

Hemant Kumar Vs. the State

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Court : Delhi

Decided On : Apr-17-1979

Reported in : 16(1979)DLT261

Judge : V.D. Misra and; F.S. Gill, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Punjab Police Rule, 1918 - Rule 24.5

Appeal No. : Criminal Appeal No. 216 of 1976

Appellant : Hemant Kumar

Respondent : The State

Advocate for Pet/Ap. : D.C. Mathur,; N.K. Parmar and; P.P. Malhotra, Advs

Judgement :

V.D. Misra, J.

(1) This is an appeal against the judgment of Mr. Mahesh Chandra, Additional Sessions Judge, convicting the appellant under section 302, Indian Penal Code, and under section 25 of the Arms Act, and sentencing him to imprisonment for life under the first count and to rigorous imprisonment for two years under the second count. Both the sentences have been directed to run concurrently.

(2) The prosecution case, in brief, is that on July 10 1974 at about 8.30. P. M. Rajinder Kumar (since deceased) was talking to Ram Nath near the shop of Sohan Lal halwai at Sarai Phoos, Subzi Mandi, Delhi. They were talking about the film 'Gupt Gyan'. The appellant (Hemant Kumar alias Bauna) was also present near the halwai's shop. Rajinder Kumar reprimanded the appellant for teasing the girls of the locality and indulging in goodaism. The appellant retorted by saying that who was he (Rajinder Kumar) to object. Simultaneously the appellant took out a dagger from his tehmat and attacked Rajinder Kumar. Rajinder Kumar tried to ward off the knife blows with his hands and sustained injuries thereon. However, the appellant succeeded in giving knife blows on the chest and abdomen of Rajinder Kumar. On receiving these injuries Rajinder Kumar fell down. One more knife blow was given by the appellant on his back. Thereafter the appellant ran away brandishing his knife. Ram Nath stopped a scooter-rickshaw, put the injured in the rickshaw and took him to Hindu Rao Hospital. At the hospital the injured was examined by Dr, J.K. Jain (PW 10) at 9.05 P.M. He found the injured gasping. He did not find any pulse. Blood pressure was not recordable. Heart sounds were expired at 9.15 P. M.

(3) Dhan Singh (Public Witness 21). who was on duty in the casualty ward of the hospital, telephoned the police-station. The information was recorded by Assistant Sub-Inspector Tara Chand of Police Station Subzi Mandi. He informed police-post at Tis Hazari about the incident. He also sent a copy of the report to the senior officers. Sub-Inspector Rajindsr Singh of Police Station Subzi Mandi on receiving the information went to the hospital for registration of the case. Inquest report Exhibit Public Witness PWI/B was prepared. He took into possession the out-patient card Exhibit Public Witness Public Witness 10/A from the hospital authorities and sent the dead body to the mortuary to await post-mortem examination. The Sub-inspector came to the place of occurrence and lifted bloodstained earth. Blood and a chappal lying there. Rough site plan was also prepared by him.

INSPECTorShyam Dev (Public Witness 23), Station House Officer of Police Station Subzi Mandi. came to know about the incident at about 10.40 P.M. He went to the place of incident Along with the Sub-Divisional Police-Officer and other police

officers. He joined the father of the appellant and other persons in search of the appellant. The appellant was found at his bua's house in Bholanagar. Shahdar', and was arrested. The appellant was searched and dagger Exhibit P 3 was recovered from him. It was duly taken into possession. The tee-shirt and loongi worn by the appellant were suspected to be bloodstained and were, therefore, duly seized.

(4) Since the appellant was found to have injuries on his person, he was examined by Dr. D. S. Sharma of Police Hospital who found "stitched wound about 1/2 inch' in length on the back of hand between left middle and ring fingers. The injury was found to be simple in nature caused by blunt weapon. The duration of the injury was given as 6 to 7 hours.

(5) Sample of blood of the deceased as well as that of the appellant Along with bloodstained articles were sent to the Central Forensic Science Laboratory. Sample blood of the appellant was found to be of 'O' group. The bloodstains on the clothes of the deceased were found to be of blood group 'AB', Banyan of the appellant was found to have blood of groups '()' and 'AB'. The dagger recovered from the tehmata of the appellant was found to have blood of group 'AB'.

(6) Mr. D.C. Mathur, learned counsel for the appellant, contends that all the eye-witnesses are false and were deposing at the instance of the police. According to the learned counsel, the police did not know the name of the assailant and later on decided to implicate the appellant.

