

Paramjit Singh and anr. Vs. State

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Court : Delhi

Decided On : Mar-09-1983

Reported in : 1983(1)Crimes3220; 23(1983)DLT338; 1983(4)DRJ393; ILR1983Delhi867

Judge : R.N. Aggarwal and; G.R. Luthra, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 300, 302 and 323

Appeal No. : Crl. Appeal No. 55 of 1980

Appellant : Paramjit Singh and anr.

Respondent : State

Advocate for Def. : Harish Gulati, Adv.

Advocate for Pet/Ap. : D.C. Mathur, Adv

Judgement :

G.R. Luthra, J.

1. On January 14, 1980 both the appellants-Paramjit Singh and Surinder Singh, who are real brothers, were convicted and sentenced to undergo imprisonment for life by an Additional Sessions Judge, Delhi for an offence of murder of one Hardev Singh punishable under Section 302 read with Section 34 IPC.

2. The allegations of the prosecution briefly are as follows. On 7th September, 1978, Hardev Singh (deceased; and his father Darshan Singh (PW 11) saw a Natak near Hanuman Temple in village Khiala. After the Natak was over, they were returning to their house. One Anil met them in the way and he also accompanied them. Near 'T' block, Vishnu Gaiden at about 11.15 p.m. (night of 7th September, 1978) they were stopped by both the appellants. The appellants demanded from Hardev Singh and Anil that the latter should return to the former their money which the latter had won in gambling by fraud during the day. Hardev Singh and Anil denied having earned any money on account of gambling. Both the appellants became enraged and stated that they would teach a lesson. Simultaneously, Surinder Singh caught hold of Hardev Singh from behind and asked Paramjit Singh to teach a lesson to Hardev Singh. Paramjit Singh took out a knife from the right side pocket of his pant and gave a blow with the same on the right thigh of Hardev Singh. On receiving the blow Hardev Singh cried 'maar diya, maardiya' and ran towards his house. Then Paramjit Singh attacked Anil who in order to ward off the assault put forward his left hand as a result of which he received injuries on his left hand palm and fingers. Darshan Singh (PW 11) raised an alarm 'pakro, pakro'. Paramjit Singh pointed the knife towards Darshan Singh and told the latter that if the latter advanced he would be killed. Both the appellants were able to make good their escape along with the knife. Darshan Singh ran to look after his injured son Hardev Singh who was found lying on a cot in front of house of Anil. Darshan Singh felt the pulse of his son and found that he was virtually dead. He, therefore, proceeded towards Police Station Tilak Nager to lodge a report. Sub Inspector Jai Chand (PW 14) met him near Raj Cinema and the former recorded the statement of the latter. That statement of Darshan Singh was sent to the Police Station where F.I.R. No. 996 was registered at 12.40 p.m. of 8th September, 1978.

3. On the pointing out of Anil and Darshan Singh, Sub Inspector Jai Chand prepared the site plan. Crime team was summoned who took the photograph of the various portions of the scene of occurrence. Samples of blood and blood soaked earth were taken.

4. The dead body was sent for post mortem examination which was conducted by Dr. Bharat Singh (PW 9). Anil was also got medically examined and his examination was conducted by Dr. L.T. Ramani (PW 5) on 8th September, 1978 at about 8.25 a.m.

5. After having escaped from the scene of occurrence, the appellants were concealing themselves under Naraina Bridge. On receipt of secret information as to where the appellants were, Sub Inspector Jai Chand took along Darshan Singh (PW 11) and Pratap Singh (PW 12) who is son-in law of PW 11 for apprehending the appellants. Both Darshan Singh and Pratap Singh had met Sub Inspector Jai Chand near Ajanta Cinema when the former were returning after cremating the body of Hardev Singh on 8th September, 1978. The appellants were arrested under the Naraina Bridge.

