Harjinder Singh Alias Jinda vs Delhi Administration on 14 November, 1967

Equivalent citations: 1968 AIR 867, 1968 SCR (2) 246, AIR 1968 SUPREME COURT 867, 1968 2 SCR 246, 1968 2 SCJ 190, 1968 MADLW (CRI) 122, 1968 (1) SCWR 210, 1968 CURLJ 485, 1968 SCD 330, 1968 MADLJ(CRI) 395

Author: S.M. Sikri

Bench: S.M. Sikri, J.M. Shelat

PETITIONER:
HARJINDER SINGH ALIAS JINDA

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT:
14/11/1967

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHELAT, J.M.

CITATION:
1968 AIR 867 1968 SCR (2) 246
CITATOR INFO :
R 1975 SC 179 (8)
R 1981 SC1441 (3)
R 1981 SC1552 (11,12)
RF 1986 SC 683 (7)

ACT:
Indian Penal Code, s. 302 and s. 304--Murder and culpable homicide-Ingredients of offence of murder.

HEADNOTE:
The appellant was convicted by the Sessions Judge under s. 302 of the Indian Penal Code and the conviction was upheld by the High Court. According to the prosecution evidence the appellant was trying to assault one D when the latter's brother K intervened. The appellant took out a knife and

caused an injury on K's thigh which cut an artery and resulted in his death. In appeal, by special leave, before this Court it was urged that in the circumstances of the case the intention and knowledge requisite for an offence under s. 302 I.P.C., had not been established.
HELD: (i) The appellant had not used the knife while he was engaged in the fight with D. It was only when he felt that the deceased also came up against him that ..he whipped out the' knife. The deceased was at that time in a crouching position. In these circumstances it could not be said that the appellant intended to cause the injury in the thigh knowing that it would cut-the artery. It was, therefore, not possible to apply cl. 3 of s. 300 to the act of the accused, and he was not guilty of murder. [250 G-H]
Virsa Singh v. State of Punjab. [1958] S.C.R. 1495, applied.
(ii) However, when the appellant struck the deceased with the knife, he must have known that the deceased then being in a bent position, the blow would land in the abdomen or near it--a vulnerable' part of the human body--and that such a blow was likely to result in his death. In these circumstances it would be quite legitimate to hold that he struck the deceased with the knife with the intention to cause an injury likely to cause death. The offence, therefore. clearly fell under s. 304 Part 1. [251 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 21 of 1965.

Appeal by special leave from the judgment and order dated May 19, 1964 of the Punjab High Court, Circuit Bench at Delhi in Criminal Appeal No. 7-D of 1963.

A.S.R. Chari, C.L. Sareen and R.L. Kohli, for the appellant. B.R.L. lyenger, S.P. Nayar for R.N. Sachthey, for the respondent.

The Judgment of the Court was delivered by Sikri, J.This appeal by special leave was limited to the question whether the case comes under s. 302 of the Indian Penal Code. The case of the prosecution which has been accepted by the learned Sessions JUdge and the High Court was,. in brie as follows:

> On January 31, 1962, at about 2.30 p.m., a fight took place' between Dalip Kumar, P.W. 12, and Harjinder Singh, appellant, near the water tap in front of a tin factory in Zamirwali lane, Delhi. Harjinder was apparently worsted in the fight and he then left the place holding out a threat that he would teach a lesson to Dalip Kumar. The appellant. returned with his brother Amarjit Singh to the house of Dalip Kumar and shouted to Dalip Kumar to come out. Mst. Tejibai opened the door of the house and asked the appellant and Amarjit Singh to go away, but either these two or the

> appellant pulled Dalip Kumar out of the house into the lane and gave him beating near a lamp-post in the comer of Zamirwali lane. At. that time the deceased Kewal Kumar, who was the brother of Dalip Kumar, came and tried to intervene and rescue his brother. It is at this stage that the evidence conflicting as to what exactly happened, According to one version, Amarjit Singh accused caught hold of Kewal Kumar and the appellant took out the knife and stabbed the deceased. According to the other version, given by Mohd. Ali, P.W. 5, this is what happened:
>
> "Dalip Kumar's brother holding Jinda accused asked him not to fight. Jinda at that time took out the knife from his pocket and opened it with both his hands and then gave a blow with it under the belly and the upper portion of the left thigh. Amarjit Singh accused did not do. anything."

In cross-examination he stated:

> "Jinda accused was holding Dalip Kumar from the collar of his shirt by his left hand. At that time Kewal Kumar was on right hand side of Jinda accused. When Jinda took out the knife and opened it with both his hands, Dalip Kumar and his brother Kewal were grappling with Jinda accused Jinda accused gave only one knife blow to Kewal Kumar. Kewal Kumar was m bent condition when he was stabbed only once."

After inflicting this injury the appellant ran away. Dr. G..S. ,Mittal, P.W. 8, noted the following injuries on the person of the deceased:

> 1. A stab wound 1"x1/4"x? On left thigh upper and below the inguinal ligament.
>
> 2. Abrasion l" x linear on back of left fore-arm middle.

