

**Rajesh Kumar Alias Kala Vs. State**

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**Court :** Delhi

**Decided On :** Apr-07-1995

**Reported in :** 1996CriLJ607

**Judge :** P.K. Bahri and; S.D. Pandit, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154; [Arms Act, 1959](#) - Sections 27

**Appeal No. :** Criminal Appeal Nos. 19/91 and 21/91

**Appellant :** Rajesh Kumar Alias Kala

**Respondent :** State

**Advocate for Def. :** Ms. Rebecca. ; M. John, amices Curiae, ; Mr. P.S. Sharma, Stnd. Counsel (Crl) and;

**Advocate for Pet/Ap. :** Mr. Gajendra Kumar, Adv

**Judgement :**

**P.K. Bahri, J.**

1. Rajesh Kumar alias Kala S/o Ram Lal and Vikram Singh, S/o Munshi Ram have been convicted of offences punishable under Section 302 read with Section 34 I.P.C. and have been sentenced to undergo rigorous imprisonment for life and to

pay a fine of Rs. 1,000/- each and in default to undergo rigorous imprisonment for three months and they have also been convicted of offences punishable under Section 324 read with Section 34 I.P.C. and have been sentenced to undergo rigorous imprisonment for six months and Vikram Singh has also been convicted of an offence under Section 27 of The Arms Act and has been sentenced to undergo rigorous imprisonment for six months on that count with the direction that substantive sentences shall run concurrently vide judgment dated January 11, 1991 of an Additional Sessions Judge, Delhi. Both these convicts have filed the present appeals which are being decided by this judgment.

2. The case of the prosecution, in brief, is that PW-3, Manju Aggarwal, who is also a doctor by profession, was living with her husband, Dr. Sudershan Prakash Aggarwal, since deceased, in House No. 4-150, Vijay Nagar, Narela and they were having a nursing home in the ground floor under the name and style of 'Aggarwal Nursing Home.' About two years prior to this occurrence, Rajesh, appellant was employed as a compounder who continued to work with them for about 1 1/2 months. However, he was turned out from the job as he had committed theft of some money belonging to her husband and he was not paid his 15 days salary as he had committed theft of more money than was due to him as salary for those 15 days. The story further proceeds that Rajesh, at that time, had apologised for his mistake and thus no further action was taken against him by lodging any report to the police. About a year before the present incident, Rajesh had come to the nursing home and had given beating to Virender, another compounder working with them inasmuch as it was Virender who had seen Rajesh committing the theft of the money and had informed the deceased about it. At that time also, Rajesh had apologised and matter was not reported to the police.

3. It is alleged that on January 5, 1988 at about 1 P.M. Rajesh accompanied by his friend Vikram had come to the nursing home and had met Manju and told her that they wanted to meet Dr. Sudershan for getting some treatment from him for some venereal disease suffered by Vikram and she had told them that due to doctor having a late night, he was resting and there was no emergency for showing Vikram to the doctor at that moment and they should come after 4.30 P.M. and thereafter, they had gone away.

4. It is further alleged that at about 5 P.M. when she and her husband were sitting in the room of her husband, both the appellants came there and Vikram told her husband that he was having a venereal disease and wanted treatment for the same and her husband then took him to Room No. 1 for examining him and Rajesh also followed them in that room and immediately thereafter, she heard shrieks coming from that room and she also entered that room and saw that Vikram was having a Kirpan in his hand and he was assaulting her husband with that Kirpan and she raised an alarm and her husband, in order to save himself, came out of that room and ran towards his own room and Rajesh, appellant, who was having an iron rod chain, which he was waving, shouted that life of her husband would not be spared and at that time the two compounders working in the said nursing home namely Bal Kishan, PW-8 and Bhagwan PW-10 came there. Rajesh had threatened them that in case they intervened, they would also lose their lives and at that moment, her husband came to his room but was being followed by Vikram who struck a number of blows on her husband's head with Kirpan and she, taking some courage, caught hold of Rajesh in her grips whereas the two compounders ran out for calling more people and Vikram, in order to get Rajesh released, had struck blows with the said Kirpan on her hands and she thus received injuries and her grip loosened. Meanwhile, her husband, in order to save himself, entered the ladies waiting room but Vikram did not spare him and followed him and gave repeated blows of Kirpan on his person and soon after, the two compounders brought Mahavir Singh Dahiya, PW-9, along with some other persons and they caught hold of the appellants along with their weapons.

