

**Dan Behari Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Feb-03-2003

**Reported in :** 2003CriLJ4959

**Judge :** M.C. Jain and ;K.N. Ojha, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 301 and 302

**Appeal No. :** Criminal Appeal No. 1575 of 1980

**Appellant :** Dan Behari

**Respondent :** State of U.P.

**Advocate for Def. :** Rajul Bhargava, ;R.P. Dubey, ;Arhya Gupta, ; Sudhir Agrawal and ;A.G.A., Advs.

**Advocate for Pet/Ap. :** Tej Pal and ;G.S. Chaturvedi, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K.N. Ojha, J.**

1. This appeal has been preferred against order of conviction and sentence dated 16-7-1980, passed by 1st Additional Sessions Judge, Mathura, in Sessions Trial No. 164 of 1979, State v. Dan Behari, by which Dari Behari, appellant has been

convicted under Sections 301/302, I.P.C. with life imprisonment.

2. None appeared for the appellant to advance argument, although he is represented by Sri Tej Pal and Sri G. S. Chaturvedi, Advocates. Arguments of learned A.G.A. were heard and the judgment is being delivered. The appeal is being decided on merits.

3. One Than Singh lodged F.I.R. against Dan Behari on 19-2-1979 at 10.30 a.m. under Section 307, I.P.C. bearing crime No. 85 at police station Vrindavan, district Mathura that Dan Behari had caused firearm injury to his son Budha on 19-2-1979 at 9.00 a.m. The occurrence is said to have taken place near Pattarpura Tonga stand; which is at the distance of one mile from the outpost Mathura Gate, Police Station, Vrindavan.

4. According to prosecution, there is a temple in Vrindavan. Kaushal Kishor's father got the father of the accused appellant appointed in the temple for Pooja. Kaushal Kishor lives in a house known as Kishori Rani Kunj. The appellant and his father wanted to get this house vacated. Civil litigation was pending between Kaushal Kishor and the father of the accused appellant in Mathura. Due to this enmity, on 18-2-1979 when Chandra Bhan, son of Kaushal Kishor was going on cycle from Vrindavan to Mathura, he met Dan Behari accused and his brother Yogendra. Dan Behari and Yogendra tried to attack Chandra Bhan but he escaped injuries. On the same day Dan Behari and Yogendra beat Chandra Prakash, another son of Kaushal Kishor at 6.30 P.M. F.I.R. was lodged at the police station in respect of both these incidents. Dan Behari and his brother Yogendra were taking breakfast at the shop of Tonu. Kaushal Kishor enquired as to why they had beaten his son Chandra Prakash as the civil suit was pending and the right in respect of the house would be decided by the Court and there was no need to quarrel. At this appellant Dan Behari and his brother Yogendra abused, then Kaushal Kishor threw a piece of brick and accused Dan Behari fired with country made pistol at Kaushal Kishor, Kaushal Kishor sat down, hence one innocent child Budha son of Than Singh, who was standing behind Kaushal Kishor, was hit. Witness Sudhan brought Budha to his (Budha's) house. Dan Behari and Yogendra ran away. Budha was bleeding profusely. Sudhan and Than Singh, father of

Budha carried Budha to C.F.C. Hospital Vrindavan on rikshaw. Injured Budha succumbed to his injuries in the hospital on 19-2-1979 at 10.30 p.m. The investigation was started by Police Sub-Inspector Shiv Ram Singh Sengar, who recorded the statements of Than Singh, Sudhan, Tonu and Kaushal Kishor and prepared site-plan. The accused was not traceable. Ultimately Dan Behari accused surrendered in the Court on 23-2-79. Police Sub-Inspector Babu Ram Dikshit prepared the inquest report. In the postmortem examination, following ante-mortem injuries were found on the dead body of Budha:--

(1) Firearm injury 1% cm. x 1 cm. x muscle deep on, front of left arm just below shoulder joint with blackening and charring surrounding the wound.

(2) Firearm injury 1 cm. lateral to injury No. 1. Both these injuries were connected through and through the muscle. Injury No. 1 was wound of entry and injury No. 2 was wound of exit.

(3) Firearm injury of entry 1 cm. x 1 cm. x chest cavity deep at about middle third of right side clavicle. The wound was surrounded by blackening and charring.

