

Dalbir Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : May-07-2008

Reported in : 2008(3)ShimLC429

Judge : Surjit Singh and; Surinder Singh, JJ.

Appellant : Dalbir Singh

Respondent : State of H.P.

Judgement :

Surjit Singh, J.

1. In these two appeals, the same judgment, i.e., judgment dated 30th January, 1996, of Sessions Court, Kangra at Dharamshala, has been assailed and, therefore, they are being disposed of by a common judgment.

2. One appeal has been filed by the State. Its number is 563 of 1996. Prayer has been made in this appeal for converting the conviction of respondent Dalbir Singh from Section 304 IPC to 302 IPC and awarding appropriate sentence to him. Another prayer made in this appeal is for setting aside the acquittal of respondents Bakshi Chand and Daljit Singh, who were charged and tried alongwith respondent Dalbir Singh for an offence, under Section 302 read with Section 34 IPC. The second appeal, titled Dalbir Singh v. State of H.P. numbering 46 of 1996, is for setting aside the conviction and sentence of Dalbir Singh for offence, under

Section 304 (first part) IPC.

3. Bakshi Ram, Dalbir Singh and Daljit Singh, respondents in Cr.A. No. 563 of 1996 filed by the State, shall hereinafter be referred to as accused.

4. Relevant facts may be summed up thus. PW-3 Braham Dass had gone to attend a marriage in village Beh on 18th February, 1995. In the evening, when he was returning to his village Harli, he saw accused Daljit Singh walking ahead of him, in the company of a lady named Chanchla Devi. After walking some distance in the company of accused Daljit Singh, Chanchla Devi followed another path leading to her house, while accused Daljit Singh continued to walk along the main path. On reaching near his house, accused Daljit Singh shouted to his mother if his brother Dalbir Singh was at home. On hearing accused Daljit Singh's shout, his brother Dalbir Singh, a co-accused with him, came out. The two brothers then started giving beatings to PW-3 Braham Dass. When PW-3 Braham Dass raised alarm, PW-4 Kaushalya Devi, one Roshni Devi, PW-5 Bikram Singh and deceased Vijay Kumar, son of PW-3 Braham Dass, came running towards him. On seeing those persons, accused Daljit Singh and Dalbir Singh ran towards their house. In the meanwhile, accused Bakshi Chand came out in the verandah of his house with a gun in his hand. He handed over that gun to Dalbir Singh and exhorted him to fire a shot at deceased Vijay Kumar. Accused Dalbir Singh then fired a shot, which hit deceased Vijay Kumar on the chest and forehead, as a result of which he died on the spot. Accused Dalbir Singh then tried to kill PW-5 Bikram Singh also, but he ran away.

5. Matter was brought to the notice of the Pradhan of the Gram Panchayat, namely PW-6 Gandharv Singh, who gave a ring to the police. Information given by him to the police was entered in the Daily Diary, copy Ex. PM. As per this entry, information was received at the Police Station at 6.35 p.m. The incident allegedly took place at 5.15 p.m.

6. On getting the aforesaid information, SHO, Police Station Dehra, PW-17 SI Kishan Chand rushed to the spot. There he recorded the statement of PW-3 Braham Dass. The said statement is Ex. PD. It was sent to the Police Station for the formal registration of the case. Case was formally registered vide FIR Ex.

PD/1. PW-17 Kishan Chand then conducted inquest and prepared inquest report Ex. PT and Ex. PT/1. Dead-body was sent for post-mortem examination. PW-1 Dr. Sumanju Dhiman conducted the post-mortem and made the following observations:

An averagely built male measuring 5' - 9' in length lying in supine position. Rigor mortis were present. Hypostagis present on back. Wearing sweater, stippled coloured (light blue white shirt with blue design. Black pant with black belt. Light blue undervest, light brown underwear. There was 4' x 3' gap on sweater, 2 cm x 1 cm hole on shirt, 4 holes in the undervest were seen. There was lacerated wound on frontal region of scalp about 3' x 1/2' in size. Multiple wound on left side chest with chain like appearance. Area of size 3-1/2' x 2' in size.

He gave the opinion that the cause of death was multiple ante-mortem injuries to heart and left lung caused by a shot from smooth bore firearm. Police recorded the statements of the persons, who claimed to have witnessed the occurrence, and filed report against all the three accused.

7. Trial Court charged accused Dalbir Singh with offences, under Section 302 IPC and Section 25 of the Indian Arms Act; accused Daljit Singh was charged with an offence, under Section 302 read with Section 34 IPC; and accused Bakshi Chand was charged with offence, under Section 302, read with Section 34 IPC, and Section 27 of the Indian Arms Act.

