
(2005) 01 P&H CK 0178
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 550-DB of 1996

Subhash	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

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

Citation : (2005) 13 CriminalCC 308

Hon'ble Judges : Virender Singh, J;S.N. Aggarwal, J

Bench : Division Bench

Advocate : K.K. Aggarwal, with Mr. Kapil Kakkar, for the Appellant; Bijender Dhanker, A.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Virender Singh, J.—Subhash, Hari Om Alias Om and Parmod, the appellants stand convicted u/s 302 read with Section 34 IPC vide impugned judgment of learned Additional Sessions Judge, Rewari dated October 17,1996 for allegedly causing the death of Parbhat Singh son of Hardhian Singh in the area of village Pali. They have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- eachjn default thereof to undergo rigorous imprisonment for two years. Aggrieved by the impugned judgment of conviction and sentence they have preferred the instant appeal.

Brief facts of the case:

2. Parbhat Singh 9since deceased) aged 55 years was coming back to his house after attending the marriage of the daughter of Rantej of his village, when at about 10.0 P.M. the present appellants met him on the way in the lane. They caught hold of him. He requested them to leave him but they started giving him fist and kick blows. Consequently he fell down. Lala son of Mam Raj rescued Parbhat Singh from the appellants. He was removed to Civil Hospital Rewari. A ruqqa was sent to the concerned police whereupon ASI Sunder Lal (PW-9) of

police post Kund (police station Khol) reached the hospital and recorded the statement of Parbhat Singh. Since no cognizable offence was made out, the said statement was recorded in the Daily Diary Register. Parbhat Singh died in the hospital on 31.1.1995, whereupon the formal FIR (Ex.PB/1) was registered u/s 302 read with Section 34 IPC in the concerned police station.

3. After completion of investigation, the appellants were challaned to face trial As indicated above, they have now suffered conviction for the charge of Section 302 read with Section 34 IPC.

4. We have heard Mr.K.K.Aggarwal, learned Senior Advocate appearing for all the three appellants and Mr.Bijender Dhanker, learned Assistant Advocate General representing the State of Haryana. With the assistance of learned counsel for either side, we have gone through the entire record very minutely.

5. Mr.Aggarwal without joining any issue on merits of the case has confined his arguments on the point of gravity of offence only. He submits that even if the allegations of the prosecution are taken to be true, legally the present case would not fall within the four corners of Section 302 IPC as there was no common intention of the appellants to commit the murder of Parbhat Singh and they had not even the knowledge that the injuries being caused in the shape of fist and kick blows were likely to prove fatal. The learned counsel then contends that in the light of the fracture of ribs on the person of the deceased, as noticed by Dr.B.K.Sharma, Radiologist (PW-1), at the most it can be said that the appellants had the common intention to cause grievous injuries to Prabhat Singh. The present case, thus, would fall within the mischief of Section 325 read with Section 34 IPC, Mr.Aggarwal so contends.

6. On the point of quantum of sentence, the learned counsel contends that in the event of altering the conviction of the appellants to Section 325 read with Section 34 IPC, the sentence already undergone by them would meet the ends of justice. Dwelling upon his argument, Mr.Aggarwal contends that so far as Subhash and Hari Om appellants are concerned, they have already undergone more than five years of their substantive sentence, whereas Parmod has also remained in custody for two years before he got bail from this Court.

7. Repudiating the arguments advanced by Mr.Aggarwal, Mr.Dhanker submits that since all the three appellants waylaid the deceased, thereafter opened common assault on him giving him multiple injuries, which resulted into his death, as such their case squarely falls within the four corners of Section 302 read with Section 34 IPC and hence the conviction as recorded by the learned trial Court deserves to be upheld.

8. Since Mr.Aggarwal has not touched the merits of the case on other counts except the gravity of offence, we do not intend to delve into detailed discussion with regard to the evidence adduced by the prosecution, but we at the same time are in agreement with his contentions with regard to gravity of offence.

9. No doubt, in the initial statement of Parbhat Singh, the previous elections have been projected as the cause of enmity, yet taking into consideration the totality of the circumstances, it can comfortably be concluded that the present occurrence is an outcome of a sudden affair that flared upon to spur of moment. The three appellants noticed Parbhat Singh in the lane at a particular time while he was returning home after attending a function at the house of Rantej of his village. Admittedly, none of the appellants was having any weapon in his hands. The allegations is that after a wordy-duel, they caught hold of the deceased and started giving fist and kick blows on different parts of his body. From this it can easily be inferred that the appellants, who were incidentally present at that time, had made up their mind at the spot to give only thrashing (beatings) to the deceased, may be on account of previous election grouse. They had certainly no intention viz. to commit the murder of Parbhat Singh. Even the knowledge that the injuries being caused by them were likely to prove fatal, cannot be attributed to them.

10. After carefully rescanning the medical evidence also, we are of the view that no injury was individually sufficient to cause the death and at the same time as per allegations, no particular injury on the person of the deceased has been attributed to any of the appellants. Since the medical evidence now adduced is to the effect that certain ribs were fractured, the case would at the most fall within the ambit of Section 325 read with Section 34 IPC. Our view is strengthened by a decision of the Hon'ble Supreme Court captioned Mohan and others v. State of Uttar Pradesh, JT 1997(7) Supreme Court 113. In that case also the conviction was modified from the main charge of Section 302 to Sections 326/149 IPC and 323/149 IPC. In the said case the sharp edged weapon was used. However, in the instant case, all the three appellants were empty handed. Another judgment rendered in K.Malles Rao v. The State of Orissa, 1986 Criminal Law Journal 427 can also be read with advantage. In the aforesaid case, the Orissa High Court while relying upon the decisions in Rajwant Singh v. State of Kerala, AIR 1966 SC 1874 and State of Madhya Pradesh Vs. Ram Prasad, observed that the accused, who had dealt some fist blows and kicks on the person of the deceased after the sudden quarrel, had no knowledge that by his act he was likely to cause the death of the deceased and in the absence of proof of knowledge or intention, the offence committed by him would be voluntarily causing grievous hurt or hurt as the case may be.

11. As a sequel to the aforesaid discussion, we modify the conviction of all the three appellants from Section 302 read with Section 34 IPC as recorded by the learned trial Court to Section 325 read with Section 34 IPC.

12. We also agree with the contention of learned counsel for the appellants on the question of quantum of sentence. As stated by Mr.Aggarwal and not disputed by the learned State counsel, two of the appellants namely Subhash and Hari Om have already undergone more than 5 years of their substantive sentence. The third appellant namely Parmod is stated to have already undergone two years.

The occurrence relates to the year 1995. They have faced the agony of protracted trial since then. Taking into account the entirety of facts and circumstances of the case, the ends of justice would be adequately met if all the three appellants are sentenced to the period already undergone by them. It is so ordered.

13. Keeping in view the modification ordered by us in the main charge of conviction, the sentence of fine imposed by the trial Court upon the appellants to the tune of Rs. 10,000/- each is reduced to Rs.5,000/- each. However, in addition to it, we direct the appellants to pay a compensation of Rs. 15,000/- in equal shares to the legal heirs of the deceased u/s 357 Cr.P.C. The amount of compensation shall be deposited within a period of three months from today, failing which necessary steps shall be taken up to recover the said amount in accordance with law.

14. Since the recovery of fine was stayed by this Court at the time of admission of appeal, the amount of fine (Rs. 15,000/- in all) shall also be deposited by the appellants, in default whereof they shall under RI for one year.

15. Resultantly, the instant appeal is partly allowed in the terms indicated hereinabove with regard to the main offence as well as the sentence part.