



*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 09.08.2024
Judgment delivered on: 28.08.2024

+ CRL.A. 574/2002

CHANDER SINGH Appellant

versus

STATE Respondent

+ CRL.A. 618/2002

HANUMAN Appellant

versus

STATE N.C.T. OF DELHI Respondent

Advocates who appeared in this case:

For the Appellants : Mr. Kanhaiya Singhal, Mr. Prashant Kumar and Mr. Kuntal,
Advocates in Crl.A.574/2002
Mr. Mukesh Kalia, Mr. Sunny Sharma and Ms. Kanika Vohra,
Advocates in Crl.A.618/2002

For the Respondents: Mr. Mukesh Kumar, APP for the State with Insp. Sandeep Kumar,
P.S. Gokul Puri, Delhi. Mr. Devesh Kundu and Ms. Anita,
Advocates for Victim alongwith Ms. Kamlesh (Victim's Wife) and
Mr. Anshul, (Victim's Son).

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Both the appellants i.e. Hanuman and Chander Singh, along with one Khem Chand (since deceased), faced a criminal trial for committing



murder and attempted murder. They all have been held guilty and convicted for commission of offences under Section 302/34 IPC and Section 324/34 IPC.

2. Such order is impugned in the present two appeals.

3. Since both these appeals pertain to one and the same incident and since the contentions raised by the appellants are also similar, these are being disposed of by this common judgment.

4. The incident in question had taken place in the year 1998 and as per the allegations appearing in the chargesheet, both the appellants along with one Khem Chand (since deceased) and one juvenile offender had committed murder of Vinod Kumar on the night intervening 01.11.1998 and 02.11.1998 and in the process, they all, while sharing common intention, also attacked Mohan Lal (PW5) with intention to eliminate him.

5. Both the appellants and Khem Chand were charged under Section 302/307/34 IPC and, as already noticed above, though they have been held guilty for committing offences under Section 302/34 IPC, but with respect to the other charge of attempted murder, they have, instead, been convicted for causing simple injury with sharp weapon and held guilty for offence under Section 324/34 IPC.



6. Co-convict Khem Chand was also held guilty in terms of the impugned judgment dated 16.05.2002 and was awarded punishment vide Order on Sentence dated 17.05.2002 but, admittedly, such Khem Chand has already expired.

7. Thus, at the moment, we are concerned with the aforesaid two appellants i.e. Hanuman and Chander Singh.

8. The facts lie in a very narrow compass.

9. Injured Mohan Lal, who received injuries at the hands of appellants, is the solitary eyewitness of the incident in question. FIR is also registered on the basis of his statement. In his such statement, he claimed that he had gone to attend marriage-reception of his brother-in-law Anand at their residence situated at D-26, Gokul Puri, Delhi. His other relatives including elder brother Hukam Singh and his co-brother Vinod Kumar were also present in such function. At about 12:30 in the night, when they were taking dinner outside the house, all the four accused persons, whom they already knew, came there and accused Khem Chand demanded a match box. However, Hukam Singh, instead, gave infuriating reply by claiming that they had not opened any 'paan shop'. This resulted in a quarrel but all the accused persons left the spot. After 15-20 minutes, when Mohan Lal and Vinod were returning home after seeing off Hukam Singh, at about 1:00 am, all the four accused persons came there and surrounded them. When they tried to run away,



they were apprehended and accused Hanuman gave blow with a gupti on the left thigh of Mohan Lal and in the similar manner, gupti blow was given on the left thigh of Vinod as well. After the aforesaid stabbing incident, all the accused fled from the spot. Both the injured were taken to GTB hospital where Vinod was declared brought dead. According to injured Mohan Lal, Vinod had been murdered by all the four accused (including the juvenile offender) and they all had also attempted to murder him. It was in the above backdrop, all the accused persons were apprehended.

10. Charges were framed to which both the appellants herein had also pleaded not guilty and claimed trial.

11. The prosecution examined 17 witnesses.

12. The accused, in their respective statements made under Section 313 Cr.P.C. pleaded innocence and claimed that it was a false case and they were not involved in the incident. They also examined five witnesses in their support.

13. When these appeals were taken up by this Court on 10.08.2004 (qua appellant Chander) and 19.10.2005 (qua appellant Hanuman), this Court, keeping in mind the fact that the appellants had already undergone incarceration for substantial duration and that the appeals were not likely to be taken up in near future for final hearing and observing that there



was a case for suspension of sentence as the injury inflicted was single blow on thigh, directed suspension of sentence. Appellant Hanuman, the main author of blow had spent more than six years behind the bars whereas appellant Chander had spent more than five years.

14. The above two appellants challenge the order of conviction as well as on sentence.

15. As regards sentence, for offences under Section 302/34 IPC, they have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each. For offences under Section 324/34 IPC, they have been sentenced to RI for six months each. There is a provision for in-default sentence and if the fine amount is realized, it was directed by the learned Trial Court that a sum of Rs.15,000/- from such fine amount would go to the LRs of the deceased, for loss and injury. The sentences were directed to run concurrently.

