

**Vijay Kumar Vs. State**

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**Court :** Delhi

**Decided On :** May-14-1979

**Reported in :** 17(1980)DLT9; 1980RLR203

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

**Acts :** [Evidence Act, 1872](#) - Sections 27

**Appeal No. :** Criminal Appeal No. 151 of 1976

**Appellant :** Vijay Kumar;ramesh

**Respondent :** State;state

**Advocate for Pet/Ap. :** K.N. Chitkara,; S.K. Agarwal and; K.K. Sud, Advs

**Judgement :**

**Prithvi Raj, J.**

(1) Vijay son of Karan Singh and Romesh alias Kaley son of Piarey Lal were tried by Shri V B. Bansal, Additional Sessions Judge, Delhi, under section 302 read with Section 34 Indian Penal Code, for having intentionally caused the death of one Mathra Pershad in furtherance of their common intention and under Section 324 read with section 34, Indian Penal Code, for having caused simple injuries with a dagger, in furtherance of their common intention, to Pardeep. The trial court by its impugned judgment dated 26th March, 1976, found the appellants guilty of the

aforesaid offences and consequently sentenced them to imprisonment for life under section 302 read with Section 34 and to rigorous imprisonment for one year under section 324, Indian Penal Code read with section 34 of the Code. The sentences, however, were made to run concurrently.

(2) The appellants feeling aggrieved by their conviction and sentence have separately filed the present appeals which are being disposed of by this common judgment.

(3) Brief facts of the case are as under :

'A quarrel took place between Tillu alias Pradeep and Romesh alias Kaly and Vijay on 30th March, 1975, at 12.30 p.m. Kaly caught hold of Tillu, Vijay proclaimed as to what for he was waiting and that Tillu should be taught a lesson. Romesh alias Kaly gave knife injuries to Tillu on his abdomen and back. In the mean time Mathra Pershad father of Tillu came there and tried to rescue his son. Vijay proclaimed that Mathra Pershad should also be taught a lesson. Vijay caught hold of Mathura Pershad while Romesh alias Kaly inflicted knife injuries on the person of Mathra Pershad. Mathra Pershad fell down on receiving the stab wounds. The appellants managed to escape from the spot. The injured persons, Tillu and Mathra Pershad were removed to the Irwin Hospital by Nanwa Ram (P.W. 7), who got them admitted in the Hospital.'

(4) Jagdish Bharti (Public Witness 10) informed the police control room at about 12.30 or 1 P.M. that a quarrel had taken place in Basti Julahan. Sub-inspector Kundal Lal Sharma (Public Witness 3) on receipt of the above said telephonic message entered a report at Serial No. 116 of the daily diary, copy Exhibit Pw 3/A, and passed on the message to Police.

(5) SUB-INSPECTOR Mohan Chander (Public Witness 8) on receipt of the message from the control room made entry in the daily diary at number 10-A, a copy of that entry, copy Exhibit Public Witness Public Witness 8/A, was given to Sub-Inspector Prithvi Singh (Public Witness 24) for investigation of the case. On receipt of the copy, Prithvi Singh went to the spot where he learnt that the injured had already been removed to the Hospital. He went to the Irwin Hospital and collected the

injury sheets of Mathra Pershad and Pardeep. Both of them were declared to be unfit for making statement. He met Dalip and Nanwa Ram at the hospital, and recorded the statement of Nanwa Ram Exhibit Public Witness Public Witness 7/A. He sent the same with his endorsement, Exhibit Public Witness Public Witness 9/A, to police station Sadar Bazar for registration of the case.

(6) Assistant Sub-Inspector Vishwa Nath (Public Witness 9) on receipt of the above said Ruqqa recorded first information report No. 272 dated 30th March, 1975 (Copy Exhibit Public Witness PW9/B). He sent its copy with the original Ruqqa to Sub-Inspector Prithvi Singh for investigation.

