

Ami Chand Vs. State

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Court : Delhi

Decided On : Jul-18-1995

Reported in : 1996CriLJ2807

Judge : J.B. Goel and; P.K. Bahri, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 174 of 1990

Appellant : Ami Chand

Respondent : State

Advocate for Def. : B.T. Singh, Adv.

Advocate for Pet/Ap. : Ms. Meena Chaudhary Sharma, Adv

Judgement :

P.K. Bahri, J.

1. This appeal has been brought against judgment dated March 21, 1990 and order dated 24th August 1990 by which the appellant Ami Chand, has been convicted of offences punishable under Section, 302 I.P.C. and 324 I.P.C. and has been sentenced to undergo life imprisonment and pay a fine of Rs. 1,000/- and in

default to undergo rigorous imprisonment for six months under the first count and to undergo rigorous imprisonment for one year under the second count with the direction that substantive sentences shall run concurrently.

2. The case is initiated on the statement of complainant Harbhajan Singh, PW-4, who was also allegedly injured in the same occurrence statement made to the police, the F.I.R. was registered and in the said statement, it was disclosed that he was residing in House No. 109. Har Nagar Ashram and his friend, since now deceased, Brahm Dutt alias Brahmi aged about 16/17 years, resident of House No. 161, Hari Nagar, New Delhi was having a barber shop in Hari Nagar Ashram whereas Harbhajan Singh was employed as a carpenter in Ishwar Industries at the relevant time. Both have been childhood friends and in his spare time, Harbhajan Singh had been often sitting at the shop of his friend Brahm Dutt.

3. He also disclosed that Ami Chand, appellant, has also been coming to the shop of Brahm Dutt often and he also used to visit and sit at the Dhaba (hotel) of Om Prakash alias Omi located nearby where he used to also sleep. He disclosed that on the 2nd September, 1973, at about evening time, he, as usual, after being free from his work had come to the shop of Brahm Dutt and at that time Ami Chand was also standing outside the said shop and he made a query from Ami Chand as to what sort of business he was carrying on these days and he also asked him whether he was standing there to have his kill on which Ami Chand lost his temper and became ready to fight with him. He further mentioned that he then came out of the shop and tried to pacify Ami Chand on which he gave abuses and started beating him and Brahm Dutt separated them and Ami Chand gave the threat that he would see to them and went away.

4. The story, as narrated by him, proceeds further that he along with Brahm Dutt, after closing the shop, went for stroll and for easing themselves towards DDA Flats, Sunlight Colony and at about 9.15 P.M. when they were returning, Ami Chand accompanied by another person of fair colour having height of 5' 3' 4' aged about 30/35 years, whom he could identify if he were to come before him again, came there and Ami Chand exclaimed that now they should tell how they can save themselves and thereafter he took out a dagger from the pant's dub and assaulted

him with the said dagger towards his head but he warded off the blow which struck on his neck on the back side and meanwhile Ami Chand's companion caught hold of Brahm Dutt and Ami Chand struck a blow with the same dagger on Brahm Dutt's chest just below the neck and they raised the alarm to save themselves. Ami Chand and his companion made their escape and Brahm Dutt also proceeded to some distance towards his house and then he fell down and he informed the family members of Brahm Dutt at his house and Brahm Dutt's father came with a taxi in which Brahm Dutt and he himself were taken to the hospital. Brahm Dutt was declared, on examination by the doctor at the hospital, as dead while he got his treatment from the doctor. PW-4/A is the said statement on the basis of which the case was registered.

5. Information to the police was given by Ram Dhan, which was recorded at Serial No. 24 and Hira Lal, S.I. was deputed to inquire into the matter and he had first reached the place of occurrence and on learning that the injured had been removed to the Safdarjung Hospital, he, leaving behind Constable Padam Singh to preserve the spot, reached the hospital and obtained the M.I.C. and then recorded the statement of Harbhajan Singh in the hospital. The I.O. took into possession sample blood and sample of dust and earth from the place of occurrence and converted them into sealed parcel vide memo Ex. PW-4/B which was signed by Premwati, mother of the deceased and Harbhajan Singh, PW-4.

6. Ami Chand could not be arrested. The name of the other culprit also could not be traced. Ami Chand was got declared proclaimed offender. Hue and cry notices were issued repeatedly for arresting Ami Chand but without success and thus, the challan was filed under Section 512 of the old Criminal Procedure Code and the statements of the witnesses were recorded and the file was consigned to the record room.

