
(2007) 08 SHI CK 0007
In the High Court Of Himachal Pradesh

Kanshi Ram and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34, 452

Citation : (2008) CriLJ 884

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The appellants were convicted and sentenced by the Additional Sessions Judge, Fast Track Court, Kangra at Dharamshala u/s 452 read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 5,000/- each, in default of payment of fine further undergo simple imprisonment for 6 months and they were also sentenced u/s 307 read with Section 34 of the Indian Penal Code to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 10,000/- each, in default of payment of fine to further undergo simple imprisonment for a period of one year. All the sentences were ordered to run consecutively. The appellants were held entitled to set off for detention the period already undergone by each of them. The trial Court further ordered to pay a compensation of Rs. 30,000/- to the victim, Dinesh Chand for the injuries suffered by him at the hands of the appellants.

PROSECUTION CASE

2. In nutshell, the prosecution case against the appellants has been that the complainant-Dinesh Kumar was running a hardware shop near Thandol bus stand and appellant-Kanshi Ram was having a vegetable shop in a khokha in front of the shop of the complainant. On 17-8-2000, at about 12 p.m., complainant-Dinesh Chand was reading a newspaper in his shop, the appellant Kanshi Ram,

his son Shashi and nephew Vijay Kumar alias Kala came there and pounced upon him from back and Kanshi Ram gave a blow on his left hand and his thumb got cut and separated with a sharp edged weapon when he tried to run both the accused namely Vijay Kumar and Shashi also inflicted injuries with the sharp edged weapons. Dinesh Kumar shouted Bachao-Bachao, when he saw back Kanshi Ram was having a sword in his hand, Shashi was armed with Khukhri and Vijay Kumar alias Kala, Darat. The complainant-Dinesh ran for shelter in the adjacent house of Brahma Nand. The appellants followed and entered into the house of Brahma Nand, caught hold of the complainant and gave further blows with their weapons on his different parts of the body. Smt. Sita Devi. wife of Shri Brahma Nand had tried to save the complainant, but the appellants kept on hitting him. Consequently, he fell down. Brahma Nand got attracted by the noise. He visited the spot along with a Gurkha labourer and rescued the complainant with great difficulty. The appellants ran away from the spot. The injured Dinesh Chand was taken to Sub-Divisional Hospital. According to the complainant, the appellants nurtured enmity against him for the last about 2 years. They had damaged the wires of his vehicle (Tempo), regarding which a case was pending against them before the Sub-Divisional Judicial Magistrate and they had also damage his Tractor. regarding which a case was going on in the Court of Additional Chief Judicial Magistrate, Palampur. Captain Suresh, brother of the injured informed the police on the same day and a rapat Ex. P.W. 5/A was recorded in the daily-diary. The police visited the hospital and recorded the statement (Ext. P.W. 6/A) of Dinesh, under Section 154 of the Code of Criminal Procedure, on the basis of which a formal FIR Ext. P.W. 6/B was recorded under Sections 452, 325, 324, 323 read with Section 34 of the Indian Penal Code. Dinesh injured was referred to CMC Hospital, Ludhiana, for his treatment.

RECOVERIES u/s 27 OF THE EVIDENCE ACT

3. The police visited the spot and took into possession darat Ext. P2 from appellant-Kanshi Ram vide Memo Ext. P.W. 12/ C, pursuant to his statement Ext. P.W. 12/ A. Sword Ext. P1 and his clothes Exts. P.3 and P4 were recovered from appellant-Sushil Kumar vide memo Exts. P.W. 13/D, as a consequence of his statement Ext. P.W. 13A and from Vijay Kumar got recovered one danda and clothes vide memo Ext. P.W. 13/ F, per his statement Ext. P.W. 13/F.

4. The police also prepared site plan of the spot Ext. P.W. 14/B and also from where the recoveries were affected. The wearing apparel of victim and appellant-Vijay Kumar were sent for chemical examination. On receipt of the report Ext. PA and on completion of the investigation, case under Sections 452,307 read with Section 34 of the Indian Penal Code was presented in the Court of Additional Chief Judicial Magistrate, Palampur, he committed it for trial to the Court of Sessions.

5. The charge was framed and put to the appellants under the aforesaid sections. They abjured the charges levelled against them. To prove their case, prosecution examined 15 witnesses,

DEFENCE OF THE APPELLANTS

6. The respondents were also examined u/s 313 of the Code of Criminal Procedure. They raised the right of private defence. According to them, Kanshi Ram appellant was sitting in his shop and all of sudden Dinesh and his nephew came to his shop. He was holding a sword in his hand and threatened him and attacked him with the sword. He raised hue and cry. On hearing it, the other appellants came to the spot. His son requested Dinesh not to kill him, but again Dinesh Chand pounced upon him but his son disarmed him. Thereafter Dinesh picked up a big stone and proclaimed that "Aaj Main Tujhe Maar Doonga. On this his son countered Dinesh. Had he not done so, he would have killed Kanshi Ram. Due to this Dinesh Chand received injuries on his person. False implication was alleged on account of the previous litigation.

7. The appellants were also heard u/s 232 of the Code of Criminal Procedure. Since it was not a case of no evidence, therefore, the appellants were called upon to enter upon their defense, but no evidence was led.

8. After hearing the learned Counsel for the parties, the learned trial Court convicted and sentenced the appellants as aforesaid.

