

**Prifam Singh Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-18-1972

**Reported in :** 1972CriLJ1621; 8(1972)DLT205

**Judge :** M.R.A. Ansari, J.

**Acts :** [Indian Penal code, 1860](#) - Sections 300

**Appeal No. :** Criminal Appeal No. 18 of 1972

**Appellant :** Prifam Singh

**Respondent :** The State

**Advocate for Pet/Ap. :** K.B. Kalra and; D.C. Mathur, Advs

**Judgement :**

**M.R.A. Ansari, J.**

(1) The appellant Pritam Singh has filed this appeal against his conviction under section 304, Part 1, I. P. C. and against the sentence of 7 years' rigorous imprisonment passed against him.

(2) The appellant along with three other persons, namely, Ranjit Singh alias Jita, Mmgat Ram and Kishan Lal, was prosecuted in the Court of the Additional Session Judge, Delhi, for an offence under ssc- corporation 302 read with section

34 Indian Penal Code The prosecution case against them was that they as well as the deceased Shiv Charan were residents of Hudson Lines, Kingsway Camp, Delhi. On 24th March, 1971 in the evening. Rani, daughter of Babu Lal brother of the deceased, aged about 14 years, was sweeping the open space outside her house when the appellant and his brother Jita, who were present outside their house at that time, made some indecent remarks to the girl. Those remarks were heard by her brother Om Prakash and he reprimanded the appellant and Jita for making such indecent remarks. There was an altercation between Om Prakash on the one hand and the appellant and Jita on the other hand. The residents of the locality intervened and settled the matter. On 26th March 1971 at about 5.30 or 6 P.M., Om Prakash happened to go to the shop of Ram Singh Pakorawala which was at a distance of about 30 or 40 yards from the shop of Ved Prakash, the son of Babu Lal. The appellant and the other three co-accused surrounded Om Prakash. The appellant was armed with a knife at that time. Fearing an attack by them, Om Prakash ran towards the shop of Ved Prakash, but he was chased by all the accused. The deceased, who was also present at the shop of Ved Prakash at that time, questioned the accused as to why they were chasing Om Prakash. Mangat Ram and Kishan Lal then instigated the appellant and Jita to attack the deceased. Thereupon, Jita caught hold of the deceased from behind and the appellant stabbed the deceased with his knife on the face, chest, abdomen and the temporal region of the head. Just then, Ramesh, son of the deceased, who happened to see this incident, brought a lathi from his house and dealt a blow with the lathi on the head of the appellant as a result of which the appellant fell down on the ground. The other accused then ran away. Babu Lal, Ramesh and Savitri, the mother of Ramesh then caught hold of the appellant and snatched away the knife from his hand. Babu Lal went to the police station taking the knife with him and lodged a report at the police station and also produced the knife with which the appellant was alleged to have stabbed the deceased. By the time the police arrived at the scene of offence, the deceased had already been removed to the hospital and was declared to be dead by the doctor who examined him. The appellant was arrested immediately and the clothes he was wearing were also seized as they were found to be blood-stained. He was also sent to the hospital for medical examination as he was found to be having some injuries on his person.

The other accused were also arrested on the same day. The knife which was produced by Babu Lal at the police station was sent to the Chemical Examiner and the Serologist. Their report showed that it was stained with human blood of the same group as that of the deceased. This, in short, is the prosecution case against the appellant and the other co-accused.

(3) The prosecution examined 17 witnesses and the affidavits of some other witnesses were filed in the trial Court. P. Ws. 1 to 5 and 7 are the alleged eye-witnesses to the incident on 26th March 1971. They testified to the facts already stated and they denied the suggestion that when Jita was found coming out of the latrine, they surrounded him and attacked him with lathis and that when the appellant intervened to save Jita, they attacked the appellant also with lathis and that in the exercise of his right of private defense, the appellant, had picked up a knife from a shop nearby and had brandished it and, he accidentally caused injuries to the deceased. P. W. 6 is Rani the daughter of P. W. 1, and she narrated the incident that took place on 24th March 1971. She was corroborated by P. Ws, 1, 2 and 7. These witnesses denied the suggestion made on behalf of the accused that Rani was carrying on an affair with Jita and that on 24th March 1971, she had tried to pass on a letter to Jita which was, however, intercepted by Om Prakash and that her relations including Public Witness -I. and the deceased had assembled outside the house of the appellant and Jita with a view to attack them and that when the neighbours intervened, they went away saying that they would take revenge against Jita.

