

**Mohan Lal Vs. State**

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**Court :** Delhi

**Decided On :** May-24-1978

**Reported in :** 1978CriLJ1832; ILR1978Delhi420

**Judge :** V.D. Misra and; A.B. Rohtagi, JJ.

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

**Appeal No. :** Criminal Appeal Nos. 137 and 171 of 1975 and 360 of 1976

**Appellant :** Mohan Lal

**Respondent :** State

**Advocate for Pet/Ap. :** D.R. Sethi and; K.K. Sud, Advs

**Judgement :**

**Avadh Behari Rohatgi, J.**

(1) Mohan Lal, Satiah Kumar and Bhupinder Kumar, appellants, were tried for offences under sections 302, 454 and 506 read with section 34 of the Indian Penal Code. They were also charged with an offence under section 25 of the Arms Act. The Additional Sessions Judge who tried them found them guilty. He sentenced each of them to two years imprisonment under section 454, two years again under section 506 and life imprisonment under section 302. In addition to these sentences he also awarded to each of them one year imprisonment under section

25 read with section 27 of the Arms Act.

(2) The prosecution case is this. On June 22, 1974, at about 11.30 a.m. information was received at the police station Rajinder Nagar that three persons had been caught at Akash Taxi Stand, New Rajinder Nagar. This information was given by Mulakh Raj, taxi driver (Public Witness 3). On receipt of this information the police swung into action. They came to the taxi stand. They recorded the statement of one Niranjn Singh, the owner of -the Taxi Stand. Then the police went to record the statement of Sobam Singh (Public Witness 2).

(3) The investigation which started with the statement of Niranjn Singh revealed that three boys Mohan Lal (aged 19 years). Bhupinder Kumar (aged 20 years) and Satish Kumar (aged 19 yeate) broke into house No. 423, Double Storey, Rajinder Nagar, of Kewal Krishan Khurana. They removed the locks and bolts. Mohan Lal and Satish Kumar entered the house. Before they could ransack the house and decamp with the booty, Soban Singh the domestic servant of Kewal Krishan, arrived there. As he entered the room he saw that Satish Kumar was standing near the door with danda of the form of Gupti in his hand. At the inner gate Mohan Lal was standing with an open knife is his hand. When Sohan Singh tried to raise alarm these two boys Mohan Lal and Satish Kumar threatened to kill him. Soban Singh escaped to the roof of the house and shouted 'chor chor'. On this Mohan Lal and Satish Kumar tried to run away. They came out. Outside the house Bhupinder Kumar was standing near a scooter. The three appellants tried to start the scooter. But when they failed they ran towards the taxi stand. In the meanwhile a crowd had colleced on hearing the alarm and they gave a hot pursuit to the appellants. When the appellants reached the Akash Taxi Stand Niranjn Singh caught hold of Satish Kumar. One Subhash Chander seized Bhupinder. Ram Lal, a domestic servant of house No. 160, double storey quarters, took Mohan Lal into his clutches. Mohan Lal somehow freed himself from the tenacious grasp of Ram Lal. In the process of securing release he stabbed Ram Lal in the back. Ram Lal started bleeding. He was taken to the hospital where he scumbed to his injuries between the night of 22nd June 1974 and 23rd June, 1974.

(4) On receipt of the first report given to the control room by Mulakh Raj the police arrived at the spot and took the three appellants into custody. After completing the investigation they put the case to court. The three appellants were tried and sentenced, as we have said. Now they appeal to this court against their sentences and convictions.

(5) Mulakh Raj Public Witness 2 and Niranjana Singh Public Witness 3 were examined as prosecution witnesses. But they turned hostile. They did not support the prosecution case. The trial judge convicted the appellants on the testimony of Soban Singh Public Witness 2 and Subhash Chander Public Witness 8. Soban Singh made a straightforward statement. His master Kewal Krishan had left the house in the morning at about 10.15 a.m. He himself had gone to the doctor at about 10.30 a.m. to get medicine. When he came back at 11 a.m. he found the locks and bolts of the main gate removed. As he entered he sighted Satish Kumar and Mohan Lal in the house. Satish was having a 'danda' in his hand. Mohan Lal was brandishing a knife. Soban Singh went to the roof of the house and in dire alarm he raised a hue and cry of 'chor chor'. Mohan Lal and Satish Kumar in a bid to escape ran out of the house. They tried to start a scooter where Bhupinder Kumar was standing. As they failed they ran towards the taxi stand 20 or 25 persons followed the appellants. Soban Singh did not chase them as there was nobody to look after the house. therefore, he stayed behind.

(6) Public Witness 10 Subhash Chander stated that on June 22, 1974, at 12.30 or 1 p.m. he was present at New Rajinder Nagar Taxi Stand. He saw three persons come running from the side of quarter No. 160. Two of them were armed with knives and a third with danda. He caught hold of Bhupinder Kumar, one of the appellants. Ram Lal held Mohan Lal in his embrace. Mohan Lal stabbed Ram Lal with knife in the back and thereupon Subhash took hold of Mohan Lal in his firm grip. Ram Lal was removed to the hospital in a taxi. The police after their arrival picked up blood from the spot.

