

Lakhvinder Singh Vs. State

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Court : Delhi

Decided On : May-04-1987

Reported in : 32(1987)DLT50

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 324 and 326; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 140 of 1986

Appellant : Lakhvinder Singh

Respondent : State

Judgement :

1. On 20-4-85, Shri V. S. Aggarwal, Addl. Sessions Judge, Delhi framed the following charges against the accused Lakhvinder Singh :-

'That you on 25-12-83 at about 12 in the night at C-124, New Sabzi Mandi, Azadpur, Delhi did an act to wit caused injuries to Dharam Raj girl with such intention or knowledge and under such circumstances that if you had caused the death of said Dharam Raj Giri, you would have been guilty of murder and that you did causes injuries to said Dharam Raj girl with sharp-edged weapon and thereby committed an offence punishable under section 307, I.P.C. and within the cognizance of this court.'

2. The accused pleaded not guilty to the charge and claimed trial.

3. In support of their case, the prosecution examined as many as 9 witnesses out of which PW 1 Dharam Raj girl is the injured while PW 4 Shri Ravinder Kumar is the eye-witness of the occurrence. The remaining evidence is of formal nature.

4. The accused in his statement under section 313 Cr.P.C. denied the allegations in toto. According to him, he had come to Azadpur Mandi with a truck at 9.30 p.m. and immediately had gone to sleep. At about 12.30 midnight, the Policemen came and knocked at the door. They enquired if any Sikh gentleman is sleeping in the truck, when he opened door of the truck, the Policemen should 'Yahi hey, yahi hey vo sadder' and he was forcibly taken to police station where he was implicated falsely in this case. In defense, he examined one Kirpal Singh who happened to be present at the time the police caught hold of the accused. The Ld. Addl. Session Judge on consideration of the oral as well as documentary evidence before him believed the prosecution version and convicted the accused of an offence punishable under section 326 I.P.C. in as much as the injury on the person of Shri Dharam Raj girl were not caused with the intention or knowledge to cause his death. The accused was sentenced to undergo RI. for 2 years and a fine of Rs. 500/-. In default of payment of fine, he was directed to further undergo RI for 3 months. It is against this order the present appeal has been preferred through Jail.

5. Ms Neelam Grover, Advocate was appointed amicus curiae to defend the appellant and to assist the court in deciding the appeal.

6. Ld counsel for the appellant has taken me through the record of the case. Her submission is that Shri Dhir Singh who admittedly was in the company of the injured at the time of the incident has not been produced which casts doubts on the prosecution story. Furthermore, as per the statement of the injured, the accused was not known to him before. No reasonable Explanationn has been advanced as to why the accused without any rhyme or reason attack an unknown person, and that too at the mid of night. Her further contention is that the identification parade has not been held and the possibility of his false implication cannot be ruled out. Lastly, her case is that even if the prosecution version is taken on its face value, the offence, if any, will fall within the four corners of S. 324,

IPC. None of these arguments are to the liking of the Ld. counsel for the State who mainly relies upon the statement of the injured and the eye-witness in whose presence the accused was apprehended along with the weapon of offence and brought to the police station for the registration of the case without any delay. As the injuries on the person of Shri Dharam Raj girl were opined to be grievous in nature and caused by a sharp-edged weapon, the accused was rightly held guilty of an offence under S. 326, IPC. He does not deserve any sympathy in the matter of sentence.

