Ashok Kumar vs State Of Punjab on 21 September, 1976

Equivalent citations: AIR1977SC109, 1977CRILJ164, (1977)1SCC746, 1976(8)UJ873(SC), AIR 1977 SUPREME COURT 109, (1977) 1 SCC 746, (1977) 4 CRI LT 4, 1977 SCC(CRI) 177, 1977 SC CRI R 29, 1977 CRI APP R (SC) 26, 1977 2 SCWR 401, 1976 UJ (SC) 873

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Bench: P.N. Bhagwati, Syed M. Fazal Ali, V.R. Krishna Iyer

JUDGMENT

P.N. Bhagwati, J.

1. The appellant and his two brothers Kewal Krishan and Dharam Pal were charged before the Sessions Judge, Amritsar for the offence of intentionally causing the death of one Dharam Pal (hereinafter referred to as the deceased). Briefly the prosecution case was, and here we are cutting out the background and the frills of the incident, that on 20th October, 1969 at about 1.15 p.m. the deceased and his brother Sain Das were proceeding towards Gali Jatan Chowk when appellant, Kewal Krishan and Dharam Pal came from the direction of their house, each armed with a knife. Dharam Pal raised a Lalkara that the deceased should not be allowed to escape and opened the attack by giving a knife blow on the head of the deceased. Kewal Krishan then inflicted a knife blow on the chest of the deceased and the appellant plugged his knife in the left flank of the deceased. On receipt of these injuries the deceased fell down and Dharam Pal gave another knife blow on the chest of the deceased after he had fallen down. This incident was seen by Sain Das who was accompanying the deceased and two other persons, namely, Satpal and Manohar Lal also witnessed the incident. These three persons raised an alarm on which the appellant, Kewal Krishna and Dharam Pal ran away with their knives. The deceased died within a few minutes thereafter. A first information report in regard to the offence was lodged by Sain Das at the police station. The police investigated the offence and ultimately charged sheeted the appellant, Kewal Krishan and Dhaiam Pal for various offences arising out of the incident.

2. There were three eye-witnesses to the incident, namely, Sain Das, Satpal and Manohar Lal, but out of them only two were examined by the prosecution, namely, Sain Das and Satpal and Manohar Lal was given up as he was won over by the other inside. Sain Das and Satpal deposed to the incident as narrates above and the learned Sessions Judge, accepting their evidence in its entirety, held that the prosecution case was sufficiently established against the appellant, Kewal Krishan and Dharam Pal and convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to life imprisonment and so far as Kewal Krishan and Dharam Pal were concerned, he convicted them under Section 323 read with Section 34 and sentenced each of them to suffer 10 years' rigorous

imprisonment and to pay a fine of Rs. 1000/-. Kewal Krishan and Dharam Pal were also convicted under Section 324 and sentenced to two year's rigorous imprisonment and the appellant was convicted under Section 324 read with Section 34 and sentenced to one year's rigorous imprisonment. The sentences of imprisonment were directed to run concurrently.

3. The appellant, Kewal Krishan and Dharam Pal preferred an appeal to the High Court against the conviction and sentence recorded against them. The High Court felt that there was inconsistency between the medical evidence in regard to the injuries caused to the deceased and the oral evidence in regard to the role played by Dharam Pal in inflicting the injuries and taking the view that there was scope for reasonable doubt, the High Court gave the benefit of doubt to Dharam Pal and acquitted him. However, so far as the appellant and Kewal Krishan were concerned, the High Court confirmed their convictions and since the conviction of the appellant was under the conviction of the appellant was under Section 302, the High Court maintained the sentence of life imprisonment, but in regard to Kewal Krishan, the High Court reduced the sentence of imprisonment from ten years to two years' rigorous imprisonment. The appellant and Kewal Krishan both preferred a petition for special leave to this Court. The appellant succeeded in obtaining special leave, but the petition of Kewal Krishan was rejected. The present appeal is in the circumstances directly only against the order of conviction and sentence passed against the appellant.

