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Hans Raj Vs. the State

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Court : Delhi

Decided On : Nov-18-1968

Reported in : ILR1969Delhi183

Judge : Om Prakash, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 307

Appeal No. : Criminal Appeal No. 79 of 1968

Appellant : Hans Raj

Respondent : The State

Advocate for Pet/Ap. : B.R. Rampaul and; Keshav Dayal, Advs

Judgement :

Om Parkash, J.

(1) This order will dispose of three criminal Appeals (Nos. 79, 88 and 97 of 1968) which have arisen out of the same incident.

The incident had occurred in the Tis Hazari Courts, Delhi,. on the 31st October, 1966, at about 12 -30 P.M. The prosecution case was that Om Parkash, Public Witness I, accompanied by his wife's sister's husband. Ram Nath, Public Witness 4, had, on the 31st October, 1966, gone to Tis Hazari Courts, to hear the orders in

his appeal, filed against his conviction under sections 379/75, Indian Penal Code , pending in the Court of Shri Om Parkash, Additional Sessions Judge and that btoh Om Parkash and Ram Nath were sitting on a bench lying outside the Court when Nand Kishore and Hans Raj had come there. Nand Kishore had threatened Om Parkash that he would teach him a lesson as the latter had gto his brtoher convicted. Nand Kishore had, then, taken out the dagger, Exhibit P/1, and had attacked Om Parkash. Om Parkash had run for his life into the court-room of Shri M.S. Joshi, Public Witness 7, Additional Sessions Judge. Nand Kishore and Hans Raj had chased him into the Court-room. Nand Kishore was shouting that he would kill Om Parkash wherever he may go. Nand Kishore had attempted to stab Om Parkash with the dagger, Exhibit P. I in the court-room but before he could do so, he was apprehended by Ajaib Singh, Public Witness 2, the Naib Court of the Court of Shri M.S. Joshi. Ajaib Singh had snatched the knife from Nand Kishore. Hans Raj was apprehended at the gate of the Court-room by Babu Singh, Public Witness 3, antoher Naib Court, who was corning out of the Court of Shri M.S. Joshi, Babu Singh had snatched the knife, Exhibit P/2, from Hans Raj.

(2) Kalyan Singh, Public Witness 8, had come on the spto. He had recorded the statement. Exhibit P/A of Om Parkash and had sent it to the Police Station, Subzimandi for registration of the case. On the basis of Exhibit P/A, the formal F.I.R., Exhibit Public Witness 5/A was prepared and after investigation, Nand Kishore and Hans Raj were prosecuted under sections 307/34, Indian Penal Code . Nand Kishore was also prosecuted under section 25 of the Arms Act for unlawful possession of the dagger. Exhibit P/1.

(3) The cases were tried by the learned Assistant Sessions Judge. Nand Kishore and Hans Raj denied the allegations leveled against them. The plea of Nand Kishore was that Om Parkash had gto a grudge against him inasmuch as he had made a report to the police that Nand Kishore was dealing in illicit liquor and arms and had gto recovered two pistols and 600 btotles of illicit liquor from the house of Om Parkash. So far as the incident of 31st October, 1966 was concerned, the version of Nand Kishore was that on that day, he was going to Lahori Gate to purchase timber and that Om Parkash had met him at the bus-stand, Om Parkash had hired a scotoer. Nand Kishore had also travelled with him in the scotoer, Om

Parkash had made Nand Kishore drink liquor. The two had reached Tis Hazari Courts. On getting down from the scotoer, Nand Kishore had found that a sum of Rs. 75.00/12.00 was missing from the pocket of his shirt. Nand Kishore wanted to search Om Parkash for the amount but Om Parkash had refused to submit to search. The dagger, Exhibit P/l was with Om Parkash at that time.

(4) Hans Raj denied that he had gone to the Tis Hazari Courts with Nand Kishore. He further denied that he was possessed of the knife, Exhibit P/2, or had threatened Om Parkash with knife or had chased him into the Court of Shri M.S. Joshi. Hans Raj admitted that he was apprehended by Babu Singh at the main gate of the Court of Shri M. S. Joshi. His Explanationn was that he had come to the Courts in connection with the pension of his father. Neither Nand Kishore nor Hans Raj produced any evidence in support of the pleas taken up by them.

