

Manoj Kumar Vs. the State

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Court : Delhi

Decided On : Oct-13-2004

Reported in : 114(2004)DLT511; 2004(77)DRJ670

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code - Sections 34, 307, 324 and 326

Appeal No. : CrI. A. No. 749/2002

Appellant : Manoj Kumar

Respondent : The State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : R.K. Mehta, Adv

Judgement :

Pradeep Nandrajog, J.

1. Appellants who are brothers were named as offenders by the injured/complainant in FIR No.578/2000 under Section 307/34 IPC P.S. Uttam Nagar. They were tried by the Additional Sessions Judge in Sessions Case No.66/01. Vide judgment dated 5.8.2002, they were convicted of the offence charged of. Vide order dated 8.8.2002, sentence imposed was 7 years RI with fine

of Rs.5,000/- each, in default SI for 3 months.

2. Injured Prashant had made the following statement pursuant where to, FIR was registered :

'I reside at K-1/55, Mohan Garden, Uttam Nagar, New Delhi along with my family. Today dated 29.6.2000 at about 9.30 PM, carrying Rs.2/- in coins I went to purchase ice at People Wala Chowk. One rupee coin fell down from my hand. Handing over the other coin to Manoj, who was selling ice, I told him to give me ice for Rs.2/-. I told him that I would give him Re.1/- later on. Manoj refused to sell ice to me. I told him that he knew me and I would give him Re.1/- tomorrow. Altercation ensued. His elder brother Raju reached in the meanwhile. He slapped me on my face. Both brothers assaulted me. Raju exhausted, today is the right time to teach me a lesson. So exhauling, Raju held my arms from the rear and exhausted Manoj to hit me at which Manoj picked up 'Sua' used for breaking ice and stabbed me in my stomach. Thereafter, Raju assaulted me on my chest with something pointed. To save my life, I ran away. When I was running away they threatened to kill me.'

3. The complainant Prashant was admitted at Deen Dayal Upadhyay Hospital at 10.40 PM on the date of occurrence i.e. 29.6.2000. MLC recorded following injuries on his person :-

(i) Punctured wound on the right side of epigastrium.

(ii) Multiple incised wound-linear-over left side chest and skin deep over infra-clavicle area No.3.

(iii) Multiple incised wound-linear-over right infra-clavicle area - skin deep.

(iv) Abrasion-linear over left right elbow.

4. Dr.P.Soni had attended Prashant. He prepared the MLC on 19.7.2000. He recorded nature of injury to be dangerous.

5. Dr.P.Soni having left Deen Dayal Upadhyay Hospital, when case went to trial, Dr.Vivek Khanna proved the MLC. Dr.Vivek Khanna appeared as PW-7.

6. In his testimony, Dr.Vivek Khanna opined that injuries 2, 3 and 4 being superficial could not be dangerous. He stated that only injury No.1 could be stated to be dangerous. However, since he had not examined the patient and was only proving MLC prepared by Dr.P.Soni, he stated that this was his opinion. He further deposed that injury No.2 and 3 could be self-inflicted. On being questioned, as to how injury No.1 was dangerous, he deposed that surgery on the patient was done on 30.6.2000. Operation notes recorded injury to be :

'Stab wound penetrating deep to peritonium and reaching up to interior wall of stomach caused a tiny perforation.'

7. He deposed that on 29.7.2000 since Dr.P.Soni had benefit of operation notes, considering the note aforesaid, Dr.P.Soni might have opined injury to be dangerous.

8. Only one eye witness was produced at the evidence by the prosecution, he being the complainant Prashant.

9. In his examination-in-chief, Prashant stated as under:

'On 29th June,2000 at about 9.30/10.00 p.m. I had gone to fetch ice from Peepal Chowk, Mohan Garden. I had gone on foot from my house. Manoj accused present in the court today was present at the ice shop. I purchased ice from him for a sum of Rs.2/-. When I put my hand in my pocket I found that I had only one coin of Rupee one. The other coin had been lost in the way. I asked the accused to accept rupee one today and that I will give the other rupee on the next day. On this the accused replied that if I had no money I should not have asked for ice. I told him that he knew me well and I will give him the balance rupee one on the next day. On this an altercation took place. I asked the accused not to abuse me. As we were exchanging hot words, Raju the elder brother of the accused who has a shop near (rightly pointed out towards accused Raju) came there. He gave me a slap from behind and asked as to why I was quarreling with his brother. We were separated by some persons who had intervened. The father of the accused had also come there. Thereafter Raju accused took me aside and was talking to me that his brother Manoj was not at fault. He then went to his brother Manoj and had

a talk with him. He came to me and caught hold of me by my both hands from behind. Manoj had also come there. He was having a sua meant for cutting ice. Manoj gave one blow with the said sua on my stomach and five/six blows with the same on both sides of my chest. I, therefore, ran away from that place in order to save myself. Goldy my cousin met me. He along with one Jai Prakash rang up the police. A PCR van had reached there and had removed me to DDU Hospital. The local police had reached there and had recorded my statement Ex.PW-2/A which is signed by me at point-A.'

