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Court : Delhi

Decided On : Nov-04-1969

Reported in : ILR1969Delhi1024

Judge : H.R. Khanna and; S. Rangarajan, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 77 of 1967

Appellant : Sita Ram

Respondent : State

Advocate for Pet/Ap. : B.G. Singh and; B. Dayal, Advs

Judgement :

S. Rangarajan, J.

(1) The appellant Sita Ram, said to be munshi of an advocate and aged about 24 years, has preferred this appeal against his conviction under section 302 Indian Penal Code, he having been awarded the lesser sentence of rigorous imprisonment for life. Three other persons Lal Chand (said to be aged 19 years), a scooter rickshaw driver Hari Krishan and another Harbhajan Singh (both of them said to be 21 years) who were charged under section 302 read with section 34 Indian Penal Code in connection with the alleged murder of Jawahar Lal (said to

be aged 19 or 20 years), were acquitted by the learned Sessions Judge, Delhi, who tried the case.

(2) The prosecution case, briefly stated, is that the deceased Jawahar Lal had a love affair with a girl, named Sheela, daughter of Chuni Lal, who lived in Lajpat Nagar, New Delhi. The deceased and his brother Raj Kumar (Public Witness l) worked along with their father Dina Nath (Public Witness 26) who runs the Gupta Restaurant at Wazir Nagar, near defense Colony, New Delhi.

(3) The deceased Jawahar Lal was known to the appellant and to the other three accused, who were acquitted, all of whom used to visit the house of the appellant. Since Chuni Lal did nto approve of his daughter being friendly with Jawahar Lal there was some misunderstanding leading to an assault on Chuni Lal who filed a complaint against the deceased Jawahar Lal under section 324 Indian Penal Code; the deceased was sentenced to rigorous imprisonment for one month. Sheela's marriage to another person took place about a month prior to the occurrence; even subsequently Jawahar Lal continued to follow Sheela and this was naturally resented by her father Chuni Lal.

(4) At about 5-30 Pm on 23rd March, 1966 Harbhajan Singh (one of those acquitted by the lower Court) is alleged to have gone to the restaurant of Jawahar Lal who left, riding on the bicycle propelled by Harbhajan Singh. At about 6 Pm when both of them were in front of Moolchand Hospital (Lajpat Nagar), Harbhajan Singh stopped pedalling the bicycle a gto down. The appellant Sita Ram along with Hari Kishan and Lal Chand came there in a scooter rickshaw (No. Dlr 5414) driven by Hari Kishan. Appellant Sita Ram and Lal Chand gto down from the scooter; Hari Kishan was seated in the scooter itself. Lal Chand, Harbhajan Singh, Sita Ram appellant, and the deceased Jawahar grappled with each other and exchanged abuses. Appellant Sita Ram took out a knife from his pocket and stabbed Jawahar on the left side of the abdomen. After inflicting the injury appellant Sita Ram and Lal Chand gto into the scooter, which was driven away in the direction of Ashram. When Raj Kumar (PW 1) was going from his house in Lajpat Nagar to the Gupta Restaurant he saw Jawahar being stabbed; Public Witness 1 threw down the bicycle, on which he was proceeding, and rushed

towards his brother. Kalu Ram (Public Witness 5), who was standing at a bus stop nearby to catch a bus for going to the Ashram, and Ved Prakash (PW 7), a Music Teacher, who was also going towards the bus stop to catch a bus after giving music tuition to some of his pupils in that area, witnessed Public Witness 1 stabbing the deceased. Kalu Ram (PW 5) rushed to the spot; when Harbhajan Singh was about to run he along with Ved Parkash (Public Witness 7) apprehended him. Pw 5 advised Public Witness 1 to go to the Police Station and lodge a report. He reached there at 6-23 Pm and narrated what had happened to Joginder Nath (Public Witness 28), Inspector of Police and Station House Officer, Lajpat Nagar Police Station. Public Witness 28 immediately sent Tarsern Pal (Public Witness 8) to the spto with directions that the injured 8HCD/69-3 should be examined, removed to the hospital and that the place of occurrence by guarded. Exhibit Pa is the statement which Pw 28 recorded from Public Witness 1 at the Lajpat Nagar Police Station. Thereafter along with a police party Public Witness 28 left for the spto where he found PWs 5 and 7 holding Harbhajan Singh and a constable guarding the spot. In the mean time the injured had been removed in a taxi by Public Witness 8 to the hospital Public Witness 28 noticed blood on the ground and blood stained handkerchief (PI) as well as a bicycle (P2) lying nearby.