(7) The prosecution has produced four eye-witnesses. These are Ram Nath(PW 1), Jagdish(PW2), Daulat Ram , Cp 4W) and Ram Babu (PW5).. They are residents of the locality in which the incident took place. It is true that Ram Nath admits that there were some cases pending against him at the time of occurrence. But then there is nothing to show that he was either a chance witness or there was no likelihood of his being present at the scene. The incident had taken place on G.T. Road in front of Khatra Karam Ilahi. The halwai shop is situated near this Khatra and opens on G.T. Road. Ram Nath was, at the time of the incident, living in Khatra Motia Bagh which is hardly four shops away from Khatra Karam Ilahi. In the month of July at about 8 30 P.M. the people are usually out of their houses and galies in

order to have fresh air. Ram Nath knew the deceased as well as the appellant as both belonged to that locality. It is no doubt true that in the out-patient card Exhibit Public Witness Public Witness 10/A the doctor has noted on a margin of the card that the injured was brought by this witness. It is also true that a copy of the card Exhibit Public Witness Public Witness 10/B, which the doctor produced while deposing in court, does not contain this entry. Perusal of both the cards shows that Dr. J K.Jain (Public Witness 10). who was working in the casualty department, could not even correctly record the injuries present on the body of the injured. This is apparent from the cards. Some of the injuries have been written in between the lines. Evidently, either this doctor did not have any experience in handling medico-legal cases or the condition of the injured was such that he immediately started emergency treatment to the injured to save his life. In our opinion, it is the duty of a doctor to do everything possible in order to save the life of a person. The formal paper work including the preparation of medico-legal report can wait when the condition of the injured is grave. It is, therefore, not surprising that Dr. Jain completely overlooked the fact of recording the name of the name of the person who had brought the injured while completing the out-patient cards. Had he been preparing a formal medico-legal certificate, which is usually on printed forms in the hospital, he could not have missed recording the name of the person accompanying the injured. Be that as it may, we cannot overlook the fact that the injured was accompanied by some attendant. This is apparent from the entries in the cards reading : 'No hope-explained to the attendant. Patient gasping No Pulse. No B P. Heart sounds muffled'. There is no dispute that this entry is not interpolated. In these circumstances we will not attach any importance to the belated mention of the name of the attendant by the doctor. The inexperience of the doctor is also evident from the fact that he was at pains to put the thumb-impressions of the injured at various places in the two cards. And that too after the injured was dead. He should have known that it is not at all necessary for a patient to sign or thumb-mark any document in the hospital.

(8) Ram Nath is corroborated by other eye-witnesses. Jagdish (Public Witness 2) is the cousin of the deceased. At the time of the incident he was living in Katra Karam Ilahi. He had also gone to the hospital. It is true that there is a slight contradiction in the statement of Ram Nath and Jagdish. Whereas Ram Nath

deposes that Jagdish had accompanied him in the scooter-rickshaw when he took the injured to the hospital, Jagdish states that he went to the hospital on cycle almost immediately after Ram Nath took the injured to the hospital. It may be noticed that both were residents of the same locality and they had known each other from childhood. All the eye-witnesses were giving their evidence after about two years of the incident. In these circumstances there were bound to be contradictions in their statements. Minor details as to who accompanied the injured, whether the statement was recorded in the hospital or at the place of occurrence, were likely to be confused by the witnesses.

(9) Daulat Ram (Public Witness 4), who had come to buy milk from the halwai shop, had also witnessed the stabbing. He was near the halwai shop when the incident took place. Ram Babu(PW 5) is the last eye-witness. The halwai shop belongs to his father Sohan Lal. But in the absence of Sohan Lal, he runs the shop. On that fateful evening Ram Babu was selling, amongst others, milk. It is not disputed that if one is present in the shop and selling articles, one can see the place of occurrence. It is also not disputed that the shop was open. Ram Babu could conveniently see the stabbing. After all the stabbing was not a case of biting and running away. The number of injuries received by the deceased on his hands and the various parts of the body show that he had resisted the attack. In other words, it took some time before Rajinder was fatally stabbed. The attention of persons present around was bound to be diverted to the incident because of hue and cry raised by the injured.

(10) We have no hesitation in holding that the eye-witnesses produced by the prosecution had witnessed the occurrence and that they have been rightly believed by the trial court. Much has been made of the statement of Ram Nath wherein he deposed that his statement Exhibit Public Witness PWI/A (the first information report) was recorded at the scene of occurrence after the police had brought him there from the hospital. But in cross-examination the witness clarified that he was much puzzled and, therefore, could not say if the police had first completed the inquest report and then gone to the place of incident. We find that Ram Nath is a witness of seizure memos of various articles seized from the place of occurrence. His supplementary statement was also recorded at that place. So

when Jagdish deposes that Ram Nath's statement was recorded at the place of incident he is not referring to the first information report. Even if it be assumed that the first information report, i.e., the first statement of Ram Nath. was recorded at the place of incident and not at the hospital, it does not affect the case. It is not a case where the name of the accused was not known to the police. The appellant was admittedly arrested the same night at about 3 A, from Shahdara with the help of his father and other persons. The inquest report and other relevant papers were in the hand of Dr. Bharat Singh (Public Witness 3) much before 10 A.M., the time when he conducted the postmortem examination on July 11, 1974. Statement of Ram Nath (Exhibit Public Witness Public Witness I/A) along with other papers had been sent to Dr. Bharat Singh. The doctor has signed each sheet, according to the usual practice, of all the documents received by him. The brief facts mentioned in the inquest report are practically a copy of the statement of Ram Nath. In these circumstances we find no force in the contention of the learned counsel for the appellant that the police did not know the name of the assailant till a very late hour.

