

Naresh Kumar Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Jul-10-1996

Reported in : 1997CriLJ1044

Judge : H.S. Brar and; B. Rai, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal No. 386 of 1993

Appellant : Naresh Kumar

Respondent : State of Punjab

Advocate for Def. : Mehtab Singh, DAG assisted by; H.S. Diwana, Adv.

Advocate for Pet/Ap. : P.S. Mann, Sr. Adv.,; H.S. Grewal and; TPS Mann, Adv

Disposition : Appeal allowed

Judgement :

Harphul Singh Brar, J.

1. This is an appeal filed by the convicts Naresh Kumar, Gagandeep alias Gogi and Pawan Kumar against the

JUDGMENT / ORDER

dated 3-11-1993 of the learned Additional Sessions Judge, Jalandhar, vide which he has convicted Naresh Kumar under Section 302, I.P.C. and Gagandeep alias Gogi and Pawan Kumar under Section 302 read with Section 34, I.P.C. for committing the murder of Balwinder Kumar. All the three accused were awarded life imprisonment and were further directed to pay a fine of Rs. 1,000/- each. In default of payment of fine, they were directed to undergo further R. I. for one year.

2. The prosecution story has been unfurled by Wazir Chand son of Mehnga Ram P.W. 1 resident of Billi Chaharm, P. S. Shahkot. The said Wazir Charid has stated that he was the resident of Village Billi Chaharm and sold milk in the village. On 31-10-1992 he and Balwinder Kumar (now deceased) son of Madan Lal Adharmi by caste, resident of Billi Chaharm, who was his cousin, left from their village to Civil Hospital, Shahkot to enquire about the health of Balbir Singh, Jat by caste, resident of Billi Chaharm, P. S. Shahkot, who was admitted in the Civil Hospital, Shahkot. Kewal Kristian son of Prabh Dyal, Adharmi by caste, resident of Bajwa Kalan was already present there (Civil Hospital, Shahkot). After enquiring about the health of their friend Balbir Singh, all three of them were going on foot towards their village from Civil Hospital, Shahkot. At about 7. 45 P.M., when they reached a little ahead of Ramgarhia Public School on Gurudwara Road, Shahkot, Naresh Kumar alias Lovely son of Birbal Arora and Gogi son of Rajinder Kumar Arora, owner of Mangat Rice Mills and Pawan Kumar, owner of Dabra Medical Store, armed with an iron rod were seen standing outside the Dabra Medical Store. Seeing them, Lovely at once raised a lalkara saying, 'Balwinder Kumar had picked up a quarrel with us on the day of Dusshera and he should not escape alive.' Within their sight, (Pawan Kumar and Gogi, at once caught hold of Balwinder Kumar in their arms) whereas Naresh Kumar alias Lovely took out a knife out of the right pocket of his pant and gave two blows one after the other to Balwinder Kumar. The first blow hit Balwinder Kumar on the left temple, whereas the second blow hit him below the neck on the right side. Pawan Kumar who was armed with an iron-rod, continued to raise lalkara that if anybody stepped forward, he would not be spared. They being unarmed, could not go forward and while standing there, they raised raula (Alarm), 'Mar Ditta, Mar Ditta' (Killed, Killed). In the meantime, people gathered on the scene and the assailants fled from the spot with their respective weapons. Both of them arranged for a vehicle and removed

Balwinder Kumar to Civil Hospital, Shahkot for treatment. Due to serious condition of Balwinder Kumar, the doctor referred him to Civil Hospital, Nakodar. After reaching Civil Hospital, Nakodar, they were yet to get Balwinder Kumar admitted there, when he succumbed to his injuries outside the hospital. He (Wazir Chand) and Kewal Krishan had witnessed the whole incident in the light fitted on the Govt. electric pole.

3. The cause of grudge was that on the day of Dussehra, Naresh Kumar alias Lovely was deputed on duty near the Jhulas (Cradles) by Dussehra Committee, Shahkot. On that day, Wazir Chand and Balwinder Kumar had gone to see Dussehra. They had an altercation with Naresh Kumar alias Lovely over standing near the Jhulas (cradles) but at that time, the matter was got patched up. Thereafter, Naresh Kumar alias Lovely kept this grudge in his mind and as a consequence thereof, all those three having connived with one another, had inflicted injuries to Balwinder Kumar and had killed him. He was going to Police Station, Shahkot to lodge a report but Gunjit Singh, A.S.I, of Police Station, Shankot met him and he recorded his statement to him. He signed his statement after reading it and admitting it to be correct.

