

PETITIONER:
KHANJAN PAL

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT 03/08/1990

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
KULDIP SINGH (J)

CITATION:
1990 SCR (3) 606 1990 SCC (4) 53
JT 1990 (3) 359 1990 SCALE (2) 167

ACT:

Indian Penal Code, 1860: Sections 300, 302 and 304--Injury afflicted without intention to cause death--Acting on spur of moment without pre-meditation--Resulting in death--Conviction thereof--Applicability of Section 304.

HEADNOTE:

The appellant was charged with the murder of a co-worker at the factory in which they were working. The Trial Court discarded the testimony of eye-witnesses and other circumstances and acquitted the appellant, by giving him the benefit of doubt.

On appeal, the High Court accepted the testimony of the eyewitnesses and convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment. This appeal is against the High Court's judgment. Allowing the appeal in part,

HELD: 1. The High Court had interfered with the order of acquittal for cogent reasons and that the conclusion of the High Court that the appellant has caused the death of the deceased, by stabbing with a knife in the manner alleged by the prosecution is unassailable. The approach by the trial court was clearly wrong and the finding is perverse. The testimony of the two independent eye-witnesses had not been properly appreciated. Their presence at the scene could not at all be doubted in the light of what P.W. 3 has deposed. They are probable witnesses and there had not been any infirmity in their evidence. [608F-G]

2. However, the offence is not murder punishable under Section 302 IPC, and that the act of the appellant as proved would fail only under Section 304 Part-II, IPC. The appellant had admitted that there had been an altercation between the two and the deceased received the injury in the course of a scuffle. The evidence clearly established that the whole incident was a sudden development and that the appellant had acted at the spur of the moment and without any pre-meditation.

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There had been no ill-will or enmity between the two. A casual remark made by the appellant provoked the deceased and the altercation ensued which culminated in the stabbing

with knife. The appellant used the knife only once and did not act in any cruel manner. It was in the sudden quarrel in heat of passion that the appellant inflicted the injury on the deceased without any intention to cause death but having knowledge that such act was likely to cause the death of the deceased. [609B-D]

3. The conviction is altered to one under Section 304, Part-II, IPC. Appellant had already undergone imprisonment for over one year. He had been released on bail by order of this Court. The appellant, a young man who had been at large for over nearly 12 years, cannot be committed to prison for any further period at this stage. [609E]

4. To meet the ends of justice, it is directed that the appellant should pay a fine of Rs.50,000 in addition to the term of imprisonment he has already suffered. This amount would be paid to the father of the deceased and other legal heirs. In case of default in payment of fine, the appellant should undergo further imprisonment for six months. [609F-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 328 of 1979.

From the Judgment and Order dated 2.1.1979 of the Allahabad High Court in Government Appeal No. 663 of 1973. Pramod Swarup for the Appellant.

Manoj Swarup, Prashant Choudhary and Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. Khanjan Pal, the appellant, was convicted by the High Court for the offence punishable under Section 302, I.P.C. and sentenced to undergo imprisonment for life, in reversal of the order of acquittal passed by the Sessions Judge, Agra. The brief facts of the case are as under:

The appellant, Khanjan Pal, and the deceased, Deep Singh, were working in the bangles welding factory of Data Ram in Mohalla Rajputana, Thana Firozabad. The prosecution case was that while working in the factory at about 2.30 P.M. on 8.4.1972, the appellant

608 said to the deceased that he had illicit relationship with one Tara. Deep Singh said that he considered Tara to be his sister. The altercation ensued between the appellant and the deceased and in the course of the altercation, the appellant stabbed the deceased with a knife and this incident was witnessed by P.W. 2, Ram Pratap Singh, and P.W. 4, Maharaj Singh besides Umrao Singh, P.W. 1. The injury sustained by the deceased was a punctured wound penetrating into chest cavity. The occurrence was reported at the police station by Umrao Singh, father of the deceased at 3.00 P.M. the same day. In the course of the investigation, blood-stained shirt was seized from the appellant and sent for chemical examination. The certificate was to the effect that it was stained with human blood.

The trial court acquitted the appellant discarding the testimony of the eye witnesses mainly for the reasons that the occurrence could not have happened at the alleged time and place as the place of occurrence was not mentioned in the first information report, the postmortem report referred to the presence of undigested food in the abdomen of the deceased, the presence of Umrao Singh (P.W. 1), Ram Pratap Singh (P.W. 2), and Maharaj Singh (P.W. 4) was doubtful in the light of the conduct of P.W. 3, Data Ram and that since

the attendance register was not produced, it was doubtful whether the factory was opened on that day or not. The appellant was therefore given the benefit of doubt by the trial court.

The High Court on a careful analysis of the entire evidence dislodged the finding of the trial court, accepted the testimony of P.W. 2 and P.W. 4 and concluded that the prosecution had established the charge against the appellant. We have been taken through the judgments' and the relevant records of the case. We are satisfied that the High Court had interfered with the order of acquittal for cogent reasons and that the conclusion of the High Court that the appellant has caused the death of the deceased, Deep Singh, by stabbing with a knife in the manner alleged by the prosecution is unassailable. The approach by the trial court was clearly wrong and the finding is perverse. The testimony of the two independent eye witnesses had not been properly appreciated. Their presence at the scene could not at all be doubted in the light of what P.W. 3 has deposed. They are probable witnesses and there had not been any infirmity in their evidence as rightly pointed out by the High Court. The evidence of P.W. 1, rejected by the trial court was also not accepted by the High Court. The reasoning adopted by the trial court, in our opinion, was so perverse that the High Court was justified in upsetting the finding and

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arriving at an independent conclusion which is fully supported by the evidence on record. We do not, therefore, see any merit in the contention advanced on behalf of the appellant that the conviction is wrong.

We, however, agree with the learned counsel for the appellant that on the basis of the facts proved, the offence is not murder punishable under Section 302, I.P.C., and that the act of the appellant as proved would fail only under Section 304 Part-II, I.P.C. The appellant had in statement under Section 313, Cr.P.C., admitted that there had been an altercation between the two and the deceased received the injury in the course of a scuffle. The evidence clearly established that the whole incident was a sudden development and that the appellant had acted at the spur of the moment and without any pre-meditation. There had been no ill-will or enmity between the two. A casual remark made by the appellant provoked the deceased and the altercation ensued which culminated in the stabbing with knife. The appellant used the knife only once and did not act in any cruel manner. It was in the sudden quarrel in heat of passion that the appellant inflicted the injury on the deceased without any intention to cause death but having knowledge that such act was likely to cause the death of the deceased. In such circumstances, the act of the appellant falls under Exception 4 to Section 300, I.P.C., and the appellant is liable to be convicted only under Section 304, Part-II, I.P.C.

We accordingly alter the conviction to one under Section 304, Part-II, I.P.C. We are told that the appellant had already undergone imprisonment for over one year. He had been released on bail by order of this Court dated 16.7.1979. The appellant, a young man who had been at large for over nearly 12 years, in our opinion, cannot be committed to prison for any further period at this stage. To meet the ends of justice, we direct the appellant to pay a fine of Rs.50,000 in addition to the term of imprisonment he has already suffered. We, thus modify the sentence awarded by the High Court. We also direct that the fine, if realised, shall be paid to P.W. 1, Umrao Singh, the father of the deceased and other legal heirs of Deep Singh. In case of

default in payment of fine, the appellant shall undergo further imprisonment for one year. The appeal is partly allowed.

G.N. Appeal partly allowed.
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JUDIS