

Dinesh Kumar Vs. the State

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Court : Delhi

Decided On : Aug-26-1988

Reported in : 36(1988)DLT309; 1988(15)DRJ307

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

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

Appeal No. : Criminal Appeal No. 177 of 1985

Appellant : Dinesh Kumar

Respondent : The State

Advocate for Pet/Ap. : A.N. Mulla,; J.M. Khanna and; K.K. Bakshi, Advs

Judgement :

Charanjit Talwar, J.

(1) This appeal by Dinesh Kumar is against the judgment dated the 26th July, 1985 of the Additional Sessions Judge convicting the appellant under Section 302, Indian Penal Code and sentencing him to rigorous imprisonment for life together with a fine of Rs. 5,000.00 . Briefly stated, the facts are as under.

(2) The deceased Satya Parkash D.iwar (hereinafter referred to as 'Dawar') was a tenant of a shop in premises No. 4515, Gali Jatan, Sadar Bazar, Delhi. The owner

was Mangal Sain, father of the appellant Dinesh Kumar. The tenant wanted to install a printing machine in the shop but the landlord objected to the same. He (Dawar) had bought the machine almost a week prior to the occurrence. On 26th February, 1984, which happened to be a Sunday, Dawar had arranged for a mechanic to install the machine in the shop where the machine had been earlier stored. Mangal Sain and his three sons Vijay Kumar @ Chinny, Vinod Kumar and Dinesh Kumar came to the shop and enquired as to what was happening. When informed that the machine was to be installed on that day and he (the tenant) was waiting for the mechanic, he was threatened by Mangal Sain and his sons that in case he dared to install the machine, he would lose his life. After giving the threat, Mangal Sain and his sons left the shop. Because of the threat and at the instance of his wife, Smt. Raj Rani, who was present in the shop, Dawar went to the Police Station, Sadar Bazar and lodged a report at 2.50 P.M. The translation of the Daily Diary has been exhibited as Public Witness 17/A. A.S.I. Ram Charan Along with Dawar came to the spot but after remaining there for a couple of minutes, he left.

(3) Immediately after the departure of the Police officer, Mangal Sain and his three sons came back to the shop. Two of his sons viz., Vinod Kumar and Vijay Kumar entered the shop and remarked to the deceased that he not only wanted to install the machine without permission but had even reported the matter to the Police against them and, therefore, deserved to be taught a lesson. Those two held Dawar by his hands and dragged him out of the shop. Mangal Sain Along with Dinesh Kumar was waiting outside. He caught hold of the deceased from his hairs 'and almost fell him' on the ground. While holding Dawar (the deceased), the three of them, i.e., Mangal Sain, Vinod Kumar and Vijay Kumar exhorted Dinesh Kumar 'DEKH Kya Raha Hai Maar De Saaley KO'. On this call Dinesh Kumar whipped out a dagger and threatened Raj Rani not to come forward and then dealt a dagger blow on the left side of chest of Dawar. Satya Parkash Dawar was thereafter released. He (the deceased) pressed his wound with his hand and ran towards the shop, where he fall near the doorsteps. His wife Smt. Raj Rani kept a towel on the bleeding wound. She also raised an alarm, many persons collected at the spot, on hearing it.

(4) It was the prosecution case that Mangal Sain informed the Police Control Room that a fight was going on at the said premises. This message was recorded in the Daily Dairy Report at Sl. No. 77, at 3.30 P.M. A translation of that report has been exhibited as Ex. Public Witness 8/A. On receipt of the wireless message from the Police Control Room by Police Station Sabzi Mandi regarding the quarrel, A.S.I. Daya Nand and Constable Sagar Singh were dispatched to the spot for investigation. Asi Daya Nand found that the injured (Dawar) was being taken to the hospital by some persons of the crowd, who had gathered there, in a tempo. He asked Constable Sagar Singh to accompany the injured to the Hindu Rao Hospital. Dawar was, however, declared 'brought dead' by the Medical Officer of the hospital, who examined him. The medico-legal report which has been exhibited as Ex. Public Witness -15/A shows that Vijay Kumar, son of Mangal Sain had brought Dawar to the hospital. The Head Constable on duty at the hospital informed the Duty Officer at Police Station Sadar Bazar, Delhi at about 4.20 P.M. that Dawar had been brought to the hospital as dead. This message was recorded in the daily dairy report and a copy of the same handed over to Asi Ram Charan, the same officer who had visited the shop earlier, as noticed above. Accompanied by Constable Bhim Singh, Asi Ram Charan reached the spot and found that the shutter of the shop was closed and the injured had already been removed to the hospital. He reached the hospital and took into possession the MLC of the deceased.