4. A.S.I. Gurmit Singh who attested the statement of Wazir Chand P.W. when mentioned about the steps taken by the police, stated that on receipt of a chit from the doctor of Civil Hospital, Shankot about Balwinder Kumar son of Madan Lal Adharmi resident of Billi Chaharm at the Police Station containing the reference that the injured being serious, was referred to Civil Hospital, Nakodar, he along with Darshan Singh Head Constable No. 1276, Balbir Singh Constable No. 982 and S.P.O. Joginder Pal reached the Civil Hospital, Nakodar in a government vehicle driven by P.H.G. Satnam Singh for recording of a statement. Wazir Chand son of Mahanga Ram met him in the hospital who got his above statement recorded with him. After recording the statement, it was read over to him who, after admitting the same to be correct, affixed his signatures in English before his statement which he attested. As the statement disclosed the commission of an offence punishable under Section 302/34, Indian Penal Code, that writing was sent to Police Station, Shahkot through Balbir Singh Constable No. 982 for the registration of a case (F.I.R.). Formal F.I.R. Ex. PA/2 was registered by Shiv

Kumar, M.H.C, P. S., Shahkot in 31-10-1992 at 11.30 P.M.

5. It may be noted that before the trial Court, Gurmit Singh, A.S.I., P. S., Shahkot (P.W.9) (who was posted as S.I. in Police Station Bholath, District Kapurthala), stated that on 31-10-1992, he was posted as A.S.I, at Police Station, Shahkot. On that day, a chit Ex. P. 1 was received from the P.H.C., Shahkot regarding the admission of Balwinder Kumar. He along with other police officials, reached there and came to know that the injured had been referred to Civil Hospital, Nakodar, after giving him first-aid for better treatment, as his condition was stated to be serious. He and other officials then went to Civil Hospital, Nakodar where they came to know that the injured had expired. P.W. Wazir Chand was present near the dead body and his statement Ex. PA was recorded by him. It was read over to him and he, after admitting the same to be correct, signed it on which he made attestation and vide his endorsement Ex. PA/1, it was sent to the Police Station through a Constable. On its basis, formal F.I.R. Ex. PA/2 was recorded by A.S.I. Shiv Kumar (who was M.H.C. at that time) whose signatures and handwriting he identified. He prepared the Inquest Report Ex. PF and statements of Lachhman Dass, and Madan Lal were recorded there. He wrote application Ex. PK making a request for conducting the post-mortem and duty of H. C. Darshan Singh and S.P.O. Joginder Pal was fixed for the purpose. He had prepared the Injury Statement Ex. PL also.

6. He along with other police officials, then went to the Police Station and some other constables were taken along and they reached the spot, i.e. the place of occurrence, prepared the rough Site-Plan Ex. P.M. with correct marginal notes. Blood-stained earth was taken into possession from the place of occurrence and a parcel was prepared which is Ex. P-7 and it was sealed with the seal of 'GS' and seized vide memo Ex. PB, attested by Kewal Krishan and Dalbir Singh, PWs.

7. On the morning of 1-11-1992, after the postmortem, H. C. Darshan produced before him (ASI Gurmit Singh), the blood-stained clothes of the deceased Ex. P. 2 to Ex. P. 6 and the same were also put into a parcel and sealed with the seal of 'GS', and taken into possession vide memo Ex. PN, attested by Darshan Singh and Joginder Pal, PWs. The post-mortem report Ex. PJ was also taken into

possession. The dead-body was handed over to the father of the deceased through receipt Ex. PG. A raid was made for the arrest of the accused, but they were not available. On 4-11-1992, all the three accused were arrested by him.