8. Prosecution examined 17 witnesses-PW-3 Braham Dass, PW-4 Kaushalya Devi and PW-5 Bikram Singh claimed to have witnessed the occurrence.

9. PW-3 Braham Dass testified that when he reached near the house of the accused, while returning from a marriage in village Beh, accused Daljit Singh, who was going ahead of him with a bag of wheat flour, gave a call to his mother if accused Dalbir Singh was in the house and that soon thereafter accused Dalbir Singh came and both Dalbir Singh and Daljit Singh started giving fist blows to him and dragging him to their house. He stated that when he raised alarm, PW-4 Kaushalya Devi, PW-5 Vikram Singh, deceased Vijay Kumar and Roshni Devi came and on seeing them accused Dalbir Singh and Daljit Singh ran towards their

house and, in the meanwhile, accused Bakshi Chand came out in the verandah of his house and handed over a gun and cartridges to accused Dalbir Singh and commanded him to open fire. He further stated that accused Dalbir Singh then fired a shot, which hit his son Vijay Kumar, as a result of which he fell on the ground and died soon thereafter.

10. PW-4 Kaushalya Devi stated that she had also gone to attend a marriage and when she was returning, she heard cries of PW-3 Braham Dass and attracted by those cries when she proceeded towards the site of occurrence, she saw deceased Vijay Kumar and PW-5 Bikram Singh going ahead of her and that when she reached near a mango tree, she saw accused Dalbir Singh and Daljit Singh giving beatings to PW-3 Braham Dass. She stated that on seeing deceased Vijay Kumar and PW-5 Bikram Singh, the two accused released PW-3 Braham Dass and ran towards their house and, in the meanwhile, accused Bakshi Chand brought out a double barrel gun and handed it over to accused Dalbir Singh and commanded him to open fire and then accused Dalbir Singh fired a shot, which hit deceased Vijay Kumar, who died on the spot.

11. PW-5 Bikram Singh stated that on 18th February, 1995, around 5 or 5.15 p.m., he was present in his house alongwith deceased Vijay Kumar, as both of them were watching a programme on television and, in the meanwhile, they heard the cries of PW-3 Braham Dass. He stated that attracted by those cries, he and deceased Vijay Kumar ran towards the spot and saw accused Dalbir Singh and Daljit Singh giving beatings to PW-3 Braham Dass and on seeing them they released him and ran towards their house. He stated that in the meanwhile accused Bakshi Chand came out with a gun and two cartridges and handed the same over to accused Dalbir Singh and asked him to open fire and then accused Dalbir Singh fired a shot, which hit accused Vijay Kumar resulting in his death on the spot. He further stated that accused Dalbir Singh then tried to fire another shot at him but he ran away from the spot.

12. Accused took the plea that deceased Vijay Kumar, on being instigated by his father PW-3 Braham Dass that he had been abused by accused Dalbir Singh, came to their house armed with a Lathi and hit him on his head, as a result of

which he fell down and raised cries for help and when accused Daljit Singh, his brother, came out from the house to rescue him, he too was dealt 4-5 blows of Lathi by the deceased and, in the meanwhile, he was able to get up and went to his house and picked up the gun, which was lying there and fired a gunshot to scare away deceased Vijay Kumar, but unfortunately it hit him and caused his death.

13. Trial Court held that there was no evidence suggesting that the three accused had a pre-concert and, therefore, acquitted accused Daljit Singh and Bakshi Ram of the charge, under Section 302, read with Section 34 IPC. Trial Court, however, held that accused Dalbir Singh fired the gunshot, resulting in the death of deceased Vijay Kumar, after having been hit on the head by a Lathi and, therefore, his act fell within the mischief of Section 304 IPC. So, the trial Court convicted accused Dalbir Singh of the offence of culpable homicide not amounting to murder, under Section 304 (first part) IPC, and sentenced him to undergo rigorous imprisonment for five years and fine of Rs. 5,000/-, in respect of offence under Section 304 IPC.

14. We have been taken through the entire evidence, particularly the testimony of the abovenamed three witnesses, who claim to be the eye-witnesses, by the learned Additional Advocate General. We have also considered the submissions made by the learned Additional Advocate General as also the learned Counsel for accused Dalbir Singh, who has also filed appeal seeking reversal of judgment of his conviction for offence under Section 304 IPC.

15. On scrutiny of the evidence, we find that the plea put forth by accused Dalbir Singh that deceased Vijay Kumar, armed by a Lathi, on being instigated by his father PW-3 Braham Dass, came to his house and hit him on the head is probable. The path which PW-3 Braham Dass was following at the time of the occurrence is at a distance of 100 yards from the place where the dead-body of Vijay Kumar lay. The place where the dead-body of deceased Vijay Kumar lay is a part of the Courtyard of the accused. Prosecution has not been able to offer any plausible explanation as to why did Vijay Kumar go to the Courtyard of the accused, when his father was allegedly being beaten up on the path at a distance of 100 yards

from the point where he was shot dead and his dead-body was found lying.

