

Bhagwan Dass Vs. the State

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Court : Delhi

Decided On : Jan-11-1995

Reported in : 1995CriLJ2056

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 43 of 1983

Appellant : Bhagwan Dass

Respondent : The State

Advocate for Def. : Hridayajot Singh, Adv.

Advocate for Pet/Ap. : Ms. Neelam Grover, Adv

Judgement :

P.K. Bahri, J.

1. This appeal is directed against the judgment dated October 8, 1982 of an Additional Sessions Judge, Delhi by which he convicted the appellant of an offence punishable under Section 302, I.P.C., and vide order of sentence of the even date, he sentenced him to undergo rigorous imprisonment for life.

2. The case of the prosecution, in brief, is that deceased Sukh Lal was familiar with the appellant and Kanhaiya Lal and Gian Chand and on day of occurrence i.e. October 26, 1981 at about 10.45 p.m. at Ganga Mandir Marg, Near Gali No. 63, Regarpura. New Delhi they were found gambling. Ram Chander and Madan Lal, the two brothers' of Sukh Lal had come in search of Sukh Lal as he had not returned home and it was getting late night and they found them gambling at that place. They wanted Sukh Lal to get up and leave the said place on which Bhagwan Dass, Gian Chand and Kanhaiya Lal also stood up and they exchanged hot words with Sukh Lal and they proceeded towards the lane. When they had reached the place of occurrence, Bhagwan Dass, Gian Chand and Kanhaiya Lal started pressurising Sukh Lal to continue to gamble with them but Sukh Lal declined to further gamble at that time.

3. It is the case of the prosecution that at that time Gian Chand and Kanhaiya Lal caught hold of Sukh Lal from his both sides and exhorted Bhagwan Dass to stab him with knife uttering the words 'Bhagwan Dass Ko Kaha Ki Mar Sale Ko'. On such exhortation, Bhagwan Dass had taken out the knife and gave a forceful blow on the right thigh of Sukh Lal from the back side. At that time, one Kishore Kumar had also reached the spot and three assailants are stated to have fled away from that place.

4. Sukh Lal, who had become unconscious and was bleeding, was removed to Willingdon Hospital where doctor had declared him dead. On the statement of Madan Lal, the case was registered vide F.I.R. No. 1036/82 at Police Station Karol Bagh, New Delhi.

5. As far as the occurrence is concerned, the learned Additional Sessions Judge has come to the conclusion, on the basis of the evidence led and the material placed before him, that the appellant had caused the aforesaid injury to the deceased. He has further held that the two other accused had no common intention to cause the said injury and thus he had acquitted them but had come to the finding that the appellant had the intention to cause death of Sukh Lal and thus, he convicted him of an offence punishable under Section 302, I.P.C.

6. The learned counsel for the appellant has not challenged the finding of the Additional Sessions Judge that in fact the aforesaid injury was inflicted by the appellant in the said circumstances but she has urged that from the evidence led before the Court, there is not even an iota of suggestion that the appellant had any motive to kill Sukh Lal or had any intention to cause his death. She has pointed out that the occurrence had taken place in a very sudden manner. The real purpose of the appellant and his co-accused was to somehow make Sukh Lal to gamble with them but Sukh Lal was not keen on gambling at that time because his two brothers had come and so he wanted to go back to his house and suddenly the appellant had taken out the knife and gave one stab blow at the back of the thigh of the deceased and so the offence committed is under Section 304 Part II of Indian Penal Code.

7. According to the post-mortem report prepared by Dr. Bharat Singh, PW-13, two incised wounds were noted which were continuous one on the back of the right thigh of the deceased and the internal examination of the wound disclosed that palatinal artery was punctured and he opined in his report. Ex. PW-13/A, that death was due to haemorrhage and shock resulting from injury to the said artery and the said injury was sufficient to cause death in ordinary course of nature.

8. We have gone through the statements of the witnesses, particularly of Ram Chander PW-7 and Madan Lal PW-5 and we find that they had no reason to give any version for falsely implicating the appellant. Their statements are straight forward and truthful and have rightly been believed by the Additional Session Judge for holding that the occurrence had taken place in the manner mentioned above and the appellant had caused the said injury.

9. However, the question which arises for consideration is that what offence has been made out against the appellant in view of the aforesaid facts. Under Section 300 of the Indian Penal Code, the offence would be culpable homicide amounting to murder if there was any intention to cause death. That is not the case in the present facts. Clause 3 of Section 300 could have been made applicable if the appellant had intended to cause the injury to the said particular artery which was sufficient to cause death in the ordinary course of nature. Here the appellant had

struck only one blow with the knife and not at any vital part of the deceased, but unfortunately the said blow resulted in puncturing the said artery which resulted in death of Sukh Lal. So, it cannot be said from this evidence that the appellant intended to cause that particular injury to the said artery and thus the matter would not be covered by the said Clause 3 of Section 300 of the Indian Penal Code.

10. We are of the opinion that the appellant has committed the offence under Section 304 Part II. A similar case has been decided by the Supreme Court in *Gokul Parashram Patil v. State of Maharashtra*, : 1981 CriLJ1033 . In the said case also, a solitary blow had been given by the accused to the deceased on the left clavicle, a non-vital part, but that injury resulted in cutting the superior vena cava which injury was sufficient to cause death in the ordinary course of nature. It was held by the Apex Court that the accused had no intention to cause the death and also had not intended to cause the said injury to the said superior vena cava and it held that the offence made out was under Section 304 Part II and had sentenced the accused in that case to undergo rigorous imprisonment for five years.

11. A Division Bench of this Court in case of *Dewan Chand v. State* 24 (1983) DLT 152 : 1984 Cri LJ 1045 had an occasion to deal with almost similar facts. In that case also, the injury had been caused on the deceased's thigh with a knife which had cut femoral artery and that injury was opined to be sufficient to cause death in the ordinary course of nature. It was held that as it was not proved from the facts that the accused intended to cause death of the deceased and also did not intend to cause such injury to the said femoral artery and thus it was held that the offence made out was under Section 304 Part II of Indian Penal Code.

12. In view of the above discussion, we hold that the Additional Session Judge was not right in convicting the appellant of an offence punishable under Section 302 of Indian Penal Code. We partly allow the appeal and set aside the conviction and sentence of the appellant under Section 302 of Indian Penal Code and convert his conviction to under Section 304 Part II of Indian Penal Code.

The appellant has already undergone about six years of imprisonment. We sentence him to the period of imprisonment already undergone. The appellant is

already on bail. His bail bonds are discharged.

The appeal stands disposed of.

13. Order accordingly.

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