8. Naresh Kumar accused who was in custody on 4-11-1992, was interrogated by him in the presence of Mohinder Pal P.W. and Constable Swarn Singh. He made a disclosure statement Ex. PC to the effect that he had kept concealed the knife in the reed bushes near the Shiv Mandir on the road leading from Shahkot to Bhullar which he could get recovered. The statement was signed by the accused Naresh Kumar and other PWs. Thereafter, the accused led the police-party to the place of concealment and got recovered the dagger Ex.P. 1 from the aforementioned place, which was put into a parcel and sealed with his seal 'GS' and taken into possession vide memo Ex. PD, attested by Mohinder Pal and Swarn Singh. He had prepared the rough sketch of the dagger Ex. PE before putting it into a sealed parcel and the rough site plan of the place of recovery Ex. PO, with correct marginal notes. Statements of Swarn Singh, Mohinder Pal and Kewal Krishan were recorded by him. On the receipt of the report of the Forensic Science Laboratory Ex. PP and after completion of investigation, the accused were challaned by S. I. Darshan Singh whose signatures and handwriting he identified as he had been seeing him writing and signing in his presence.

9. The accused Naresh Kumar was tried Under Section 302, I.P.C. and the accused Gagandeep and Pawan Kumar were tried Under Section 302 read with Section 34, I.P.C. and ultimately, they were convicted and sentenced as stated above.

10. The prosecution in order to prove the guilt of the accused, examined as many as 9 witnesses namely, Wazir Chand as P.W.1, Kewal Krishan as P. W.2, eye-witness of the occurrence, Mohinder Pal as P.W. 3, Madan Lal as P.W. 4, Dalip Singh Draftsman as P.W.5, Balbir Singh as P.W. 6, Dr. Harsimran Singh as P.W. 7, Dr. Tarsem Singh as P.W.C and ASI Gurmeet Singh as P.W. 9. Affidavits of M.H.C. Shiv Kumar Ex. PQ, MHC Pargat Singh Ex. PR were also tendered into evidence. The accused did not plead guilty to the charge.

11. P.W. 8 Dr. Tarsem Singh of Civil Hospital, Nakodar conducted the post-mortem examination on the dead-body of Balwinder Kumar at about 10-00 a.m. on 1-11-1992. He noticed the following injuries on the dead-body :-

1. An incised wound 5 cm x 1 cm over the left temporal region extending from the tempromandibular joint and going to the outer edge of the left eye 2 cms above it. On dissection, left temporal bone was cut through! extending upto the brain matter injuring all the layers of meninges. The underlying brain tissue was injured and coloured blood along with clots was present.

2. An incised wound 3 cm x 1.5 cm. over the right side of the neck parallel to and 2 cm. above the mid clavicular point. (Collar Bone). The wound was 5 cm. deep. Common Carotid artery and internal jugular vein on the right side were cut through. Dark colour blood along with clot was present.

3. An abrasion 1 cm. in diameter over the outer aspect of right foot 2 cm. below the right ankle which were already dressed.

12. In the opinion of the doctor, the cause of death was due to haemorrhage and shock as a result of injuries Nos. 1 and 2 and injury to the brain which were sufficient to cause death in the ordinary course of nature. The doctor deposed at the trial that the injuries were ante-mortem in nature and the time that elapsed between injury and death was within few minutes and between death and post-mortem, 24 hours. He proved Ex. PJ, the correct carbon copy of the postmortem report and Ex. PJ/1, the pictorial diagram showing the seats of injuries. He further proved Ex. PK, the application of the police moved for conducting the postmortem examination, along with Inquest Report Ex. PF, Ex. PL injury statement and copy of F.I.R. Ex. PA/2. All these documents were initialed by him and returned to the police after the postmortem examination together with the copy of the Post-mortem Report and belongings of the deceased.

13. Learned counsel for the appellants has contended that the presence of Wazir Chand and Kewal Krishan, PWs at the time of occurrence is highly doubtful, unnatural and improbable. They are chance witnesses and are closely related to the deceased. The F.I.R., according to the learned counsel, is highly belated and

has been lodged after due deliberations and consultations. It is further contended by the learned counsel for the appellant that Balwinder Kumar had died immediately after coming out of Shahkot Dispensary. It has been tried to be shown by the prosecution that Balwinder Kumar died in the Nakodar Hospital but the same is not proved from the record and this is shown only to gain time for finding out the eyewitnesses to the occurrence.

14. On the other hand, the learned State counsel has submitted that the presence of eyewitnesses is natural at the spot. They have proved the prosecution story, their statements have been corroborated by the statement of P.W. 6 Balbir Singh as well as the medical evidence on the record. He further submits that the presence of the dead-body at Civil Hospital, Nakodar is proved from the statement of Dr. Tarsem Singh who referred the injured from P.H.C., Shahkot to Civil Hospital, Nakodar. The learned counsel further contends that the recovery of dagger Ex.P. 1 at the instance of Naresh Kumar accused goes a long way in showing that the murder was committed by the accused in furtherance of their common intention.