(7) Hira Lal Public Witness 23 is the sub-inspector. He stated that on June 22, 1974, at 12.20 p.m. he went to the spot and recorded the statement of Niranjana Singh. The three appellants along with two knives and a Gupti were handed over

to him. He went to the hospital and received the injury sheet of the injured. The doctor declared the injured unfit to make a statement and, therefore, he returned back to the spot and recorded the statement of Soban Singh. He took into possession the knives, the danda and a watch stained with human blood from the wrist of Mohan Lal. The scooter was also taken into possession. Blood was picked from a place near the taxi stand.

(8) Ram Lal who received the fatal injury at the hands of Mohan Lal was removed to the hospital by one Ramu Public Witness 4 where he died at 1.40 a.m. in the night between 22nd and 23rd June, 1974. His master Sat Pal Public Witness 6 identified the dead body. Doctor Bharat Singh Public Witness 22 performed the post-mortem examination on the dead body of Ram Lal. He found the following injury :

'ONEstitched wound on the left renal angle placed horizontally size Hp x.

(9) This injury, he said, was possible by a sharp edged weapon and was sufficient to cause death in the ordinary course of nature.

(10) The trial judge came to the conclusion that there was ample evidence on the record to prove the guilt of the appellants. He rested his decision mainly on the evidence of Soban Singh and Subhash Chander. He opined that they were truthful witnesses. He held that the prosecution case has been proved beyond reasonable doubt. With this conclusion we are in full agreement. It is true that the investigation started with the statement of Niranjn Singh. It is also true that Niranjn Singh has not supported the prosecution version. And the same is true of Mulakh Raj. Mulakh Raj made the first report to the control room on telephone but did not support the prosecution case as set up. Though these two witnesses turned hostile yet the fact remains that prosecution case finds corroboration even from their statements. The very fact that three persons were mentioned by Mulakh Raj in his report to the police as having been caught at the taxi stand shows that the three appellants were arrested at the spot by the police. Even Niranjn Singh stated that four or five persons came running to the taxi stand and they were being chased by 100 or 150 persons.

(11) The upshot of the entire evidence is that the three appellants were apprehended by the members of the public in broad day light and at such a busy place as the taxi stand of Rajinder Nagar. This is the central fact in the whole case. The time and place of the occurrence is such that it proves beyond reasonable doubt that the appellants were chased by the members of the public on hearing the alarm and were ultimately overpowered. The police arrived at the scene and took into their possession the knives, the gupti, watch and the scooter. In an effort to liberate himself from the firm hold of Ram Lal, Mohan Lal stabbed Ram Lal in the back. The blood-stained watch which was taken into possession from the wrist of Mohan Lal and the blood picked up from the place under the tree near the taxi stand clearly prove that it was Mohan Lal who gave the mortal blow. All these details of the prosecution case were deposed to by Subhash Chander whose testimony the trial court believed. We see no reason why we should take a different view.

(12) The testimony of Subhash Chander was severely criticised by counsel for the defense on the ground that he was a stock witness of the police as was clear from the admitted fact that he was accused in some cases and convicted in one and had appeared as a prosecution witness in four or five cases. We do not think his testimony ought to be rejected out of hand. In agreement with the trial judge we are of opinion that Subhash Chander's statement taken as a whole shows that he was a witness of truth. From the mere fact that he has appeared as a prosecution witness in some cases it cannot be inferred that he is a stock witness of the police. If he had been the sole witness of the occurrence one might have felt unsafe to place an implicit reliance on his word of mouth. But his statement is corroborated in material particulars by the statement of Soban Singh whose evidence we have no reason to disbelieve. His master Kewal Krishan Public Witness 5 appeared in the witness box to depose that some one informed him that his house was being burgled by thieves and on receipt of the telephone call he immediately reached the house. It is true that nothing was stolen from the house. But that is not a factor in favor of the appellants. Before they could ransack the house and decamp with the booty the servant returned and on his raising the alarm the appellants took to their heels.

(13) One outstanding fact in this case is that the three appellants were arrested by the Police at the taxi stand on receipt of information from Mulakh Raj. Soban Singh's statement is true. He has named only Mohan Lal and Satish Kumar as the persons present in the house. Bhupinder Kumar was seen standing near the scooter. Niranjana Singh, Soban Singh and Subhash Chander have uniformly stated that the mob followed the appellants shouting 'char chor'. That the three appellants were nabbed not far away from the place of occurrence is a circumstance of crucial importance in this case. Subhash Chander has clearly deposed to the incident of stabbing of Ram Lal by Mohan Lal when the former tried to catch hold of the latter and the latter having got himself released attacked the former with a knife.

