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Court : Delhi

Decided On : Apr-22-1968

Reported in : 1969CriLJ250; 5(1969)DLT144

Judge : I.D. Dua, C.J.

Acts : Indian Penal Code (IPC), 1860 - Sections 34, 323, 324 and 326

Appeal No. : Criminal Revision Appeal No. 38 of 1968

Appellant : Om Parkash

Respondent : The State

Advocate for Pet/Ap. : M.S. Gandhi and; V.D. Misra, Advs

Judgement :

I.D. Dua, C.J.

(1) Om Parkash who was convicted by Shri P. C. Bhatnagar, Magistrate 1st Class Delhi on 31st August, 1967 under sections 326/34 I. P. C. and sentenced to undergo rigorous imprisonment for one year and whose appeal from his conviction and sentence was dismissed by the learned Additional Sessions Judge on 27th November, 1967, has preferred this revision through Shri M. S. Gandhi, his learned Advocate.

(2) The circumstances giving rise to this revision are that on the evening of 14th November, 1965, at about 7 P. M. Ved Parkash P. W, 2 and Vishwa Nath were having tea at a tea stall in Ram Nagar. After finishing with their tea, Vishwa Nath went out of the shop and Ved Parkash soon thereafter heard some noise indicative of some alteration. Coming out of the shop, he saw that Kulwant Singh. Chander. Om Parkash and Lachhman were quarrelling with Vishwa Nath. Vishwa Nath picked up a brickbat and hurled it on his opponents, but they evaded the brickbat and did nto sustain an injury. They, however, again tried to catch hold of Vishwa Nath, Ved Parkash shouted on them and asked them to go away, toherwise, they would be thrashed. Om Parkash instigated his companions to catch hold of Ved Parkash as well because he was Vishwa Nath's companion. Kulwant Singh alias Tillu thereupon caught hold of Ved Parkash from one side and Lachhman from behind. Btoh of them had open knives in their hands and they inflicted injuries therewith on Ved Parkash.

(3) Three prosecution witnesses of course turned hostile and deposed in favor of the accused persons, but Ved Parkash. the injured person, was believed by the learned Magistrate, as also by the learned Additional Sessions Judge. Upholding the prosecution version, the learned Magistrate held, Om Parkash also guilty under sections 326/34, I. P. C., and sentenced him along with the toher accused persons to rigorous imprisonment for one year.

(4) The learned Additional Sessions Judge, on appeal, affirmed btoh the conviction and sentence of Om Parkash.

(5) On revision, the learned counsel for the petitioner has mainly concentrated on the submission that P. W. 7 could nto prove the medi- cal report and, therefore', there is no evidence showing the nature of injuries sustained by Ved Parkash. I am unable to uphold this contention. The doctor, whose report was sought to be proved, had left the service of Irwin Hospital and his whereabouts were nto known. In these circumstances, in my opinion, the statement of P. W. 7 Gurbaksh Singh, Head Clerk of Irwin Hospital, proving the report Exhibit P. W. 7/A made by Dr. Amarjit Singh is fully in accord with law and no fault can be found with it. The next contention raised on behalf of the petitioner is that the injuries were nto grievous,

with the result that section 326. I. P. C., is inapplicable. 'Reliance in this connection has been placed on a Judgment of the Judicial Commissioner of Kutch in Bawa Salemamad Gulmamad v. The State of Kutch, and Coral Indra Gonsalves v. Joseph. According to the petitioner's learned counsel, the case falls within section 323, I. P. C., and the maximum sentence under that section is imprisonment for one year of either description. It is argued that the present is nto a case of maximum imprisonment on Om Parkash, who was held liable only by virtue of section 34. I. P. C.

(6) On behalf of the respondent however, it has been argued that, in any event, section 324 is clearly applicable and that section authorises imprisonment of either description to the extent of three years and that keeping in view the fact that about four persons quarrelled with Ved Parkash and two of them cought hold of him and gave him stab-wounds with knives whereas the accused petitioner Om Parkash encouraged and incited them. the sentence of imprisonment for one year, cannto be considered to be excessive.

(7) After considering the arguments of title counsel and going through the record, I have gto the least hesitation in holding that the part played by the accused-petitioner in the occurrence in question is established beyond any reasonable doubt. Merely because some of the eyewitnesses have been won over by the accused or have favord the accused and deposed against their own statements made earlier to title police, is by itself no cogent ground for nto relying on the testimony of Ved Parkash, the insured person, whose statement is quite impressive and trustworthy. The frequency with which knives have begun to be used in Delhi by the desperate characters, whose number seems to be increasing, and the somewhat unsatisfactory law and order situation in certain parts of Delhi, may well have a tendency to discourage an average, peace- loving citizen from deposing against such desperate characters. That it should be so, is a. matter to which the authorities concerned are expected to pay attention in the interest of proper maintenance of law and order and of the satisfactory functioning of the - judicial process. The fact that some eye-witnesses had to be declared hostile in this case is nto surprising, but it does nto affect the credibility of Ved Parkash's testimony. It is nto shown why lie should shield the guilty party and falsely

implicate the accused, as indeed the accused have also given no plausible reason for their false implication. As a matter of fact, the learned counset for the petition 'r has also nto very seriously questioned the credibility of Ved Parkash. It is of course true that 0m Parkash did nto himself give the actual knife blow, but certainly he was a prominent actor in the drama which led to the injuries inflicted on Ved Parkash and he cannto escape his liability for the injuries inflicted in furtherance of the common intention of all the participants. The essential constituent of the vicarious criminal liability prescribed by section 34, Indian Penal Code , namely, the Common intention, is more than amply established in this case and 0m Parkash's conduct admits of no reasonable doubt that common intention to cause injuries to Ved Parkash animated him and this common intention led to the commission of the offence in question. Such common intention, it is well settled, can be formed even at the spto and it is nto necessary that long interval should intervene between its formation and the actual commission of title crime. The action of those who inflicted the injuries, quite clearly, was in concert with the common intention unequivocally exhibited by Om Parkash. His conviction is, thereforee, fully justified, and, as observed earlier, no serious attempt has been made to question it.