7. Appellant came to be arrested by Himachal Pradesh Police and Delhi Police was informed and he was brought to Delhi on 6th October 1986. The appellant had pleaded not guilty to the charges and had mentioned in his statement under Section 313 that he was working at the hotel of Omi in Hari Nagar Ashram till July 1973 and he had developed strained relations with Harbhajan Singh and it is at the

instance of Harbhajan Singh that he has been falsely implicated in this case.

8. The offences to the appellant have been brought home beyond reasonable doubt by the Additional Sessions Judge basing implicit faith in the testimony of Harbhajan Singh who was also injured in the same occurrence. The learned counsel for the appellant has assailed the finding of the Additional Sessions Judge in this regard by arguing that the statement of Harbhajan Singh bristles with contradictions and improvements and at least the Court should have given benefit of doubt to the appellant as two views are possible with regard to the reliability of the facts given by Harbhajan Singh.

9. Harbhajan Singh was examined in Court at first on 14th August 1974 at the time when appellant was absconding. Thereafter, he had appeared in Court on 21st December 1987. In examination-in-chief, he narrated the facts as have been culled out in the opening of the order. Except that he has not given any physical features of the other co-accused who had accompanied Ami Chand at the time of occurrence. In cross-examination, he deposed that he could not identify the other accused because incident had taken place in the night.

10. Learned counsel for the appellant, referring to the translated F.I.R., argued that it was recorded in the F.I.R. that this witness and Brahm Dutt were going for taking meals while in Court Harbhajan Singh has stated that he and Brahm Dutt had gone for answering call of nature and while they were returning, that the said occurrence took place. We have perused the original statement of Harbhajan Singh on the basis of which the F.I.R. was recorded which is in Hindi language and we find that therein also Harbhajan Singh had mentioned that he and Brahm Dutt had gone for a stroll and answering call of nature in the open space near the D.D.A. Flats. So, it cannot be said that there has been any discrepancy made by the witness in this connection.

11. Mere fact that Harbhajan Singh has, in Court, deposed that because of darkness he could not identify the other companion of Ami Chand is not of much consequence. After all, the occurrence took place long long time back and witness is liable to forget certain facts which he had noticed at the time of occurrence and which he had incorporated in his first statement to the police when his memory

was fresh. It is not possible to give any importance to the contention of the learned counsel for the appellant that in case Harbhajan Singh could not identify the other culprit, there is every doubt that he could properly identify Ami Chand. Ami Chand was very well-known to the witness and a quarrel had taken place between them in the earlier part of the day and thereafter Ami Chand had also tried to strike a blow on Harbhajan Singh with a dagger, so he had come very close to Harbhajan Singh for that purpose and there could not be any difficulty in Harbhajan Singh recognising the appellant as the assailant. In the F.I.R. he had named Ami Chand as the assailant who gave the fatal injuries to Brahm Dutt and also had given the blow with the dagger on his neck at the back side.

12. Referring to the post-mortem report of Brahm Dutt, learned counsel for the appellant pointed out that two stab blows were given to Brahm Dutt whereas in the F.I.R. as well as in his statement made in Court, Harbhajan Singh has referred to only one blow. We do not think that it is such a vital discrepancy which could throw any doubt to the truthfulness of the statement of Harbhajan Singh. After all, Harbhajan Singh himself had received an injury at the hands of the appellant in the same occurrence and his presence at the time of the occurrence can indeed be not doubted. He had gone to the hospital where Brahm Dutt was also taken. While Brahm Dutt was declared brought dead, he was given treatment by the doctor at the hospital. It is true that the prosecution has (sic) doctor who had prepared the M.L.Cs. as the whereabouts of the doctor could not be found out, still the fact remains that it is Harbhajan Singh, who was present in the hospital where he made the statement to the police, on the basis of which the case was registered. There was no previous enmity except the quarrel which took place in the evening between Harbhajan Singh and Ami Chand. Thus, it cannot be said that Harbhajan Singh had any motive to falsely implicate Ami Chand for this crime.