(7) Accompanied by Nanwa Ram Public Witness Public Witness Sub-Inspector Prithvi Singh visited the spot and prepared rough site plan. Exhibit Public Witness Public Witness 24/A. He also recorded the supplementary statement of Nanwa Ram. On 31st March, 1975, he went to the Irwin Hospital and recorded the statement of Pardeep who was declared fit by the doctor to make a statement. Mathra Pershad, however, was still declared unfit for making a statement. In the evening Ramji Lal(Pw 12) and Harish Kumar (Public Witness 11) came to the police station and informed Sub-Inspector Prithvi Singh that they had seen the appellants near rescue his brother but Kaley threatened to inflict injury on him with the knife. He avoided the attack by moving moving backward. He stated that Pardeep was given three stab wounds. His father Mathura Pershad came there and enquired from the appellants, as to what they were doing upon which Ramesh abused his father. Vijay caught Mathra Pershad while Ramesh stabbed him in the abdomen. Matbra Pershad fell down. Both the accused ran away towards, Nala. He along with Nanwa, took the injured to the Hospital in a Taxi, and got them admitted in the Hospital. the Imperial Cinema. Prithvi Singh accompanied by Raniji Lal and Harish Kumar and two constables proceeded towards Imperial Cinema. He apprehended the appellants at the pointing of Harish. Sub-Inspector Prithvi Singh interrogated Ramesh alias Kaley who made a disclosure statement, Ex. Public Witness Public Witness II/C stating that he could get recovered the knife/dagger from his house kept under shoes lying on the roof of the bath room of the second floor of his house. Ramesh then led them to the roof of the bath room on the second floor got recovered the knife/dagger. Prithvi Singh took the

knife into possession vide Memo Ex.PW I I/E, of the knife and converted the knife into a sealed parcel. He prepared the injury statements Ex. Public Witness Public Witness 24/B and Ex. Public Witness Public Witness 24/C in respect of Ramesh alias Kaley and Vijay Kumar and sent them for medical examination. On 4.4.75 he went to the Irwin Hospital. Mathura Pershad was declared fit to make a statement which he recorded. On 19.4.75 an information was received from Irwin Hospital about the death of Mathura Pershad. He went to Irwin Hospital and prepared the inquest report Ex. Public Witness Public Witness 24/D. He sent the dead body of Mathura Pershad for post mortem examination vide application Ex. Pw 24/E. On 7.7.75 he made an application Ex. Public Witness Public Witness 24/F to the Medical Officer Irwin Hospital, and sent the dagger in the sealed parcel for obtaining the opinion as to whether the injuries on the person of Mathura Pershad could be caused by that dagger. He sent the clothes and blood sample of Mathura Pershad in a sealed cover to C.F.S.L. He proved the reports Ex. Pw 24/G and Ex. Public Witness Public Witness 24/H received from the office of C.F.S.L. After completing the investigation, he filed the challan against the appellants in Court.

(8) Prosecution story regarding the assault made on Pardisp alias Tillu and Mathra Pershad was fully supported in court by Nanwa Ram (PW. 7) He on 30th March, 1975, at about 12.30 (noon) was working at his house No. 2086, Basti Pipal Wali Julahan, where he heard the noise of children that a quarrel had taken place. He came out of his house and saw a quarrel going on between Tillu and Kaley alias Ramesh and Vijay. Giving details of the attack as noted earlier, he stated that he took the injured Tillu and Mathra Pershad to the Irwin Hospital and got them admitted there. He further stated that the police on reaching the Hospital recorded his statement, Ex. Public Witness Public Witness 7/A, which he thumb marked at point 'A' after admitting its contents to be correct when read over to him. The injured and the appellants who are the residents of Basti Jullahan were known to him earlier. Kaley accused, he stated, is also known as Ramesh.

(9) The other eye-witness to the occurrence are Pardeeo Kumar (PW 15) and his brother Dalip Kumar (Public Witness 16). About two years earlier SPradeep had a quarrel with Ramesh and gave beating to him. On 30th March, 1975, at about 12.30 noon he came out of his house for urinating when he was stopped by the

appellants. Vijay asked Ramesh to take revenge from him. He was caught by Vrjay who asked Ramesh to inflict injury on him. He was injured by Ramesh with two edged knife like a Kirpan. He sustained one injury on the left side of his chest and two on the left leg. On his raising alarm his brother Dalip came to his help. Ramesh threatened t)alip, who went a little aside but kept standing there. In the meantime his father Mathra Pershad came to his help. Vijay asked Ramesh to leave Pardeep Kumar and catch hold of his father Mathura Pershad. His father was caught by Vijay and Ramesh stabbed him in the abdomen. Nanwa helped his father in getting up. They were taken to the Hospital in a Taxi by Nanwa and Dalip and were got admitted there. Dalip Kumar, Public Witness PW. 16 at about 12.15 noon on the day of occurrence on hearing alarm 'Jhagra Ho Gaya' came out of his house and saw Vijay holding his brother Pardsep while Kaley accused was inflicting injuries on him. He went forward to

