

**Mahipal Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/687696](http://sooperkanoon.com/687696)

**Court :** Delhi

**Decided On :** Apr-02-1986

**Reported in :** 30(1986)DLT63

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

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

**Appeal No. :** Criminal Appeal No. 63 of 1983

**Appellant :** Mahipal

**Respondent :** State

**Advocate for Pet/Ap. :** K.K. Sud,; Rajiv Chauhan and; G.S. Sharma, Advs

**Judgement :**

**R.N. Aggarwal, J.**

(1) Mahipal, the appellant herein, Along with Surinder Kumar (since acquitted) was charged with the offence of murdering Harjeet Singh. The learned Sessions Judge who tried the case found the appellant guilty of the offence charged with and sentenced him to imprisonment for life and to a fine of Rs. 500.00 and in default to undergo rigorous imprisonment for three months. The appellant was also charged with the offence under Section 27 of the Arms Act, found guilty and sentenced to rigorous imprisonment for six months. Both the sentences were

ordered to run concurrently. Against his convictions and sentences he has come in appeal. Surinder Kumar was given benefit of doubt and acquitted.

(2) The case for the prosecution as unfolded by the prosecution witness No. 23 Paras Ram is that on 5th May 1981 at about 7.30 p.m he Along with his friends Gurdev Singh and the deceased Harjeet Singh went for a stroll to Nangia Park. After walking for about 10 minutes in the park, they reached near the fountain. Mahipal and Surinder Kumar were sitting on the cemented fence around the fountain. As the deceased was passing in front of Mahipal, it is alleged, Mahipal stretched his legs in the result the deceased stumbled but just saved himself from falling. The deceased asked Mahipal as to why he had to do that. Mahipal retorted that does he not know that he is a well known 'Dada' or 'Badmash' of Chandrawal and no one dared to speak before him. At that very time, it is alleged, Surinder caught Harjeet Singh from behind and Mahipal took out a knife from right side pocket of his pant and gave a blow on the left side of the chest of Harjeet Singh who on the receipt of the injury fell down. Mahipal and his companion tried to escape but Paras Ram with the help of Gurdev Singh caught Mahipal and snatched the knife from his hand.

(3) Public Witness . 26 Sumer Singh, Sub-Inspector, was on patrol duty and while patrolling he reached the park and came to know of the occurrence from the people who had gathered at the spot. Public Witness . 26 took Mahipal into custody. The injured was rushed to the hospital where he was declared as having been brought dead.

(4) Dr. Bharat Singh performed autopsy on the dead body of Harjeet Singh on 6th May 1981 and he found the following injury on the body of the deceased :

'ONE incised stab wound on the left side front of chest in mid clavicle line 1-1/2' medial and above the left nipples. Size 2 cm. cm. x ?. Both angles are equally pointed. Wound is placed obliquely. Bleeding is still taking place on slight turn of body on the sides.'

(5) On internal examination the doctor found that the injury after entering chest cavity through second intercostal space had cut the anterior border of the left lung

through and through and thereafter the pericardium of the heart and finally cut the pulmonary artery through and through and had ended in between the space and soft tissue of aorta and pulmonary artery. The total depth of the wound was found to be 5 cm. The doctor opined that the injury had been caused by a sharp edged weapon and was sufficient to cause death in the ordinary course of nature.

(6) The accused in his statement at the trial denied the prosecution case. There is a counter version. According to the appellant, Harjeet Singh and Paras Ram gave him beating and he received number of injuries and that Harjeet had sustained the injury by falling on the pointed edge of the iron grill around the fountain. He further stated that Harjeet and Paras Ram had the knife. He further stated that Paras Ram is a bad character and there are number of cases against him and he has been implicated falsely in the case by the witnesses in collusion with the police.

(7) We may notice here that the appellant was medically examined by Dr. Mukhtiar Singh (P.W. 5) on 6th May 1981 at 12.05 a.m. and following injuries were found on his person :

1. C.L.W. 1/2' X 1/4' X fatty tissue. Partly right cheek bleeding slightly. 2. Localized swelling face all over fore-head, both lids, cheeks, upper lip and lower lip. Nose tender red. 3. Bruise 1' X 1' left knee joint. 4. Abrasion 1/4' X 1/4' little finger tip left hand.'

(8) The doctor had opined that the duration of the injuries was about 8 hours.

(9) We have carefully perused the prosecution evidence produced at the trial and we are of the view that the prosecution case admits of no doubt that it was the appellant who had given the knife blow to the deceased Harjeet which proved fatal. The medical evidence belies the defense version that the deceased had received the injury by a fall on the pointed end of the iron grill fixed around the fountain. We have no hesitation in finding the said defense version as not true.

(10) The crucial question that arises in this case, to our mind, is that on the established facts what offence has been committed. The crime was not premeditated. Public Witness . 23 has testified that there was altercation and

exchange of hot words between Mahipal and Harjeet. The presence of injuries on the body of the appellant, in our view, are suggestive that there was a quarrel and a fight between the accused party and the deceased party. The appellant, it seems, during the quarrel in the heat of passion had taken out the knife and given one blow which, unfortunately, landed on a vital part of the body and proved fatal. On these facts we do not think it can be said that the accused had acted in a cruel or unusual manner. We are of the view that the case would Fall under exception 4 to Section 300 of the Indian Penal Code. We are further of the view that it may not be safe to hold that the blow was given with the intention of causing death. But the appellant could certainly be fixed with the knowledge that his act is likely to cause death. We would set aside the conviction of the appellant under Section 302 of the Indian Penal Code and instead convict him under part li of Section 304 of the Indian Penal Code and sentence him to rigorous imprisonment for 7 years and a fine of Rs. 500.00 and in default of payment of fine to undergo rigorous imprisonment for 3 months. His conviction and sentence on the charge under the Arms Act are maintained. The sentences of imprisonment on both the charges shall run concurrently.

(11) The appeal is disposed of accordingly.