

Ram Lal

Vs

Delhi Administration

Criminal Appeal No. 190 of 1970

(CJI J. M. Shelat, D. G. Palekar, S. N. Dwivedi JJ)

05.09.1972

JUDGMENT

PALEKAR, J. -

1. The appellant Ram Lal has been convicted by the Delhi High Court for the murder of one Har Lal under Section 302, I.P.C. and sentenced to imprisonment for life. Special leave is limited to the question of the applicability of Section 302, I.P.C.
2. Appellant Ram Lal along with three others, namely, Lekh Ram, Tek Chand and Mohar Singh were committed to the Court of Session on two separate charges. One charge was under Section 302, read with Section 34, I.P.C. for the alleged murder of deceased Har Lal, and the other charge was under Section 325, read with Section 34, I.P.C. for voluntarily causing grievous hurt to one Budh Ram. One more charge was added in the court of Session so far as Ram Lal is concerned. The Additional Sessions judge noticed that the lathi blow which proved to fatal was given by Ram Lal and hence a substantive charge under Section 302, I.P.C. was framed against the appellant.
3. After trial, Mohar Singh was acquitted. The appellant Ram Lal, Lekh Ram and Tek Chand were convicted under Section 302 read with Section 34, I.P.C. and sentenced to undergo life imprisonment for the murder of Har Lal. The appellant and Tek Chand were also convicted under Section 325, read with Section 34, for the grievous injuries caused to Budh Ram and sentenced to 2 1/2 years rigorous imprisonment. The sentences were made to run concurrently. In appeal to the High Court the appellant Ram Lal alone was convicted for the offence under Section 302, I.P.C. for the murder of Har Lal whereas Tek Chand and Lekh Ram were convicted in respect of that assault under Section 325, read with 34. The sentence passed on Tek Chand and Lekh Ram was reduced to 2 1/2 years rigorous imprisonment.
4. The appellant Ram Lal has alone come to this court and we are concerned only with the question whether the prosecution has been able to prove on the facts as disclosed and accepted by the High Court an offence under Section 302, I.P.C. against him. The High Court came to the conclusion, so far as the attack on deceased Har Lal is concerned, that he was assaulted with lathis or sticks by the appellant, Tek Chand and Lekh Ram. It also came to the conclusion that their common intention was not to cause death but only grievous hurt. On that finding the conviction of all the three could have been only under Section 325, read with Section 34. The reason, however, why Ram Lal, the appellant, was convicted under Section 302, I.P.C. was the High Court held that though all three had the common intention of causing grievous hurt, it was appellant Ram Lal who gave the blow on the head of the deceased with his lathi which proved fatal and hence the appellant was liable to be convicted under Section 302, I.P.C. According to the High Court though Tek Chand and Lekh Ram

had attacked the deceased they had not given any blow to the deceased on his head.

5. The whole case seems to have proceeded on the assumption that only one blow was given on the head and that was given by appellant Ram Lal. The Additional Sessions Judge while framing the additional charge against the appellant for substantive offence under Section 302, I.P.C. mentioned that the evidence as recorded before the Committing Court disclosed that the appellant had given a fatal lathi stick blow on the head of Har Lal. The charge against him also as framed by him stated that the appellant had intentionally caused the death "by causing lathi blow" on the head of the deceased. The High Court also assumed that only one lathi blow was given on the head of the deceased and that blow proved fatal. Now all these assumption are obviously not correct.

6. Dr. Ved Vrat who had examined the injuries on the person of the deceased has described the injuries as follows -

(1) Contused lacerated wound 1/2" x 1/2" bone deep, left side frontal region; bleeding present;

(2) Contused lacerated wound 2" x 1/2" bone deep over vertex in mid line. Bleeding present;

(3) Deformity nose;

(4) Deformity left side forehead and left parietal region depressed fracture skull.

7. The post-mortem examination was performed by Dr. Bishnu Kumar who noted 5 injuries - two out of which were definitely on the head. They are -

(1) Stitched wound with irregular margins 1 c.m. on the back part of left frontal region about 2 c.m. to the left of mid line. Tissues underneath were lacerated and depression in this area was present;

(2) Stitched wound with irregular margin 2.5 c.m. with abrasions all round in an area of 3 c.m. on the vertex in mid line i.e. in the back part of parietal region.

Dr. Bishnu Kumar further stated as follows :

"On opening head effusion of blood in scalp in whole of the frontal region on the both sides and parietal and temporal region on left side was also present. Depressed comminuted fracture involving left frontal and parietal bones was present. From three sides of this comminuted fracture, fissured fracture was going. On the right side this fracture was continuous with the separation of the suture which ended at the junction of middle and front fossa. On the front and fissured fracture was traversing on the front fossa and joining the fracture coming from the middle fossa. Plenty of subdural haemorrhage covering whole of right cerebral hemisphere and subarachnoid haemorrhage in plenty was present..... In my opinion death in this case was due to intracranial haemorrhage and fractured skull consequent to head injury caused by some blunt object or surface."

(The above quotation is as printed in the paper book.)

8. No attempt was made to identify the internal injury with either or both the external injuries found on the head. It is quite possible on that evidence to infer that only one of these two injuries may have been responsible for death or both. The difficulty then arises which was the injury caused by the appellant. The finding of the High Court was that the appellant Ram Lal had given only one blow with the stick on the head and not more than one. In that case it will be very difficult to say whether the blow given by him was the one which ultimately proved to be fatal. Mr. Khanna, appearing on behalf of the Delhi Administration, contended that since the High Court came to the definite conclusion that the other assailants had not given any blow on the head of the deceased it must be assumed that both these blows had been given by Ram Lal, appellant. But that would be contrary to the finding of the High Court which has specifically come to the conclusion that only one with the stick had been given by the appellant on the head of the deceased. It was essential in this case, in order to bring home the offence of murder to the appellant, that the lathi blow given by him on the head had proved fatal. Since the evidence clearly discloses that two lathi blows had been given on the head and there is no evidence which of these two was given by the appellant, the benefit of doubt must go to him. He may have given the fatal blow or he may have given the blow which did not prove fatal. In these circumstances, the appellant's conviction under Section 302, I.P.C. was plainly incorrect. He and his companions had the common intention to cause grievous hurt and hence he can be convicted only under Section 325, read with Section 34. Since in pursuance of the common intention he had given a blow with a lathi on the head which is a vital part of the body he is not entitled to the same consideration as the others in the matter of sentence because the others had given blows on non-vital parts. Therefore, we set aside the conviction under Section 302, I.P.C. and convict the appellant under Section 325, read with Section 34, and sentence him to five years rigorous imprisonment in respect of the offence committed with regard to deceased Har Lal. We do not interfere with the rest of the order passed against him by the High Court.

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