5. Manju, in order to save her husband, gave him first aid including oxygen but at that time, Rajesh shouted that they had already given sufficient blows to her husband that no one on earth can save him and that they were not running away from the spot and they were not afraid of the police and he had taken the revenge of being turned out from the job. It is further alleged that the public persons had given beating to both the appellants and thereafter, the police had come to the spot and she took her husband in her car with the help of Vijay and police to North Delhi Nursing Home where Dr. Gupta, on examining her husband, declared him brought dead and doctor had also treated her injury.

6. At about 5.15 P.M. an unknown person from public telephone had given the information to the Police Station Narela which was recorded at Daily Diary No. 13-A, copy of which is Ex. PW-6/A, about the incident at the said Aggarwal Nursing Home. The S.H.O. PW-22, Inspector Sohan Vir Singh accompanied by A.S.I. Ram Kumar, Constables Naresh Kumar, Mehtab Singh, Brahm Singh and Suresh Singh, in a Government vehicle, came to the place of the occurrence and they found the two appellants already in custody of the public and on seeing the arrival of the police, the appellants are stated to have thrown down their weapons in the street. Leaving the appellants and the weapons in the custody of A.S.I. Ram Kumar, the S.H.O. along with other constables, followed the vehicle in which Manju was taking her husband to the hospital and at the hospital, after Manju's husband had been declared as brought dead, the statement of Manju was recorded, Ex. PW3/A, on the basis of which FIR was registered at about 5.15 P.M. vide daily diary No. 16-A, copy of which is Ex. PW6/C, and the copy of FIR No. 2188, is Ex PW-6/B.

7. Dr. S. P. Gupta, PW-17, had prepared the short report, Ex. PW-17/A, mentioning that at about 6.20 P.M. the dead body of Dr. Sudershan Aggarwal was brought and he had multiple wounds inflicted on his body and Manju had following injuries :-

- a) 3 cm. x 0.3 incised wound, skin deep, freshly bleeding over the medial border of left wrist joint;
- b) 6 cm. x 0.3 incised wound in web space between thumb and index finger of right hand muscle deep, freshly bleeding;
- c) diffused swelling of left ankle joint with pain on active and passive movements;
- d) diffused swelling in the region of right lateral malleolus with ecchymosis.

He had advised X-ray of left wrist as well as of the ankle and leg. He opined that the injury was possible with a sharp weapon and he later on gave the opinion, after seeing the x-rays that injury No. 1 & 2 were grievous in nature whereas injuries No. 3 & 4 were of simple nature.

8. The S.H.O. came to the place of the occurrence along with Manju and lifted the blood from the room and the hall and ladies waiting room and also from the dispensary of the said nursing home along with central earth and some tufts of hair were also lifted from the said places and the sheath of the Kirpan, which was lying in Room No. 1, was also taken into possession. A broken watch of the deceased was also lifted from Room No. 7 and a pair of chappal and a shawl were lifted from the ladies waiting room and he had converted them into separate sealed parcels and taken them into possession vide recovery memo Ex. PW-2/D. One chopped thumb lying in Room No. 1 was also seized vide recovery memo. Ex. PW-2/E. He took into possession the Kirpan and the said chain rod after preparing the sketch of the Kirpan, Ex. PW-2/B and converted them into sealed parcels vide recovery memo, Ex. PW-2/F. P-13 and P-14 are the said weapons.

9. Thereafter, he had prepared the inquest papers, Ex. PW-22/C. He recorded the statements of the witnesses and had sent the dead body for post-mortem. The clothes which were worn by the two appellants, which were blood stained, were taken into possession. P-19 shirt, P-20 sweater, P-21 jacket, P-23 trousers and P-24/1-2 a pair of shoes were taken from the person of accused Rajesh whereas P-25 jarsi, P-26 shirt, P-27 vest, P-28 trousers and P-29/1-2 a pair of shoes were taken from the person of appellant Vikram. They were converted into sealed parcels vide memos Ex. PW-2/G and PW-2/H.

