

Dharam Pal and Others

Vs

State of Haryana

Criminal Appeal No. 169 of 1973

(Jaswant Singh, P. S. Kailasam JJ)

16.08.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leaves is directed against the judgment and order dated October 9, 1972 of the High Court of Punjab and Haryana at Chandigarh dismissing the appeals preferred by the appellants who were convicted and sentenced by the Sessions Judge, Rohtak, as under :

Dharam Pal : Life imprisonment under Section 302 and rigorous imprisonment for five, four and one year under Sections 307, 326/34 and 323/34 of the Indian Penal Code respectively.

The sentence of imprisonment for life was awarded to this appellant for intentionally causing the death of Sardara Singh, son of Chhotu Jat, resident of Kehrawar, aged 41/42 years and the sentence of five years was awarded to him for attempting to murder Singh Ram, PW 7.

Surta (Uncle of Dharam Pal, Appellant) : Life imprisonment under Section 302/34 and rigorous imprisonment for five, four and one year under Sections 307/34, 326 and 323/34 of the Indian Penal Code respectively.

The conviction and sentence under Section 326 against this appellant was recorded for causing grievous injury on the person of Hari Ram, PW 6.

Samme Singh : (brother of Dharam Pal, appellant) : Life imprisonment under Section 302/34 and rigorous imprisonment for five, four and one year under Sections 307/34, 326/34 and 323 of the Indian Penal Code respectively.

The conviction and sentence under Section 323 was recorded against this appellant for causing simple hurts on the thighs of Hari Ram, PW 6.

2. The story as put forth by the prosecution was that an altercation took place at about 7.00 a.m. on July 26, 1971 at village Kehrawar within the jurisdiction of Police Station Sample in the District of Rohtak between Dharam Pal, appellant 1 and Hari Ram, PW 6 when they were separated by PW 7, Singh Ram, elder brother of the father of Hari Ram and PW 9, Zile Singh, a collateral of Hari Ram's grandfather. While leaving the spot. Dharam Pal held out a threat to Hari Ram that he would teach him a lesson. On the same day at about 3.30 p.m. when Hari Ram, PW 6 was getting himself shaved by Suresh Barber at the shop of the latter, Ram Singh, the father of Dharam Pal, appellant 1 armed with a pistol, Dharam Pal, appellant 1 armed with a single barrel gun, Sutra, appellant 2, armed with

a pharsa and Samme Singh, appellant 3, armed with a lathi appeared at the shop of Suresh Barber. One seeing the appellant and their father, Hari Ram, PW 6 jumped out of the barber's shop and ran towards the village. He was chased by the appellants and Ram Singh, Sutra, appellant 2 managed to come in front of Hari Ram and administered a blow with the pharsa on the head of the latter as a result whereof he fell down. Samme Singh, appellant 3 then inflicted lathi blows on the thighs father of Hari Ram. At this stage, Singh Ram PW 7, the elder brother of the father of Hari Ram, who was sitting under a neem tree at a short distance came running to rescue Hari Ram. Dharam Pal there upon fired at Singh Ram injuring his left arm. Sardara Singh, son of Chhotu who also came there to rescue Hari Ram was also hit by another shot fired at his neck by Dharam Pal. Brandishing his pistol, Ram Singh told the PWs present on the spot that if any one dared to come forward, he would nor be spared. On hearing the alarm, Munshi Ram, father of Hari Ram, Darya Singh Lambardar, PW 8, Zile Singh, PW 9 and Hazari son of Bakhatawar arrived at the scene of the occurrence. Sardara Singh was removed to Rohtak Medical College Hospital while Hari Ram and Singh Ram were taken to Primary Health Centre, Sampla in a bus. At the Medical College Hospital, PW 1, Dr. S. K. Moda, Registrar, Casualty examined Sardara Singh at about 5.00 p.m. and found him fully conscious but unable to speak properly due to leakage of air through the wound in his neck. On examining Sardara Singh, the doctor noted the following injury on his person :

A lacerated wound about 5 cm. in diameter on the front of neck near its middle. The situs of the wound was about 5 cm. from the chin and 5 cm. from the upper border of manubrium sterni. It was oozing and during breathing air leaked out through the wound. There was charring of skin in the region of 0.2 cm. all around the wound and roots of hair were burnt in the area of charring.