(4) P. W. 12 is Dr. Bishnu Kumar, who performed the post mortem examination on the body of the deceased on 27th March 1971. He found the following external injuries :-

1. An incised wound 10.2 x 0.2 cm. vertical on the right side of the face ; 2. An incised wound 0.4 x 0.1 cm. in the web space between the left thumb and the index finger ; 3. An incised wound 2.5 x 1 cm. on the front of the left side chest over third rib ; 4. An incised punctured wound 2 x 0.7 cm. over the second piece of sternum ; and 5. An incised punctured wound 2.2 x 0.6 cm. on the left side of the front abdominal wall just above the level of umbilicus. He found the following

internal injuries.

(5) On opening the abdomen, blood was present in peritoneal cavity. External injury No. 5 had entered the abdominal cavity, caused a through and through cut on stomach body near greater curvature on its front wall wound being 1.5 x 0.6 cm. and back wall wound being 1.2x0.3 cm. It then caused a through and through cut in the pancreas below-entry wound measuring 1 x 0.3 cm. and exit wound 0.6x0.3 cm. This injury then finished in the tissues beneath the pancreas where there was a localised blood effusion. The total depth of injury No. 5 was about 5.6 cms. External injury No. 4 had entered the chest cavity cutting the second piece of the body of the sternum and then cut the pericardium and the root of pulmonary trunk front wall. Pericardial cavity was full of blood and the total depth of injury no 4 was about 4 cm. He expressed his opinion that death was due to shock and haemorrhage consequent to the injuries to the heart, stomach and pancreas and that injuries Nos. 4 and 5 were sufficient, individually and collectively, to cause death in the ordinary course of nature. He also expressed his opinion that all the injuries could be caused by some single edged weapon like Ex. P/1 which was the knife which was alleged to have been used by the appellant.

(6) The injuries on the person of the appellant were proved through Public Witness 20, Daryao Singh, Nursing Attendant, Police Hospital, Delhi, as Dr. A. Uppal, who had examined the appellant, was not available. According to the injury report issued by Dr. Uppal which was proved through this witness, there were three injuries on the appellant namely (i) a lacerated wound '1' on the left scalp, (ii) a lacerated wound about '1' on the second toe on the left foot, and (iii) a simple abrasion '2' on the left forearm. The rest of the witnesses are the various police officers who had investigated into this case at various stages.

(7) The appellant, when examined under section 342 Cr. P.C. with regard to the incident on 24th March 1971, stated that while he was sitting in his house, his brother Jota was standing at the door of the house, P. Ws. 1, 2 and 3 and the deceased came with lath's and knocked at the door. He later learnt that Public Witness 6, Rani, had thrown some letter at Jota which was picked up by Public Witness 2. People from the locality came and settled the matter. Later, the

deceased and Public Witness I called his father and asked him to bring about the marriage of Rani with Jita to which his father did not agree. When examined about the incident that took place on 26th March 1971, he stated that Jita went to the latrine and when he came out he was surrounded by the deceased and Public Witnesses 1,2,3 and 5. On hearing the cries of his brother 'bachao' 'bachao', he went there and asked those persons as to why they were beating him up. His brother Jita then ran away, but he himself was surrounded by those persons. The deceased gave him 8 or 10 lathi blows and the others also gave him the lathi-blows. He sustained injuries on his hands and head and fell down unconscious. He re-gained consciousness at the police station. The statement of Jita was also to the same effect. The other accused Kishan Lal and Mangat Ram totally denied their presence at the time of the incident on 26th March 1971, They examined 10 defense Witnesses. D.W. I is the Headmistress of a Primary School. She was examined to prove the age of Rani, Public Witness 6. According to her. Rani's date of birth was 14th February 1955. D.Ws. 2,3,4 and 6 supported the defense version with regard to the incident on 26th March 1971. D.W. 10 is a handwriting expert and his evidence is to the effect that the letter which was produced by Jita during his examination under section 342 Cr. P.C, was in the handwriting of Rani, Public Witness 6.

