

## **Bakhtawar And Anr. vs State Of Haryana on 6 October, 1978**

**Equivalent citations: AIR1979SC1006, 1979CRILJ883, (1979)81PLR499, (1979)4SCC698, 1979(11)UJ154(SC), AIR 1979 SUPREME COURT 1006, 81 PUN LR 499, (1979) 2 SCJ 267, 1978 CRILR(SC MAH GUJ) 613, (1979) 6 CRI LT 165, (1979) SC CR R 14, (1979) MAD LJ(CRI) 602, (1979) ALLCRIC 130, 1979 UJ(SC) 154(2), 1979 (4) SCC 698**

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**Bench: A.D. Koshal, Jaswant Singh, P.S. Kailasam**

### **JUDGMENT**

Jaswant Singh, J.

1. The appellants, Bakhtawar and his son, Satbir, who were charged and tried under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the Penal Code') for causing the death of one Balbir Singh, their co villager, were convicted under Section 304, Part II of the Penal Code and were sentenced to ten years rigorous imprisonment and a fine of Rs. 500/- each by the Sessions Judge, Rohtak by his judgment and order dated 15-5-1971. While the appellants preferred an appeal to the High Court against their conviction & sentence, the State filed an appeal against the aforesaid judgment and order of the Sessions Judge acquitting the appellants of the offences under Section 302 read with Section 34 of the Penal Code. The High Court by its judgment and order dated September 16, 1971 found that the prosecution had succeeded in establishing the guilt of the appellants under Section 302 read with Section 34 of the Penal Code. Accordingly, it altered the conviction of the appellants from the one under Section 304 Part II read with Section 34 of the Penal Code to that under Section 302 of the Penal Code and enhanced the sentence of each of them to life imprisonment remitting the fine. It is against this judgment and order that the appellants have come up in appeal to this Court.

2. The case as put forth by the prosecution was : On July 20, 1969 at about 3.00 P.M. Balbir deceased while ploughing his land noticed the appellants cutting bushes from his 'Johari' and taking it to the land which was in their possession as mortgagees from one Phule. Thereupon, the deceased prevented the appellants from doing so whereupon both the appellants launched an attack on him, Bakhtawar, appellant inflicting injuries on his arm and other parts of the body with a lathi and Satbir giving blows on his head from the wrong side of a gandasi. On seeing the occurrence Richpal and Maida, (PWs. 4 & 5) who had gone to Sheoprasad's well situate near their fields to quench their thirst rushed to the place of occurrence and extricated the deceased from the clutches of the appellants who then ran away towards their fields. Leaving Maida to look after the deceased who

had become unconscious as a result of the injuries inflicted on him by the appellants, Richpal, (PW 4) went and reported the matter to the village Sarpanch named Risal Singh (PW 8). On being informed about the matter, Risal Singh (PW 8), accompanied by Richpal (PW 4) arrived at the scene of the occurrence and removed the deceased to the Civil Hospital, Beri where he succumbed to his injuries shortly after admission. On the expiry of the deceased, Dr. Ram Lal Gulati (PW 2), Incharge Civil Hospital, Beri sent Ruqa (Exh. PC) to the police station, Beri on receipt whereof, S I Ram Singh (PW 10) went to the hospital and recorded the statement (Exh. PB) of Richpal (PW 4) on the basis whereof a case under Section 302 read with Section 34 of the Penal Code was registered against the appellants. After preparing the inquest report, the S I. sent the dead body for post-mortem examination, Dr. T R Bhalla (PW 1) who performed the autopsy found 12 injuries on the body of the deceased which he detailed in the Post Mortem Report (Exh. PA) and opined that injuries Nos. 11 and 12 which were grievous were sufficient to cause the death of the deceased. After sending the body for post-mortem examination, the S. I. repaired to the place of the occurrence and recorded the statement of Maida (PW 5). The S I. also posted a constable to guard the place of the occurrence and on the next morning seized some blood from there vide Exh. P.F. and arrested the appellants. After the usual investigation, the appellants were proceeded against in the court of the Judicial Magistrate, Ist Class, Jhajjar, who committed them to the Court of Sessions to stand their trial under Section 302 read with Section 34 of the Penal Code.

