

Shankar and ors. Vs. the State

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Court : Delhi

Decided On : Aug-21-1969

Reported in : ILR1969Delhi922

Judge : Hardayal Hardy and; V.D. Misra, JJ.

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

Appeal No. : Criminal Appeal No. 218 of 1867

Appellant : Shankar and ors.

Respondent : The State

Advocate for Pet/Ap. : F. Anthony,; O.P. Soni,; C.L. Itorora and;

Judgement :

Hardayal Hardy, J.

(1) This is an appeal by Shankar son of Hira Lal and Parkash son of Mohan Lal residents of Nabi Karim, Delhi who have been convicted of an offence under section 302 I.P.C. read with section 34 Indian Penal Code . and sentenced to imprisonment for life. The accused are said to be friends and have been found guilty of murder of Mohd Yunis son of Shamsuddin resident of the same locality who it is said was also their friend at one time. The prosecution case against the accused is that the deceased had borrowed a sum of Rs. 100.00 from Shanker

accused some three months before the occurrence. On October, 12, 1968 the two accused approached the deceased's father at his shop and told him that the deceased had not repaid the loan. Shamsuddin assured them that the deceased would make the payment and advised them to avoid mutual trouble on that score. The accused left the shop of Shamsuddin stating that they would have to deal with the accused in their own way.

(2) At about 4.45 P.M. the same day, the accused met the deceased in front of a Qabristan abutting on a metalled road, known as Kacha Rasta Kadam Sharif, where there was exchange of hot words between the deceased on one side and the accused on the other. Shanker accused was heard threatening the deceased that he had withheld payment of the loan thinking himself to be a big bully. The remark provoked the deceased and he replied in an equally firm tone that he would not make the payment and that Shanker could do what he liked. Shanker then whipped out a dagger, which was subsequently described as a cobbler's knife, from the right pocket of his trousers and struck the deceased on his face with it. The deceased reeled back after he had sustained a minor injury on the left side of his face. Parkash accused then caught hold of the deceased from behind and called on his companion to kill him. While the deceased was thus held by Parkash in his grip, Shanker stabbed him in the chest. The deceased fell on the ground at the entrance of the Qabristan near the Modern-Motor Training School and died almost instantaneously.

(3) Pws Saeed Ahmed, Boota Ram and Som Nath claimed to have witnessed the occurrence. Public Witness Nanne Khan who was coming from the opposite direction claimed to have seen the accused making good their escape into the bye-lane of the Qabristan. He saw Shanker carrying in his hand what he described as a sort of dagger. PWs Saeed Ahmed, Boota Ram, Som Nath and Nanne Khan kept staying on the spot until the arrival of the police.

(4) On receipt of a telephonic message at the police Control Room that someone had been stabbed and was lying unconscious at the Modern Motor Training school on Qutab Road in front of Kela Godam, Public Witness Krishan Kumar Asi of the Police Control Room relayed the message to the Kamala-Market Police Station

where upon Asi Surjit Singh reached the spto within a few minutes. He recorded the statement of Public Witness Saeed Ahmed at 5.45 P.M. The Fir in the case was recorded on the basis of that statement the same day at 6-05 P.M. Investigation of the case was taken up by Inspector Sham Lal, Sho Kamla Market, Police Station who reached the spto between 5.30 and 5.45 P.M. He prepared the inquest report and recorded the statements of the witnesses present on the spto and sent the dead body to the hospital for postmortem examination.

(5) Asi Rattan Chand searched for the accused in their respective house and in some other areas of the locality and ultimately found both of them sitting on a bench in the waiting hall of the railway station Delhi Main at about 2 A.M. PWs Shiv Lal and Rattan Lal were also with Asi Rattan Chand at that time. In the presence of these two witnesses, he arrested the accused who were wearing blood-stained shirts. Asi Rattan Chand took those shirts into his possession and put them in sealed parcels.

(6) On October 19, 1966 Shanker accused while in police custody made a statement before Inspector Sham Lal that he had thrown the cobbler's knife in the stones lying near the Paharganj Bridge. Pursuant to that statement, the knife Exhibit P1 was discovered from the place at the instance of Shanker in the presence of Boota Ram and Sardar Hussain.

