

Kishore Kumar Vs. State of Uttar Pradesh

Kishore Kumar Vs. State of Uttar Pradesh

SooperKanoon Citation : sooperkanoon.com/490547

Court : Allahabad

Decided On : Jul-21-1999

Reported in : 2000CriLJ552

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : Arms Act, 1872 - Sections 25; Indian Penal Code (IPC) - Sections 302 and 307

Appeal No. : Criminal Appeal No. 882 of 1980

Appellant : Kishore Kumar

Respondent : State of Uttar Pradesh

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ram Prasad Singh, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

1. This appeal arises out of the judgment and order dated 31 -3-1980 passed by Sri S. K. Srivastava, IX Additional Sessions Judge, Bareilly in Sessions Trial No. 369 of 1979 whereby he has convicted the appellant Kishore Kumar under Section 302, IPC and under Section 25 of the Indian Arms Act. He has been sentenced to

undergo life imprisonment under Section 302, IPC and to undergo 3 months rigorous imprisonment under Section 25 of the Indian Arms Act. Both the sentences have been ordered to run concurrently.

One Munna alias Din Dayal was murdered in this incident on 1-5-1979 at about 2 p.m. in Mohalla Kalibari, P. S. Baradari, District Bareilly. S.I. Girish Chandra Dwivedi of P. S. Baradari and H. C. Kundan Singh of outpost Shahmatganj were returning to police station from the Court. When they reached near the 'Arhat' of Om Prakash Chandra Prakash in Mohalla Kalibari at about 2 p.m., they saw one person assaulting another with a knife. The said S.I. challenged the assailant who started running towards eastern side. He and H. C. Kundan Singh chased him and with the help of witnesses Umesh and Mangal Sen. succeeded in apprehending him with blood stained knife at a distance of about 50 paces. On being questioned he gave his name as Kishore Kumar (appellant). At that very time Constable Mahendra Singh of Outpost Shahmatganj also reached there and took the injured to the hospital on the direction of S.I. Girish Chandra Dwivedi. The injured was in wounded condition and was unable to speak. S.I. Girish Chandra Dwivedi also found a bicycle belonging to the accused there. He took the accused's bicycle and the blood stained knife to P. S. Baradari where he lodged the report Ex. Ka-1 at 2-20 p.m. The accused was put up in the lock up. Investigation was entrusted to S.I. Nawab Singh (P.W. 7), who proceeded to the spot immediately and inspected it and engaged himself in investigation of the case as usual. Constable Mahendra Singh returned back from the hospital and reported at P.S. Baradari at 2.55 p.m. vide G. D. Ex. Ka-5 that the injured was declared dead. The case was then converted from Section 307, IPC to 302, IPC. S.I. Nawab Singh had reached from the spot to Police Outpost Shahmatganj at 3-30 p.m. where he learnt about the death of the deceased. Liladhar, P.W. 6 met him at Outpost Shahmatganj whom he took to the hospital Liladhar, P.W. 6 identified the deceased as his son and gave his name as Munna alias Din Dayal. Panchayatnama in the hospital was prepared by S.I. G.S. Sidhu. The statements of the witnesses were recorded by S.I. Nawab Singh and after completion of the investigation he submitted charge sheet against the accused-appellant under Section 302, IPC and 25 of the Indian Arms Act.

2. At the trial the prosecution examined Mangal Sen, P.W. 1, Umesh Chandra Sharma P.W. 2, S.I. Girish Chandra Dwivedi P.W. 3 and H.C. Kundan Singh P.W. 5 as eye-witnesses Dr. I.J. Punhani was examined as P.W. 4 who had conducted postmortem over the dead body of the deceased. Liladhar, P.W. 6 (father of the deceased), S.I. Nawab Singh, Investigating Officer, P.W. 7 and H. C. Babu Ram P.W. 8 were also examined. The accused denied the prosecution case and pleaded false implication. He examined Radhey Shyam Kanchan as DW-1 and Mahesh Chandra Saxena as DW. 2.

Learned Additional Sessions Judge believed the prosecution case and evidence. Accordingly, he convicted and sentenced the appellant as stated in the opening part of the judgment.

We have heard learned A.G.A. from the side of the State and have carefully perused the record of the case and the evidence adduced at the trial.

It deserves mention that at the time of the post mortem of the dead body of the deceased by Dr. I. J. Punhani, P.W. 4 on 1-5-1979 at 4 p.m. The following ante-mortem injuries were found on his person :-

1. Incised wound 5 cm x 15 cm elliptical on the right side chest 6 cm below the right nipple. It was chest cavity deep.
2. Punctured wound 0.5 cm x 0.5 cm x bone deep on the sternum in midline. 4 cm medially to injury No. 1.
3. Two punctured wounds on the left side chest 4 cm x 4 cm x skin deep 15 cm below axilla 5 cm apart from each other.
3. The deceased was found to be aged about 25 years and about one day had passed since he died.
4. It is a case of spot arrest where the appellant was apprehended with the weapon of offence (blood stained knife). Three eyewitnesses of fact, namely, Mangal Sen, P.W. 1, S.I. Girish Chandra Dwivedi, P.W. 3 and H. C. Kundan Singh, P.W. 5 have clinchingly proved beyond doubt by their testimony that it was