(11) Grievance has been made of the police not sending a carbon copy of the first information report to the Ilaqa Magistrate that very night according to rule 24.5 of the Punjab Police Rules, Volume III. It is also urged that the police has left incomplete column No. 7 of the first information report (Exhibit Public Witness Public Witness 13/A). Our attention has been invited to *Datar Singh v. The State of Punjab*, : 1974 CriLJ908 , and it is submitted that the failure to send a copy of the first information report to the Magistrate sometimes vitally affects the prosecution case.

(12) It is very unfortunate indeed that the police is consistent in violating the salutary provisions of the Punjab Police Rules referred to above. We have yet to come across a case in which column No. 7 of the first information report is properly filled in. This column relates to 'date and hour of dispatch from police-station' of the special report sent by the police-station to the Ilaqa Magistrate. In the present case the requirements of this column are sought to be complied with by writing 'Through Dak Special report' Of course, it will be ideal if the police complies with all the salutary provisions of the various rules in order to inspire confidence in the minds of the accused, the defense counsel as well as the

court. In some cases this is the only check to find out if the police had come to know the names of the assailants at the earliest, and to ensure that the accused had not been roped in on suspicion. However, in this case the failure of the investigating agency to send the carbon copy of the first information report to the Ilaqa Magistrate does not play any vital part. As already stated, by 3 AM. the appellant had been arrested and before 10 A.M. statement of Ram Nath was in the hands of Dr. Bharat Singh who performed the post-mortem examination.

(13) It was contended on behalf of the appellant that the nature of injuries found on the dead body of Rajinder Kumar shows that the injuries must have been caused by two sharp-edged weapons. In order to appreciate this contention we may now refer to the statement of Dr. Bharat Singh (Public Witness 3). He found the following injuries on the body of the deceased.

'1. One incised stab wound over the right fore arm 3' below the elbow joint on the medial side. It was placed obliquely. Size of the wound was 1"x3/4"x3' with exit on the back of the forearm. No major blood vessels were cut. 2. One incised stab wound over the left side of the chest 1' below and outer to left nipple placed obliquely. Size of the wound was 1"x 3/4' x?. Wound was spindle shaped and was covered by blood. 3. One incised stab wound over the left costal margin placed obliquely with tail end upward. Size of the wound was 2' x 3/4' x ?. Wound was covered by blood. 4. One incised stab wound over the left side abdomen 9' below the anterior axillary line placed obliquely vertical with tail end directed downwards. Size of the wound was 2' x 1' x?. Wound was covered by blood. 5. One incised wound over the outer part of left forearm in the middle placed horizontally. Size 1' 3/10' x 2/10'. 6. One incised stab wound on the back of left side chest at the lower angle of scapula, placed vertically. Size 2 1/2' x 1' x Tail end was directed upwards. 7. One incised wound over the occipital area of skull leftside Size of the wound was 1/2' x 3/10' x 2/10'.

(14) The doctor was of the opinion that the injuries had been caused by a sharp-edged weapon such as dagger Exhibit P 3. According to him, injuries Nos. 2 and 6 individually or in combination were sufficient to cause death in the ordinary course of nature. The doctor admitted that injury No. 2, which was spindle shaped, was

caused by a double-edged weapon. He also admitted that injury No. 6 is possible even by a single edged weapon. But it does not follow that injury No. 6 could not be caused by dagger Exhibit P3. It was not even suggested to the doctor that injury No. 6 was not possible by a double-edged weapon like dagger Exhibit , 3 and was only possible by, a single-edged weapon, In these circumstances, we do find any force in this contention of the learned counsel for the appellant

(15) The recovery of dagger Exhibit P 3 from the appellant is proved by Bhola Nath (Public Witness 7), Udbey Chand (Public Witness 9.) and. Inspector Shyam Dev (PW 23). Public witnesses Bhola Nath and Udhey Chand are not in any way connected with the deceased nor are inimical to the appellant. They were residents of Sarai Phoos and had known the appellant. They support the prosecution version that they, Along with the Inspector, had gone to the house of the appellant's father who was questioned about the whereabouts of the appellant. With the help of the appellant's father, they were able to trace the appellant to the house of his Bhua in Bhola Nath Nagar. Shahdara. There is no reason to disbelieve these witnesses who have been rightly relied upon by the trial court.

(16) We may lastly note that the bloodstains of group 'AB' found on the banyan (tee-shirt) of the appellant as well as on dagger Exhibit P 3 recovered from him also inculcate the appellant. The sample blood of the appellant was found to be of blood group 'O'. This blood group was also found on the banyan and loongi of the appellant which were taken into possession at the time of his arrest. It may be recalled that the left hand of the appellant was found injured and bandaged at the time of his arrest. The wound was such that it had to be stitched. The police doctor had found a stitched wound. In other words, this wound was the reason of his own blood being found on his banyan and loongi. As already stated the banyan had also bloodstains of group 'AB'. The blood group of the deceased was 'AB' as is evident from the fact that the bloodstains of this group were found on all the clothes removed from the body of the deceased. Blood picked up from the scene of occurrence was also found to be of blood group 'AB'.

(17) We do not find any force in the appeal which is dismissed.

