

Jawahar Lal And Anr. vs State Of Punjab on 17 January, 1983

Equivalent citations: AIR1983SC284, 1983CRILJ429, 1983(1)SCALE60, (1983)4SCC159, AIR 1983 SUPREME COURT 284, 1983 (4) SCC 159, 1983 2 CRI LC 427, 1983 SCC(CRI) 805, (1983) CRILC 427

Bench: D.A. Desai, R.B. Misra

ORDER

1. Special leave granted limited to the nature of offence and sentence.
2. Two appellants, who are brothers, alongwith their father Sardari" Lai were prosecuted for an offence under Section 302 read with Section 34 and under Section 324 of the Indian Penal Code.
3. Prosecution case is that the appellants have a sweet meat shop in Katra Baghian, Amritsar. P.W. 6 Amrilc Singh is residing in a house opposite to the shop. On April 13, 1980, Sardari Lai, the father of the appellants requested Amrik Singh to permit him to tie a rope of the canopy with the projection of the house of the witness, but he did not allow the same. Sardari Lai was offended. On April 18, 1980, a wet underwear drying-up on the roof flew away which was picked up by the 1st appellant Jawahar Lai. But when witness Amrik Singh demanded the same, the appellant had declined to return the same saying that he had found the same lying in the bazar and moreover he had not allowed his father to tie the rope. There was an exchange of abuses, but the matter ended there. In the evening on that day when Sardari Lai visited the shop of the appellants, Amrik Singh complained about the conduct of the 1st appellant Jawahar Lai. However, Sardari Lai persuaded the 1st appellant to return the underwear of witness Amrik Singh. At about 9.30 P.M. on that day deceased Darshan Singh accompanied by P.W. Santokh Singh visited the house of witness Amrik Singh for settling the details of the marriage that was to be performed in the near future. At about 10.00 P.M., deceased Darshan Singh and P.W. Santokh Singh left the house of witness Amrik Singh. Amrik Singh followed them. When they reached the bazar locality, all the three of them saw the two appellants and Sardari Lai standing in front of their shop and on seeing deceased Darshan Singh and his companions, they raised chargers. Sardari Lai raised lalkaras and exhorted the appellants to catch hold of witness Amrik Singh and he should not be allowed to escape. It is alleged that appellants 1 and 2, each of them was armed with a dagger. The first Appellant Jawahar Lai gave a blow with dagger on the left side of the chest of deceased Darshan Singh, who fell down on the ground. When P.W. Santokh Singh rushed to the rescue of deceased Darshan Singh, second appellant Kewal Krishan gave two blows with a dagger and he also fell on the ground. Witness P.W. 8 Surinder Mohan Singh raised an alarm and the appellants ran away from that place. The injured were removed in two rickshaws to the hospital where on reaching the hospital Darshan Singh was pronounced dead by the Medical Officer who examined him. P.W. Santokh Singh was admitted in the hospital. P.W. 6 Amrik Singh lodged the first information report and the offence was registered. After completing the investigation, the appellants were prosecuted and tried for the offences hereinabove mentioned.

4. At the trial P.W. Amrik Singh and P.W. Surinder Mohan Singh were examined as witnesses to the occurrence. P.W. 4 Dr. Amar Singh who conducted the autopsy on the dead body of deceased Darshan Singh deposed that he found one incised stab wound $4\frac{1}{2}$ cm x $2\frac{1}{2}$ cm on front of left side of chest at 6 O'clock position, $3\frac{1}{2}$ cm below left nipple oblique in direction. He also found two minor abrasions, one on front of left knee and the other on left side of fore-head. In his opinion, death was due to shock and haemorrhage as a result of injury to heart corresponding to injury No. 1 and in his opinion this injury was sufficient in the ordinary course of nature to cause death.

5. The defence of the accused, the 1st appellant Jawahar Lai, was that he caused one single injury to deceased Darshan Singh. He has given his own version of the incident to which we would presently refer. Appellant No. 2 and Sardari Lai denied having committed any offence.

6. The learned Additional Sessions Judge rejected the defence version put forth by the 1st appellant Jawahar Lai as unworthy of credit and held that the evidence of two witnesses Amrik Singh and Surinder Mohan Singh was reliable and is borne out by a part of the statement made by the 1st appellant Jawahar Lai under Section 313 of Cr. P.C. He however rejected that the 1st appellant caused injury to Darshan Singh in furtherance of the common intention of all the accused. Accordingly, the 2nd appellant Kewal Krishan was held responsible for his own act of causing injury to P.W. Santokh Singh. The Sessions Judge was not satisfied with regard to the participation of the 3rd accused Sardari Lai and he was given benefit of doubt and acquitted. Accordingly, the 1st appellant Jawahar Lai was convicted for an offence punishable under Section 302, I.P.C. and was sentenced to suffer imprisonment for life and to pay a fine of Rs. 2,000/- in default to suffer further imprisonment for one year. Second appellant Kewal Krishan was held guilty for an offence under Section 324, and as he was aged about 17 years on the date of the occurrence with no previous conviction, he was given benefit of the provision of Section 360 of the Cr.C.P.

