

Paramjit Singh Vs. State

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Court : Delhi

Decided On : Mar-14-1995

Reported in : 1995IAD(Delhi)1355; 1995CriLJ3153; ILR1996Delhi90

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 324

Appeal No. : Criminal Appeal No. 2 of 1990

Appellant : Paramjit Singh

Respondent : State

Advocate for Def. : Mr. P.S. Sharma, St. Counsel (Crl) and ; Mr. Siddharath Sharma, Adv.

Advocate for Pet/Ap. : Sandeep Sethi, Adv

Judgement :

P.K. Bahri, J.

1. The appellant, Paramjit Singh alias Pammi, S/o Sh. Moha Singh has been convicted of offences punishable under Section 302, I.P.C. and Section 324, I.P.C. vide judgment of an Additional Sessions Judge dated November 27, 1989 and vide separate order of the even date, he has been sentenced to undergo rigorous

imprisonment for life and to pay a fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for three months on the first count and has been sentenced to undergo rigorous imprisonment for one and a half year and to pay a fine of Rs. 2,000/- and in default of payment of fine, to undergo simple imprisonment for four months on the second count with the direction that substantive sentences shall run concurrently and the fine if realised in respect of the fine imposed regarding Section 324, the same shall be paid to injured Rajinder Pal as compensation. He has filed this appeal challenging his conviction and the sentences.

2. The 23rd day of June 1986 was the birthday of Rajinder Pal, PW-1, which ought to have been a day of rejoicing but it appears that the same turned out to be a day of mourning for him and his family members. Rajinder Pal, PW-1, with his grandfather, since deceased namely Badri Nath and his two paternal uncles namely Subhash Chand, PW-2, and Mahesh Chand, PW-3, were residing at the relevant time at house No. 344, Neemri Colony, Delhi. Dinesh Pandey, PW-11, is a friend of Rajinder Pal. He is also friend of the brothers of the appellant. The appellant is also a neighbour residing in the same area.

3. It is the case of the prosecution that on the 23rd June 1986, Rajinder Pal, PW-1, was having a stroll on a road near bus-stand at about 10 P.M. and at that time he happened to meet the appellant who asked Rajinder Pal to serve him liquor but Rajinder Pal declined to accede to his request retorting that he was not indebted to him and there took place some altercation between the two. Thereafter, the appellant had left the place. Rajinder Pal, thereafter, had spent some time with Dinesh Pandey, his friend, in the nearby park and at about 10.30 P.M. both of them returned to the house of Rajinder Pal. When they reached near the house of Rajinder Pal, they saw the appellant creating a nuisance in front of his house and his grandfather Badri Nath was trying to pacify the appellant and meanwhile Subhash had also come downstairs. In order to persuade the appellant to leave the place, it appears that Rajinder Pal tendered his apology to the appellant but appellant, who was in somewhat enraged mood, took out his kirpan from the right dub of his trousers under his kurta and struck a blow on the right rib of Rajinder Pal. Badri Nath, who tried to intervene, was also given a blow with same weapon

which landed on the left side of his chest. Thereafter, the appellant ran away from the spot. Subhash is stated to have then removed injured Badri Nath to the Hindu Rao Hospital where the doctor declared Badri Nath as brought dead. The occurrence is stated to have also been witnessed by Mahesh Chand, another uncle of Rajinder Pal.

4. The appellant has been convicted of the offences mentioned above on the eye witness account given by these four eye witnesses namely PW-1-Rajinder Pal, PW-2-Subhash Chand, PW-3-Mahesh Chand and PW-11 Dinesh Pandey.

5. It is indeed not disputed before us by learned counsel for the appellant that Badri Nath had met with a homicidal death. He has also not challenged the conviction and sentence imposed on the appellant under Section 324, I.P.C. for having caused simple injury to Rajinder Pal. The only contention raised by learned counsel for the appellant before us is that keeping in view the facts which had come out from the statements of these four crucial witnesses, it is evident that there was no intention of the appellant to murder Badri Nath. The dispute had arisen on a very trivial account when appellant had in his over enthusiasm for having some deep rooted liking for liquor, was insisting Rajinder Pal for serving him some liquor on his birthday which Rajinder Pal was not willing to serve and the appellant came to the house of Rajinder Pal again to repeat perhaps the same request and was behaving in the manner which resulted in nuisance being created at that place. On Rajinder Pal arriving there and on his making efforts to see that the appellant goes away from the place, in a sudden manner, the appellant thought of inflicting injuries on person of Rajinder Pal. He had taken out the Kirpan, which is usually carried by the persons belonging to the Sikh community to which the appellant belonged and he struck the blow with that weapon on the person of Rajinder Pal.

6. It is urged by learned counsel for the appellant that it is Badri Nath who just intervened in the said incident and appellant, without any intention to kill Badri Nath, had struck a blow on person of Badri Nath which landed on the vital part of the body of the deceased. He urged that in view of these facts, it cannot be said that either the appellant had any intention to kill Badri Nath or he had any intention

to cause that particular injury on person of Badri Nath which proved fatal. He has argued that at the most the appellant could be imputed with the knowledge that the said injury was likely to cause death of Badri Nath and the case would squarely fall within the provision of Section 304, Part-II and he has relied on certain judgments of the Supreme Court.

