

Didar Singh Nihala and ors. Vs. the State

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Court : Punjab and Haryana

Decided On : Nov-07-1963

Reported in : 1964CriLJ197

Judge : Shamsheer Bahadur, J.

Appellant : Didar Singh Nihala and ors.

Respondent : The State

Judgement :

Shamsheer Bahadur, J.

1. This is an appeal of Didar Singh, Bhag Singh and Surjit Singh, who have been convicted under Part I of Section 304 read with Section 34 of the Indian Penal Code, for having caused the death of Risala on 21st of August, 1962, as a result of injuries inflicted on him at the time of sunset on 20th of August, 1962, in village Kaleram. Each of them has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 100/ each.

2. There is not much dispute on facts which may briefly be narrated. The appellant Bhag Singh and Phagu are brothers and after the death of their father Moman, there were some differences between them with regard to the partition of land as a result of which Bhae Singh would not permit his brother Phagu to use his toddler cutting machine. Phagu accordingly started using the machine of Risala deceased

and did so for 20 or 25 days. Two days prior to the occurrence, Bhag Singh asked Resale not to permit his brother Fhagu to use his fodder cutting machine. Risala did not agree to this. On this, challenges were exchanged between Bhag Singh and Resale. It is not denied that Bhag Singh and the other two appellants are eighth degree collaterals of Resale.

3. At about sunset time on 20th of August, 1962, Resale and his brother Mannha were sitting in front of their nauhra while the appellant Surjit Singh, Bhag Singh and Didar Singh were sitting in front of their nauhra of Didar Singh, Daya Chand and Siri Chand P. Ws. were also sitting in front of their nauhra. All of them were smoking huqqas at the time. Suddenly, Page came to the nature of Resale with a load of green fodder and on seeing him Bhag Singh showered a filthy abuse at Resale. and told him that although he (Bhag Singh) had requested him not to permit Page to use the fodder cutting machine, he (Resale) had paid no heed to it. Risala retaliated in the same language. The appellants Bhag Singh, Didar Singh and Surjit Singh then left the place and went to nauhra of Didar Singh and reappeared armed with lathes. They further shouted a lalkara challenging Risala and Mannha to get ready. They all started abusing Risala. Mannha and Risala also picked up lathis. Surjit Singh and Bhag Singh gave lathi blows to Risala on his head while Mannha gave a lathi blow to Didar Singh and also to Bhag Singh. Didar Singh gave a lathi blow to Mannha P. W. on his head. Bhag Singh gave a lathi blow to Mannha on the left shoulder; then Surjit Singh gave a lathi blow to Mannha on his right leg. Daya Chand and Siri Chand, who were sitting in the nearby nauhra raised an alarm and the appellants ran away. Risala, who had fallen down on receiving the injuries, was picked up. He was bleeding, Risala was put in a position of repose in his baithak as he had become unconscious and could not speak. Indeed, he never regained consciousness and died on the following day at 12 noon.

4. The report Exhibit P. A. was lodged by Daya Chand at Police Station Kalayat, which is at a distance of 6 1/2 miles from Kaleram where the occurrence took place.

5. The post-mortem on the body of Risala was performed by Dr. Roy of Civil Hospital, Jind at 7-30 A. M. on 22nd of August, 1962, and the following two injuries were found:-

(i) 2 1/2' x 1/4' into bone deep grayish looking contused wound on the left parietal region of scalp.

(ii) 3/4' x 1/6' into bone deep grayish looking contused wound on the right parietal region of scalp. The whole of right parietal region was moderately swollen and showed reddish discoloration, and so also the right temporal region.' Death, in the opinion of the doctor, was due to severe laceration of the right temporal and parietal lobes of the brain. In cross-examination, the doctor stated that the fracture on the left parietal region i. e., injury No, 1, also could result from injury No. 2. Even with immediate expert medical aid the chance of survival, according to the doctor, was very remote and a person who had been inflicted these injuries could not possibly retain his consciousness. In the doctor's view, Risala could not have revived his consciousness at any time.

6. Mannha. brother of Risala deceased, had four simple injuries; three abrasions and one contusion, all caused by a blunt weapon. Bhag Singh appellant had one abrasion which was a simple injury caused by a blunt weapon. Didar Singh appellant had a contusion and one abrasion --both injuries being simple caused by a blunt weapon. Some of the injuries on Mannaha, in the opinion of the doctor, could have been caused by a fall but not injury No. 1.

