

Kulwant Rai

Vs

State of Punjab

Criminal Appeal No. 630 of 1981

(D.A. Desai, R.B. Misra JJ)

07.08.1981

JUDGMENT

1. We have heard Mr. Ashwani Kumar, learned counsel for the State and Mr. Mulla, learned counsel for the appellant.

2. We have gone through the judgment of the learned Sessions Judge who has summed up the circumstances in which the offence came to be committed. The learned Judge found that the accused at the time of the offence was aged about 20 years. The offence was committed without any premeditation. The learned Judge also found that there was no prior enmity. He also recorded that a short quarrel preceded the assault. All these would not have weighed with us, except the fact that only one blow was given with a dagger and the blow landed in the epigastrium area. The deceased succumbed to the injury. The learned Sessions Judge convicted the appellant for an offence under Section 302, Indian Penal Code and sentenced him to suffer imprisonment for life.

3. When the matter was before the High Court it was strenuously urged that in the circumstances of the case Para 1 of Section 300 would not be attracted because it cannot be said that the accused had the intention to commit murder of the deceased. In fact, that is conceded. More often, a suggestion is made that the case would be covered by Para 3 of Section 300, Indian Penal Code in that not only the accused intended to inflict that particular injury but the injury intended to be inflicted was by objective medical test found to be sufficient in the ordinary course of nature to cause death. The question is in the circumstance in which the offence came to be committed, could it ever be said that the accused intended to inflict that injury which proved to be fatal. To repeat, there was an altercation. There was no premeditation. It was something like hit and run. In such a case, Para 3 of Section 300 would not be attracted because it cannot be said that the accused intended to inflict that particular injury which was ultimately found to have been inflicted. In the circumstances herein discussed, it would appear that the accused inflicted an injury which he knew to be likely to cause death and the case would accordingly fall under Section 304 Part II, Indian Penal Code.

4. We accordingly alter the conviction of the appellant from one under Section 302 to that under Section 304 Part II, Indian Penal Code and sentence him to suffer rigorous imprisonment for five years.

5. The appeal is disposed of accordingly.

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