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**Parveen Kumar Vs. the State**

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**Court** : Delhi

**Decided On :** Jan-02-1980

**Reported in** : 17(1980)DLT297; 1980RLR381

**Judge** : Charanjit Talwar, J.

**Acts** : Indian Penal code, 1860 - Sections 307 and 324; Arms Act, 1959 - Sections 27

**Appeal No.** : Criminal Appeal No. 201 of 1979

**Appellant** : Parveen Kumar

**Respondent** : The State

**Advocate for Pet/Ap.** : O.P. Dutta and; S.N. Mehta, Advs

**Judgement** :

**Charanjit Tulwar, J.**

(1) The appellant, Parveen Kumar, has challenged the conviction and sentence under Section 307, Indian Penal Code, and under Section 27 of the Arms Act, 1959 (Act Liv of 1959). He has been sentenced to undergo rigorous imprisonment for a period of four years and a .fine of Rs. 200.00 under the first count, and rigorous imprisonment for a period of one year under the second count, by the Additional Sessions Judge, Delhi by his order dated September 21, 1979 for

causing grievous injuries with a finife to Rakesh Kumar Jain (Public Witness I ).

(2) The prosecution case, in brief, is that Rakesh Kumar Jain, a resident of Dehra Dun, had come to Delhi on Februray 18, 1979. On February 21, 1979, the day of occurrence, he learnt that the accused, whom he knew earlier as they had been Jiving in the same street in Delhi had stabbed his uncle. On intervention by 'Mohallawalas' the incident, which happened two weeks before had not been reported to the police. On that very day at about 3,35 p.m. when he was passing through Pahari Dhiraj Bazar, he met the accused Parveen Kumar Ganja, who was coming from the opposite side. When asked by the complainant as to why he was behaving like a 'Dada' (reference being to the earlier stabbing incident), the accused told him that he had already taught a lesson to his uncle and would also see him (the complainant). After this talk, the appellant took out a knife (Exhibit PI) on the left side chest and arm-pit of Rakesh Kumar. Immediately thereafter the injured was removed to the hospital by Moti Lal (Public Witness 2), who had reached the spot, on the alarm raised by the complainant. The incident had also been witnessed by Subhash Chand (Public Witness 6). The appellant could not be apprehended as he had run away.

(3) The statement (Exhibit F.A.) of the injured was recorded in the hospital and a formal First Information Report was registered. The accused on being arrested made a disclosure statement and led the police party to the recovery of the knife (Exhibit P 1) from under the heap of garbage outside Luxmi Devi Jain Girls Higher Secondary School, Mandirwali Gali, Pahari Dhiraj, Delhi. As the injuries were opined to be grievous in nature, caused with a sharp edged Weapon, the appellant was challenged for being in possession of the knife (Exhibit PI), under Section 27 of the Arms Act.

(4) The appellant in his statement under Section 313 of the Code of Criminal Procedure admitted that he met the complainant on February 21, J979 at about 3.15 p.m. at the place of occurrence. According to him, Rakesh Kumar Jain had asked him as to why he had become a 'Dada.' He denied the allegations that he had inflicted the knife blows to Rakesh Kumar Jain. His version was that one Sunil, who was accompanying the complainant, had attacked him (the appellant) and

while avoiding those blows, knife injuries were received by the complainant in that scuffle. He further denied that he had made any disclosure statement or that he had run away from the place of occurrence. According to him, he had been falsely implicated in the case on account of the quarrel which he had with the uncle of the complainant.

(5) Mr. O.P. Dutta, learned counsel for the appellant, has not challenged the varacity of the witnesses who have deposed regarding scuffle in which the complainant Rakesh Kumar Jain (Public Witness 1) had received injuries. He urged that even if the proscoution version regarding the appellant having inflicted injuries is believed, it has not been proved that the complainant had received any grievous injury. The submission is that Medico-legal report (Exhibit Public Witness PW/A) prepared by Dr. Vinod Kumar Kapur (Public Witness 12), who was the Casualty Medical Officer when the complainant was admitted in the hospital, does not prove the injuries to be grievous. In his cross-examination when asked about the depth of the injuries, Dr. Kapur stated: 'For the depth of the injuries) it was the work of the Surgeon (injuries 1 to 5).' The witness apparently meant that it was for the Surgeon, who attended on the patient, to give the depth of the injuries. The learned counsel for the State agreed that in the Medico-legal Report (Public Witness 1/A) depth of the injuries is not mentioned. What is stated is the length and the breadth of the injuries. The learned trial Court, however, has taken for granted that Dr. Vinod Kapur has proved the depth of those injuries. That finding is obviously not borne out from the Medico-legal Report (Exhibit Public Witness Public Witness 9A).

