Venkataswami Vs. the State

Venkataswami Vs. the State

SooperKanoon Citation : sooperkanoon.com/682878

Court : Delhi

Decided On : Apr-03-1979

Reported in : 16(1979)DLT54

Judge : Prithvi Raj and; O.N. Vohra, JJ.

Acts : Indian Penal code, 1860 - Sections 302; Code of Criminal Procedure (CrPC) , 1973 - Sections 154

Appeal No. : Criminal Appeal No. 141 of 1976

Appellant : Venkataswami

Respondent : The State

Advocate for Pet/Ap. : D.C. Mathur and; K.K. Sud, Advs

Judgement :

0.N. Vohra, J.

(1) This is an appeal by Venkataswami (40) son of Chinna Swami, resident of Sector I, R. K. Puram, New Delhi, who was convicted under section 302 of the Indian Penal Code and sentenced to imprisonment for life.

(2) Briefly, the facts are that on May 25, 1975 Rajan (Public Witness 3), Assistant Manager of Madras Coffee House run in Shop No. 4, Sector I, R. K. Puram, New Delhi informed Police Post Sector, 4 R. K. Puram, New Delhi, at 10.40 p.m. that a

knifing incident had occurred in his hotel at 10.30 p.m. Constable Chiranji Lal was sent to the spot and a copy of the report was forwarded to Sub Inspector Dalip Singh (Public Witness 21), who happened to be on patrol duty at that time. Sub Inspector Dalip Singh rushed to the Coffee House and found that the injured had been removed to the Safdarjung Hospital. Accordingly, he went to the Safdarjung Hospital and approached the doctor for seeking permission for recording statement of Ram Raj, the injured, but the doctor declared him 'not fit' for statement at 11.15 p.m. There Sub Inspector Dalip Singh contacted Gian Sagar (Public Witness 1), who was looking after the Coffee House in the absence of his father, the manager of the Coffee House. Gian Sagar informed that at 10.30 p.m. he was at the Coffee House and at that time Venkataswami, who was employed as a cook in the Coffee House, was taking meals sitting at an adjoining table and Ram Raj, who was employed as a bearer, was serving meals. He also stated that Ram Raj served curd twice to Venkataswami and as the demand was repeated Ram Raj represented that very little curd was left and that was to be used for preparing more curd and, thereupon, Venkataswami got enraged and shouted why he was not being served curd and picked up a chhuri lying on the nearby table and thrust the same in the abdomen of Ram Raj. Thereafter, he ran away carrying the chhuri along while Ram Raj, who was holding the abdomen with his hand, tried to come out but fell down on the ground and became unconscious. He further stated that Ram Raj had been removed to Safdarjung Hospital by Jackanand and Constable Chiranji Lal and that Raju and others had witnessed the occurrence. Sub Inspector Dalip Singh made a note of what was stated and got it signed by Gian Sagar in token of its correctness, and forwarded the statement (Ex. Public Witness PW1/A) Along with his endorsement (Ex. Public Witness PWI/B) to Police Station R. K. Puram for registration of case under Section 307 of the Indian Penal Code. Asi Phool Singh (Public Witness 6) who was then siorking as Duty Officer, recorded the First Information Report, copy of which w Ex. Public Witness Public Witness 6/A, on receipt of the communication at 12.30 a.m. and thus the case was registered.

(3) Dr. R. C. Mehta recorded the time of arrival of Ram Raj at the hospital as 11.15 p.m. and noted that stabbing had been caused within half an hour in a quarrel in his report (Ex. Public Witness Public Witness 17/A) On examination, he made the

following observations:

'-PT.is profusely sweating, pale. -Peripheral pulse feeble. -B. P. not recordable. -Incised wound in epigastric region through which loops are coming out in the omentum size of incised wound could not be assessed due to intestine.'

The kind of weapon used was opined as sharp. Dr. R. P. Kothari attended upon Ram Raj but the latter succumbed to the injuries sustained and died at 9.20 in the morning of May 26, 1975 (Death Report Ex. Public Witness Public Witness 17/B).

