

Balwant Singh and Others Vs. the State

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Court : Delhi

Decided On : Mar-10-1998

Reported in : 1998IIIAD(Delhi)459; 1998CriLJ2753; 77(1999)DLT208;
1998(45)DRJ282

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307 and 324

Appeal No. : Crl. Appeal No. 162 of 1977

Appellant : Balwant Singh and Others

Respondent : The State

Advocate for Def. : Mr. M.S. Bhutalia, Adv.

Advocate for Pet/Ap. : Ms. Dhanbir Singh, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. This appeal arises from the judgment dated 1.4.1977 delivered by the Additional Sessions Judge, Delhi in Sessions case No. 18/75 whereby the accused, Balwant Singh, Braham Prakash and Duli Chand were convicted under Section 307 read

with Section 34 IPC.

Brief facts which are necessary to dispose of this appeal are recapitulated as under:

2. On 14.9.1974, Chattar Singh, Complainant lodged a complaint with the police that he had been working as a watchman in Ayodhya Textile Mill and on the said date he was at his house situated in village Haloombi . After the day's work when he was going home at about 8.45 a.m. he reached the house of Balwant Singh accused, he found Balwant Singh accused and his son Brahm Prakash accused present outside their house. Duli Chand accused was also present outside his house situated near the house of Balwant Singh. Duli Chand retorted to Balwant and Brahm Prakash that Chattar Singh (complainant) be killed. On this instigation Balwant and Brahm Prakash came from their house armed with balam. Duli Chand and Brahm Parkash caught hold of the complainant and Balwant attacked him with a balam and gave a blow with it while aiming at his neck, as a result of which he suffered injury on his neck. While giving such a blow Balwant had retorted that he had been insulted previously by him and he was to be taught a lesson for the same.

3. On recording the report of Chattar Singh, a case under Section 307/34 IPC was registered against the accused and the investigation was started. During the investigation Chattar Singh was medically examined. The Doctor on examining Chattar Singh had observed an injury 1/4' x 1/2' x 1/2' over the neck on the right cervical region. The nature of the injury was stated to be simple having been caused by a sharp pointed object.

4. During the pendency of this appeal Balwant Singh died on 24.9.1983. The learned counsel appearing for the appellant has produced the death certificate of Balwant Singh.

5. Learned counsel for the appellant submitted that the only injury which has been caused has been attributed to Balwant Singh who has expired and appeal as far as Balwant Singh is concerned, abates.

6. Mr. Dhanbir Singh, learned counsel for the appellant submitted that conviction under Section 307/34 IPC cannot be sustained. The learned counsel has invited my attention to the statement of the prosecution witnesses. Chattar Singh (PW-2) in his statement has stated on seeing me Duli Chand proclaimed that 'I should be assaulted.' Similarly, Satbir (PW-4) in his statement has stated 'on seeing Chattar Singh, Duli Chand retorted that he should be caught hold of'. Tarif Singh (PW-6) who was said to be an eyewitness of the incident had mentioned 'Chattar Singh should be beaten.' The learned counsel for the appellant submitted that from the cumulative effect of statements of all the witnesses it was clear that they had no intention of causing death. In this view of the matter no offence under Section 307/34 can be made out against the appellant.

7. As observed above, the main accused who was injured has already expired and from the statements of PW-2, PW-4 and PW-6, it is clear that the intention was not to cause death but only to assault him. therefore, I find considerable force in the submission of the learned counsel for the appellants that conviction under Section 307/34 IPC is unsustainable.

8. It is the settled position of law which has been crystalised by a number of judgments of the Supreme Court that in a case of Section 307 when injuries have been caused, the intention should be gathered from the nature of the injuries which have been caused. In the instant case only one injury, i.e. 1/4' x 1/2' x 1/2' has been caused. If the accused had any intention of causing death perhaps they could have easily caused death in the facts and circumstances of this case. In the facts and circumstances of this case either from the statements of the witnesses or from the injury it is difficult to bring this case within the ambit of section 307 I.P.C. against the appellants. In this view of the matter conviction of the appellants under Section 307/34 is unsustainable and they are accordingly acquitted as far as their conviction under Section 307 I.P.C. is concerned.

9. The appellants have been convicted under Section 324 IPC. On examination of the totality of facts and circumstances of this case, their conviction under Section 324 Indian Penal Code is upheld. The appellants have already undergone a part of the sentence. The incident is of the year 1974. They all must have properly settled

in their lives after 24 years of the incident and directing them to now serve out the remaining sentence would hardly be just and proper. therefore, in the facts and circumstances of this case and in the interest of justice, I deem it appropriate to release the accused appellants on the sentence already undergone. However, the fine of Rs. 1,000/- each, be deposited within two months from today, if not already deposited and in default of payment of fine, the appellants shall undergo a simple imprisonment of one month. The appeal is partly allowed and disposed of.

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