(5) The learned Assistant Sessions Judge held that Nand Kishore had threatened Om Parkash to kill him and had also tried to stab him in the abdomen with the dagger Exhibit P/1 and that but for the snatching of the dagger by Ajaib Singh, Nand Kishore would have stabbed Om Parkash in the abdomen and caused his death. The learned Assistant Sessions Judge held Nand Kishore guilty under Section 307 Indian Penal Code and sentenced him to 7 years' rigorous imprisonment and to pay a fine of Rs. 200.00. Nand Kishore was also held guilty under section 25 of the Arms Act and was sentenced to undergo six month's rigorous imprisonment. The sentence under section 25 of the Arms Act was made to run concurrently with the sentence of imprisonment awarded under section 307 Indian Penal Code .

(6) Regarding Hans Raj, the learned Assistant Sessions Judge held that Hans Raj had formed a common intention with Nand Kishore to murder Om Parkash and that in furtherance of the common intention, he had threatened Om Parkash with the knife, Exhibit P/2 and had chased him into the Court. Hans Raj was held guilty under sections 307/34 Indian Penal Code and was sentenced to rigorous imprisonment for five years and to pay a fine of Rs. 200.00.

(7) Criminal Appeals Nos. 88 and 97 of 1968 have been filed by Nand Kishore against his conviction under section 307 Indian Penal Code and section 25, Arms

Act, respectively. Criminal Appeal No. 79 of 1968 has been filed by Hans Raj against his conviction under sections 307/34 JPC. As already stated, this order will dispose of all the three appeals.

(8) The appeals filed by Nand Kishore may be taken up first. The conviction of Nand Kishore is based on the evidence of 0m Parkash, Public Witness I, Ajaib Singh, Public Witness . 2, Babu Singh, Public Witness 3, Ram Nath Public Witness 4, and Shri Viyas Dev Misra, Public Witness 6. Om Parkash P.W. I appears to be a man of shady character. He was hauled up under section 307 Indian Penal Code , though he says he was acquitted. He was also prosecuted for being in possession of 600 btotles of illicit liquor and two pistols. He was convicted in a case under sections 379/75 Indian Penal Code , though he was acquitted on appeal. He was externed from Delhi for two years under the order of the Additional District Magistrate, Delhi. He was also detained under the defense of India Rules, Om Parkash is nto worthy of credit. Ajaib Singh, Public Witness 2, stated that he was present in the Court of Shri M. S. Joshi on the 31st October, 1966 and that Shri Viyas Dev Misra, Public Witness 6, was addressing arguments in a case. According to the witness, at about 12 -30 P.M., Om Parkash had come running into the Court shouting 'BACHAO' 'BACHAO'. 0m Parkash was followed by Nand Kishore who had a naked dagger. Exhibit P/1 in his right hand. Nand Kishore was abusing and threatening Om Parkash with the dagger. Ajaib Singh further states that as Nand Kishore was going to stab Om Parkash in the abdomen, he (the witness) caught hold of Nand Kishore and snatched the dagger from him. Babu Singh, Public Witness 3, states that Nand Kishore was, even after his apprehension, shouting that he would kill Om Parkash. Ram Nath, Public Witness 4, had accompanied Om Parkash to the Tis Hazari Courts on the date of the occurrence. Ram Nath states that Om Parkash was sitting on the bench and that Nand Kishore and Hans Raj had come there. The witness further states that Nand Kishore had said that 0m Parkash had falsely gto his brtoher convicted and that he had come there to take revenge. According to the witness, Nand Kishore had then taken out the dagger. Exhibit P/1 and Om Parkash had thereupon run towards the Court of Shri M. S. Joshi, Nand Kishore had followed Om Parkash with the dagger but was caught hold of by Ajaib Singh. Ram Nath, further, states that even after his apprehension, Nand Kishore continued shouting that he would kill Om Parkash

on the next available opportunity. Shri Viyas Dev Misra, Additional Standing Counsel, Delhi Administration, Public Witness 6, states that he was arguing a case in the Court of Shri M. S. Joshi on the 31st October, 1966 and that suddenly a person whose name he had later on come to know as Om Parkash, had rushed to the Court and immediately after Nand Kishore, who had the dagger. Exhibit P/1 in his hand had also rushed into the Court abusing and shouting that he would kill Om Parkash. In cross-examination, Shri Viyas Dev Misra stated that Nand Kishore was swinging his dagger and it appeared that he was aiming the same at the abdomen of Om Parkash.

