

Krishan Kumar Vs. State (Delhi Administration) and ors.

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Court : Delhi

Decided On : Sep-09-1992

Reported in : 1993CriLJ19; 1993(1)Crimes185; 1992(24)DRJ595

Judge : Usha Mehra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

Appeal No. : Criminal Review Appeal No. 95 of 1992

Appellant : Krishan Kumar

Respondent : State (Delhi Administration) and ors.

Advocate for Pet/Ap. : Mohd. Nasir and ; Seema Gulati, Advs

Judgement :

Usha Mehra, J.

(1) The Revisionist, Krishan Kumar, has come up against an order passed by the Additional Sessions Judge, Delhi dated 2nd July, 1992 whereby the Additional Sessions Judge had framed & charge under Section 307-I.P.C. against the petitioner.

(2) The brief facts of the case are that on 20th September, 1991, at about 10 P.M. some people collected at the police post, Inderlok. S.J.Mahipal Singh, in charge of

the Police Post came out and asked the reasons of their presence before the Police Post. He was informed by the petitioner that there was a dispute with his landlord Nanak Chand and Vinod Kumar. The said S.I. deputed two constables with him. On further inquiry, S.I. Mahipal Singh came to know that Ved and Anil gave a knife blow to one Mohd. Qamil hence the people had collected outside the Police Station. It is further the case of the prosecution that Krishan Kumar the present petitioner and his three associates gave a knife blow to one Vinod Kumar his landlord and his accomplice gave knife blow to Mukesh Kumar while they were coming from his house No. 313/57-G to the Police Post.

(3) The knife blow was given in the presence of Constable Suresh Pal. The injured were removed to the Hindu Rao Hospital and their statements were recorded on the basis of which a case under Section 307/323/34. Indian Penal Code was registered against the petitioner and his co-accused. The learned Additional Sessions Judge framed the charge under Section 307.I.P.C. only.

(4) It is framing of this charge which has been assailed by the petitioner inter alia on the ground that the doctor gave his opinion on the basis of the injuries sustained by the injured as simple. therefore, from the injury sustained by the injured it cannot be inferred that it was sufficient to cause death in the ordinary course of nature.

(5) Moreover, as per prosecution's own case only one injury was inflicted which is not sufficient in the ordinary course of nature to cause death.

(6) I have heard the learned counsel for the petitioner,- Mr. Mohd. Nasir and counsel for the State, Mrs. Seema Gulati and have perused the record. Admittedly, as per prosecution's own case only one knife blow has been given to the injured and as per medical report on the M.L.C. this was a simple injury. Now the question for consideration is whether in view of these facts, a case under Section 307-I.P.C. or under Section 324-I.P.C. has been made out. Section 307 reads as under;-

'PENALCODE, S. 307; Act must by itself be capable of causing death in natural or ordinary course of events: Section 307 provides in terms for the punishment of a person who does any act with such intention or knowledge and under such

circumstances that if he by act caused death, he would be guilty of murder. It is, therefore, clear that the only act which could fall within the purview of the section is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events. But where injury was caused by a knife on the neck by the use of little force and was not such as would in the ordinary course of nature have caused death, the conviction of the accused under Section 321.'

(7) Mrs Gulati, appearing for the State contended that the petitioner tried to inflict the knife injury at the vital part of Mr. Vinod's body. Had the injured been stabbed it would have caused death.- Moreover his extortions shows his intention, moreover he inflicted knife blow when the party reached near petitioner's Milk Diary. This according to her shows pre-plan to murder the landlord. She also pointed out the circumstances that it was night and there was a previous fight between the parties, therefore, the intention can easily be inferred. This statement she contends is fortified by the statement of the Police Constable, Suresh Pal, who was accompanying the petitioner and the injured party. At this stage, Mrs-gulati contended that no motive can be assigned to the testimony of Constable Suresh Pal, who is an independent person. The extortion and in fact trying to inflict the knife blow at the vital part of Vinod's body coupled with the fact that there was previous fight between the parties clearly show the intention on the part of the petitioner and therefore , the case is squarely covered under Section 307-I.P.C.

(8) Counsel for the petitioner on the other hand contended that when there is a simple injury caused with one blow then conviction cannot be under Section 307. It could be only under Section 304 Indian Penal Code and in this regard he has placed reliance on the decisions of the Supreme Court in the case of Kundan Singh Vs . State of Punjab reported in : 1982 CriLJ626 as well as in the case of Ram Prasad and Another v. State of Uttar Pradesh reported in (1982 SC 149, Fatta v. emperor reported in A.I.R. 1931 reguruswami Tevan reported in A.I.R. 1939 Mad 780 and Shiv Singh v. State reported in 1975 CrL. L.J.704. Admittedly in all these cases, after the evidence was recorded, the Court came to the conclusion that when the accused never intended to cause injury and injury being simple, conviction under Section 307 Indian Penal Code . was not justified. But I am afraid petitioner cannot take advantage of the observation made by the Supreme Court

in the above said cases because the facts of those cases are totally different. In the case of Kundan Singh (supra), the gun shots was fired by the accused and the victim received simple injuries but the said gun shots was not fired with the intention to injure the victim. It was in this background the Supreme Court came to the conclusion that the charge under Section 324 is made out. This decision was after the evidence was recorded. Similarly, in the case of Ram Prasad and another v. State of Uttar Pradesh (supra), the Supreme Court converted the conviction under Section 307 to Section 324 because in that the case the accused and the complainant wished to compound the offence. It was in this background that the simple injury was taken into account and it was ordered that the conviction be converted into Section 324-I.P.C.. Similarly, in the case of Fatta v. Emperor (supra), the Court was concerned where the simple injury was given at the neck and the force was not used therefore, the facts of that particular case were taken into consideration when the Court came to the conclusion that the charge under Section 307 is not made out. In fact under Section 307 it is the intention which is very material. The facts of this case shows that there was intention and the knowledge that if the knife blow given on the stomach of the injured which is a vital part of the body then it is going to cause death in the ordinary course of business which factor is important. Moreover, this aspect will be gone into after recording of the evidence. At this stage, prima facie from the evidence which is available on the record, to my mind, the trial Court rightly came to the conclusion that charge under Section 307 Indian Penal Code is made out.

(9) The revision petition is accordingly dismissed.

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