

Govind Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-01-1993

Reported in : 1996CriLJ305

Judge : P.N.S. Chauhan and ;R.P. Awasthy, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 14, 34, 302 and 324; Code of Criminal Procedure (CrPC) - Sections 173

Appeal No. : Criminal Appeal No. 1 of 1988

Appellant : Govind

Respondent : State of Madhya Pradesh

Advocate for Def. : N.S. Ruprah, Adv.

Advocate for Pet/Ap. : Rajendra Singh and ;S.R. Nema, Adv.

Disposition : Appeal dismissed

Judgement :

R.P. Awasthy, J.

1. Having been convicted, by Shri D.N. Joshi, Second A.J. to S.J. Sagar, camp at Rehli for alleged commission of an offence punishable under Section 302 I.P.C. and having been sentenced to undergo imprisonment for life, the present

appellants have filed this appeal.

2. Prosecution case is that previously the present accused were keeping their grocery shop on a raised platform belonging to Municipal Committee, Deori. The Municipal Committee had dismantled the said raised platform for making some other construction. Therefore, the accused placed their shop only from two or three days before the incident dated 13-3-85 in front the shop of Kapoor Chand (since deceased). The residents and shopkeepers of the vicinity felt aggrieved on account of accused keeping their shop at the said place on the ground that the said shop had blocked their passage. Therefore, when on 13-3-85 at about 3 to 3.30 p.m. the accused were digging holes in the ground placing some shade on their shop, Kapoor Chand protested regarding it. Thereupon, the accused started abusing him. Kapoor Chand forbade them from abusing him. Consequent to it Raj Kumar (appellant No. 2) and Govind started dealing blows by means of iron rods which they were having in their hands at that time. According to the contents of the first information report each of the accused/appellant dealt one blow each on the head of Kapoor Chand. Kapoor Chand fell down on the ground. Govind dealt yet another blow which hit the wrist or arm of Kapoor Chand.

3. Kapoor Chand was immediately shifted to the hospital but (looking the injuries sustained by him in all its probability) Kapoor Chand died at the place of the incident itself.

4. Kamlesh Kumar lodged first information report (Ex. P.8) on the date of incident itself viz. on 13-3-85 at 3.45 P.M. and on the basis of the said report, a report of un-natural and untimely death (Ex.P-9) was recorded at police station, Deori. Soon after recording the said report, the investigating officer Shri. R.C. Thakur, who happened to be the Station Officer, Deori went to the hospital and made usual death inquest as per memo (Ex.P.13) and a requisition was sent to the Assistant Surgeon for performing postmortem examination on the dead body of Kapoor Chand. Dr. B.K. Gupta, Assistant Surgeon, Primary Health Centre, Deori performed postmortem examination on 14-3-85 and found as many as 6 ascertained wounds and 4 contusion as well as 2 abrasion (in all 12 injuries on the dead body of Kapoor Chand and according to Dr. B.K. Gupta (PW. 3) all of the said injuries

were antemortem in nature. On account of the injuries 1 to 6, bones and three fessaes of skull of Kapoor Chand were fractured into multiple pieces. The entire brain matter was contused. The cranial cavity was full of blood. In the opinion of Dr. B.K. Gupta injuries 1 to 6 were individually sufficient to cause death of Kapoor Chand.

5. After completion of the investigation, the report under Section 173 Cr.P.C. (Challan) was filed in the competent court charges against the accused/ appellants for alleged commission of offence punishable under Section 302 of the IPC. Two other co-accused Vindrawan and Babulal were also charged with having committed offence punishable under Section 302 read with Section 14 of the IPC but they have been acquitted of the said charged by the trial Court and no appeal has been filed by the State against the said finding or holding them not guilty. Therefore, we are only concerned with the case against the present accused/appellants.

6. It has been argued for the appellants that Kamlesh Kumar (PW 5), Raj Kumar (PW 7) and Mulayam Chand (PW9) who 'claim' to be the eye witnesses of the incident did not see any incident and are not 'actually' the eye witnesses to the incident.

