(1965) 07 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 20 of 1964

Ranjit Singh		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: July 20, 1965

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Jindra Lal, J; Grover, J

Bench: Division Bench

Advocate: R.K. Chhiber, Amicus Curiae, for the Appellant; K.L. Jagga, Assistant Advocate General, for the Respondent

Final Decision: Dismissed

Judgement

Grover, J.

Ranjit Singh, aged about 22/23 years and Dial Singh, aged 17/18 years, were sent up for trial in the Court of Session at Amritsar u/s 302/34 Indian Penal Code, for having committed the murder of Khurshid, a Christian, aged 20 years, at about 4 P.M. on 11th February 1963. Dial Singh was acquitted of the charge but Ranjit Singh was convicted u/s 302, Indian Penal Code, and sentenced to imprisonment for life. He has come up in appeal to this Court against his conviction and sentence.

2. According to the prosecution version, Khurshid and Ranjit Singh used to work in the Onkar Factory near the shop of Kundan Lal Brij Lal. They stopped in front of that shop on the day of the occurrence and started exchanging hot words. Khurshid asked Ranjit Singh to pay up the debt which he owed to him. Ranjit Singh refused to make any payment. Khurshid repeated his demand two or three times which enraged Ranjit Singh who abused him. It is then alleged that Ranjit Singh took out a knife from the pocket of his trousers and inflicted an injury with it on Khurshid''s chest. Khurshid fell down and died soon afterwards. Th? first information report was lodged within almost 10 minutes of the occurrence in the Police Station B-Division,

Amritsar, by Puran Singh who was working at the shop of Kundan Lal Brij Lal as carpenter along with his apprentice Hardial Singh. Puran Singh stated that the occurrence had been witnessed by him and Hardial Singh. The post-mortem examination, which was performed on the following day, showed an incised wound in the chest. On dissection, costal cartilage of the fifth rib of the left side was found cut through and through and pericardium was cut in the same manner. The right ventricle of the heart was also cut. It is unnecessary to give the ether details of the injury because it is obvious, and has not been disputed, that after receiving that injury the deceased was bound to succumb to it immediately and it was sufficient to cause death in the ordinary course of nature. Puran Singh, who appeared as P.W. 3, supported the version given in the first information report and mentioned Dial Singh having said to Ranjit Singh to pay up the money. Hardial Singh P.W. 4 supported his statement and attributed the infliction of the injury on the deceased to Ranjit Singh.

3. It was on 15th February 1963 that Ranjit Singh was arrested by the police at 2 or 2.15 P.M. and when he was interrogated he made a disclosure statement about the weapon of offence i.e. the knife and it was later on recovered pursuant to his disclosure statement. Both the accused persons denied the case of the prosecution in its entirety. The learned Additional Sessions Judge carefully examined the evidence, in particular the statements of the eye witnesses. He felt that so far as Dial Singh was concerned no part had been attributed to him. His name had not been mentioned in the first information report and in the opinion of the learned Judge Puran Singh P.W. probably failed to mention his name because he might have felt that Dial Singh had not committed any offence. The evidence of both the eyewitnesses was believed, so far as Ranjit Singh was concerned, particularly because of the recovery of the knife which was found stained with human blood and which had been recovered as a result of the disclosure statement made by Ranjit Singh but in respect of Dial Singh naturally no case was found to have been proved against him.

4. Mr. R.K. Chhibber has taken us through the evidence but we find no reason to disagree with the appreciation of evidence by the learned Additional Sessions Judge. The occurrence took place in broad day light and was witnessed by P.Ws. Puran Singh and Hardial Singh who had every reason to be present at the spot and who had no motive or Interest in falsely implicating Ranjit Singh. The first information report was lodged most promptly and the medical evidence supported the prosecution version which received corroboration from the recovery of the knife pursuant to the disclosure statement made by Ranjit Singh. We have, therefore, no manner of doubt that Ranjat Singh was rightly found to have inflicted the fatal injury on the deceased.