6. On interrogation, Paramjit Singh appellant made a disclosure statement on 8th September, 1978 to the effect that he had concealed the knife (weapon of offence) in the house of his maternal uncle, named, Ajit Singh and that he could get the said knife recovered on pointing out. That house at that time was unoccupied. That disclosure statement was witnessed by Pratap Singh (FW 12) and Constable Deeg Ram (PW 13). The disclosure statement is Ex. PW 11/G. Thereafter Paramjit Singh appellant led the police party to the house of his maternal uncle. He entered into that house from below a window of room and took out a knife from an opening in the wall. The police took that knife into possession, prepared its sketch and put the same into a sealed parcel.

7. According to the prosecution, there were two eye witnesses of the occurrence. Only Darshan Singh (PW 11) has entered into the witness box and has corroborated the prosecution version fully. Anil was not produced by the prosecution on the ground that he was not traceable and could not be served with summons in spite of best efforts. It was on the basis of and by believing Darshan Singh (PW 11) that the learned Session Judge believed the prosecution version. The learned counsel for the appellants assailed his statement as unreliable on number of grounds. The said learned counsel laid great stress on the fact that Darshan Singh being father of the accused had a motive to support the case of the

prosecution and that no conviction could be based on a statement of such an interested witness. According to the said learned counsel the said witness was never present at the spot. It was pointed out that the said witness stated that he was having high blood pressure on account of which he was advised complete rest and that if that were so, it was highly improbable that the said witness would go to see theatrical performance which obviously involved exertion.

8. The learned counsel also argued that statement of Gurdev Singh (PW 4), who is son of PW 11, made the presence of Darshan Singh (PW 11) at the time of occurrence as improbable. The reliance of the learned, counsel is on a portion of statement of Gurdev Singh which reads as under :

'When I reached the scene of occurrence, besides the police, many other residents of that locality had collected there but I do not recollect their names now. At that time I remained with the police there for about half an hour and then went back to inform my relations about the death of my brother Hardev Singh.'

9. The contention of the learned counsel for the appellants was that in spite of the fact that PW 4 mentioned about the presence of many persons of the locality, he did not specifically mention about the presence of his father at the place of occurrence which clearly meant that his father was not present there.

10. However, the aforesaid arguments do not appeal at all. It is a matter of common knowledge that in spite of and against the advice of doctors people go on moving about. So the statement of PW 11 that he went to see Natak in spite of high blood pressure and against the advice of the doctor does not create any improbability in his statement. Then the statement of PW 4 does not justify any inference that PW 11 was not present at the time of occurrence. PW 4 reached the place of occurrence after the crime had been committed. Further, his statement is not to the effect that his father was not present.

11. The mere fact that Darshan Singh is father of the deceased is no ground for disbelieving him. There is no suggestion that he was trying to implicate the appellants on account of any enmity. No relation and much less a father will ever attempt to conceal the true culprits and involve innocent persons. In Varghese

Thomas v. State of Kerala 1977 Cri. L.J. 343 it is laid down that the evidence given by the relatives of the deceased cannot be regarded as unreliable or needing corroboration from independent witnesses when there is no previous enmity between the deceased or his relatives on the one side and the accused on the other.

12. Then it is very important to note that the first information report was lodged with great dispatch and promptness. The occurrence took place at about 11.15 p.m. on September 7, 1978. Within one hour and fifteen minutes (at 12.30 a.m. on September 8, 1978) the statement of Darshan Singh (PW 11) was recorded by Sub Inspector Jai Chand (PW 14) and ten minutes later at 12.40 a.m. first information report was recorded. The aforesaid timings are available from the statement of Darshan Singh (PW 11), endorsement of S.I. Jai Chand on the same and copy of the first information report which are Ex. PW 8/A and Ex. PW 8/B. This promptness in lodging of the first information report lends assurance and corroboration to the truth of the statement of Darshan Singh (PW 11). The learned counsel for the appellants laid great stress on the non-production of Anil who, according to the prosecution, was an eye witness. The learned counsel contended that an adverse presumption should be drawn against the prosecution to the effect that had that witness been produced, he would have either not supported the prosecution version or would have given a different version altogether. But we find that non-production of Anil was not without any reason. As mentioned in the judgment of the learned Session Judge, lots of efforts were made to serve that witness with the summons but he was untraceable with the inevitable result that he had to be given up.