7. 1st and second appellant having been dissatisfied with the order of the Sessions Judge, preferred Criminal Appeal No. 381 of 1981 in the High Court of Punjab and Haryana at Chandigarh. The division Bench of the High Court agreed with the findings recorded by the learned Additional Sessions Judge and confirmed the conviction and sentence of the appellants.

8. When the special leave petition came up for admission, this Court by its order dated October 25, 1982 directed a notice to be issued on the question of the nature of offence and sentence. This has reference to the case of 1st appellant alone because the 2nd appellant was given benefit of the provision of Section 360, Cr.P.C. and nothing is required to be done in that behalf. We are therefore, concerned with the case of the 1st appellant only, and the inquiry is of a limited nature as to whether the conviction for an offence under Section 302 and the sentence imposed for the same are justified?

9. Narration of facts clearly bring out the background in which the offence was committed. The social order in Punjab is such that trivial disputes lead to fatal consequences. This case aptly illustrates the same. Facts not in dispute are that Sardari Lai, the father of the 1st appellant wanted to tie a rope of the canopy which had to be fastened to the projected eaves of the house of witness Amrik Singh. This minor good neighborly gesture did not meet with the approval of witness Amrik Singh and he declined an eminently fair request. In turn a few days after when the wet underwear of

witness Amrik Singh flew off from his roof, it was picked up by the 1st appellant, but when demanded by Amrik Singh the 1st appellant declined to return the same. Sardari Lai, the father being more mature, intervened and returned the underwear. Thereafter this unfortunate event occurred. As the prosecution case disclosed in the evidence of eye-witnesses indicate that the appellants and their father were waiting in front of their shop. This part of the prosecution case is rejected by the learned Additional Sessions Judge on a misconception about the location of the scene of offence. Both the appellants were armed with daggers. The use of the expression 'dagger' is unfortunate because it appears each of the appellants had a knife. A Punjabi carrying a knife is not at all an unusual feature nor can it furnish an indication that it was carried by them to facilitate inflicting a fatal injury. Further appellants and their father had some trivial dispute with P.W. Amrik Singh. He was present. He has gone un-harmed. 1st Appellant had no malice against deceased Darshan Singh. He had no quarrel with him. He had no dispute with him. According to prosecution, appellant had no grievance against deceased Darshan Singh, and to this Darshan Singh one blow with a knife was given which unfortunately landed on the chesty and proved fatal.

10. At this stage, it would be advantageous to give the version of the occurrence as narrated the 1st appellant in his statement under Section 313 of the Cr.P.C. The whole of it need not be reproduced. But the substantial Part which reads as a version of occurrence may be reproduced. According to him deceased Darshan Singh and witness Santokh Singh came to his shop between 9.00 or 10.00 p.m. and both appeared under the influence of drink. Both of them gave abuses to him in filthy language. Darshan Singh complained that the 1st appellant had insulted Amrik Singh and therefore, they had come to teach him a lesson. Deceased Darshan Singh also told the 1st appellant that they had come to take their 'Dola' (taking his sister after marriage). Then the 1st appellant described the incident. It reads as under :

Darshan Singh then took out dagger type knife from his pant. He aimed blow at me. I had held his arm with which he was holding the weapon. I grappled with him and both of us fell on the ground. His dagger type knife fell on the ground which I lifted. Darshan Singh tried to snatch the dagger type knife from me. Out of fear, I gave the dagger type knife blow to Darshan Singh but I cannot say where it had hit because I had thought in case Darshan Singh snatched the knife from me, he would attack me.

11. The learned Sessions Judge was not impressed by the version of the occurrence as given by the 1st appellant and the High Court, except reproducing the whole statement of the 1st appellant in the judgment, has neither analysed nor evaluated the same. However, as the High Court rejected a specific contention on behalf of the 1st appellant that even if the 1st appellant is shown to have inflicted a blow with a knife on Darshan Singh, the offence would not be one under Section 302 of the Indian Penal Code, it can be safely assumed that the version as given by the 1st appellant did not find favour with the High Court.

12. The only question, we have to examine is whether under these circumstances the offence would be under Section 302 of the Indian Penal Code.

13. According to the learned Sessions Judge, the 1st appellant was aged 19 years at the time of the occurrence. He has given one blow with a knife. When on receipt of the blow deceased Darshan Singh fell on the ground, there is not the slightest suggestion that the 1st I appellant ever attempted to cause any more harm to deceased Darshan Singh.

