyder, JJ.

Appellant : State of U.P.

Respondent : Prem Singh

Judgement :

S.J. Hyder, J.

1. Karan Singh and Prem Singh are two real brothers. Both of them were prosecuted in Sessions Trial No. 663 of 1976 before the Sessions Judge, Moradabad. By his judgment and order of May 31, 1977, the Sessions Judge found Karan Singh guilty of the offence punishable under Section 302 I.P.C. At the same time, he recorded an order of acquittal in favour of Prem Singh appellant. In consequence we have before us Government Appeal No. 2177 of 1977 which arises out of the order of acquittal against Prem Singh. The connected Criminal Appeal No. 1531 of 1977 has been filed by Karan Singh. Both these appeals are directed against a common judgment and as such we are deciding them together.

2. The prosecution case is short and simple. Karan Singh is a previous convict. He was sentenced to life imprisonment in connection with a murder case. Shortly

before the occurrence, which is the subject-matter of the two connected appeals, Karan Singh had been released after serving out a jail sentence.

3. There was a small piece of open land in Mohalla Patpat Sarai Street in the city of Moradabad which was a common property of the persons residing in the said Mohalla. The two accused encroached on the said open land and placed a tea stall there, which was being run by Karan Singh appellant. Bad characters assembled at the said shop and indulged in eveteasing. This was resented by the residents of the locality. Mangat Ram deceased was also a resident of the same Mohalla. Shashi Kant (P. W. 3), Satya Pal Anand (P. W. 6) also lived in Mohalla Patpat Sarai. The residents of the locality including the deceased Mangat Ram moved an application to the Prescribed Authority on March 30, 1976 praying for the removal of the shop. Mangat Ram was in the forefront of the efforts of the residents of the locality to get the shop removed. The then Additional District Magistrate (Executive) directed the removal of the shop and the same was removed on April 4, 1976 by Govind Saran Shukla S. I. Kotwali, Moradabad. The relevant entry in the general diary of the removal of the shop is Ex. Ka. 6 on the record and the memo prepared in respect of the same are Exs, Ka. 15 and Ka. 16. The two brothers Prem Singh and Karan Singh felt aggrieved by the removal of the shop. The main target of their venom was Mangat Ram deceased.

4. It is then stated that about three or four days before the occurrence, the two appellants held out threats to Mangat Ram.

5. The climax was reached on June 5, 1976 according to prosecution case in Mohalla Patpat Sarai. Mangat Ram carrying a jug in his hand had gone to purchase milk from a milkman at about 5 P.M. He was accompanied by his son at the time of occurrence, viz. Awadhesh Sharma (P. W. 7) who was nine years of age at that time. When he had reached the house of Sri R.P. Gupta, he was overtaken by the two brothers, Karan Singh and Prem Singh. Prem Singh caught hold of the victim from behind and Karan Singh dealt successive knife blows on the person of Mangat Ram deceased. The victim made efforts to ward off the blows but he was prevented from doing so on account of the firm grip in which he was held by Prem Singh. In the meanwhile Shashi Kant Gupta (P.W. 3), Satya Pal

Anand (P. W. 6), Ganga Dayal, Jagat Singh and Roshan reached the place of the occurrence on hearing the cries of the deceased. Thereupon, Prem Singh loosened the grip and made his escape good along with Karan Singh after scaling the wall of the hospital compound. In this melee, the jus which was being carried by Mangat Ram fell on the ground. The son of the victim ran towards South and informed his mother. The victim also pressed his wound and ran towards his house which was nearby. He collapsed in the lap of his wife Shrimati Misri Devi (P. W. 2) who had come out of his house on hearing the outcries of his son Awadhesh Sharma. The deceased was placed on a cot and carried to the nearby hospital by Shrimati Misri Devi, Ram Gopal and Jagat Singh. Mangat Ram was admitted as an indoor patient in the hospital. In the meanwhile, Shrimati Misri Devi proceeded to the police station which was only one furlong from there. She lodged a first information report of the occurrence. The said report was scribed by Murari Lal (P. W. 1). Mangat Ram succumbed to his injuries in the District Hospital Moradabad at 5-30 P.M. Information about his death was immediately sent to the police station at 5.55 P. M, and the case was converted into one under Section 302 I.P.C.

