

Partap Vs. the State of Haryana

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Court : Punjab and Haryana

Decided On : Feb-04-1992

Reported in : 1992CriLJ3732

Judge : J.S. Sekhon and; Amarjeet Chaudhary, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 304(1), 307 and 323; Code of Criminal Procedure (CrPC) - Sections 313; Criminal Law

Appeal No. : Criminal Appeal No. 25-DB of 1991

Appellant : Partap

Respondent : The State of Haryana

Advocate for Def. : J.C. Sethi Addl. AG.

Advocate for Pet/Ap. : Dara Singh Sr. Adv. and; S.S. Randhawa, Adv.

Judgement :

J. S. Sekhon, J.

1. Partap, accused-appellant, was convicted by the learned Additional Sessions Judge, Bhiwani, on the charge of murder of Rohtas, deceased, under Section 302, Indian Penal Code and ordered to undergo imprisonment for life, besides a fine of Rs. 200/-, or in default of payment thereof to suffer three months' further rigorous

imprisonment. He was also convicted under Section 323, Indian Penal Code, for the simple injuries with blunt weapon on the person of Maidhan (P.W. 10) and awarded three months' simple imprisonment, besides a fine of Rs. 50/-, or in default of payment thereof to suffer further 15 days' rigorous imprisonment.

2. Feeling aggrieved against the above referred conviction and sentence, the appellant has filed this appeal.

3. In brief the facts of the prosecution case are that Partap, accused-appellant, is the step-brother of Rohtas (deceased) and Maidhan (PW). They used to cultivate their lands by irrigating the same from a joint tubewell, operated by electricity. Partap, accused, was not contributing his share of electricity-charges, which resulted in dispute between these two brothers on the payment of electricity-bills. The land of Partap accused adjoins the land of Rohtas, deceased. Land of Rohtas is on higher level to that of Partap and there was a dispute between them over the boundaries thereof.

4. On 24-7-1989, at about 7-00 a.m. Maidhan (P.W. 10) along with Ved Parkash (P.W. 11) and Dharambir witness was smoking while sitting in the lane in front of the outer door of the house of Gopal, uncle of Rohtas, deceased. Meanwhile, Rohtas came there from the side of fields. Partap, accused, carrying a kulhari also arrived there from the side of his house, Rohtas asked Partap accused to manage the daul of his field properly or let him (Rohtas) to do so, because the water used to trickle down from his field to that of the accused. Partap accused then uttered that his step brothers had united and created hell for him. He then dealt a kulhari blow on the neck of Rohtas, who fell down on the ground. Maidhan (PW) tried to rescue his brother Rohtas, but Partap accused dealt a blow from the reverse side of his kulhari on the left side of forehead of Maidhan. Maidhan tried to snatch kulhari from the accused and in that scuffle he received scratches on his left arm. Partap accused then ran towards his house along with kulhari. Ved Parkash and Dharambir witnessed the occurrence. Surender, grandson of Gopal took Rohtas and Maidhan to Civil Hospital, Dadri, where Dr. U.S. Disodia (PW 5) medically examined Rohtas and found an incised wound on the left side of neck, measuring 4' x 1.5' into muscle deep. The vessels of the neck were cut and bleeding

profusely. The injured was referred to General Hospital, Bhiwani or Medical College, Rohtas for treatment. The injury was kept under observation. This doctor also examined Maidhan (PW) at 7.50 a.m. on that day and found a lacerated wound on the left side of his forehead, besides an abrasion on the left forearm on its dorsomedial aspect. Both these injuries were, however, ultimately declared simple in nature.