He described the other features of the injuries as follows:

> "The direction of the stab wound was Oblique and was going medially. Sartorius muscle was cut underneath along with femoral artery and vein. Cut over major part of their diameter. There was effusion of blood in the muscles and around the track over left thigh upper end..."

He deposed that death was due to shock and hemorrhage from injury to femoral vessels by stab wound of the thigh. He further stated:

> "It is correct that femoral artery and vein are important main vessels of. the body. The cutting of these vessels would result in great loss of blood. The cutting injuries of these vessels could result in immediate death or after short duration."

It was urged before the Sessions Judge on behalf of the appellant that, in the circumstances of the case; the offence, if at all committed, Would fall under s. 326, I.P.C. The learned Sessions Judge,

relying on Virsa Singh v. State of Punjab (1), he/d:

> "In this case, the prosecution has proved that the bodily injury, the nature of which has been described above was present. This injury was caused with the pen knife deliberately. It was not accidental or unintentional. Injury of any other kind. was not intended. This injury in the opinion of this doctor was sufficient in the ordinary course of nature to cause death. This being so the case 1958 S.C.R. 1495 would apply and the offence which the accused Jinda has committed falls u/s 302 Indian Penal Code."

The High Court, on appeal, over-ruled a similar contention in the following words:

> "Lastly, the counsel has attempted to take the case out of the purview of the offence of murder. It has been contended that it was. just a small knife with which a blow was given and that it was not on the vital part of the body and, therefore, the appellant should not be held guilty of murder. In my opinion, the contention is wholly unsustainable. The deceased, a boy of about 16 years of age had merely come to help his brother, when the appellant, who had deliberately come armed with knife from his house, stabbed the deceased with that knife on vulnerable part. 1 do not see how the (1) [1958] S.C.R. 1495.

offence can be considered not to fall within the purview of murder."

Later, the High Court observed:

> "It is futile to contend that he did not intend to kill the deceased. The injury and the weapon are quite eloquent in this respect."

The learned counsel for the appellant, Mr. Chari, contends on the facts established in this case no offence under s. 302 s been committed and the appellant should have been connected under s. 326 or at the most under s. 304, part two. The learned counsel for the respondent strongly relies. on the decision this Court in Virsa Singh v. Slate of Punjab(1) and he says at all the ingredients laid down in that case by this Court are ascent in this case and, therefore, the High Court was correct in firming the conviction of the appellant under s. 302, I.P.C. It seems to us. that all the ingredients which were laid down this Court in that case have not been established in this case. Bose, J., speaking for the. Court observed:

> "To put it shortly, the prosecution must prove the following facts before it can bring a case under s. 300, "3rdly";
>
> First, it must establish, quite objectively, that a bodily injury is present;
>
> Secondly, the nature of the injury must be proved. These are purely objective investigations.

> Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and,.
>
> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

The learned Judge further explained the third ingredient at p. 1503 in the following words:

> "The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he (1) [1958] S.C.R. 1495.

intended to inflict 'the injury' that is proved tO be present.If he can show that he did not, or if the totality of' the circumstances justify such an inference, then, of 'course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor ,there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

In Rajwant singh v.State of Kerala(1), Hidayatullah, J. referring to Virsa Singh v. state of Punjab(2), observed:

> "As was laid down in Virsa Singh v. State of Punjab... for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the. injury is found to be sufficient to cause death one test is satisfied. Then it must be proved that there was an intention to inflict that very injury and not so.me other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is satisfied."

It seems to us that the. High Court has not considered whether the third ingredient laid down by Bose, J. in Virsa Singh v. State Punjab(2) has been proved in this case or not. In our opinion the circumstances justify the inference that the accused did not intend to cause an injury on this particular portion of the thigh. The evidence indicates that while the appellant was trying to assault Dalip Kumar and the deceased intervened, the appellant timing 'himself one against two took out the knife and stabbed 1he deceased, It also indicates that the deceased at that stage was in a

crouching position presumably to intervene and separate the two. It cannot, therefore, be said With any definiteness that the appellant aimed the blow tat this particular part of the thigh knowing that it would cut the artery. It may be observed that the appellant had not used the knife While he was engaged in the fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife.

(1) A.I.R. 1965 S.C.1874, 1878 (2) [1958] S.C.R. 1495 in these circumstances it cannot be said that it has been proved that it was. the intention of the appellant to inflict this particular injury on tiffs particular place. It is, therefore, not possible to apply cl. 3 of s. 300 to the act of the accused.

Nevertheless, the deceased was in a crouching position when the appellant struck him with the knife. Though the knife was " 5 to. 6" in length including the handle it was nonetheless a dangerous weapon. When the appellant struck the deceased with the knife, he must have known that the deceased then being in a bent position the blow would land in the abdomen or near it a vulnerable part of the human body and that such a blow was likely to result in his death. In these circumstances it would be quite legitimate to hold that he struck the deceased with the knife with the intention to cause an injury likely to cause death. We are, therefore, of the-opinion that the offence falls under s. 304 Part 1.

The appeal is allowed and the conviction is altered from one under s. 302 to s. 304 Part 1 and the appellant is sentenced to seven years rigorous imprisonment.

G.C. Appeal allowed.