10. Considering the testimony of injured and the evidence of the doctor, learned Additional Sessions Judge held that keeping in view the nature of injuries an intention to commit murder can be inferred. He held that nature of the attack and the parts of the body on which injuries were caused are an indication of the intention of the accused. He held that the weapon used was an ice pick. He further held that before the attack, both the accused had a talk, which showed meeting of mind and a common intention to commit the crime.

11. Mr.R.K.Mehta, learned counsel for the appellants contended that the complainant had completely altered his version in Court viz-a-viz his initial version to the police and, therefore, his evidence was to be rejected, in any case, it did not inspire confidence. Alternatively, counsel urged that no case was made out against accused Raju.

12. Statement made by Prashant to the police immediately after the incident, pursuant where to FIR was registered, shows that he stated that when altercation ensued between him and Manoj, Raju reached the spot. Both the accused assaulted him. Thereafter, Raju held his arms from the rear. Manoj stabbed him with the ice breaker in the stomach and thereafter Raju assaulted him with a pointed object in the chest. In his deposition before the Court, Prashant stated that when he was exchanging words with Manoj, Raju who was the elder brother and was having a shop across came. Giving him a slap, he queried why he was quarreling with his brother. They were separated by some persons who had intervened. Raju took him aside and told him that Manoj was not at fault. He went to Manoj and had a talk. Both came back. Raju caught hold of him from behind

and it was Manoj who gave him one blow with the 'Sua' on his stomach and 5/6 blows with the sua on the side on his chest.

13. There is no doubt a changed version as deposed to by Prashant in Court viz-a-viz what he had stated to the police, but substantially pertaining to the genesis of the incident and assault by Manoj, his version has remained the same. Difference is that before the police he made a statement that even Raju assaulted with a pointed object, but in the Court he stated that it was only Manoj who assaulted him. Raju held him from behind.

14. Voluntarily causing hurt by means of an instrument used as a weapon of offence which results in a simple injury is an offence punishable under Section 324 IPC. If the hurt is grievous and the weapon is dangerous the offence, being of a higher degree of culpability, is one punishable under Section 326 IPC. An act which is done with knowledge or intention that it is likely to cause death, is an offence of attempt to murder and is punishable under Section 307 IPC. The line of demarcation between an offence punishable under Section 326 IPC and the one punishable under Section 307 IPC is that to fall within Section 307 IPC, the act must be done with such mens-rea as would have constituted the act of murder if death had occurred. Shortly stated, in an attempt to commit murder, all the elements of murder exist, except the fact of death.

15. Intention of the accused depends upon the facts and circumstances of the particular case. (i) The nature of the weapon used, (ii) express intention at the time of the act, (iii) severity and persistence of the blows. All have to be considered cumulatively in arriving at any conclusion. In the absence of proof of other circumstances, and in particular motive, the accused must ordinarily be deemed to have intended to cause only the kind of injury which has been actually caused. The accused is entitled to the benefit of doubt qua the nature of the injuries intended to be caused. So far as conviction is to be based on knowledge as distinguished from intention, law has to apply according to the degree of likelihood and the knowledge of the assailant established.

16. Going by Prashant's version as narrated to the Court, it is clear that the incident occurred at the heat of the moment. It is not that Manoj or Raju went

looking for an opportunity to assault Prashant. The 'Sua' was readily available in the vicinity. Manoj was selling ice and 'Sua' was used to break the ice.

17. Unfortunately, the sua, though recovered, was not exhibited before trial. It could be 3 inches with a small handle. It could well be 5 to 6 inches with a small handle. One does not know.

18. One fact stands out, that of the 3 incised wounds, two were skin deep. Only 1 was deep and penetrating. This shows that either intensity of the force used was weak, or the length of the 'Sua' was small.

19. If the injuries are reflected of the intention, evidenced by weakness of the thrust, it certainly rules out intention to cause death of the injured. If injuries, as noticed, were result of the length of the 'Sua' being less, inherently, weapon of offence was not such, use of which could attribute intention or attract knowledge of the accused that Prashant could die as a result of the assault by use of 'Sua'.

20. Over all purview of the evidence leans against the conviction under Section 307 IPC. The offence falls within the four corners of Section 326 IPC.

21. Conviction of the appellants under Section 307/34 IPC is set aside. It is, however, converted to conviction under Section 326/34 IPC.

22. For conviction under Section 307/34 IPC, learned Additional Sessions Judge has awarded imprisonment for 7 years RI with a fine of Rs.5,000/- each, in default SI for 3 months.

23. Appellants have been in judicial custody during the pendency of the present appeal, which was admitted on 9.9.2002. Custody was immediately after the impugned judgment. Appellants are currently aged 26 and 28 years respectively. They do not have a criminal background. Offence took place on the spur of the moment. Considering the aforesaid, I order that the appellants shall undergo RI for 4 years with fine of Rs.1,000/- each, in default of payment of fine, they shall undergo SI for one month each.

24. Appeal disposed of in terms of paras 21 and 23 above.