(5) In the meanwhile Asi Daya Nand, who had reached the spot earlier than Asi Ram Charan, also arrived at the hospital. He arrested Vijay Kumar who had accompanied the injured. Smt. Raj Rani, wife of the deceased, accompanied by her daughter Manju had also reached the hospital by then. It is the case of the prosecution that they had not accompanied the injured as they had to close the shop but after closing the same, immediately left for the hospital in a three-wheeler scooter. Smt. Raj Rani's statement was recorded by Inspector Raj Bahadur Tyagi, which statement is the basis of the F.I.R. In the said statement, a copy of which has been exhibited as Ex. Public Witness 1/A, she narrated the incident involving Mangal Sain and his three sons, which occurred at about 200 P.M. on that very day, i.e., 26th February, 1984. She also stated that her husband, on receiving the threat not to install the machine at any cost, otherwise he would lose his life, went

to the Police Station to lodge a report. She further stated that at about 3.15 P.M. Mangal Sain and all his three sons came back to the shop. Vinod Kumar and Vijay Kumar dragged her husband out of the shop and exhorted Dinesh Kumar, who stabbed him. The said statement along with the endorsement of Inspector Tyagi was sent to the Police Station Sadar Bazar for registration of a case A formal F.I.R. (Ex. Public Witness 6/B) was recorded at 5.55 P.M. and the investigations commenced. The statement of Manju was recorded in the hospital itself. The Investigating Officer Along with Smt. Raj Rani and Manju and accompanied by other members of the Police party, came back to the spot where Raj Rani opened the shop. The blood stained towel with which Dawar had pressed the wound on him chest was found lying there. It was taken into possession. The site was got photographed and the site plan prepared. At about 10.00 P.M. on that very day, accused Dinesh Kumar and Vinod Kumar were arrested from their house. During investigation Dinesh Kumar, appellant herein, disclosed that he would get recovered the knife with which the injury had been caused. The disclosure statement was recorded which was signed by him and also by two Police Officers as witnesses. In pursuance of the said disclosure statement, the appellant led the Police party to the entrance gate of a nearby House No. 4521 and took out the knife which was lying inside a drum. The Knife having a blade of 5.6 inches was seized. A sketch of the knife was prepared and made into a packet and sealed. Dr. L.T. Ramani conducted the postmortem on the body of Dawar and found the following injury :

'(1)Incised stab wound 3.3. c.m. x 1 c.m. placed obliquely on the left side of chest well at the level of nipple 6 c.m. medial to the left nipple.' In his opinion the injury was caused by a sharp edged weapon and was sufficient to cause death in the ordinary course of nature. The death had occurred due to haemorrhage and shock resulting from that injury.

(6) During the course of investigations, Mangal Sain expired. Thus report under Section 173 of the Code of Criminal Procedure was filed only against his three sons namely Vijay Kumar @ Chinny, Vinod Kumar and Dinesh Kumar. On 31st July, 1984, the following charge under Section 302 read with Section 34 of the Indian Penal Code was framed against all of them.

'I, S.M. Aggarwal, Additional Sessions Judge, Delhi do hereby charge you (1) Vijay Kumar alias Chinny (2) Vinod Kumar and (3) Dinesh Kumar, all three sons of Mangal Sain and all r/o 4515, Gali Jatan Sadar Bazar, Delhi as under :- That on 26-2-1984 at about 3.15 P.M. in front of House No. 4515, Gali Jatan, Sadar Bazar, Delhi you all Along with your father Mangal Sain (since died) in furtherance of the common intention of you all did commit murder by intentionally or knowingly causing the death of Sat Parkash, your tenant and thereby committed an offence punishable under Section 302 read with Section 34, Indian Penal Code and within the cognizance of this court. And I hereby direct that you all be tried by this court for the said charges.'

(7) After trial, the Additional Sessions Judge acquitted the co-accused Vijay Kumar and Vinod Kumar by holding that the prosecution had not been able to establish that they shared common intention to murder Dawar. As far as the present appellant is concerned, the trial court found him guilty for the offence of murder and held that 'He developed the intention to kill Satya Parkash there and then and inflicted the fatal blow'. It was observed that the prosecution had established that the injury caused was sufficient to cause death in the ordinary course of nature and, therefore, the appellant was guilty for the offence punishable under Section 302 of the Indian Penal Code.

(8) We may note here that the State had filed an appeal (Cr. Appeal No. 169/86) against the acquittal of co-accused Vijay Kumar and Vinod Kumar. By our order dated 20th July, 1988, we dismissed that appeal as being time barred by 207 days.

(9) There are only two eye witnesses to the occurrence, Public Witness 1 is Smt. Raj Rani, widow of the deceased and Public Witness 2, Km. Manju, daughter of the deceased, the latter at the time of occurrence about 16-17 years old. Mr. Mulla, learned counsel for the appellant has taken us through their testimony. His first submission is that these two witnesses were infact not present in the shop at the time of the incident. He reiterates the plea which was taken before the trial court also that their version is to be rejected. The trial court has dealt exhaustively with this submission. The criticism of the learned counsel that neither Raj Rani nor

her daughter Manju had accompanied the injured has been noticed in the impugned judgment.

