

Bhagwan Singh Vs. State

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Court : Delhi

Decided On : Aug-10-1979

Reported in : 17(1980)DLT130

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307, 324, 452 and 506;
Arms Act - Sections 25; Excise Act - Sections 61

Appeal No. : Criminal Appeal No. 37 of 1976

Appellant : Bhagwan Singh

Respondent : State

Advocate for Pet/Ap. : O.P. Malviya and; K.K. Sud, Advs

Judgement :

V.D. Misra, J.

(1) Bhagwan Singh appellant has been convicted under section 302 Indian Penal Code, for the murder of Ram Babadur Thapa and sentenced to imprisonment for life by Mr. K.B. Andley, Additional Sessions Judge, Delhi. The appellant has also been convicted under section 25 of the Arms Act and sentenced to rigorous imprisonment for six months with a. direction that both the sentences are to run concurrently. Bhagwan Sing happeals against his conviction and sentences.

(2) The appellant lives in Gali Paharwali, Pahari Dheeraj, Sadar Bazar, Delhi. One Om Parkash alias Khalifa deceased also used to live in the same locality. Khalifa and the appellant were at daggers drawn. Khalifa was murdered and the appellant was prosecuted for this murder. Ram Bhadur Thapa (deceased) and his brother Krishan Bahadur Thapa Public Witness Pw, who were living in Gali Jattan nearby, used to go to court with the supporters of Khalifa deceased to watch appellant's trial. The appellant was acquitted in that case.

(3) It is the case of the prosecution that on July, 26, 1975 at about 4 P.M. Krishan Bahadur Thapa Public Witness . was going on Sadar Nala Road for his house. When he reached near the corner of Gali Paharwali the appellant met him. The appellant abused him and threatened to teach him a lesson for p

(4) At the hospital Dr. Bhupinder Nath (Public Witness 7), Casualty Medical Officer, examined Ram Bahadur Thapa at 5 P.M. He found the injured fully conscious. On local examination the doctor noticed '(1) Incised wound left lumbar region, size about 1' x " x (2) Another incised wound in the right gluteal region 1' x " x ?'. The doctor sent the injured to male surgical ward for emergency operation and treatment. Ram Bahadur, however, died on August 5, 1975. Autopsy was held the same day by Dr. Bishnu Kumar (PW 21). In addition to the operational wounds and the bed sores, this doctor found that the injury in the abdomen had 'entered the abdominal wall in the abdominal cavity and injured the intestines.' Injury in the buttock had 'entered the pelvic cavity through the sacro-sciatic notch and then caused the cut in the rectum' The depth of this injury was about 6 cm. In the opinion of the doctor the death was 'due to peritonitis subsequent upon stab wounds abdomen and pelvic region' because of these injuries. He also opined that both these injuries were individually as well as collectively sufficient to cause death in the ordinary course of nature.

(5) Constable Kaptan Singh (Public Witness 19) was on duty at the hospital when Ram Bahadur Thapa was brought to the casualty. He telephoned Police-Station Sadar Bazar and informed them about the admission of the injured. Sub-Inspector C.S. Dahiya was directed to investigate. The Sub-inspector went to the hospital and on being informed that Ram Bahadur Thapa was not fit to make a statement,

recorded the statement of Krishan Bahadur Thapa and sent the same for registration of a case under section 307, Indian Penal Code. He handed over further investigation to Sub-inspector Noor Ahmed (Public Witness 22).

(6) Sub Inspector Noor Ahmed went to the scene of crime at about 10 P.M. He joined Krishan Bahadur in the investigation and recorded the Statements of Mohinder Pal and Om Parkash. He searched for the accused but failed to trace him. On being transferred to another police-station he handed over the investigation to the Station House Officer on July 28,1975. The Station House Officer handed over the investigation to Sub-Inspector Mazhar Hussain (Public Witness 26) on July 30,1975. On August 5, 1975 the Sub-Inspector came to know about the death of Ram Bahadur Thapa. After holding an inquest, he sent the body for post-mortem examination.

(7) On September 23, 1975 Sub-Inspector Mazahar Hussain received a secret information about the appellant and organized a picket at Pul Bhangash. At 5.45 P.M. or so the appellant was noticed coming from the Side of Subzi Mandi. He was apprehended. His person was searched and knife Exhibit P-11 Along with its sheeth Exhibit Public Witness Public Witness was recovered and taken into possession. A case under section 25 of the Arms Act knife Exhibit PI. After Completing the investigation the appellant was charge-sheeted under Section 302 Indian Penal Code, and section 25 of the Arms Act.

(8) The defense of the accused was one of total denial. He alleges that he has been roped in because of old enmity.

