

Dalip Singh And Others vs State Of Haryana on 28 April, 1993

Equivalent citations: AIR1993SC2302, 1993CRILJ2092, JT1993(3)SC682, 1993(2)SCALE671, 1993SUPP(3)SCC336, AIR 1993 SUPREME COURT 2302, AIR 1993 SUPREME COURT 2119, 1993 AIR SCW 2421, 1993 (3) SCC(SUPP) 336, 1993 SCC(CRI) 1005, 1993 (3) JT 682, 1993 (2) UJ (SC) 266, (1993) SC CR R 640, (1993) EASTCRIC 663, (1993) 2 RECCRIR 672, (1993) 2 SCJ 542, (1993) 2 CURCRIR 223, (1993) ALLCRIC 486, (1993) 2 ALLCRILR 374

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Bench: N.P. Singh

ORDER

K. Jayachandra Reddy, J.

1. This is yet another case of death in police custody. There are four appellants. Dalip Singh, A-1 was an S.I. of Police, Rajmal, A-2 was A.S.I., Bikram Singh A-3 and Suraj Bhan, A-4 were the Constables attached to the Police Station Cheeka Guhla District Kurukshetra. According to the prosecution on 5.9.86 one Kailash was arrested by the police staff, Cheeka and the allegation was that he was involved in a theft of a buffalo on the basis of the complaint given by one Jodha and Jogi. However, he was released on assurance given by Balbir Singh and others. On 8.9.86 they arrested him again and, kept him in police lock-up and started beating him. The four accused are stated to have' participated in the beating and inflicted a number of injuries on the deceased. On 13.9.86 the Sarpanch Puran Singh, P.W.5 also came to the police station and in his presence also the deceased was beaten. In spite of the requests made by P.W.4, Daryao Singh, the father of the deceased and other witnesses the deceased was not released. On 15.9.86 at about 8. A.M. it is alleged that these police personnel threw the injured deceased under a bus to make it appear as an accident Somebody in the bus shouted that a person has come under the bus. The bus was stopped and the deceased was put in the bus and was taken to the hospital but he was found to be dead. A report was given by P.W.3 the uncle of the deceased and the investigation was taken up. The post-mortem was conducted by the Doctor, P.W.I who found 15 injuries all over the body of the deceased. On internal examination the Doctor found that 3rd to 9th ribs were fractured and haemotoma was present in the urethra and liver also was found to be injured with a laceration. The Doctor opined that the deceased died due to shock and haemorrhage on account of injuries on the vital organs namely spleen, liver and testis. The accused pleaded not guilty. A-1 pleaded that he was not in the police station from 26th August, 1986 to 16th September, 1986 and that he was at Kurukshetra

investigating a case.

2. The learned Sessions Judge accepted the prosecution case in all respects but found them guilty only under Sections 323, 324 and 343 I.P.C. and instead of imposing sentence of imprisonment released them on probation on furnishing necessary bonds. The State preferred Criminal appeal No. 10-DBA of 1988 against the judgment of the learned Session Judge questioning the acquittal of the accused of the major charges. Only Dalip Singh one of the convicted accused filed Criminal Misc. Petition No. 7494 of 1988 in the High Court for condonation of 161 days delay in filing the appeal and the same was heard alongwith the state appeal. A Division Bench of the High Court allowed the State appeal and convicted the four appellants under Section 304 Part I I.P.C. and sentenced them to undergo 10 R.I. Some of the other minor convictions were also confirmed. Criminal Misc. Petition filed by Dalip Singh, A-1 for condonation of delay in preferring the appeal was, however dismissed. Aggrieved by the same the appellants have preferred the present appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellant Jurisdiction) Act read with Section 379 Cr. P.C.

3. Since this is a regular appeal, we have heard the respective counsel at length and have gone through the evidence of the material witnesses.

4. P.W. 3 Nighaya is the uncle of the deceased Kailash. He deposed that the deceased was taken away by the two officials of police staff, Cheeka and P.W.4, the father of the deceased also accompanied them. That very day in the evening through the good offices of Balbir Singh, release of the deceased was obtained. On 8.9.86 the deceased was again taken away by a constable of the police staff, Cheeka. At that time, P.W.4, the father of the deceased accompanied the deceased. When they did not turn up on 9.9.86 P.W.3 accompanied by Hari Singh, P.W. 8 and one Shookand went to the CIA Staff Office, Cheeka. There they found Rajmal, A.S.I. (A-2) handling the deceased and beating him. Besides him Munshi Bikram, A-3 and Constable Suraj Bhan, A-4 also gave him beatings. P.W.3 and other witnesses requested them to release the deceased but he was not released on 10, 11th and 12th September, 1986. The police were investigating with regard to theft of a buffalo on the basis of a complaint lodged by one Jodha and Jogi. On 12.9.86 when the deceased was not released, P.W.3 and others went back to the village in order to bring the Sarpanch, P.W.5. On 13.9.86 P.W.3 returned with the Sarpanch and found P.W.4, Shook- and and P.W.8 sitting on the chowk which is 5 to 6 killas away from the office of CIA Staff, Cheeka. Then all of them alongwith the Sarpanch, P.W.5 went to the office of CIA Staff Office. There they saw Dalip Singh, S.I. (A-1) alighting from a car. They requested him to release Kailash. But he did not release him and asked them to go away. Thereupon he also started beating Kailash in their presence. Because of the threats advanced by the accused, P.W.3 and others returned from the CIA staff office. Again on 14.9.86 all of them went to the office of CIA staff and again made a request to release Kailash but in their presence again Rajmal, A.S.I. (A-2) beat Kailash. P.W.3 and other witnesses returned. On 15.9.86 they again went to the office of CIA staff in the morning at 5 A.M. but they were not allowed inside by A-4. They came back and sat at the chowk. After half an hour or 45 minutes they went towards the staff office but on the way they were informed by Mai Ram, P.W.8 and another th'at the deceased had died and that the police have taken the injured Kailash and have thrown him under a bus and raised a false alarm that a passenger had fallen. On the same day namely 15.9.88 P.W.3 gave a report marked as Ex. P.C. before Inspector Avtar Singh, P.W.9 which was addressed to the

