

Amar Singh Vs. State

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Court : Delhi

Decided On : May-17-1994

Reported in : 1994(29)DRJ573

Judge : Jaspal Singh, J.

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

Appeal No. : Criminal Appeal No. 49 of 1977

Appellant : Amar Singh

Respondent : State

Advocate for Pet/Ap. : Rajeev Awasthi and; Mukta Gupta, Advs

Judgement :

Jaspal Singh, J.

(1) Amar Singh alias Gheesa and Lekh Ram were convicted under section 307 read with section 34 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for three years with a fine of Rs.200.00 . Aggrieved by his conviction and sentence AmarSingh alias Gheesa preferred an appeal. That was in the month of February. The year was 1977.

(2) What is the case of the prosecution? This is how it emerges out from the evidence of Bansilal (Public Witness -1), Parbhati Lal (Public Witness -2), Laxmi (Public Witness -3), Ganga Ram (Public Witness -4) and Sher Singh (Public Witness -6)

(3) On February 3, 1975 at about 11 P.M. the appellant accompanied by Lekh Ram came to the house of Bansilal and asked him to accompany them. When he showed reluctance he was secured by the appellant while Lekh Ram inflicted a knife blow on his back. On this Parbhati Lal who is the father of Bansilal, tried to intervene but then he too was stabbed on his right thigh, abdomen and chin. Next was the turn of Kalu Ram who happens to be the brother of Bansilal. He too was secured by the appellant while Lekh Ram stabbed him on his left upper arm, left side of the chest, waist and left thigh. There after the appellant and his companion took to their heels.

(4) It appears that soon after the occurrence the police also arrived at the scene. The injured were removed to the hospital and usual steps towards investigation were taken including the registration of the case and the taking into possession of blood smeared earth, clothes of the injured persons etc.

(5) A look at the medical reports (Ex.PW-8A to Public Witness -8/C) is called for.

(6) It was Dr.A.P.Bansal of Willingdon Hospital who had examined the injured. He found following injury on the person of Bansilal (Public Witness -1).

'CLEAN sharp incised wound left side back about 2' away from second lumbar vertebra'. As regards Parbhati Lal he found three injuries on his person. They were '(1) Sharp incised wound on the chin 1x1/4'. (ii) Sharp incised wound right iliac Fossa in the abdomen 1' x 1/4'. (iii) Sharp incised wound right upper thigh 1/2' x 1/2'.' Coming to Kalu Ram, he too was found to have three injuries. This is how Dr.Bansal describes them. '(i) Two incised wound left side chest of the outer aspect each measuring 4' x 1/2'. Depth to be ascertained. (ii) Incised wound left upper arm 1' x 1/2' on the outer aspect. (iii) Incised wound left thigh on the upper 1/3rd region on the outer aspect 2' x 1/2'. Depth to be ascertained.'

(7) As would be borne out from above Bansilal (Public Witness -1) and Parbhathi Lal (Public Witness -2) are the persons who had suffered injuries at the hands of the appellant and his companion Laxmi (Public Witness -3) is the mother of Bansilal (Public Witness -1) and wife of Parbhathi Lal (Public Witness -2). The other two witnesses to the occurrence namely Ganga Ram (Public Witness -4) and Sher Singh (Public Witness -5) are from outside the family-fold and had reached the place of occurrence while Parbhathi (Public Witness -2) was being assaulted. What is of significance is that during arguments the learned counsel for the appellant could not draw my attention to any such infirmity in the statements of any of these witnesses which could be termed as fatal to the prosecution. All of them have firmly stuck to their guns and have lent full-throated support to the prosecution version. The medical evidence referred to by me above also lends complete support and corroboration to the prosecution version. This being the position, I do feel that the teamed Additional Sessions Judge was fully justified in placing reliance on them.

(8) However, this does not finish the matter here. The perusal of the impugned judgment would go to show that the appellant has been convicted under section 307 with the help of section 34 of the Penal Code on the ground that in medico legal report Ex. Public Witness 9/C given by Dr.A.K.Singhal the injuries found on the person of Parbhathi Lal (Public Witness -2) were found to be dangerous. What further requires to be noticed is that Dr.A.K.Singhal never entered into the witness box and his report was proved by Ramji Lal (Public Witness -9) who is posted as a Record Clerk in Willingdon Hospital. As per him Dr.A.K.Singhal had left the service of the Hospital and his present address was 'not known to the hospital'.

(9) May be Dr.Singhal's address was not known to the hospital authorities but did the Investigating Officer make any effort to locate him? There is no evidence to that effect. This being, the position, much cannot be allowed to be made out of the statement of the Record Clerk. Surely, under the circumstances, the prosecution cannot take advantage of the opinion of Dr.A.K.Singhal marked Public Witness - 9/C by which the injuries on the person of Parbhathi (Public Witness -2) were declared 'dangerous'. And once this position is accepted, the ground for convicting the appellant under section 307 is washed away (see Parveen Kumar v. State :

17(1980)DLT297 ; Narender Kumar v. State : 17(1980)DLT302 .

(10) In view of what has been recorded above, the appeal is accepted partly. The conviction is converted from under section 307 read with section 34 of the Penal Code to one under section 324 read with section 34 of the Penal Code.

(11) As already noticed, the occurrence is of February 3, 1975. The record of the trial court goes to show that during trial the appellant was in custody at least from April 15, 1976 to December 8, 1976. A bail order was passed by this Court in appeal on February 14, 1977 meaning thereby that he had remained in custody at least from April 15, 1976 to February 14, 1977. I think this spell of incarceration itself should be taken to be sufficient deterrent. Consequently, the sentence too is reduced to the period so undergone.

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