

Dharam Pal and Others Vs. State of U.P.

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Court : Supreme Court of India

Decided On : Mar-30-1995

Reported in : AIR1995SC1988; 1995CriLJ3642

Judge : Madan Mohan Punchhi and; K. Jayachandra Reddy, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 148, 149, 302, 323 and 325

Appeal No. : Criminal Appeal No. 427 of 1988

Appellant : Dharam Pal and Others

Respondent : State of U.P.

Judgement :

Madan Mohan Punchhi, J.

1. Dharam Pal, Tej Pal and Rajendera (original accused 1,2 and 5 respectively) - are the appellants. They, along with two others viz., Krishan and Rambir (original accused 3 and 4) were tried for offences punishable under Sections 302/149, 323, 325/149 and also Under Section 148, I.P.C. The trial Court acquitted Krishan and Rambir and convicted the appellants before us Under Sections 302 read with 34, I.P.C. and also Under Sub-section 325 read with 34 I.P.C. and sentenced each of them to imprisonment for life and for shorter terms of imprisonment in respect of other offences which were directed to run concurrently. On appeal, the High Court

agreeing with the findings of the trial Court dismissed the same. Hence the present appeal.

2. A-1 and A-2 are brothers and A-3 to A-5 are the sons of A-1. They are all the residents of Haidernagar Village, Mujaffarnagar Distt. The deceased Chandra Veer was the father of Budh Singh (PW-4) who is also the resident of the same village. There was some dispute regarding the irrigation of field and the accused were aggrieved that the deceased and his family members were diverting the water to their field out of turn. On the day of occurrence, i.e. 20-10-1977, at about 10 A.M. , A-1 went to he house of the deceased and asked him why he diverted the water to his field to which the latter replied that he did not divert any water and exchange of words between the two. On the same day evening, PW-1, PW-3 and PW-4 and also the deceased were all sitting in the house of PW-4 and smoking Hukka. At about 7.15 P.M. it is alleged that accused Dharam Pal and Tej Pal came from the side of the field and abused the deceased for diverting the water. Again, a quarrel ensued. About 15 minutes later, all the accused came to the house of the deceased and among them Dharam Pal and Tej Pal were armed with guns, Krishan armed with lathis. Having come to the place they started abusing the deceased and also started beating with lathis PW-4 and the de ceased. On being exhorted, Dharma Pal and Tej Pal who were armed with gun and Krishan who was armed with Pistol alleged to have fired and one of the gun shots hit the deceased and as a result of which the deceased died instantly. PW-4 also received injuries by lathis. PW-1 who witnessed the occurrence prepared a report, went to the police station situated three miles away and lodged the FIR. PW-14, the SHO registered the crime and reached at the scene of occurrence. He held the inquest and sent the dead body for post mortem. The doctor (PW-2) who conducted the post mortem on the dead body found one gun shot entry wound and a corresponding exit wound. On internal examination he found several ribs fractured and the left pleura as well as the left lung were found uptured. He opined that the death was due to shock haemorrhage as a result of these injuries. On 21-10-1977, the Investigating Officer arrested Dharma Pal with his licenced gun and recorded his statement. Earlier at the scene of occurrence he found one empty cartridge and seized the same. Necessary Punchnama was prepared to that effect. Meanwhile, PW-4 was sent for medical examination and PW-11 (doctor) found on

him three contusions, one lacerated wound and two wounds of traumatic swelling. On X-ray of the hands of PW-4, fracture of 2nd and 3rd metacarpal and proximal phalanges of the index and middle fingers were found. However, no radiological bone injury was detected in the left hand. The seized guns as well as the cartridge which were recovered at the scene of occurrence were sent to Ballistic Expert and opinion came to the effect that the cartridge that was found at the scene of occurrence is not the one fired from the gun recovered from the accused. After completion of the Investigation the charge-sheet was laid.

3. The plea of the accused was one of denial and he pleaded that because of enmity, all the members of his family have been implicated. They further stated that there had been an election between the Pradhan Prithvi and one Mahavir and they were in the Mahavir's party and the prosecution witnesses were in the party of Pradhan. And due to this rivalry in the parties, they have all been falsely implicated.

4. The prosecution relied on P.Ws 1, 3 and the injured witness PW-4. PW-5 deposed about the previous incident which took place regarding the diversion of water. The trial Court accepted the evidence of the eye-witnesses, but acquitted the two other accused viz., Krishan and Rambir holding that they were young boys aged 16 and 15 years respectively and they might have followed their father to the scene of occurrence and they might not have, shared the common intention along with A-1 and A-2. So far as Rajendra is concerned, the trial Court held that in view of the fact that he inflicted injuries with a lathi on PW-4, as well as on the deceased, he would be constructively liable along with A-1 and A-2. As stated above, the findings are confirmed by the High Court.

5. The learned Counsel for the appellants submits that the motive suggested by the prosecution is very weak and the ballistic report excludes the use of the licenced gun which were seized from A-1 and A-2, and, therefore, the prosecution case that licenced guns were used is falsified. The occurrence took place some time during the night time and the witnesses could not have been in a position to identify the assailants and also that PW-4 aged 65 years was having a poor vision. Therefore, his version that he identified the accused could not be accepted. In this

regard he also relied on the fact that in the Court P.W. 4 wrongly identified one of the accused.