(9) Mr. O.P. Malviya, learned counsel for the appellant assails the statements of eye-witnesses and submits that they had deposed against the appellant because of enmity. Mohinder Pal and Om Parkash Public Witness PWs. are stated to be partisan witnesses who fall in the category of chance witnesses also. He challenges the place of crime because no blood was found at that place.

(10) The evidence shows that there was an old enmity between Khalifa and the appellant. Krishan Bahadur Thapa admittedly belonged to party of Khalifa. Krishan Bahadur had in 1968 been prosecuted at Gurgaon under section 61 of the Excise

Act and was imprisoned till the rising of the court with a fine of Rs.40.00 . Though he was convicted on August 4, 1971 under section 452/506, Indian Penal Code, he was acquitted in appeal. Once a case under section 324, Indian Penal Code, was also registered against him. Om Parkash lives in the same building in which Krishan Bahadur lives. The house of Mohinder Pal's uncle is next to this building. All the three are friends. Krishan Bahadur was prosecuted Along with Mohinder Pal in a case under section 452/506, Indian Penal Code, but was acquitted in appeal. Mohinder Pal was also hauled up in a theft case of Police-Station Gandhi Nagar.

(11) The enmity between Krishan Bahadur Thapa and the appellant was an old standing one. At one time the appellant was prosecuted under section 307, Indian Penal Code, on the complaint of this witness, but the appellant was acquitted. Before judgment of acquittal was announced in the Khalifa murder case, the appellant made an application to the trial court slating that the complainant party was threatening to 'see him outside the court room if acquitted.' The name of Krishan Bahadur was one of the names mentioned in that appeal.

(12) Now enmity is a double-edged word. It can be a motive to involve falsely one's enemy and it can also be a motive for killing an adversary. In this case it is obvious that there was had blood between the appellant and Krishan Bahadur Thapa. The other two witnesses being close friends of Krishan Bahadur Thapa can be termed as partisan witnesses. In these circumstances we would very closely scrutinize the statements of all the witnesses. We may also at this stage notice that in a fight involving desperadoes, no independent person usually wants to risk his neck by coming forward to depose about the facts.

(13) We will first take up the question of the place of crime. According to Mr. Malviya, since no blood was found on the alleged scene of crime, it should be concluded that the stabbing did not take place there. Sadar Nala Road is admittedly a busy thoroughfare. The incident had taken place at 4.30 P.M. in the month of July. This is a time when good amount of traffic is passing on the road. Information sent from the Irwin Hospital by Constable Kaptan Singh to police-station Sadar Bazar was received at 7.10 P.M. at the Police-Station. This

information was conveyed to Sub-Inspector Dahiya at 7.20 P.M. Thus a period of three hours had elapsed before the police went into action. It took another two and a half hours before the police arrived on the scene. During this time there was nobody to guard the scene of crime and the blood, if any, would have been Wiped out by the traffic. Moreover, all the witnesses are unanimous that the injured did not fall after receiving the injuries but sat down on the road. The condition of the injured when he was examined by Dr. Bhupinder Narh at the hospital, does not show symptoms of much loss of blood. It is true that the witnesses do state that blood fell on the scene of crime, but at 10 P.M. when Sub-Inspector Noor Ahmed inspected the place of crime he did not notice any blood. It is also true that the witnesses do talk of seeing blood lying at that place when they were summoned there by Sub-Inspector Noor Ahmad. But, in our opinion, this can be termed only as a mis-conception. As already stated, about 5' hours had elapsed before the police arrived on the scene of crime and it was highly improbable to find any blood because of the place being a busy thoroughfare. In these circumstances, the absence of blood on the scene of crime would not affect the prosecution case.

(14) It is contended that Krishan Bahadur Thapa did not accompany his injured brother to the hospital. In this connection the statements of Constable Kaptan Singh (Public Witness 19) and Dr. Bhupinder Nath (Public Witness 7) are referred to. Now medicolegal certificate (Exhibit Public Witness PW7/A) has a column for 'Name of relative or friend' bringing the injured to the hospital. In this column the name of Krishan Bahadur Thapa is mentioned. There is also a column for the name of injured's father. In this column the name of the father of the injured is written. The doctor admits that he did not fill these two columns. He states: In case where the information pertaining to the above referred columns is not readily available to the doctor conducting the examination at that particular time, those columns are left blank and normally they are filled up by the constable on duty subsequently on getting such information.² Constable Kaptan Singh (Public Witness 19) states that he had filled these two columns. He swears that he had made these entries immediately after the doctor had conducted the medico-legal examination of the injured. He states: 'The doctor asked me to fill in the above said entries after verification from the person who had brought the injured to the hospital. Accordingly, I asked about the above said particulars from the person

who had brought the injured Ram Bahadur Thapa.' The constable identified Krishan Bahadur Thapa as the person who had given him those particulars.