16. However, when the arguments were heard on 09.08.2024 by this Court, the incident as such was not disputed and the only contention raised by the appellants was limited to the effect that it was not a case where they had any intention or knowledge to commit any murder and at best a case under Section 304 Part II IPC was made out. It is argued that there was never any intention or knowledge or motive or previous enmity available with the Appellant vis-à-vis incident, which happened in spur of the moment.



17. They both were found quite firm in their above stand and their respective counsel also submitted that they were confining their appeals to the above limited aspect.

18. In view of the aforesaid categorical submission made by the appellants, this Court is only required to evaluate whether it is a case falling under Section 302 IPC or under Section 304 Part II IPC.

19. We have carefully gone through the relevant facts in order to ascertain the above said aspect of the case.

20. Undoubtedly, the testimony of PW5 Mohan Lal is in complete synchronization with what he had claimed during the investigation and apparently, he has indicted all the accused persons. As per his deposition, all the four accused resurfaced within 15-20 minutes and surrounded them. The juvenile offender caught hold of Mohan Lal and the appellant Hanuman gave gupti blow on his left thigh. The accused Khem Chand and Chander caught hold of Vinod and in the similar manner, accused Hanuman gave gupti blow on his left thigh also.

21. We have also taken note of the incident which had taken place same night, 20-25 minutes back.

22. The appellant Khem Chand had asked for a match box from Hukam Singh. However, Hukam Singh refused to give any match box and rather made a satirical comment that they were not running any paan



shop. Such annoying and sarcastic remark led to altercation. Though, all the accused left the spot but it is quite evident that they returned in a short while.

23. Thus, if the aforesaid incident is to be believed, the appellants were harboring grudge with Hukam Singh only. Manifestly, Hukam Singh was the one who had refused to give any match box and was responsible for the above said taunting remark which eventually led to the incident in question. Thus, the animosity and the hostility was vis-a-vis Hukam Singh alone. The prosecution has, however, not bothered to enlighten as to why it did not examine such Hukam Singh, whose remark had ultimately triggered and irked the accused and resulted in the incident in question.

24. Be that as it may, if the prosecution's version is believed in toto, it would become clear that the appellants had come back within 15-20 minutes only and, therefore, it can easily be inferred that they remained in the 'same state of mind' and there was not enough of time to cool down the temper and in such a peculiar situation, there is evident lack of any premeditation and intention.

25. Undoubtedly, it happens to be a case of solitary blow.

26. The author of such solitary blow is appellant Hanuman.



27. Identical blows were given to Vinod (deceased) as well as Mohan Lal (injured). These were with the same intensity on the same body-part and with the same intent, knowledge or objective, if we may say so.

28. Obviously, there is no universal rule that whenever there is a solitary blow, it has to be presumed to be a case falling under Section 304 Part II IPC. Conversely, keeping in mind the factual matrix of any given case, the Court can hold it to be case of Section 304 Part II IPC, despite there being multiple blows. Thus, the number of blows cannot be the sole governing factor to determine whether it is a case of Section 302 IPC or of Section 304 Part II IPC.

29. Indisputably, the injury is not on any vital part of the body either.

30. There is nothing to indicate that the aim was directed towards chest or neck and that in the process of scuffle, such blow landed on thigh. On the contrary, the testimony of the solitary eyewitness is very firm and specific and it has been, in no uncertain terms, deposed by him that the blow was given on the thigh and thereafter all the accused persons vanished from there.

31. We also feel that if the intention was to eliminate them, the blow would have been either on the vital part or they would not have left the spot, merely after causing one solitary blow, that too on thigh.



32. We also cannot lose sight of the fact that all the accused were charged for offence under Section 307 IPC for attempted murder of Mohan Lal. However, the learned Trial Court found that it was a case of Section 324 IPC only and not of Section 307 IPC.

33. We are unable to understand as to why if the offence under Section 307 IPC, in context of injuries suffered by Mohan Lal, was converted to one under Section 324 IPC, the similar dealing was not given with respect to the injuries suffered by Vinod.

34. There is nothing to demonstrate any distinction with respect to the manner in which they both had been given injuries. They both were attacked at the same time, by the same person, with the same weapon, and the attack was also given on the same body-part i.e. thigh.

35. The learned Trial Court came to the conclusion that the injuries inflicted upon Mohan Lal had been caused by a sharp-edged object i.e. gupti on a non-vital part and, therefore, it held that it was a case of commission of offence under Section 324 IPC.

36. If that was so, the injuries suffered by Vinod should have also been treated in the same manner. Thus, the approach seems little puzzling and bewildering, in context of alleged injuries inflicted upon Vinod.

37. Undoubtedly, the gupti, which was recovered during the investigation, was blood-smeared but fact remains that the manner in



which the injuries were inflicted upon Vinod and Mohan Lal in identical manner, there was no reason for the learned Trial Court to have treated the case of Vinod Kumar differently.