16. Learned Additional Advocate General argued that PW-3 Braham Dass has testified that accused Dalbir Singh and Daljit Singh, while giving him beatings, carried him towards their house. He stated that this fact was disclosed by PW-3 Braham Dass to the police also, at the time of making statement, under Section 154 of the Code of Criminal Procedure, Ex. PD. It is true that in the statement of PW-3 Braham Dass as also in the earliest version given by this witness to the police, vide statement Ex. PD, the fact is recorded but other witnesses, namely PW-4 Kaushalya Devi and PW-5 Bikram Singh, do not say that PW-3 Braham Dass was being carried by accused Daljit Singh and Dalbir Singh to their house when he was being beaten up. Also, we have noticed that this fact, even though mentioned in Ex. PD, the alleged earliest version, does not figure in the inquest report, Ex. PT and PT/1, which is supposed to have been prepared after the recording of statement Ex. PD. The omission of this fact in the inquest report not only negates the submission made by the learned Additional Advocate General but also suggests that Ex. PD is ante-timed and that it was recorded subsequent to the preparation of the inquest report.

17. There is another reason for our holding that the FIR is ante-timed. Police got the information about the incident initially at 6.35 p.m., per entry in the Rojnamcha copy Ex. PM. Statement Ex. PD purports to have been recorded at 7.45 p.m. The statement is quite lengthy and a detailed one. It runs into two full-scale pages. PW-17 SHO Kishan Chand, who recorded the statement, must have spent at least 20 minutes to complete the process. That means, he reached the spot around 7.25 p.m. or say within 50 minutes of the receipt of the initial information, on telephone, at the Police Station. The FIR, based on Ex. PD, was recorded at 10 p.m. or say more than two hours after the recording of the statement, Ex. PD. If the SHO could reach the spot within 50 minutes of the receipt of the initial information, it can legitimately be presumed that the man, who was deputed with statement Ex. PD to the Police Station, could have also reached the Police Station within the same time. It has already been noticed that the FIR was recorded at 10 p.m. The fact suggests that Ex. PD was not recorded at 7.45 p.m., the time recorded below it, but much later and also after the preparation of inquest report

and that it contains a version, which is an improvement over the version recorded in the inquest report.

18. It has come in evidence that there was a lacerated wound, 10 cm x .5 cm x bone deep, on the scalp, starting from occipit, on the person of accused Dalbir Singh. He was examined at 12.10 p.m. on the day next following the day of incident. The duration of the injury was opined to be 12 to 18 hours. Reference in this behalf may be made to the testimony of PW-2 Dr. S.K. Sharma. No doubt, the injury was opined to be simple in nature but the fact remains that the injury was bone deep and 10 cm in length. It has been admitted by PW-2 Dr. S.K. Sharma, in his cross-examination, that 12 stitches were applied as part of the treatment of the aforesaid lacerated wound. He also admitted that the injury was possible by a Lathi blow. The presence of this injury on the person of accused Dalbir Singh coupled with the omission in the testimony of PW-4 Kaushalya Devi and PW-5 Bikram Singh that PW-3 Braham Dass was being carried by the accused towards their house fits in the defence version that deceased Vijay Kumar came to the house of the accused, armed with a Lathi and dealt a blow on the head of accused Dalbir Singh. The plea is further strengthened by the fact that deceased Vijay Kumar was fired at and died in the Courtyard of the accused, which is 100 yards away from the path which PW-3 Braham Dass claims to have been following that day, while returning from village Beh where he had gone to attend a marriage function.

19. However, the acceptance of the defence plea would not completely absolve accused Dalbir Singh of his liability for the act committed by him. His plea is that he fired the shot to scare away deceased Vijay Kumar. The plea cannot be accepted for the simple reason that even though he fired the shot from a short distance of just 20 feet and it hit the deceased on his chest and forehead, which fact suggests that he aimed the shot at the upper part of the body of the deceased. So, he is guilty of culpable homicide, which, in view of the aforesaid facts and the circumstances of the case, does not fall within the definition of murder given in Section 300 IPC. His act thus falls within the mischief of Section 304 IPC. Hence, both the appeals are dismissed.

20. Accused Dalbir Singh, who is out of jail these days, because of the suspension of sentence awarded to him by the trial Court, is ordered to surrender in the trial Court, within three weeks, to serve out the remaining part of the sentence, failing which the trial Court shall issue non-bailable warrant of arrest against him and commit him to jail.

21. Both the appeals stand disposed of.

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