(14) Counsel for the defense argued that Subhash Chander and Soban Singh are wholly unreliable witnesses. Subhash, he said, was under the thumb of the police. Soban Singh, he said, was a tutored witness as he came to court with the police duly coached. We were referred to *Hira Lal v. State of Haryana*, : 1971 CriLJ290 , *V. Thevar v. State of Madras*, : 1957 CriLJ1000 and *Badri v. State of Rajasthan*, : 1976 CriLJ496 in support of the submission that conviction on the evidence of a single witness, such as is Subhash Chander in this case, was most 'unsafe and ought not to be sustained. We do not agree. There is no computerized rule. Nor are judges computers. It must always depend on the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. In this case we find there is abundant evidence, direct and circumstantial, to prove the guilt of the appellants. The trial court called the appellants 'dare-devils' of the locality. No one was willing to come forward to depose against them. In such circumstances, as always, the court has to separate the grain from the Chaff.

(15) Counsel then submitted that Mohan Lal's case fell under section 304 and we should alter his conviction from one under section 302 to section 304, Indian Penal Code. He referred us to *Harjinder Singh v. Delhi Administration*, : 1968 CriLJ1023 . This contention is not well founded. We have no hesitation in rejecting it. Mohan Lal to liberate himself from captivity, inflicted a mortal wound on the back of Ram Lal who had hitherto held in restraint.

(16) We, therefore, confirm the sentence of life imprisonment awarded to Mohan Lal under section 302 Indian Penal Code and two years each under sections 454 and 506. These sentences will run concurrently. We also confirm the sentence awarded to Satish Kumar and Bhupinder Kumar of two years imprisonment each under sections 454 and 506 read with section 34, Indian Penal Code. The convictions of all the three appellants under section 25 read with section 27, Arms Act and sentence of one year R.I. each are also hereby confirmed.

(17) But we cannot agree with the trial court that Satish Kumar and Bhupinder Kumar are also guilty of offence under section 302 read with section 34 Indian Penal Code. We find no sharing of common intention in so far as the offence of section 302 is concerned. We may recount the facts again to distinguish their cases from the case of Mohan Lal.

(18) On the arrival of Soban Singh and on his raising alarm Mohan Lal and Satish Kumar ran out of the house. They went towards the place where Bhupinder Kumar was standing near the scooter. The appellants wanted to speed away on the scooter but the scooter would not start. therefore, all three of them ran towards the taxi stand as if it were a safety belt. A crowd chased them. Mohan Lal and Bhupinder Kumar were brandishing knives. Satish Kumar was waving a gupti. All three of them were running for their individual safety, exposed as they were to a common danger. They were impelled by the instinct of self-preservation which monitors human behavior when faced with mortal peril. There was no prior concert. There was no prior meeting of minds. In a case like this each would be individually liable for whatever injury he caused but none would be vicariously liable for what the other did. Here each one was running for his own life. In this pursuit for protection each one was for himself. Each one was concerned about his own safe retreat. When the three appellants reached the taxi stand Mohan Lal inflicted the fatal injury on the back of Ram Lal. Two others were seized and as a result were unable to use their arms. On this evidence it is impossible to record a finding of common intention. Mohan Lal is solely responsible for his act. Satish Kumar and Bhupinder Kumar cannot be vicariously convicted for the act of Mohan Lal. As the Privy Council said in *Mahbub Shah v. Emperor* :

'THE inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case.'

(19) In the facts and circumstances of the present case there are two independent transactions. The transaction of house breaking in order to commit an offence (s. 454) and criminal intimidation (s. 506) had ended the moment the three appellants took to their heels. up to that stage it will be proper to apply section 34, Indian Penal Code against all the three appellants. That transaction was a common enterprise. It was a joint venture. But when they started running away for fear of being caught a separate transaction took place : See *Shyam Behari v. State of U.P.* : 1976 CriLJ342 . The three appellants were running ahead. A crowd shouting 'chor chor' was following them. In his individual attempt for safe retreat Mohan Lal killed Ram Lal. therefore, Satish Kumar and Bhupinder Kumar cannot be said to have committed the offence of section 302, Indian Penal Code. We accordingly set aside the conviction and sentence of Satish Kumar and Bhupinder Kumar under section 302 read with section 34, Indian Penal Code.

(20) In the result criminal appeal 171 of 1975 (*Mohan Lal v. State*) is dismissed. Criminal Appeals 137 of 1975 (*Bhupinder Kumar v. State*) and 360 of 1976 (*Satish Kumar v. State*) are allowed to this extent that the conviction of Bhupinder Kumar and Satish Kumar under section 302, Indian Penal Code read with section 34 is set aside. Their conviction and sentence under sections 454, 506 read with section 34, Indian Penal Code and section 25 read with section 27, Arms Act are affirmed.

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