Supreme Court of India
Sarabjeet Singh And Ors. vs State Of Uttar Pradesh on 22 November, 1982
Equivalent citations: AIR 1983 SC 529, 1983 CriLJ 961, 1982 (2) SCALE 1354, (1984) 1 SCC 673
Bench: D Desai, R Misra
ORDER

1. Special leave granted.

2. We heard Mr. Ram Jethmalani, learned Counsel for the appellants and the learned Counsel for the State of U.P.

3. The appellant Sarabjeet Singh and 17 other persons were put up on trial before the learned II Additional Sessions Judge, Gonda, in Sessions Trial No. A-65/74 for having committed offences under Sections 147, 427 read with 149, 323 read with 149 and 302 read with 149 of the Indian Penal Code, alleging that they committed murder of Radhey Shyam, an infant aged about 4 years, son of P.W. 1 Ghirau, by lifting him and throwing him on the ground. The genesis of the quarrel lies in a transaction of sale of land belonging to one Smt. Koela purchased by P.W. 1 Ghirau from accused 1 Sarabjeet Singh for a consideration of Rs. 1600/- three years prior to July 15, 1972, being the date of occurrence. This transaction of sale was not evidenced by any registered deed but P.W. 1 Ghirau claimed to be in possession and in order to assert his possession he proceeded to construct a wall on the northern, eastern and southern sides of this land. He also constructed a 'Marha' in the northeastern and another on the southern side of his ancestral land. He had put up a thatched room. There was a plot bearing No. 1146 belonging to Ghirau which is to the east of the land of accused 1 Sarabjeet Singh and Sarabjeet 20 Singh was interested in purchasing this plot of land for which he approached Ghirau on couple of occasions but Ghirau was in no mood to transfer this land. In the meanwhile, the village in which this land is situated was put in to consolidation and by a quirk of fate, the name of the mother of accused 1 was entered on the land which he desired to purchase. When objections were raised, Sarabjeet Singh approached Ghirau to give a favourable statement before the authorities but he failed to persuade Ghirau. There was thus some embittered relationship between accused 1 Sarabjeet Singh and P.W. 1 Ghirau, the father of the unfortunate innocent victim. On July 15, 1972, P.W. 1 Ghirau, his other son P.W. 2 Pateshwari Prasad, his mother Smt. Koela and his wife Smt. Patiraji were present on their ancestral land in front of his house and the infant Radhey shyam was playing near about. At that time, led by accused 1, 17 other named accused and some other unknown and unidentified about 5-6 in number trespassed into the land. The miscreants carried spears and lathis. Accused 1 Sarabjeet Singh gave the usual 'lalkard' that the house of Ghirau be demolished and the inmates of the house be driven out. Accused 1 Sarabjeet Singh and Shobha attacked Ghirau and the remaining accused began demolishing the charni walls and the thatched 40 shed. Smt. Koela came to the rescue of Ghirau but she was pushed aside with the help of a lathi and she suffered injuries. Accused Kamesbwari struck a lathi blow on the head of PW. 2 Pateshwari. At that time accused 1 Sarabjeet Singh lifted infant Radhey Shyam bodily and threw him with some force on the ground. It is the prosecution case that Radhey Shyam suffered some internal injuries and committed blood and soon fell into coma. Radhey Shyam was immediately carried to the house. Till about 11 O'clock no one was allowed to come out from the house and thereafter the accused and his companions left. P.W. 1 Ghirau proceeded to police station

Lallia and lodged a report of the occurrence which was reduced to writing and is admitted in evidence as Ka-1. The names of accused 1 and 17 others were mentioned in the First Information Report. An offence was registered and P.W. 1 returned to his house when he found that Radhey Shyam had succumbed to his injuries. He returned to the police station and reported about the death of Radhey Shyam and the offence was altered to one under Section 304, I.P.C. After the usual investigation accused was chargesheeted as mentioned above.