(4) DR.BHARATSINGH(PW16), Police Hospital, Delhi, conducted the post mortem examination on the body of Ram Raj on May 27, 1975 at 2 p.m. and observed that incised wound over the epigastric area I ' long placed obliquely horizontal was abdominal cavity deep and sufficient to cause death in the ordinary course of nature and that death was due to shock and haemorrhage as a result of injuries sustained and that the time since death was 30 hours.

(5) Sub Inspector Dalip Singh, who had gone to the place of occurrence from Safdarjung Hospital, recorded the statements of the witnesses. Thereafter hejoinedVedParkash(PW15) and set out in search of Venkataswami. On reaching Madrasi Camp near Chanakyapuri New Delhi, he joined Head Constable Banwari Lal (Public Witness 14). On seeing the policy party, Venkataswami tried to run away but was apprehended. On being interrogated, he disclosed that he had hidden the chhuri under the earth in a shrub near railway line and could get the same recovered by pointing out the same. In regard to this discovery memo Ex. Public Witness Public Witness 14/A was prepared and was signed by Venkataswami. Venkataswami led the party to the place promised by him and after some digging up of earth took out chhuri Ex. PI. It was seized vide memo (Ex.PW 14/B) and sketch (Ex. Public Witness Public Witness 14/C) was prepared.

(6) During trial, Venkataswami took the stand that after taking lot of liquor, he went to sleep in his jhuggi and did not know what happened thereafter.

(7) The learned Additional Sessions Judge placed reliance on the evidence of three eye witnesses, namely, Gian Sagar (Public Witness 1), K. Raju (Public

Witness 2) and Rajan (Public Witness 3) and the evidence in regard to the discovery and recovery of the weapon of offence and convicted Venkataswami as already mentioned.

(8) Shri Dinesh Chand Mathur, who has appeared as amices curiae for Venkataswami, has urged that the ocular evidence in this case is unworthy of reliance. His contention is that Gian Sagar is a child witness and no enquiry for satisfaction that he was worthy of being administered oath and otherwise worthy of being examined was held and that Rajan is not an eye witness at all. As regards the preliminary enquiry to test the competency of a child witness, it is desirable that the Judge should record his opinion that the child understands the duty of speaking the truth after some questioning. This is, however, in accordance with the rule of prudence and not a legal obligation. The absence of such an enquiry can, thereforee, at the highest be taken as an irregularity and in a case where from the circumstances it can be said that the child is in fact a competent witness, nothing would turn on the absence of separate enquiry or certificate for the reason that no prejudice can be said to have been caused. would be seen that no objection was taken by or on behalf of Venkataswami that Gian Sagar was not worthy to depose on account of age and no such suggestion was given in cross-examination. The averment that during the absence of his father, Gian Sagar was actually looking after the Coffee House was not challenged. In the circumstances, it cannot be said that Gian Sagar, who was 13 or 14 years of age and a student of 6th class and who fared well while in the witness box, as would appsar from record, suffered in his competency on account of age. The danger about a child witness, as is well known, lies in the fact that being very intelligent and without having a conscience he can imagine something which did not happen to be true on being tutored and gave a glib account in Court with an innocent face. In the instant case, the police was immediately informed about the occurrence and the report was recorded at the instance of Gian Sagar within a short time. The other eye-witnesses were also examined there and then. There was thus no time lag and no opportunity for tutoring. There was no necessity, too, as there were other eye-witnesses as well. These circumstances coupled with the consideration that no one had any animus against the appellant, who was as good an employee of the Coffee Houseas Ram Raj and no question at all of screening the real offender,

we are of the view there is inherent guarantee that Gian Sagar is a wholly competent witness.