(8) On a consideration of this evidence, the learned trial Court acquitted Jita, Mangat Ram and Kishan Lal of the offences with which they were charged and convicted the appellant for an offence under section 304, Part I, Indian Penal Code.

(9) The incident that took place on 26th March 1971 was an offshoot of the incident that took place on 24th March 1971. That an incident did take place on 24th March, 1971 is admitted by the appellant also. There is only a slight variation between the prosecution and the defense version with regard to this incident that took place on 24th March, 1971. where according to the prosecution, the appellant and Jita had made some indecent remarks to Rani, P. W. 6, which were overheard by Om Prakash, Public Witness 2, and which were resented by him; according to the defense. Rani herself wanted to pass on a letter to Jita which was intercepted by Om Prakash and the latter informed his relations and they all came

armed with lathis and wanted to attack Jita. The difference in the prosecution and the defense version is not very material. The letter Ex. D/A. which has been proved to be in the hand- writing of Rani, shows that there was some kind of an affair, innocent or otherwise, going on between Jita and Rani without the knowledge of Rani's relations. But Ex D/A is not the letter which is said to have been intercepted by Om Prakash, P. W. 2, on 24th March 1971. It is an earlier letter written by Rani to Jita. The existence, of the affair between Jita and Rani does not necessarily contradict the prosecution version with regard to what happened on 24th March 1971. Simply because Rani was having an affair with Jita, it does not follow that the appellant Prilam Singh and Jita would not have made some indecent remarks to Rani as alleged by the prosecution, because the remarks which are alleged to have been made by those persons were that they were bachelors and Rani should look at them. The version that Om Prakash happened to over-hear these remarks appears to be more probable than the version that Rani threw a letter at Jita which was picked up by Om Prakash. The learned Additional Sessions Judge was, therefore, not justified, in my view, to reject the prosecution evidence with regard to the incident that took place on 24th March, 1971. That an altercation followed between the appellant and Jita on the one hand and the relations of Rani on the other is admitted by the appellant. That during this altercation, relations of Rani wanted to beat Jita further probablises the prosecution version that Jita had made certain indecent remarks to Rani. If on the other hand, it was Rani who was at fault by throwing a letter at Jita, her relations would have reprimanded her rather than attack Jita. Whichever version is accepted, the one significant fact which emerges is that it was Om Prakash who had either intercepted the letter or who had over-heard the indecent remarks made by the appellant and Jita and it was Om Prakash who started the altercation. therefore, the appellant as well as Jita had a grudge against Om Prakash and had a motive to take revenge of him whenever the opportunity arose. If, on the other hand, the altercation that took place on 24th March 1971 was on account of the interception of the letter which was attempted to be passed by Rani to Jita and if admittedly the residents of the locality had intervened and pacified Rani's relations and if admittedly, Jita's father also had gone to meet P. W. 1 later, Rani's relations would not have any motive to attack Jita or the appellant on 26th March 1971.