3. In the opinion of the doctor, the injury was caused within a probable duration of 6 hours by a bullet. The injured was after his aforesaid examination admitted in Ward 6 of the Hospital on the same day at 5.45 p.m. Soon after the arrival of Sardara Singh in the ward, tracheotomy was done on account of which he became unable to speak and succumbed to his injury at 9.15 p.m. on August 7, 1971 while still admitted in the Medical College Hospital, Rohtak. On August 8, 1971, the autopsy on the dead body of Sardara Singh was conducted by PW 2, Dr. A. S. Chaudhary who made the following observations :

Tracheotomy wound was present on the thyroid cartilage which on opening led to the oesophagus. The wound in the oesophagus was 1 cm. in diameter. On probabing it led to the right side and laterally above the right clavicle. The lateral process of the fifth cervical vertebra was fractured. On opening the muscles above the scapula there was a pus cavity and a bullet was found. The muscles around the bullet and on the tight side of the neck along the course of the bullet were echymosed. Scalp was jaundiced and was yellow coloured, brain and membrane were congested. Pleurae contained blood-stained fluid. Larynx was congested. Right lung was oedematous. On section it exuded frothy fluid. So was the left lung. Pericardium was jaundiced. Left side of the heart was empty. Right contained blood. Large vessels contained dark fluid blood. Abdomen was distended. Pericardium was jaundiced. Stomach contained 6 to 8 ozs. dark fluid. Shall and large intestines were empty and distended. Liver was enlarged and pale. Spleen was enlarged and pale.

4. In the opinion of the doctor, the death of Sardara Singh was due to hepatitis (Jaundice) and the injury to the wind-pipe, food pipe and secondary infection. In the estimation of the doctor, the time that elapsed between injury and death was about 12 days and between death and post-mortem about

18 hours. The bullet found by PW 2, Dr. A. S. Chaudhary in the body of Sardara Singh was sealed in a bottle and seized.

5. The Police succeeded in arresting Sutra and Shamme Singh, appellants along with Ram Singh on August 1, 1971 and Dharan Pal, appellant on August 19, 1971. During the course of the investigation, a .12 bore country made pistol and two cartridges were recovered at the instance of Ram Singh, the father of Dharam Pal, appellant.

6. On the every day of the occurrence, i.e. on July 26, 1971 at 5.30 p.m., Dr. S. P. Sayal, Medical Officer Incharge, Primary Health Centre, Sampla examined Singh Ram, PW 7 and found the following injuries on his person.

1. Fire-arm wound 1/3" x 1/4" x 1/2" on the back of the left forearm above 2" above the wrist joint. The margins were ragged and inverted. The wound was bleeding.

2. Firearm wound 1/4" x 1/4" x 1/3" on the outer side of left forearm about 1" above the wrist joint. The wound was bleeding.

7. The above noted injuries on the person of Singh Ram were opined by the doctor to have been caused within three hours by a firearm. The doctor referred Singh Ram to Dr. D. S. Misra Registrar, Radiology, Medical College Hospital, Rohtak for X-ray of the injury on his left forearm, and on receipt of his report to the effect that there was communicated fracture of the lower end of the left radius bone sent an intimation to the Police. In the opinion of the doctor, injuries 1 and 2 as detailed above were caused by the aforesaid bullet P-1.

8. On the same day, i.e. on July 26, 1971 at 6.00 p.m. Doctor S. P. Sayal, PW 3 also examined Hari Ram, PW 6 and found the following injuries on his person.

1. Incised wound 2 1/4" x 1/10" bone deep on the right parietal - 1 region of the head about 2" above the right ear. The wound was bleeding.

2. Reddish contusion 4 1/2" x 1" on the inner side of the left thigh about 8" about the knee joint. The contusion was horizontal.

3. Reddish contusion 2 1/2" x 1" on the inner side of the left thigh about 2" below injury 2. Horizontal in direction.

4. Reddish contusion 4" x 1" on the inner side of the left thigh about 1 1/2" below injury 3. Horizontal in direction.

5. Reddish contusion 3" x 1" on the front of right thigh about 7" above the knee joint. Horizontal in direction.

6. Reddish contusion 2" x 1" on the right side of the back near the tip of scapula.

9. In the opinion of Doctor S. P. Sayal. Injury 1 which he found on the person of Hari Ram, PW 6 was caused by a sharp edged weapon and the rest of the injuries on his person were caused by a blunt weapon within a probable duration of about 3 hours. The doctor referred Hari Ram, PW 6 also to the Radiologist Dr. D. S. Misra, PW 4 for radiological examination of the injury of the skull and on receipt of his report that there was depressed fracture in the right parietal region opined that the

said injury was grieves.

10. On a consideration of the evidence led in the case, the learner Sessions Judge, Rohtak convicted and sentenced the appellants, as stated above. The Session Judge also convicted and sentenced Ram Singh, the father of the appellants 1 and 3 under various counts but we are not concerned with his case as on appeal, the High Court while maintaining the aforesaid convictions and sentences recorded against the appellants acquitted Ram Singh of all the charges.

11. The Counsel appearing on behalf on the appellants has submitted that the material on the record does not justify the conviction of the appellants for the offences set out above. He has further contended that the convictions of Sutra and Samme Singh, appellant under Sections 302/34 and 307/34 of the Indian Penal Code cannot in any event be maintained.

12. We have gone through the statements of Hari Ram, PW 6, Singh Ram, PW 7, Darya Singh, PW 8 and Zile Singh, PW 9 who claim to have witnessed the occurrence and have also scrutinized the rest of the material bearing on the charges farmed against the appellants. So far as the aforesaid convictions and sentences recorded against Dharam Pal, appellant are concerned, there is overwhelming evidence and we have no reason to digger from the conclusions concurrently arrived at by the Sessions Judge and the High Court. The appeal of Dharam Pal is accordingly dismissed.

