

Randhir Singh Alias Dhire

Vs

State of Punjab

Criminal Appeal No. 763 of 1981

(D.A. Desai, Baharul Islam JJ)

18.09.1981

ORDER

DESAI, J.-

1. Appellant Randhir Singh alias Dhire has been convicted for having committed an offence under Section 302, Indian Penal Code in that on July 4, 1979, he gave a blow with a kassi on the head of Mohan Singh who under the impact of the blow fell down on the ground. He was removed to the hospital where he died on July 10, 1979. Autopsy on the dead body of Mohan Singh was conducted by PW 1, Dr. S.C. Garg on the very day. He noticed the following injuries :

1. A stitched wound on the right frontal parietal region 2 inches in length. It was approximately bone deep.
2. A surgical wound on the right temporal region for burr hole.
3. There was bruising of the right eye with ecchymosis of the bulbar conjunctiva.

On internal examination the autopsy surgeon found under the seat of Injury 1 a fissured fracture extending from the side of the wound to the base of the skull covering the middle cranial fossa.

2. The appellant and his father Shamsher Singh were tried by the learned Sessions Judge for having committed an offence under Section 302, IPC and Section 302 read with Section 34, IPC respectively. The learned Sessions Judge convicted both of them for the offence with which each of them was charged and sentenced each of them to suffer imprisonment for life. Shamsher Singh, the second accused was also directed to pay a fine of Rs. 3000, in default to suffer rigorous imprisonment for one year.

3. In the appeal preferred by both the accused a Division Bench of the High Court of Punjab & Haryana held that the charge against Shamsher Singh was not brought home and he was given benefit of doubt and acquitted. Conviction of the appellant and the sentence imposed upon him confirmed.

4. When the special leave petition came up before this Court, a notice was issued limited to the nature of offence and sentence only and special leave was also limited to the same.

5. Appellant was aged about 18 1/2 years on the date of occurrence being July 4, 1979. According

to the prosecution he gave one blow with kassi. This blow was given on July 4, 1979, at about 12 noon. Victim Mohan Singh died in the hospital on July 10, 1979. In the opinion of the Medical Officer who carried out the autopsy death occurred on account of intra-cranial haemorrhage as a result of Injury 1. In the opinion of the Medical Officer this injury was sufficient in the ordinary course of nature to cause death. In the background of these facts, the question arises, as to what is the offence committed by the present appellant. Unfortunately the High Court has not dealt with this aspect. The High Court took into consideration the fact that there were three injuries on the dead body and that Injury 1 is attributed to the present appellant. Thereafter there is an observation which is contrary to record. It reads as under : "Other two injuries are just bruises and simple in nature." This is factually incorrect because Injury 2 is not an injury caused by any one but was a surgical wound caused for the purpose of performance of an operation on the deceased. Injury 3 is a bruise and is an injury of a trivial character. It is not even the prosecution case that the present appellant gave more than one blow with kassi or with any other weapon.

6. It is at this stage necessary to recall the circumstances under which the appellant is alleged to have given one blow with kassi. Facts alleged and held proved are that deceased Mohan Singh had constructed a house in the phirni (outer circuitous road) of Village Khasi Khurd. He had installed a water pump near his house. Appellant and his father belonged to Village Khasi Kalan and they had purchased agricultural land adjacent to the phirni of Village Khasi Khurd. On the date of the occurrence Smt. Amar Kaur widow of the deceased was cleaning utensils at the water pump and the deceased was washing his hands and face. Appellant started digging earth from village phirni and started throwing it towards the water pump. Mohan Singh asked him not to do so but he did desist and in the meantime the father of the appellant arrived there with a kassi. There ensued an altercation between the father of the appellant on the one hand and deceased Mohan Singh on the other. At that stage according to the prosecution Shamsher Singh, father of the appellant exhorted the appellant to attack the deceased and under these circumstances the appellant is alleged to have given one blow with the sharp edge of kassi on the head of Mohan Singh and this blow proved fatal after a period of six days.

7. In the circumstances discussed herein it is not possible to hold that the appellant intended to cause death of the deceased and Para I of Section 300, Indian Penal Code would not be attracted.

8. The contention is that Para III of Section 300, IPC would be attracted in that the appellant not only intended to cause that particular injury which is alleged to have been inflicted and the injury alleged to have been inflicted was sufficient in the ordinary course of nature to cause death. In a small village upon a minor quarrel, the appellant a young boy aged 18 1/2 years, studying in the engineering college and not shown to have been armed, gave one blow by kassi brought by his father; could it be said that he intended to cause that particular injury ? Merely because the blow landed on a particular spot on the divorced from the circumstances in which the blow was given it would be hazardous to say that the accused intended to cause that particular injury. The weapon was not handy. He did not possess one. Altercation took place between his father and the deceased and he gave blow with a kassi. In our opinion in these circumstances it would be difficult to say that the accused intended to cause that particular injury. True it is that the injury proved fatal and was opined in the ordinary course of nature to be sufficient to cause death. We need not dilate upon this subject in view of a very recent decision of this Court in Jagrup Singh v. State of Haryana [(1981) 3 SCC 616 : 1981 SCC (Cri) 768]. Sen J. speaking for the Court, after referring to various previous decisions on the subject including the one relied upon in this case, Virsa Singh v. State of Punjab [1958 SCR 1495 : AIR 1958 SC 465 : 1958 Cri LJ 818], observed that in order to bring the case within Para III of Section 300, IPC, it must be proved that there was an intention to inflict that

particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted. We find it difficult to hold in the circumstances herein set out that such was the intention of the appellant.

9. In our opinion, having regard to the totality of circumstances, viz., there is only one injury, that the weapon was not carried by the appellant in advance, that there was no premeditation, that he was a young college going boy, that there was some altercation between the deceased and his father and that the death occurred nearly after six days, one can only say that the that the appellant must be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Under these circumstances, in our opinion, the appellant is shown to have committed an offence under Section 304 Part II of the Indian Penal Code and he must be convicted for the same and sentenced to suffer rigorous imprisonment for five years.

10. Accordingly this appeal is allowed and the conviction of the appellant is altered from Section 302, IPC to Section 304 Part II, IPC, and the sentence of life imprisonment is reduced to rigorous imprisonment for five years.

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