6. Sri Kameshwar Prasad (P. W. 15) the then Inspector of Police Moradabad was present when the first information report of the occurrence was registered. He took up the investigation of the case without any delay in his hand. He sent Prem Shanker Sub-Inspector to go with a number of constables to the scene of the occurrence. He also recorded statement of Shrimati Misri Devi (P. W. 2) and Ram Gopal at the police Station.

7. The inquest on the dead body of Mangat Ram was conducted by Prem Shanker S. I. under the direction of the Investigating Officer. The diagram of the dead body was prepared and the recoveries were made by the investigating agency. The recovered articles were duly sealed and sent to the Malkhana. The dead body of Mangat Ram was sent for autopsy in accordance with law.

8. The post mortem examination on the dead body of Mangat Ram was performed by Dr. D. Misra (P. W. 10) on June 5, 1976 at about 3 P.M. The doctor noted as many as four punctured wounds as external ante-mortem injuries. All these punctured wounds had corresponding internal injuries. In the opinion of the Doctor

death of the deceased was due to syncope as a result of injury No. 1 mentioned in the postmortem examination report. The postmortem examination by the Doctor is Ex. Ka. 14 on the record.

9. Kameshwar Prasad the investigating officer reached the place of occurrence after a short while. At that time, Sub-Inspector Prem Chand was also present there. A site plan was prepared of the place of occurrence. A trail of blood commencing from the place of the occurrence to the house of the deceased was noticed by the Investigating Officer. He searched the house of the two accused, but did not find anything incriminatory. He did not find the accused at their houses as they had absconded.

10. The Investigating Officer thereafter recorded the statement of Ganga Dayal, Awadhesh Sharma and Shashi Kant Gupta. He got a photograph of the scene of the occurrence prepared. The photographer Nem Chand was examined by the prosecution as P. W. 12.

11. Next day, information was received that Karan Singh was staying at the house of Hem Singh in village Salarpur police station Gajraula. A search of the house of Hem Singh was made on 6-6-1976 by Chandrapal Pathak S. I. (P. W. 14) but the same did not yield any result. Chandrapai Singh Yadav, however managed to apprehend Karan Singh at Gajraula at about 12-40 P.M. on 6-6-1976. He made a search of the person of Karan Singh at Gajraula at about 12-40 P.M. on 6-6-1976 and recovered a knife from his possession which is marked as Ex. IV. The recovery memo of the blood-stained knife and shirt taken from the possession of Karan Singh is Ex. Ka. 17. Prem Singh appellant surrendered in court on June 10, 1976. After completing the investigation, the charge-sheet against the two accused was submitted on 24-6-76.

12. At the trial of the case, the prosecution examined Shashi Kant Gupta (P. W. 3), Satya Pal Anand (P. W. 6), Awadhesh Sharma (P. W. 7) as eye-witnesses of the occurrence. Shrimati Misri Devi (P. W. 2) the wife of Mangat Ram is the author of the First Information Report. She has deposed about the dying declaration made by Sri Mangat Ram, Dr. D. Misra (P. W. 10) has furnished the medical evidence about the autopsy conducted on the dead body of Mangat Ram. The Investigating

Officer Kameshwar Prasad has been examined as P. W. 15. The rest of the prosecution witnesses are more or less formal witnesses.

13. Karan Singh appellant denied the charge and claimed to be tried. He stated that the prosecution witnesses were deposing against him on account of enmity. A similar claim was made by Prem Singh appellant in Government Appeal No. 2177 of 1977. He further said that his relations with Karan Singh were not cordial and that the latter had threatened him with a knife in connection with some incident. He had examined Murari Lal Sharma (D. W. 1) as a witness.

14. We think it would be proper to deal with the allegation of Prem Singh that his relations with his brother were not cordial. In order to prove this allegation, Prem Singh got summoned Murari Lal Sharma (P. W. 1) and the first information report lodged by Prem Singh against Karan Singh for the offence punishable under Sections 312 and 506 I.P.C. The corresponding entry of the first information report in the general diary is Ex. Kha. 2. The said report was lodged on December 1, 1975. It does not disclose any serious offence and no action on the basis of the said first information report was taken by the police. Family members occasionally quarrel between themselves and sometimes a first information report in respect of such quarrel is also lodged. A casual quarrel between Karan Singh on one side and Prem Singh on the other by itself is not sufficient to say that there was a bad blood between the two brothers. The Sessions Judge has rightly observed that quarrels of this nature are generally forgotten in a fraternal embrace.

