

**Chanda Vs. the State**

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**Court :** Delhi

**Decided On :** Nov-12-1979

**Reported in :** 17(1980)DLT242

**Judge :** G.R. Luthra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 399

**Appeal No. :** Criminal Appeal No. 108 of 1974

**Appellant :** Chanda

**Respondent :** The State

**Judgement :**

**G.R. Luthra, J.**

(1) The present appeal is directed against a judgment dated 30th May 1974 of Shri B.B. Gupta, Addl. Sessions Judge, New Delhi convicting each of the appellants in respect of commission of offence punishable under Section 325 read with Section 34 Indian Penal Code and sentencing each of them to undergo Rigorous imprisonment for four years and to pay a fine of Rs. 200.00 in default of payment of which to undergo further rigorous imprisonment for three months.

(2) Ghanda Singh appellant is father of Shambir appellant. They were living in huts near I.N.A. Colony, New Delhi. On 24th August 1973 at about 7-30 P.M., as the

case of the prosecution is, Ghanda Singh appellant was abusing his wife as well as his son Shambir and then tried to beat his wife which was averted on account of intervention of Shambir appellant. Thereafter the said accused Ghanda kept on hurling filthy abuses. Smt. Deweshri Devi, wife of Kanwar Singh, now deceased, who then was living nearby with her husband, requested Chanda not be abuse filthly as ladies were also living in neighborhood. Instead of restrain Ghanda started abusing Deweshri Devi (Public Witness 6) also. Kanwar Singh, now deceased, intervened and questioned Chanda as to why he was abusing the wife of former, and at the same time pushed latter to go to his hut. Shambir appellant then got up and tried to grapple with Kanwar Singh saying as to why the latter was trying to push his father Ghanda. Fateh Singh (Public Witness I) intervened and separated them. Shambir Singh then went to his hut while Kanwar Singh returned to his own. Ghanda, however, continued with his volly of abuses. There was an utterance from Kanwar Singh or someone else that let the Police be informed and the appellants be got arrested because they were habituated to create mischief. Kanwar Singh thereupon started for informing the Police on the telephone but before he could go he was caught hold of by Chanda from hair and Shambir appellant from front with one hand and with the other hand Shambir started giving fist blows on the right side stomach of Kanwar Singh. When they left Kanwar Singh the latter sat. He, was however, restless. Fateh Singh (Public Witness I) Deweshri Devi (Public Witness 6) and others took Kanwar Singh to Safdarjang hospital where they were advised to take him to All India Institute of Medical .Sciences (hereinafter referred to as Institute). He was taken to the said Institute where he was declared dead.

(3) Shri Ganga Datt, S.I. Police, (Public Witness 10) came to know on the telephone from the control room in respect of the said occurrence. He went to the spot from where he learnt that the injured had already been removed to the hospital. He reached the Institute and he was informed that Kanwar Singh had died. He then went to the place of occurrence, recorded statement of Fateh Singh (Public Witness I) which is Ex. Public Witness PW10/A, made an endorsement Ex. Public Witness PWIO/B and sent the same to the Police Station) defense Colony for registration of the case.

(4) The appellants in their statements under Section 342 of the Code of Criminal Procedure 1898 admitted that they were present at their Jhugis. They set up a version which is as follows. Chanda came back from his duty at about 4.45 p.m. on 24th August 1973. He had given money to his son Shambir appellant to purchase eatables, but the latter had not made purchases. The result was that only Kicheri was prepared for consumption by Chanda. He felt irritated and started abusing Shambir which attracted Kanwar Singh, now deceased. Kanwar Singh walked fastly but slipped in the way and fell down in a drain with his abdomen striking against some bricks on account of which he received injury and was removed to the hospital. According to them they had been falsely implicated by Deweshri Devi, wife of the deceased, on the ground that falling down of Kanwar Singh was a direct result of trouble between the appellants.

(5) The learned Additional Sessions Judge relied upon statements of eye witnesses, Fateh Singh (Public Witness 1) Jai 'Prakash (Public Witness 2) Jagmohan Singh (PW4) Sham Singh (Public Witness 5) and Deweshri Devi (Public Witness 6) who supported the prosecution story.

(6) The appellants examined Bahi (DW1) Tek Chand (DW2), Ram Chander (DW3) Brij Lal (DW4) and Harish Chand (DW5) who supported the version of the defense. All these defense witnesses were disbelieved by the learned additional Sessions Judge and accordingly the appellants were found to be guilty.

