Narayan Das Vs The State of West Bengal

Court: Calcutta High Court

Date of Decision: Nov. 26, 2008

Acts Referred: Penal Code, 1860 (IPC) â€" Section 307

Citation: (2009) 3 CALLT 586

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Jayanta Kumar Das, for the Appellant; Md. Aslam Khan, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.
This appeal is directed against a judgment and order dated 14th March, 1987 passed by the learned Additional

Sessions Judge, Nadia in Sessions Trial No. VII of April, 1986 arising out of Sessions Case No. 5 of January, 1985 convicting the appellant

Narayan Das for the offence punishable u/s 307 of the Indian Penal Code and sentencing him to suffer simple imprisonment for a period of ten

years as also to pay fine of Rs. 1000/-, in default of payment of fine, to suffer further simple imprisonment for a term of one year. The other four

accused persons namely Shyamal Kumar Dey, Tapash Sarkar, Pran Gopal Ghosh and Nitya Gopal Pramanik were also tried in this case for the

offence punishable u/s 307 read with section 34 of IPC but the learned Trial Court finding no tangible evidence against them to his satisfaction

acquitted them of the charge for the offence punishable u/s 307 read with section 34 of IPC.

2. The facts and circumstances of the case briefly stated are as follows:

On 18th June, 1983 the "B" shift workers of Kalyani Textile Mills were on agitation for lack of drinking water. Although the shift had already

started at 2.00 P.M., the workers did not report for duty. At about 5 O"clock in the evening Madan Mohan Bhaiya, one of the partners, reached

the factory. He took his seat. So did the Manager. Shortly thereafter, the partner was surrounded by the workers. They were about forty in

number. Conversation was going on as regards lack of drinking water and the arrangements made with regard thereto by the management. The

appellant Narayan became furious and started assaulting the said Madan Mohan with fists and blows. Madan Mohan fell down. Narayan pounced

upon him and inflicted a wound with a knife in the belly of Madan Mohan. Madan Mohan cried out for help. Santosh pulled up Narayan but he

fled away from the place of occurrence. Madan Mohan was taken to the adjoining paper mill from where he was shifted to Jawahar Lal Nehru

Memorial Hospital, Kalyani where he was operated upon. At about 5.50 P.M. on 18th June, 1983, the police was informed telephonically by an

unidentified person that Narayan had stabbed Madan Mohan whereupon police rushed to Kalyani Textile Mills when they were told that the

patient had been taken to hospital. The police went there. The Manager of the Kalyani Textile Mills submitted a written complaint at 19.15 hours

on 18th June, 1983. It is on this basis that the case was started under sections 326/307 of the Indian Penal Code against five accused persons

including Narayan. The bloodstained wearing apparels of the victim were seized by the police. The appellant Narayan could not be traced. He, as

matter of fact, absconded for a very long time and ultimately surrendered on 15th December, 1983. The other accused persons started

surrendering one after the other within 3/4 days after the date of the incident. All the five accused persons were charged u/s 307 read with section

34 of the Indian Penal Code. The appellant has been convicted and the rest of the accused persons have been acquitted as more fully indicated

above.

3. Mr. Das, the learned Advocate appearing in support of the appeal made the following submissions:

(a) Except for Madan Mohan Bhaiya the victim himself, who was examined as P.W.5 no other witness saw the accused Narayan dealing the injury

with a knife to the victim.

(b) The prosecution has not been able to establish that the intention of the appellant was to kill the victim or with that intention the attempt was

made. He in support of his submission relied on a judgment in the case of Hari Kishan Vs. Sukhbir Singh and Others, . He also relied on a

judgment in the case of State of Maharashtra Vs. Mohd. Yakub and Others,

(c) Lastly, he submitted that the punishment inflicted upon the appellant is much too severe and should be reduced suitably.

4. It is true that none of the witnesses except for the victim saw the accused pealing the injury with a knife and for that adequate reasons have

come in the evidence.

