

Umed Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-09-2001

Reported in : 2002(5)WLC517; 2002(4)WLN146

Judge : V.G. Palshikar and; Jagat Singh, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302, 323 and 324

Appeal No. : D.B. Criminal Appeal No. 537 of 1998

Appellant : Umed Singh

Respondent : State of Rajasthan

Advocate for Def. : A.R. Nikub, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg and Doongar Singh, Advs.

Judgement :

Singh, J.

1. Both these appeal arise from common judgment dated 21.8.1998 delivered by Additional Sessions Judge, Nagaur, therefore, they are being disposed of by this common judgment, copy of which may be retained in each file.

2. By the impugned judgment accused appellant Sushil Kumar alias Shyam Kumar has been convicted under Section 302 1PC for murder of Hem Singh. He has also

been convicted under Section 323/34 1PC for the simple Injuries caused to Tejaram. Similarly, accused appellant Umed Singh has been convicted under Section 302/34 [PC as also under Section 323 IPC. Both the accused appellants are sentenced for life imprisonment for the murder of Hem Singh and simple imprisonment of three months for the simple injuries caused to Tejaram. Both the accused appellants are also fined Rs. 1000A and Rs. 100/- in each count and in default thereof were to undergo six months and 15 days simple imprisonment respectively. Both the substantial sentences were ordered to run concurrently.

3. The prosecution version is that on 5.11.1996 at 10.30p.m. Hem Singh alongwith his son Doongar Singh PW-1 left Deedwana Salt Plant for their home town Pachpadara in order to catch bus from Deedwana bus stand. Tejaram PW-4 and Jalam Singh PW-3 were also accompanying them upto Deedwana bus stand. When they were proceedings towards the bus stand at about 11.00 p.m. both the accused appellants came from behind. Sushil Kumar gave a knife blow oh the chest of Hem Singh whereas Umed Singh gave a lathi blow on the neck of Teja Ram PW-4. Thereafter both of them fled away. Hem Singh fell down due to the injuries and started bleeding. He was immediately taken to the hospital where was declared brought dead.

4. PW-1 Doongar Singh lodged written information Ex.P/1 at 11.15 p.m. upon which offence was registered. Autopsy on the dead body was done by PW-7 Dr. Mahesh Jha. Accused persons were put under arrest on 6.11.96 vide Ex.P/28 and Ex.P/29. On 10.11.1996 vide Ex.P/37 disclosure statement under Section 27 of the Evidence act was given by Sushil Kumar and wanted to recover a knife. On the same day vide recovery memo Ex.P/35 he got a knife recovered from his own residential house which was seized and sealed then and there.

5. After usual investigation both the accused appellants were challenged and charged, but claimed trial hence nine witnesses were examined on behalf of the prosecution and 36 documents were exhibited. In their statements under Section 313 Cr.P.C. both the accused appellants denied all the averments of the prosecution case and pleaded innocent. Thereafter the learned Sessions Judge convicted and sentenced the accused appellants in the manner stated above.

6. Mr. Garg learned counsel for the accused appellants has took us into the evidence and tried to bring home that there was no motive to commit the crime, therefore, the evidence produced by the prosecution has to be scrutinised with more care and caution. His another contention was that Badrudeen. Ishwardeen and Tulshiram had important bearing on the prosecution case but have not been examined, therefore, the prosecution wanted to conceal some true facts from the Court and adverse inference may be taken. There were material contradictions in the statements of the prosecution witnesses and they cannot be held to be of sterling worth. Lastly it was contended that only single knife injury was caused by Sushil Kumar and, therefore, at the most offence will not travel to Umed Singh it was submitted that he had no common intention with Sushil Kumar to commit the murder of Hem Singh and, therefore, at the most he could be convicted under Section 323 of the injuries caused by him to Tejaram.

7. On the contrary, learned Public Prosecutor has supported the impugned judgment and sentence.

8. We have carefully considered the rival contentions of the parties and have perused the impugned judgment as also the evidence ocular and documentary available on the file.

