

Ram Parshad Vs. State

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Court : Delhi

Decided On : Nov-14-1983

Reported in : 25(1984)DLT112; 1984(6)DRJ234

Judge : R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

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

Appeal No. : Criminal Appeal No. 109 of 1981

Appellant : Ram Parshad

Respondent : State

Advocate for Pet/Ap. : A.N. Mulla,; C.M. Nayar and; D.R. Sethi, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) Shri G. S. Dakha Additional Sessions Judge Delhi by his judgment under appeal found the appellants guilty under Section 392/34 Indian Penal Code and sentenced them to undergo R.I. for life. Appellant Ram Parshad was also ordered to pay a sum of Rs. 5.000.00 as fine and in default thereof he was required to undergo a further R.I. for two years. This appeal has been directed against this judgment.

(2) We may at the very outset point out that one of the appellants, Ram Kumar is stated to have died after the conviction and during pendency of this appeal. We are, therefore, left to deal with the case of appellant Ram Parshad alone.

(3) At this stage we may give a brief resume of the events that led to the commission of the crime. The accused Ram Parshad at the time of the occurrence was employed in the custom department drawing a salary of Rs.400.00 . The deceased, in the case is one Kaptan. The houses of the parties are separated by a common wall and Smt. Hukam Kaur, wife of Kaptan deceased used to paste cow dung cakes on this wall. The appellants Ram Parshad and Ram Kumar (now dead) used to raise objections in this regard as a result of which there was some strain in the relation of the parties.

(4) The prosecution case is that on 13-10-79 at about 8-30 P.M. the appellants went to the roof of their house and started throwing cow dung cakes. They are said to have simultaneously offered abuses to the deceased and his family. At this Kaptan deceased is said to have gone to his roof with a view .to restrain the accused from behaving in this manner. Ram Sarup, Ishwar Singh and Daya Nand simultaneously followed him. On the roof itself the deceased Kaptan is stated to have asked the accused to stop abusing and throwing cow dung cakes. No sooner the deceased Kaptan raised this objection Ram Parshad is said to have exhorted Ram Kumar accused to catch hold of Kaptan which he did and thereafter, the accused Ram Parshad gave a blow with 'Kasola' on the head of Kaptan deceased. Having done so they escaped from the spot. The deceased Kaptan was removed to the hospital where he was declared dead by the doctor. After the dead-body was handed over to the police, postmortem was conducted. Both the accused were arrested on 14-10-80. On the same day i.e. 13-10-79 at about 10-42 Pm an information is received from Dr. Ashok Singhal, in charge Primary Health Centre, Najafgarh by police station Najafgarh which was recorded at daily diary No. 22A in pursuance of which Inspector Gurmail Singh Sho goes to the Health Centre accompanied by some other police officials. On reaching the police station he meets Ram Sarup who makes a statement about how the occurrence took place. It is this statement which forms the basis of F.I.R. No. 470, Police Station Najafgarh dated 13-10-79 recorded at 11-40 P.M. and marked as Ext.PW12/A.

Besides disclosing sequence of events Ram Sarup in this statement has also said that whenever there was quarrel between the parties for placing cow dung cakes on the common wall the accused used to say that Kaptan deceased and his wife would continue their action of pasting cow dung cakes on the wall till such time he is not done away.

(5) The postmortem of the dead-body of Kaptan deceased was conducted by PW4 Dr. Bharat Singh with the history of being hit by Kasola. On examination of the body of the deceased he found incised looking wound over the right parietal area of skull placed horizontally oblique at its vertical parts involving part of the back of the skull near the mid-line, size of the wound was 2 1/2'x 3/4' bone deep. Both the angles of the wound were equally pointed. In the central portion of the wound tissues were cut in a clean cut manner, but at the angles muscle fibres were crossing from one side to other side. Wound was covered by blood clots.

(6) Internal examination of the body revealed effusion of clotted blood in the scalp on the under surface at the margins of the wound. There was superficial cut on the parietal bone in the central portion of the wound on the skull, 1/2' long. Only the part of the outer table of the skull bone was cut. There was mild degree of subdural haemorrhage on the right side all over. Brain was congested. Base of skull was normal, neck tissues were normal both lungs were normal, heart was normal, spleen and kidneys were normal. PW4 Dr. Bharat Singh was of the opinion that injury was antemortem and was possible by semi-sharp object or Kasoli as alleged and was sufficient to cause death in the ordinary course of nature. Death was due to coma resulting from head injury and the duration was about 14 hours.