5. P.W.1 in this regard deposed as follows:

In course of the altercation Narayan Das came forward and hit Madan ! Mohan Bhaiya with fists and blows and thereafter Narayan kicked the

chair in which Madan Mohan Bhaiya was sitting as a result Madan Mohan Bhaiya fell down on the ground from the chair and Narayan Das

pounced on him.

6. P.W.2, Santosh, who was at a distance from the place of occurrence, deposed as follows:

From the gate I found Madan Babu to fall down from the chair in course of the conversation between him and the leaders. I rushed to Madan

Babu and found Narayan Das to assault Madan Babu with fists and blows. I pulled Narayan Das on. Then I lifted Madan Babu who told me that

Narayan Das had stabbed him. Thereafter I found entrails to come out of the belly of Madan Babu piercing his two ganjis.

7. P.W.3, Haren, who had taken the victim to the hospital, deposed in this regard is as follows:

The proprietor Madan Mohan Bhaiya came to the factory at about 5/5.30 P.M.1 along with other employees followed Madan Mohan Bhaiya who

took his seat on a chair in front of the table of Manager. The Manager also took his seat and the employees surrounded them. An altercation

between the employees on one side and Madan Mohan Bhaiya on the other ensued. In course of the altercation Narayan Das dealt Madan Mohan

Bhaiya with 2/3 blows as a result he fell down from the chair. Santosh Das rushed to them and caught hold of Narayan Das who was assaulting as

he was stabbed with a knife. Thereafter Santosh Das lifted Madan Mohan Bhaiya and took him to a paper factory nearby. I did not mark what

Narayan Das did thereafter. Dilip Chakraborty brought a rickshaw and with the help of the rickshaw Madan Mohan Bhaiya was shifted to

Jawharlal Nehru Hospital.

8. From the evidence of the P.W.1 noted above, it appears that after the victim Madan Mohan had fallen down on the floor, the accused pounced

upon him. That is to say that Madan Mohan was on the floor and the accused was upon him and these two persons were surrounded by 30/40

persons. The victim and the accused were in close proximity with each other and it is at that stage that the wound was inflicted by the accused

upon the victim. When the victim cried and told he has been stabbed, it is at that stage that the others could follow what Narayan had done and

then the victim was given assistance and removed to the hospital. The P.W.5, the victim himself deposed as follows:

Suddenly Narayan Das came to me and started to assault me with kicks and blows as a result of which I fell down from my chair and then and

there he dealt me with a knife blow on my belly. Then and there I shouter out ""Narayan Das ameke chaku mere diyeche, Santosh ameke

Haspataley niye chala"" (Narayan Das has assaulted me with a knife, shift me to the hospital immediately.

9. Therefore, as regards the involvement of the accused Narayan we have no manner of doubt. The gravity of the wound inflicted by him would

appear from the evidence of the P.W.8 Dr. Biswas who deposed, inter alia, as follows:

The injury might be caused by sharp cutting weapon like knife. The injury might have caused death if not properly attended.

10. From the evidence of the P.W.7, S.I. Rasaraj Das, we find that before leaving the hospital, he made an attempt to talk to the victim but the

victim had by that time been shifted to the operation theatre.

11. We are therefore not impressed by the first submission of the learned Advocate, for the appellant. We are satisfied that the prosecution has

proved the fact that the appellant Narayan inflicted the wound in the belly of his employer Madan Mohan.

12. The second submission of the learned counsel has not impressed us either. Intention is something which is locked in the mind of the accused

and, therefore, strict proof of intention is seldom available. Intention has to be inferred from the overt act of the accused. When a deadly wound is

inflicted then the Court is entitled to presume that the accused intended to kill the victim. Moreover in the present case the victim was saved

because of the timely medical assistance. Reference may be made to the judgment in the case of Sagayam Vs. State of Karnataka, wherein Their

Lordships opined as follows:

To justify conviction u/s 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. An attempt in order to be

criminal need not be the penultimate act foreboding death. It is sufficient in law if there is present an intent coupled with some overt act in execution

thereof, such act being proximate to the crime intended and if the attempt has gone so far that it would have been complete but for the extraneous

intervention which frustrated its consummation. There are different stages in a crime. First, the intention to commit it, second, the preparation to

commit it, third, an attempt to commit it. If at the third stage, the attempt fails, the crime is not complete but the law punishes for attempting the

same. An attempt to commit crime must be distinguished from an intent to commit it or preparation of its commission.