(10) Pardeep Kumar was examined by Dr. J.L. Rawal who noted the injuries on his person in the Medico Legal Certificate Ex. Public Witness PW21/A. Dr. Rawal also examined Mathura Pershad and noted the injuries on his person in the Medico Legal Certificate Ex. Public Witness PW21/D. Dr. Rawal had left the service with the hospital without leaving his address. The above certificates were proved by Khazan Singh Public Witness PW21 who stated that they are in the hand of Dr. Rawal. Khazan Singh also proved endorsements Ex. Public Witness PW21/B and Ex. Public Witness PW21/C and Mlc Ex. Public Witness PW21/A to be in the hand of Dr. Sruti. Both the said doctors, Khazan Singh stated, had left the service of the hospital without leaving their present address. Khazan Singh, also proved endores- mentsEx.PW21/E and Ex.PW21/F on the Mlc Ex. Public Witness PW21/D of Mathura Pershad to be in the hand of Dr. Sruti Gandhi.

(11) Dr. A.K. Ghosh, Public Witness PW/14 on 20.4.75 conducted the postmortem examination on the body of Mathura Pershad aged about 44 years. On external examination he found Greenish dis-colour action over the abdomen and the chest. Scrotum and penis were swollen, bandages were seen-over the abdomen, riger mortis was absent in upper limbs and present in lower limbs. He also found that Blackish regurigitate material was coming out of nose and mouth. The examination revealed the following external injuries on the dead body: (1) Paramortoid stitched

wound 16c.m. over the front of the abdomen extending from epigastrium with one draignage tube attached at the bottom of this injury (operation). (2) Incised punctured stitched wound 1.3 x 1 c.m. into abdomen deep over the right iliac fossa for draingage tube 10 c.m. above the inner fold of right groin (operation). (2) Cut open drip wounds, 3 in number and measuring 1.8 c.m., 2.3 c.m. and 2 c.m. over the upper part of right thigh in front lower and inner part of right leg and over the upper front part of left arm respectively (operation). (4) Longitudinal incised stab wound 1.5 c.m. x 0.6 c.m. into abdomen deep over the left illiac fossa, outer part 5 c.m. above the middle of left illiac crest, with drainage tube attached. All the above injuries were ante-mortem. Trachia were normal, the right lung was adherent to chest wall otherwise normal on both sides, heart was normal, the intestines were comparatively lustreless, matted together. Several adhesions were seen present between coils mesentery and ometuam. Foul smell was coming out of the abdominal Cavity stitches were seen present over the stomach, omentum and mesentely and few coils of large illiac transverse colostomy seen. Stomach: Presented stiches over interior wall contains little thick blackish material. Walls were normal. The small intestines were unremarkable except the illiac transverse colostomy. Large intestines contained semi liquid faeces and gasses and presented stitches as mentioned in illiac transverse colostomy. The civic spleen and kidney were normal. The bladder was nearly empty. Skull and brain were normal. The doctor opined the death due to periton IT is subsequent to stab injury abdomen, as alleged, by sharp edged penetrating weapon. Injury No. 4 was directed obliquely towards the middle line and upward. .The said injury was sufficient to cause death in the ordinary course of nature. Injury No. 4 in the opinion of the doctor could possibly be caused by the dagger Ex. P.1 alleged to be the weapon of offence.

(12) Harish Kumar (Public Witness 11) and Ramji Lal (Public Witness 12) fully supported the testimony of Sub-Inspector Prithvi Singh regarding the arrest of the appellants and Ramesh alias Kaley having made the disclosure statement Ex. PW11/C leading to the recovery of the knife Ex. P. I by recovery memo

(13) The Trial Court accepting the testimony of the prosecution witnesses, noted above, convicted and sentenced the appellants to undergo life imprisonment under

Section 302 I Pc read with Section 34 and also separately convicted and sentenced them to Rigorous Imprisonment for one year under Section 324 Indian Penal Code read with Section 34 IPC.