9. So far as the motive to commit crime is concerned, though it has not been mentioned in the FIR Ex.P/1 but PW-5 Yadvendra Singh Dubey, Manager, Salt Department, Deedwana has proved that the deceased was bill clerk in their office and Laxmi Narain, father of accused Sushil Kumar was also one of the employees there. Some bills of Laxmi Narain were not prepared by Hem Singh, therefore, he had a grudge against him. This witness has further stated that Laxmi Narain was absent from 26th October to 31st October. He has further proved Ex.P/13 to Ex.P/27 which are the arrear bills prepared by deceased. No effective cross examination was done on this witness and it has been proved that some pay bills and arrear bills of Laxmi Narain were pending with the deceased and, therefore, his son Sushil Kumar had a grudge against deceased. Therefore, this contention of the learned counsel is not tenable. Even if a motive is not proved that by itself is not sufficient to throw the prosecution case over board because when there is

direct evidence absence of motive pales into insignificance and the question of motive becomes more or less academic vide *Datar Singh v. State of Punjab* (1), *Rajesh Govind Jogesha v. State of Maharashtra* (2).

10. With regard to non examination of some of the prosecution witnesses it can be safely said that those witnesses were not the eye-witnesses of the occurrence and the learned trial Court has also dealt with this matter and has rightly rejected the plea. Before us also has rightly rejected the plea. Before us also the learned counsel could not indicate the importance of these witnesses. Had they been so material, atleast some of them could have been examined in defence. Sans it, no importance can be attached to the witnesses on whom prosecution has not put much reliance.

11. So far as material contradictions in the statements of the eye-witnesses are concerned, PW-1 Doongar Singh, PW-3 Jalam Singh and PW-4 Teja Ram are the eye witnesses on whose testimony the learned court below has put much reliance and have held them to sterling worth. All these three witnesses have supported the prosecution case in all minor details. The FIR has been lodged immediately after the occurrence with all necessary details of prosecution story which has been proved by PW-1 Doongar Singh. This witness could not be contradicted with regard to the FIR Ex.P/1 as also with regard to his police statement. The only omission pointed out by the learned counsel was that in Court statement he has deposed that both the accused appellants came to their house at about 8,00 p.m. At the time Sushil Kumar was having a novel in his hand and wanted to give to this witness for reading which he refused because they were just leaving for their home town. This fact was not found mentioned in FIR Ex.P/1. Except this improvement no other deformity is pointed out by learned counsel. In our view the above improvement is not significant because it does not relate to the main prosecution story and is of no significance. PW-1 Doongar Singh has withstood worth and has been rightly believed so by the learned trial Court.

12. Similarly, PW-4 Tejaram has also supported the prosecution version in all minor details. He too was given a lathi blow by Umed Singh accused on his neck for which he was examined by PW-7 Dr. Mahesh Jha who also prepared his injury

memo Ex.P/12. This witness has also been cross examined at length yet could not be contradicted by police statement. The only omission pointed out in Ex.D/1, his police statement, was that in Court statement he has stated that before going to the house of Hem Singh he first went to the house of Badrudeen which to our mind is not a material contradiction and cannot affect the testimonial value of this witness. He has also withstood the test of cross examination and has been rightly believed so by the trial Court. He being an injured witness, his presence on the place of occurrence is also not doubtful.

13. PW-3 Jalam Singh has also corroborated the prosecution version. He has also been cross examined at length but could not be contradicted by his police statement because he has not given any exaggerated version in the Court nor has made any improvements in it. PW-3 Jalam Singh and PW-4 Tejaram have no axe to grind against the accused appellants nor any suggestions were made to them in the cross examination showing any enmity towards the accused persons or any relationship with the complainant. Therefore, this contention of the learned counsel is also not tenable and the learned trial Court has rightly these witnesses to be wholly reliable.

14. Though knife Article-1 is also allegedly recovered on the disclosure statement made by accused appellant Sushil Kumar and has also been discussed at length by the trial Court but because the same has neither been sent to the FSL nor any report has been received from there, therefore, this recovery is insignificant and we are not discussing this aspect.

15. Even if knife so recovered is not connected with crime, that by itself will not be sufficient to weaken the prosecution case because FIR Ex.P/1 was lodged immediately after the occurrence, bearing all necessary details of the prosecution version and because PW-1 Doongar Singh, PW-4 Tejaram and PW-3 Jalam Singh have been named as eye witnesses in the FIR and they have supported the prosecution in all necessary details and have withstood the test of cross examination and, therefore, rightly held of sterling worth by the trial Court, the conviction based upon their testimony is unshakable according to us also.