(9) Ntohing was brought out in the cross-examination of the aforesaid witnesses which could shake their testmony. It is true that Ram Nath Public Witness 4, was a relative of Om Parkash and he was declared hostile as he had nto supported the prosecution case fully against Hans Raj but that is nto a valid ground for the rejection of his evidence, especially when his evidence so far as Nand Kishore is concerned, is consistent with the evidence of Ajaib Singh, Public Witness 3, and Shri Viyas Dev Misra, Public Witness 6, two independent witnesses.

(10) Nand Kishore did nto lead any evidence to establish his plea that he had travelled in a scotoer with Om Parkash and that he had found that his purse containing Rs. 75.00/12.00 was missing when he had alighted from the scotoer and that he wanted to search Om Parkash in connection with the missing purse, Om Parkash, Public Witness I, had denied the allegation that he had travelled with Nand Kishore on the day of the incident when the allegation had been put to him in cross-examination. The particulars of the allegation as put to Om Parkash in his cross-examination differed from the particulars of the plea put forth by Nand Kishore in his statement under section 342, Criminal Procedure Code. The suggestion put in cross-examination was that Om Parkash and Nand Kishore had travelled in a taxi while in the plea it was stated that they had travelled in a scotoer. The amount mentioned in the suggestion, put in cross-examination was Rs. 108.00 while in the plea the amount stated was Rs. 75.00/12.00 annas. The plea put forth by Nand Kishore had no substance.

(11) The evidence of the prosecution witnesses, discussed above established the following facts-that Om Parkash, Public Witness I, was sitting on a bench in the Tis Hazari Courts, that Nand Kishore accompanied by Hans Raj had come there, that Nand Kishore had threatened Om Parkash that the latter had falsely gto his brtoher convicted and he would take revenge, that Nand Kishore had taken out the dagger. Exhibit P/1, that Om Parkash had run into the Court of Shri M. S. Joshi, that Nand Kishore had run after him with the dagger. Exhibit P/1 in his hand, that Nand Kishore was shouting that he would kill Om Parkash and had tried to stab him with the dagger. Exhibit P/1 in abdomen but the dagger was snatched from his hand by Ajaib Singh, P.W. 2.

(12) It was contended, on behalf of Nand Kishore, that the above facts could nto establish a charge under section 307 Indian Penal Code . The argument was that the facts merely showed that Nand Kishore had made preparation to commit murder but that the facts did nto prove that he attempted to commit murder, inasmuch as, Nand Kishore had nto done the penultimate act, namely of actually stabbing Om Parkash with the dagger. The argument does nto appear to be sound. The distinction between preparation to commit an offence and an attempt to commit an offence was pointed out by their Lordships of the Supreme Court in Abhayanand Mishra v State of Bihar. It was observed :-

'THEREis a thin line between the preparation for and an attempt to commit an offence. Undoubtely, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, thereforee, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.

(13) A person commits the offence of 'attempt to commit (1) : 1961 CriLJ822 a particular offence when (i) he intends to commit that particular offence; and (ii) he

having made preparations and with the intention to commit the offence, does an act towards its commission, such an act need nto be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.'

(14) The above observations were reiterated in Om Parkash v. State of Punjab(2), which was a case under section 307 Indian Penal Code . In view of the observations made by their Lordships of the Supreme Court, it will be erroneous to say that in order to convict an accused under section 307 Indian Penal Code , the act committed by him in pursuance of the intention to commit murder must necessarily be the penultimate act. If any act is committed towards the commission of the offence of murder, with the intention to commit murder, but the offence of murder is nto committed for reasons beyond the control of the accused, he can be held guilty under section 307 Indian Penal Code , though the act committed by him was nto the penultimate act Nand Kishore could be held guilty under section 307 Indian Penal Code though he had nto actually stabbed Om Parkash if the facts and circumstances of the case so warranted. Nand Kishore had a mtoive to attack Om Parkash as the latter had gto his brtoher convicted. He had threatened Om Parkash with the dagger. Exhibit P/1 outside the Court. He had chased 0m Parkash into the Court. He was shouting that he would kill Om Parkash and had aimed the dagger at the abdomen-a vital part of the body. The blade of the dagger was 6' -7'. The injury caused by the dagger would have caused the death of 0m Parkash in the ordinary course of nature. It is clear that but for the intervention of Ajaib Singh, Public Witness 2, the act of Nand Kishore would have resulted in the death of Om Parkash. The death did nto occur due to reasons beyond the control of Nand Kishore. The circumstances of the case justified the conviction of Nand Kishore under section 307 Indian Penal Code .