15. After hearing the learned counsel for the parties, we consider that the presence of the alleged eye-witnesses Wazir Chand (PW-1) and Kewal Krishan (PW-2) is highly doubtful and in fact, they were not there at the time of occurrence on the following grounds :-

(1) Dr. Harsimaran Singh P.W. 7 has deposed in his examination-in-chief at the trial that on 31 -10-1992. Balwinder Kumar (now deceased) was brought to his Hospital P.H.C., Shahkot in a serious condition, which information was sent to the S.H.O., Shahkot vide his ruqa Ex. PI. It has been admitted by P.W. 9 Gurmit Singh I.O. that on 31-10-1992, he received ruqa Ex. P. 1 from P.H.C., Shahkot regarding the admission of Balwinder Kumar. It is relevant to reproduce the language of the ruqa Ex. P1 sent by Dr. Harsimaran Singh (PW-7) to the S.H.O., Police Station Shahkot

To

S.H.O., P.S., Shahkot.

Sir,

An accidental case profusely bleeding named Balwinder Kumar s/o Madan Lal, Shahkot came in a very serious condition. He was given first aid and referred to C. H., Nakodar.

8 p.m. 31-10-1992

8 p.m. 31 -10-1992 'Dr. Harsimaran Singh R.M.P., Shahkot.

It may be added here itself that in this ruqa, on the right side, addition has been made just below the words 'Dr. Harsimaran Singh, R.M.P., Shahkot' written in black ink which has been exhibited as PI/A and the addition reads as under

Case brought by Wazir Chand and Kewal Krishan. On the left hand side, another addition has been made in Punjabi just below the words 'to C.H., Nakodar' which has been exhibited as P1/B wherein it is written 'Pind Billi Sharan'. When Dr. Harsimaran Singh (PW-7) who had issued this ruqa, was put a question in the cross-examination at the trial about the additions, he stated as under:-

In Ex. PI the words encircled Ex. PI/A that case was brought by Wazir Chand and Kewal Krishan which is in different ink and is not in my hand. Similarly encircled Ex. P1/B in Punjabi Village Billi Chaharam is not in my hand. Similarly, when the I.O. was questioned about these additions, he stated in the cross-examination as under:-It is incorrect to suggest that I have fabricated the words encircled at Ex. P1/A and P1/B. I did not record the statement of the doctor as to why he had written Exs. P1/B in Punjabi whereas the other writing is in English. I also did not enquire from him as to why the writing Ex. PI/A and PI/B are in different ink than the body of other writing of PI as the Ex. PI was received in routine.

16. The writing encircled as Ex. PI/A which is written in black ink shows that it has been inserted at some later stage and that has decidedly, not been written by Dr. Harsimaran Singh (PW-7). Similarly, the writing encircled Ex. PI/B which is written in Punjabi, has also been written later by someone and decidedly, not by Dr. Harsimaran Singh (PW-7). These additions prima facie look to be a fabrication made later by the Investigation Agency to introduce the names of Wazir Chand

and Kewal Krishan as eye-witnesses. Ruqa Ex. PI sent by Dr. Harsimaran Singh to S.H.O., Police Station, Shahkot clearly reads that 'an accidental case profusely bleeding of Balwinder Kumar son of Madan Lal, Shahkot came to the doctor in a very serious condition who after giving him first-aid, referred him to Civil Hospital, Nakodar.

17. It has been stated by Dr. Harsimaran Singh (PW-7) on oath at the trial that on 31-10-1992, Balwinder Kumar was brought in his hospital P.H.C., Shahkot in a serious condition. 15 to 20 persons from the city had brought the injured to the hospital but nobody informed him about their names. They also refused to give their signatures. As has already been stated above, he denied that the words encircled as Ex. PI/A and PI/B were in his hand. This evidence of the doctor (PW-7) and the I.O. (PW-9) and the ruqa Ex.P1 clearly indicates that till that time, the names of the alleged eye-witnesses Wazir Chand and Kewal Krishan were not known to the prosecution.