16. The last argument of the learned counsel was that Ummed Singh had no common intention with Sushil Kumar to commit murder of Hem Singh. There seems to be some substance in this argument because not an iota of evidence with regard to this fact is available on file that Umed Singh had conspired with Sushil Kumar or they had any common intention to commit the murder of Hem Singh. At the most a knowledge can be imputed to Umed Singh that Sushil Kumar was armed with a knife. But no such knowledge can be imputed that Sushil Kumar had intention to commit the murder or cause serious injury to Hem Singh. In this respect *Mithu Singh v. State of Punjab* (3) and *Ajay Sharma v. State of Rajasthan* (4), among others can be referred to in which also in similar circumstances co-accused was not held to be having common intention to murder, therefore, sans any evidence of the pre-meeting of mind or at least having common intention of murder, Umed Singh could not have been convicted under Section 302 with the help of Section 34 IPC. At the maxim he could be imputed with knowledge that when co-accused Sushil Kumar was armed with a knife some sharp injury is likely to cause and he can be convicted only under Section 324/34 IPC for the injury inflicted by Sushil Kumar to Hem Singh and 323 IPC for the blunt simple injury caused by him to Tejaram.

17. So far as crime committed by Sushil Kumar accused is concerned, he chased the deceased armed with a knife and caused a knife injury on the vital part with such a force that Hem Singh died instantaneously.

18. Mr. Garg, learned counsel vehemently contended that the offence falls under exception 4 of Section 300 IPC because only a single injury was caused and because neither there was any motive nor any intention to cause death of Hem Singh. Learned counsel relied upon a catena of judgments to support his arguments which we have carefully considered at length.

19. In *Jagtar Singh v. State of Punjab* (5), a quarrel took place at the spur of the moment. The appellant never expected to beat the deceased and a single knife blow was caused resulting in injury to heart and death of deceased. In the circumstances the Apex Court held that there was no premeditation, there was no malice either and the meeting was a chance meeting and that the appellant at least

could be imputed with his knowledge that he was likely to cause injury which was likely to cause death and, therefore, was convicted under Section 304 Part-II IPC.

20. In *Kunhayippu v. State of Kerala* (6), accused who was on friendly terms with deceased and immediately before occurrence asked for a glass of juice from him, but thereafter accused went behind the deceased and gave a single knife blow on the abdomen from the back side resulting his death which proved fatal. In the above circumstances the Apex Court convicted him under Section 304 Part-II IPC.

21. In *State of Madhya Pradesh v. Jhaddu and Ors.* (7), the Apex Court held that where there was no intention to kill, but the accused could be imputed with the knowledge that death was the likely result, therefore, the conviction of accused under Section 304 Part II IPC was affirmed. In that case the deceased had sustained injuries on the chest resulting in fracture of ribs and laceration of lungs leading to death.

22. Similarly in *Madan Lal v. State of Punjab* (8), the accused caused serious injuries to the deceased with the handle of a pump due to which the deceased died three days thereafter. The motive of the crime was that the accused was hungry for three days and when food was refused from 'Sewadar' of the 'Dera' accused if a fit of anger attacked the deceased suddenly. The Apex Court held that the offence would come under Section 304 Part II IPC instead of Section 302 IPC.

23. In *Ramesh Vithalrao Thakre and Anr. v. State of Maharashtra* (9), there was only one injury on the deceased. The accused had given the single blow by knife on the abdomen of the deceased while the latter was trying to intervene to save her brother being attacked by the accused. The Apex Court held that the accused could be clothed with knowledge and not intention that the injury was likely to cause death and the offence fell under Section 304 Part II and not Section 300 IPC.

24. The Apex Court in *Masumsha Hasanasha Musalman v. State of Maharashtra* (10), held that where only one serious injury was caused by the appellant to the deceased while all other injuries could have been caused during the scuffle, the

probability that while injury No.1 could have been inflicted by the appellant injuries No.2 and 3 could have been caused in the course of scuffle cannot be ruled out. In this view of the matter the accused could have been convicted only for culpable homicide not amounting to murder punishable under Section 304 Part-II IPC and not under Section 302 IPC.

25. In *Camilo Vaz. v. State of Gao* (11), accused persons were armed with dandas, bottles and cycle chains came to complainant party for giving sound beating. No intention on the part of accused to kill anyone could be inferred. Factum of enmity was not mentioned in the first information report. In such circumstances, when accused hitting victim a danda blow on vital part of body with force he cannot be convicted under Section 302 but his case would fall in Part-II of Section 304 IPC because he had knowledge that the blow intended by him was likely to cause death.