(7) POST-MORTEM examination on the dead body of Kanwar Singh was performed by Dr. B.B.L. Aggarwal, Assistant Professor in the Institution on 25th August 1973 at 11-30 AM. He found that there was no evidence of any injury present on the body, that spleen was enlarged and that death was due to haemorrhage and shock due to rupture of spleen. The learned Addl. Sessions Judge remarked that giving of fist blows on the abdomen of Kanwar Singh caused grievous injury to him but that it could not be said that there was any intention of causing death or causing such bodily injury as was likely to cause death and that therefore, the offence which was committed by the appellants was one punishable under Section 325 Indian Penal Code and not under Section 304 IPC.

(8) The matter was fixed for 24th October 19 79. None appeared on that date and hence was adjourned to 25th October 1979. On that date also none appeared. So no arguments had been addressed by any of the parties.

(9) I fully agree with the learned Additional Sessions Judge in respect of the findings of facts. He had rightly believed the prosecution witnesses, named already. The said witnesses had come up immediately to support the prosecution version. But the same is not true of the defense witnesses, who did not put in their version before the Police. Further there can hardly be any notice on the part of the witnesses of the prosecution to have falsely implicated the present appellants when latter were innocent, and had not committed the crime. According to the defense appellants had been falsely implicated by the wife (Public Witness 6) of Kanwar Singh on the ground that she looked upon them as mischief-mongers and indirectly responsible for death of Kanwar Singh by fall in the drain. She could not have influence over the other prosecution witnesses as well as the Police to achieve that object. It is apparent, therefore, that the defense is merely concocted one.

(10) However, the question arises, if the appellants could be convicted in respect of commission of offence of causing grievous hurt punishable under Section 325 Indian Penal Code when it had been rightly held by the learned Addl. Sessions Judge that the offence of culpable homicide not amounting to murder had not been made out.

(11) The offence of culpable homicide not amounting to murder is defined in Section 299 of Indian Penal Code, which reads as under :-

'299.Culpable homicide-whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death) commits the offence of culpable homicide.'

(12) It has not come in evidence of the prosecution that there was intention on the part of the appellants to cause death of Kanwar Singh. Injury, that was caused by fists could not be said to be likely to cause death. An injury is likely to caused death

if the same could do so under normal conditions. In the present case there was no mark of external injury and according to the prosecution the fist blows had been given on the abdomen of Kanwar Singh. It was just a chance or co-incidence that Kanwar Singh happened to have enlarged spleen which was ruptured and his death was caused. Hence bodily injury that was inflicted was not likely to cause death. Then there is no evidence at all that the appellants had any knowledge that giving of fist blows would cause death of Kanwar Singh because they never had the knowledge of enlargement of his spleen.

(13) The offence of grievous hurt is defined in Section 320 Indian Penal Code. The act of appellants does not fall in any of the clauses of Section 320 Indian Penal Code except that there could be possibility of their act falling under the words, 'any hurt which endangers life' as mentioned in clause Eighty. So the question is as to what type of hurt endangers life. Obviously the fact as to whether there was danger to the life or not is to be taken with reference to the normal conditions and not to the abnormal physique or health of the victim. In *Bai Jiba vs. Emperor* A.I.R. 1917 Bom 259 it was held that phrase such as hurt which endangers life used in Section 320 I.P.G. or injury which is likely to cause death within the meaning of Section 299 I.P.G. must be applied with reference to the normal conditions and any hurt which endangers human life must also be likely to cause death. It is also laid down that the only distinction between culpable homicide not amounting to murder as defined in Section 299 Indian Penal Code and an injury which falls within the definition of grievous hurt on the ground that it 'endangers life' is that in the former case death occurs while in the latter case death does not take place. So, in the present case, under normal conditions death was not likely to occur and there was no danger to life by giving of fist blows on the abdomen of Kanwar Singh. It was on account of enlargement of spleen that rupture of the same occurred and death of Kanwar Singh took place.

(14) In the aforesaid judgment the Bombay High Court had given an instance of a death in which there was neither culpable homicide not amounting to murder nor offence of grievous hurt. That instance had been given in the following words at page 261 :

'THE commonest of all such cases, and one unhappily of very frequent occurrence in this country, is death caused by a very ordinary kick or blow owing to the person injured suffering unknown to his assailant from an enlarged spleen.'

That illustration applied in the present case. Hence in the present case neither there was any culpable homicide not amounting to murder nor causing of grievous hurt. It was merely a simple hurt punishable under Section 323 Indian Penal Code which had been caused.

(15) I, therefore, partly accepting the appeal converting the conviction into one under Section 323 Indian Penal Code and reduce the sentence of each of the appellants to rigorous imprisonment for nine months. The learned Addl. Sessions Judge concerned shall get the appellants arrested and sent to jail for undergoing the unexpired portion of their sentence. The period spent by each of them in jail as undertrial shall be set off against the aforesaid term of imprisonment.

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