(9) Coming to the merits, it would be seen that all the three eye-witnesses are natural witnesses of the occurrence. Rajan was not present at the time the knife blow was inflicted by Venkataswami to Ram Raj. He had gone to answer the call of nature. On return to the Coffee House, he found Ram Raj lying injured and Gian Sagar calling out that Venkataswami had run away after injuring Ram Raj with a knife and saw Raju present there. Technically he is not an eye-witness, none the less his evidence is of immense value. Both Gian Sagar and K. Raju have stated about the incident and how it was occasioned and what followed thereafter and it is significant to note that no attempt at all was made in cross-examination to falsify what was stated by these witnesses as well as by the third witness except that it was put to Gian Sagar that his version that Venkataswami had gone to the kitchen and had washed the chhuri was something which had been stated at the instance of the police.

(10) It is pointed out by Shri Dinesh Chand Mathur that in examination in chief Gian Sagar stated that he was present in the Coffee House while in cross-examination he stated that he was standing outside the Coffee House at the door when Venkataswarmi was taking his meals. This is hardly a contradiction. Both the positions can be correct when it was not clearly brought out that reference as to their being recorded was to the same time. It is also pointed out that according to K. Raju, Gian Sagar was not there when the stabbing incident occurred. This contention is devoid of merit. It has already been noted that according to Gian Sagar he Was at the door of the Coffee House. Accordingly, he would have gone inside after the Stabbing incident. It is observed that K. Raju was being asked as to who was inside the room at the time of the actual occurrence and in that sequence he stated that Rajan and Gian Sagar came there afterwards which would mean that they came inside the room after the stabbing. It is significant to note that no challenge was given to Gian Sagar when he claimed to be present and no pointed question was put to Rajan or K. Raju suggesting that Gian Sagar was not there at the Coffee House at all. Lastly, it is pointed out that statement Ex. Public Witness PW1/A should not beused for corroborating the version of Gian

Sagar as first information in this case in view of the earlier report Ex. Public Witness Public Witness 7/A made by Rajan at the police post at 10.40 p.m. On examination, this contention is found to be incorrect. The essential requisite of the information referred to in Section 154 of the Criminal Procedure Code is that it should contain such facts about the occurrence as show that a cognizable offence has been committed. The information that was given here was by a person who was not an eye-witness at all and all that was stated was that a knifing incident had taken place at the hotel. It was bereft of essential facts and was so cryptic that it is difficult to say that it was information in regard to commission of a cognizable offence. Accordingly, it cannot be taken as first information report. In Tapinder Singh v State of Punjab, 1970 Criminal Law Journal 1415, the information was that firing had taken place at Taxi Stand, Ludbiana. The Supreme Court refused to accept it as the first information report as it did not clearly specify a cognizable offence and observed :

'THEmere fact that this information was the first in point to time does not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has, broadly speaking, to be determined on the relevant facts and circumstances of each case.'

(11) In the matter of assessment of oral witnesses, there are three major considerations the first, as to whether the witness is an interested witness, the second, whether what is stated is probable and the third, whether the account has been falsified in cross-examination. Venkataswami and Ram Raj were both employees of the Coffee House. They were thus equally situated to all the three eye-witnesses. It would be seen that the case of Venkataswami was that he had taken liquor on that day. All the three witnesses have unhesitatingly admitted this in cross-examination. It is manifest that the witnesses are fair witness. The accounts which they have given are probable accounts which stated unchallenged and half-hearted attempts made to falsify them have utterely failed. We are thus satisfied that the ocular evidence in this case is such as inspires full confidence in the mind and there is no reason why implicit faith should not be put therein.