4. Amongst others, the important witnesses are P.W. 1 Ghirau, PW. 2 Pateshwari Prasad, PW. 7 Dr. Nirankar Singh who carried out the autopsy and PW. 6 Dr. V.K. Verma who examined P.W. 1 Ghirau and PW. 2 Pateshwari Prasad.

5. Accused 1 gave an application Ext. Ka-3 to the Superintendent of Police, Gonda, in which he gave a counter version of the occurrence. This was inquired into by Circle Inspector PW. 8 Har Niwas Misra who submitted his report Ext. Ka-11.

6. In the course of the trial accused 1 pleaded that he has been falsely involved in the case on account of a conspiracy between Lalta Prasad and Ghirau with a view to taking away the land which v/as in his possession for years. He stated that plot No. 1146 has been in his possession since the time of his father and this plot came to be recorded in the name of his mother during consolidation operations. He further stated that the land of Smt. Koela came into his possession as he purchased the same. He stated that PW. 1 Ghirau, one Bhusaili and Dhiran wanted to purchase this land and, therefore, they were enraged when accused 1 succeeded in purchasing the same. He further stated that PW. 1 Ghirau is inimical to him because Ghirau's paternal aunt (his father's sister) is married to Ram Chotey who was Pradhan but who lost in the last election to accused 1 Sarabjeet Singh. He has made certain allegations against Ram Chotey with which we are not concerned. He denied having caused any injury to any witness and also denied that he either lifted Radhey Shyam or threw him on the ground with force. Other accused tried at the same trial made different statements but they are hardly relevant at this stage.

7. The learned Sessions Judge held accused 1 Sarabjeet Singh guilty of having committed the murder of Radhey Shyam and convicted and sentenced him to suffer imprisonment for life. He convicted the remaining accused for offences under Section 147, Section 427 read with Section 149 and Section 323, read with Section 149, I.P.C. and awarded the sentences of rigorous imprisonment for one year, for the first offence, rigorous imprisonment for one year for the second offence and six months' rigorous imprisonment for the third offence respectively. He acquitted all the accused other than accused 1 for the offence under Section 302 read with Section 149, I.P.C.

8. In all 17 accused including accused one preferred Criminal Appeal 4 m No. 542 of 1976 to the High Court of Judicature at Allahabad (Lucknow Bench), Lucknow. A Division Bench of the High Court allowed the appeal of accused 5, Daddan, accused 9 Sattar, accused 14 Shobha Chamar, accused 17 Chhedi and accused 18 Abdul Hakim, set aside their conviction and sentences and acquitted them of all the charges for which they were convicted. The appeal of the remaining 11 accused including the present appellants was dismissed and their conviction and sentences were confirmed. Of the convicted accused, 10 including the accused 1 have preferred this appeal.

9. When the special leave petition came up for admission this Court issued notice limited to the question of nature of offence and sentence in respect of accused 1 Sarabjeet Singh and with regard to the remaining accused limited to the question of sentence only. Except accused 1, the rest of the appellants were granted bail to the satisfaction of II Additional Sessions Judge, Gonda. We grant leave limited to the question as set out in the notice.

10. The limited inquiry, therefore, in this case is whether the learned Sessions Judge was right in convicting accused 1 for an offence under Section 302, IPC and the High Court in confirming the same in the circumstances of this case.

11. The deceased Radhey Shyam was an infant aged about 4 years on the date of the occurrence No weapon is used for causing any injury to him. The maximum that the prosecution witnesses, especially PW 1 Ghirau and PW. 2 Pateshwari Prasad have deposed that during the course of the occurrence accused 1 Sarabjeet Singh lifted the deceased infant Radhey Shyam and threw him on the ground. Now the incident occurred in front of the thatched room of PW. 1 Ghirau Its an open, probably cultivated land. It is not suggested that there were any stones or there was any paved land or a cemented floor on which Radhey Shyam was thrown by the accused. The only word worth noticing m the evidence of both the witnesses is that accused 1 lifted and threw Radhey Shyam with force. We would accept that without a demur.