15. Now coming to the actual occurrence, we have the eye-witness account brought on the record by Shashi Kant Gupta (P. W. 3), Satya Pal Anand (P. W. 6) and P. W. 7 Awadhesh Sharma. The first two eye-witnesses named above have given a consistent and cogent account of the occurrence which developed into climax and the events that followed thereafter. Both these witnesses are residents of Mohalla Pat Pat Sarai. They have stated that they were going for a morning walk when they saw the incident. According to them, Prem Singh respondent in the Government Appeal caught hold of the deceased from behind while Karan Singh appellant in the connected Criminal Appeal gave a number of knife blows to the deceased. They have stated that Mangat Ram was carrying a jug at the time of

the occurrence. It fell down on the ground. The Investigating Officer recovered the jug from the place of occurrence and prepared a recovery memo in respect thereof. There is no contradiction in the test-mony of these witnesses and the Sessions Judge was right in accepting their evidence.

16. The learned Counsel appearing for the appellants in the case has contended before us that Shashi Kant Gupta (P. W. 3) and Satya Pal Anand (P. W. 6.) were complainants before the Prescribed Authority in connection with the shop constructed by Karan Singh and their evidence is suspect. We are unable to subscribe to this submission. The grievance of the residents of Mohalla Pat Pat Sarai about the unauthorised construction of the shop had been removed earlier. Any grievance which these two witnesses could have against Karan Singh and Prem Singh had, therefore, disappeared before the day of occurrence. We are, therefore not prepared to accept the argument advanced on behalf of the two accused.

17. It is then stated that Awadhesh Sharma is a child witness and his evidence should not be accepted on its face value. This again is a misconceived submission which must be rejected. The Sessions Judge had tested the intelligence of Awadhesh Sharma before recording his statement. He had also satisfied himself that Awadhesh Singh understood the implication of speaking truth before the court. Awadhesh Singh has given a clear and cogent account of the incident which he saw with his own eyes. It may be pointed out that Awadhesh Sharma has an elder brother who also lived with Mangat Ram deceased. In case, the prosecution was inclined to give false evidence, it was not at all necessary to mention the name of Awadhesh Sharma in the First Information Report as an eye-witness of the occurrence. The name of his elder brother could have been mentioned in the document instead of the name of Awadhesh Sharma.

18. We have also the dying declaration of Mangat Ram deceased which has been brought on the record through the testimony of his widow Shrimati Misri Devi (P. W. 2). She has given graphic account of agonising incident in her life when her husband died in her lap. She has testified that at about 5 P.M. on June 5, 1976, her husband Mangat Ram accompanied by her son Awadhesh Sharma had left

the house to bring milk. A short while thereafter, Awadhesh Sharma came running to her with tears in his eyes and crying on account of the, injuries inflicted on his father. Shrimati Misri Devi (P. W. 2) came out of her house and before she could inquire much from Awadhesh, the reality was before her own eyes. Mangat Ram staggered and fell in her lap with severe bleeding injuries. In the meanwhile, Shashi Kant Gupta (P. W. 3), Satya Pal Anand (P.W. 6), Ganga Dayal and Jagat Singh also arrived there. Mangat Ram told her that Prem Singh held the deceased from behind and Karan Singh stabbed him with a knife. She has given a heart rending account of the manner in which her husband was taken to the hospital and thereafter she went to lodge a first information report of the occurrence at police station Kotwali. The testimony of Shrimati Misri Devi is corroborated by other witnesses. The account given by her has a ring of truth about it. We are, therefore, inclined to believe that she had correctly narrated the dying declaration made by the deceased Mangat Ram.

19. For the reasons stated above, we are of the opinion that the Sessions Judge was right in recording an order of conviction against Karan Singh. In consequence, we see no force in Criminal Appeal No. 1531 of 1977 which is liable to be dismissed.

20. The only question which survives for our determination is as to whether the Sessions Judge was right in recording an order of acquittal in favour of Prem Singh respondent in Criminal Appeal No. 2177 of 1977. The assessment of evidence made by the Sessions Judge is on the same lines as made by us in this judgment. In short, the Sessions Judge has believed the case of the prosecution that Prem Singh respondent in Government Appeal No. 2177 of 1977 was holding the deceased Mangat Ram from behind while the brother of Prem Singh, namely, Karan Singh inflicted knife blows on the person of the deceased. The Sessions Judge has also considered the medical evidence produced by the prosecution in the case and as stated by us earlier in this judgment, has come to the conclusion that Mangat Ram died as a result of the knife blows administered to his person. In recording the order of acquittal in favour of Prem Singh, the Sessions Judge felt himself oppressed, by a number of decisions of the Supreme Court. The ratio of the said decisions is that if a number of persons in a murder trial are charged with