(5) The injured was seen at the Safdarjang Hospital by Dr. M.L. Goglani (Public Witness 2) at 6-55 Pm who noted that a stream of blood was flowing through his pants. The patient was in a state of extreme shock and collapse; there was an incised wound on the inguinal ligament- over the left groin 2' internal to the interior iliac spine. The patient succumbed to the injuries at 7-02 PM.

(6) Joginder Nath (Public Witness 28) examined Harbhajan Singh and after recording his statement arrested him. He prepared injury statement. Exhibit Pjj, in respect of the injury on the cheek of Harbhajan Singh and sent him for medical examination. He was examined by Dr. S.C. Kukreji (Public Witness 6) who found the injury afresh but nto bleeding. There was some controversy in the trial court over whether the deceased was wearing a ring (which was nto recovered immediately) with which he is said to have fisted Harbhajan Singh, to cause and injury on his cheek. But we do nto find the need to discuss this aspect in view of the acquittal of Harbhajan Singh.

(7) PW28 also examined nto only PWs 5 and 7 but also Pwi once again. PW28 then searched for the remaining accused persons and arrested Lal Chand at 12-30 mid-night near the market of Kidwai Nagar. On 25th June, 1966 Hari Kishan surrendered at the residence of Superintendent of Police, South District. The appellant Sita Ram was absconding. PW28, thereforee, applied for taking action under sections 87/88 of the Code of Criminal Procedure. Sita Ram was declared a proclaimed offender and his properties were attached in pursuance of a warrant issued by the Magistrate. PW28 arrested Sita Ram on 14th July, 1966 in South Patel Nagar, near Vivek Cinema. The knife (P7), which is nto stated to contain human blood, was among the articles recovered from the person of Sita Ram.

(8) According to the Police Surgeon, Dr. G.S. Mittal (Public Witness 3) who conducted the post mortem examination on the body of the deceased Jawahar Lal on 24th June, 1966, there was a stab wound- size 9/10' x 5/10' abdominal cavity deep on the left side inguinal region, (the wound being 2 deep). The skin margins were clean cut, one end out clean and the other end slightly torn. The pelvic cavity was half full with liquid blood the external iliac artery and vein were cut over half the circumference. The injury, which was ante mortem and which could have been caused with one sharp-edged instrument (P7), was sufficient in the ordinary course of nature to cause death.

(9) The appellant, when examined in the committing Court, mentioned that he would make a statement at the trial. His statement, which was one of denial at the trial, was as follows :-

'THOUGHhe knew the deceased he was nto his friend; he did nto know about his (the deceased's) love affair with Sheela. At the instance of one Mathra Dass he went to the Police to get Hari Krishan released on bail. At the time of the occurrence, at about 6-15 Pm he was in Connaught Place. The knife (P7) did nto belong to him. The witnesses deposed falsely against him on account of the presure of the pohce and on account of their having been permitted by the police to trade in illicit liquor. He did nto know about the police having obtained non-bailable warrants for his arrest; he came to know about the attachment of his properties only later.'

(10) It can admit of no doubt whatever that Jawahar Lal was stabbed in front of the Moolchand Hospital at about 6-PM on the evening of 23rd June, 1966 and that he died at the Safdarjang Hospital at 7-02 Pm the same evening as a result of the stab wound. It can also admit of no doubt that Chuni Lal, father of Sheela, had been assaulted by the deceased which led to a complaint having been filed by Chuni Lal to the police against Pwi and the deceased. The deceased was also convicted.

(11) After discussing the evidence, their Lordships observed as under:

THEnext question is whether the offence is one punishable under section 302 or 304 Indian Penal Code. For this purpose it is necessary to notice a few statements made by Dr. G.S. Mittal (PW3) who conducted the autopsy. To a question put as to whether the injury would nto have proved fatal if it had been half an inch away from a particular site, nto involving the iliac artery, and vein, PW3 stated that it was a hypothetical question which he was unable to answer precisely. He stated further as follows:-

'Icannto imagine a knife entering into a cavity without injuring nothing (a mistake for 'anything'). But in case, it happens like this that no internal organs are injured, the person would surely live.'

Thereupon he was confronted with his deposition in the committing Court that if the stab wound had nto involved the iliac artery and vein, the injury would nto have been fatal. PW3 stated that he did nto remember what he had stated in the committing Court and that if he had stated so it represented the correct view. These questions in cross-examination do nto in any way detract from the position which the medical evidence clearly establishes, namely, that the said injury, which was 2 deep, had cut nto only the artery but also the vein and that it was on the left side of the inguinal region. PW3 had noticed a corresponding cut hole in the pants worn by the deceased, opposite the stab wound. It was over the left groin, according to PW2', 2' internal to the interior illac spine.