7. The case for the prosecution has been given in detail by Daya Chand P. W. 3 and Siri Chand P. W. 4. Both of them are collaterals in the third degree of the deceased and are also remotely related to the appellants. Mannha P. W. 5 has also deposed about the incident which led to his brother's death.

8. Bhag Singh appellant, in his statement) under Section 342 of the Code of Criminal Procedure, has denied the facts on which the prosecution case is based and with regard to his own injuries he stated that he had been beaten by the police. Surjit Singh likewise denied the allegations of the prosecution and stated that he had been falsely implicated by Bhagtu against whom his father had got a

complaint filed for the embezzlement of Rs, 3000/-. Didar Singh while denying the prosecution case attributed his own injuries to Risala who had given him a beating. According to Didar Singh, the house of Risala had been raided by the police on the day prior to his death. Risala, who was drunk at the time, blamed Didar Singh for the raid. Risala forced open the entrance in the house of Didar Singh at about 9 P. M. and after giving lathe blows ran away.

9. Mr. Dara Singh, who has argued the case for the appellants, concedes that the prosecution evidence cannot be seriously contested and has made no attempt to justify the assertions made by the appellants in their statements under Section 342 of the Code of Criminal Procedure. In the submission of Mr. Dara Singh, the application of the principle of constructive liability under Section 34 of the Indian Penal Code in the circumstances of this case is not justifiable on the ground that injuries on Risala were inflicted in a sudden fight in the heat of passion upon a sudden quarrel. In the words of 4th exception to Section 300

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

The learned Sessions Judge has held that the fight had suddenly developed in the heat of passion and, therefore, the exception is applicable. Mr. 'Dara Singh submits that the applicability of Section 34 is ruled out altogether in such circumstances. The fight having developed all of a sudden there was no opportunity of any pre-concert. There are, however, two other circumstances to be borne in mind. Daya Chand P. W. 3 and Siri Chand P. W. 4 have stated that the appellants, after the exchange of abuses, between Risala and Bhag Singh, went inside the nauhra of Didar Singh and brought out lathis with them. Daya Chand P. W. 3 and Mannha P. W. 5 have further deposed that the appellants raised a lalkara after they had come out of the nauhra of Didar Singh and challenged Risala and Mannha to get ready. These are very important matters of detail in determining the question whether despite on the suddenness of attack the possibility of pre-concert is excluded altogether. Mr. Dara Singh very strongly contends that there being no premeditation no question of constructive liability can

arise and each of the appellants must be accorded punishment for acts which have been brought home to him. In his ensuing contention, Mr. Dara Singh submits that it cannot be said with certainty as to which of the blows resulted in the fatal injury. Reliance is placed by him on the doctor's statement that injury No. 1 could be the result of injury No. 2. On the basis of this statement, it is argued that there was only one fatal injury and Didar Singh not having inflicted it, there can be no certainty as to which of the other two appellants can be found guilty for this. In this view of the matter, it is submitted by Mr. Dara Singh that all the appellants are only guilty under Section 323 on the Indian Penal Code.

10. I am unable to agree that the circumstances envisaged in the 4th exception to Section 300 ipso facto exclude the applicability of Section 34 of the Penal Code. In any event, the two circumstances, to which I have adverted, make it clear beyond any doubt that the common intention had developed at the spot when they went deliberately inside the nauhra of Didar Singh to pick up lathis and after emerging out of it threw out a challenge to Risala and his brother to get ready. The direct evidence of common intention is always difficult to obtain and its existence which is an essential ingredient of constructive liability has invariably to be deduced from surrounding facts. These two circumstances, in my opinion, give a complexion which is wholly different from the one which has been projected by the learned Counsel. The common intention, in my opinion, though it did not exist before the assault it had certainly, come into existence when the fight started.

11. I am, however, of the view that the appellants though they must be fixed with the knowledge that the blows were such as were likely to cause death were not animated with the intention to cause death. The offence, therefore, falls under the second part of Section 304 and not the first one, as found by the learned Sessions Judge. I would, therefore, alter the conviction of the appellants under Section 304, Part I, read with Section 34, to Section 304, Part II read with Section 34 of the Indian Penal Code. The sentence is reduced to four years' rigorous imprisonment each. The fine imposed by the learned Sessions Judge of Rs. 100/- each is upheld. In default of payment of fine, the appellants would undergo rigorous imprisonment for a further period of three months each. (Out of the appellants, Didar Singh alone is on bail and he will surrender to his bail-bonds: The appeal is

allowed to the extent indicated aforesaid.

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