7. The most material evidence in the case is that of Dharam Raj girl and his companion PW 4 Shri Ravinder. Both of them had gone to village Bharola which is quite near to Azadpur Mandi. After taking their meals when they reached near Mandi at about 8.30 p.m. the accused was found standing in the darkness. On enquiry the accused did not disclose his identity. When Ravinder insisted that the accused must disclose his identity, the accused immediately assaulted Dharam Raj girl with a Talwar and hit him on his head. The accused gave another blow which was warded off by Shri girl by raising his left arm. The talwar hit him on his left hand. Thereupon, both of them along with Dhir Singh succeeded in overpowering the accused. They snatched the talwar from him. Dhir Singh took Dharam Raj girl to the hospital while Ravinder brought the accused to the Police Station where his statement Ex. PW 4/C was recorded. The talwar Ex. P-1 and the sheath Ex. P-2 were taken into possession vide Memo Ex. PW 4/B. Before that the sketch Ex. PW 4/A of the talwar was drawn by the I.O. Shri Om Parkash. There is no worthwhile cross-examination on any of the two witness. Ld. Counsel for the appellant has not been able to point out any material discrepancy in between the statements of these witnesses and the case set up by the prosecution. It may be that the prosecution has not produced Dhir Singh but that has no material bearing inasmuch as the accused was apprehended on the spot. Without losing any time, he was brought to the police station where all the formalities were completed. For that reason, there was no necessity to hold the identification parade.

8. The M.L.C. of the accused Ex. PW 6/A lends further support to the incident. He was examined at 4 a.m. The doctor found two bruises on the middle part of left upper leg and the lateral side of left knee joint. In the opinion of the doctor, the

duration of the injuries was about six hours. This time clearly tallies with the oral evidence that the incident had taken place on the night of the previous evening.

9. The defense evidence of the accused has rightly been discarded as DW-1 Kirpal Singh let him down. Even though in the examination-in-chief, he claimed to have seen the accused being apprehended while he was sleeping in his truck at midnight but while under cross-examination, he could not even give the number of the truck in which the accused was sleeping. He also did not take any step to lodge protest with the higher authorities falsely implicating the accused. For a normal person, it should have been the natural conduct.

10. So far as injuries on the person of Dharam Raj girl are concerned, the same were examined by PW 2 Dr. N. K. Singhal. He found the following injuries on his person :

'(1) Incised wound dorsal aspect base of left thumb 1' x 1/2' x bone deep.

(2) Incised wound at lower end of right forearm immediately below right thumb 3/4' x 1/4' x 1/4'.

(3) Lacerated wound right frontal region 1' x 1/4' x 1/4'.

The patient was then referred to E.M.O. (Surgical), PW 7, Dr. J. R. Dass, Senior Radiologist examined the injured and found a fracture on the first metacarpal bone of left hand. The unchallenged statement of this witness, if considered along with the report PW 2/A of Dr. N. K. Singhal, it stands established that the injury on the base of the left thumb was bone deep and opined to be grievous. The fracture occurred as a result of the injury caused by a sharp-edged weapon, namely, kirpan, Ex. P. 1.

11. The Id. lower court, however, on the basis of evidence, came to the conclusion that the first blow on the forehead has not been opined to be serious. Furthermore, there is nothing on record to indicate that the accused had intention or knowledge to cause the death of the injured. Furthermore, there was no past enmity and the accused started assaulting only when Ravinder, PW 4 enquired as to why he was standing in the darkness. In these circumstances, according to the Id. lower court

the necessary ingredients of S. 307 IPC cannot be said to have proved. With this finding, I entirely agree. The accused was rightly held guilty of an offence punishable under section 326 IPC which I hereby maintain.

12. On the question of sentence, the submission of the Id. counsel for the appellant is that the accused is a young man of 25 years of age. He is a first offender. He had no motive to assault Shri Dharam Raj girl unless provoked by his colleague. The incident took place all of a sudden. All these circumstances taken together, according to the Id. counsel, call for a lenient view. There appears to be some substance in her submission. Admittedly, the accused was not known to any of the eye-witnesses of the occurrence. There was no motive for him to cause injuries on the person of Dharam Raj Giri. It also happened at the spur of the moment when Ravinder insisted the disclosure of his identity. The accused is not a previous convict. He has already suffered imprisonment for about a year or so. The ends of justice, in my opinion, will be fully met if his sentence is reduced to the one already undergone. Ordered accordingly. With this modification, the appeal stands disposed of. The appellant be released forthwith unless required in any other case.

13. Order accordingly.