(12) The facts, which we consider established, go to show that the appellant was aggrieved with the deceased in having pursued Sheela even after she had been

given away in marriage. The evidence of Pwi shows that Sita Ram had threatened the deceased that in case he followed Sheela the consequences will be bad. Harbhajan Singh had gone to the restaurant of Dina Nath Gupta (PW26), father of Pwi and the deceased, at 5-30 Pm and had taken the deceased along with him on a cycle. PW5 said Harbhajan Singh stopping the bicycle near the electric pole at a distance of about twenty yards from the bus stop; in the mean time, the above scooter-rickshaw driven by Hari Kishan also stopped near the bicycle. The appellant and Lal Chand gto down from the scooter and caught hold of the deceased the appellant pulled out a knife and stabbed him on the right side of the abdomen. These clearly show that the injury, with a sharp-edged weapon, was intentionally caused. The injury, according to the medical evidence was sufficient in the ordinary course of nature to cause death.

(13) Thirdly to section 300 Indian Penal Code reads as follows :-

'3RDLY-IFit is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.'

INVirsa Singh v. State of Punjab (1) V. Bose J. laid down the following principles :-

'TOput it shortly, the prosecution must prove the following facts before it can bring a case under s. 300 'thirdly'.

HIRSTit must establish, quite objectively, that a bodily injury is present;

Secondly, nature of the injury must be proved; These are purely objective investigations.

Thirdly, must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was nto accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and;

Fourthly, must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

(14) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under section 300 'thirdly'. It does nto matter that there was no intention to cause death. It does nto matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary-course of nature (nto that there is any real distinction between the two). It does nto even matter that there is no knowledge that an act of that kind will be ikely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is 'purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a license to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are nto guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

(15) After referring to the observations of Lord Goddard in R.V. Steane 1947 All E.R 813 to the following effect:-

'NOdoubt, if the prosecution prove an act the natural consequences of which would be a certain result and no evidence or Explanationn is given, then ajury may, on a proper direction, find that the prisoner is guilty of doing the act with the intent alleged.'

(16) V. Bose J. observed as follows :---

'THATis exactly the position here. No evidence or Explanationn is given about why the appellant thrust a spear into the abdomen of the deceased with such force that it penetrated the bowels and three coils of the intestines came out of the wound and that digested food oozed out from cuts in three places. In the absence of

evidence, or reasonable Explanationn, that the prisoner did nto intend to stab in the stomach with a degree offorce sufficient to penetrate far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise, it would be perverse to conclude that he did nto intend to inflict the injury that he did. Once that intent is established (and no other conclusion is reasonably possible in this case, and in any case it is a question of fact), the rest is a matter for objective determination from the medical and other evidence about the nature and seriousness of the injury.'

(17) In Anda and others v. The State of Rajasthan(2) Hidayatullah J. (as his Lordhsip then was) while discussing sections 299 and 300 of the Indian Penal Code observed as follows with reference to the third clause of section 300 Indian Penal Code :--

'THIRDclause views the matter from a general stand point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature To cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature.'

(18) In Rajwant Singh v. State of Kerala(3) Hidayatullah J- (as his Lordship then was) referred to the earlier decision in Anda v. The State of Rajasthan, and quoted a portion (in respect of which emphasis was added) from the observations extracted above. With reference to Virsa Singh v. State of Punjab, the following observations were made :-

'ENGLISHCommon Law made no clear distinction between intention and recklessness but in our law the foresight of the death must be present. The mental attitude is thus made of two elements-(a) causing an intentional injury and (b) which injury the offender has the foresight to know would cause death. . ..'

'.. . .As was laid down in Virsa Singh v. State of Punjab for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and nto some other injury and that it was nto accidental or unintentional. If this is also held against the offender the offence of murder is established'.