13. It is then pointed out by learned counsel for the appellant that exclamation imputed to Ami Chand in the F.I.R. has not been referred to by Harbhajan Singh in his testimony in Court. We do not think that this omission on the part of Ami Chand to disclose this fact also in Court in any manner affects the veracity of his testimony. In the F.I.R. he had mentioned that knife was taken out from the pant's dub by Ami Chand whereas in Court he referred to the fact that Ami Chand gave

the blow with the dagger at first to him and thereafter to Brahm Dutt. Again, we do not think that it is such a discrepancy which affects in any manner the merits of the case. It is, then pointed out that in the F.I.R. it has been mentioned that the companion of Ami Chand had caught hold of Brahm Dutt when dagger blow was given by Ami Chand to Brahm Dutt whereas in Court, the witness did not refer to the fact that Brahm Dutt was held by the other accused and thereafter Ami Chand had given the dagger blow to Brahm Dutt. These small variations in statement of the witness have occurred obviously on account of lapse of considerable time. It is impossible for any person to remember the facts in detail after lapse of about 15 years, as has happened in the present case.

14. On similar count, there has appeared a discrepancy whether Harbhajan himself had gone to call Brahm Dutt's father or he had sent someone else to call Brahm Dutt's father. In F.I.R. he had mentioned that he himself called the family members, but in Court he deposed that he had asked some public person out of many persons who had collected at the spot to inform at the house of Brahm Dutt and thereafter parents of Brahm Dutt came to the spot. We do not treat it as any material discrepancy which could make the statement of the witness doubtful in any manner.

15. Harbhajan Singh appears to be a 'natural witness' whose presence at the time of occurrence indeed cannot be doubted as he had himself received the injury. His testimony by and large tallied with what he had disclosed to the police in his first statement which is the basis of the F.I.R. Nothing has come out from his cross-examination which, in our view, could disclose that Harbhajan Singh had any reason to falsely implicate the appellant for these offences.

16. It has been urged before us that Omi and other public persons, who gathered at the time of occurrence, were also material witnesses which have been withheld by the prosecution. It is not the case of the defense that police had recorded statements of any such witnesses under Section 161 of the Criminal Procedure Code and then they have been withheld. We do not know whether Omi and other public persons had witnessed the occurrence. So, it cannot be said that the prosecution had withheld any material witnesses.

17. The Supreme Court in *Srichand v. State of Maharashtra*, : 1967 CriLJ414 has laid down that an adverse inference against the prosecution can only be drawn if it withholds some evidence and not merely on its failure to obtain certain evidence.

18. It has been urged that the C.F.S.L. report shows that blood of deceased has also come on the shirt of Harbhajan Singh. It is to be remembered that both Harbhajan Singh and Brahm Dutt were stabbed and at the time of occurrence they were standing very close to each other and the possibility of blood of deceased falling on Harbhajan Singh's shirt cannot be overruled, particularly also when he and deceased had gone to the hospital in the same taxi.

19. PW. 2, Premwati, was examined to show the dagger in his hand and his clothes being blood stained at that time. But for good reasons given by the Additional Sessions Judge, her testimony has not been found to be creditworthy. However, in view of the testimony of Harbhajan Singh, which is wholly reliable, no illegality has been committed by the Additional Sessions Judge in bringing home the offences to the appellant on the solitary statement of Harbhajan Singh. If the witness's testimony is wholly reliable, there is no legal requirement that testimony of such a witness should also be corroborated in any material particulars before bringing home the offences to the accused. It is only where the testimony of a particular witness is partly reliable that necessity arises for seeking corroboration to his testimony from some other evidence.

20. It is, indeed, not disputed before us that the occurrence had taken place at the said time and place and Brahm Dutt had met homicidal death in that occurrence. The only question argued before us by learned counsel for the appellant was that it was not Ami Chand who had caused the death of Brahm Dutt or given simple injuries to Harbhajan Singh. We need not refer to the statements of other witnesses which are formal in nature and which establish the facts that occurrence took place in which Brahm Dutt met his homicidal death and Harbhajan Singh received the injury. It is to be emphasised here that the appellant had remained absconding for years together and in his statement under Section 313, he has not disclosed as to where he had been all these years after he left Delhi.

21. Be it as it may, the conviction of the appellant in respect of the said offences is well made out from the testimony of Harbhajan Singh. The learned Additional Sessions Judge has given good reasons for believing the testimony of Harbhajan Singh and we agree with those reasons. We have not attached any importance to the testimony of PW-13 who claimed that Harbhajan Singh was heard by him on the day of occurrence uttering the word that Ami Chand had killed Brahm Dutt and had injured Harbhajan Singh because his testimony came to be recorded by the police after 3 or 4 months of the occurrence.

22. In view of the above discussion, we find no merit in this appeal. We dismiss the appeal and affirm the conviction and the sentences of the appellant. The appellant, who is in jail, be informed about the fate of the appeal.

23. Appeal dismissed.

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