

Dinesh. Vs. State of H.P

Dinesh. Vs. State of H.P

SooperKanoon Citation : sooperkanoon.com/911693

Court : Himachal pradesh

Decided On : Dec-07-2010

Judge : Surinder Singh, J.

Acts : Evidence Act - Section 27; Indian Penal Code (IPC) - Sections 307, 324, 326, 71, 320

Appeal No. : Cr. Appeal No. 281/2004

Appellant : Dinesh.

Respondent : State of H.P

Advocate for Def. : Mr. Vikas Rathore, Adv.

Advocate for Pet/Ap. : Mr. G.R. Palsara, Adv.

Judgement :

1. The appellant was charge sheeted, tried and convicted of the offences punishable under Sections 324, 326 and 307 Indian Penal Code but in view of Section 71 Indian Penal Code and also the fact that injuries inflicted on the complainant were in the same transaction while committing the offence of attempted murder thus appellant was sentenced only under Section 307 Indian Penal Code to undergo rigorous imprisonment for a period of five years and to pay a fine of `15000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. Out of the fine, if recovered, a sum of ` 5000/- was ordered to be paid to the injured Deepak Kumar.

2. Appellant felt aggrieved by the impugned judgment of conviction and sentence as such filed the instant appeal.

3. In short, prosecution story, as emerges from the evidence on record, can be stated thus. PW3 complainant Deepak injured and appellant Dinesh both were known to each other. On 23.3.2000 around 12 noon both had some altercation. On the same day at 2 p.m. said Deepak Kumar came out of his house and found the appellant present out side. Appellant asked him to accompany him. When both of them were going together, suddenly appellant attacked him with the knife (Ext. P5) resulting into injuries on his neck. When he tried to resist, appellant inflicted another injury on his throat and thereafter on his abdomen. Complainant cried for help. PW1 Kamal Kishore and Rakesh Kumar came to the spot and took him to the Hospital. Clothes of the complainant were smeared with blood.

(i) Police was informed by the Medical Officer. Its entry was made by PW6 H.C. Santosh Kumar in the Rojnamcha Ext. PW5/A.

(ii) PW5 H.C. Sanjay Kumar visited the Hospital, sought opinion of the doctor by moving an application whether the injured was fit to make the statement. The doctor certified that he was fit to make the statement. As such statement Ext. PW3/A of the injured was recorded, which culminated into FIR Ext. PW2/A.

(iii) PW4 Doctor N.K. Handa examined the injured and noticed the following injuries:-

1. There was a incised wound 2 below angle of right jaw bone. It is obliquely placed elliptical in shape. It was 1 long and approximately 1 cm in depth. The skin margins were clear cut. The neck muscles were exposed and partially cut. There was tailing at the lower part of the wound. There was fresh bleeding from the wound.

2. There was a incised wound situated on the back of skull in the mid line. It was horizontally placed more on right side 1 below occipital protuberance. It was 1 long and about 3/4 th cm deep. All the scalp layers were cut across and bone was exposed. There was fresh bleeding in the wound .

3. There was a incised wound, obliquely placed with the tailing at the lower end of the wound. It was situated on the upper part of neck 2 below injury No. 1. It was 1 cm. long. Half cm. deep and 3 cm in width. The skin layers were cut with clear cut margin and there was fresh bleeding from the wound.

4. There was an incised wound situated over lower part of the abdomen. It is 1 cm long and .4 cm deep skin layer cut through with ragged margin muscles were exposed. There was no other injury found all over the body. The person was delirious and confused with blood pressure was 80/ 58 mm of mercury. The clothes were smeared with fresh blood.

4. Injuries No. 1 and 3 were opined to be grievous in nature and dangerous to life whereas injuries No. 2 and 4 were simple in nature having been caused with sharp edged object within half an hour. To this effect, he issued the Medico Legal Certificate Ext. PW4/A.

5. PW5 H.C. Sanjay Kumar investigated the case, visited the site of the alleged occurrence and prepared the site plan Ext. PW5/C. He also took into possession the blood stained clothes of the complainant vide memo Ext. PW1/A.

6. On 24.3.2000, appellant was arrested. During his interrogation he made disclosure statement Ext. PW1/B under Section 27 of the Evidence Act pursuant to which he got recovered the knife Ext. P5. Its sketch Ext. PW1/D was prepared in the presence of the witnesses, which was taken into possession.

7. Police recorded the statements of the witnesses and on completing the challan, it was presented in the court for the trial of the appellant.

8. Finding a prima facie case against the appellant, he was accordingly charge sheeted for the offences aforesaid, to which he pleaded not guilty and claimed trial.

9. To prove its case, prosecution examined Injured PW1, Kamal Kishore and PW4 Dr. N.K. Handa besides examining other formal witnesses and the Investigating Officer.

10. Learned trial Court relied upon the prosecution evidence and at the end of the trial, appellant was convicted and sentenced, as aforesaid. Hence this appeal.