12. Turning to the medical evidence, PW. 7 Dr Nirankar Sinsh Surgeon Incharge of the Civil Hospital, Gonda, deposed he carried out the autopsy on the dead body of Radhey Shyam In his opinion the age of the deceased at the time of death was 3 1/2 years The Constitution of the deceased was average. There was rigor mortis in the owner extremities Decomposition had set in and the stomach had swollen. Blood mixed liquid was oozing out of both the nostrils. He found injury being a bluish shade of 2" x 1" on the right side of skull just over the ear On internal examination he found skull bones open and hey were widely separated from the adjoining surface. The by and the membranes had turned blue. The heart, the lungs, the liver spleen and kidney were congested. It may be remembered that when a limb is said to be congested it would imply that the blood circulation had stopped and limber were drained of blood. According to the" opinion of the Surgeon deceased died in coma and death was caused due to brain injury. He further stated that the external injury was possible from throwing the body on a hard substance such such as ground and the internal injury was corresponding to the external injury. He said that the brain injury was sufficient to cause death of the boy. In cross-examination he stated that there was swelling of the penis. It is a sign of decomposition. He admitted that normally death is not possible due to congestion of brain and membrane and he admitted that there was no fracture or depression under the only external injury Attention was drawn to a contradiction in the police report forwarding the body for autopsy wherein it was stated that the external injury was on the left side of the head while he found the injury and the only injury Which was not on the left side. He admitted that the police had not reported having noticed any injury on the right side of the head. He could not reconcile this contradiction He admitted that he was surprised when he found all the the sutchers of the skull bone wide open. He admitted that in the course of postmortem of different bodies even with head injuries he never found all the sutchers of the skull bone being separated and that too on account of one external injury because of being thrown on the ground He admitted that even if the body is thrown

with force after death it is also possible that all the joints of the skull may open. He was no sure of his opinion and he requested the Court that an expert may be consulted son this point. To be frank, this medical evidence leaves much to be desired. We would, however, proceed on the basis that Radhey Shyam an infant 3 1/2 years to 4 years of age was lifted and thrown on ground forming part of cultivated land. And he suffered a bruise as an external injury and congestion of brain which is not necessarily fatal He did not suffer any fracture of the skull bone or a depression of he skull, vawlt.

13. On this evidence the question is whether the charge under Section 302, IPC, is brought home to the accused. Section 299 defines culpable homicide. Section 300 defines murder. There are five exceptions to Section 300. Section 300 provides that except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or secondly-if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-3rdly-if it is done with the intention of causing bodily injury to any person and the boldly injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or 4thly-if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

14. Now, obviously the first part of Section 300 will not be attracted because it could not be said that the act of accused 1 which caused the death was done with the intention of causing death. Accused 1 had no grievance against an innocent child. The dispute was with Ghirau. The dispute originated in a land transaction. Attempt was to assert possession. The hut with thatched roof of Ghirau was sought to be demolished and the accused have been convicted for having committed an offence of mischief. Radhey Shyam was an innocent boy even if accused 1 had some malice against Ghirau it is not possible to treat that malice transferred to Radhey Shyam. And even if accused 1 is shown to have been armed with a weapon, he has not used it which would have disclosed his intention. He merely lifted the boy and threw him on the ground. And to recall, the ground was not a cement plastered or paved ground. The young boy did not suffer any fracture either of the skull or any bones of the body. Therefore, even if it is said that accused 1 threw Radhey Shyam with force, the force was not such as to result in fracture of the soft bones of an infant. That gives us a measure of the force used. Therefore, it cannot be said that accused 1 had the necessary intention to cause death of the deceased. It is belied by the absence of the use of weapon even though there were weapons in plenty. Against the victim there was no malice and the only thing done was to throw him on the ground with such force as would not break the bone. We are referring to this aspect more specifically because the medical evidence has left us in grave doubt about the conclusions reached by the autopsy surgeon.