5. Dr. Disodia sent intimation, Exhibit PG, to the police about the arrival of the injured persons in the hospital. On receipt of this intimation, at about 8.00 a.m. at fuwara chowk, Dadri, Sub-Inspector Ram Kumar (PW 13) rushed to the hospital and recorded the statement Exhibit PT of Maidhan PW-injured after he was declared fit to make the statement by the doctor. This statement was concluded at 9-25 a.m. and on its basis a case under Section 307, Indian Penal Code, was got registered against the accused vide F.I.R. Exhibit PT/2 at Police Station Sadar, Charkhi Dadri at 9.40 a.m. Sub-Inspector Ram Kumar after deputing Head Constable Sadhu Ram to guard the spot, left for Medical College Hospital, Rohtak, for recording the statement of Rohtas, injured. He moved an application, Exhibit PA, for ascertaining the capability of Rohtas to make statement, but Dr. Shiva Mathur, House Surgeon, Medical College, Rohtas (PW 3) opined at 1.50 p.m. that the patient being in the operation theatre was unfit to make the statement. Again, at 4 p.m. Rohtas was declared unfit to make the statement by Dr. Mathur. Unfortunately, Rohtas succumbed to the injuries in the hospital at 4.40 p.m. as stated by Dr. J. P. Chaudhary, Registrar, Medical College, Rohtak (PW 2), Dr. Arun Gera then House Surgeon sent intimation Exhibit P. 3 to the police about the death of Rohtas in the Medical College Rohtak. On receipt of this information, S.I. Inder Singh (PW 14) got changed the offence to one under Section 302, Indian Penal Code. Meanwhile S.I. Ram Kumar (PW 13) also arrived at the spot at 7.30 p.m. S.I. Inder Singh then rushed to Medical College Hospital, Rohtak and held inquest, Exhibit PD on the dead body of Rohtas. He also recorded the statements of some witnesses.

6. The autopsy on the deadbody of Rohtas was conducted by Dr. V. K. Govila, Medical Officer, General Hospital (PW 4), who found a stitched wound on the right arm, besides bracket shaped wound on the left neck. On dissection, he found tying

of external jugular vein; left internal jugular vein and the other vessels were ligated. The vertebral body was found cut and pieces lying loosely. He also detected the fracture of 2nd to 5th ribs of the left side. The injury on the neck was found sufficient to cause death in the ordinary course of nature.

7. On 27-7-1989, S.I. Inder Singh arrested the accused while sitting on the culvert along the Gotara road. On interrogation, the accused disclosed and got recovered kulhari, Exhibit P5, from his house. It was seized after putting it into a sealed parcel and prepared its rough sketch, Exhibit PS/2. The sealed parcels of the blood stained earth, clothes of the deceased and kulhari were sent to the Forensic Science Laboratory, Madhuban. The Chemical Examiner vide report Exhibit PQ found blood on the clothes and earth-stones lifted from the spot but no blood could be detected on the kulhari. The Serologist vide his report Exhibit PQ/1 determined the origin of the blood to be of human on the above referred articles.

8. After completion of investigation, Partap accused was arraigned for trial on such like allegations for the murder of his step-brother Rohtas and for causing simple injuries to Maidhan, P.W.

9. Before the trial Court, in order to prove its above referred case, the prosecution examined fourteen witnesses. The formal evidence of M.H.C. Sant Singh and Constable Kanwar Singh was tendered on affidavits being of formal nature. The reports of the Chemical Examiner and the Serologist were also tendered in evidence. Dharambir, eyewitness was not examined by the prosecution, as having been won over.

10. The version of the accused-appellant in his statement under Section 313, Code of Criminal Procedure was that of simple denial and false implication.

11. When called upon to enter on his defence by the trial Court, the accused examined Mahabir Parshad, posted as L.D.C. in Haryana State Electricity Board, Dadri as DW 1 and Daya Shanker Bhatnagar, Accountant posted in District Jail, Bhiwani, as DW 2 in order to prove that the electricity bills of the motor of the tubewell had been paid up-till 13-7-1989, as per receipt Exhibit DI. Sh. Daya Shanker Bhatnagar, Accountant of the District Jail, Bhiwani, was examined as

D.W. 2 in order to prove that Maidhan PW and other persons had met Partap accused in the Jail on 24-9-1990.

12. The trial Court, however, believing the ocular evidence of Maidhan injured and Ved Parkash (PW 11), coupled with the medical evidence, convicted and sentenced the appellant, as referred to above.

