

Kaptan Singh Vs. State

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Court : Delhi

Decided On : Feb-04-1983

Reported in : 1983(1)Crimes765; 24(1983)DLT133

Judge : Rajindar Sachar and; R.N. Aggarwal, JJ.

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

Appeal No. : Cr. A. No. 75 of 1980

Appellant : Kaptan Singh

Respondent : State

Advocate for Def. : B.T. Singh, Adv.

Advocate for Pet/Ap. : Gurcharan Singh, Adv

Disposition : Appeal allowed

Judgement :

R.N. Aggarwal, J.

1. The appellant Kaptan Singh and his brother Partap Singh (died during the trial) were tried in the Court of Shri G.S. Dakha, Additional Sessions Judge, on the charge under Section 302 read with Section 34 of the Indian penal Code. The learned Judge found the accused guilty of the offence charged with and sentenced

him to imprisonment for life. Against his conviction and sentence Kaptan Singh has come in appeal.

2. The case for the prosecution is that between the accused and the complainant party there existed a dispute over the construction of a Chabutara on account of which the width of the lane became narrow, and it obstructed the free use of the passage. On 3rd July 1978 at about 7 P.M Om Parkash (P. W. 1) and his cousin Randhir Singh (P. W. 5) were going to their field. When they were about a Killa away from their field they saw Kaptan Singh catching hold of Mukhtiar Singh and Partap Singh hitting Mukhtiar Singh on the neck with some weapon. Om Parkash and Randhir Singh raised alarm and they ran after the two accused but they were not able to catch them. Om Parkash and Randhir Singh saw the deceased bleeding profusely from the neck. Om Parkash leaving Randhir Singh at the spot rushed to the village and informed the family members of Mukhtiar Singh about the occurrence. He also informed the police on telephone about the occurrence. The report made by Om Parkash was recorded at the Police Station Nangloi at 8.10 P.M. and the same is Ex. PW 4/A. (The actual message given was that a quarrel is going between Inder Raj and Mukhtiar etc. at Phooth Kalan). The accused are the sons of Inder Raj. Jaipal, Om Parkash and some other family members of Mukhtiar Singh reached the spot and they removed him to Willingdon Hospital. Mukhtiar Singh succumbed to the injury at 1.10 A.M.

3. Dr. Ramani (P.W. 6) performed post-mortem on the dead body of Mukhtiar Singh and he found one stitched wound 4 1/2' long placed horizontally on night side of the neck and (2) a cut open mark 1/2' long on the right angle (vein section). On probing injury No. 1 the doctor found that the internal jugular vein was cut. The cut was at the level of upper border of thyroid cartilage. The doctor gave the opinion that the injury could be caused by any sharp edged weapon including a knife.

Both the accused were arrested on 25th July and at the instance of Partap Singh a razor was recovered from the fields near Rohtak. P.W.6 after examining the razor gave the opinion that injury could also be caused with the razor P.2.

4. The case was investigated by Sub-Inspector Kulwant Rai (P.W.14). P.W.14 on receipt of the report regarding the quarrel went to the village where he was told that the injured had been removed to the hospital. P.W.14 went to the Willingdon Hospital and contacted the doctor who declared that the injured was unfit to make the statement. P.W. 14 was met by Om Parkash and he recorded the statement Ex. PW 1/A of Om Parkash on the basis of which the formal report Ex. PW 4/B was recorded at the police station at 11.55 p.m. The statement of Om Parkash was recorded some time between 10 and 11 P.M.

5. The razor P.2 was sent for examination and report to the Forensic Science Laboratory but no blood was found on it. The police had also not found any blood at the spot of the occurrence. The Explanation given is that it had rained after the occurrence and the blood was probably washed away.

6. The accused at the trial admitted that he and his brother had built a Ghabutara but stated that Chandan Singh Sub-Inspector brother of the deceased had objected to the construction of the Ghabutara and wanted them to demolish it but they had refused to do so and on that Chandan Singh Sub-Inspector had become inimical towards them. The accused otherwise denied the prosecution case in its entirety. The accused stated that the witnesses had gone against them since they are closely related to each other. The accused in support of his defense examined Shri K.G. Malhotra, a Scientific Assistant from the Regional Meteorological Center, Lodi Road. Shri Malhotra deposed that on 3rd July there was rain fall from 10.40 to 11.04 A.M. and again from 15.20 to 15.35 hours. The witness further deposed that on 3rd July the Sun had set at 19.23 hours.

7. The accused Partap Singh who is alleged to have given the fatal blow is dead. The appellant has been convicted with the aid of Section 34 of the Indian Penal Code. The allegation being that the appellant Kaptan Singh had taken the deceased into the folds of his arms (KOLI BHAR RAKHI THI) and Partap Singh inflicted the injury on the neck of the deceased.

