

## **Ravinder Kumar vs State Of H.P. And Anr. on 10 October, 2002**

**Equivalent citations: JT2002(9)SC384, AIRONLINE 2002 SC 506**

**Bench: U.C. Banerjee, B.N. Agrawal**

### **ORDER**

1. The appellant is in appeal against the order of conviction under Section 325 of the Indian Penal Code whereby the accused-appellant was convicted and sentenced to undergo rigorous imprisonment for four years together with payment of fine by the High Court. It is to be noticed at this juncture that against the order of conviction passed by the learned sessions judge in session, trial No. 16/99 holding the accused persons, namely, Ravinder Kumar - the present appellant herein and one Kuldip Singh guilty of offences under Sections 302/323/341/34 of the Indian Penal Code and sentencing them to undergo life imprisonment together with fine of Rs. 2,000/- each. Various other periods have also been prescribed but the sentences were directed to run concurrently.

2. The case against the accused is that on 11th September, 1991, Mehar Singh, Bikram Singh, Pritam Singh, Subhash, Panni Ram and Parma Nand of Village Lohdar came to Tikkar Didwin for loading and carrying buffaloes of some trader in their truck bearing registration No. HPH-2700 but the trader was not found available to them and therefore they were returning in their truck at about 9.00 p.m. They reached Morsu at about 9.15 p.m. and found the bus of the accused parked obliquely on the road with the result that there was no space left for the truck to pass through. The complainant party allegedly requested the accused to take the bus aside so that they could drive their truck but the accused allegedly retorted and asked to wait as the complainant party was not going to extinguish the fire. But the road was not made available for the truck for quite some time. Subhash Chand, the driver of the truck again requested the accused to give the way but Ravinder accused told him to alight from the truck and take the bus. Parma Nand and Bikram alighted from the bus but both the accused started throwing the bricks upon them. Two bricks allegedly struck on the person of Parma Nand whereas one brick blow was received by Bikram Singh and both of them fell on the road unconscious. In the meantime, the other occupants of the truck alighted from the truck but the accused armed with 'dandas' gave 'danda' blows to Parma Nand and Bikram Singh who were lying on the road. On raising alarm some other persons came on the spot and witnessed the occurrence.

3. A report was lodged by Mehar Singh in the police station initially under Sections 307/341/34 of the Indian Penal Code but later on the offence was converted to one under Sections 302/341/34 of the Indian Penal Code. It is this incident which had culminated in the set of trial spoken of and the conviction and punishment, as noticed above.

4. The High Court, however, dealt with the issue and sentenced Ravinder Kumar, the appellant herein, to undergo rigorous imprisonment for four years as noticed above, under Section 325 of the Indian Penal Code and acquitted the accused Kuldip Singh, of all the charges. The learned advocate appearing in support of the appeal has taken us through the order of the High Court and placed

strong reliance on certain observations which we find worth noting as well. The High Court observed:

"The defence of the accused that the complainant party picked up quarrel with the accused and in that scuffle injuries were caused to both the parties; finds support from the version of this witness, statement of Pritam Singh (PW 3) as well as from the medical certificates of the accused persons.

From the perusal of the evidence referred to above, we are of the opinion that scuffle had taken place between the parties and in that scuffle injuries were inflicted on both the parties. The offence of common intention to cause the death of deceased Parma Nand has not been established by the prosecution nor the same can be gathered from the evidence. The prosecution has also not been able to prove that the injuries caused to deceased Parma Nand were with the intention to cause his death. Doctor N.K. Galoda (PW 13) has not stated that the injuries suffered by deceased Parma Nand were sufficient in the ordinary course of nature to cause his death.....

Thus, in a way it can be well said that prosecution has tried to withhold the material evidence of Subhash from the appraisal of the court. The prosecution has only examined one interested witness to prove the recovery of 'dandas' from the possession of the accused persons. It has come in evidence that the recovery of the 'dandas' were effected from the open maize field which were easily accessible to the people of the locality and the recoveries were effected more than five days after the alleged concealment and in such circumstances, the recoveries are doubtful. Four 'rods' and four bricks (broken pieces) lifted from the spot and alleged to have been used as weapons of offence were not shown to the eye witnesses to prove that those bricks were the same which were thrown by the accused on the person of the deceased and injured Bikram Singh. Strangely enough the bricks shown to doctor N.K. Galoda (PW 13) were heavy and full bricks.

The next question which arises for consideration is whether accused Ravinder Kumar could be convicted under Section 302 read with Section 34 of the Indian Penal Code. It was essential in this case, in order to bring home the offence of murder to the accused that the brick blows or the 'lathi blows given by him on the head of deceased Parma Nand proved fatal. The evidence clearly discloses that the accused threw 10-15 bricks upon the deceased and also gave 10-12 blows of 'dandas' but according to the doctor, the deceased died due to single head injury, he may have given the blow which did not prove fatal. In these circumstances, the conviction of accused Ravinder Kumar under Section 302 is plainly incorrect. In our view, he could be convicted only under Section 325 of the Indian Penal Code."

5. It has been contended in support of the appeal that on the basis of the observations as above, question of coming to a conclusion as regards the conviction under Section 325 of the Indian Penal Code and sentencing the appellant herein for a period of four years of rigorous imprisonment does

not arise and resultantly a manifest error has crept in on the part of the High Court. We find some justification in such a submission. Admittedly, there is no charge under Section 325 of the Indian Penal Code. Apart therefrom the High Court itself came to a conclusion that the appellant may have given the fatal blow or may not have given the fatal blow and thus the conviction under Section 325 of the Indian Penal Code is unwarranted in the contextual facts. The learned advocate appearing for the state, however, tried to justify the order of the High Court and introduction of Section 325 of the Indian Penal Code since there was a scuffle and since the head injury was there and submitted that the question of offence under Section 302 of the Indian Penal Code would not arise. The High Court was otherwise right in introducing Section 325 of the Indian Penal Code in the matter in issue. We are, however, unable to record our concurrence therewith. The observations of the High Court itself goes against the finding under Section 325 of the Indian Penal Code. As such, the order impugned, in our view, cannot be sustained. The appeal is thus allowed.

The order impugned stands set aside and quashed. Bail bonds shall stand discharged.