18. Another document which shows that the names of the alleged eye-witnesses were introduced in the late night of 31-10-1992, is the Inquest Report Ex. PF. The names of these eyewitnesses are not mentioned therein. Kewal Krishan (PW-2) has admitted in his cross-examination that the Inquest Report was prepared at about 11-30 p.m. but his signatures were not obtained. His statement was recorded at the spot at 12-00 (night) on 31 -10-1992 or at 12-00 a.m. on the next day and prior to that, he had no talk with the police.

19. The prosecution is unable to prove as to the time when Balwinder Kumar died and the place from where the dead-body of the deceased Balwinder Kumar was found.

20. P.W. 1 Wazir Chand has stated at the trial that he along with Kewal Krishan (PW-2) took the injured to Civil Hospital, Nakodar and in the Civil Hospital, Nakodar, the doctor declared the injured dead. The police visited the Civil Hospital, Nakodar where his statement Ex. PA was recorded. He has stated in his cross-examination that they had informed the doctor that the condition of the injured was serious. That doctor was clean-shaven and he declared him dead on examining him. When the police came to the hospital, the doctor was still there.

21. In his statement Ex. PA on the basis of which formal F.I.R. was recorded, Wazir Chand P.W. had stated that after reaching Civil Hospital, Nakodar, they were yet to get Balwinder Kumar admitted there when he succumbed to his injuries outside the hospital. Thus, his statement is contradictory as to whether Balwinder Kumar died outside the hospital or inside the hospital.

22. P.W. 2 Kewal Krishan has stated in his examination-in-Chief that they had brought Balwinder Kumar in a car to Nakodar Hospital. The doctor declared him dead.

23. P.W. 9 Gurmit Singh, I.O. has stated in his examination-in-chief at the trial that he and other officials went to Civil Hospital, Nakodar and came to know that the injured had expired. P.W. Wazir Chand was present near the dead body and his statement Ex. PA was recorded by him. He has admitted in the cross-examination that he did not record the statement of any doctor that the dead-body had been brought there. No doctor was produced and no effort was made even by the I.O. to record the statement of the doctor or to produce any evidence which could show that the deceased was declared dead by any doctor at Nakodar Hospital as the dead-body was not found in the Nakodar Hospital.

24. It looks that the injured had died immediately after leaving the P.H.C., Shahkot. It is corroborated by the following facts:-

One, P.W.7 Dr. Harsimaran Singh has stated in his examination-in-chief before the trial Court that Balwinder Kumar was brought in his hospital P.H.C., Shahkot in a serious condition when he was referred to Civil Hospital, Nakodar. Ex. PI, the ruqa sent by Dr. Harsimaran Singh to S.H.O., Shahkot at 8 p.m. which reads as under, indicates that Balwinder Kumar was in a very serious condition when he reached P.H.C., Shahkot :-

To

S.H.O.

P.S., Shahkot

Sir,

An accidental case profusely bleeding named Balwinder Kumar s/o Madan Lal, Shahkot came in a very serious condition. He was given first aid and referred to C. H. Nakodar.

Pind Billi Sharan 10-92 8 p.m. 31-10-938 p.m. Dr.HARSIMARAN SINGH 31-10-92 R.M.P., Shahkot Case brought by Wazir Chand & Kewal Krishan.

Secondly, Dr. Tarsem Singh P.W. 8 who conducted the post-mortem examination of the deceased, has noticed the following injuries on his person :-

1. An incised wound 5 cm. x 1 cm. over the left temporal region extending from the tempore man-dibular joint and going to the outer edge of the left eye 2 cms. above it.

On dissection left temporal bone was out through extending upto the brain matter, injuring all the layers of meninges. The underlying brain tissue was injured. Dark colour blood along with clots were present.

2. An incised wound 3 cm x 1.5 cm. over the right side on the neck parallel to and 2 cm. above the mid clevicular point, (collarbone). The wound was 5 cm. deep. Common carotid artery and internal jugular vein on right side were cut through. Dark colour blood along with clot were present.

3. An abrasion 1 cm. in diameter over the outer aspect of right foot 2 cms. below the right ankle which were already dressed.

And stated that in his opinion, the cause of death in this case was due to haemorrhage and shock as a result of injuries No. 1 and 2 and injury to the brain, which was sufficient to cause death in the ordinary course of nature, and the probable time that elapsed between injury and death was within a few minutes, Though in the end, he added that by few minutes, he meant half an hour.

25. This factual position described by the doctor is also an indication showing that Balwinder Kumar died at Shahkot itself.