13. It is very important to note that the appellants were concealing themselves under Naraina Bridge and were not at their normal places of residence when they were arrested. That conduct clearly gives an indication of guilty mind. The evidence which shows their arrest at that place on 8th September, 1978 consists of the statements of Darshan Singh (PW 11), Pratap Singh (PW 12) and Sub Inspector Jai Chand (PW 14). When the appellants were examined under Section 313 of the Code of Criminal Procedure, each of them was specifically asked about his arrest in the aforesaid manner. Each of them merely stated that the aforesaid

version of the prosecution was incorrect. It is very important to note that none of them told as to from which place arrest was made.

14. The recovery of knife on the basis of disclosure statement of Paramjit Singh appellant also gives a corroboration to the case of the prosecution as unfolded by Darshan Singh (PW 11). The recovery of knife stands proved from the statements of Darshan Singh (PW 11) his son-in-law Pratap Singh (PW 12), Constable Deeg Ram (PW 13) and S.I. Jai Chand (PW 14).

15. The case of the prosecution receives further strength from the fact that on medical examination injuries on the person of Anil were found.

In this respect there is statement of Dr. L.T. Ramani, Police Hospital, Delhi. According to him, the injuries found on the person of Anil were as under:

(i) An incised wound $1/2'$ x $2/10'$ x skin deep placed transversely on the left index finger on the palmar aspects.

(ii) Superficial incised wound $1/2'$ long on the left middle finger on the palmar aspect, (both the said injuries were in one line).

(iii) Linear abrasion $1/2'$ long on the left palm.

16. The aforesaid injuries indicate the presence of Anil at the spot and having been attacked and that he received injuries.

17. Now the question is as to what offence has been committed by the appellants. According to the learned Additional Sessions Judge, Delhi both the appellants in furtherance of their common intention to cause death of Hardev Singh actually caused his death and that, therefore, both of them were guilty of murder punishable under Section 302 read with Section 34 IPC. The relevant portion of his judgment reads as under :

'The way Hardev Singh was secured by accused Surinder Singh and was stabbed by co-accused Paramjit Singh indicates that actually they wanted to kill him by giving him a stab blow in some vital region and it was only because of some struggling which must have been done by the victim, that the said blow fell on that

particular part of his body. It must, therefore follow that the accused persons intended only to cause the death of Hardev Singh and for that reason the accused cannot be permitted to derive any advantage due to the fact that the blood vessel that was cut in this case was not a vital part of the body.'

18. However, we have to see if there was any common intention on the part of the appellants and whether the provisions of Section 34 IPC are applicable or not. So that there should be a common intention there must be meeting of minds to commit a particular offence. The common intention pre-supposes prior concert. There should be some pre-arranged plan, even though the said plan is formed hastily or all of a sudden. In the present case, as it appears from the evidence of prosecution, the intention of the appellants was to teach a lesson to Hardev Singh and Anil on account of the latter having indulged in sharp practice in gambling. Teaching of lesson does not spell out any intention to cause death or kill. Teaching of lesson could be confined only to causing of simple hurt. It was by chance that the appellants happened to meet Hardev Singh. There was, therefore, no prearranged plan on their part. Surinder Singh did catch hold of Hardev Singh from behind but it cannot be said that he knew that Paramjit Singh would give knife stabs. Paramjit Singh was not carrying open knife. He took out the knife from his pocket. therefore, Surinder Singh could not imagine that Paramjit Singh would take out the knife. It was only one blow which was given. Had repeated blows by knife been inflicted it could be said that although Surinder Singh did not have any meeting of mind with Paramjit Singh for causing injuries by knife, yet plan or meeting of mind between him and Paramjit Singh was formed at the spot and then there could be existence of common intention. But there could be no such formation of plan with single injury only. Under these circumstances Surinder Singh is guilty of causing simple hurt punishable under Section 323 read with Section 34 IPC.

