

PETITIONER:
YUDHVIR AND ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 08/11/1996

BENCH:
A.S. ANAND, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas J.

One Anup Singh, a young wrestler, was murdered around noon on 19.12.1985. Two of his associates were also injured in the episode. Police challaned the four appellants before us for the murder of Anup Singh and for causing hurt to his associates. As the weapon used was a knife and as the place of incident was within the notified area under The Terrorist and Disruptive Activities (Prevention) Act) 1987 ('TADA' Act for short), the case was tried by a Designated Court constituted under section 9 of the TADA Act. All the four appellants were convicted first appellant under section 302 and 324 of the Indian Penal Code and the remaining appellants under those offences with the aid of section 34 of the Indian Penal Code. Each of them was sentenced to imprisonment for life under the first count and to rigorous imprisonment for three years under the second count. The first appellant was further charged with section 25 of the Arms Act 1959 read with section 6 of the TADA Act but he was acquitted of that offence. Appellants have preferred this appeal under section 19 of the TADA Act.

Prosecution story: On the previous day of murder of Anup Singh, an encounter took place between him and first appellant - Yudhvir. On this account, first appellant was harbouring a ruse towards the deceased. On the occurrence day, deceased Anup Singh and his associates (PW1 and PW2) travelled in a bus in which the four appellants also travelled and they all alighted at Rohtak bus stand. First appellant - Yudhvir told his associates that he would take revenge on the deceased for the previous day's incident. He then whipped out a knife from his pocket and aimed a blow at the deceased but it was warded off by him. Fourth appellant - Rajinder, who reached there in the meantime, dealt a blow on the deceased with a hockey stick. At that stage, second appellant (Rambir) and third appellant (Bijender) caught hold of the deceased by his hands from both sides. First appellant then inflicted a stab injury on the chest of the deceased. When PW1 and PW2 made a bid to rescue him, first appellant attacked them also with the knife and consequently, they too sustained injuries. By then, other

people rushed up to the rescue of the victims and the assailants thereupon took to their heels. All the injured were taken to the Medical College Hospital Rohtak but Anup Singh succumbed to the injuries on the same day.

First information regarding the incident was the statement of PW1 recorded by the police. All the four appellants were arrested on different dates, and on the strength of the information elicited from the first appellant a knife was recovered by the police. After completing the investigation, final report was laid against all of them.

During the trial PW1 and PW2 spoke to the occurrence in accordance with the prosecution case. When the appellants were examined under section 313 of the Code of Criminal Procedure, first appellant stated that he was attacked by the deceased Anup Singh and his friends in retaliation for what he did to the deceased on the previous day. Involvement of the remaining appellants in the incident was totally repudiated by all of them.

Learned Judge of the Designated Court accepted the evidence of PW1 and PW2 and held that prosecution succeeded in proving the case against the appellants. Accordingly, they were convicted and sentenced as aforesaid.

Sri Sushil Kumar, learned Senior Counsel who argued for appellants 2 to 4 contended that those appellants were falsely implicated in the case and alternatively contended that no common intention as envisaged in section 34 of the IPC could be fastened on them.

In the first information statement, associates of first appellant were described as Gogi s/o Ishwar Singh, Ramkiran Pandit and Jailal @ Jaila Pahalwan. Appellants have disowned such names and they contended that in the final report laid by the police they were described with those names added to their real names just to make it appear that they have such names also. In this context, it is pertinent to note that in the inquest report, the name of first appellant alone was mentioned and his companions were indicated by the residuary words "etc". Learned Senior Counsel contended that if the FIR had really come into existence before inquest was held, there was no reason to skip the names of the three appellants in the inquest report.

On a closer scrutiny of the evidence we are persuaded to attach much weight to the aforesaid contention. Non-mention of the FIR number in the inquest report is conspicuous therefrom for which PW 9 (Sub-Inspector who held the inquest) could not give any explanation whatsoever. On the other hand, he admitted in cross-examination that he prepared inquest report first and the FIR was recorded next which, of course, at a later stage he tried to make amends. But what he said first on that score seems to be disclosure of the actual sequence of what really happened. At no place in the inquest report, the name of anyone of the assailants (other than the first appellant) was indicated and at all places where the remaining assailants were to be referred to the author of the report employed the abbreviation "etc." This lacuna was later replenished in the FIR by using names of three more assailants which names the appellants have disowned now.