10. Both the accused were got examined from Dr. M. M. Gupta of Hindu Rao Hospital, PW-23. PW-23/A is the M.L.C. of appellant Rajesh Kumar. He found swelling and tenderness on the right wrist and swelling and tenderness on the lower end of the left forearm wrist and he had advised x-ray and on person of appellant Vikram, vide M.L.C. Ex. PW-23/B, he found infected lacerated wound 4 cm. x 1/2 cm on right parietal region of skull, infected wound 3 cm. x 1 cm. on dorsal aspect of the left wrist, abrasion on left thumb and right index finger.

11. PW-24, Dr. L. T. Ramani, had performed the post-mortem on dead body of Dr. Sudarshan and he had found about 44 injuries, mostly incised wounds, on different parts of his body and had opined, as per his post-mortem report, Ex. PW-24/A, that except for injuries No. 23, 26 & 27, which were caused by blunt

object/weapon, all other injuries were caused by sharp edged weapon and injuries No. 11, 13, 20 and multiple injuries on the skull were individually sufficient to cause death in the ordinary course of nature. He had preserved the clothes and sample hair of the deceased which he handed over to the police duly sealed. He was shown the weapons in question and he opined that all the incised injuries were possible with the said Kirpan and the blunt injuries were possible with the said iron roan chain. It may be mentioned that sample blood of both the appellants were also taken by D. Gupta and was handed over to the police.

12. The case property was got sent to the C.F.S.L. and the C.F.S.L. reports, Ex. PW-22/N, PW-22/P, PW-22/Q. PW22/R were received which showed that the blood group of the deceased was B and on the clothes of the deceased and on the clothes of both the accused, human blood of Group B was found and so also on the Kirpan. The blood group of Rajesh was O and of Vikram was B. The blood group of the deceased and of Vikram was same.

13. The attendance register of the employees working in the nursing home of the complainant was also taken into possession vide recovery memo, Ex. PW-3/B.

14. The two compounders, PW-8 Bal Kishan and PW-10 Bhagwan, for reasons best known to them, had turned hostile and did not support the prosecution case that they had witnessed the murder of the doctor at the hands of the appellants. The learned Additional Sessions Judge has brought home the offence to the appellants on the sole testimony of PW-3, Manju Aggarwal, the widow, as she was found to be wholly reliable witness and had sought corroboration from the factum of presence of injuries on the persons of the appellants and the blood being found on the clothes of the appellants as well as on the Kirpan, weapon of offence.

15. Learned counsel for the appellants has vehemently argued that in the present case, the appellants have been falsely implicated inasmuch as they had come to the said clinic for varied reasons. While Vikram had an injury on his head suffered in some accident, for which he wanted treatment, Rajesh Kumar had come for demanding his dues from the doctor but was beaten and confined in a room and Manju Aggarwal was not wholly reliable witness inasmuch as the FIR in the present case has been anti-timed which fact is clear from the testimony of DW-1,

the Metropolitan Magistrate, who had received the copy of the FIR at 10.10 A.M. on 6th January 1988 which is Ex. DW-1/A. It is pointed out that in the daily diary pertaining to the recording of FIR neither the names of the accused nor the names of the eye witnesses have been given. So, it is urged that PW-3 should not be treated as a wholly reliable witness and benefit of doubt should be given to the appellants.

16. On the other hand, learned counsel for the State has argued that PW-3 is an eye witness of the occurrence inasmuch as she had suffered injuries on her person during the occurrence and there is no earthly reason not to believe her statement given in Court implicating the two appellants for perpetrating the ghastly crime of murder of her husband. He has urged that she is truthful witness as she had given the occurrence as it happened without any embellishments. He has pointed out that there was clear motive for Rajesh to have committed the murder as he was annoyed with the doctor for having thrown him out of job and also withholding his salary and the other appellant, obviously had no motive and no motive has been imputed on him for causing the murder except that he came along with Rajesh and apparently committed this murder at the behest of Rajesh. He has urged that in case there was any need to falsely implicate the appellants, then PW-3 would have assigned the major role of inflicting the fatal injuries to her husband to Rajesh than to his friend Vikram. He has argued that the offences have been rightly brought home to the appellants by the Additional Sessions Judge on the basis of the totally convincing and reliable evidence of PW-3 which does not suffer from any error.