19. The definition of 'murder' is given in Section 300 IPC. That definition, inter alia, says that culpable homicide is murder if the act by which the death is caused is done with the intention of causing death. According to the learned Additional Sessions Judge, Delhi there was an intention on the part of the appellants to kill Hardev Singh. We have already held that there is no indication of existence of

such an intention. therefore, it is to be seen if any of the other parts of definition of 'murder' can be applicable. Clause '3rdly' of the said definition says that culpable homicide is murder if the act by which the death is caused, is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In *Virsa Singh v. The State of Punjab* : 1958 CriLJ818 the following was held by the Supreme Court while interpreting clause '3rdly' of Section 300 IPC :

'To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300. '3rdly' ;

First, it must establish, quite objectively, that a bodily injury is present ;

Secondly, the nature of the injury must be proved ; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and of course, the burden is on the prosecution throughout) the offence is murder under Section 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature not that there is any real distinction between the two).'

20. In the present case statement of Dr. Bharat Singh, police surgeon (PW 9) is that on the body of Hardev Singh (deceased) there was one incised stab wound over right thigh and that the said injury was ante-mortem caused by a sharp edged weapon having a single cutting edge and that the said injury was sufficient to cause death in the ordinary course of nature. It is, therefore, proved from the above statement that a bodily injury was present, that nature of injury was on incised wound and that the said injury was sufficient in the ordinary course of nature to have caused death. therefore, the only thing to be seen is if there was an intention to inflict the particular bodily injury which caused death. Dr. Bharat Singh stated that it was on account of cutting of artery which caused haemorrhage and death of Hardev Singh. The relevant statement of Dr. Bharat Singh reads as under :

'Normally, the place where Hardev Singh deceased received the injury, is not considered to be a vital part of the body. However, since in this case the large blood vessel was cut, it became fatal.'

In the present case although injury (incised wound) was intentionally inflicted by Paramjit Singh yet there could not be any intention on his part that the injury should be such as would cut the blood vessel. In such circumstances the particular injury of cutting of blood vessel in this case was not intentional on the part of Paramjit Singh and therefore, this case is not covered by clause '3rdly' of Section 300 IPC. It was held by the Supreme Court in *Laxman Kala Nikalje v. The State of Maharashtra*, : 1968 CriLJ1647 , where also the death was caused on account of cutting of an artery and injury was not on a vital part, it was held that the case did not fall in clause '3rdly' of Section 300 IPC and that the offence committed was punishable under Section 304 part II. That judgment of the Supreme Court is exactly on the similar facts. therefore, in the present case Paramjit Singh committed an offence punishable under Section 304, part II IPC.

21. We, therefore, alter the conviction of Surinder Singh from 302/34 IPC to 323/34 IPC. The maximum punishment provided under Section 323 IPC is one year. As we understand, Surinder Singh has been in jail, including the period of trial, for more than a year. therefore, there is no question of awarding any further

punishment and sentence shall be already undergone.

22. The conviction of Paramjit Singh is altered from 302 to 304, Part II IPC, whereby the maximum sentence of imprisonment provided is ten years. Paramjit Singh was aged about 20 years at the time of the commission of the offence. According to Section 6(1) of the Probation of Offenders Act, 1958, when a person under 21 years of age is found guilty of having committed an offences punishable with imprisonment but not with imprisonment for life, he shall be given the benefit of being released on probation of good conduct unless the court, for reasons to be recorded, is of the opinion that that course should not be adopted. For the purpose of forming the opinion, as Sub-section (2) of Section 6 of the said Act says, it is necessary to call for the report of the probation officer. thereforee, the report of the probation officer should be obtained within ten days and the matter of either releasing Paramjit Singh on probation of good conduct or sending him to imprisonment will be considered on 21st March, 1983.

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