(4) Firearm injury of exit 3/4 cm. x 1/2 cm. x chest cavity deep on right side back of chest just below shoulder blade.

Injuries 3 and 4 were connected with each other when the chest was explored.

(5) Surgical stitched wound 18 cm. obliquely on right lateral side of chest 3 cm. above injury No. 4.

(6) Cut open incised wound 1 cm. x 1/2 cm. x muscle deep just above medial side of right ankle joint.

(7) Lacerated wound 1 cm. x 1/4 cm. muscle deep on mucus surface of upper lip at left angle of mouth.

(8) On opening right side collar bone was fractured under injury no. 3. Pleura was lacerated under injury No. 4 covered with surgical stitches.

5. In the opinion of the doctor the death was caused due to syncope as a result of shock and haemorrhage due to injuries sustained.
6. After the charge-sheet was submitted the case was committed to the Court of Session.
7. The prosecution examined P.W. 1 Than Singh, P.W. 2 Sudhan, P. W. 3 Tonu, P.W. 4 Kaushal Kishor, P.W. 5 Dr. G. K. Kaithal, P.W. 6 Dr. C. P. Srivastava, P.W. 2 Head Constable Visharnbhar, and P.W. 8 S.I. Shivram Singh.
8. The accused appellant Dan Behari pleaded not guilty. His case is that he along with his brother Yogendra was having breakfast at the shop of Tonu on 19-2-1979 at 9.00 a.m. Kaushal Kishor, his son Chandra Bhan and one other came there and started abusing and throwing stones on Dan Behari and Yogendra, as a result of which Yogendra was injured. Kaushal Kishor fired at Dan Behari but gun hit Budha. Dan Behari along with his brother Yogendra immediately went to police station Vrindavan and Yogendra lodged F.I.R.
9. We have gone through the record including the judgment delivered by learned Additional Sessions Judge, Mathura. It is admitted that dispute between Dan Behari and Kaushal Kishor took place on 19-2-1979 at about 8.00 or 9.00 a.m. at the shop of Tonu. It is also admitted that firearm injury was caused to Budha at his shop where the persons, taking breakfast, were present there. The only difference is that according to prosecution, firearm was opened by Dan Behari and not by Kaushal Kishor, case of the appellant Dan Behari is that exchange of hot talk did take place and Kaushal Kishor fired at Dan Behari and injury was caused to Budha, who had no concern with the parties. P.W. 2 Sudhan and P.W. 3. Tonu are independent witnesses and have no enmity with the accused. They have stated that it was Dan Behari, who fired at Kaushal Kishor but the injury was caused to Budha because Kaushal Kishor had sat down. P.W. 3 Tonu is shop keeper. He has no enmity with Dan Behari. He would not like to invite enmity with him by making false statement. His presence at his shop in the morning when many persons are taking breakfast, is quite natural and his presence at the spot cannot be doubted. So is the case about the statement of P.W. 3 Sudhan, who has stated that he had gone to the shop of Tonu for breakfast when the occurrence did take

place. If he would not have been present at the shop of Tonu, he would not have brought Budha to his house, where his father was present and from there they carried Budha to the hospital in rikshaw where lateron, he succumbed to the injuries. Thus the statement of P.W. 2 and P.W. 3 have rightly been believed by the learned Additional Sessions Judge.

10. The occurrence did take place on 19-2-1979 at 9.00 a.m. and the FIR was lodged on the same day at 10.30 am. within one and half hour while outpost Mathura Gate of police station Vrindavan, where the F.I.R. was lodged is at a distance of about 1 mile. First Budha was carried to his house and from there to the hospital. Thus the FIR has been promptly lodged and it does not suffer from any deliberation and consultation.