38. We have also seen the postmortem report and the deposition of Autopsy Surgeon PW-10 Dr. Gaurav Vinod Jain, who noticed incised stab wound of size 2.1 x 0.6 x 10 cm over the outer middle left thigh. The injury had gone through the underlying blood vessel and nerve. There was no other external injury and, according to the Autopsy Surgeon, if immediate surgical intervention had been provided, it could have even saved the injured.

39. Of course, the Autopsy Surgeon also claimed that the injury was sufficient to cause death in the ordinary course of nature but the manner in which the incident has taken place and in view of our foregoing discussion, it cannot be said to be a case falling under Section 302 IPC.

40. There is apparently no real premeditation or intention. The accused had returned within 15-20 minutes. If at all they had any animosity, it was with Hukam Singh who was not present when the appellants had inflicted the blows in question. Moreover, the injuries were caused to Vinod as well as Mohan Lal in an unvarying manner by the same appellant and with the same weapon and since the injury was on a non-vital part of the body, the learned Trial Court, itself, should have



convicted the accused under Section 304 Part II IPC, instead of under Section 302 IPC.

41. Though, the precedents in a criminal trial cannot be applied mechanically as one small difference of fact-situation can make huge difference, reliance by appellants upon *Sukhdev Singh vs State of Punjab*: 1992 Supp (2) SCC 470, *Krishan Kumar @ Monu vs State*: 2014 SCC OnLine Del 4615, *Gurwinder Singh @ Sonu vs State of Punjab and another*: (2018) 16 SCC 525, *Daulat vs The State (Govt. of NCT Delhi)*, ILR (2009) IV DELHI 101, *Hira Lai v. The State (NCT of Delhi)*: 2014 SCC OnLine Del 3532, *Laman Kalu Nikalje Vs. State of Maharashtra*: 1968 SCC Online SC 113 and *Harjinder Singh alias Jinda Vs. Delhi Administration*: 1967 SCC Online SC 57 does not seem misplaced or out of context.

42. In *Randhir Singh vs State*: 2011 SCC OnLine Del 1752, almost similar question was posed to this Court and in judgment dated 07.04.2011, authored by one of us (Hon'ble Mr. Justice Suresh Kumar Kait), the conviction was altered from Section 302 IPC to rather Section 326 IPC. In that case, the injury was on right thigh, a non-vital part of the body and it was observed that it could not be held that the act was committed with the knowledge that it was likely to cause death. In *Rahul vs. State*: 2023 SCC OnLine Del 2197, this Court considered the appeal in which the conviction was recorded under Section 302/34 IPC by the



learned Trial Court. In that case also, one of the accused had taken out knife from his pants and had stabbed the deceased on his right thigh. In that case also, it was a solitary blow and the Autopsy Surgeon had observed that such injury on the front right thigh was sufficient to cause death in ordinary course of nature but eventually, this Court altered the conviction to Section 304 Part II IPC.

43. In view of the above, both the appeals are allowed in part and while maintaining the conviction under Section 324/34 IPC, the order of conviction under Section 302 IPC for causing death of Vinod is altered to Section 304 Part II IPC.

44. Both the appellants have already undergone sufficient incarceration already. The incident is of the year 1998. The appellants were in their twenties when the offences had been committed by them and their sentence was suspended by this Court way back in the year 2004. They, reportedly, have no other criminal antecedent. It also needs to be noticed that the families of the victims were also duly represented before this court when final arguments were heard and they simply prayed for grant of compensation to them instead of giving the appellants any further substantive sentence. Both the appellants have also come forward and are ready to compensate the victims and their families. Taking stock of overall facts of the case, it will in the fitness of the things if we sentence the appellants as under: -



- (i) Both the appellants are sentenced to the period already undergone by them for offence under Section 304 Part II/34 IPC.
- (ii) Simultaneously, they both are fined Rs.1,50,000/- each for offence under Section 304 Part II/34 IPC. The entire such fine amount shall be payable to the legal representatives of the deceased Vinod Kumar within one month from today. However, in case such amount is not paid by them, they both would undergo ten months SI each and would surrender forthwith after said period of one month.
- (iii) As regards offence under Section 324/34 IPC, their substantive sentence shall remain unaltered. However, as volunteered by them, they are also directed to pay fine in a sum of Rs.25,000/- each to injured Mohan Lal/ his family members or legal representatives. Such amount shall be paid by them within one month from today and if they fail to make the payment as aforesaid, they both would undergo SI for a period of one month each.
- (iv) For payment/ disbursal of fine amount, the convicts shall appear before the learned Trial Court/ Successor Court within one week from today and would move application(s) themselves.



45. Both the appeals stand disposed of in the aforesaid terms.
46. Copy of this judgment be provided, free of cost, to both the appellants under the signatures of the Court Master.
47. Copy of the judgment be also provided to the learned counsel for the victims and a copy be sent to the learned Trial Court for information and due compliance.

(MANOJ JAIN)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

AUGUST 28, 2024/st