(6) Admittedly Dr. H.P. Garg, who had opined that the injuries were grievous, has not been produced. The learned trial Court's finding that Dr. Garg's writing having been proved, the absence of the hospital records relating to the treatment given to Rakesh Kumar Jain (Public Witness 1) was not material to show that the injuries were grievous, is also not correct. In the absence of the relevant medical record and without knowing the reasons which led Dr. Garg to give his opinion, it is not safe to hold that the injuries inflicted by the accused were grievous.

(7) The learned counsel for the appellant further' submitted that' the finding of the Court below that the offence committed by the appellant Was in any case covered under Section 307, Indian Penal Code,, as the injuries have been inflicted on the vital part of the body, was also erroneous. In support of his contention that the accused can only by convicted under Section 324, Indian Penal Code, and not under Section 307, Indian Penal Code, he has cited the decision of the Supreme Court reported in Sarju Prasad v. State of Bihar, : 1965 CriLJ766 in that case the accused had been convicted by the trial Court under Section 307, Indian Penal Code, on the allegation that he had inflicted injuries with a knife on the vital part on the injured persons although no vital part was actually out as a result of the injury. It was held that the mere fact that the injury actually inflicted by the appellant did not cut in vital organ of the injured, was not by itself sufficient to take the act out of the purview of Section 307, Indian Penal Code. It was, however, further held that in such a case the burden' was- still upon the prosecution to establish that the intention of the- appellant in causing the particular injury was of the kind referred to' in' Section 300,. Indian Penal Code, and not under Section 307) Indian Penal Code.

(8) It is, thereforee, important to find out whether the intention of the appellant in this. case, while inflicting the injuries which I find, are simple in nature, on the vital part of the injured,, was such as is referred to under Section 307, Indian Penal Code. Admittedly, the in Juries were caused in a scuffle. No enmity between the complainant and the appellant has been proved. Mr. Mehta, learned counsel for the State submits that the mere fact that the appellant-was in possession of the knife shows that he had such an intention. I am unable to agree. From the circumstances brought on the record it cannot be held that the act of the appellant in causing the injuries was done with such means read as would have -constituted the act of murder if Rakesh Kumar Jain (Public Witness 1). had' died. Another factor which I have kept in mind is that the accused had also suffered a simple injury which has not been explained by the prosecution. Non Explanationn of that injury on the person of the accused cannot be ignored. I thus find that the prosecution has failed to prove the requisite intention of the appellant.

(9) For the reasons stated above, I hold that the offence committed by the appellant does not fall under Section 307, Indian Penal Code, but mounts only to an offence under Section 324 Indian Penal Code.

(10) Regarding the offence under Section 27 of the Arms Act I hold that the offence has been established. The disclosure statement made by the appellant was not seriously challenged before me. The learned counsel for the appellant on this aspect submitted that the pointing out by the appellant to the heap of garbage where from the knife (Exhibit PI) was recovered, did not prove that he had possessed that knife. The unrebutted testimony of the witnesses regarding the identification of the knife and the fact that it was recovered on the disclosure statement of the appellant, is conclusive proof of its possession by the appellant at the time of the occurrence. I, thereforee, maintain the conviction of the appellant under Section 27 of the Arms Act.

(11) On the question of sentence Mr. Datta submitted that the appellant was only 20 years of age at the time of the commission of the offence and was, thereforee, entitled to be released on probation as the offence under Section 324 Indian Penal Code, was not punishable with imprisonment for life. Keeping in view the antecedents of the appellant who had inflicted a knife blow to the uncle of the complainant about two weeks prior to this incident, I do not consider it desirable to deal with him under the provisions of the Probation of Offenders Act. However, considering the fact that the appellant was not released on bail during the trial and also during the pendency of this appeal and has, thereforee, undergone rigorous imprisonment from February, 21 1979 onwards, I reduce the sentence under both the counts to the period already undergone by him. The appeal is accordingly partly accepted.

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