4. This being an appeal by special leave, it would not be right for this Court to embark on a reappreciation of the evidence and to interfere with the concunent view taken in regard to the evidence by the learned Sessions Judge; and the High Court. We must proceed on the basis that the appellant, Kewal Krishan and one other person whose identity with Dharam Pal could not be; said to be established, attacked the deceased and the unidentified assailant gave a knife blow on the head of the deceased, Kewal Krishan then inflicted a knife blow on the chest of the deceased and following upon this, the appellant gave a knife blow in the left flank of the deceased and lastly, after the deceased had fallen down, the unidentified assailant gave a knife blow on the chest of the deceased. The only knife blow attributed to the appellant was a knife blow on: the left flank of the deceased. Now, if we turn to the evidence given by Dr. Narender Mohan (PW 3), who performed the post-mortem examination on the dead body of the deceased, we find that six injuries were received by the deceased. Injuries Nos. 5 and 6 were merely abrasions and we need not consider them, because they could have been caused by falling on the ground. Injury No. 1 was an incised wound on the right side of the head above the right ear and this was obviously an injury caused by knife blow given by the assailant who was identified as Dharam Pal. Injury No. 2 was an incised wound in the epigasrtia region on the left side and could well be the injury inflicted by the appellant. If this was the injury caused by the appellant, it would obviously be impossible to convict him of the offence under Section 302, since; according to the medical evidence, it was a simple injury and not responsible for the death of the deceased. But the State contended that it was not injury. No. 2 which was inflicted by the appellant but it was injury No. 3. Injury No., 3 was an incised stab wound on the outer side of the left side of the chest 6" below the axilla and it was admittedly the fatal injury which caused the death of the deceased. Dr. Narendra Mohan deposed that injury No. 3 was sufficient in the ordinary course of nature to cause death and it was this injury which was? responsible for the death of the deceased. There is, however, nothing to show that it was the appellant who inflicted injury No. 3. Both injuries Nos. 2 and 3 are on the left side, one in the epigastric region and the

other 6" below the axilla and it is not possible to say which of these two injuries was caused by the appellant. The only evidence given by the eye-witnesses was that the appellant gave a knife blow on the left flank of the deceased and this evidence would be compatible with either of the two injuries Nos. 2 and 3. Moreover, it appears from the dimensions of injuries Nos. 3 and 4-both are 1/3" x 1/4"-that these two injuries must have been caused by the same weapon and the same person must be the author of both these injuries, Now the only assailant, whom according to the prosecution evidence, inflicted two injuries was the unidentified assailant and hence injury No. 3 would more properly be attributable to him and not to the appellant. It is, therefore, not possible to say that the prosecution has established beyond reasonable doubt that injury No. 3, which was the fatal injury, was caused by the appellant. The possibility cannot be ruled out that it was injury No. 2 which was caused by him and hopes the conviction of the appellant for the offence under Section 302 cannot be sustained and for the individual injury caused by him, he can be convicted only under Section 324.

5. The appellant would also be constructively guilty for the other injuries caused to the deceased, since it is apparent from the prosecution evidence that the appellant, Kewal Krisha and the unidentified assailant attacked the deceased in pursuance of a common intention shared by all of them. The common intention, according to the learned Sessions Judge and the High Court, was to cause griveous hurt to the deceased and it was on this footing that the earned Sessions Judge and the High Court convicted Kewal Krishan of the offence under Section 326 read with Section 34. We very much doubt whether the learned Sessions Judge and the High Court were right in taking the view that the common intention of the three assailants was merely lo cause grievous hurt to the deceased. As many as four injuries were inflicted on the deceased by knives and out of them, one was on the head and three were on the chest. Heaving regard to the weapons used by the three assailants, the number of injuries caused by them and the vital parts of the body on which the injuries were inflicted, it does appear that the common intention of the assailants was to cause the death of the deceased and Kewal Krishan could, therefore, have been convicted under Section 302 read with Section 34. But unfortunately the State has not been vigilant in enforcement of the criminal law and regrettably it has not preferred an appeal against the acquittal of Kewal Krishan under Section 302 read with Section 34, with the result that his conviction under Section 326 read with Section 34 must stand. And if that be so, consistency compels us to reach the conclusion that the appellant also must, on the same basis, be convicted under Section 326 read with Section 34 instead of Section 302 read with Section 34.

6. We accordingly allow the appeal and convert the conviction of the appellant from one under Section 302 to that under Section 326 read with Section 34. Kewal Krishan was also convicted under Section 326 read with Section 34, but surprisingly enough the High Court let him off with a ridiculously light sentence of two years' rigorous imprisonment. It is difficult to under-stand how the High Court could take such an absurdly lenient view in the case of Kewal Krishan when the assault in which Kewal Krishan participated resulted in the death of the deceased. But the case of Kewal Krishan not being before us, we cannot do anything about it. We can only try to ensure that a proper sentence is imposed on the appellant. We are told that the appellant has already been in jail for period of about 6 years and ten months. That, in our opinion would be sufficient punishment to him and we accordingly sentence him to imprisonment for the period already undergone by him. The appellant is on bail since the last month or so and he need not surrender to his bail. The bail

bonds will stand cancelled.