

Chahat Khan

Vs

The State of Harayana

Criminal Appeal No. 72 Of 1970

(A. N. Grover, M. H. Beg JJ)

09.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by Special Leave from the Judgment of the Punjab and Haryana High Court.
2. Chahat Khan, Bhup Singh, Harun and Mohar all of whom belong to Keri Nuh, were tried under Section 302, read with Section 34 of the Indian Penal Code by the Additional Sessions Judge, Gurgaon for the murder of Ahmad Khan on the Morning of the 4th July 1968, Ahmad Khan and his companions attacked him with lathis. Chahat Khan shouted that Ahmad Khan should be taught a lesson for hitting him with a lathi some years ago. Chahat Khan gave a blow on the head of the deceased with his lathi. Bhup Singh hit Ahmad Khan with a lathi on the left "Kanpatti". The other companions of Chahat Khan also inflicted injuries on Ahmad Khan. It appears that Ahmad Khan died soon after.
4. The post-mortem examination was conducted by Dr. Jagdish Chander, P. W. 1 who found six injuries on his person. The first two injuries may be mentioned -

(1) Lacerated wound 1 1/4" x 1/4" bone deep on the left parietal region 3" above the left pinna, margins are stained with bright red clotted blood.

(2) A dark red contusion mark 3" x 1/4" on the left side of neck 2" below the lobule of left ear.

According to the diagram accompanying the post-mortem injury No. 1 was above the left ear and injury No.2 was just below that ear. Both these injuries were caused by lathis. In the opinion of the doctor the death was caused by injury No. 1.

5. The prosecution examined a number of eye-witnesses, namely, Nazar Khan, P. W. 2, Deena, P.W. 3, Chatru, P.W. 4. P. W. 6 and Hussain Khan, P. W. 7. These witnesses supported the prosecution version and their evidence was accepted by the learned Additional Sessions Judge. It was, however, found by the learned Judge and that finding has not been disturbed by the High Court that the prosecution had failed to prove that there was any motive on the part of the appellants to inflict injuries on the deceased. The High Court while believing the evidence of the witnesses to come to the conclusion that the conviction of all the accused persons under Section 302 read with Section 34 of the Indian Penal Code was not justified as there was no common intention to commit the murder of Ahmad Khan but the intention was only to cause him a hurt or the most a grievous hurt. This is

what the High court has stated in its judgment :

"None of the Appellants other than Chahat Khan had any motive to take the life of Ahmad Khan. Accordingly, we find that the common intention in furtherance of which they acted was not to commit the murder but to cause grievous hurt. Injury No. 1, a lacerated wound, found on the head of the deceased, which resulted in fracture of the left parietal bone, according to the ocular evidence, was inflicted by Chahat Khan. He had clearly exceeded the common intention and was thus guilty of murder under clause Thirdly of Section 300 of the Indian Penal Code."

6. Chahat Khan was thus sentenced to life imprisonment but the conviction of the other three appellants before the High Court, namely Bhup Singh, Harun and Moahar was altered to one under Section 325, read with Section 34 of the Indian Penal Code and their sentences were reduced to two years rigorous imprisonment each.

7. The main argument of the learned counsel for the appellant before us is that according to the prosecution evidence injury No. 1 which caused the death of Ahmad Khan could not be attributed to the appellant. Reliance has been placed on the observation made by the learned Additional Sessions Judge which seems to indicate Chahat Khan did not give any lathi blow. The learned Judge went to the extent of saying that the witnesses had wrongly stated that Chahat Khan had given a lathi blow to Ahmad Khan. But nevertheless the Judge proceeded to say, "But I do not think that these witnesses should be discarded for making wrong statement about the injury of Chahat Khan." It appears that there is some confusion in the judgment of the learned Additional Sessions Judge but the High Court clearly came to the conclusion that the injury on the head which resulted in the death of Ahmad Khan had been caused by Chahat Khan. This is based on the evidence of the eye witnesses. The learned counsel for the appellant has laid a good deal of emphasis on the fact these witnesses are not very clear whether it was the appellant or Bhup Singh who had caused injury No. 1. Our attention has been invited to the statement of Nazar Khan P.W. 2, who stated that the appellant gave a lathi blow on the head of Ahmad Khan and Bhup Singh gave a lathi blow on the left "Kanpatti". But Nazar Khan stated in categorical terms that after Chahat Khan, the appellant, had given the lathi blow Ahmad Khan fell down and Bhup Singh gave a lathi blow to him on the left "Kampatti". He stated that of Ahmad Khan and that the blow was inflicted from behind. It has been pointed out by the learned counsel for the appellant that injury No. 1 is not in the middle of the head and it is so located that it could not have been inflicted by Nazar Khan. P.W. 3, Deena also stated that Chahat Khan was leading the party of the accused and he gave a lathi blow. He further stated that Chahat Khan had given the lathi blow from behind. The lathi of Bhup Singh struck on the neck of Ahmad Khan on the left side. Mehtab Khan, P. W. 6, deposed that Chahat Khan gave a lathi blow on the head of Ahmad Khan due to which Ahmad Khan fell down. Bhup Singh gave a blow to Ahmad Khan while Ahmad Khan was falling. Injuries Nos. 1 and 2 clearly show that injury No. 1 is well above the ear and was inflicted on the parietal region. The witnesses when they speak of an injury having been inflicted on the head surely refer to that injury and that is attributed in categorical terms to the appellant. The injury attributed to Bhup Singh is below the ear and it is injury No. 2. Moreover the witnesses have stated that Bhup Singh inflicted the injury after the deceased had fallen down on receiving the blow on his head which was inflicted by the appellant. We find no such infirmity in the conclusion of the High Court on this point on which we could justify interference by us.

8. The other point on which a good deal of emphasis has been laid on behalf of the appellant is that according to the prosecution witnesses he was carrying not only a lathi but also a gun. If he was

carrying a gun and a lathi in his hands it follows that he could have effectively used the lathi so as to inflict an injury of the nature that was found on the deceased and the effect that the gun was hanging in his shoulders. Therefore he could effectively use the lathi with both of his hands. There is no substance as well.

9. Lastly we may mention that a good deal of emphasis has been laid on the absence of motive and the fact that the appellant did not use his gun and only used his lathi which according to the argument of the learned counsel showed that he had no intention to kill the deceased. We No. 1 was on a region of the head which was a vital part. According to medical evidence this injury proved fatal. When a person is causing injury on such a vital part the intention to kill can certainly be attributed to him. We find no merit in this appeal and it is dismissed.

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