11. Shri G.R. Palsara, Advocate, for the appellant forcefully argued that no case worth the name against the appellant stands proved from the evidence on record. He further ventilated that during the trial of the case, complainant has materially deviated from the FIR lodged by him and also canvassed that PW1 Kamal Kishore was not named as eye witness but he projected himself to be so and even his testimony is not free from doubt. He further argued that the learned trial Court did not appreciate the evidence of the prosecution in the right perspective; therefore, material prejudice has been caused to the appellant.

12. Contra, Shri Vikas Rathore, learned Deputy Advocate General supported the impugned judgment of conviction and sentence. He took me through the evidence on record pointing out that the appellant was rightly convicted and sentenced for the offences charged by the learned trial Court.

13. To appreciate the rival contentions, I have closely, cautiously and thoroughly re-appraised the evidence on record.

14. In the instant case, injured PW3 Deepak Kumar is a material witness. He testified that at the relevant time, he was in his house and the appellant had come to his house and asked him to accompany him. He went with the appellant to some distance. While going with him, appellant on the way, attacked him with a knife. A blow was dealt on his neck and second blow on his throat and 3rd on the abdomen. At all the three places, he had bleeding injuries. He further stated that when he was attacked by the appellant, some PWD labourers were at a distance of 50 meters from the site of the occurrence. He had tried to catch-hold of the appellant but he managed to escape. Then he fell down and was taken to the Hospital by his uncle PW1 Kamal Kishore and Rakesh Kumar in a vehicle where he was medically examined. His statement was also recorded by the police. He identified his blood stained clothes during the trial of the case and also the knife Ext. P5 with which he was attacked.

15. In cross examination he stated that the place where he was attacked was around 200 meters from his house and was not visible. He further stated that he went to the Hospital on foot and also that his uncle Kamal Kishore came to the spot immediately after the occurrence and Rakesh met him on the way near his house. He also stated that the appellant inflicted the first blow of knife on his neck thereafter he caught hold of the appellant but he gave another blow with the knife which hit his throat. He remained hospitalized for three days and admitted that some altercation had taken place between him and the appellant on 12.00 noon on that day.

16. PW1 Kamal Kishore though alleged himself to be the eye witness but from the scrutiny of his statement, it appears that he came immediately after the incident had taken place and this fact has been suggested in his cross examination and admitted by him that when he reached the spot Deepak Kumar had bleeding injuries and was lying on the ground and also admitted that when Rakesh Kumar reached the spot, appellant was not present there. He was also associated at the time of the disclosure statement having been made to the police pursuant to which knife was recovered. His statement to this effect was not questioned in the cross-examination except that knife which was recovered, was not shown to him during the trial.

17. On the scrutiny of the aforesaid statements, I find the statement of the injured worth inspiring confidence which admits to no other version than that the appellant had attacked with the knife on the complainant with the result he sustained sharp edged injuries on his person, as observed by the doctor and stated by him.

18. Learned counsel for the appellant though submitted that the version during the trial was different from the FIR made to the police. But in so far as the manner in which the appellant had attacked upon him, there is consistency in both the statements one made before the Court and another in the FIR. I failed to find out that there has been any material contradiction in both these statements. Further, no attempt was made to confront the said witness with that portion of the FIR which, according to the learned counsel for the appellant, was contrary to what he testified during the trial of the case. Therefore, I find consistency in both the

versions which are duly corroborated by PW1 Kamal Kishore in material particulars. Thus it is proved beyond doubt that the appellant was the assailant.

19. Once it is held that the appellant was the assailant, next question arises as to what offence has been committed by him.

20. PW4 Dr. N.K. Handa on his examination noticed the injuries on the complainant, as described above and in his opinion, injuries No. 1 and 3 were grievous in nature and dangerous to life and other two injuries were simple in nature having caused with sharp edged object, within half an hour of his examination. He categorically stated that these injuries could not have been caused by any mode except with a knife. Although he stated that injured would have died, had the first aid was not given in time? He also did not say what sort of medical treatment was given to the injured to save his life.

21. There is no doubt that motive actuating the appellant was not one from which one can conclude that he intended to commit murder of the injured. Also for the reason that the knife Ext. P5 is a small pocket knife which has a blade of 7.3 mm. The motive, at best could be to overawe and threaten the injured to begin with, as admitted by the complainant that before the said incident earlier at about 12.00 during the day time, he had an altercation with the appellant. Since the appellant had armed himself with a knife, he must have done so with an intention to make use of it, if need arose. The very possession of the knife with him at the relevant time, when he called the appellant out of his house, his intention was at least to cause an injury to the complainant.

22. Further, as already stated above, the doctor, who conducted the medico legal examination of the injured used the term that the injuries in question were dangerous to life and further clarified it that it endangered life, if the first- aid would not have been given in time. Neither it was explained as to what sort of treatment was given by the doctor to save him nor it was explored in the cross examination on behalf of the appellant.