(10) The incident that took place on 26th March 1971 is also admitted by the appellant and from the suggestions made on behalf of the appellant to P. W. 1 during his cross examination, it can be taken as being admitted by the appellant also that during the incident that took place on 26th March 1971, the deceased had received injuries which resulted in his death. The controversy is with regard to the manner in which the incident took place on 26th March, 1971. The prosecution case is that when Om Prakash happened to go to the shop of Ram Singh Pakorawala, the appellant and the three co-accused surrounded him and one of them, namely, the appellant, was armed with a knife. Om Prakash ran towards the shop of his cousin Ved Prakash chased by the appellant and the other three accused. On seeing this, the deceased, who happened to be present at the shop, intervened and at the instigation of Mangat Ram and Kishan Lal, Jita caught hold of the deceased from behind and the appellant inflicted a number of injuries on the deceased with his knife. Ramesh P. W. 5 then brought a lathi from his house and hit the appellant on his head with the lathi as a result of which the appellant fell down. He was then caught by P. Ws. 1, 5 and 7 and the knife was snatched away from his hands. The defense version about this incident, on the other hand, is that when Jita came out of the latrine, he was surrounded by the deceased and P. Ws 1, 2, 3 and 5 and was beaten by lathis and when the appellant tried to intervene, he was also beaten by lathis by these persons and that in order to protect himself, he picked up a knife from the shop near by and brandished it and in so doing inflicted injuries on the deceased. The defense version has been supported by the defense witnesses. But before considering their evidence, it is necessary to consider the evidence of the prosecution witnesses, because the prosecution has to prove its case against the accused by the evidence of its own witnesses and if it fails to do so, it cannot rely upon any infirmities in the defense evidence.

(11) As already stated the alleged eye-witnesses to the incident that took place on 26th March, 1971 are P. Ws. 1 to 5 and 7. Out of them, P.Ws 1, 2, 3, 5 and 7 are relations of the deceased and may, therefore, be characterised as interested witnesses. Only P. W. 4 Ved Prakash can be said to be an independent witness in the sense that he is not a relation of the deceased. But even his evidence is challenged on the ground that he belongs to the same caste as the deceased. Even

assuming for a moment that even P. W. 4 is an interested witness, the evidence of these witnesses cannot be rejected solely on the ground that they are either relations of the deceased or belong to the same caste. Their evidence only requires to be scrutinised with some care. Out of these witnesses, the presence of P. Ws. 1 to 3 and 5 at the time of the incident is admitted by the appellant. The name of P. W. 4 is mentioned in the first information report which was given by P. W. 1 almost immediately after the incident. therefore, there cannot any doubt about the presence of P. Ws. 1 to 5 at the time of 1 incident if the evidence of these witnesses is accepted, it would sufficient to prove the prosecution case against the appellant a the evidence of P. W. 7 can safely be ignored. As a mall of fact, it is only on the basis of the evidence of P. W. 7 that the other three accused have been acquitted by the learned Aditonal Sessions Judge. At this stage, it may also be mentioned that appears from the records that after P. W. 4 had been examined in the trial Court on 20th January, 1972, an application purported to be a application by P. W. 4 was filed before the learned trial Court on 22nd January. 1972 in which it was stated that P. W. 4 had been compelled by the relations of the deceased to give evidence against the appellant and that what he had Stated in his evidence was not the truth. This application, however does not appear to have been pressed, because P.W. 4 himself did not appear before the learned trial Court and, therefore, this application was merely filed. It is quite obvious that this application was filed at the instance of the relations of the accused in the case.

(12) The evidence of these witnesses is consistent and their evidence is corroborated by the report given by P. W. 1 immediately after the incident and which has been treated as the first information report in this case. Their evidence is further corroborated by the fact that the appellant was found at the scene of offence at the time the police arrived, as he had been detained thereby some of the relations of the deceased. Their evidence is further corroborated by the fact that the clothes then worn by the appellant were Found to be blood stained

(13) One of the grounds on which the evidence of these witnesses is challenged is that they have not explained the injuries which were found on the person of the appellant. The nature of these injuries has already been mentioned. The injury on the head has been explained by the prosecution as being due to the blow dealt by

Public Witness .5 with a lathi. The injury on the toe can be explained as being due either to the scuffle which took place just before the stabbing of the deceased or to the appellant falling down on the ground after Public Witness .5. The injury on the left fore-arm, which is in the nature of an abrasion, also might have been caused when the appellant fell down on the ground. therefore, the prosecution has accounted for all the injuries found on the person of the appellant and the evidence of the prosecution witnesses is not open to challenge on the ground that they have not explained the injuries sustained by the appellant.