the aid of Section 34, Penal Code, common intention on the part of all cannot be inferred from the mere fact that in the heat of the quarrel one of the accused suddenly whipped out a knife and inflicted blows on the victim with the knife. The underlying assumption behind all these decisions is that in certain cases, it is possible for the accused to have an intention merely to chastise the victims. All the accused cannot be credited to have the intention of causing the death of the victim, if one of them developed a distinct intention to cause such death in a state of frayed temper. In other words, it is possible for one of the co-accused to develop a different intention from the rest of them.

21. We have given serious consideration to the reasoning adopted by the Sessions Judge. We are, however, unable to agree with him in the view of law taken by him. Every case has to be judged on its own facts. There is no rule of law which lays down that in every case in which knife blows are inflicted by only one of the accused, the other accused cannot be convicted for having committed the murder with the aid of Section 34, I.P.C. The decisions on which the Sessions Judge has relied do not lay down the law in such broad terms. The law pronounced by the Supreme Court in the case on which reliance has been placed by the Sessions Judge has to be Confined to the facts of those cases.

22. Now Section 34 of the Penal Code lays down that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it was done by him alone. The said provision of law enshrines a fact of the principle of vicarious liability in criminal jurisprudence. A criminal act- may have been committed by one of the accused alone; the other accused are deemed to be guilty of the offence if the act is done in pursuance of the common intention of all of them.

23. The question of intention does present some difficulty. Ordinarily, intention is a matter within the personal knowledge of the person whose intention is in question. But according to the principles governing criminal trials, the burden of proving in the sense of establishing a case is always on the prosecution. Intention like any other fact may be proved either by direct or by circumstantial evidence. The intention of an accused can be proved by the prosecution by leading circumstantial

evidence. It is well established that evidence of this nature should be consistent with the guilt of the accused and it should be totally inconsistent with his innocence. In the Supreme Court decisions on which reliance has been placed by the Sessions Judge, evidence led by the prosecution did not fulfil these tests. It was because of this lacuna in the prosecution evidence that it was held by the court that the accused concerned could not be punished for the substantive offence with the aid of Section 34 of the Penal Code.

24. The facts of the present case are totally different, Prem Singh respondent held Mangat Ram from behind and he prevented him from defending himself against the assault launched upon his person by Karan Singh appellant. Both Karan Singh appellant and Prem Singh respondent, grappled with Mangat Ram at the same time. It would not have been possible for Karan Singh to deliver successive knife blows on Mangat Ram unless the latter had not been pinned down by Prem Singh. The success of the assault on the person of Mangat Ram depended largely on the state of his immobility. Prem Singh respondent in the Government Appeal was responsible for making Mangat Ram immobile. Preconcert on the accused has to be necessarily inferred. The act of Prem Singh respondent in the Government Appeal before us in the gory Drama which was enacted in one of the streets of Mohalla Pat Pat Sarai in the city of Moradabad cannot be separated from the part played by Karan Singh appellant in giving the knife blows to Mangat Ram. It has to be held that Prem Singh was as such responsible for the homicidal death of Mangat Ram as his brother Karan Singh. We are, therefore, of the view that the prosecution has succeeded in establishing a common intention between the two brothers and the instant case is a fit case in which Prem Singh respondent shall also to be convicted for the offence punishable under Section 302/34 I.P.C.

25. We are thus of the opinion that Government Appeal No. 2177 of 1977 must succeed.

26. The result is that Government Appeal No. 2177 of 1977 is hereby allowed. The judgment and order recorded by the Sessions Judge on May 31, 1977 in Sessions Trial No. 663 of 1976 acquitting Prem Singh respondent is hereby set aside. Prem Singh is convicted of the offence punishable under Section 302/34 I.P.C. and is

sentenced to undergo life imprisonment. Prem Singh is on bail. His bail bonds are cancelled. He shall surrender forthwith to serve out the sentence awarded to him. Criminal Appeal No. 1531 of 1977 directed against the said judgment is hereby dismissed. The conviction and sentence awarded to Karan Singh appellant is hereby maintained. Karan Singh shall serve out the sentence inflicted by the Sessions Judge and confirmed by this Court.

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