(7) The prosecution case also rests on the testimony of Public Witness 5 Ram Sarup, PW8 Ishwar Singh and Public Witness 9 Daya Nand who were examined before the learned Addl. Sessions Judge as eye witnesses to the occurrence. The learned Addl. Sessions Judge believed the evidence and after finding the accused guilty under Section 302/34 Ips sentenced the accused to the aforementioned imprisonment and fine. Despite the fact that the learned defense counsel Shri A. N. Mulla, addressed us on a limited point as to whether the case would fall under Section 302 or under Section 304 Part II Ipc in the light of the peculiar facts and

circumstances of the case, we have gone through the judgment of the learned Addl. Sessions Judge. We find that the learned Addl. Sessions Judge has given adequate reasons for the conclusion arrived at by him on facts and he has dealt with all the objections raised in respect of the testimony of the witnesses examined at trial. The judgment of the learned Addl. Sessions Judge is well reasoned and the conclusions arrived at by him on facts are logical and justified. We, therefore, do not find any reason to interfere with the judgment of the learned Addl. Sessions Judge in so far his conclusions in respect of the guilt of the accused on facts is concerned.

(8) We may, however, state that Shri Mulla the learned counsel for the appellant has submitted that in the light of the peculiar facts and circumstances of this case coupled with the evidence led by the prosecution the learned Addl. Sessions Judge has fallen into an error by holding the accused guilty under Section 302 read with Section 34 Indian Penal Code and that it was a case which squarely attracts Section 304 Part II IPC. We are, therefore, called upon to examine the point of law as to whether the appellant has rightly been found guilty under Section 302 Indian Penal Code or whether the facts of this case only attract the application of Section 304 Part II IPC. It was submitted by Shri A. N. Mulla that the deceased and his wife were used to pasting cow dung cakes on the common wall and this invariably was being objected to by the appellant; that even though parties used to have an exchange of words in this regard, it had not strained the relations to the extent that the accused appellant could ever have thought of assaulting, much less of killing the deceased. He has further submitted that the accused was justified in objecting to the pasting of cow dung cakes on the common wall, that the accused, in fact, only went to roof of his house to clear away the cow dung cakes and in the process he also hurled abuses on the other party, that the dispute in fact was so trivial that it cannot form the basis for killing, that the court may keep in mind the level at which these villagers talk to each other. (This is, perhaps, said to indicate that it was a minor thing for such villagers to abuse each other). It was further submitted that only one blow is given and that in all probability there had been some altercation in which the blow was given on head and that on facts of this case it cannot be said that the accused intended to cause injury which, in fact was caused and resulted in the death of Kaptan deceased.

(9) The learned counsel for the State, Shri D. R. Sethi has, however, submitted that the law on this point was actually laid down in Virsa Singh v, State of Punjab : 1958 CriLJ818 which has not been departed from and that the test to find out whether the case falls under Section. 302 Indian Penal Code or not would be as to whether the accused intended to cause that injury which was actually caused or whether the injury somehow landed on the head.

(10) We are of the view that the proposition put forward by Shri D. R. Sethi is not at all in dispute. All that is to be seen in the light of the peculiar facts and circumstances of this case is as to whether the conviction of the accused can sustained under Section 302 or not. In support of his contention Shri A. N. Mulla, learned counsel for the appellant has invited our attention to a catena of cases of Supreme Court such as Jagrup Singh v. State of Haryana : 1981 CriLJ1136 ; Randhir Singh alias Dhire v State of Punjab : 1982 CriLJ195 ; Madan Lal v. State of Maharashtra : (1982)1SCC496 ; Gurmail Singh and others v. State of Punjab : 1982 CriLJ1946 ; Hari Ram v. State of Haryana : 1983 CriLJ346 ; Sital Singh v. State of Punjab : 1983 CriLJ1042 ; Jawahar Lal and another v. State of Punjab : 1983 CriLJ429 ; Jagtar Singh v; State of Punjab : 1983 CriLJ852 .

(11) Mr. A. N. Mulla has invited our attention to these ruling of the Supreme Court with the singular purpose to put across his point that these cases are on all fours with the facts of this case and there is no reason for this court to depart from the view taken by the Supreme Court under such circumstances.

(12) In the case of Jagtar Singh v. State of Punjab, the Supreme Court has observed that if there is a sudden quarrel on the spur of moment arising out of trivial reason on chance meeting between the parties and there is no premeditation or malice, causing of a single blow of knife on chest of the victim resulting in death, it would not be right to impute an intention to cause death or causing particular injury. Knowledge that it was likely to cause injury which was likely to cause death could, however, be inferred and the offence would fall under Section 304 Part Ii and not under Section 300 IPC.

(13) In the case of Jawaharlal Lal and another v. State of Punjab, (supra) it was held that where the accused was an immature boy of 19 years of age and in the

background of trivial quarrel with 'A' had given a solitary blow of knife to the deceased which fall on his chest, the accused had no malice against the deceased, he had no quarrel with the deceased and the accused did not make any attempt at giving second blow in the dim light available at the time of occurrence, the accused could not be said to have intention to cause that particular injury. Even if the injury proved to be fatal, the case would not be covered by Section 300, thirdly. However, since the accused could be attributed the knowledge that he was likely to cause death, the accused could be convicted under Section 304, Part I and not under Section 302.

(14) In the case of Sital Singh v. State of Punjab (supra) it has been held that if the action of the accused is unpremeditated and sequel to a quarrel taking place between them, the case would fall under Section 304 Part 1.