5. Before the learned Additional Sessions Judge as also before us, it has been contended on behalf of Ranjit Singh that the offence which has been established

against him is not one u/s 302, Indian Penal Code. In view of certain decisions which will be presently noticed, it has been submitted that the offence would be one u/s 304, Part II, Indian Penal Code. The argument raised is that when the fatal injury was inflicted by one blow only it could well be that the act by which the death was caused was not done with the intention of causing death or causing such bodily injury as was likely to cause death. Reliance has been placed on AIR 1946 41 (Lahore) which is a Bench decision of Teja Singh and Mohammad Sharif JJ. In that case there was some ill feeling between Ghulam Mohammad deceased and Hans Raj Singh accused. On the fateful day there was a quarrel between them and an exchange of abuses. Suddenly Hans Raj Singh took up the Chhuri which was lying with him and thrust it in the abdomen of the deceased who fell down and died immediately. Mohammad Sharif J. applied exception 4 to section 300 following a judgment of Young C.J. and Addison J. in AIR 1935 149 (Lahore) in which case no blow whatsoever was given by the deceased and during the course of an altercation the accused who had picked up a skewer-like instrument for breaking ice in his hand thrust it into the stomach of the deceased which ended in death. In that case reference was also made to AIR 1925 148 (Lahore) in which death had been caused with a knife in similar circumstances and the accused was convicted u/s 304, Part II, Indian Penal Code, on the ground that there was no intention to cause death or to cause such injury as was likely to cause death. Teja Singh J. who wrote a separate but concurrent judgment found that Hans Raj Singh could not be regarded as having committed the offence after pre meditation. It had occurred on the spar of the moment in the heat of passion and upon a sudden quarrel. After referring to certain other cases the learned Judge expressed the opinion that in a case where even no blow had been given it could not be said that there had been a sudden fight and, therefore, the application of Exception 4 to section 300 would not be attracted. He preferred to base his decision on the reasoning that there was not the slightest foundation for saying that the accused had attacked the deceased with the intention of causing death. The would found on the dead body was of a nature which could be caused by a knife of an ordinary type. He, therefore came to the conclusion that neither the accused intended to cause an injury sufficient in the ordinary course of nature to cause death nor he knew that his a:t was so imminently dangerous that it must in all probability cause death or it would result into an injury likely to cause death. All that could be held was that the injury caused by him was likely to cause death Therefore, the accused could be held guilty of culpable homicide not amount-ting to murder.

Mr. Chhibber has also called attention to a decision of the Supreme Court in Chamru Budhwa v. State of Madhya Pradesh 1954 Cri.L.J. 1676. In that case there had been a severe exchange of abuses between the parties pre ceding the incident and during the abuse the temper rose and both the parties came out of their respective houses in anger and in the course of quarrel the accused dealt the fatal blow on the head of the deceased with his lathi. It was held that even though the circumstances were

such as not to bring the case within Excep. 1 to section 300, the crime was committed without premeditation in a sudden fight in host of passion upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner thus bringing the case within exception 4 thereto with the result that the offence committed was culpable homicide not amounting to murder. It was further held that when the fatal injury was inflicted on the head of the deceased only by one blow it could as well be that the act by which death was caused was not done with the intention of causing death or of causing such bodily injury as was likely to cause death. The act appeared to have been done with the knowledge that it was likely to cause death; hut without any intention to cause death or to cause such bodily injury as was likely to cause death within the meaning of Part II of section 304 of the Penal Code.

6. The learned counsel for the State has relied on Virsa Singh Vs. The State of Punjab, and another decision of their Lordships in The State of Punjab v. Lachhman Das Cr. A. No. 194 of 1963 (Criminal Appeal No. 194 of 1963 decided on 5th November 1964) and has contended that in the circumstances of the present ease the offence of which the appellant has been found guilty is one of murder u/s 302, Indian Penal Code. In Virsa Singh''s case there was only one injury on the deceased and the finding of the Courts below was that the appellant had caused it by a spear thrust causing a punctured wound 2" x 11/2" transverse in direction on the left side of the abdominal wall. Three coils of intestines were found coming out of the wound. The High Court had found that "the whole affair was sudden and occurred on a chance meeting." It was argued that the prosecution had not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature. Section 300 thirdly was relied upon. Bose J., who delivered that judgment of the Court, put the whole matter after a detailed discussion like this:

To put it shortly, the prosecution must prove the following facts before it can bring a case u/s 300 ''thirdly''; 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.