7. All of the said witnesses have said that Raj Kumar and Govind had dealt only one iron rod blow each on the person of deceased Kapoor Chand. However, as many as 12 injuries are inflicted, out of which at least 10 must have been caused by means of some hard and blunt subject, were found on the person of Kapoor Chand and only two abrasions were found which could have been caused by sustaining a fall. Therefore, there is no explanation as to how Kapoor Chand sustained remaining at least 8 injuries on his person which no one says that he saw them being inflicted on the person of Kapoor Chand. Consequently, it is not known as to who inflicted the said injuries on the person of the deceased. On this basis, it has been argued that it should be held that the said witnesses are not eye witnesses of the said incident and they have falsely implicated the present accused appellants only on account of the fact that they happen to be close relatives of deceased Kapoor Chand.

8. It has further been argued that there was no meeting of mind of accused Govind and Raj Kumar and Govind-allegedly dealt only one blow on the hand of Kapoor Chand.

9. It has further to be seen that the attack was allegedly made by appellant Govind by means of a small piece of iron rod which was being used for digging holes in the ground for fixing a shelter or shade on their shop. Thus, there was absolutely no premeditation and the incident took place at the spur of moment. Therefore, accused Govind cannot be held vicariously liable for criminal act committed by any co-accused, and hence Govind cannot be held guilty for committing an offence punishable under Section 302 read with Section 34 of the IPC. At worst he can be held guilty only committing an offence punishable under Section 324 of the IPC. Since he has remained in jail for about 4 months, he deserves to be sentenced only for the period which he has undergone in jail.

10. In reply, it has been submitted that under the given circumstances, the facts and circumstances of the case conclusively establish that it were the accused and the accused alone who had caused all of the injuries which were found on the person of deceased. The prosecution witnesses, being the witnesses of truth have deposed only that much which they had witnessed. Therefore, it cannot be said that the remaining injuries were not inflicted by the , present accused/appellants. On the other hand, the circumstances of the case lead to only one inescapable inference and irresistible conclusion that all of the said injuries found on the person of Kapoor Chand were caused and inflicted only by the present accused/appellants. Looking to the nature of injuries caused on the head of the deceased resulting into multiple fractures of his skull bones and rendering anterior fossae, left middle fossae and posterier fossae broken into multiple pieces, only one inference which can be drawn is that the present appellants intended to cause the death of Kapoor Chand. Therefore, the present appeal is devoid of any substance and deserves to be disallowed in its totality.

11. In the considered opinion of this Court the arguments advanced for the appellants cannot be accepted due to following reasons :-

12. It is incorrect to say that Kamlesh Kumar (PW 9) has deposed that Govind had dealt only one blow on the arm or hand of Kapoor Chand. In para No. 5 of his deposition, Kamlesh had deposed that Govind had dealt two blows out of which one was dealt on the head and the other was dealt on the hand of Kapoor Chand. When this part of deposition was brought to the notice of the learned counsel for the appellants, it was argued for them that initially Kamlesh had deposed in his examination-in-chief that Govind had dealt only one blow on the hand of Kapoor Chand but when the contents of the first information report were read over to him at his request for the purpose of refreshing his memory, he gave the said statement merely and just to support the version given in the first information report. It has further been argued that it is so because had Kamlesh seen Govind dealing a blow on the head of Kapoor Chand, he could not have had forgotten the said fact as he happens to be related as cousin of the deceased.

13. To me it appears that Kamlesh did not depose regarding the said fact because he appears to be very cautious in his approach in the matter of giving his testimony in a case of commission of capital offence of murder. In this connection it has to be seen that in the first information report, it is mentioned that two other acquitted co-accused had caught hold of Kapoor Chand, while the present accused/appellants dealt blows on his person. Therefore, had Kamlesh intended just to support the version given in the first information report he could have very well deposed that the said two accused had caught hold of Kapoor Chand while blows were being dealt on his person. However, Kamlesh has exercised restraint and has refrained from making such a statement. Under the said circumstance, it would not be just and fair to infer, while evaluating the testimony of this witness that he has given the said statement merely to support the version given in the first information report lodged by him.