13. We have heard the learned counsel for the parties, besides perusing the record.

14. Mr. Dara Singh, Senior Advocate, the learned counsel for the appellant, contends that there was no previous ill-will between the parties and both the parties happened to meet by chance wherein Rohtas deceased had remonstrated with the accused in not maintaining the common ridge of their fields properly and that the water used to trickle from the fields of the accused to that of the deceased, he further maintained that the possibility of the deceased and accused having grappled with each other, could not be ruled out and that it was at the most a case of culpable homicide not amounting to murder, punishable under Section 304, Part I, I.P.C.

15. Mr. J.C. Sethi, Additional Advocate-General, Haryana, on the other hand, maintained that the provisions of Clause Thirdly to Section 300, I.P.C. are well attracted to the facts of the case in hand and that the appellant had rightly been convicted by the trial Court under Section 302, I.P.C. for causing the death of Rohtas.

16. Mr. Sethi also relied upon the observations of the Apex Court in *Jai Prakash v. State (Delhi Administration)*, 1991 (I) SVLR (CR) 47. The Apex Court in that case, after elaborate discussion of its earlier view in *Virsa Singh's* reported as 1958 SCR 1495 : (1958 Cri LJ 818) and subsequent authorities referred therein, observed that it cannot be laid down as general principle if death is caused by a single blow found sufficient to cause death in the ordinary course of nature, the offence would always amount to culpable homicide not amounting to murder. On the other hand, it was held that it depends on the circumstances of each case whether the accused intended to cause that particular type of injury which was found sufficient

to cause death in the ordinary course of nature. In other words, it was held that the Court has to ascertain the intent of the accused in giving a particular injury in order to ascertain whether the provisions of Clause Thirdly to Section 300, I.P.C. are attracted or that the case falls under Exception 4 to Section 300, I.P.C. While distinguishing between 'intention' and 'knowledge', the Apex Court culled out a para from Kenny's observations on 'intention' in Outlines of Criminal Law (17th Edition at page 31) as under:--

Intention : To intend is to have in mind a fixed purpose to reach a desired objective; the noun 'intention' in the present connexion is Used to denote the state of mind of a man who not only foresees but also desires the possible consequences of his conduct. Thus if one man throws another from a high tower or cuts off his head it would seem plain that he both foresees the victim's death and also desires it; the desire and the foresight will also be the same if a person knowingly leaves a helpless invalid or infant without nourishment or other necessary support until death supervene. It will be noted that there cannot be intention unless there is also foresight, since a man must decide to his own satisfaction, and accordingly must foresee that to which his express purpose is directed.

Again, a man cannot intend to do a thing unless he desires to do it. It may well be a thing that he dislikes doing, but he dislikes still more the consequences of his not doing it. That is to say he desires the lesser of two evils, and therefore has made up his mind to bring about that one.

The apex Court also relied upon Russel on Crime (12th Edition at Page 41) in order to ascertain the import of word 'intention' an element of crime. It reads as under:--

In the present analysis of the mental element in crime the word 'intention' is used to denote the mental attitude of a man who has resolved to bring about a certain result if he can possibly do so. He shapes his line of conduct so as to achieve a particular end at which he aims.

Thereafter, the apex Court observed as under by referring to its earlier views in Virsa Singh's case, *ibid*:--

It can thus be seen that the 'knowledge' as contrasted with 'intention' signify a state of mental realisation with the bare state of conscious awareness of certain facts in which human mind remains supine or inactive. On the other hand, 'Intention' is a conscious state in which mental faculties are aroused of achieving a conceived end. It means shaping of one's conduct so as to bring about a certain event. Therefore in the case of 'intention' mental faculties are projected in a set direction. Intention need not necessarily involve premeditation. Whether there is such an intention or not is a question of fact. In Clause Thirdly the words 'intention (intended) to be inflicted' are significant. As noted already, when a person commits an act, he is presumed to expect the natural consequences, but from the mere fact that the injury caused is sufficient in the ordinary course of nature to cause death it does not necessarily follow that the offender intended to cause the injury of that nature. However, the presumption arises that he intended to cause that particular injury. In such a situation the Court has to ascertain whether the facts and circumstances in the case are such as to rebut the presumption and such facts and circumstances cannot be laid down in an abstract rule and they will vary (vary) from case to case. However, as pointed out in Virsa Singh's case the weapon used, the degree of force released (sic -- reused) in wielding it, the antecedent relations of the parties, the manner in which the attack was made that is to say sudden or premeditated whether the injury was inflicted during a struggle or grappling, the number of injuries inflicted and their nature and the part of the body where the injury was inflicted are some of the relevant factors. These and other factors which may arise in a case have to be considered and if on a totality of these circumstances a doubt arises as to the nature of the offence, the benefit has to go to the accused. In some cases, an explanation may be there by the accused like exercise of right of private defence or the circumstances also may indicate the same. Likewise there may be circumstances in some cases which attract the first exception. In such cases different considerations arise and the Court has to decide whether the accused is entitled to the benefit of the exception, though the prosecution established that one or the other clauses of Section 300, I.P.C. is attracted. In the present enquiry we need not advert to the aspect since we are