the present appellant who had inflicted knife blows on the victim which resulted in his death. Of course, another eyewitness, Umesh Chandra P.W. 2 turned hostile but it is found that he too supported the prosecution case inadvertently in certain measure. His evidence is to the effect that it was about 2 p.m. that he was going in the company of Mangal Sen P.W. 1 when he saw a person lying injured near the 'Arhat' of Om Prakash Chandra Prakash and that the Daroga was taking the accused. He, however, denied to have seen the accused-appellant stabbing the person who was lying injured. In our opinion, the learned Additional Sessions Judge has rightly observed that this witness had probably been won over by the accused. But the time and place of occurrence as well as the presence of the accused, Daroga and another witness Mangal Sen P.W. 1 is established by his testimony too. In any view of the matter, there is satisfactory and convincing testimony of three eye-witnesses, namely, Mangal Sen P.W. 1, S.I. Girish Chandra Dwivedi, P.W. 3 and H. C. Kundan Singh P.W. 5 to the effect that it was the accused/appellant who has stabbed the victim and that he had been apprehended at the spot with the knife, No enmity could be proved by the defence against any of these witnesses which could have tempted any of them to depose falsely against him.

5. The insignificant contradiction in the testimony of the witnesses as to whether the victim received knife blows in standing or lying posture has rightly been ignored by the learned Additional Sessions Judge. At page 17 of the judgment the situation actually stands explained. It was argued before the learned Additional Sessions Judge that P.W. 5 H. C. Kundan Singh stated that when he first saw the accused, he was standing and assaulting the victim who was also standing. It was submitted that according to P.W. 1 Mangal Sen and P.W. 3 S.I. Girish Chandra Dwivedi when they first saw the victim, he was lying on the ground and the accused was assaulting with knife in crouching position. Learned Additional Sessions Judge has rightly observed that the argument was nothing more than hair splitting. Indeed, the accused and the victim must have been on their legs for some time before the victim fell to the ground. It could be that this was the position when the accused and victim attracted the attention of H. C. Kundan Singh. It was natural that during the course of receiving knife blows, the victim fell down to the ground.

6. An attempt was also made before the learned Additional Sessions Judge to taint H.C. Kundan Singh, P.W. 5 to be inimical towards the accused Kishore Kumar. A typed copy of some application dated 7-4-1979 had been filed which the accused had made to the S.S.P. Bareilly alleging harassment to him by one Sardar Sunder Lal. However, in spite of searching cross-examination of H. C. Kundan Singh, nothing could be elicited to establish any link between him and Sardar Sunder Lal. The witnesses vehemently denied any friendship with Sunder Lal. D.W. 1 Radhey Shyam Kanchan, Clerk of Bareilly College, Bareilly was examined to prove the plea of alibi raised by the accused with the help of the register of attendance of students of B.Sc. Part I, Chemistry of the Session 1978-79. The accused was allegedly present in Chemistry Class on 1-5-1979 which was held between 1-20 and 2 p.m. The entry of the accused being present in the said class was not made by D..W. 1 Radhey Shyam Kanchan. The register also showed that there was no 'A' (Absent) entry. Whenever a student was found not responding to the roll call, just a dot had been put. Obviously, it could be possible to convert the dot entry into 'P' (Present) entry. The 'P' (Present) entry against the name of the accused Ram Kishore was also not similar to the other entries of 'P' in respect of other students as mentioned by the learned Additional Sessions Judge on page No. 18 of his judgment. This observation of the learned Additional Sessions Judge is based on his perusal of the register that had been produced in defence. The inference is justifiable that the accused-appellant was simply coining a false plea of alibi.

7. It should also be pointed out that though motive is not necessary to be proved in the case of direct evidence like the present one, but motive has also come to be indicated against the accused-appellant for the commission of this crime. Liladhar P.W. 6 who is the father of the deceased stated that at about 8 days before this incident, the accused was making remarks on the girls passing in front of the shop of the deceased and the deceased had asked the accused not to do so on which the accused had threatened the deceased. Youngsters like the accused/appellant expect unlimited permissiveness from the society with regard to their philandering pursuits and their anger knows no bounds if somebody tries to create hindrance or obstacle in their misadventure. Some of them (as the accused-appellant has done) may go to the extreme extent to translate their anger by eliminating the person creating obstacle in their way. It is most unfortunate that the accused-appellant cut

short the life of the hapless victim who, as a responsible citizen, had simply scolded the appellant with a view to dissuade him from indulging in eve-teasing of the girls.

8. As a cumulative result of the above discussion touching the different aspects of the case, we come to the conclusion that the case of the prosecution was proved against the accused-appellant to the hilt by convincing and trustworthy evidence. The eye-witness account reconciled with the medical evidence, inasmuch as the injuries found on the person of the deceased could be caused by knife blows inflicted by the accused/appellant. At the top of it, he was apprehended also at the spot with the blood stained knife, which he had used as the weapon of the offence to inflict injuries on the person of the victim. He could not establish any enmity with the eye-witnesses, namely, Mangal Sen P.W. 1, S.I.-G.C. Dwivedi P.W. 3 and H. C. Kundan Singh P.W. 5. Nor could it be shown that any of these witnesses was thick with the deceased or his family. The murder was committed by the accused appellant in broad daylight at a public place without any justification whatsoever.

9. The appeal has no merit. We accordingly hold that the accused/appellant Kishore Kumar has rightly been convicted by the learned Additional Sessions Judge for the offences punishable under Section 302, IPC and for the offence punishable under Section 25 of the Indian Arms Act. The sentences passed against him by the learned Additional Sessions Judge, viz., life imprisonment under Section 302, IPC and 3 months rigorous imprisonment under Section 25 Arms Act also do not call for any interference. We hereby dismiss the appeal. The appellant Kishore Kumar is on bail. He shall surrender forthwith to serve out the sentences passed against him.