(19) His Lordship observed that the sufficiency of the injury was objectively established by the nature and quality of the acts taken with the consequence which was intimately related to the acts. The learned counsel for the appellant has relied upon two later judgments of the Supreme Court reported in Harjinder Sifigh v. Delhi Administration (4) and Laxman Kalu Nikalie v. Thr Stale of Maharashtra (5). In Harjinder Singh, Sikri J. was dealing with a case where the deceased, a boy of 18 years of age, had merely come to help his brother, when the appellant, who had deliberately come out with a knife from his house. The appellant in that case (Harjinder Singh) had a fight with Dalip Kumar, brother of the deceased, earlier in the day near a water-tap in which Harjinder Singh was worsted. Harjinder Singh left with a threat that he would teach a lesson to Dalip Kumar. Then the appellant returned with his brother to the house of Dalip Kumar challenging him to come out. The door of the house was opended by a lady and Harjinder Singh and his brother were asked to go away; either those two persons or Harjinder Singh alone pulled Dalip Kumar out of the house into the lane and beat him. At that time the brother of Dalip Kumar (deceased) came, tried to intervene and rescue Dalip Kumar. The evidence at this stage, as to what exactly happened, was conflicting. The High Court had found that Harjinder Singh had deliberately come out armed with a knife and stabbed the deceased with that knife on a vulnerable part and, thereforee, it was futile to contend that he did nto intend to kill the deceased. The effect of the evidence was set out in the following manner by Sikri J. :-

'THEevidence indicates that while the appellant was trying to assault Dalip Kumar and the deceased intervened, the appellant finding himself one against two took out the knife and stabbed the deceased. It also indicates that the deceased at that stage was in a croushing position presumably to intervene and separate the two. It

cannot, thereforee, be said with any definiteness that the appellant aimed the blow at this particular part of the thigh knowing that it would cut the artery. It may be observed that the appellant had nto used the knife while he was engaged in the fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife. In these circumstances it cannto be said that it has been proved that it was the intention of the appellant to inflict this particular injury on this particular place. It is, thereforee, nto possible to apply Clause 3 of Section 300 to the act of the deceased.'

(20) Sikri J. referred to Virsa Singh and Rajwant Singh', the relevant principle of law enunciated in those two decisions was nto departed from. In the light of the facts it was found that it had nto been proved that it was the intention of the appellant in that case to inflict the particular injury (if the parlicular phace. In Laxman the facts were as follows :-

'LAXMANwas married to Shantahai, daughter of one Bhika Ganpat Nikani five years prior to the coccurrence. Some days prior to the occurrence Shantabai was brought to her parents' place. Laxman wanted his wife back and came to take her to his own place. The excuse given by Bhika and his wife was they could nto send Shantabai without giving the customary presents for which they did nto have the needed money. Since Laxman insisted Rs. 10.00 were borrowed; after the purchases were made Laxman insisted that he should go by a particular train that day itself but the parents suggested that he could do so the next morning. It was nto known whether Laxman was reconciled with the suggestion or he was still angry. At about 7 Pm the same evening when Laxman and Ram Rao (his wife's brother) were sitting outside the quarters and Bhika was chopping some fuel after an exchange of words Laxman took out a knife, stabbed Ramrao on the shoulder and ran away. Ramrao died even before he was actually admitted in the hospital, to which place he was carried. On the facts, it was conceded for the State that the case was nto covered by the first and second clause of section 300 Indian Penal Code. Death was caused mainly because the injury on the chest had resulted in the auxiliary artery and veins being cut. Death was ue to shock and haemorrhage.'

(21) The following observations were made by Hidayatullah Cj in that context :-

'ITmust be remembered that the quarrel between Ramrao and Laxman was nto such as would have prompted Laxman to make a homicidal attack uopn his brother-in- law'.

'ITmust be remembered that he gave one blow and although it was given on the chest, it was nto on a vital part of the chest and but for the fact that the knife cut an artery inside, death might nto have ensued.'

'INother words, looking at the matter objectively, the injury which Laxman intended to cause did nto include specifically the cutting of the artery but to wound Ramrao in the neighborhood of the clavicle. thereforee, we are of opinion that the thirdly of section 300 does nto cover the case.'

(22) In Laxman, the quarrel itself was nto such as would have prompted a homicidal attack on the brother-in-law; the injury was nto on a vital part of the chest. On the question whether the offence is one of murder or the lesser offence of culpable homicide nto amounting to murder the totality of the circumstances-including the motive for the attack, the nature of the weapon and the attack-has to be kept in view. If this total view permits speculation as to the intent of the prisoner then it is for the prosecution to prove, further that the particular injury at the particular place was intended, instead of at another place.

(23) We are of the view that in this case there is no room for more than one view; the appellant intended to do what he actually did to cause the injury at the particular place. Once this conclusion is reached the further question, as to the sufficiency of the injury to cause death in the ordinary course of nature, is a matter to be decided by referring to objective standards, namely, the medical evidence. The injury in this case, objectively speaking, being sufficient in the ordinary course of nature to cause death the offence committed was one clearly punishable under section 302 Indian Penal Code. The sentence of rigorous impri sonment for life was the minimum that could be imposed. In the result the conviction and sentence are confirmed and the appeal is dismissed.

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