CONTENTION RAISED IN APPEAL

9. To be precise, the appellants have assailed the impugned judgment of conviction and sentence, on the grounds that the prosecution story was full of contradiction, improvements and exaggerations. The learned trial Court wrongly relied upon their testimonies and the impugned judgment is perverse. The trial Court erred in placing reliance upon the statement of the prosecution witnesses, who were the neighbours of the complainant-Dinesh and belonged to another community and were inimically disposed of towards them and the right of private defense was not taken into consideration.

10. We have heard the learned Counsel for the parties. Shri Tarlok Chauhan, learned Counsel for the appellants has forcefully argued that the learned trial Court has unnecessarily placed implicit reliance upon the prosecution witnesses, who were inimical towards the appellants and the learned trial Court wrongly disbelieved the plea of right of private defense.

10. Contra, Shri S.D. Vasudeva, learned Additional Advocate General, has supported the judgment of conviction and sentence.

11. We have given thoughtful consideration to the rival contentions of the parties and have carefully examined the evidence on record.

Our findings

12. To appreciate the rival contentions of the parties, we have meticulously examined the evidence on record, P.W.8 is the victim Dinesh Chand. He has fully corroborated the version of the prosecution. The defence put to him has been denied. P.W. 9 Sita Devi has also offered the corroboration to his statement.

According to her, on hearing the noise, she came to the verandah. Dinesh Kumar (P.W. 8) came running from below and embraced her, he was being followed by the respondents-Shashi and Vijay Kumar alias Kala. Shashi was having a sword in his hand and Vijay Kumar was having a danda. They hit him and kept on beating him for some time. She cried and raised alarm. On hearing this, her husband, Brahma Nand (P.W. 10) came there with a Gurkha labourer (P.W. 11). A blow of sword was also given to her with the result her Dupatta Ex. P6 was also got cut she also broke her bangle which were taken into possession vide memo Ex. 9/A from the spot. She had also identified the sword Ex. P1.

13. P.W. 10 Brahma Nand lent strength to her version. When he had reached the spot inside, the appellant-Sushil and Kala ran towards the back door. He saw that Dinesh Kumar injured was lying flat there who was removed to hospital. P.W. 11 Double Bahadur also made similar statement. In his cross-examination, he has stated that on seeing the victim being attacked by the appellants, he did not raise alarm, because he got scared.

14. The other evidence regarding the recovery of the weapons of offence affords a corroboration to the case of the prosecution. P.W. 12 Chatter Singh has proved the recovery of Darat from Kanshi Ram appellant vide memo P.W. 12/C from. P.W. 13 Kehar Singh Had proved disclosures statement and recovery of sword from Sushil Kumar and danda from Vijay Kumar vide separate memos. The injured Dinesh was medically examined. He was referred to CMC, Ludhiana for further treatment and management of injuries. MLC Ext. P.W. 7/A and summary of treatment Ex. P.W. 15 /A reveals the following injuries proved by Dr. Rohit (P.W. 7) and Dr. Rahul Tandan (P.W. 15) respectively:

Left Hand : Index finger, rear total 1. Lacerations Scalp 1. Frontal region 4" in amputation at the level of PIP joints. length. Bone deep He sustained various injuries on his laceration person. He was taken to Sub-Divisional 2. Left temporal region hospital, where, he was examined by 2" in length bone deep. Dr. Rahul Tandon (PW 15), who found the following injuries on his Back Left shoulder 2.5" person, and issued MLC in Ext.PW15/A:- laceration stitched outside. Right shoulder 3" lacerations stitched outside.

Left scapular region 3" lacerations sutured outside.

Right side of midlines 3" lacerations sutured outside.

Left Superficial laceration Arm around 5" in length stitched outside. Neck On left side of neck 2" in length clean cut, superficial.

2. HANDS: Right Middle finger. Less of Hand nail & soft tissue adjacent to nail. Laceration over dorsal aspect of middle phalanx extending on to the volar aspect of proximal phalanx. Fracture proximal phalanx at PIP joints. Flexor tendon injury present.

Injury to flexor and extensor tendon.

Distal vascularity doubtful. Thumb : Total amputation of thumb at MP Joints. 3. LEFT FOREARM Wound over dorsal aspect of distal 1/3rd with fracture ulna. Extensor tendon to all fingers transacted. MODE OF INJURY 1, 2 & 3 : Sharp edged weapon. DURATION OF INJURY Less than 24 hours. TYPE OF INJURY No. 1 : dangerous to life. No. 3 & 3 : grievous to life.

15. A perusal of the above injuries indicate that apart from the injuries sustained by the victim on his hand and forearm, there were also injuries on the vital parts, like head and neck. The doctor has opined that the victim would have died and he not given timely treatment. Further according to him, the injury Nos. 1 to 3 above can be caused with sword Ext. P. 1 and darat Ext. p.2.

16. It is by now well settled that for constituting an offence u/s 307 of the Indian Penal Code, it is sufficient in law, if there is present, intent occupied with some overt act in execution thereof. The ingredients of the offence u/s 307 of the Indian Penal Code are fully established, in this case, the presence is admitted by the convict appellants the recovery of the weapons have been proved from them. The plea of right of private defence is absolutely not made out from the evidence on record. There is no material contradiction in the statements of the prosecution witnesses. It is clearly established that in furtherance of the common intention; the appellants with preparation trespassed into the shop and house and they had the knowledge, intention and knew the circumstances under which they acted with a view to cause the death of Dinesh. The prosecution has been able to prove the actus reus and the mens rea.

17. The learned trial Court has rightly and aptly picked up and appreciated, each of the relevant facts. We have examined the impugned judgment of conviction and sentence passed by the learned trial Court. Since we did not find anything worth interfering, accordingly we affirm it. Consequently, the appeal is dismissed.