17. PW-3, Smt. Manju Aggarwal, had narrated the facts, as enumerated by us above, in her examination-in-chief. In cross-examination, apart from suggesting that her statement was not recorded in the North Delhi Nursing Home, at the time it is reported to have been recorded, by and large, her statement, on material facts, remained unchallenged. Although the cross-examination of her runs into quite a few pages, no facts have been elicited which could show that the occurrence had not taken place in the manner narrated by her in the Court. Even her statement with regard to the previous incident and Rajesh being an employee and having been turned out from the employment on account his having committed the theft

and his again coming and beating up another compounder, who had told the doctor about the theft, was not challenged.

18. In cross-examination, suggestion given was that Rajesh had come to demand his salary and he was beaten up but no suggestions have been given to PW-3 and other witnesses that in case occurrence had not taken place in the manner narrated by them as to how her doctor had received the multiple injuries and how PW-3 received the injuries. The presence of the two appellants at the spot has not been challenged at all. Rather, suggestions have been given that both the appellants were present at the spot but they had come for different reasons. There was no earthly reason for PW-3 to have falsely implicated the appellants for the commission of the murder of her husband and allow the real culprits to go scot free. The only suggestion given was that the appellants had not assaulted on her husband which fact, of course, was denied by the witnesses. It is not suggested to the witnesses as to why would PW-3 implicate the appellants falsely for this gruesome murder. It is Rajesh who had the motive to kill. PW-3 and her husband did not have any grudge against the appellants after Rajesh had been turned out from the job and rather they had been sympathetic to him by not reporting to the police about the theft committed by Rajesh. So, there could be no animus nourished by PW-3 against Rajesh whereas Vikram was not known to PW-3 prior to the date of the occurrence, so there could be no reason for his false implication.

19. It has been urged that the doctor who treated the injuries of PW-3 deposed that it took about 5/6 hours in performing the operation on the injuries of PW-3 and PW-3 had not disclosed the names of the assailants to the said doctor. So, it is urged that the statement could not have been made by PW-3 to the police when she was being operated upon in the hospital. It is to be mentioned that no suggestion has been given to the said doctor in cross-examination that statement of Manju was not recorded by the police at his nursing home. The doctor was examined in Court after more than a year of the incident, so he might have given some wrong estimate of the time he took in giving treatment to the injuries of PW-3. If we look to the injuries, It does not appear that so many hours were required for giving treatment to her injuries. There is consistent statement of PW-3 and also of S.H.O. that statement of Manju was recorded in that nursing home and

thereafter she had accompanied the S.H.O. to the place of occurrence.

20. It is true that there are lapses of the police in not making proper entries in the daily diary by not recording the substance of the FIR which should include the names of the witnesses and the names of the accused and perhaps there was some delay in sending the special report to the Metropolitan Magistrate. But these lapses of the police, in our view, would not throw over-board the truthful testimony of PW-3.

21. It is pertinent to mention that Constable Ranbir Singh PW-20, had categorically stated that he was handed over the special report on 5th January 1988 and he had left the police station after making a departure entry at 9.45 P.M. and after delivering the said report at the residence of the Metropolitan Magistrate, he had returned to the police station and made the arrival entry at 12.40 A.M. whereas the Metropolitan Magistrate had deposed that he was handed the copy of the FIR only at 10.10 A.M. But in cross-examination, learned Magistrate states that in case the copy of the FIR comes to his residence when he is not at home, then his family members hand over the copy of the FIR to him on his return. In case PW-20, Ranbir Singh, has been guilty of dereliction of duty in not handing over the copy of the FIR to the learned Magistrate during the night and making a wrong entry in the daily diary, it cannot be said that there was any deliberate attempt on the part of the Investigating Officer to make any false entry in the daily diary. After all, Ranbir Singh was deputed to deliver the special report and he claims to have delivered the same before 12.40 A.M. when he recorded the return entry in the daily diary. It may be that this constable did not perform his official duties, as was expected from him, and had actually not gone to the residence of the Metropolitan Magistrate during the night and made the wrong entry in the daily diary that he had come back after delivering the special report to the higher officers including the Metropolitan Magistrate.

22. It is true that various safeguards have been inbuilt in the statutory provisions and the police rules to ensure that FIR is not ante-timed. Under Section 154 of the Criminal Procedure Code as soon as the FIR is recorded, the corresponding entry has to be made in the daily diary wherein substance of the FIR is required to be

incorporated and the substance of the FIR would mean that not only the name of the person on whose statement the FIR is recorded, but also the names of the eye witnesses, the names of the accused had to be recorded. Then, in a heinous crime like murder, under the Police Rules, a special report is liable to be sent to the higher officials including Ilaka Magistrate promptly and then the Investigating Officer is also required to hold the inquest proceedings promptly and send the inquest papers along with the dead body to the mortuary for post-mortem.