26. Under Column No. 24 of the Inquest Report, sketch-plan where the dead-body is found is given. The drawing of the place prepared by the I.O. where the dead-body was lying along with the writing, is reproduced as under :-

24. Sketch plan where the dead body is found.

Main Gate-----Dead body of Balwinder
Kumar deceasedVacant siteBuilding |-----| Cotof Civil Hospital, | | Shahkot
| ||-----|-----

It clearly shows that on the left side of the cot on which the dead-body is lying, building of Civil Hospital, Shahkot is shown which means that the injured had died immediately after the ruqa was sent by the doctor to the police station and the injured was referred to Civil Hospital, Nakodar; and it fits in with the statement of Dr. Tarsem Singh (PW-8) who conducted the post-mortem of the dead-body of Balwinder Kumar saying that the probable time that elapsed between the injury and the death was within a few minutes; though at the end of his statement, he clarified that within a few minutes, he meant within half an hour. Even if it is taken that the death took place within half an hour of the incident, it shows that the death took place at Shahkot itself. The occurrence took place at 7-30 p.m. when the injured was assaulted and it must have taken some time to take the injured to the P.H.C., Shahkot for getting first-aid.

27. These facts probabilise that in fact, on receiving a ruqa from P.H.C., Shahkot, the police also immediately reached there and found the deadbody there and the Inquest Report was, in fact, prepared at Shahkot itself. The relevant entry which shows that the Inquest Report was prepared at Nakodar, thus, seems to be only a made up one by the police to gain time in the meantime to find out the probable eye-witnesses. The I.O. (Gurmit Singh, P.W. 9) has admitted in his cross-examination that when he prepared the Inquest Report, he also prepared the drawing of the place where the deadbody was lying. Then a definite suggestion was put to him in the cross-examination at the trial that in the Inquest Report, while giving the boundaries of the place where the deadbody was lying towards South, he had shown the boundary of P.H.C., Shahkot. He simply denied it as incorrect and had no explanation to offer. When in fact, in the Inquest Report, while giving

the boundaries of the place where the deadbody was lying towards the South, he had shown the boundary of P.H.C., Shahkot. The trial Court has also noted this fact and we have also perused the Inquest Report Ex. PF. We find that towards the South where the deadbody was lying on the cot is written 'Building of Civil Hospital, Shahkot.

28. The visit of P.W. 1 Wazir Chand and Kewal Krishan P.W. 2 along with Balwinder Kumar (since deceased) to P.H.C., Shahkot to enquire about the health of Balbir Singh (P.W. 6) who was admitted in the hospital at that time, also seems to be a story cooked up by the prosecution in order to show the presence of P.W. 1 and P.W. 2 ,at the time of occurrence. P.W. 1 Wazir Chand admitted in his cross-examination that Balbir Singh who was admitted in the Civil Hospital, was an agriculturist. He has not stated about his earlier relationship or friendship with Balbir Singh. Similarly, P.W. 2 Kewal Krishan who has also admitted in his cross-examination that neither he was a student nor Balbir Singh was his class-fellow. He further admitted that Balbir Singh had no relationship with him in the village. He has also not disclosed any earlier relationship with Balbir Singh. Though it is not such an important matter which alone could indicate that the visit of the P.Ws. was not probable; but when looked into in the light of the other evidence on the file, it assumes importance and shows that the meeting of the eye-witnesses in the hospital with Balbir Singh seems to have been just shown to give the prosecution story a colour of some probability.

29. The fact that these PWs. had no relationship with Balbir Singh, is discernible from the statement of Balbir Singh himself who admitted in his cross-examination that he had not gone to mourn the death of Balwinder Kumar though he, was discharged from the hospital after a week of the death of Balwinder Kumar. He had further admitted in the cross-examination that he had not visited the police station, nor appeared before the police, nor made any statement before the police after his discharge from the hospital. Thus, his mere production at the trial as P.W. showing that the PWs. along with the deceased had gone to meet him in the hospital, does not carry any weight. He has not even corroborated the statement of P.W. 1 when he deposed at the trial that when they had taken the injured to the hospital, they had narrated the occurrence to Balbir Singh and his brother

Baljinder Singh. Baljinder Singh has not been produced by the prosecution and Balbir Singh has not corroborated the statement of P.W. 1 by uttering even a single word.