He further proceeded to observe that once the above four elements were established by the prosecution, the offence would be murder u/s 300 "thirdly". In other words, once the intention to cause bodily injury actually found to be present was proved, the rest of the enquiry was purely objective and the only question would be whether, as a matter of purely objective inference, the injury was sufficient in the ordinary course 3f nature to cause death. No evidence or explanation had been given as to why the appellant in that case had thrust the spear into the abdomen of the deceased with such force that it penetrated the bowels and had caused such intensive damage. In the absence of evidence, or reasonable explanation, that the accused did not intend to stab in the stomach with a degree of force sufficient to penetrate that far into the body, or to indicate that his act was a regrettable accident and that he intended otherwise said Bose J. it would be perverse to conclude that he did not intend to inflict the injury that he did. It was consequently held that he had been rightly convicted by the High Court of murder.

7. There is hardly any point of distinction between the above case and the present case. The knife had a blade of 9 and the injury which was caused was so deep and so much damage had been done inside the chest that in the absence of any reasonable explanation of the nature indicated by Bose J. it must be concluded that the appellant intended to inflict the injury that he did. Once that intention is established, the only question would be whether it was sufficient in the ordinary course of nature to cause death. As the medical evidence is quite clear and categorical on the point, there is no escape from the conclusion tha4 Ranjit Singh was guilty of an offence u/s 302.

8. In the other case, the State of Punjab v. Lachhman Dass the deceased and the accused had known each other and there was no previous enmity. Both of them came out of a temple when the deceased charged the accused with having stolen his shirt and demanded its restoration. The accused denied the stealing but the deceased not being satisfied with the denial persisted in demanding the restoration of the article alleged to be stolen. There was a wordy abuse of each other when the accused took out a kitchen knife and struck it into the chest of the deceased who died instantaneously. The learned Sessions Judge convicted him of an offence u/s 302, Indian Penal Code, and sentenced him to rigorous imprisonment for life. In the High Court the learned Judges concurred with the Sessions Judge in accepting the prosecution case. They rejected the submission of the counsel for the appellant that exception 4 to section 300 would be applicable to the facts of the case because in their view a wordy altercation could not be regarded a ''fight'' but they proceeded to convict him u/s 304, Part II, on the ground that the relations between the accused and the deceased were cordial and there could be no intention on the part of the former to cause the death of the victim, though he had the knowledge that the injury with the weapon in question would be so imminently dangerous that it must, in all probability, cause death, or such bodily injury as was likely to cause death. Their Lordships considered the provisions of section 304 and disagreed with the

view that the offence committed by the accused was only culpable homicide punishable u/s 304. Their observations may be set out in their own words:

We consider that the learned Judges rightly found that the offence committed by the respondent fell within section 300. In arriving at this conclusion regard has to be had inter alia to the nature of the weapon used, the place or part of the body in which or on which that weapon is used and lastly, and this is very important, the degree of force used Now, in the present case the weapon was deadly weapon cannot be in dispute. The part of the body where the injury was inflicted was the chest. The force with which the weapon was used is shown by the fact that the middle lobe of the Tight lung was cut through and through and the right ventrical heart was also cut through and through. In these circumstances, it is just not possible to say that the causing of death by such an injury is culpable homicide not amounting to murder so as to render either part of section 304 applicable. We consider that the learned Judges of the High Court were therefore correct when they said that the case was covered by clause fourthly to section 300. The weapon, the part of the body on which it was used and the force with which the weapon was wielded clearly show that the respondent knew that it was so imminently dangerous that it must, in all probability, cause death. He had obviously no excuse for incurring that risk or causing that injury. The learned Sessions Judge was, therefore, right in holding that the respondent was guilty of murder and sentencing him u/s 302.

The ratio of both the above mentioned decisions of the Supreme Court is certainly not in consonance with the view which was taken by the Lahore High Court in Hans Raj Singh''s case as also in the other cases which can, therefore, be of no avail to the appellant. It is true that in the earlier decision of their Lordships in Chamru Budhwa''s case although there had been no exchange of blows but the finding was that the blow with the lathi had been given without premeditation in a sudden fight in heat of passion upon a sudden quarrel etc. and thus the case fell within exception 4 to section 300, Indian Penal Code. The facts of the present case are decidedly different and it is not possible to hold that the crime committed by the appellant fell within exception 4. It must be remembered that dealing a below with a lathi even thought on a vital part like the head does not necessarily establish that the accused intended to cause death but where a knife with a blade of 9" is thrust in manner in which it was cone in the chest of the deceased, the matter would be fully covered by the other two decisions in Virsa Singh v. State of Punjab5 and The State of Punjab v. Lachhman Das. Consequently the appeal must fail and it is dismissed.

Jindra Lal, J.

I agree.