23. Our experience shows that for reasons unknown the police invariably commits lapses in not complying with the said provisions of law meticulously in every case. When such lapses occur in a particular case, the Court is to be on guard to examine the ocular evidence with more care in order to determine whether such ocular evidence is fully reliable and can be given credence despite such lapses on the part of the investigating agency. Where the ocular evidence is of shaky nature and a lingering doubt comes in mind about such eye witness, where eye witness having not actually witnessed the occurrence, then these lapses committed by the Investigating Officer assume significance and the benefit of doubt has to be given in such a case to the accused. (See *State of Punjab v. Trilok Singh* : 1971 CriLJ1063 *Balaka Singh v. State of Punjab*, : 1975 CriLJ1734 *Ishwar Singh v. State of Uttar Pradesh* AIR 1976 SSC : 1976 CriLJ1883 , *Vijinder Singh v. State* 1984 (1) Cri 237 1984 Cri LJ 26 and *Arjun Marik v. State of Bihar*, : [1994]2SCR265 .

24. However, it will depend upon facts of each case to see as to what impact such lapses would have on the prosecution case. In *State of Uttar Pradesh v. Gokaran* : 1985 CriLJ511 it was laid down by the supreme court that it is not that as if every delay in sending the delayed special report to the District Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been anti-timed or anti-dated or that the Investigation is not fair and forth right.

25. In Criminal Appeal No. 67/90 *Naresh Kumar v. State*, decided on January 4, 1995, after noticing various judgments on this point, we held that it is absurd proposition of law that if there takes place any lapse at the level of the police

investigating the crime, this lapse should result in every case in drawing an inference against the prosecution that the witnesses put forward by the prosecution as eye witnesses are not truthful witnesses or have just been put up to support the prosecution version at a belated stage.

26. In *Vahula Bhushan alias Vehua Krishnan v. State of Tamil Nadu* : AIR 1989 SC236 it has been laid down that even if there is one solitary eye witness whose evidence is truthful and credible, such an eye witness's testimony alone can be sufficient to bring home the offence to a particular accused.

27. In *Murder Reference No. 8 of 1976, State v. Dharam Pal*, decided on May 6, 1977, a Division Bench of this Court had found that the name of the accused was not mentioned in the substance of the FIR recorded in the daily diary but finding that the eye witnesses are truthful, the Court held that this lapse on the part of the investigating agency would not go to show that FIR was ante-timed to falsely implicate the accused.

28. Coming to the facts of the present case, it indeed cannot be challenged with any rationality that PW-3, Manju Aggarwal, who herself was injured in the occurrence, is not an eye witness. Her statement in Court is straight forward and she had withstood the lengthy cross-examination which has not brought out any serious discrepancy which may have any impact on the veracity of the prosecution case. We have also analysed her evidence and found her to be totally reliable witness. Her statement is quite truthful.

29. The other facts proved in the case give due corroboration to her testimony. Even the hostile witnesses admit her presence at the time of the occurrence and thus we have no reason to discard her testimony on the ground that there was some lapse by the investigating agency in not strictly complying with the aforesaid provisions of statute.

30. We may also emphasise that Mahavir Singh Dahiya, PW-2, another independent witness, had come to the spot soon after the occurrence, being brought there by the two compounders, and in his presence the incriminating articles were taken into possession and the two appellants were also arrested in

his presence and the blood stained clothes of the two appellants were also taken into possession. In cross-examination, he has mentioned that at the time he arrived at the place of occurrence, one Mr. Malik, Advocate had also come there. May be Mr. Malik was a friend of the family but there is nothing on the record to show that Mr. Malik had manipulated any evidence at the spot. Finding the human blood of same group that of the deceased on the clothes of the two appellants and also on the Kirpan also corroborates the prosecution case to a large extent.

31. Hence, we hold that the Additional Sessions Judge was completely right in bringing home the offences to the appellants and we find no reason to interfere with the conviction of the appellants. We dismiss the appeals and we maintain the order of convictions and the sentences of the appellants.

32. Appeals dismissed.

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