(10) The learned trial court was of the view that although it was a Sunday, Raj Rani and her daughter Manju had gone to the shop which was opened specifically for installing the printing machine. Their presence on that day in the shop cannot thus be doubted. We agree with that finding. About their not accompanying the injured has also been explained by the trial court. Raj Rani (Public Witness 1) had to close the shop. She could not have just left it unattended. Infact she had given the towel, which was later on recovered blood stained from the shop to her husband for pressing it on the wound. Her presence is also borne out from the fact that she had the key of the lock of the shutter and it was she who opened it after coming back from the hospital. We have carefully scrutinised the evidence on this aspect and we agree with the finding of the trial court that the presence of Raj Rani. P.W. 1 and Manju, Public Witness 2 in the shop at the time of occurrence, cannot be doubted.

(11) The alternative submission of Mr. Mulla is that even if the testimony of the said two witnesses is accepted in toto, the offence made out is the one punishable under Section 304, Indian Penal Code and not under Section 302, IPC.

(12) As notice above, the co-accused Vijay Kumar and Vinod Kumar were acquitted of the charges. However, the trial court found that the injury caused by the appellant 'was sufficient to cause death in the ordinary course of nature' and, therefore, the offence of murder stood proved. This finding was primarily based on the statement of Dr. L.T. Ramani, Public Witness 20, who conducted the post mortem. That witness opined that 'injury was ante mortem and was caused by a sharp edged weapon such as one produced by the Police in a sealed packet bearing the seals of R.P. Sketch of the weapon was drawn on the post mortem report. Injury was sufficient to cause death in ordinary course of nature. Death was due to haemorrhagic shock resulting from the injury...'

(13) The plea of Mr. Mulla is that in the facts and circumstances of the case and particularly on the finding of the trial court that the appellant had 'developed the intention to kill Satya Prakash there and then' and caused only one injury, it ought

to have been held that the offence committed was that of culpable homicide not amounting to murder. The submission is that the charge as framed (quoted above) shows that even the trial court was not very clear whether the offence committed was murder or culpable homicide not amounting to murder. The emphasis is on the words 'intentionally or knowingly causing the death of Sat Prakash'. The further argument is that it is clear from the findings of the court that there was no pre-meditation and only one blow having been given after exchange of hot words (the reference is to the incident which took place one hour earlier), the conviction under Section 302, Indian Penal Code was not warranted. He cites *Kulwant Rai v. State of Punjab*, : AIR 1982 SC126 and *Hari Ram v. State of Haryana*, : 1983 CriLJ346 , in support of his proposition.

(14) In *Kulwant Rai's* case, the facts found were (i) that there was no prior enmity between the accused and the deceased and (2) that prior to the assault, which was without any pre-meditation, a short quarrel had preceded. In that case the accused was about 20 years of age and he had given one blow to the deceased with a dagger, which blow landed in the epigastrium. area. The victim succumbed to the injury. The Supreme Court observed that absence of prior enmity or pre-meditation would not have weighed with the court 'except the fact that only one blow was given with a dagger and the blow landed in the epigastrium area.' It was held that 'In such a case, Part 3 of Section 300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be likely to cause death and the case would accordingly fall under Section 304 Part-1, Indian Penal Code...' Mr. Mulla submits that in the present case also the maximum that can be said is that the appellant intended to cause injury which was likely to cause death but had no intention to cause that particular injury which was found to have been inflicted.

(15) In *Hari Ram's* case, the facts found were that there was an altercation between the appellant and the deceased Ran Singh and that prior to inflicting injury the appellant remarked that Ran Singh must be beaten to make him behave. It was held that on the evidence it did not appear that there was any intention on

the part of the appellant to murder Ran Singh. The conviction under Section 302, Indian Penal Code was altered into that under Part-11 of Section 304 of Indian Penal Code.

(16) In this case, Public Witness 1 Smt. Raj Rani has admitted in her crossexamination that the accused persons had left the scene after 'hitting only one blow with the churri. No second attempt was made.' The learned trial court has concluded that neither the co-accused nor their father Mangal Sain had shared common intention to kill the accused. It has further been found that there had been an altercation a little prior to the occurrence which led the deceased to lodge a report with the Police (Ex. Public Witness 17/A).

(17) We agree with Mr. Mulla that on the findings of the trial court, the case comes within the purview of culpable homicide not amounting to murder. But we disagree with him that the offence falls under Part-11 of Section 304, Indian Penal Code. We hold that the offence proved against the appellant falls under the 1st Part of Section 304, Indian Penal Code and is not punishable under Section 302, IPC.

(18) According to the appellant, at the time when he made the statement on 26th April, 1985, he was 19 years old. The incident is of 26th February, 1984. Thus he was about 18 years old at the time of occurrence. The age given by the appellant has not been challenged by the prosecution although an opportunity was given to the State vide our order dated 4th December, 1987 to do so.

(19) Keeping in view the young age of the appellant, we are of the view that the sentence of rigorous imprisonment for seven years would meet the ends of justice. We order accordingly. The appeal is allowed to the extent indicated above.