(14) Shri K.N. Chitkara, appearing for appellant Vijay, assailed the prosecution evidence contending that it bristles with discrepancies and as such conviction should not be maintained on such an evidence. He further submitted that prosecution witnesses were interested and partisan ones. He contended that it is on record that the area where the occurrence took place was thickly populated and a number of people had assembled at the spot as admitted by the prosecution witnesses, yet not a single independent witness had been produced to lend credibility to the prosecution case. It was contended that Nanwa admits that Pearey Lal father of Ramesh alias Kaley appellant had appeared against him in a case in which Nanwa had caused injuries to his landlord and that he was convicted to six months rigorous imprisonment in that case. It was further submitted that Nanwa admits that his conviction was maintained in appeal though his sentence of imprisonment was converted into one of fine. The testimony of Nanwa was also sought to be eliminated on the ground that he was not present at the spot and that according to Nanwa the quarrel took place for about an hour and he is alleged to have seen it standing at a distance of 24 feet and yet he did not try to rescue Tillu and Mathura Pershad from the clutches of the appellants and neither he made an effort to apprehend the appellants nor pursued them when they ran away. We see no merit in these submissions. The quarrel between Nanwa and his landlord took place 10/12 years prior to the present occurrence. Nanwa is related to both the parties. The cousin sister of his wife is married to Vinod, brother of Ramesh appellant. His house is adjacent to the house of Mathura Pershad. The occurrence took place near the house of Santa which is on one side of the house of Nanwa. Nanwa works at his house. His presence in his house at the time of occurrence was natural. He came out of his house hearing the noise of children that a quarrel had taken place. His presence at the spot cannot be doubted. He carried the injured to the hospital and got them admitted there. The case was registered on his statement. Exhibit Public Witness PW7/A, which was recorded by Sub-Inspector Prithvi Singh in the hospital. We have examined his statement carefully and find that the same is credible. There is a ring of truth in

it. The mere fact that he did not come to the rescue of the injured would not be enough to discard his statement. The appellants were armed with a knife and had caused injuries to Pardeep and his father Mathura Pershad. May be he was scared and did not intervene to separate the parties. This act of his would not be enough to discard his testimony which despite a lengthy cross-examination remains unshaken.

(15) Shri Chitkara, then contended that Nanwa Ram was not an eyewitness to the injury being given to Mathura Prasad. On his own admission, it was submitted when Nanwa Ram came out of his house, he saw Mathura Prasad bending and placing his hands on his abdomen which was indicative of the fact that injury had already been given. We see no force in this submission. Nanwa Ram had stated that Mathura Prasad was suffering from T.B. for about 10/15 years prior to the occurrence and had become very weak on account of his suffering from T.B. may be because of his weak health when Mathura Pershad had come out of his house he was seen by Nanwa bending downward placing his hands on his abdomen. That would not be enough to hold that the stab injury in the abdomen had been given earlier. No discernible reason is forthcoming on the record as to why the testimony of Nanwa Ram that he saw Ramesh giving injury to Mathura Pershad be not believed.

(16) It is no doubt true that Nanwa admits that some persons had collected at the spot. Nonproduction of those persons as witnesses would not destroy the sworn testimony of Nanwa which inspires confidence and is cogent and clear.

(17) The real question for determination is not as to what is the effect of non-examination of certain witnesses but whether the witnesses examined in Court on oath should be believed or not. Once the witnesses examined by the prosecution are believed because of their evidence being truth-worthy, the non-examination of other witnesses will not affect the credibility of these witnesses (See *Nirpal Singh and others v. State of Haryana* (1977)2