14. Thus, the said testimony given by Kamlesh is corroborated by the contents of the first information report which was promptly lodged by him i.e. only 15 minutes after the incident.

15. In para No. 1 Kamlesh has deposed that Kapoor Chand belonged to his caste and could be considered to be related to him as his cousin. However, the word

'related' is not equivalent to interested. A witness can be called interested only when he or she derives some benefit from the litigation, in the decree in a civil case or in seeing the accused punished. State of Rajasthan v. Smt. Kashivi bai : 1981 CriLJ1012 Guru Charan Singh v. State of Punjab : 1956 CriLJ827 and State of Bombay v. United Motor Limited : [1954]1SCR145 , or for that matter Raj Kumar (PW.7) or Mulayam Chand (PW.9) had no axe to grind against the accused. They have' exercised restraint and have desposed only that much which they saw. They appear to be wholly reliable witnesses and the witnesses, of truth.

16. All the said three witnesses, Kamlesh, Raj Kumar and Mulayam Chand hold their shops in the market place of Deori, where the incident took place. Thus, their presence on the spot was natural. The incident took place in the month of March at 3.30 p.m. Therefore, it cannot be said that they could not have witnessed any or some part of the incident from a distance, On the other hand, their testimony goes to indicate that all of these witnesses could have and had seen the incident only in part and did not see all the blows being dealt by accused appellants on the person of Kapoorchand due to following circumstances.

17. Kamlesh (PW.5) has deposed in para no. 5 that when he heard an altercation taking place between the present accused/appellant., Kapoorchand, he proceeded towards the place of the incident. He has also stated in the same paragraph that at the time of incident, he was approximately 30-40 feet away from the place of incident. He has further stated that when the accused/appellants started dealing blows on the person of Kapoorchand, he started running towards the place of incident and could reach there only when 3 blows had already been dealt on the person of Kapoorchand. Though Rajkumar (PW7) has; not deposed as to from which distance he witnessed the incident, yet from the statement given by his in para no. 1 of his deposition, it appears that he had heard and seen the altercation taking place between Kapoorchand on one hand and the accused-appellants on the other in which the accused were filthily abusing Kapoorchand. Thereafter, he saw both of the accused dealing one blow each on the person of Kapoorchand and thereafter, saw that several persons came there and intervened in the incident. It seems that he reached the place of incident i.e. the place where Kapoorchand was lying dead, only after the said incident of violence, had already

taken place.

18. Likewise, contention of Mulayamchand (PW 9) is that his shop is about 10 to 20 steps away from the shop of Kapoorchand and in paragraph 2 of his deposition, he has deposed that he did not proceed towards the place of the incident when the altercation was taking place but proceeded towards it only when the accused started dealing blows on the person of Kapoorchand.

19. Thus, while proceeding forward, it is neither natural nor essential that a person should continuously gaze towards the place of incident and since several persons had gathered there during the course of the incident, it was quite probable that these witnesses who saw the incident, from different angles, could see only a part of the incident and could not see all the blows being dealt on the person of Kapoorchand. Therefore, merely on the basis of the fact that these witnesses could see only lessor number of blows being dealt on the persons of Kapoorchand, then the injuries which were actually found on his person, it cannot be said that they were not the eye-witnesses of the incident. On the other hand, under the given circumstances, it would be most unfair to the said witnesses to infer on the basis of above referred alleged ground that they did not witness any part of the incident and are not eyewitnesses.