(15) The authority cited by the learned counsel for Nand Kishore is distinguishable. The head-ntoe in Ram Rattan v. State(3) reads as follows:-

'SECTION 307 Indian Penal Code would apply only where the accused had the intention of causing murder and did all that was possible to do so but for some intervening factor death could nto be caused although it would have been the

normal result of the act of the accused. The gist of the offence under section 307 is the question of intention. It is manifest that the liability of the accused must be limited to the act which he has in fact caused and should nto be extended so as to embrace the consequence of some act which he might have done but did nto in fact intend to do. In order, thereforee, to determine the intention of an accused the Court has to look to various factors like the nature of the injury caused, severity of the blow or its persistence, circumstances in which it is caused and the immediate mtoive for the act.

THEfact that the accused lowered down the muzzel and aimed only at the thigh and injury caused was very simple are important 'circumstances to indicate that he had no intention to murder.'

(16) In the present case, the length of the blade of the dagger,. Exhibit P/1, with which he had tried to stab Om Parkash, his threats that he would kill Om Parkash coupled with the mtoive of revenge established that Nand Kishore had the intention to murder.

(17) In view of the above discussion, the conviction of Nand Kishore under section 307 Indian Penal Code is maintained.

(18) It was contended by the learned counsel for Nand Kishore that the sentence of 7 year's R.I. is excessive. There appears to be some force in this contention. It is true that Nand Kishore had violated the sanctity of the precincts of a Court and had acted recklessly. But even so, the sentence of 7 year's R.I. appears to be excessive. The sentence of 3 year's R.I. would meet the ends of justice. Appeal No. 88 of 1968 of Nand Kishore is allowed to the extent that the sentence of 7 year's R.I. imposed upon him is reduced to 3 year's R.I. The sentence of fine is maintained.

(19) The evidence already discussed established that Nand Kishore was in possession of the dagger. Exhibit P/1, whose blade was 6' -7'. It is nto disputed that the possession of the dagger was unlawful under the Arms Act. The conviction and sentence of Nand Kishore under the Arms Act are maintained. Appeal No. 97 of 1968 will thus stand dismissed.

(20) Appeal No. 79 of 1968 of Hans Raj may now be taken up. The evidence of Om Parkash, Public Witness I, against Hans Raj is to be discarded for the reasons already stated. Ajaib Singh, Public Witness 2, only states that Hans Raj was brought into the Court of Shri M. S. Joshi after he had apprehended Nand Kishore. Babu Singh, P.W. 3, states that Nand Kishore and Hans Raj were running after Om Parkash and that Hans Raj had a knife with him. Babu Singh further states that he had caught hold of Hans Raj at the gate of the Court. Babu Singh has also stated that Hans Raj was shouting that he would kill Om Parkash. Excepting 0m Parkash and Babu Singh, no toher prosecution witness states that Hans Raj was running after Om Parkash or had shouted that he would kill Om Parkash. On the toher hand, Ram Nath, Public Witness 4, stated that Hans Raj was apprehended, at the door of the Court-room and that he had no knife with him. According to Ram Nath, the knife was lying on the ground. Ram Nath was declared hostile and was cross-examined. He was confronted with his statement made to the police wherein he had stated that Hans Raj had the knife, Exhibit P/2 with him. This statement cannto be used as substantive evidence. The solitary statement of Babu Singh that Hans Raj had shouted that he would kill Om Parkash cannto be believed. There is absolutely no evidence that Hans Raj had aimed the knife at 0m Parkash. The only fact proved against Hans Raj was that he had accompanied Nand Kishore and was apprehended at the gate of the Court-room. Hans Raj might have gone to the Court-room to know what was happening therein after 0m Parkash had rushed into the Court-room followed by Nand Kishore. It is nto disputed that Hans Raj was nto in any way connected with Nand Kishore or that he had any grudge against 0m Parkash. There is no reliable evidence to show that there was any preconcert or pre-arranged plan between Hans Raj and Nand Kishore to murder Om Parkash. The learned Assistant Sessions Judge erred in holding that Hans Raj had any common intention with Nand Kishore to murder Om Parkash. The conviction of Hans Raj is to be set aside. Criminal Appeal No. 79 of 1968 of Hans Raj is allowed. His conviction under section 307/34 Indian Penal Code is set aside. He is acquitted of that offence. He shall be released immediately unless required in some toher connection.

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