

Hemraj

Vs

The State (Delhi Administration)

Criminal Appeal No. 571 of 1976

(S. Ratnavel Pandian, K. Jayachandra Reddy JJ)

23.08.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. The above appeal is preferred by the second accused before the trial court, namely Hem Raj challenging the correctness of the judgment made in Criminal Appeal No. 157 of 1974 on the file of the High Court of Delhi confirming the judgment of the trial court conviction the appellant under Section 302 IPC and sentencing him to imprisonment for life and dismissing the appeal.

2. This appellant along with three others took his trial on the accusation that on October 5, 1972 at about 7.30 a. m. at Gali Arya Nagar, near Arya Samaj Mandir in furtherance of common intention he committed the murder of Ravinder Kumar, the deceased herein by stabbing him with a knife. The trial court convicted only the appellant and acquitted the other accused persons 1, 3 and 4, namely Madan Lal, Naresh and Daulat Ram.

3. The facts, material for the purpose of this purpose of this appeal may, however, be briefly indicated thus :

The appellant, Hem Raj and Madan Lal are brothers. Similarly, Naresh and Daulat Ram are brothers. The deceased Ravinder Kumar was the son of PW 16. The appellant and his brother Madan Lal lived in a nearby street.

4. On July 14, 1971, the appellant and his brother Madan Lal along with one Bishan Chand had beaten Ravinder Kumar in respect of which a case under Section 325 IPC in Crime No. 673 of 1971 was registered on compounded the offence.

5. On October 3 1972, Daulat Ram had gone to the house of PW 16 and complained to PW 20, the wife of PW 16 that she was not permitting the wife of the appellant to come and live with her husband and abused her in filthy language. In the evening, PW 20 complained to her husband of what had happened. PW 16 tried to contact Daulat Ram, but could not meet him. So PW 16 complained to his neighbours about the incident.

6. On October 5, 1972 at about 7.30 a. m. while PW16 was standing in the verandah of his house, the appellant along with the acquitted accused persons came there and shouted. On hearing the hue and cry, Ravinder Kumar came outside. Accused Madan and Naresh (since acquitted) caught hold of Ravinder and Daulat since (since acquitted) instigated the appellant to kill Ravinder. The appellant took out a knife from his pyjama and inflicted a stab on the chest of Ravinder. When PW 16 tried to

intervene, he was hit with a stone on his nose by Daulat Ram. After causing injuries to Ravinder and PW 16, all the accused took to their heels by the side of Desh Bandhu Gupta road. Ravinder ran after the accused for a short distance and fell down. PW 19, the neighbour of PW 16 with the help of another person removed the injured Ravinder to Irwing Hospital where the medical Officer on examination pronounced Ravinder dead.

7. PW 18, another son of PW 16 informed the Police Control Room about the occurrence over telephone. The Police Control Room in turn informed to concerned police station. PW 23, the Sub-Inspector of Police on receipt of the information reached the hospital and recorded the statement (Ex. P. 34) from PW 16. On the basis of Ex. P. 34, a case was registered. PW 3 who conducted autopsy on the dead body of the deceased found the following fatal injury which is described as injury No. 3 in the post-mortem certificate besides 3 abrasions. Injury No. 3 is described as follows :

"Incised punctured wound 2 X 1 cm. oblique 5 cm. away from mid line and 8 cm. below left nipple just inside and mid-clavicular line on the left side from the chest. The upper outer end of the injury was rounded while the lower inner end was with clean cut. Blood was coming out of it and it was chest cavity deep."

8. On internal examination, injury No. 3 was found going medially upwards, first below the skin in subcutaneous tissue, then entering the chest cavity from the angle below costasternal junction near xiphoid process - cutting the rib near it, then going in the chest cavity below sternum, cutting the recess of the left lung and then the right border of the heart i. e. the right ventricular in its full thickness measuring 1.6 cms. The opinion of Medical Officer was that injury No. 3 could have been caused by a sharp edged weapon and it was sufficient in the ordinary course of nature to cause death

9. PW 22, another Medical Officer examined PW 16 at about 7.25 p. m. on the same day and found on his person an abrasion on the left side nose measuring 1" X 1/10". On X-ray examination, fracture of nasal bone was found. In the opinion of the Medical Officer, the injury was grievous in nature. PW 25 investigated the case with the assistance of PW 23. The accused were arrested on various dates. After completing the investigation, he laid the charge-sheet. The prosecution has examined as many as 24 witnesses and filed the relevant documents. The appellant totally denied his complicity with the offence and stated that he had had been falsely implicated in this case. The trial court found the appellant guilty under Section 302 IPC (simpliciter) and consequently convicted and sentenced him as aforementioned. On appeal, the High Court confirmed the judgment of the trial court. Hence this present appeal.