8. The important question that arises for determination is whether on the evidence produced it could be held that Partap Singh had inflicted the razor injury on the neck of the deceased pursuant to a common intention. It is now a settled rule of

law that a finding of common intention should never be reached unless there is clear and convincing evidence to support it.

9. P.Ws. 1 and 5 are alleged to be the eye-witnesses to the occurrence. P.Ws. 1 and 5 gave evidence that on 3rd July 1978 at about 7 P. M. they were going towards their fields and that when they were about a killa away they saw Kaptan Singh holding Mukhtiar Singh and Partap Singh was cutting his neck with a sharp weapon. The site plan shows that the spot from where P.Ws. 1 and 5 are alleged to have seen the occurrence is about 200 feet from the spot of occurrence. The occurrence is shown to have taken place on the Kachha passage. By the side of kachha passage there is a metalled road and on either side of the road there are fields. The fields of of the deceased are near the spot of occurrence. The fields of Kaptan Singh and Partap Singh are also nearby (Ex. PW 14/B).

Shri Gurcharan Singh, learned counsel for the appellant, contended that even assuming for the sake of argument that P.Ws. 1 and 5 had seen the occurrence as stated to by them, their evidence is not sufficient to hold that there was a common intention between Partap Singh and Kaptan Singh to commit the offence. Mr. Gurcharan Singh contended that from a distance of 200 feet P.Ws. 1 and 5 could not have clearly seen the position and the manner in which Kaptan Singh was holding the deceased. According to the counsel it is possible that before Partap Singh caused the razor injury the appellant and the deceased may have grappled and Partap Singh may have suddenly taken out the razor and inflicted the injury.

10. We are inclined to agree in the above submission of Mr. Gurcharan Singh.

11. The evidence is that on 3rd July the day was somewhat cloudy and it had rained before and after the occurrence. We doubt if P.Ws. 1 and 5 could have from a distance of 200 feet clearly seen the role played by Kaptan Singh in the occurrence. The evidence is that Kaptan Singh had taken the deceased in the folds of his arms. There is no evidence that Kaptan Singh had caught the deceased from his arms and thereby disabled him from protecting himself.

12. We sent for the razor and examined it. We find that the handle of the razor is 5.8', the blunt part 1.3' and the razor (sharp side) 3'. From the evidence of P.Ws. 1

and 5 it is not possible to find out clearly the manner in which the razor was used. The razor could be used as a cutting weapon or flicked with the culprit holding it from the handle. We are extremely doubtful if from a distance of 200 feet P.Ws. 1 and 5 could have seen the manner in which the injury was inflicted. There is no evidence that Kaptan Singh knew that Partap Singh was in possession of a razor.

13. Here we would like to notice another circumstance. Partap Singh during his confinement in the Central Jail Tihar in February 1979 was kept under medical observation and the doctor found him to be of unsound mind. P.W. 1 Dr. Ashok Bhachawat found that Partap Singh was of unsound mind having flight of ideas, delusion and hallucination. He was also found to be suffering from Mania. The doctor further found that the patient is, a case of coronary artery disease with anterior wall myocardial, infection.

14. We do not have any evidence regarding the mental condition of Partap Singh at the relevant time, that is, the date of the occurrence. The possibility that Partap Singh was suffering from some sort of mental disorder even in those days cannot be ruled out.

15. In the above view we are of the opinion that it would not be safe to hold that Kaptan Singh shared the common intention with Partap Singh in causing the razor injury.

16. We may notice that Mr. Gurcharan Singh had attacked the testimony of P.Ws. 1 and 5 on a number of grounds. He had contended that they were not witnesses to the occurrence and they were subsequently made witnesses to the occurrence; secondly the occurrence had not taken place at 7 p.m. but it had taken place sometime near about 7.30 p.m. and at that time there was not sufficient light for P.Ws. 1 and 5 to see the occurrence from a distance of 200 feet. He also contended that no blood was found at the spot and that makes the spot of occurrence doubtful. He further contended that the fact that no blood was found on the razor showed that the razor P.2 was not the weapon of offence and it had been planted on the accused Partap Singh. He further contended that the prosecution witnesses and the deceased are close relations and one of the brothers of the deceased was a Sub-Inspector in the police and the police had

fabricated the evidence. He also pointed out that in the report given by P.W. 1 on telephone to the police station it is not mentioned that Kaptan Singh and Partap Singh had caused the injury to Mukhtiar Singh, and what he reported was that a dispute between Inder Raj and Mukhtiar Singh etc. is going on and this also rendered the prosecution case doubtful.

17. In the view we have taken of the applicability of Section 34 we need not discuss the other contentions of Mr. Gurcharan Singh. We allow the appeal and set aside the conviction and sentence of the appellant and acquit him. The appellant is on bail and he need not surrender to his bail bonds.

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