(18) The testimony of Pradeep and Dalip was sought to be condemned on the ground that they are bad characters and, therefore, not worthy of much credence. It was submitted that Nanwa Ram admits that Pradeep was in jail during those

days in a case of pick-pocketing, and that he had been confined in jail a number of times earlier in cases of pick-pocketing though he could not say whether Pradeep was convicted in any case or not. Nanwa Ram also admits that Dalip had also been confined in jail though he could not say in which case. According to Nanwa Ram, Dalip had been arrested in a case in which he was alleged to have beaten a D.T.C. Bus Driver. It was submitted that Pradeep admits that he spent more than three months in jail in a case under Section 110-G of the Criminal Procedure Code. Pradeep had further admitted that he was involved in 5/6 cases; that he takes liquor and that he had taken liquor 2/3 hours prior to the occurrence. Pradeep further admitted that he was involved in a number of cases, one of them being under Section 324, Indian Penal Code. Even Dalip, it was contended, admitted that he was involved in a case under Section 307, Indian Penal Code and had been convicted and sentenced to four years' rigorous imprisonment with a fine of Rs. 500.00 by Shri D.C. Aggarwal, Additional Sessions Judge, Delhi. He, however, added that his appeal against that conviction was pending. Dalip further conceded that he is an accused in a case pending in the Court of Shri Mahesh Chandra, Additional Sessions Judge, Delhi, which was pending for the last two years. It was no doubt true that both Pradeep and Dalip admit that they were involved in a number of cases but that alone cannot be made the basis to reject their testimony. All that can be said is that in such a situation their testimony has to be judged with more care and caution. So examined, we see no reason not to accept their testimony. The mere fact that both Pradeep and Dalip did not try to rescue their father from the clutches of the appellants or they did not pursue them to apprehend them would not detract from their testimony.

(19) Statement of Dalip was sought to be discarded on the ground that his statement was forged by the Investigating Officer and that the ordinal statement made by him to the Constable on duty in the hospital was being suppressed. For this submission our attention was drawn to the statement of Dalip to the effect that his statement was recorded by the Constable in the hospital who makes entries in the hospital and that no other statement was recorded by the police as he did not have any occasion to meet them thereafter. It was contended that Dalip was specific in his statement that he did not know Prithvi Singh Thanedar. That being so, it was strenuously contended that the Investigating Officer had made oat a

statement of Dalip on his own which showed tainted nature of the investigation. Dalip Kumar appears to be under some confusion when he made the above statement. No such suggestion was put to Prithvi Singh during his cross-examination, who had categorically stated that he recorded the statements of Dalip and Nanwa Ram.

(20) Equally we find no force in the submission that the names of Pradeep and Dalip Kumar being not mentioned in the first information report casts a doubt about their presence at the scene of occurrence. The names of the witnesses are not required to be mentioned in the first information report. Pradeep being a victim of the assault and injuries having been found on his person, it is futile to contend that he was not present.

(21) It was then contended that the ruqqa was completed by 2.10 p.m. and that being so, it was not possible for the Investigating Officer to examine and record the statement of Dalip Kumar which, according to the Investigating Officer was recorded between 1.30 p.m. to 2 p.m. We find no merit in this submission. Not only that the Investigating Officer was not questioned on this aspect to explain the position, the possibility of the Investigating Officer having recorded the statement of Nanwa Ram and thereafter recording the statement of Dalip Kumar and then making the Ruqqa cannot be said to be unsavoury act on the part of the Investigating Officer.

(22) Besides, the testimony of the above-noted witnesses, we have the disclosure statement of Ramesh and the recovery of the knife in pursuance thereof. It is correct that the whole of the statement in Exhibit Public Witness PW11/C is not admissible. Eliminating the inadmissible part of it, namely, 'he had concealed the weapon of offence after committing the offence', the other part that he can point out and get the dagger recovered is admissible. By pointing out memo. Exhibit Public Witness PW11/D Ramesh appellant led the police party and pointed out the house bearing No. 2190, Basti Julahan, Sadar Bazar, belonging to his father taking out the same from below the torn shoes lying over the roof of the latrine in upper storey of the house. The recovery so made, lends assurance to the discovery statement. Our attention was invited to some discrepancies in the

statements of Harish Kumar and Ramjilal, witnesses to the discovery statement and the recovery of the knief, but they are of no consequence being minor ones. Except for a denial simplicities and, the bald statement that his thumb impressions were obtained by the police on blank papers at the police station, no clinching material has been brought on the record to discredit this aspect of the prosecution version. That Ramjilal is the brother of the wife of Mathura Prashad would be no ground to discredit his testimony, which, on careful consideration, we find acceptable.