13. The case of Sutra and Samme Singh, appellants, however, stands on a different footing. Their convictions for offences under Section 302 /34 and Section 307/34 of the Indian Penal Code cannot, in our opinion, be sustained. It is true that these persons also accompanied Dharam Pal but that was only with the avowed intention if teaching a lesson to Hari Ram, PW 6. There is no material to indicate that there was a per-arranged plan to murder or to attempt to commit the murder of any person who might intercede to save Hari Ram. PW 6. The observations of the Sessions Judge that the appellants accompanied Dharam Pal not only with the common intention to beat Hari Ram but also with the intention of injuring any body who obstructed them in carrying out the criminal act of beating Hari Ram are not borne out by the evidence adduced by the prosecution. There is nothing on the record to show that the intention which Dharam Pal might have secretly formed and entertained to deal with any person other then Hari Ram, PW 6 who might choose to intervene on his behalf was known to Surta or Samme Singh There is also nothing on the record to establish that Surta and Samme Singh said or did anything in respect of Sardara Singh, deceased or Singh Ram, PW 7 or any other person which may go to indicate that they acted in concert with Dharam Pal in murdering Sardara Singh, deceased or in attempting to murder Singh Ram, PW 7. The acts attributed to them are in respect of Hari Ram only

14. It may be that when some persons start with a pre-arranged plan to commit a micro offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence but the conduct or other evidence must be such as not to leave any room for doubt in that behalf.

15. A Criminal Court fastening vicarious liability must satisfy itself as to the prior meeting of the minds of the principal culprit and his companions who are sought to be constructively made liable in respect of every act committed by the former. There is no law to our knowledge which lays down that a person accompanying the principal culprit shares his intention in respect of every act which the latter might eventually commit. The existence or otherwise of the common intention depends

upon the facts and circumstances of each case. The intention of the principal offender and his companions to deal with any person who might intervene to stop the quarrel must be apparent from the conduct of the persons accompanying the principal culprit or some other cogent incriminating piece of evidence. In the absence of such material, the companion or companions cannot justifiably be held guilty for every offence committed by the principal offender. As already stated, there is no evidence to justify the conclusion that Surta and Samme Singh appellants shared the common intention with Dharam Pal to commit the murder of Sardara Singh or to make an attempt on the life of Singh Ram and that the said acts were committed by Dharam Pal in furtherance of the common intention denotes action in concert and necessarily postulates a per-arranged plan or prior meeting of minds and an element of participation in action. As pointed out above, the common intention to commit an offence graver than the one originally designed may develop during the execution of the original plan, e.g. during the progress of an attack on the person who is intended to be beaten but the evidence in that behalf should be clear and cogent for suspicion, however strong, cannot take place of the proof which is essential to bring home the offence to the accused.

16. As there is nothing in the prosecution evidence to show that it was in the contemplation of Surta and Samme Singh, appellants not only to give a thorough beating to Hari Ram, PW 6 but also deal with any other person who might choose to intervene on his behalf, we find it difficult to hold that they accompanied Dharam Pal, appellant with the common intention of murdering Sardara Singh, deceased or with the intention of attempting to murder Singh Ram PW 7.

17. For the foregoing reasons we allow the appeals of Surta and Samme Singh appellants and set aside their convictions for offences under Sections 302/34 and 307/34 of the Indian Penal Code and the sentences imposed on them thereunder. We are, however, unable to accede to the contention of the defence Counsel and to interfere with the judgment and order of the High Court in so far as the conviction of Surta, appellant under Section 326 or that of Samme Singh, appellant under Section 326/34 of the Indian Penal Code is concerned. It is clearly brought out in the prosecution evidence that Surta, appellant a blow on the head of Ram with pharsa as a result the latter slumped on the ground and sustained a fracture of the right parietal bone. It is also in evidence that after Hari Ram, PW 6 had fallen down on account of the head injury, Samme Singh, appellant gave 4 or 5 blows on his thighs. In these circumstances, it is clear that Samme Singh shared a common intention with Surta of causing grievous injury on the person of Hari Ram, PW 6. Accordingly, we confirm the conviction and sentence of Surta, appellant under Section 326 and that of Samme Singh, appellant under Section 326/34 of the Indian Penal Code. In the view that we have taken of the matter, it is not necessary to inflict separate sentence on Samme Singh, appellant under Section 323 or on Surta, appellant under Section 323/34 of the Indian Penal Code.

18. In the result, we dismiss the appeal of Dharam Pal, appellant and allow the appeals of Surta and Samme Singh, appellants to the extent indicated above.

19. Our judgment and order in respect of the appeals preferred by Dharam Pal and Surta, appellants are of academic interest only as the sentences imposed on them by the Sessions Judge and upheld by the High Court are stated at the Bar to have since been remitted by the State Government.

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