That apart, the role attributed to the four appellants - that one of them blow with a hockey stick on the deceased - has been prevaricated by the two eye witnesses examined in Court. As the post-mortem report showed no corresponding injury on the head of the deceased, PW 1 and PW2 said during trial that they were not sure whether the strike given by A-4 had fallen on the head of the deceased. Again, as we

noticed some of the anti-mortem injuries sustained by the deceased, We find it difficult to believe that second and third appellants would have held the deceased's hands while first appellant was inflicting blows on the deceased with a knife. Deceased had an incised tailing wound on the anterior aspect of the left upper arm, incised wounds on the right thumb, right index finger, left ring finger and also on left middle finger and an abrasion 3x2 cm. on left upper arm with infiltration of blood. It is highly improbable that deceased could have sustained those injuries if both of his arms were held in the firm grip of anyone else.

We are not satisfied from the prosecution evidence that appellants 2 to 4 would have done the act attributed to them. We are therefore, unable to sustain their conviction and sentence.

Regarding first appellant- Yudhvir, the position is entirely different. He admitted his presence at the scene of occurrence; he also admitted that there was an encounter on the previous day between him and the deceased. According to him while he was travelling in the bus) deceased Anup Singh and his associates (PW1 and PW2) tried to drag him out of the bus and when he got down he was assaulted by them and consequently he fell down. Of course, he did not say as to what followed thereafter.

Deceased Anup Singh sustained, apart from the incised injuries adverted to above, a very serious spindle shaped incised wound on the chest which had fractured a rib and pierced into the paracardium and also the ventricle. The other incised wounds on his fingers and upper arms could have been the consequence of warding off the blows with sharp weapon. PW 1 in the same episode sustained a muscle deep incised wound 5x1 cm. on the left buttocks. PW2 sustained a stab wound on his left thigh. Those two witnesses have said that they and the deceased were stabbed by the first appellant with a knife. We have no difficulty in believing their version that it was the first appellant who inflicted the injuries on the deceased as well as on PW1 and PW2.

But then the question is, who was the aggressor in the incident. In this context, we may point out that the conductor of the bus (Mahabir) was cited by the police as a witness to the occurrence but the Public Prosecutor did not examine him merely on the ground that such examination was not necessary. The prosecution has, therefore, now to depend upon the testimony of the injured witnesses for establishing that first appellant was the aggressor. Non-examination of Mahabir, according to us, has badly damaged the prosecution case with regard to the commencing part of the occurrence.

We may now refer to the fact that first appellant also sustained some injuries and he too was admitted in the same hospital on the same day (almost at the same time) as the deceased and the other injured were admitted. Of course, those injuries on the first appellant were simple, but in the circumstances, we cannot overlook those injuries altogether. We are, therefore, not inclined to rule out the case of first appellant that he was first attacked by the deceased in the company of his associates PW1 and PW2. Hence, first appellant would have had initial right of private defence. But he had clearly exceeded his right by inflicting fatal injuries to the deceased with a lethal weapon. In this view of the matters first appellant is liable to be convicted only under section 304 (part I) of the Indian Penal Code and not under section 302, IPC.

In the matter of sentence, Sri U.R. Lalit, learned Senior Counsel who argued for first appellant invited our

attention to certain mitigating circumstances. One is that, first appellant was below the age of 21 when the incident happened; second is that he was pitted against three persons, two of whom were wrestlers. Learned Senior Counsel further pointed out that during the pre-trial period as well as post conviction period, first appellant has undergone imprisonment for a few years in connection with this case. We are persuaded to take such circumstances into account while fixing the quantum of sentence to be awarded to him.

In the result, we set aside the conviction and sentence passed on appellants 2 to 4 and acquit them. We alter the conviction of first appellant to section 304 (Part I) of the Indian Penal Code and sentence him to rigorous imprisonment for the period he has already undergone in connection with this case. the bail-bonds executed by the appellant would stand discharged.