(15) In the case of Hari Ram v. State of Haryana (supra) it has been observed that if the appellant with the intention to chastise the deceased in the heat of the moment thrusts 'jeli' into his chest causing death, the intention to kill being absent, the case is covered by Section 304 Part II.

(16) In the case of Gurmail Singh and others v. State of Punjab (supra) it has been observed that if the death is caused by infliction of spear blow on the chest when deceased tried to intervene to save victim of assault and there was no animosity between accused and deceased, no intention to cause death can be attributed to the accused and even though the injury is proved to be sufficient to cause death in the ordinary course of nature, since the intention of to cause such injury was absent. Section 304 Part I alone would be applicable.

(17) Similar views have been expressed in the cases of Madan Lal v. State of Maharashtra; Kulwant Rai v. State of Punjab ;Randhir Singh alias Dhire v. State of Punjab and Jagrup Singh v .State of Haryana referred to above.

(18) On a consideration of the facts and circumstances of the case in hand we find that there was the background of a little strain in the relationship of the parties due to the obstinate attitude of Kaptan deceased and his wife to paste cow dung cakes on the common wall. The accused somehow did not like it and this was being

invariably objected to. On the day of occurrence the appellants went to the roof of their house to throw away the cow dung cakes. It, however, appears that they simultaneously started hurling abuses on the other party which attracted Kaptan and the three eye witnesses who followed him. Kaptan seems to have raised objections to the throwing away of cow dung cakes and hurling of abuses and it is said that immediately thereafter the appellant Ram Parshad asked the deceased appellant Ram Narain to get hold of him and simultaneously he is said to have struck a blow with 'Kasola' on the head of the deceased. We have no clear evidence in this case as to whether Ram Parshad appellant went to the roof armed with 'Kasola' or whether he found it there on the spur of moment nor, do we have any clear evidence in respect of the fact as to what further transpired between the parties after the deceased objected. In this regard we are left guessing but in all probability since the appellant and Ram Narain deceased appellant had gone to the roof with the idea of clearing away all cow dung cakes it cannot be said that there was even the slightest intention to assault much less to kill the deceased. Probably, on an objection by the deceased some altercation ensued and in the process Ram Parshad appellant hit the deceased with 'Kasola' and the blow fell on head resulting in injury causing death of the deceased. In a case like this it would appear that single blow was caused by the accused in the heat of moment in a sudden altercation on the head of deceased resulting in his death. It is also however amply clear that this injury was sufficient to cause death in the ordinary course of nature. The facts of this case would show that there is nothing in evidence on the basis of which it could be said that the accused intended to inflict this particular injury which resulted in the death of the deceased. In the present case at the most the accused can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death but it cannot be said that there was any intention to cause fatal injury. The background and circumstances in which the blow was given and in which it landed on the head does not permit an inference that the accused intended to cause that particular injury. This is particularly so when it is seen that only one blow is given and the accused escape. therefore, considering the trivial nature of difference between the parties; the setting in which this incident took place, the probability that an altercation between the parties took place and the fact that one blow was given without any intention,

to kill or to cause an injury which was likely to kill, this case does not attract the provision of Section 302 Indian Penal Code but is squarely covered and falls within the ambit of Section 304 Part 11. We are, therefore, of the view that the argument advanced by Mr. A.N. Mulla in this regard must prevail and we accordingly hold the appellant Ram Parshad guilty under Section 304 Part II, IPC. We therefore, set aside the conviction and sentence of the accused under Section 302 Indian Penal Code and instead hold him guilty under Section 304 Part II Indian Penal Code .

(19) The next point for consideration would be as to how the appellant who has been found guilty under Section 304 Part II, Indian Penal Code by us should be dealt with. It was argued by the learned defense counsel, Shri A. Mulla, that in almost all cases but one, the Supreme Court has consistently been awarding sentence of imprisonment for five years in such cases and therefore this Court should consider whether the imprisonment already undergone by the appellant is sufficient to meet the ends of justice. This is particularly said in view of the fact that the appellant who was a government employee has also lost his job. We, however, do not find ourselves in agreement with Mr. Mulla on account of the peculiar facts and circumstances of this case. A valuable life has been lost and it is only technically that the accused cannot be held guilty of causing death with an intention to cause death. By holding him guilty under Section 304 Part II, we only permit him to derive advantage of law to which under the circumstances of this case he is entitled. The fact that he was a government servant and has lost his job is not a consideration which should weigh with the court in dealing with such cases. The accused is a mature man. We, therefore, sentence the appellant Ram Parshad to rigorous imprisonment for a period of seven years. He would, of course, get a set off of the imprisonment he has actually undergone so far.

(20) The learned Addl. Sessions Judge had also imposed a fine of Rs. 5,000.00 on Ram Parshad and in default of the payment of the fine he had ordered him to undergo further R.I. for a period of two years. We maintain his order of imposing the fine but direct that in default of payment of fine he shall undergo imprisonment for a period of one and a half years only. We further direct that the fine when recovered shall go to the widow and children, if any of the deceased. By reason of

death of Ram Kumar his appeal automatically abates. The appeal is disposed off accordingly.

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