13. The judgments cited by the learned counsel for the appellant have not laid down any law contrary to the one referred to above by us. The

judgment in the case of Hari Kishan Vs. Sukhbir Singh and Others, is clearly distinguishable because in that case ""the accused though armed with

ballam never used the sharp-edge of it. Therefore, his act in not using the sharp-edge of the ballam goes to show that he did not intend to inflict a

serious type of wound and it is on that basis Their Lordships held that the intention to kill was not proved.

14. In the case of State of Maharashtra v. Mohd. Yakub and others (supra), which was an appeal against an order of acquittal, Their Lordships

held that the intention to commit crime sufficiently evident from the fact that the act was done clandestine fashion and at the dead of night. To be

more precise Their Lordships expressed their mind in the following words:

Para 31"" - Let me now state the result of the search and research : In order to constitute ''an attempt'' first, there must be an intention to commit a

particular offence, second, some act must have been done which would necessarily have to be done towards the commission of the offence, and,

third, such act must be proximate'' to'' the intended result. The measure of proximity is not in relation to time and action but in relation to intention.

In other words, the act must reveal, with reasonable certainty, in conjunction with other facts circumstances and not necessarily in isolation an

intention, as distinguished from a mere desire or object, to commit the particular offence, though the act by itself may be merely suggestive or

indicative of such intention, but that it must be, that is, it must be indicative or suggestive of the intention. For instance, in the instant case, had the

truck been stopped and searched at the very commencement of the journey or even at Shirsat Naka, the discovery of silver ingots in the truck

might at the worst lead to the inference that the accused had prepared or were preparing for the commission of the offence. It could be said that

the accused were transporting or attempting to transport the silver somewhere but it would not necessarily suggest or indicate that the intention was

to export silver. The fact that the truck was driven up to a lonely creek from where the silver could be transferred into a sea-faring vessel was

suggestive or indicative, though not conclusive, that the accused wanted to export the silver. It might have been open to the accused to plead that

the silver was not to be exported but only to be transported in the course of inter-coastal trade. But, the circumstance that all this was done in a

clandestine fashion, at dead of night, revealed, with reasonable certainty, the intention of the accused that the silver was to be exported.

15. In the present case, we have evidence before us to show that the accused Narayan inflicted the wound with a knife. The appellant had come to

the factory presumably with the intention of working during the ''B'' shift. He in the normal course was not supposed to carry a weapon with him.

The fact that he had kept a weapon concealed in his person which he used on the victim after he had pounced upon him goes to show

unmistakably that the act was well-intended and the prosecution has been able to prove the same.

16. For the aforesaid reasons, the second submission is rejected.

17. We do not find any substance in the third submission of the learned counsel either. The crime committed by the appellant is heinous and does

not call for any leniency.

18. However, considering that the appellant was released on bail by an order dated 14th May, 1987 and considering the age factor of the

appellant we reduce the substantive sentence from ten years simple imprisonment of eight years. The amount of fine together with the default clause

stipulated by the learned Trial Court shall, however, remain the same. The appeal thus partly succeeds.

19. The bail granted to the appellant on 14th May, 1987 is cancelled. The appellant is directed through the learned counsel appearing before us to

surrender forthwith to his bail bond and to serve out the sentence as modified by this order. The appellant is entitled to statutory set off.

20. The learned Trial Court is directed to take the appellant in custody so that he may serve out the sentence as modified by this Court.

21. Let a copy of this judgment along with the lower Court records be sent down to the learned Trial Court at once for information and necessary

action. The learned Registrar General is directed to communicate the operative portion of the order at once.

Let a xerox certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties upon compliance of all formalities.

Kishore Kumar Prasad, J.

22. I agree.