

Kishan Chand and another

Vs

State of Punjab

Criminal Appeal Nos. 54 with 352 of 1981

(K. Jayachandra Reddy, R. C. Patnaik JJ)

19.02.1992

JUDGMENT

1. There are two appellants before us namely Gian Chand and Kishan Chand. Both of them along with two others were tried by the learned Additional Sessions Judge, Jalandhar for offences punishable under Ss. 302, 307 read with S. 34 IPC. The trial court acquitted the other two accused and convicted Gian Chand under S. 302 and sentenced him to undergo R.I. for life and to pay a fine of Rs. 1,000/-. Kishan Chand was convicted under S. 326, IPC read with S. 34, IPC and sentenced to 3 years' rigorous imprisonment and to pay a fine of Rs. 500/-. Both of them preferred appeals to the High Court and the State also preferred an appeal against the acquittal of Kishan Chand of the offence punishable under S.302, IPC. The Division Bench of the High Court dismissed the appeals filed by Gian Chand and Kishan Chand but allowed the appeal filed by the State and convicted Kishan Chand under S. 302 read with S. 34, IPC and sentenced him to undergo R.I.. for life. Kishan Chand's appeal is admitted under the provisions of the Supreme Court Enlargement of Criminal Jurisdiction Act. In respect of Gian Chand, Special Leave was granted and both of them figure as appellants in this Criminal Appeal No.54 of 1981.

2. The occurrence took place on 15th April 1978 at about 7 p.m. in the village Birpind which is at the distance of three miles from police station Nakodar. Because of some previous enmity this occurrence is alleged to have taken place. About a month prior to the occurrence Kishan Chand and another committed theft in respect of green fodder from the field belonging to Labmber Singh. The deceased Nirmal Singh caught hold of them. Because of that they bore grudge. On the day of occurrence, the four accused came with arms. Gian Chand had a Gandasi, Kishan Chand had a Khunda and the other two accused were armed with spears. On exhortation by Kishan Chand. Gian Chand dealt a blow on the head of the deceased. The other two acquitted accused are also alleged to have given blow's. Thereafter Kishan Chand also took part in the actual occurrence and he gave one blow on the head of the deceased. Nirmal Singh fell down and on seeing P.Ws. 7 and 10 coming, they ran away. The occurrence was witnessed by P.W. 6 also, PW-6 the brother of the deceased took the injured in a bullack cart to the hospital. The Assistant Sub-Inspector PW 12 received the information from the doctor. He went to the hospital and recorded the statement of PW-6 and the case was registered. The injured was alive and doctor PW-1 examined him and found five injuries. He died on 28th April 1978 i.e. after two weeks. An inquest was held and the dead body was sent for post-mortem. Doctor PW-2 conducted the post-mortem and he found three injuries. Injury No. 1 is wound 12cm x 2 cm bone deep on the top of head, oblique in direction starting from the centre of hair going obliquely to the left parietal region. The second injury was lacerated wound 3 cm x 1/2 cm bone deep present on the inner side of left eye-brow. The third injury was lacerated wound 2 cm

x 1/2 cm bone deep present on the left temporal region of scalp. The underlying bone was fractured. The other injuries are found to be simple. The prosecution mainly relied on the evidence of P.Ws. 6, 7 and 10. The trial court however held that so far as Kishan Chand is concerned he did not share the common intention to commit the murder of the deceased. The trial court however held that Gian Chand alone was responsible for causing the death and accordingly convicted him. As mentioned earlier, the High Court interfered and convicted both the appellants under S. 302 read with S. 34 IPC.

3. Learned counsel for the appellants submits that PWs-6 and 10 are interested witnesses. We have gone through their evidence. Both the courts below have given good reasons for accepting their evidence.

4. Now coming to the question of the nature of the offence, there are certain circumstances which have to be taken into consideration. According to the prosecution case Gian Chand dealt only one blow and that ultimately proved to be fatal. The other injuries caused by the four accused are not of much consequence. From the judgment of the High Court we are not able to see any categorical finding whether the injury inflicted by Gian Chand was sufficient in the ordinary course of nature to cause death, particularly in view of the fact that he died two weeks later and the doctor, who conducted the post-mortem found puss all over the injury. It is, therefore, difficult to say that the death was direct result of the injury. At any rate we have to note that it was only a trivial quarrel which led to this occurrence. Gian Chand was attributed only one blow. The doctor who conducted post-mortem noted the general condition of the deceased and stated in his evidence that he was in coma and the injuries were declared by him to be such which endanger the life. Having regard to the fact that he gave only one blow and that the deceased survived for two weeks and that there was likelihood of an intervening cause, it is difficult to conclude that the injury caused was sufficient to cause death in the ordinary course of nature. At any rate it cannot be concluded that Gian Chand intended to cause that particular injury having regard to the nature of the occurrence. No doubt the High Court has convicted him with aid of S. 34, IPC. To draw an inference under S. 34, the circumstance should be such as to show that a clear common intention was there and it was shared by all the appellants at least these two who are before us. If the common intention was to cause the death, we fail to see as to why Gian Chand gave only one blow. In view of the fact that the deceased died after two weeks the death may be because of the intervening cause. So we find it difficult to hold that the common intention was to commit the murder. In that view of the matter, the appellants have to be found guilty for their individual acts. So far as Gian Chand is concerned, as noted already, he dealt only one blow. The injured died after two weeks and may be due to intervening cause. Thus the offence committed by him would not amount to murder but would be one culpable homicide not amounting to murder punishable under S. 304, Part II, IPC. So far Kishan Chand is concerned, once S. 34, IPC applicably is ruled out, he would be liable for his individual act which would be punishable under S. 326, IPC as held by the trial court.

5. In the result the conviction of both the appellants under S. 302 read with 34, IPC and sentence of imprisonment for life are set aside. Instead Gian Chand is convicted under S. 304, Part II, IPC and is sentenced to seven years' rigorous imprisonment. We confirm the fine of Rs. 1,000/- and in default of payment of fine, he would further undergo rigorous imprisonment for six months. Kishan Chand is convicted under S. 326, IPC. On the date of occurrence he was about 71 years and from the record we find that he has undergone imprisonment for quite some time. Therefore his sentence is reduced to the period already undergone. The fine of Rs. 500/- imposed by the courts below is confirmed and in default of payment of fine, he shall undergo rigorous imprisonment for three months. With this modification in the sentences, the appeals are partly allowed. Appeals partly

allowed.

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