Supreme Court of India
Dev Raj vs State Of Punjab on 11 March, 1992
Equivalent citations: AIR 1992 SC 950, 1992 CriLJ 1292, 1992 (1) Crimes 980 SC, JT 1992 (2) SC 302, 1992 (1) SCALE 608, 1992 Supp (2) SCC 81, 1992 (2) UJ 65 SC
Author: K J Reddy
Bench: K J Reddy, R Patnaik
ORDER K. Jayachandra Reddy, J.

1. The sole appellant herein alongwith two other co-accused were tried for offences punishable under Sections 302 read with 34, 307 read with 34 IPC and Section 27 of the Arms Act. The learned Additional Sessions Judge, Gurdaspur convicted all of them. In an appeal preferred by them the High Court however confirmed the convictions of the present appellant and acquitted the other two persons. The appellant was convicted under Section 302 and sentenced to imprisonment for life and to pay a fine of Rs. 3000/- in default of which to undergo further R.I. for three years. He was also convicted under Section 307 IPC and sentenced to five years R.I. and to pay a fine of Rs. 1000/- in default of which to undergo further R.I. for one year. He was further convicted under Sections 307/34 IPC and sentenced to three years R.I. and to pay a fine of Rs. 100/- in default of which to undergo further R.I. for one month.

2. The prosecution case is that the appellant and other two co-accused, P.W. 7 a radio artist residing at Ludhiana and his brother Chamel Singh the deceased in this case, belong to Village Jauran Chittran. P.W. 7 was in the village in connection with Ramlila performance. On 2.10.79 the day of occurrence the deceased accompanied P.W. 7 to the Village Bus-stop to see him off at 5 P.M. They were waiting for the arrival of the bus in front of the shop of Kundan Lal, one of the co-accused. Just then the appellant came there. The deceased complained to him that he and others were insulted at the hands of the police. The appellant did not relish this and retorted why Chamel Singh was to make a complaint. This led to exchange of abuses and therefore the appellant went to his nearby shop and returned with a gun. Bodhraj, another accused came there armed with a revolver and Kundan Lal was armed with a kirpan. The later two shouted a lalkara. Thereupon the appellant fired a shot from the gun hitting on the left upper arm of the deceased. It is alleged that he also fired at P.W. 8 who had just alighted from the bus. P.W. 7 saved himself by taking shelter behind a small shed. The deceased staggered towards the village but fell down. Thereafter the accused made good their escape. The deceased was taken to the Hospital by P.W. 7 alongwith P.W. 8 the injured. Deceased and P.W. 8 were medically examined by the Doctor, P.W. I. He found on the injured deceased 5cm x 4cm lacerated wound on the lateral aspect of left upper arm. He also found multiple lacerated punctured wounds with inverted margins around this injury. The injured was kept in observation. He opined that all the injuries were result of fire arm. He also examined P.W. 8 and he found five simple injuries which could have caused by fire arm. The injured deceased was operated by P.W. 3 on 3.10.1979. On 19.10.1979 as well as again on 13.11.1979 the deceased was alive and was again referred to P.W. 3. He was again admitted to the Civil Hospital, Gurdaspur on 15.11.1979. The right arm of the deceased was amputated on 19.11.1979 and on the same day he died at about 1.55 p.m. P.W. 2 another Doctor conducted the post-mortem and he found five main injuries. The first injury was a healed scar mark below the right clavicle. The second injury was a surgically dressed wound on the left shoulder and underneath he found that blood vessels being legated and the right

arm being cut away because of amputation. The other injuries were also surgically incised and stiched wounds. On internal examination he did not find any injury on any other organs except a fracture on the left humorous and on dissection he removed three pallets. He opined that the death was due to haemorrhage and shock which was sufficient to cause death in the ordinary course of nature. He also stated in his deposition that the shock and haemorrhage was on account of the injuries found on the dead body. To a specific question that the injuries found on the dead body were sufficient to cause death in the ordinary course of nature, he answered thus:

Super added secondary haemorrhage either secondary infection; dislocation of the pallet from the injured vessel particularly on injuries on the left arm as found in the case were sufficient to cause death and so my reply is in the affirmative.

In the cross-examination he further stated that he did not observe in the post-mortem that the injuries found were sufficient to cause death in the ordinary course of nature. He further admitted thus:

As it is, I could not make up my mind in the absence of indoor record of the patient regarding the duration between injuries and death. The injuries were of varying duration in view of surgical intervention. It is correct that haemorrhage could be due to reasons other than injuries else. But in this case, the haemorrhage was positively there particularly in injury No. 1 in the left limb. The said injury was indeed an old one but a secondary haemorrhage can take place at any moment after 7 to 14 days duration. It is correct that arm is not a vital organ.

From the above medical evidence it is clear that the death was not direct result of the injuries caused to the deceased during the occurrence and it is possible that the secondary haemorrhage could have taken place between 7 to 14 days. Further in this case it is to be noted that the occurrence took place on 2.10.1979 and the injured died on 19.11.1979, i.e., nearly one and half months later. In between he was operated and for the purpose of surgeries several incised wounds were made and the doctor opined that the second haemorrhage, which resulted in shock and haemorrhage resulting in death, took place on the day when the right arm of the deceased was amputated. Under these circumstances we find it difficult to convict the appellant under Section 302 simplicitor as the death cannot be said to be a direct result of the injuries caused particularly having regard to the intervening cause mentioned above. Under these circumstances the offence committed by him would be one of grievous hurt. In the result we set aside the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life. Instead we convict him under Section 326 IPC and sentence him to undergo seven years' R.I. The sentence of fine of Rs. 3,000/- with the default clause to suffer R.I. for 3 years is confirmed. The other convictions and sentences awarded against him by the courts below are confirmed. The appeal is partly allowed.