concerned only with scope of clause Thirdly of Section 300, I.P.C.

Bearing the above referred guidelines of the apex Court in mind, if we examine the facts of the case in hand, it transpires that according to Maidhan (PW 10), Partap accused is his step brother while Rohtas deceased was his real brother and on the day of occurrence, Partap accused and the deceased happened to meet each other by chance in front of house of their uncle Gopal. Although Partap accused was then armed with a kulhari, but the factum that Rohtas deceased had asked Partap to wait but the accused did not do so and Rohtas again asked him to stop, clearly shows that the accused had not armed himself with the intention of causing injuries to Rohtas. On the other hand, the evidence of Maidhan reveals that Rohtas had insisted in asking Partap accused to stop and then lodged protest regarding mending the common ridge of their fields properly. It also figures in the evidence of this witness that the field of Partap accused was on lower level than that of Rohtas, deceased. Admittedly, the water will trickle down to the field having lower level, and it would be the duty of the person in possession of the field having a higher level to maintain the common ridge properly in order to stop the flow of the water. Consequently, it cannot be said that Partap accused was feeling sure towards his step brothers on his ground. The non-contribution of the electricity bills for consumption of electricity in the joint tubewell does not appear to be the cause of this incident as according to Maidhan PW that tubewell is shared by Manohar, Kala, Billa, etc. and their other brother Bakhtawar. Thus, it cannot be said that Partap accused would have felt sore towards Rohtas deceased only. The factum that Rohtas, deceased, had asked Partap accused twice to stop and hear his grouse, leaves no doubt about the exchange of hot words between these two persons. The possibility of grappling also cannot be ruled out, especially when Partap accused had not paid any heed to the command of Rohtas deceased and hear him at the outset. Consequently, it cannot be said to be a case of that type where the accused had intended to cause a particular injury to the victim. On the other hand, the possibility cannot be ruled out that Partap accused had not aimed the kulhari at the neck of Rohtas, deceased, but it happened to land there just by chance. Moreover, the right handed person would usually give the blow on the right side of the neck of victim if they are facing each other, but in the case in hand, the medical evidence of Dr. V. K. Govila (PW 4) shows that injury was

located on the left side of the neck of Rohtas. Under these circumstances, it cannot be said that the provisions of Clause Thirdly to Section 300, I.P.C. would be attracted to the facts of the case in hand.

17. On the other hand, the offence would amount to culpable homicide not amounting to murder, punishable under Section 304(1), I.P.C. as Partap accused had given one injury to Rohtas with the kulhari not with the intention of causing his death, although this injury was individually found sufficient to cause death of Rohtas in the ordinary course of nature by the doctor.

18. Consequently, the conviction and sentence of Partap accused-appellant for the offence punishable under Section 302, I.P.C. are hereby set aside but instead, he is convicted for an offence punishable under Section 304(1), I.P.C. and awarded seven years' R.I., besides to pay a fine of Rs. 200/- or in default of payment thereof to suffer further R.I. for one month. The conviction and sentence of Partap accused under Section 323, I.P.C. for causing injuries to Maidhan injured-PW are, however, maintained. Both the sentences shall, however, be ordered to run concurrently. The appeal stands disposed of accordingly.