(23) It was then contended that the investigation was tainted and that the first information report was a maneouvred one. The precise argument was that according to Nanwa Ram a constable had met him in Irwin Hospital to whom he had narrated the whole incident who had reduced the same into writing and that he was never interrogated by the police. The learned counsel accordingly contended that the statement recorded by the Constable was the first information report which was being suppressed and that the first information report on which reliance was now placed is inadmissible being a statement recorded during the course of investigation. We find no merit in it. Nanwa Ram appears to be under some confusion in making the above statement. Besides the Investigating Officer was not examined on the lines on which this plea is sought to be raised.

(24) It was next contended that the statement of Mathura Prashad recorded by the Investigating Officer under section 161 of the Criminal Procedure Code, 1973, on the death of Mathura Prashad was admissible under Section 32(2) of the Evidence Act, as a dying declaration. The said statement, it was submitted, had been suppressed by the prosecution which if brought to light would have revealed the true facts about the occurrence. It was accordingly contended that suppression of the dying declaration on the part of the prosecution, showed its anxiety to conceal the truth. We do not agree. In view of the direct testimony of eye-witnesses no capital can be made out of the fact that the statement of Mathura Prashad could be used as a dying declaration. No doubt is cast on the prosecution case in not pressing into service the statement of Mathura Prashad as a dying declaration.

(25) Lastly, it was submitted that Mathura Prashad has died twenty days after his having been admitted in the hospital. During this period some operations were performed on his body which, it was submitted, is evident from the post-mortem examination report revealing four operational injuries. Not only this, the doctor performing the post-mortem also found stitches present on some parts of the body. Thus, it was submitted, the death of Mathura Prasad could not be the result of injury No. 4 but mostly because of the negligence of the doctor in not properly attending upon him. Mathura Prashad was a patient of tuberculosis and his condition being normally weak, coupled with negligence on the part of the doctor, it was submitted, resulted in his death. That being so, it was submitted, at best an offence under Section 326, Indian Penal Code was made out and that conviction u/s 302 Ipc Was Totally Uncalled FOR? More So When The Surgeon performing the operations on the body of the patient Mathura Prasad, had not been produced to enable the appellants to cross-examine him with regard to the precautions taken by the doctor in carrying out the operations, and the method of performing the same.

(26) We do not agree. Doctor A.K. Ghosh who performed the postmortem examination on the body of Mathura Prasad had on examining the nature and extent of injury was sufficient to cause death in the ordinary course of nature. There is no material on the record to warrant that the ordinary course of nature was either interrupted or interfered with by any intervening act of any person. The operations performed by the doctor were with a view to help the patient and not to accelerate his death. It is no doubt true that the death has taken place after 20 days of the patient being admitted in the hospital but because of the absence of why not in the ordinary course of nature on account of injury No. 4.

(27) Further, the doctor Ghosh has opined that the death was due to peritonitis subsequent to stab injury, namely, injury No. 4, directed obliquely towards the middle line and upward. The said injury in the opinion of the doctor could possibly be caused with dagger, Ext. P.1. The case, therefore, would squarely be covered by section 300, 3rdly, Indian Penal Code. The injury was inflicted by Ramesh on the exhortation of Vijay who had caught hold of Mathura Prasad so as to facilitate injury being inflicted. Consequently the conviction of the appellants under Section

302 read with Section 34 of the Indian Penal Code for having intentionally caused the death of Mathura Prasad cannot be said to be unwarranted.

(28) In view of the testimony of the witnesses and the medicolegal report. Exhibit Public Witness .21/A, in respect of the injuries caused to Pradeep Kumar, no exception can be taken to the conviction of the appellants under Section 302 read with section 34, Indian Penal Code.

(29) Shri S.K. Aggarwal appearing for Ramesh appellant adopted the arguments of Shri Chitkara except for dilating upon the legal contention that in the facts and circumstances of the case, a case under Section 326, Indian Penal Code only were made out. We, therefore, do not feel any necessity to consider separately the arguments of Shri Aggarwal. In view of our discussion above, the appeal fails and the same is dismissed.

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