10. The fact that Ravinder had succumbed to the injury sustained by him on October 5, 1972 cannot be disputed. The actual occurrence is spoken to by PWs 16, 17 and 21 of whom PW 16 is the father of the deceased. The presence of PW 16 at the scene cannot be disputed for the reasons - firstly that the occurrence took place in front of the house of PW 16 and secondly PW 16 himself sustained fracture on his nose on being hit with a stone. PW 17 is a neighbour of PW 16. PW 21 had gone to Arya Nagar to see his relation at the time of the occurrence. All these three witnesses consistently testify that the appellant stabbed the deceased with a knife. As the occurrence had taken place in broad daylight, the question of identity of the appellant does not arise. On carefully scanning the evidence of these three witnesses, we, without any reservation, agree with the concurrent findings of the courts below that it was the appellant and appellant alone who inflicted the injury on the deceased. The learned counsel appearing on behalf of the appellant, besides attacking the testimony of these witnesses urged that when the major portion of the prosecution case

relating to the participation of the other three accused has been disbelieved, there can be no justification to convict the appellant alone relying on the same evidence of the witnesses, especially when there was a constructive charge against all the accused under Section 302 read with Section 34 IPC. Both the contentions in our view do not merit consideration. The evidence of the eyewitnesses for the reasons aforementioned inspires confidence and commands acceptance at the hands of this Court. Nothing tangible to discredit the testimony of these witnesses is brought on record. Coming to the other contention, we may say that there is no illegality in convicting the appellant under Section 302 (simpliciter) though there was a constructive charge against all the accused inclusive of appellant under Section 302 read with Section 34 IPC, since the evidence has disclosed that it was only the appellant who inflicted the injury which proved fatal.

11. The only question that remains to be considered on the established facts of the case is whether the offence committed by the appellant is the one punishable under Section 302 IPC. It transpires from the evidence that the wife of appellant is the niece of PW 20 who is the wife of PW 16 and mother of the deceased. The complaint made against PW 20 was that she was not allowing the wife of the appellant to live with him. Taking the cause of the appellant, the acquitted accused Daulat Ram went to the house of PW 16 on October 3, 1972 at 12.30 p. m. and questioned the conduct of PW 20 in interfering with the family affairs of the appellant, reprimanded her and also threatened her with dire consequences. PW 20 had reported this incident to her husband, PW 16 on that evening. Thereupon PW 16 tried to meet Daulat, but could not do so. So he complained the matter to the neighbours. This was the proximate cause according to the prosecution for the perpetration of this crime.

12. On the day of occurrence at 7.30 a. m. when PW 16 was standing in the verandah of his house, the appellant and his three other associates came there and threw a challenge stating that they would prove the complaint of PW 16 as baseless. On hearing the sudden outcry, the deceased who was inside the house rushed outside and there after this unfortunate incident had occurred. The background of the situation reveals that PW 16 was aggrieved at the conduct of Daulat for having reprimanded his wife on October 3, 1972. Therefore, it is but natural when the appellant and three others threw a challenge, PW 16 would also have been infuriated. The deceased who was in the prime of his youth and who should have felt aggrieved at the conduct of the appellant and others for having reprimanded his mother and thereafter having picked up a quarrel with his father, had rushed outside the house evidently to take side with his father. It was under that circumstance the appellant inflicted a single stab resulting in his death.

13. In or considered view, a true and accurate version of the prosecution as to the origin and genesis of the occurrence is not brought out clearly. Nonetheless, it is inferable from the circumstances that the occurrence had happened in a spur of moment and in the heat of passion upon sudden quarrel. The above inference is fortified by the admission of PW 17 admitting that both the appellants and the deceased suddenly grappled with each other and the entire occurrence was over within a minute. Thus, it is clear that it was during the course of the sudden quarrel the appellant gave a single stab which unfortunately landed on the chest of the deceased causing an injury which in the opinion of the Medical Officer was sufficient in the ordinary course of the nature to cause death.

14. The question is whether the appellant could be said to have caused that particular injury with the intention of causing death of the deceased. As the totality of the established facts and circumstances do show that the occurrence had happened most unexpectedly in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury, he could not be imputed with the intention to cause death of the deceased or with the intention to cause that

particular fatal injury; but he could be imputed with the knowledge that he was likely to cause an injury which was likely to cause death. Because in the absence of any positive proof that the appellant caused the death of the deceased with the intention of causing death or intentionally inflicted that particular injury which in the ordinary course of nature was sufficient to cause death, neither clause I nor clause III of section 300 IPC will be attracted. We are supported in this view by a series of decisions of this Court, namely, (1) Jagrup Singh v. State of Haryana, (2) Kulwant Rai v. State of Punjab, (3) Randhir Singh v. State of Punjab, (4) Gurmail Singh v. State of Punjab and (5) Jagtar Singh v. State of Punjab. Following the ratio of the aforementioned decisions, we hold in the present case that the offence committed by the appellant is the one punishable under Section 304 Part II IPC but not under Section 302 IPC.

15. In the result, we set aside the conviction under Section 302 and the sentence of imprisonment for life imposed therefore, instead convict him under Section 304 Part II IPC and sentence him to undergo rigorous imprisonment for a period of 7 years. In the result, the appeal is dismissed subject to the modifications as indicated above. We direct the appellant to surrender before the trial court to undergo the remaining unserved portion of the sentence.

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