Superintendent of Police. To the same effect is the evidence of P.W.4, father of the deceased. P.W.5, the Sarpanch Reposed that on 12.9.86 P.Ws 3 and 4 came to him and informed that in connection with the theft of a buffalo the deceased Kailash had been taken away by the CIA staff, Cheeka and requested him to get him released. Accordingly on 13.9.86 P.W.5. accompanied them and when he reached the tea shop near the CIA staff office, the other witnesses met him. After some time they saw a car arriving and saw Dalip Singh, S.I. (A-1) alighting from the car and going into the staff office. Thereupon P.W.5 and other witnesses approached Dalip Singh (A-1) but in their presence Dalip Singh kicked the deceased and gave danda blows. He also found the deceased tied up with a chain to his foot. P.W.5 requested Dalip Singh (A-1) to release the deceased but he did not oblige. Thereafter they left the office. On 14.9.86 P.W.5 and other witnesses again went to CIA staff office and in their presence Rajmal, A.S.I. (A-2) again kicked and gave danda blows the deceased. P.W.5 also deposed that again in the morning of 15.9.86 he, P.Ws 3,4 and others went to CIA staff office but they were not allowed inside and they went to the chowk and sat. there and within minutes they saw Jodha and Jogi who gave the theft report running away. Suspecting some foul play they went to the CIA staff office and came to know that the deceased had died. P.W.5 and others who were scared away by the police came back to the chowk and squatted there. In the meantime a bus arrived. P.W.8 and others who alighted from the said bus came to P.W.5 and others and informed them that Kailash had died and his dead body had been thrown by the police people under the bus. On 16.9.88 the statement of P.W.5 was recorded. Then we have the evidence of P.W.8 Mai Ram. He deposed that 9 or 10 months ago he boarded a bus from Kaithal to Patiala and when the bus had moved out of the Bus-stand, Cheeka an alarm was raised that a man had been killed under the bus and the bus was stopped. P.W.8 who was sitting in the bus did not see anything on the road. But he saw a human dead body being brought into the bus from the front window. This witness was, however, treated hostile.

5. Next important witness is P.W.9. Avtar Singh, Inspector of Police. He deposed that on 15.9.86, P.W.3 produced Ex. P.c. before him. Making an endorsement P.W.9 sent the same for registration of the crime to Police Station, Guhla. P.W.9 took up the investigation, examined the witnesses and recorded their statements. On 15.9.86 and on other dates he arrested the respective accused. As already stated the plea of the accused has been of total denial.

6. We have carefully examined the cross-examination of P.Ws 3,4 and 5. P.W.3 is the author of the earliest report Ex.P.C. in which he has mentioned all the details starting from 5.9.86 onwards to 15.9.86. He has mentioned the names of the four accused. However, A-3 was described as "Munshi", a Constable. It is further mentioned that he alongwith other accused beat the deceased. Then P.W.3 has also mentioned about their visits to the police post upto 13.9.86 and it is further stated that on that day when they were near the CIA staff office, Dalip Singh, Section 1(a-1) alighted from a car and went inside the staff room and that a request was made to him to release the deceased but he threatened them and he also beat the deceased Kailash before them. The other details of the happenings upto 15.9.86 are also mentioned therein. One of the discrepancies pointed out in his evidence is that he did not mention A-3's name as Bikram Singh and only mentioned as Munshi and therefore it is highly doubtful whether A-3 was one among the police people who beat the deceased. But we find in the evidence of P.Ws 3,4 and 5 that Bikram Singh was also known as Munshi and we do not find anything in the cross-examinations suggesting contra and all the witnesses have

identified A-3 in the court as one of the constables who beat the deceased. These witnesses are cross-examined on some aspects which are not very material. All these witnesses have denied the suggestion that they did not see the accused beating the deceased. It must be remembered that P.Ws. 3,4 and 5 would be the last persons to implicate the accused falsely in a case of this nature. Their evidence establishes beyond all reasonable doubt that the deceased was taken into custody by these accused persons. This is an important aspect in this case and the accused have no explanation as to what happened to the deceased who was thus taken into custody. They denied the entire prosecution story thereby suggesting that they did not take the deceased into custody at all. This is only a false explanation.