(7) The accused denied their guilt and attributed the case against them to enmity. Shanker accused stated that he had been falsely implicated by Asi Surjit Singh who had arrested him from his house at about mid-night on October 12, 1966 because he had made complaints against the police to the higher authorities. He also stated that Asi Surjit Singh who was posted at Paharganj Police Station at one time had been threatening him that if he did not agree to be a witness for the police in some cases he would falsely implicate him in some case. Parkash accused who was a peon in the local civil courts, stated that he had been falsely implicated at the instance of Boota Ram and Balwant Singh. He further stated that he had appeared as a witness against Balwant Singh. Boota Ram who was a friend of Balwant Singh had threatened him that if he did not resile from his statement in the case against the latter he would ruin him by falsely implicating

him in some case. The accused also examined a few witnesses in their defense.

(8) The case of the prosecution rests on the evidence of three eye-witnesses: Saeed Ahmed (Public Witness 5) Boota Ram (Public Witness 7) and Som Nath (Public Witness 10). There is also the evidence of Nanne son of Munne Khan (Public Witness 11) who deposed that he had seen the accused entering a by-lane of the Qabristan and that Shanker was then carrying a sort of dagger in his hand. There is also the circumstantial evidence with regard to the recovery of a blood-stained cobbler's knife (Exhibit PI) in consequence of the information given by Shanker accused and the recovery of the blood-stained clothes from the person of the accused at the time of their arrest on the night between October 12 and 13, 1966. The prosecution also relies upon the evidence of Shamsuddin, Mohd Ismail father and brother of the deceased to prove the transaction of loan that had created bitterness among old friends and the visit of the accused of Shamsuddin's shop earlier on the day of the occurrence where they had complained to Sharnsuddin against the behavior of the deceased in nto re-paying the loan and that they would have to deal with him in their own way.

(9) The learned Addl. Sessions Judge does nto appear to have been impressed by their evidence and has dis-believed Shamsuddin's evidence about the visit of the accused to his shop. He has also dis-believed the evidence of Public Witness Seed Ahmed. Although in one part of the judgment there is an observation that 'the ocular evidence given by PWs Saeed Ahmed, Boota Ram and Som Nath and the circumstantial evidence given by Nanne Khan quite convincingly connects the accused with a charge framed against them', in a later portion of the same judgment the learned Judge has observed that Public Witness Saeed Ahmed is 'certainly nto a witness without dubious credentials and that no conviction can possibly be based on his evidence.'

(10) It appears to us that inspire of this seeming inconsistency in the judgment, the learned trial Judge is right in holding that Saeed Ahmed is nto reliable witness and that no conviction can possibly be based on his evidence.

(11) Pw Saeed Ahmed was no doubt the first person to be examined by the police and it is his statement (Exhibit PC) which formed the basis of the FIR. But he is

apparently a person without firm moorings. On February 28, 1967 when he was examined before the committing Magistrate for the first time he fully supported the prosecution story as narrated above. The learned Magistrate then adjourned the case to March 4, 1967 for cross-examination of this witness. His statement however could not be recorded till March 15, 1967. On that day Saeed Ahmed resiled from his earlier statement and stated that he had not seen any of the accused stabbing the deceased and that his thumb impression on Exhibit P.C. had been obtained by the police on a blank paper. Strangely enough, he further stated that it was a dark night and that therefore he could not see with whom the deceased was quarreling and who stabbed him. He went on to add that he made the previous statement under the fear of the police. The case was then adjourned to April 5, 1967 to enable the prosecutor to cross-examine the witness. During the interval he was arrested by the police and when the hearing of the case was resumed he told the learned Magistrate that the statement dated March 15, 1967 exculpating the accused had been made by him under the fear of the accused. Once again he reverted to his original statement and fully supported the prosecution case both before the committing Magistrate and in the court of Session.

(12) Under these circumstances, it is difficult to place implicit faith in the testimony of this witness. We are not unmindful of the fact that one of the serious handicaps from which administration of criminal justice suffers in this country is the ease with which the witnesses for prosecution succumb to the attempts made by the accused and their friends and relatives to suborn their loyalty to the cause of truth. Attempts at tampering with the prosecution witnesses are frequently made with impunity and it is always a race between the persons interested in the accused and the police as to who should be able to retain the loyalty of the witnesses. But when a witness's regard for the sanctity of oath is subject to such pulls on both sides, it is bound to weaken one's faith in the value of his testimony. We therefore agree with the learned Addl. Sessions Judge that although the witness's explanation that he had been coerced into making a statement favorable to the accused on March 15, 1967 appears to be correct, we cannot rely upon his evidence for the purpose of basing the conviction of the accused on it.