30. It has also been noted that the two alleged eye-witnesses are the near relations of the deceased, as has been admitted by the prosecution witnesses themselves. Wazir Chand is the paternal cousin whereas Kewal Krishan is the maternal cousin of the deceased. Further, Kewal Krishan (P.W. 2) belongs to village Bajwa Kalan, whereas P.W. 2 Kewal Krishan and Balwinder Kumar (deceased) belongs to Billi Chaharam. Both these villages are situated at different directions from Shahkot. Kewal Krishan was to go to a different direction and the place of occurrence did not fall in his way, and admittedly, their names did not find mention before Dr. Harsimaran Singh (P.W. 7) who sent intimation to the Police Station, Shahkot about the arrival of the injured. Even otherwise, it looks unnatural that though three accused have been named, one armed with a knife and the other with an iron-rod, but it looks strange as to why they did not interfere particularly, when the deceased was a very good player with a stout body and out of the other two accused, one was empty-handed and the other had only an iron-rod and not any other dangerous weapon. This conduct of the eye-witnesses also proves their absence from the place of occurrence.

31. Recovery of knife P.W. 1 also seems to be fake and a padding. No independent witness has been joined at the time of the disclosure statement alleged to have been made by the accused as well as the time of alleged recovery of knife. The I.Q. has admitted in his cross-examination that Police Station, Shahkot is in the Abadi of the town and the accused was interrogated regarding the knife and his disclosure statement was recorded. No person from Shahkot was joined. He has further admitted in the cross-examination that when recovery from the place of concealment was effected, no other witness from the Mandir was joined. As stated above, only a person from village Billi Chaharam namely, Mohinder Lal was joined whose presence neither was natural, nor probable at the time of the disclosure statement, or at the time of recovery.

32. The conduct of the I.O. and his investigation of the case is also not above board. He has not been able to explain as to how the additions were made at a later stage as Exhibits PI/A and PI/B in Ex. PI. He is shy about saying anything as to where he exactly found the deadbody of the deceased. What was necessary for him to do, i.e. to examine any doctor from the Nakodar Hospital or to produce any other evidence to fix the place of recovery of deadbody, was not done. He did not explain as to how in the Inquest Report, in Column No. 24, in the sketch-plan where the deadbody was found, he had shown the building of Civil Hospital, Shahkot towards the South of the cot on which the deadbody was lying.

33. The delay in lodging the First Information Report and the further delay in sending the Special Report to the Illaqa Magistrate also assumes importance in the facts and circumstances of this case; and in our view, the delay is fatal to the case of the prosecution. The occurrence took place at 7-45 p.m. on 31-10-1992 in a street of Shahkot which was hardly half kilometre from the Police Station, Shahkot. Dr. Harsimaran Singh (P.W. 7) has deposed at the trial that the information about the arrival of Balwinder Kumar injured was sent to the S.H.O., P. S., Shahkot vide his ruqa Ex. PI. The date and time as 31 -10-1992/8 p.m. has been mentioned in the ruqa Ex. PI. It has then been admitted by the I.O. (Gurmit Singh, P.W. 9) that he received the information Ex. PI from P.H.C., Shahkot regarding the admission of Balwinder Kumar and he along with other police officials, reached the P.H.C. Shahkot. It is also admitted by the I.O. (P.W. 9) that the distance between Shahkot and Nakodar is 13 to 14 kilometres and it was connected by a road and conveyance is available at P. S., Shahkot.

34. Even in these circumstances, the First Information Report was recorded at 11-35 p.m. vide F.I.R. Ex. PA/2. It is again an admitted fact that the residence of Judicial Magistrate, Nakodar is in the City Nakodar itself but the special report reaches there through Pritpal Singh, Constable, No. 1407 at 4-00 a.m. on the next day, i.e. 1-11-; 1992. Strangely enough, Constable Pritpal Singh who delivered the Special Report, was given up by the prosecution. Thus, the delay in lodging the F.I.R. and further delay of about 4 1/2 hours in sending the Special Report remains unexplained: by the prosecution. It means the prosecution took all this time for due deliberations and consultations and to find out the convenient eye-witnesses of the

occurrence.

35. In view of our discussion made above, we accept the appeal, set aside the

JUDGMENT / ORDER

dated 3-11-1993 of the learned Additional Sessions Judge, Jalandhar and after absolving the appellants of all the charges made against that quash the conviction and sentence awarded to them by the learned Additional Sessions Judge.

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