

**Darshan Singh Vs. State**

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**Court :** Delhi

**Decided On :** Oct-30-1992

**Reported in :** 1993CriLJ511

**Judge :** Usha Mehra, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304 and 307; Code of Criminal Procedure (CrPC) - Sections 360

**Appeal No. :** Cri. A. 363/76

**Appellant :** Darshan Singh

**Respondent :** State

**Advocate for Def. :** None

**Advocate for Pet/Ap. :** R.P. Kathuria, Adv

**Judgement :**

ORDER

**Usha Mehra, J.**

1. Darshan Singh son of Kartar Singh, the appellant herein has assailed the order of conviction and sentence passed by Addl. Sessions Judge dated 6th and 11th October, 1976 respectively.

2. Darshan Singh s/o Shri Sunder Singh was an accused in another case under Section 304, I.P.C. The facts of that case were that in May, 1971, one Nagina Singh s/o Shri Ujagar Singh was killed and a case under Section 304, I.P.C. was registered against Mahinder Singh, P.W. 6, Darshan Singh S/o Lal Singh, P.W. 8 injured of that case, Joginder Singh, P.W. 11 son of injured Darshan Singh and Sudesh and Om Prakash sons of Balak Ram, P.W. 9 and one Subhash who came to attend the Court from the complainant's side in that case. All these were the accused in that case. The hearing of that case was over at about 11.45 a.m. and they came out from the Court and reached the stair case of the verandah. When they reached near the verandah, Chaman Singh, the accused in that case gave abuses and Darshan Singh retaliated and at that time Pyara Singh accused caught hold of Darshan Singh from his right arm and accused Darshan Singh s/o Sunder Singh caught hold of him from his neck. Ujagar Singh and Nirmal Singh also grappled with him stating that they would finish him that day and that time Darshan Singh s/ o Kartar Singh accused took out the knife from the dub of his payjama and stabbed Darshan Singh in his chest. The present appellant Darshan Singh s/o Shri Kartar Singh was nabbed at the spot by the Head Constable, Naresh Chand, P.W. 7 who was working as Naib Court in the Court of Addl. Sessions Judge where the case under Section 304, I.P.C. was pending. The knife was snatched from the hands of the appellant. Other accused managed to escape but were arrested from near the Court room. Injured Darshan Singh was removed to the hospital. It was under these circumstances that the case against the appellant and others was registered under Section 307 read with Section 34, I.P.C.

3. On behalf of the prosecution number of witnesses were examined but the relevant witness on whom the Addl. Sessions Judge relied upon was that of Head Constable, Naresh Chand, who was working as Naib Court in the Court of Addl. Sessions Judge where the case under Section 304, I.P.C. was pending. The factum of relationship between Chaman Singh and Pyara Singh, Ujagar Singh and Nirmal Singh and Darshan Singh are not disputed while the appellant Darshan Singh, son of Kartar Singh was not related to other accused. The factum of the pendency of a Sessions case under Section 304, I.P.C. is also not disputed. It is also an admitted fact that the case was fixed on that day for evidence. It is also not

disputed that H.C. Naresh Chand, P.W. 7 was working as Naib Court in the said Court of Addl. Sessions Judge. It is in the testimony of Naresh Chand, P.W. 7 that on hearing the noise he came out of the Court room and saw Darshan Singh s/o Kartar Singh present appellant stabbing Darshan Singh s/o Shri Lal Singh in his chest on the right side with a knife when the present appellant tried to run away, he caught hold of him and took away the knife from his hand. This deposition has remained unrebutted and uncontroverter on the record. To my mind, the Addl. Sessions Judge rightly placed reliance on his testimony. The Head Constable Naresh Chand was not related to anybody hence the Addl. Sessions Judge rightly came to the conclusion that P.W. 7 H. C. Naresh Chand had no axe of his own to grind. His statement is worthy of reliance. The minor discrepancies which have been pointed out are not such that it should vitiate his testimony which otherwise inspires confidence.

4. The contention of Mr. Kathuria that since the co-accused have been acquitted, therefore provisions of Section 34 cannot be attracted. The effect of the acquittal of the co-accused is that there was no conspiracy nor meeting of mind hence at best it could be an individual act of the petitioner. therefore, even if it is proved on record that stabbing was done by the present appellant, still the sentence awarded to him is beyond proportion. It all happened on the spur of the moment. therefore, even if the conviction is upheld the appellant should have been given the benefit of Section 360, Cr.P.C.

5. I have heard Mr. Kathuria, counsel for the appellant and perused the record. The discrepancy pointed out by Mr. Kathuria that knife remained with Mr. Naresh Chand, P.W. 7 till 5 p.m. whereas P.W. 6 says that knife was taken from the possession of the appellant. It shows that H. C. Naresh Chand was not there. This argument has no force. H. C. Naresh Chand, P.W. 7's statement that knife was taken from the hands of the present appellant remained uncontroverter. There is nothing to suggest that he was not present at the spot or did not witness the incident. Moreover, the version given by P.W. 6 does not indicate such discrepancy which can lead to the acquittal of the appellant nor the fact that P.W. 6 stated that his statement was recorded at the spot whereas P.W. 15 says that Mahinder Singh's statement was recorded in the hospital will make any difference.

The fact remains that Head Constable Naresh Chand stood the test of cross-examination and he in no uncertain words stated that he witnessed the incident. There is nothing to disbelieve his testimony. He took the knife from the hand of Darshan Singh s/o Shri Kartar Singh. Whether he should have handed over the knife to the I.O. or not is secondary question. This omission will not mean that incident never took place. The fact of appellant stabbing the injured has been proved beyond doubt. Mr. Kathuria's contention that the incident took place at a covered place like Tis Hazari there ought to have been independent witness from the public. To my mind, this argument is without force because P.W. 7 H. C. Naresh Chand is an independent witness. Even P.W. 9 has testified that the scuffle took place and the knife blow was given. Even if other witnesses are relations that by itself does not mean that their testimony should be discarded on this ground alone. Their statements have to be scrutinised and if inspire confidence then there is no reason to discard it. Dr. S.K. Gupta, appearing as P.W. 14 has also testified that the injury was dangerous as it was inflicted on the vital part of the injured's body. His certificate he has proved as Ex. P.U. From the evidence which has come on record, I am of the considered view that the learned Addl. Sessions Judge rightly came to the conclusion that it was appellant Darshan Singh s/o Kartar Singh who inflicted the knife blow to the injured Darshan Singh and therefore the conviction is upheld.

6. However, the question for consideration is what sentence should be awarded to the petitioner? Admittedly the co-accused have been acquitted of the charge under Section 307, I.P.C. therefore, Section 34 cannot be attracted. Moreover, the incident is of 1972 and the sentence was awarded on 11th October, 1976. He is not a previous convict. This scuffle was due to some altercation which took place all of a sudden after both the parties came out of the Court room and that too in a heat of moment. Now almost a period of 17 years have elapsed. At the time of incident the appellant was 47 years old, by now he has grown old. therefore taking all these factors into consideration I am of the opinion that no useful purpose will be served by sending him to Jail. The end of Justice will be met if the sentence is modified to the extent already undergone and on his deposit of fine of Rs. 500/- as awarded by the trial Court, if not already deposited he is directed to deposit the same. The appellant is on bail, the said bond is discharged. The

appeal is partly allowed.

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