(13) Pws Boota Ram and Som Nath have both been believed by the trial Court and we see no reason to differ from him, although here again we have to make due allowance for the exaggeration in their statements. Boota Ram was on the way to his dairy which is situate in the Qabristan itself. Som Nath also belongs to the same locality. He is a chaudhary of the Tonga Stand Union and was on his way from the Tonga Stand. He met Boota Ram on the way. They stated that they had hardly gone a few paces from Qutab Road into the a Kacha Rasta Kadam Sharif when they saw an altercation going on between Shanker and Parkash accused on one side and the deceased on the other. They stated that they heard the accused demanding money from the deceased who replied that he had no money and the the accused were free to do what they liked. They further stated that they were about 20 paces away from the scene of occurrence when Shanker accused whipped out what looked like a dagger from his trousers and struck Yunis with it. They latter reeled back but was soon held by Parkash accused from behind. Prakash then uttered the words 'Mar Sale Ko.' Upon this Shanker plunged the dagger in the chest of Yunis who slumped to the ground. Seeing the deceased collapse, Shanker and Parkash both went away, Shanker carrying the dagger with himself.

(14) Learned counsel for the accused argued that Boota Ram was a stock witness of the Police. He also argued that Boota Ram was a friend of one Balwant Singh who was prosecuted in a murder case in which Parkash accused had appeared as a prosecution witness. We have gone through the cross-examination of this witness on these points. It is true that he had appeared as a prosecution witness in two cases but that would hardly make him a stock witness of the police. He also admitted his interest in Balwant Singh who had been sentenced to death and that he had gone to see him in jail along with some ladies of the neighbour-hood. He further admitted that Parkash accused had appeared as a prosecution witness in the case against Balwant Singh but denied that he had ever asked him to resile from his statement. This fact may be relevant so far as his evidence relating to the part ascribed by him to Parkash accused is concerned but there is no reason why he should falsely implicate Shanker accused against whom he had no animus. It has also nto been shown that he had any interest in the deceased.

(15) Learned counsel for the accused made much of Boota Ram's admission in cross-examination that before the arrival of the police, he, Saeed Ahmed, Som Nath and Nanne Khan had talked among themselves that the injury appeared to have been inflicted by a cobbler's knife and that it was for that reason that the police had subsequently stage-managed the recovery of the knife (Exhibit PI).

(16) We find nothing un-usual in this. It is but natural that when some one has been assaulted in the presence of three or four persons and the assailants have walked away with the weapon that the persons who have seen the occurrence should talk among themselves. Shanker accused had suddenly taken out a weapon from the pocket of his trousers. The witnesses were still about 15 to 20 paces away when he inflicted the injury. The manner in which the assault was made must lead to some discussion among the witnesses as to what kind of weapon was used. The admission made by the witness would rather go to establish his veracity than cast any doubt on it.

(17) Som Nath's evidence was attacked by the learned counsel for the accused mainly on the ground that he had admitted in cross-examination that the Investigating Officer Pt. Sham Lal had recorded his statements many times and torn the same. He had also stated that the other witnesses were present when this process of recording his statements and tearing them was going on. Learned counsel argued that this showed that the police had first formulated a theory and then tried to adapt the statement of this witness to the requirements of that theory. He therefore urged that this cast a serious doubt on the integrity of investigation. We are not impressed by this argument. In the first place, no such question was put to any other witness nor did any other witness support Som Nath on this point. No question was ever put to the Investigating Officer Pt. Sham Lal. In fact, even a suggestion to that effect was not made during his long cross-examination. The admission made by Som Nath may therefore be treated either as a result of some mis-understanding on his part or it may be even an attempt on his part to oblige the accused in respect of a matter which he might have thought was of no consequence so far as his main evidence in the case was concerned. We have no doubt that by and large the evidence of Boota Ram and Som Nath inspires confidence. Their presence on the spot was quite natural and there is no reason

why they should falsely implicate the accused.

(18) Their names also find mention in the F.I.R. (Exhibit PC/I) which was recorded shortly after the occurrence.