7. The learned counsel for the State, however, has contended that the appellant had tried to inflict second blow to Rajinder Pal after having inflicted one blow on his person which had landed on the abdomen of Rajinder Pal and from these facts, it could be evident that the appellant had intended to cause fatal injuries to Rajinder Pal and when Badri Nath had intervened, he had deliberately caused the said injury to Badri Nath which was sufficient to cause death of Badri Nath in the ordinary course of nature. So, he has urged that the appellant has been rightly convicted of an offence punishable under Section 302, I.P.C. for having caused the death of Badri Nath.

8. Facts, as have been narrated by us, indeed are proved from the statements of the four eye witnesses who had no reason to falsely implicate the appellant. It is also to be mentioned at this stage that at the time the occurrence took place at about 12.45 A.M. during the intervening night of 23rd and 24th June 1986, the electricity had failed and there was only moonlight available and it is also quite clear that there was no previous enmity between the parties. The appellant had no animus against Badri Nath or even against Rajinder Pal. It has also come in evidence that when the appellant was escaping, Subhash had caught hold of him and at that time, it is the appellant who asked Subhash that he should take care of his injured father instead of keeping him in his custody and thereafter, it is the brothers of the appellant who brought the scooter in which the deceased was taken to the hospital.

9. In case of *Jawahar Lal v. State of Punjab*, : 1983 CriLJ429 , the facts were that there was no previous enmity between the parties. The parties had some quarrel which was of a trivial nature. Sardari Lal, father of the appellant in that case, had requested Amrik Singh, PW, to permit him to tie a rope of his company with the projection of the house but the side request was declined and after about 5/6 days

of that incident, and underwear of Amrik Singh was picked up by Jawahar Lal, one of the appellants, which was not being returned and thereafter, on the day of the occurrence, at about 10 P.M. deceased Darshan Singh and PW Santokh Singh and Amrik Singh, had come to the bazar and there Sardari Lal had exhorted his companions to catch hold of Amrik Singh and he should not be allowed to escape and at that point of time, the appellant 1 & 2 in that case were armed with a dagger each. The first appellant Jawahar Lal gave a blow on the left side of the chest of deceased Darshan Singh who fell down on the ground and when PW Santokh Singh rushed to the rescue of deceased Darshan Singh, the second appellant Kewal Krishan gave two blows with a dagger and he also fell on the ground. Darshan Singh was pronounced dead on being brought to the hospital. The question which arose for consideration before the Supreme Court was whether the appellant in that case had any intention to kill the deceased or had any intention to cause that particular injury which turned out to be fatal. The Supreme Court found that the appellant was aged about 19 years and keeping in view the background of the trivial quarrel, it was held that there was no intention of the said appellant to cause murder of Darshan Singh and he did not particularly intended to cause that fatal injury and he was held guilty of an offence punishable under Section 304, Part-II holding that the appellant could be imputed with the knowledge that injury which he had caused was likely to result in death of the deceased.

10. If we compare the facts of this case with the facts of the present case, we find that in the present case also, there was no ill-will between the parties prior to the date of the occurrence. PW-1, Rajinder Pal was having his birthday and appellant, who apparently was friendly with Rajinder Pal, was asking to be entertained by serving him liquor which request was declined by Rajinder Pal and the appellant wanted to persist with his request and had reached the house of Rajinder Pal and created nuisance and thereafter, when Rajinder Pal arrived, he found his grandfather trying to pacify the appellant and Rajinder Pal is stated to have apologised to appellant. It has not come out in evidence as to why Rajinder Pal was tendering apologies to appellant. It may be that Rajinder Pal, finding the appellant in an agitated mood, was trying to pacify him so that the appellant could leave that place.

11. Be as it may the appellant, who belonged to Sikh community, was having the Kirpan and he took out the kirpan from the dub of his trousers and inflicted an injury on Rajinder Pal and thereafter Badri Nath intervened and he struck a blow on the person of Badri Nath which landed on his chest, a vital part. In view of these facts, it is not possible to hold that the appellant had intention to kill Badri Nath or had intended to cause that particular injury which proved to be fatal. It could be only said that he caused that injury with the knowledge that the same was likely to cause death of Badri Nath and the case of the appellant would fall squarely under Section 304, Part-II.

12. Reference has also been made to Gurmail Singh v. State of Punjab, : 1982 CriLJ1946 ; Tholan v. State of Tamil Nadu, : 1984 CriLJ478 ; Gurdeep Singh v. Jaswant Singh, : 1992 CriLJ1283 ; Surinder Kumar v. Union Territory, Chandigarh, : 1989 CriLJ883 ; Hem Raj v. State : 1990 CriLJ2665 and Jagtar Singh v. State of Punjab, : 1983 CriLJ852 .

13. It is not necessary to deal with these judgments in any detail because each case has its own peculiar facts. The facts in these judgments have some comparison with the facts of the present case and in all these cases, the Supreme Court found that offence which has been made out in those particular cases was under Section 304, Part-II.

14. Keeping in view the above discussion, we partly allow the appeal and set aside the conviction sentence of the appellant under Section 302, I.P.C. and instead, we covert his conviction to Section 304, Part-II I.P.C. for having caused the death of Badri Nath and sentence him to undergo rigorous imprisonment for 10 year and to pay a fine to Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment of three months.

15. The appeal stands disposed of.

16. Appeal partly allowed.