6. From the above stated facts it can be seen that PW-4, father of the deceased received injuries including grievous injury and his presence at the scene of occurrence cannot be doubted and, as a matter of fact, it is not also disputed. Therefore, his evidence carried great weight and the same is further corroborated P.Ws 1 and 3. Both the Courts have considered the evidence of PW-4 along with the evidence of other two eye-witnesses and in the light of the medical evidence have given cogent reason for accepting their evidence. Therefore, we do not propose to discuss the same in detail.

7. It is strongly contended that when once it is established that the licenced gun seized by the Investigating Officer was not used, then it becomes highly doubtful whether the prosecution case, viz, that the accused used some other weapons can be believed at all. We see no force in this submission. May be that the accused used some other fire arms. The witnesses have categorically stated in their Chief-examination that A-1 and A-2 fired 3/4 times along with Krishan who was armed with a pistol. The doctor has found one gun shot wound on the deceased and there was an exit-corresponding wound. Once the evidence of PW-4 is reliable to the extent, viz., that the two accused fired at the deceased and even if there is wrong description of the weapon or if some other weapons was seized by the Investigating Officer, we are not able to appreciate how that would be a factor to discredit the evidence of the eye witnesses, particularly when PW-4's presence at the scene of occurrence was not in dispute. It is also submitted that the witnesses have stated two of the accused used their lathi and inflicted blows on PW-4 as well as on the deceased, the medical evidence shows that there was no injury on the deceased which could be attributed to lathi blow and, therefore, the witnesses have given an exaggerated version and the medical evidence to this extent is in conflict with their version and since they are interested witnesses, it is highly unsafe to give any credence to their evidence. This aspect has been considered by the Courts below, and particularly the trial Court in an elaborate manner. PW-4, at one stage had clarified that he was under the impression that one or two lathi blows given by the two accused might have

caused some injuries to the deceased. However, the mere fact that the doctor could not find a corresponding injury would not be a ground by itself to reject the evidence of the eye-witnesses.

8. Learned senior Counsel. Mr. Lalit, appearing for Dharam Pal, accused, however, contended that when there was only one gun shot wound on the deceased and the prosecution evidence is to the effect that Tej Pal also used a gun and in the absence of any second injury it cannot be said definitely as to which one of them caused the fatal injury to the deceased, and that the circumstance that only one empty cartridge was recovered from the scene of occurrence shows that one shot was fired and since it cannot be attributed to Dharam Pal specifically, it is unsafe to convict him under Sections 302/34, I.P.C. We have examined this submission carefully. We find from the evidence of the eye-witnesses that both of them fired guns. May be that one of the shots fired by either of them might have missed the target. For inferring common intention, the fact that both of them used their guns and fired at the deceased by itself is a circumstance which is sufficient to draw an inference that there was a common intention.

9. Now, coming to the case of Rajendra. As already mentioned he is the son of Dharam Pal (A-1) and his two other brothers - Krishan and Rambir were also alleged to have been in the company of Dharam Pal who have been acquitted by the trial Court holding that they being young boys might have followed their father at the scene of occurrence. Rajendra was convicted Under Sections 302/34, I. P.C. on the sole ground that he inflicted the injury with the lathi. It can be mentioned at this stage that the case of prosecution is that both Rambir and Rajendra used their lathis. As stated above, there was no injury which can be attributed to a lathi blow on the deceased. It is only on PW-4 some contusions and swelling could be found by the doctor and there could not be any doubt that these injuries were caused due to the lathi blows. In these circumstances, particularly, having regard to the fact that no lathi injury was found on the deceased, then it must be inferred that Rajendra did not cause any injury to the deceased. At the most, it can be said that he inflicted lathi blows on PW-4. In the facts and circumstances, we think it is highly unsafe to convict Rajendra also under Sections

302/34, I.P.C. holding that he also shared the common intention to commit the murder along with A-1 and A-2. The reasoning given by the trial Court for acquitting A-3 and A-4 (two young boys) to a large extent applies to the case of Rajendra also. However, the evidence, particularly that of PW-4, establishes that Rajendra inflicted blows on PW-4. Since we are holding that he did not share the common intention along with A-1 and A-2 to commit the murder he would be responsible for his individual act, primarily for causing lathi injury to PW-4. In this view of the matter, we set aside the conviction of Rajendra under Section 302/34, I. P.C. and acquit him of the charge. His conviction under Sections 325/34, I.P.C. is altered to one punishable under Section 325, I.P.C. and the sentence of one year's R. I. is confirmed. It is stated that Tej Pal died during the pendency of the appeal in this Court. Therefore, his appeal abates and is dismissed as such. In the result, appeal is dismissed in respect of Dharam Pal and partly allowed to the extent indicated above so far as Rajendra is concerned. If Rajendra has served out his sentence of one year, he should be released forthwith.