Supreme Court of India
Vijay Singh & Anr vs State Of M.P on 25 March, 1947
Author: C K Prasad
Bench: Chandramauli Kr. Prasad, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.444 OF 2008

VIJAY SINGH & ANR. …APPELLANTS

VERSUS

STATE OF MADHYA PRADESH …RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD,J.

In the present appeal by way of special leave, we are concerned with appellants Vijay Singh and Hari Singh.

According to the prosecution, on 16th of June, 1992 at about 6.30 A.M., a report was lodged by the informant, Pohap Singh (PW-1), alleging that while he was at his house, his father Bhagirath (deceased) was returning home after answering the nature's call and at that time, 11 accused persons including appellant no. 2 Hari Singh armed with farsa and appellant no. 1 Vijay Singh armed with a ballam and other accused armed with axes surrounded him. Seeing this, according to the informant, his mother Prema Bai (PW-2), his wife Sheela (PW-3) and grandfather Jagannath (PW-6) went to rescue him, whereupon informant Pohap Singh was assaulted by lathi by one of the accused. Meanwhile, appellant no. 2, Hari Singh inflicted an injury on the neck of the deceased with farsa upon which he fell down. Thereafter, all the accused assaulted the deceased with the weapons with which they were armed. It is the case of the prosecution that appellant no. 1, Vijay Singh caused an injury with a ballam near the eye of the deceased and he died on the spot.

On the basis of the report given by Pohap Singh, a case under Section 147, 148 and 302/149 of Indian Penal Code, 1860 (hereinafter referred to as "the IPC") was registered. Police after usual investigation submitted the charge-sheet against all 11 accused persons and ultimately they were committed to the Court of Sessions to face the trial. The Sessions Judge acquitted 9 of the 11 accused and convicted the appellants herein for commission of offence under Section 302 of the IPC and sentenced them to imprisonment for life. The learned Judge found the allegations as to the infliction of injuries, on the head and neck of the deceased by specific weapon such as ballam by appellant no.1 and farsa by appellant no.2 respectively, to have been corroborated by the medical evidence. Hence, the two appellants were convicted and sentenced as above.

On appeal, the High Court confirmed their conviction and sentence and while doing so, observed as follows:

> "5.....Dr. Kapil Dev Singh, who has performed the postmortem of the deceased on 16.6.1992 and found as many as six injuries on the body of the deceased, out of which injury No.1 is caused by some pointed object near the face of the deceased. Thus, the injury attributed to Vijay Singh is corroborated. The other injury was incised wound on the body of the deceased. All the injuries were caused by sharp and edged weapons. As per opinion of Doctor injury No. 1 was sufficient to cause death of the deceased.....
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> 6. After perusal of the statements of PW-1, PW-2 and PW-3, we find that the Sessions Court rightly convicted the present appellants. So far as the other accused are concerned the Doctor has specifically stated that except the injury No.1 which is attributed to Vijay Singh, all other injuries were caused by the same weapon. Thus, the other injuries are attributed to Hari Singh. Moreso, the witness could not point out which of the injuries were caused by other accused, hence, acquitted the other accused. But so far as the present appellants are concerned, there are specific allegation against them for causing injuries to the deceased.
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> "Underling ours" Aggrieved by the same, the appellants are before us.

At the outset, while assailing the conviction of the appellants, Mr. Rajesh learned counsel appearing for the appellants, submits that the High Court erred in holding that excepting injury no. 1, all other injuries are attributable to Hari Singh. He draws our attention to the evidence of PW-2 Prema Bai and PW-3 Sheela, who claim to be the eye-witnesses to the occurrence and have clearly stated in their evidence that the appellant Hari Singh gave farsa blow on the neck of the deceased and other accused persons (since acquitted) have also assaulted the deceased with farsa.

We have gone through the evidence of the eye-witnesses and from their testimony it is evident that appellant Vijay Singh had caused one injury to the deceased by ballam whereas appellant Hari Singh caused one injury on the neck by farsa. They have also testified that other accused had also given farsa blows to the deceased. In the face of it, the High Court clearly erred in holding that excepting injury no. 1, all other injuries were caused by the appellant Hari Singh.