26. In *Bhera v. State of Rajasthan* (12), the Apex Court was of the view that where there was absence of intention to cause murder and where there was quarrelling between the accused and the deceased and in anger the accused suddenly brings out a knife giving blow on the chest of deceased resulting in his death, it cannot be said that requisite intention of causing murder was there. Hence, offence would be one under Section 304 Part II IPC and not under Section 302 IPC.

27. In *K. Ramakrishnan Unnithan v. State of Kerala* (13), a single blow caused by accused was found quite severe resulting into his death. The accused was having no animosity towards the deceased and was involving because of altercation's with the son of deceased. Scenario at the time of occurrence was not showing that he had intention or requisite knowledge to cause murder, accused was convicted under Part II of Section 304 IPC for culpable homicide not amounting to murder rather than murder.

28. Though among others *Om Prakash v. State of Haryana* (14), *Gokul v. State of Maharashtra* (15), *Jagroop Singh v. State of Haryana* (16), *Randheer Singh v. State of Punjab* (17), *Kalwant Rai v. State of Punjab* (18), *Gurmail Singh v. State of Punjab* (19), *Hariram v. State of Haryana* (20) and *Jawaharlal v. State of Punjab* (21), can also be referred to. In all these pronouncements the facts and

circumstances show that the occurrence took place all of a sudden and there was no premeditation or preparation on the part of the accused. From the nature of injury also it would be observed that the accused had only the knowledge that the injury was likely to cause death. But intention as such cannot be attributed to them. The second part of Section 304 IPC speaks of knowledge and does not refer to intention which has been segregated in the first part but the knowledge is the knowledge of the likelihood of death. In order to bring the offence under clause thirdly of Section 300 IPC the prosecution must establish a bodily injury on the person of deceased which was intended to be inflicted and was sufficient in ordinary course of nature to cause death. Similarly, if the defence counsel wanted a particular case to fall in exception 4 of Section 300 IPC it has to be proved that the offence is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner. Simply because a single injury was caused and there was no previous enmity between the parties the offence will not fall in exception 4 of Section 300 IPC unless and until all the ingredients of Section 4 referred above are discernible from the prosecution evidence i.e. the injury found on the person of deceased was caused without premeditation and in a sudden fight upon a sudden quarrel and in the heat of passion and without taking undue advantage or acting in a cruel or unusual manner.

29. In the matter at hand all these ingredients of exception 4 of Section 300 IPC are lacking because Hem Singh deceased alongwith his son PW-1 Dbongar Singh at about 11.00 in night was proceeding towards Deedwana bus stand. All of a sudden both the accused appellants came running behind and without any provocation or any quarrel or fight Sushil Kumar accused stabbed Hem Singh on chest resulting which he died instantaneously. PW-7 Dr. Mahesh Jha who conducted autopsy on the dead body and prepared post-mortem report Ex.P/31 has deposed that he found stab wound (incised 3/4' x 1/4' x 2-1/2' on left side of chest 1 -1/2' medial to left fifth rib to lower boarder of sixth left rib cutting sixth rib just near sternal boarder as also mediaslinal pleura found cut below injury as also left lung was found punctured over lying the heart. Similarly, incised wound 1/2' x 1/8' x cavity deep was found near the lower end of right vertical anterior surface. According to the doctor cause of death was syncope caused by intra-thoracic

haemorrhage due to cardiac injury. In the cross examination Dr. Mahesh Jha has specifically stated that due to this injury the injured could have died immediately or could hardly have survived only for a minute or two. The above testimony of the doctor proves that the stabbed injury was caused so severely that it penetrated upto the right ventricle of the heart and cutting the vital organs of the body. Nowhere it has been pointed out that accused Sushil Kumar never intended to cause this injury. Not even a bald suggestion was made to this effect either to Dr Jha or to any of the eye witnesses. Therefore, it has been rightly found proved by the trial Court that accused Sushil Kumar intended to cause injury on the left side chest of deceased Hem Singh which according to Dr. Jha was sufficient to cause death. The fact that Hem Singh died immediately thereafter also leaves no doubt that this knife stabbed injury was caused with vigorous force.