(8) In regard to the section of the Indian Penal Code under which the offence falls, I find that in Exhibit Public Witness . 7/A. Dr. Amarjit Singh has described the injuries to be grievous, but from the contents of the report, it is nto possible to discern title reasons for this conclusion and the doctor could nto be served. On this premise, giving to the accused the benefit of doubt, it may be assumed that title offence falls under section 324, I.P.C., about which there can be no dispute. This section entails rigorous imprisonment up to three years and title offence there under being a minor offence and all of its legally essential ingredients being included in the offence under section 326 it is permissible to this Court to convert the conviction into one under section 324 and I so convert it. There is obviously no question of any prejudice to the accused.

(9) Turning now to the question of sentence, it has to he borne in mind that this is a delicate matter of great difficulty which requires several aspects to be carefully considered. title central core of the problem is to impress on the accused and all

toher like-minded persons that the life of crime does nto pay. This involves a proper balanced consideration of deterrent and reformative effect of sentence in the background of all the circumstances. One cannto of course ignore the fact that the use of knives, as weapons of offence, is becoming far too common in Delhi and that it is posing a serious threat to the orderly and peaceful life of the law-abiding citizens. This situation reflects a somewhat unsatisfactory state of affairs in regard to the maintenance of law and order and prevention of crime in the capital, 0m Pa.rkash is stated to he just 18 years of age and seems to hae fallen in bad company. Keeping in view his age and the fact that be did nto himself use the knife though one cannto help remarking that it was a cowardly act on the, part of those who held the unarmed Ved Parkash and gave him knife blows, that the offence has been converted into one under section 324, I.P.C., and that the proceedings in the trial Court had lingered on for an inordinately long time, I would reduce the sentence on 0m Parkash to nine months' rigorous imprisonment, feeling that this would make him realise that anti-social conduct does nto pay. The revision is accordingly allowed in part as fust mentioned.

(10) I may, before closing, advert to title duration of the proceedings in the trial Court. On 18th April, 1966. it appears that the challan was put into Court, though investigation h;'d been going on since November, 1965. An application dated 1st December, 1965 for release on 'ad ibterim bail' was filed in the Court of the remand Magistrate by the four accused persons who surrendered themselves in Court through Bawa Brij Paul Singh, Advocate. It was further prayed that a report be called from Kamla Market Police Station for confirming the bail. On 2nd December, 1965 the order of release on hail was made. On 4th December, 1965, the police made a report and prayed for remand to police custody of the accused so as to enable them to recover the weapon of offence. On this report, at page 80 of the record, there exists an incomplete order dated 4th December, 1985 remanding the accused to police custody which docs nto appear to be signed and in which the dates up to which the police remand was granted and on which the case was to- be heard, arc unfilled. But be that as it may, charges seem to have been framed on 12th May, 1966 and the recording of prosection evidence started on 2nd June, 1966, when the statements of three prosecution witnesses were recorded and the case adjourned to 6th July, 1966, for which date six witnesses

were directed to be summoned. Further evidence, however, could nto be recorded till 11th October, 1966 because of the absene of one or the toher accused person. On that date, only one witness was examined as no toher witness was present and the cast was adjourned to 20th October, 1966, on which date again, some accused persons were absent. The accused appeared on 26th October, 1966 and the case was adjourned to 7th November, 1966 for evidence, but on that date and on 18th November, 1966, the Presidening Officer was on executive duty and no proceedings took place. On 3rd December, 196^ Lachh- man and Tillu accused, who were in judicial custody, did nto appear, though the toher accused were present and the case was adjourned to 17th December, 1966, when again, without any proceedings, it was adjourned to 6th January, 1967. On that date, after the examination of one witness the case was adjourned to 17th January, 1967, when again the Presiding Officer was put on toher duty. One witness was examined on 24th February, 1967 and two on 9th March, 1967. when the case was again adjourned for recording the evidence of the medical witnesses, if produced. On 17th April, 1967, the Presiding Officer was again posted to toher duty and no proceedings took place. On 25th April, 1967, Lachhman and Tillu accused did nto come from the jail and the case had to be adjourned to 4th Mav, 1967, when it was adjourned to 19th May, 1967 without any proceedings. Again on several dates, no proceedings took place and on 5th July, 1967, after examining one witness, the prosecution closed its case. 17th July, 1967 was fixed for the statement of the accused, but those, statements could nto be recorded till 1st August, 1967. Some adjournments were thereafter granted for the defense witnesses to be brought by the accused who were examined on 23rd August. 19P7 and orders were announced on 31st August, 1967. The prtoracted nature of the proceedings needs no comment and it is obvious that it is nto in conformity with the instructions contained in the High Court Rules and Orders. Such inordinate delay may welt tend to impair the effectiveness of our criminal judicial process and it may also detract from the popular esteem in which it is generally held he-cause of its judicious impartial and reasonably speedy dispatch of criminal cases. These cases are expected, according, to the instructions. of the High Court, to be proceeded with, as far as practicable' from day today and to be disposed of quickly, adjournements when necessary.. to be as short as the circumstances permit. This

Court considers it proper once again to draw the attention of the authorities concerned to the imperative necessity of expeditious disposal of criminal cases,

(11) The attention of the' Court below is also drawn to the fact that quite' a large number of judicial stamps were found on the record nto to have been punched at all. The importance Of punchig the stamps cannto be over emphasised.

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