7. When once it is established that the deceased was taken into custody on 8.9.86 second time then it is their responsibility to show as to how the deceased went out of their custody. There is not even a whisper from the side of the accused as to what happened to the deceased who was taken into custody by them. The evidence of the P.Ws would show that on 15.9.86 they went to the CIA staff room early in the morning and they were not allowed to enter the office. Within half an hour they came to know that the deceased had died and his dead body was thrown under the bus. The dead body which was put in the bus was later examined by the DoctOrs. P.W.I who conducted the autopsy frond as many as 15 injuries. Out of them some were abrasions and some were contusions and a lacerated wound on the forehead. He also found a big contusion over the left scrotum and the testicular was injured. On internal examination he found that there were fractures of 3rd to 9th rib on the left side and the liver, spleen and glad bladder were injured. He opined that the death . was due to injuries on these organs. In the cross examination he admitted that on an application he gave opinion to the effect that the possibility of a, bus accident or 'marpit' causing these injuries can not be ruled out. The Doctor also opined that probable duration between the injuries and death was within minutes. Relying on this admission yet another submission is that the death was not due to injuries but could be due to bus accident. When once we come to the conclusion that there was no bus accident and that the deceased did receive injuries at the hands of the accused in the police staff room, this submission has no force at all. The death must be the result of those injuries and the accused must have thrown the deceased in an unconscious state under the bus to make it appear as an accident and it may be that the deceased died immediately thereafter. But it is clear that the death was due to the injuries and not due to any bus accident. Therefore the said opinion given by the Doctor does not in any manner affect the prosecution version namely that the deceased died due to the injuries inflicted by the accused. Relying on this medical evidence, it is submitted on behalf of the appellants that the death could be due to bus accident. We see absolutely no force in this submission. As already noted the fact that the deceased was taken into custody, is established beyond all reasonable doubt. The evidence of P.Ws. 3,4 and 5 also establishes that the deceased was beaten up by these accused in the police staff room and the deceased also was found chained. Therefore there is no question of the deceased going out of the police post or escaping by himself. The evidence of these witnesses therefore shows that these accused must have tried to create a story that the . deceased met his death by the bus accident by throwing the dead body of the deceased under a running bus. The Doctor only gave an opinion but he did not rule out the death being due to beatings.

8. On behalf of Dalip Singh, A-1, the learned Counsel, however, submitted that he was not in the police post during that period. In support of this submission he relied on an admission made by P.W.9 in his cross-examination to the effect that Dalip Singh, A-1 left the police post, Cheeka on 26.8.86 in connection with the investigation of the crime under Section 363/366 I.P.C Police Station City Kaithal under the orders of the Superintendent of Police and that he did not return to the police post, Cheeka till 16.9.86. He, however, added that he himself was at Kurukshetra from 12.9.86 to 14.9.86. The evidence of P.Ws 3,4 and 5 is to the effect that on 13.9.86 Dalip Singh, A-1 came to the police post and they requested him to release the deceased but he refused and that in their presence he kicked the deceased and also beat him with danda. Therefore the above admission made by P.W.9 does not in any manner rule out Dalip Singh, A-1 having gone to the police post on 13.9.86. There is no record whatsoever to show that he did not visit Cheeka on 13.8.96. It must be remembered that he was the Sub-Inspector of the Police Post and the distance between Cheeka and Kurukshetra is only 60 kilometers and there is ample evidence to show that he was moving around in a car. Therefore the submission that A-1 was not in the police post on 13.9.86 is devoid of any force.

9. learned Counsel, on behalf of Dalip Singh, A-1, further submitted that even if the prosecution version is to be accepted he beat the deceased only on 13.3.86 and it can not be said that he inflicted any of the serious injuries and consequently he can be convicted only under Section 323 I.P.C. We are unable to agree. Taking the evidence of these three witnesses as a whole it emerges that all these four accused inflicted injuries and without knowledge of A-1 the deceased could not have been detained in custody. Therefore no separate case can be made out so far A-1 is concerned. All the four accused shared the common intention to beat the deceased violently and they must have knowledge that by inflicting such injuries, they were likely to cause the death of the deceased. The High Court has convicted them under Section 304 Part I I.P.C. as though they intentionally inflicted such injuries which are likely to cause death. Taking the case as a whole into consideration it must be held that the accused were responsible for inflicting those injuries and they must be attributed the knowledge only that by inflicting such injuries they were likely to cause the death in which case the offence would be one punishable under Section 304 Part II I.P.C. Accordingly we set aside the conviction of the accused under Section 304 Part I I.P.C. and sentence of 10 years R.I. awarded thereunder. Instead we convict each of the accused under Section 304 Part II read with Section 34 I.P.C. and sentence each of them to undergo 5 years' R.I. The other convictions and sentences are confirmed. The sentences are directed to run concurrently.

10. Subject to the modification of sentence, the appeal is dismissed.