(12) Another argument is that Ram Raj was operated upon by Dr. Kothari but the latter was not examined and, thereforee, the appellant should be given the benefit of doubt that death may be the result of the operation that was performed. The basis of all this is the suggestion given to Dr. Bharat Singh that death was caused due to operational injuries. The doctor denied the suggestion and it remained at that stage as no material nor evidence to substantiate the suggestion was produced, fn fact, the matter was not pressed further. It is submitted that in a case where surgery intervenes it becomes the bounden duty of the prosecution to examine the doctor who performed the operation so that the accused may be allowed opportunity of exploring that aspect. We are of the view that it is too broad a statement. Much would depend on the facts and circumstances of the individual case and, no generalisation is possible. In a case where there is sufficient time lag between the causing of the injury and the death and some ailment or new development altogether interposes the causing of injury and death, situation may arise which may call for determination as to whether there were factors other than the injury attributed to the accused person responsible for death. No such consideration, however, can be said to arise in this case. The injury was on a very vital part of the body. It was severe and was caused with a deadly weapon. As a result of this injury. Ram Raj was soon reduced to such a poor state of health that one could say that he was virtually gasping for life; his pulse became feeble and his blood pressure was not recordable. The fact that death occurred within 12 hours despite such medical aid as one of the top most hospitals in the metropolis could provide itself speaks volumes of the intensity of the injury. The cause and effect connection between the injury and death, in the circumstances of this case, is such that it looks something abhorrent to the mind to imagine, much less to hold, that benign efforts to save life which was flickering by performing surgery resulted into death. Dr. Bharat Singh who performed the autopsy observed on internal examination ;

'INJURYNo. 2 was anti mortem possible by a sharp edged weapon and was sufficient to cause death in the ordinary course of nature. Death was due to shock and haemorrhage as a result of injuries..... Depth of injury No. 2 was 4.'

(13) The last argument is that Venkataswami was so high up on account of liquor which he had consumed that it cannot be said that he intended to cause the particular injury which resulted into the death of Ram Raj. Reliance has been placed on Section 86 of the Indian Penal Code which says:

'86.In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated unless the thing which intoxicated him was administered to him without his knowledge or against his will.'

(14) This Section came up for consideration in Basdev v. State of Pepsu, : 1956 CriLJ919 . After taking note of earlier decisions, the observations were summarised as fellows :

'SOfar as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule,that a man is presumed to intend the natural consequences of his act or acts.'

All that has come in evidence in this case is that Venkataswami was drunk. No one including Venkataswami has stated about the quanity of liquor that had been consumed by him. There is neither any evidence nor even suggestion that Venkataswami was staggering in gait or unintelligible in speech. On the other hand, the proved facts are that he was taking his meals while sitting on the table and he demanded curd on two occasions and after taking the same, he again demanded curd and became infuriated when he was told that more curd could not beprovided. After inflicting the injury he took out the chhuri and went into the kitchen to wash the blood on the chhuri and, thereafter, he ran away. He concealed the chhuri and on being spotted by the police, he took to his heels. The whole of this conduct would negative the conclusion that Venkataswami was so

much affected by intoxication that he was incapable of forming the intention to cause the injury which he inflicted. There is nothing at all from which inference can be drawn that he did not intend to cause the injury in the abdomen that was actually caused by him.

(15) In Virsa Singh v. State of Punjab : 1958 CriLJ818 , Vivian Bose J. explained the meaning and scope of Clause 3rdly of Section 300 of the Indian Penal Code in the following words :

'.....THEprosecution must prove the following facts before it can bring a case under s. 300, '3rdly' ; First, it must establish, quite objectively that a bodily injury is present; Secondly, the nature of the injury must be proved ; These are purely objective investigations; Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accident or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.'

(16) Looking at the place of injury and keeping in view the nature of the weapon of offence and the severity with which it was inflicted, there can be no manner of doubt that the injury which resulted into death of Ram Raj was the very injury which was intended by Venkataswami. The opinion of the doctor who pirformsd the past mortem examination is that the injury was sufficient in the ordinary course of nature to cause death. The immediate effects of the injury observed by the doctor who happened to examine Ram Raj shortly after the incident and the fact that death took place with 12 hours despite best medical aid lead to the firm conclusion that the opinion given by the doctor is wholly acceptable. We are, thereforee, of the view that the learnedAlditioni Session Judge was correct in his conclusion that the offence that is made out is one of murder.

(17) For the foregoing reasons, the conviction and sentence are upheld and the appeal is dismissed.