15. The only question is whether third part of Section 300 would be attracted. If the act which caused the death is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is shown to be sufficient in the ordinary course of nature to cause death then the accused would be guilty of having committed the murder. Can it be said that the accused 1 intended to cause bodily injury to this boy? Of course, the other side very humorously submitted that while lifting and throwing the boy on the ground accused 1 was not fondling the boy.

That is indisputably correct. But that does not mean that every death must be viewed backward so as to charge the one who caused death as a murderer. Such an approach would remove the well recognised line between culpable homicide amounting to murder and culpable homicide not amounting to murder. Primarily in any action taken by the criminal, his state of mind is very relevant. The state of mind may either disclose intention or knowledge and that is a very relevant factor. It is equally true that these are a bit illusory factors to be deduced from surrounding circumstances such as the genesis of the occurrence, the motive, the weapon used, the seat of injury, the ferocity of the attack, etc. It is also equally true that every grown up man is presumed to know the natural and probable consequence of his own act. This is undeniable. Therefore, it is necessary to find out whether when accused 1 lifted the boy and threw him on the ground, did he intend to cause any particular injury as envisaged by third part of Section 300 ? And the second question which stares into face is whether the intended injury was caused and it was shown in the ordinary course of nature to cause death. The autopsy surgeon has taken a shifting stand when he said that death was due to injury to the brain and the only injury he found in the brain was congestion and proceeded to explain that congestion of brain does not necessarily result in death. But it is equally true that soon after the injury, within a few hours the victim died and he had suffered an injury and no other probable cause of death is shown. There must be some correlation presumably between the injury and its outcome. The question is not whether there is such correlation or causal connection but the question is whether the outcome was intended by the act undertaken. If every time a push is given to a boy or an infant is thrown it is not possible to attribute the necessary intention of causing the death. Therefore, both clauses lastly and 3rdly of Section 300 are out of the way and Clause 2nly and 4thly were not pressed into service.

16. At this stage we may dispose of one contention of Mr. Jethmalani very seriously canvassed by him. He urged that this is a reckless act on the part of accused 1 and such a rash and negligent act, if it leads to death, is punishable under Section 304A, IPC. Section 304A provides that whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Apparently lifting a young child and throwing him on the ground divorced of surrounding circumstances would appear to be a rash act but no action can be examined divorced from the circumstances in which it occurred. Accused 1 did not accidentally come across the young child and without any mental perturbation lifted him and threw him on the ground. The act of accused 1 has to be examined taking into account the genesis of the occurrence, the strained relationship between the father of the victim and accused 1, the fact that accused 1 accompanied by 17 other persons each one armed either with spears or lathis, came to the house of the father of the victim, proceeded to demolish the hut and caused injury, very trivial, to be presently mentioned to Ghirau and his other son Pateshwari Prasad and in the course of this occurrence Radhey Shyam was lifted and thrown on the ground by accused 1. Coming to the house of Ghirau armed and in company of armed associates forming an unlawful assembly with a view to committing offence would certainly attribute some criminal intention or the knowledge that the act would result in harm to others including a likelihood of causing death. Rashness lies in unintended action but taken remaining oblivious to consequences while the action of accused 1 is the outcome of action referable to knowledge of consequences of the Act. In the background of these facts it is not possible to accept the submission of Mr. Jethmalani that accused 1 was guilty of rash act and is only punishable under

Section 304A of the Indian Penal Code.

17. Accused 1 is a grown up person. He had criminal propensities and proclivities towards, the father of the boy. He accompanied by his associates had come armed to the father of the boy and in the process with a view to causing some harm and wrecking vengeance he also lifted the innocent young child, incapable of causing any harm to him, and threw him on the ground. If you deal with a very boxing infant child and in a manner which appears to be harsh and likely to cause an injury, you are presumed to know that such a young non-grown up infant with non-developed bones and muscles may suffer death. And such knowledge can be attributed to accused 1 in the circumstances of this case. When he lifted Radhey Shyam he must have immediately known that the boy was a very young infant and at that age neither the bones nor the muscles are strong and he was thrown with force on ground, obviously the distinct possibility of death being caused may not be foreign to the mind of the accused 1. He can, therefore, be attributed the knowledge that by his act he was likely to cause death. His case would squarely fall under Section 299 which defines culpable homicide not amounting to murder and will be punishable under the second part of Section 304, IPC which provides punishment if the act is done with knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. Therefore, the conviction of accused 1 from Section 302, IPC and sentence of imprisonment for life is altered to one under Section 304, Part II, IPC.