20. It has further to be seen that it has been suggested in the cross-examination of the said witnesses that in fact Radhe had dealt blows on the person of Kapoorchand and he happens to be a person of unsound mind. The present accused/appellants have been falsely implicated in the present case as the said prosecution witnesses happen to be close relatives of the deceased. Kapoorchand (PW 1) has been examined for the accused on the said point or for the said proposition. However, Phoolchand (PW 1) has himself deposed that he did not see as to who dealt blows on the head of Kapoorchand and Radhe was standing unarmed amongst the by-standers who, according to this witness, were 200 to 500 in number. It has to be further seen that the eye-witnesses of the incident have not deposed that there was any other person who was armed with any hard and blunt object and that after, the altercation, they saw any other person, but for the accused/appellants dealing any blow on the person of Kapoorchand. Under the

said circumstances, it would be preposterous to assume that any other person except the accused, (who were seen dealing some of the blows) would have had caused the remaining injuries on the person of Kapoorchand and would have had appeared all of a sudden and disappeared or evaporated in thin air, soon thereafter, when the said eye-witnesses reached the spot. Therefore, the only irresistible conclusion and inference which can be drawn from the above circumstances is that it were the appellants alone who had caused the said injuries on the person of Kapoorchand.

21. Under the given circumstances only one probability remains that but for the blows which Govind was seen dealing on the person of Kapoorchand, the remaining blows might have been dealt by co-accused Rajkumar. Nevertheless as has been already mentioned, Kamlesh (PW5) has deposed that he had been Govind dealing a blow on the head and other blow on the hand (or arm) of Kapoorchand. Mulayamchand (PW9) has deposed that he had been Govind dealing a blow on the head of Kapoorchand. Rajkumar (PW7) has deposed that he had seen Govind dealing a blow on the hand of Kapoorchand. On this basis it has been argued for the accused/appellants that the said statements are contradictory to each other and are discrepant. However, There seems to be no discrepancy in their testimony due to following reason:- In view of the said medical report, there was as many as 6 injuries on the head of Kapoorchand and one contusion on right upper arm, one abrasion on right middle finger, one lacerated wound on the left forearm, one contused abrasion on the left lower forearm, one contusion on the border of left forearm. Thus, there were in fact about 5 injuries on the arms and hand of Kapoorchand. Consequently, it is quite probable that Rajkumar saw Govind dealing a blow on the hand of Kapoorchand while Mulayamchand saw Govind dealing a blow on the head of Kapoorchand and Kamlesh saw Govind dealing a blow on the head as well as on one hand of Kapoorchand. Consequently, the prosecution witnesses Kamlesh and Mulayamchand did see Govind dealing a blow on the head of Kapoorchand. Had there been only one injury on the hand and only one injury on the head of Kapoorchand, then it could have been said that there is discrepancy in the testimony of the said witnesses. However, in view of the said medical evidence, there seems to be no discrepancy in their testimony.

22. Now it has to be seen that according to medical report given by Dr. Gupta, injuries Nos. 1 to 6 which were on the head of Kapoorchand had Caused multiple fractures of skull bones of Kapoorchand and according to the said medical report, each of the said injuries, was individually or independently sufficient to cause death of Kapoorchand.

23. It may be pertinent to mention here that the trial court has further rightly held that neither of the prosecution witnesses Raj Kumar (PW 7) and Mulayamchand are related to Kapoorchand.

24. In Narsibhai Haribhai Prajapati etc. v. Chhatrasingh AIR 1977 SC 1753 and presence of alleged eye witness was considered very doubtful due to various other reason enumerated in the authority. Therefore, the said authority is not applicable on the facts of the present case and is not an authority on a question of fact that whenever an eye witness deposes that he saw lessor number of blows being dealt on the person of victim than the injuries actually found on his person, he should not be considered as an eye witness of the incident. In the present case, the question of formation of common intention is only remotely relevant. It is so because it has already been held that Govind had also inflicted such an injury on the head of Kapoorchand which was sufficient to cause his death. Therefore, he is individually liable for the said criminal act committed by him. Consequently. Mohindar Singh and Anr. v. State of Delhi : 1975 CriLJ1320 , Devilal v. State of Rajasthan : 1971 CriLJ1132 have no application on the facts of the present case.

25. In view of the said reasons, in the opinion of this court, the trial court has not committed any error in holding the accused/appellants guilty for committing offences punishable Under Section 302 IPC and therefore, the present appeal fails and is disallowed in its totality. The finding given and sentence awarded to the accused/appellants is maintained.