30. Nowhere it has been pointed out that there was any sudden fight or sudden quarrel. No such suggestions were given to any of the prosecution witnesses nor has been mentioned so by accused Sushil Kumar in his statement under section 313 Cr.P.C. The evidence available on the file indicates that Hem Singh and his son PW-1 Doongar Singh along with other two witnesses were going unarmed to catch the bus and the accused appellants with specific purpose of causing these injuries overtook them mid way and caused the injury referred above. The Apex Court in *locus classicus* judgment of *Virsa Singh v. State of Punjab* (22), and thereafter in a catena of judgments referred above and more particularly in *Morcha v. State of Rajasthan* (23), *Bhagwan Munjaji Pawade v. State of Maharashtra* (24) and *Ram Ashre v. State of M.P.* (25), has demarcated the differences between clause thirdly and explanation 4 of Section 300 IPC. It was broadly held that in considering whether the intention was to inflict the injury found to have been inflicted, the inquiry necessarily proceeds on broad lines. For example; whether there was intention to strike at a vital or a dangerous spot and whether with sufficient force to cause the kind of injury found to have been inflicted. To put it shortly, the prosecution must prove; (1) quite objectively that a bodily injury is present; (2) the nature of injury must be proved; (3) It must be proved that there was intention to inflict that particular bodily injury i.e. that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved the inquiry proceeds further and fourthly it must be proved that the injury of

the type just described above is sufficient to cause death in ordinary course of nature. Once these four elements are established the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind i.e. sufficient to cause death. It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. ONCE THE INTENTION TO CAUSE BODILY INJURY ACTUALLY FOUND TO BE PRESENT IS PROVED THE REST OF THE INQUIRY IS PURELY OBJECTIVE AND THE ONLY QUESTION IS WHETHER THE INJURY IS SUFFICIENT IN ORDINARY COURSE OF NATURE TO CAUSE DEATH. The Apex Court was of the view that no one has a licence to run around inflicting injuries that are sufficient to cause death in ordinary course of nature and then claim that they are not guilty of murder, if they inflict injuries of that kind, they must face the consequences. They can only escape if it can be shown or reasonably adduced that injury was accidental or otherwise unintentional.

31. In similar circumstances in *Morchha's case* (supra) the accused went armed with a dagger and despite the willingness expressed by his wife to accompany him next morning accused inflicted two injuries on her person one of which was a wound on the posterior auxiliary line cutting liver and of large colon which was sufficient in the ordinary course of nature to cause death. The Apex Court held that the whole affair appeared to be pre-planned and premeditated. The accused intended to cause death of deceased is further clear from the fact that he inflicted such a severe injury and he was convicted under Section 302 IPC. Similarly, in *Uhagwan Munjaji Pawade's case* (supra) though the quarrel had broken out suddenly but there was no sudden fight or fight as such as the deceased was unarmed. There was no exchange of blows, deceased did not cause any injury, therefore, accused was not entitled to exception 2 or 4 of Section 300 IPC. In *Anda v. State of Rajasthan* (26), 30 blunt injuries by lathi were inflicted on non-vital parts resulting which injured died some time after and the offence fell under clause thirdly of Section 300 IPC. In *Boya Narasimhudu v. State of Andhra Pradesh* (27), stick blows were given on the head resulting into his death. Injury was found sufficient to cause death and accused was convicted under Section 302 IPC. Though there are upteen other pronouncements of Apex Court as also of our own

High Court available on either side but at the cost of prolixity we will not like to mention them.

32. In the legal and factual aspects mentioned above, it can be safely said that the act of accused appellant Sushil Kumar causing a severe knife injury on the left chest of Hem Singh without any sudden fight or sudden quarrel cannot fall under exception 4 of Section 300 IPC rather it falls under clause thirdly of Section 300 amounting to murder. In this respect it can be said that accused Sushil Kumar came on the scene with pre- plan armed with a knife and accompanying with co-accused who was also armed with lathi. There was also animus of the accused against Hem Singh because he was instrumental in not preparing pay and arrears bills of the father of accused.

33. Consequently, we uphold the conviction and sentence under Section 302 IPC of accused appellant Sushil Kumar and dismiss his appeal. However, appeal of Umed Singh is partly accepted. He is acquitted of the offence of Section 302/34 IPC and instead convicted under Section 324/34 IPC and awarded one year's rigorous imprisonment. Similarly, his conviction and sentence awarded by trial Court under Section 323 is also upheld.

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