18. The appeal of accused 1 is partly allowed and his conviction for an offence under Section 302, IPC and sentence of rigorous imprisonment for life are set aside and instead he is convicted for an offence under Section 304, Part II of the I.P.C. and he is sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 3000/-, in default to suffer rigorous imprisonment for one year. If the fine is realised an amount of Rs. 2500/- will be paid to P.W. 1 Ghirau as compensation. His appeal against his conviction and sentence for remaining offences is dismissed and the conviction and sentence are confirmed with this direction that the substantive sentence awarded for the same shall run concurrently with the substantive sentence awarded by this judgment.

19. We must now deal with the appeal of rest of the appellants and the leave is granted limited to the question of quantum of sentence only. The rest of the appellants are convicted for offences under Section 147, Section 427 read with Section 149 and Section 323 read with Section 149, IPC, and each of them is sentenced to suffer rigorous imprisonment for one year, rigorous imprisonment for one year and rigorous imprisonment for six months respectively for the three offences. The High Court has confirmed the sentence in respect of appellants 2-10 before this Court. Now, with regard to the offence under Section 323, IPC, let us look to the injury suffered by P.W. 1 Ghirau and P.W. 2 Pateshwari Prasad. P.W. 6 Dr. V.K. Verma deposed that when Ghirau was brought to him he was complaining of pain on upper outer part of right thigh, in the back on ride side and in the left calf. No external injury was visible. In respect of P.W. 2 Pateshwari Prasad, P.W. 6 Dr. V.K. Verma found a lacerated wound 3/4" X 1/4" X 1/4" on the scalp on left side just above left occipital prominence. The sum total of these injuries is that Ghirau had no external injury and his complaint of pain is a subjective reflection. And the injury on Pateshwari Prasad is so trivial as would require only an expert medical officer to ascertain it and describe it. If appellants 2-10 had come with serious intention of causing harm and were armed with spears and lathis as stated by P.W. 1 and P.W. 2 and

if they were unarmed, it is difficult to believe that Ghirau and Pateshwari Prasad would have escaped almost unscathed. A rigorous imprisonment for six months for such offence is rather on the heavier side. Similarly, a sentence of rigorous imprisonment for one year for the offence of mischief committed by causing damage to the thatched roof of Ghirau appears to be slightly on the heavier side. The damage appears to be quite trivial. And Ghirau and Pateshwari Prasad also were not innocent by standers because evidence shows that accused 1 Sarabjeet Singh had suffered grievous hurt and some simple injuries during this very occurrence. This becomes clear from the evidence of D.W. 6 Dr. S.K. Shukla, which amongst others, shows that Sarabjeet Singh's left hand had suffered a fracture, not that accused Sarabjeet Singh had any right of private defence and at any rate none against deceased infant Radhey Shyam and, therefore, we did not think it proper to refer to it while examining the evidence against accused 1 but while taking the overall view we cannot afford to overlook this aspect. The learned Sessions Judge had found that Ghirau had suffered a damage to the tune of Rs. 500/-. This is the estimate of P.W. 1 Ghirau himseif. We need not question it. Would it be fair to impose a substantive sentence of one year for this offence? Similarly, we find a sentence of one year's rigorous imprisonment for the offence under Section 147 in the facts and circumstances of the case to be little heavy which calls for interference. Having regard to all the circumstances of the case, we are of the opinion that the sentence of appellants 2 to 10 before us for all the offences, namely, Section 147, Section 427, read with Section 149 and Section 323 read with Section 149, IPC, be reduced to sentence already undergone. They have already been released on bail. They need not surrender. Their bail bonds are cancelled and their appeal to this extent is allowed.