(14) On the other hand, the defense version has not been substantiated either by any facts appearing in the prosecution evidence itself or by the evidence of the defense witnesses. So far as the injuries on the deceased are concerned, it may straightaway be stated that there is no explanation whatever forthcoming from the defense evidence. None of the defense witnesses has stated that the deceased had sustained any injuries during this incident. Even the suggestion made to P. W. 1 during his cross examination that these injuries were caused while the appellant was brandishing the knife for self-protection has not been stated by any of the defense witnesses. Their evidence is also not supported by the nature of the injuries sustained by the appellant. According to these witnesses, the appellant was given as many as 15 or 20 lathi-blows by the deceased and P. Ws. 1 to 3 and 5. But there is only one injury on the appellant which could have been caused by a lathi-blow. According to the defense witnesses, Jita also was attacked with lathi and he also received 7 or 8 lathi-blows. But there was not even a single injury on the person of Jita. therefore, there is not only no explanation forthcoming from these witnesses, with regard to the injuries sustained by the deceased but their evidence is belied by the nature of the injuries on the appellant and by the absence of any injury on Jita. The defense version which is in effect a plea of self-defense by the appellant has, therefore, to be rejected and the prosecution version as spoken to by P. Ws. 1 to 5 has to be accepted.

(15) The learned Additional Sessions Judge having accepted the evidence of these witnesses so far as the part played by the appellant is concerned has, however, not accepted the evidence of these witnesses so far as the part played by the other co-accused is concerned. I am unable to understand the logic of the

reasoning given by the learned Additional Sessions Judge for convicting the appellant and acquitting the other accused. If the learned Additional Sessions Judge was of the view that these witnesses are not speaking the truth so far as the part played by the other accused is concerned, then it would mean that the incident as spoken to by these witnesses did not take place in the manner as spoken to by them. If the learned Additional Sessions Judge was of the view that the other accused have been falsely implicated by these witnesses, then he should have rejected their evidence in toto and should have acquitted the appellant as well. The learned Additional Sessions Judge has not given a finding that the other accused have been falsely implicated by these witnesses nor has he given any finding that they were not present at the time of the incident. Whatever may be said about the part played by Mangat Ram and Kishan Lal accused and even if it can be said that the evidence did not prove that they shared the common intention along with the appellant for causing injuries to the deceased, I cannot follow the reasoning of the learned Additional Sessions Judge for his view that the evidence did not prove that Jita shared the common intention along with the appellant of attacking the deceased. All the witnesses have consistently stated that Jita had caught hold of the deceased from behind and that it was only while he was thus catching hold of the deceased that the appellant inflicted the injuries on the deceased with his knife. This part played by Jita has been mentioned in the first information report also. Jita's presence at the time of offence is also admitted. The learned Additional Sessions Judge has not recorded any finding that Jita had not caught hold of the deceased while the appellant had stabbed him. The learned Additional Sessions Judge has only observed that the evidence that Jita also exhorted the appellant to attack the deceased was not quite satisfactory and that, therefore, the prosecution evidence did not prove that Jita also shared the common intention with the appellant of attacking the deceased. But whether it was on Jita's exhortation that the appellant attacked the deceased or whether Jita did not exhort the appellant to attack the deceased, the fact remains that Jita had caught hold of the deceased while the appellant stabbed him with the knife on the vital parts of his body. This act on the part of Jita, which has been consistently spoken to by all the witnesses and which has also been mentioned in the first information report, is sufficient to prove that Jita also shared there common

intention along with the appellant to cause injuries on the deceased. The nature of the injuries caused on the deceased and nature of the weapon used by the appellant for causing such injury justifies the inference that Jita shared the common intention with appellant not only of causing injuries to the deceased but of cannot such injuries to the deceased which were sufficient in the ordinary arise of nature to cause his death. The acquittal of Jita, in my view wholly unjustified and it only shows that the learned Additional Session Judge had made up his mind to acquit Jita whether or not the evidence against him justified such acquittal.