14. Section 300 of the I.P.C. provides that culpable homicide is murder firstly if act by which the death is caused is done with the intention of causing death or, thirdly if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. There are two other paras setting out circumstances in which culpable homicide would amount to murder. But they are not relied upon the learned Counsel Shri Ashwani Kumar and therefore, need not be referred to here. It is, therefore, necessary to confine the examination whether on the facts not now in dispute either para 1 or para 3 of Section 300 is attracted.

15. It was not seriously questioned that para 1 would not be attracted. In the facts and circumstances of this case, as succinctly set out, it is difficult to say that the 1st appellant intended to Cause the death of the deceased. Emphasis was laid on para 3 and it was urged that the case would be covered by para 3 of Section 300. It was urged that the 1st appellant not only intended to cause a particular injury which is alleged to have been inflicted, but on objective evidence of the Medical Officer the injury inflicted is shown to be sufficient in the ordinary course of nature to cause death, and therefore, para 3 would be attracted. Following a trivial dispute. 1st appellant, a young immature boy aged about 19 years, gave one blow with a knife. The incident occurred at about 10.00 p.m. The light available was from an electric lamp post in the street. In this light upon a trivial quarrel,, only one blow without any attempt at giving a second blow, was inflicted and that fell on the chest. Could it be said that the injury which was inflicted was the particular injury which was intended to be inflicted? If the answer is in negative and it is ought to be so, the important requirement in the first part of para 3 would not be satisfied. Merely because the blow landed on a particular spot on the body, divorced from the circumstances in which the blow was given, it would be hazardous to say that the 1st appellant intended to cause that particular injury. The weapon used was the usual handy weapon, a Punjabi generally carries a knife. The 1st appellant was near his shop. He did not attempt to inflict any more harm. In the available dim light, the blow landed on the chest. In our opinion, in these circumstances, it would be difficult to say that the 1st appellant intended to cause that particular injury. Even if the injury inflicted proved to be fatal, the case would not be covered by para 3 of Section 300.

16. Mr. Ashwani Kumar very seriously contended that the defence version is found to be false by both the Courts and appears to be improbable. As there is concurrent finding on this aspect of both the Courts, we would accept the contention of Mr. Ashwani Kumar. But if the defence version is incorrect, that itself cannot blind us to the circumstances in which the offence was committed, the background in which it was committed and the ferocity of the attack and the weapon used. At this stage, we must point out that the High Court was in error when it said that the incident did not occur near the shop of the 1st appellant, but near the door of the house of P.W. 6 Amrik Singh. The High Court overlooked that position that the house of P.W. Amrik Singh is situated opposite to the shop of the 1st Appellant. Therefore, the High Court was in error attaching importance to the fact

that the incident occurred near the door of the house of P.W. Amrik Singh, because if that spot was described from the direction of the shop of the 1st appellant, it would refer to the same spot.

17. Unfortunately, for us the High Court did not examine these aspects. But we should also not further dilate on this point in view of the decision of this Court in Jagrup Singh v. State of Haryana . In that case after referring to the evidence, this Court held that the appellant gave one blow on the head of the deceased with the blunt side of the gandhala and this injury proved fatal. The Court then proceeded to examine as to the nature of the offence because the appellant in the case was convicted for an offence under Section 302. Undoubtedly, this Court said that there is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under Section 304, Part II of the Code. The Court then proceeded to lay down the criteria for judging the nature of the offence. It may be extracted ;

The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstance attendant upon the death.

18. We may point out that decision in Jagrup Singh's Case was subsequently followed in Randhir Singh @ Dhire v. State of Punjab Decided on September 18. 1981 and in Kulwant Rai v. State of Punjab Decided on August 7, 1981 (Criminal Appeal No. 630 of 1981).

19. Having kept this criteria under view, we are of the opinion that the offence committed by the 1st appellant would not be covered by clause Thirdly of Para 3 of Section 300 and therefore, the conviction under Section 302, I.P.C. cannot be sustained.

20. What then is the offence committed by the 1st appellant ? Looking to the age of the 1st appellant at the time of the occurrence, the nature of the weapon used, the circumstances in which one blow was inflicted, the time of the day when the occurrence took place and the totality of other circumstances, namely, the previous trivial disputes between the parties, we are of the opinion that the 1st appellant could be attributed the knowledge that he was likely to cause an injury which was likely to cause death. Accordingly, the 1st 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 maintaining the sentence of fine.

21. We accordingly allow the appeal of the 1st appellant and set aside his conviction under Section 302, IPC and the sentence of imprisonment for life imposed upon him. The 1st appellant is convicted for an offence under Section 304 Part II, Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years. The sentence of fine of Rs. 2,000/- in default to suffer further rigorous imprisonment for one year imposed upon him is maintained.

22. Appeal preferred by the 2nd Appellant is dismissed.