

Om Parkash Vs. the State

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Court : Delhi

Decided On : Mar-17-1998

Reported in : 1998IIIAD(Delhi)461; 1998CriLJ2625; 75(1998)DLT75; 1998(45)DRJ264

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306, 307 and 324

Appeal No. : Crl. Appeal No. 191 1997

Appellant : Om Parkash

Respondent : The State

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

Advocate for Pet/Ap. : Mr Neeraj Chaudhary, amices Curie

Judgement :

ORDER

Dalveer Bhandari, J.

1. The appellant Om Parkash was tried for the offence under section 307 IPC for having attempted to commit the murder of one Bir Singh at 8.30 P.M.on 10.3.1976 in village Sultan Puri, Delhi Brief facts necessary to dispose of this appeal are

recapitulated as under:

2. On 10.3.1976, around 8.30 p.m. the appellant Along with Jai Kishan and Dale Ram, had gone out for a walk in the village and when they reached near the 'Gher' of Ramji Lal. His other companion had gone for urinating and the appellant was there with 4-5 persons. On seeing the complainant: the appellant at that time, was standing with 4-5 persons by the side of a wall. The appellant came running and stabbed him on the left side of his chest with a knife. Jai Kishan and Dale Ram were a few steps away. The accused ran away from the scene of occurrence. The knife with which the injured was stabbed remained in his chest, and the injured himself took it out.

3. Bir Singh, injured stated in his statement that the accused was working Along with him in the same factory. The complainant also stated that he was diligent and prompt in his work while the appellant was not so and on that score the appellant carried a grudge against him and which was the reason for this unfortunate incident.

4. The prosecution examined 13 witnesses and out of them PW-2 and PW-3 were there at the spot. They supported the version of the prosecution. The trial court after scrutinising the entire prosecution evidence on record came to the conclusion that the appellant had caused the injury and consequentel convicted the appellant under Section 307 IPC and sentenced him to an imprisonment for a period of four years and fine of Rs. 400/- was imposed and in default of payment of fine the accused was directed to undergo further imprisonment for a period of two months.

5. Aggrieved by the order of the learned Additional Sessions Judge dated 26.4.1977, the appellant preferred this appeal.

6. The learned counsel for the appellant submitted that the version of the prosecution suffers from serious infirmity. Dr. P.V. Rao, PW-12 has not been examined thereforee, in absence of doctor's examination it is difficult to come to the conclusion whether the injury caused by the appellant was grievous in nature? There is no other material on record by which it can be ascertained that the injury caused to the appellant was dangerous to the life. In this view of the matter the

conviction of the appellant under Section 307 IPC cannot be sustained.

7. The learned counsel for the appellant has placed reliance on Nazar Mohd. & Hanuman v. State of Delhi 1994 JCC 689; Swaran Singh Vs . State : 42(1990)DLT588 and Ashok Kumar v. State 1994 JCC 522. According to ratio of these authorities, in the facts and circumstances of this case the appellant ought to have been convicted under Section 324 IPC and not under Section 307 IPC.

8. On consideration of the facts and circumstances of this case and in the interest of justice. I deem it appropriate set aside the appellant's conviction under Section 306 I.P.C. and convert the same under Section 324 I.P.C. while maintaining the conviction of the appellant under Section 324 IPC, the sentence is reduced to the period already undergone.

9. The Appeal is accordingly disposed of.

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