(19) The evidence of Nanne Khan who deposed that he saw Shanker carrying what he described as 'a sort of dagger ' in his hand when he was going to Qutab Road also has a bearing on the guilt of the accused. There is absolutely no reason why Nanne Khan's statement should not be believed.

(20) Learned trial Judge has dis-believed the evidence relating to the recovery of the blood-stained cobbler's knife (PI) at the instance of accused Shanker. His reason for dis-believing that evidence is that there is discrepancy between the alleged disclosure statement (Exhibit PG) and the evidence of PWs Boota Ram and Sardar Hussain. According to Exhibit Pg, Shanker had stated that he had thrown a sharp-edged iron 'Rumpy' in the stones lying inside the Paharganj Bridge whereas PWs Boota Ram and Sardar Hussain deposed that Shanker had told the police officer that he had concealed the 'Rumpy' in bushes near the Paharganj Bridge. It appears to us that this is not such a discrepancy as would discredit the evidence regarding recovery. The embankment near the Pahar Ganj Bridge from where the cobbler's knife (Exhibit PI) is said to have been recovered consists of stones as well as bushes. The learned trial Judge has also observed that Boota Ram and Sardar Hussain could not satisfactorily explain t

(21) The medical evidence also establishes that the stabbing-wound 2' x 6/10' chest cavity deep on front of chest right side-" above epigastric region which, in the opinion of Dr. G.S. Mittal (PW1) who conducted the post-mortem examination of the dead body of Yunis, was caused by a weapon like the cobbler's knife Exhibit P1 and that as opined by Dr. Mittal death was due to cutting of heart and lung by that injury.

(22) There is thus no doubt about the death of the deceased having been caused by the stab-wound inflicted by Shanker accused. The only question now is as to what offence has been committed by the accused. According to the learned Addl. Sessions Judge both Shanker and Parkash are guilty of the offence punishable

under section 302 Indian Penal Code read with section 34 .1 PC. The conclusion reached by the learned trial judge however appears to us to be somewhat inconsistent with what has been said by him in another portion of the judgment. The learned Judge has observed:-

'THEY killed Mohd Yunis in the course of a sudden quarrel, which took a serious turn with the utterance of unexpected remarks by the deceased that if the accused considered that he was a bully, he might be treated as such and that he would not repay Shankar's loan, come what may. These remarks unfortunately so heated the blood of the accused that they lost all sense of proportion and reason. They, however took undue advantage of the helplessness of the deceased. But for this, I would have been inclined to think that they were guilty of the lesser offence punishable under section 304 Indian Penal Code .'

(23) We are also not convinced that there is sufficient material on record to suggest the application of section 34 J.P.C. The prosecution evidence on the other hand establishes that accused Parkash was neither concerned with the loan transaction nor had he inflicted any injury on the deceased. He was not carrying any weapon on his person. The evidence of Shamsuddin about Parkash and Shankar both having visited his shop earlier on the day on which Yunis was killed, has been rightly dis-believed by the trial court. Boota Ram and Som Nath both speak about Shankar accused having whipped out a dagger from the pocket of his trousers. There is nothing to show that Parkash accused had any knowledge of Shankar having a knife on his person. Boota Ram and Som Nath no doubt say that Parkash accused caught hold of Yunis and uttered the word 'Mar Sale ko' That part of their statement however appears to us as an exaggeration and can hardly be treated as sufficient evidence of common intention or pre-concert between Parkash and Shankar which is essential for the application of section 34 Indian Penal Code . While we have no doubt that Parkash accused was present with Shankar accused when there was altercation between him and Shankar on one side and the deceased on the other over Shankar's demand for return of his loan and the deceased's attitude of defiance; but we are not satisfied beyond reasonable doubt that Parkash was concerned in any way with the infliction of injuries or with the wielding of the knife by Shankar accused. We are therefore

inclined to give benefit of doubt to Parkash accused but we maintain the conviction of Shankar accused for an offence under section 304 Part (2) I PC. We have no doubt that he killed the deceased in the course of sudden altercation which took a serious turn on account of the bullying and defiant attitude adopted by the latter.

(24) The order of conviction and sentence passed on Parkash accused is consequently set aside and he is ordered to be acquitted while the conviction of Shankar accused is altered from one under section 302 Indian Penal Code . to one under section 304 Part (2) Indian Penal Code for which he is awarded a sentence of five years' rigorous imprisonment.

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