(16) Even with regard to the conviction of the appellant, I have find any justification for his conviction under section 304 Part 1, Part li and not under section 302 I. P. C. The appellant had inflicted a number of injuries with a knife which is a deadly weapon on the chestern abdomen of the deceased which' are vital parts of the human being According to the medical evidence, the injuries on the chest and abdomen, either individually or collectively, were sufficient in the ordinary course of nature to cause death If a person intentionally inflied injury which is sufficient in the ordinary course of nature to cause do then he comes within the mischief of clause (3) of section 300 I. and is guilty of an offence under section 302 1 P. C The learned additional Sessions Judge has also not expressed the view that the and the appellant did not come within the scope of section 300 I. The only reason given by the learned Additional Sessions Judge for convicting the appellant under section 302 I. P. C. and for convection him under section 304, Part 1, I. P. C. is that Exception 4 to section I. P. C. was applicable to the appellant's case. I hardly find any fiction for this view of the learned Aditonal Sessions Judge. Exces to section 300 I. P. C. is to the following effect :-

'CULPABLE homicide is not murder if it is committed with the premeditation in a sudden fight in the heat of passion upon a quarrel and without the offender's having taken undue advertise acted in a cruel or unusual manner.' In order to bring the appellant's case within the ambit of Except every one of the ingredients mentioned in this Exception has to be It has to be proved-- (i) that it was committed without premeditation ; (ii) that it was committed in a sudden fight ; (iii) that it was committed in the heat of passion ; (iv)that it was committed upon a sudden quarrel; and (v)that it was committed without, the offender's having undue

advantage or acted in a cruel or unusual manner. I do not find any one of these ingredients proved in the Presentation. The fact that the appellant and the other three co-accused came there one of them, namely, the appellant, having been armed with a knife, proves that they came there with the deliberate intention of attacking Om Prakash or anyone who came to his help. The presentation evidence does not justify the inference that there was any satisfaction. On the other hand, it proves that when Om Prakash attempted to escape from the appellant and the other three accused, they hit him and that when the deceased intervened, Jita caught hold of him from behind and the appellant inflicted a number of injuries with his hand on the deceased. Therefore, there was no sudden fight, there was heat of passion and there was no sudden quarrel. Further if the passion mitigation evidence is accepted, except Ramesh, none of the other witnesses were armed and even Ramesh dealt one blow with his lathi only after the appellant had stabbed the deceased, in inflicting as many as five injuries on various portions of the body of the deceased with a knife while the deceased himself was quite unarmed and even before P.W. 5 had struck the appellant with the lathi, the appellant certainly acted in a cruel manner. The least that can be said is that he took undue advantage of the deceased. There was no justification, therefore, for applying Exception 4 to section 300 Indian Penal Code to the appellants case.

(17) I am constrained to state that the judgment of the learned Additional Sessions Judge hardly does any credit to him. Having accepted the evidence of the prosecution witnesses, the learned Additional Sessions Judge ought to have convicted the appellant under section 302 I.P.C. and he should have also convicted Jita for an offence under section 302 read with section 34 Indian Penal Code. If, on the other hand, the learned Additional Sessions Judge had not accepted the evidence of the prosecution witnesses and was of the view that they had not given a true version of the incident, he should have acquitted all the accused. The least that can be said about the judgment of the learned Additional Sessions Judge is that it is wholly illogical.

(18) But since the State has not chosen to file any appeal against the acquittal of the other accused or against the acquittal of the appellant under section 302 I.P.C., I do not wish to take any action suo motu in this regard. I shall rest content by

confirming the conviction of the appellant as well as the sentence passed against him.

(19) In the result, the appeal is dismissed.

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