3. On a consideration of the evidence, the Sessions Judge found that the appellants did not have the intention of causing the murder of Balbir but had only the knowledge that the injuries caused by them were likely to cause his death. Accordingly he convicted them under Section 304. Part II of the Penal Code read with Section 34 of the Penal Code and sentenced them as stated above. Both the appellants and the State felt aggrieved by the judgment and order of the Sessions Judge and preferred cross appeals with the result as indicated above.

4. Mr. K.C. Sharma appearing on behalf of the appellants has urged that on the evidence adduced in the case, no offence can be said to have been made out against the accused and that in any case, the offence if any, did not amount murder under Section 302 of the Penal Code. We are unable to acceded to these contentions. From the evidence of Richpal (P. W. 4) and Maida (P.W. 5) it is established beyond any manner of doubt that while Bakhtawar, appellant inflicted injuries on the arm and other parts of the person of the deceased, Satbir gave a number of blows on the head of the deceased resulting in the following injuries:-

1. One contused wound 1 1/2" " x 1/2" bone deep on the dorsem of the left hand near the knuckle of the left index finger. It was caused by blunt weapon.
2. One contused wound 2" x 1/4" bone deep on the dorsel aspect of the left index finger in the proximal and middle phalyox the proximal phylyinx was fractured.
3. The injury was of greivous nature and was caused by blunt weapon. Two contused wound 3/4" x 1/4" and 3/4" x 1/4" bone deep on the posterior aspect of left elbow joint. The wound was one inch apart from each other. It was caused by blunt weapon.

4. One contused wound 3/4" x 1/2" skin deep on the posterior aspect of the right fore arm in the middle part.
5. One contused wound 1/2" x 1/4" skin deep on the posterior aspect of the right fore-arm 3" below the elbow joint.
6. One contusion mark 2" x 1" on the interior aspect of the right knee joint.
7. One contusion mark 2" x 3/4" on the interior aspect of the left knee joint.
8. One abrasion 3" x 1/4" on the left hyolchonderic region on abdomen of 7" above the anterior iliac region.
9. One contused wound 1" x 1/2" skin deep on the posterior aspect of the left side of the chest over the scapular region in the lower part.
10. One contusion mark 3" x 1 1/2" on the left buttock on the upper and outer quadren.
11. One construed wound 2" x 3/4" bone deep on the left parietal region on the scalp 4" above the pinna of the left ear. There was fracture of the left parietal bone and the injury was of grievous nature and caused by blunt weapon.
12. One construed wound 1 1/2" x 1/2" bone deep on the right parietal region of scalp 2 1/2" above the pinna of the right ear. There was fracture of the right parietal bone. The injury was of grievous nature and caused by blunt weapon.

5. The evidence of these two eye witnesses is trustworthy and there is no reason to discard the same. The evidence of these two witnesses receives ample corroboration not only from the statement of Risal Singh (P.W. 8) but also from the testimony of the doctor who has opined that out of the injuries detailed above, injuries Nos. 11 and 12 were grievous and were sufficient to cause the death of the deceased. For the commission of the offence of murder it is not necessary that the accused should have the intention to cause death. It is now well settled that if it is proved that the accused had the intention to inflict the injuries actually suffered by the victim and such injuries are found to be sufficient in the ordinary course of nature to cause death, the ingredients of Clause 3rdly of Section 300 of the Indian Penal Code are fulfilled and the accused must be held guilty of murder punishable under Section 302 of the Code. Reference in this connection may be made to the decision of this Court in Virsa Singh v. The State of Punjab 1958 SCR 1985 and State of Andhra Pradesh v. Royava-rasu Punneya and Anr. . There is no doubt in our mind that the accused in the present case had the intention to cause the injuries found on the body of the deceased. As already stated, those injuries were sufficient in the ordinary course of nature to cause death. The ratio of the two decisions just above cited, therefore, applies fully to the facts of the instant case.

6. For the foregoing reasons, we do not find any merit in this appeal which is dismissed.