Mr. Rajesh, then submits that the appellants can be held guilty under Section 302 of the IPC only when it is proved that the injuries inflicted by them have resulted into death. He refers to the evidence of PW-7 Dr. Kapil Dev Singh and submits that according to his opinion, the death occurred because of excessive bleeding and shock on account of all the injuries found on the person of the deceased. He points out that this doctor had found 5 injuries on the person of the deceased and all those injuries cannot be attributed to the present appellants. Mr. Rajesh further points out that even if it is assumed that appellant Vijay Singh had assaulted the deceased with ballam on the face and appellant Hari Singh by farsa on the neck, they cannot be held guilty under Section 302 of the IPC as those injuries only did not cause death.

Mr. C.D. Singh, learned counsel for the State, on the other hand, submits that since the doctor in evidence has stated that injury no. 1 was sufficient to have caused death, the High court rightly convicted the appellants. In any view of the matter, according to Mr. Singh, the deceased died of various injuries caused to him during the occurrence, and therefore, the appellants can well be convicted under Section 302 with the aid of Section 34 of the IPC.

True it is that the High Court, while upholding the conviction of the appellants, has observed that "as per the opinion of the doctor, injury no. 1 was sufficient to cause death of the deceased". We have gone through the evidence of PW-7 Dr. Kapil Dev Singh. PW-7 in his evidence stated that during the post-mortem examination, he found the following injuries on the person of the deceased:

> "1.Depressed fracture with contusion with open wound cutting front parietal bone 4" x 1½" x bone deep on right side.
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> 2. Incised wound on cheek cutting auxiliary bone 5"x 1/2" x bone deep right side.
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> 3. Incised wound of the size 4" x ½" x muscle deep and cutting breathing pipe and major blood arteries on right side.
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> 4. Incised wound on superior collar bone right side, 5" x ½" cutting breathing pipe.
>
> 5. Incised wound right side on the face cutting right jaw bone size 3" x ½" x bone deep." As regards the cause of death, he has stated as follows:
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> "In my opinion, all the injuries were caused by sharp and blunt weapon. In my opinion cause of death is excessive bleeding and shock...." Thus, the doctor has altogether found 5 injuries on the person of the deceased and the death had occurred due to excessive bleeding and shock on account thereof. Therefore, it cannot be said that only injury no.1 was the cause of the death. Hence, we are constrained to observe that the High Court committed serious error by holding that injury no. 1 was sufficient to cause death of the deceased.
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> Nonetheless from the evidence of the prosecution witnesses what is proved beyond doubt is that appellant Vijay Singh caused injury on the face of the deceased by ballam and appellant Hari Singh on neck by farsa. In this backdrop, we proceed to consider the nature of offence. It is relevant here to mention that no charge under Section 34 IPC has been framed against the appellants. Even if we assume in favour of the State, as contended by Mr. Singh, that it is possible to hold the appellants guilty under Section 302 read with Section 34 of the IPC in the absence of charge, in our opinion, for that the prosecution will have to prove that injuries attributable to the appellants or any of them were the cause of death. As observed earlier, the appellants had caused one injury each, whereas the deceased had sustained five injuries. According to the doctor, death had occurred on account of shock and excessive bleeding due to the injuries caused on the person of the deceased.

> Therefore, the death had not taken place as a result of the injuries caused by the appellants or any one of them. Hence, they cannot be held guilty under Section 302 IPC simplicitor or with the aid of Section 34 IPC.

However, the prosecution has been able to prove that the appellants have assaulted the deceased with ballam and farsa, which are dangerous weapons. Further, the appellants had caused grievous injuries on the person of the deceased. Hence, they may not be held guilty under Section 302 or 302 read with Section 34 IPC, but surely their acts come within the mischief of Section 326 IPC. Accordingly, we modify the appellants' conviction and hold them guilty under Section 326 IPC and sentence them to undergo rigorous imprisonment for 10 years each and fine of Rs.5,000/- each, in default to suffer imprisonment for six months. We have been told that both the appellants have already remained in custody for more than the period of their sentence. If that be so, they be released forthwith unless required in any other case.

In the result, the appeal is partly allowed, the conviction and sentence of the appellants under Section 302 IPC is set aside, instead they are convicted under Section 326 IPC and sentenced to the period as above with the direction aforesaid.

……J (CHANDRAMAULI KR. PRASAD) .....J (JAGDISH SINGH KHEHAR) NEW DELHI, MARCH 25, 2014.

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