23. Even the courts at times have considered the injury described as dangerous to life as an injury envisaged in clause eight of Section 320 Indian Penal Code. The

expression dangerous is an adjective and the expression endanger is verb. An injury which can put life in immediate danger of death would be an injury which can be termed as dangerous to life and, therefore, when a doctor describes an injury as dangerous to life, he means an injury which endangers life in terms of clause (8) of Section 320, of Penal Code, for, it describes the injury dangerous to life only for the purpose of the said clause. If he instead of using the expression that this was an injury which endangered life, described it that the injury was dangerous to life, it would mean the same thing. Thus the court has to form its opinion irrespective of the doctor's opinion examining various factors.

24. In *Atma Singh versus The State of Punjab* 1980 Cri. L.J. 1226 the Division Bench of the Punjab and Haryana High Court observed as under:- 17. We are of the view that the Court is not absolved of the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Experts opinion notwithstanding. The court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with the Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as dangerous to life and the nature of the injuries is such which could merit such a conclusion then such an injury has to be treated as grievous hurt of the description mentioned in first portion of clause (8) of Section 320 of the Indian Penal Code.

25. Taylor in his book *Principles and Practice of Medical Jurisprudence*, 11th Edition, at page 230, stated as follows:- The meaning of the words dangerous to life is left entirely to the professional knowledge of a witness. It is not sufficient that he should make a simple assertion in that the wound was dangerous to life; he must be prepared to state to the Court satisfactory reasons for this opinion; and these reasons may be rigorously inquired into by counsel for the defence. Danger to life primarily depends upon haemorrhage, shock or damage to a vital organ; and secondly, on the chance of complications such as infection leading to septicaemia, pyaemia, tetanus or gas gangrene and of infection of particular parts or tissues- pneumonia, pleurisy, empyema, pericarditis, meningitis, or peritonitis; or more

remotely to the effects of scaring, causing stricture (of the urethra, pesophagus, out etc), paralysis, urinary infection, etc. As a general principle, the Court is likely to consider as dangerous to life in a legal sense only those wounds in which the danger is imminent. The law appears to contemplate the more immediate rather than the more remote possible dangers.

26. Modi in his book Medical Jurisprudence and Toxicology, 13th Edition at page 238, states as follows: Danger to life should be imminent before the injuries are designated dangerous to life such injuries are extensive, and implicate important structures to organs, so that they may prove fatal in the absence of surgical aid. For instance, a compound fracture of the skull, a wound of a large artery, or rupture of some internal organ, such as the spleen, should be considered dangerous to life. But the injuries which prove fatal remotely by intercurrent diseases, such as tetanus, erysipelas, etc. should not be considered as dangerous.

27. Therefore, while considering the above celebrity legal authorities the Court, of course, can form its own opinion and come to the conclusion regarding the nature of the injuries, PW4 Dr. N.K. Handas opinion notwithstanding. While seeing the nature and dimensions of the injuries, its location and damages that it has caused without any intervening circumstance pleaded and established by the prosecution despite the fact that the injuries were described as grievous and endanger life, having regard to the factors aforesaid, I am firmly of the view that the injuries in question do not fall under any of the aforesaid provisions. To come to this conclusion, I am fortified by the judgment of this Court in Madan Lal versus State of H.P. 1990 Cri. L.J. 310 and Avinash Shetty vs. State of Karnataka and another (2006) 1 SCC (Cri.) 316.

28. In fact to prove the offence under Section 307 Indian Penal Code what the courts has to see, is whether the act, irrespective of its result was done with the intention or knowledge, under circumstances mentioned in that Section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of attempted murder. Under this Section, intention precedes act attributed to

accused, therefore, an intention is to be gathered from all the circumstances and not merely from the consequence that ensue. The nature of weapon used, manner in which it is used, motive for the crime severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention [See All India Criminal Law Reporter 1989 (1) SC 66].

29. In the instant case, there has been some altercation prior to the alleged incident. The appellant is alleged to have caused the injuries aforesaid with the pocket knife, as testified by the injured. The injuries in question are only skin deep whereas injury No. 1 exposed the muscle of the neck beneath the skin. Had the appellant harbouring the intention to kill the injured, he would have come prepared with a more lethal weapon. Further the injury in question, though described by the doctor as grievous and dangerous to life referable to clause (8) of Section 320 Indian Penal Code, even it also fairly and squarely fall under that clause, but the above injury would definitely fall under Section 324 of the Indian Penal Code. Therefore, the offence under Section 307 Indian Penal Code in the given circumstances falls short of murder as the ingredients of the said Section are not fully met and satisfied.

30. Therefore, the offence committed by the appellant would only come under Section 324 Indian Penal Code and neither under Section 307 nor under Section 326 Indian Penal code.

31. For the reasons stated above, the conviction of the appellant under Sections 307 and 326 Indian Penal Code is set aside and conviction under Section 324 Indian Penal Code is upheld.

32. Learned counsel for the appellant, faced with the above situation, submitted that at the time of the commission of the alleged offence, appellant was aged about 20 years. He is an unemployed youth and there is no previous criminal history to his discredit, he also remained in custody for a period of 13 days, during the investigation of the case, therefore, leniency may be shown in the matter of sentence. In view of the above submissions, let the report of the Probation officer concerned be called and list the matter on 3.1.2011. The appellant be also

produced on that date to hear him on the point of sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com