11. The defence version that Kaushal Kishor fired at Dan Behari and the injury was caused to Budha cannot be believed. It is the case of the accused that the F.I.R. was lodged from his side, wherein it is written that the injury was caused to Budha at 19-2-1979 at 9.00 a.m. at the shop of Tonu, but there is no mention as how the occurrence did take place. Reliance has been placed on the statement of P.W. 1 Than Singh, P.W. 2 Sudhan and P.W. 5 Dr. G. K. Kaithal. Sri Ramesh Chandra Sharma (D.W. 1) is an Advocate. He has stated that he was President of Vrindavan Municipal Board and remained member also for many years and when the occurrence did take place, he was confined to bed. Father of Budha had gone to him to get his son admitted in C.F.C. hospital to he called D.W. 2 Radha Ballabh Sharma and sent a letter to Dr. G.K. Kaithal (P.W. 5). In that letter it was specifically mentioned that Than Singh does not know as to who had caused injuries to his son. Injured Budha was admitted in hospital just after injuries were caused. Than Singh was not the eye-witness of the occurrence. There was not sufficient time for Than Singh to enquire about the manner in which the injuries were caused because he was interested first to save the life of his son. Therefore, if he simply told to Ramesh Chandra Sharma that his son be got admitted in the hospital without naming anybody for causing the injuries to his son, it does not exonerate the appellant. For admission in hospital, it is not necessary that the name of the person who caused the injuries, be specifically, mentioned, moreso in the circumstance that revealing the name of the accused make the case as of

medico legal and the admission in the hospital may be delayed while the life of the victim was in danger. Than Singh had told him that the dispute had taken place between Kaushal Kishor and Dan Behari, Budha was standing there and injury was caused to him. It means that he also confirmed that the dispute did take place at the shop of Tonu. The statement of the witnesses examined by the accused, show that Budha was not being admitted in the hospital. It was shown to be a medico legal case. Therefore, his father though it proper to approach D.W. 1 Ramesh Chandra Sharma by stating that in some dispute between Kaushal Kishor and Har Prasad faction, the injury did take place and, therefore, on this basis Ramesh Chandra Sharma sent the letter mentioning therein that it was not medico legal case. The object was that Budha be got admitted in the hospital and his life be saved. D.W. 4 Madan stated that Kaushal Kishor had not fired, thereafter he has stated that he was not present on the spot at the time of occurrence. Thus, the defence version of the appellant has rightly been disbelieved by the learned Additional Sessions Judge.

12. Section 301 of I.P.C. is specific that if a person by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing death of any person whose death he neither intends, nor knows himself to be likely to cause, culpable homicide committed by the offender is of the description of which it would have been, if he had caused the death of the person, whose death he intended or knew himself to be likely to cause. Thus, even though murder of Kaushal Kishor was not committed and the death of Budha was caused, the appellant is equally liable for it and, thus, the charge under Section 302, I.P.C. is proved against him. The nature of the weapon, injury caused to Budha, motive of litigation pending between the parties, consistent, natural and reliable statement of the eye-witnesses and unbelievable defence version, as also the statement of the witnesses supported by the medical evidence confirm that it was the appellant-Dan Behari who committed murder of Budha. Therefore, the learned Sessions Judge Mathura has rightly convicted and sentenced him to undergo life imprisonment.

13. An application was moved by the appellant along with affidavit of his father Pt. Hari Prasad Shashtri on 28-3-2000 containing the fact that at present the appellant

is leading a religious and God fearing life, doing Sewa at the famous temple of 'Rangnath Ji Maharaj' and is undergoing treatment under the doctor of Ram Krishna Mission Hospital, Vrindavan. Therefore, a lenient view be taken while awarding sentence. As discussed above, the charge under Sections 301/302, I.P.C. is proved against the appellant. He was so furious while firing that he did not even care that some unknown innocent child was also standing behind Kaushal Kishor with the result Budha died. The papers of Ram Krishna Mission Sewa Ashram, Vrindavan do not show that he is suffering from such disease that it will be dangerous for his life if he is sent to Jail. Considering the gravity of the offence, in our opinion, the accused cannot be relieved from the punishment on this ground, specially in the circumstance that minimum sentence under Section 302, I.P.C. is the life imprisonment which has been rightly awarded by the learned Sessions Judge. Therefore, instant application does not yield any fruitful result.

14. The appeal is dismissed. Accused-Dan Behari is on bail. His bail is cancelled. He be taken into custody and sent to Jail to serve out the sentence.

15. Let a copy of this order be sent down to the trial Court concerned for compliance of the order and to report this Court within two months from the date of receipt of the record.

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