(15) It is unfortunate indeed that the job of entering those particulars has been left by the doctor to the constable on duty. The medico-legal certificate is a very important document and, in our opinion, it must always be completed by the doctor. However, it is possible that when there is a rush of patients in the Casualty, the doctor may have to give priority to attending the patients instead of spending time to find out the particulars.. Be that as it may, we see no reason in this case to disbelieve that the entries were not duly filled in immediately after the injured had been examined by the doctor.

(16) Grievance is also made of the fact that Constable Kaptan Singh did not inform the police-station soon after the admission of the injured at 5.00 P.M. and took two hours to send this information at 7.10 P.M. We have gone through the statement of Constable Kaptan Singh. We find that no one questioned the constable about the delay in informing the police- station, It is not suggested to us that the constable was in fact not present on duty at the hospital. It is, however, conjectured by Mr.Malviya that perhaps the constable was waiting for the arrival of some relation of the injured and was not willing to inform the police-station till then. We cannot go by conjectures. We would not be justified in condemning the constable for this delay since he was not asked about the delay. After all the constable might have a perfect answer for the delay e.g. the telephone of the hospital or of the police-station being out of order. Moreover, the constable had no axe to grind in delaying the information. He was a disinterested person and had no reason for not performing his duties in the normal course.

(17) The statement of Krishan Bahadur Thapa is assailed on the ground that in case he had witnessed the stabbing of his brother, he would have informed the police immediately since the police-station was at a distance of about 3 or 4 furlongs from the scene of crime. This witness admits that while going to the hospital he did pass police-station Sadar Bazar. However, he states that he never thought of stopping at the PoliceStation to report the incident before proceeding to the hospital. In our opinion, this was a natural behavior. The first priority in such

cases must be to take the injured to the hospital immediately in order to save a life.; Every moment is precious and no time has to be lost in getting the medical attention. The moment Krishan Bahadur Thapa reached the Casualty Ward of the Hospital, he met Constable Kaptan Singh. In these circumstances he justified in assuming that the police would perform its duty in due., course.

(18) It is also contended that had Krishan Bahadur been threatened by the appellant at 4 P.M. that day he should have straightway gone to the police-station to report instead of going to his house and discussing the matter with his brother. The witness explains that the distance to his house and to the police-station from the place of the incident which took place at 4 P.M. is the same. In these circumstances, there was nothing strange in the witness discussing the matter with his brother and thereafter going with him to the police-station to lodge a report.

(19) Minor contradictions in the statement of this witness in the court and his police statement Exhibit P.A. have been highlighted before us. Whereas in the court he talked of directing Mohinder Pal and Om Parkash to inform his family about the incident, he did not tell the police about it. Again, as in the court he talks about lifting his injured brother and putting him in a scooter with the help of Mohinder Pal and Om Parkash, he did not say so in his statement Exhibit P A. Similarly he did not tell the police that in the earlier incident at 4 P.M. the appellant had hurled filthy abuses. In our opinion, these contradictions are such as are likely to occur in the statements of only truthful witness. These are minor details indeed and might not be given importance by a witness in his police-statement. Having closely scrutinized the statement of Krishan Bahadur Thapa we find no reason to disbelieve him. We may repeat that the enmity was between the appellant and Krishan Bahadur Thapa. This is evidence also from the application Exhibit D-1 made by the appellant before the court in which the appellant was being tried for the murder of Khalifa. In this application various names, including the name of Krishan Babadur Thapa, have been specifically mentioned. The name of Ram Bahadur Thapa, is conspicuous by its absence. In these circumstarces the target of the attack was bound to be Krishan Bahadur Thapa and Ram Bahadur Thapa received the injuries while saving his brother.

(20) Om Parkash Public Witness PW' as already noticed, resides in the same building in which Krishan Bahadur lives. His presence at the scene of crime cannot be termed accidental since his house is not very far away from the place of incident. He had gone to the shop of betel seller when he witnessed the occurrence. He fully supports the prosecution version. He has been believed by the trial Judge and we see no reason to take a different view.

(21) Mohinder Pal's presence is challenged on the ground that he is a resident of Gandhi Nagar which is a very far off locality across the Jamuna. But till 1965 he was residing in the same Gali in which lives Krishan Bhadur Thapa. The house of his uncle Ram Dass adjoins the building in which Krishan Bahadur lives. He is in the habit of going to that house almost every day. While going to his uncle's house he had stopped at the betelseller's shop at the crossing for buying cigarettes. He has frankly admitted his friendship with Krishan Bahadur Thapa as well as the various prosecutions which were launched against him by the police. There is nothing on record to show that he was ever convicted. It may be noticed that this witness is a goldsmith by profession and his ancestral shop is situated in Gali Mandirwali in the locality in which the occurrence took place. In fact, the distance between Gali Mandirwali and Gali Jattan is about 35/40 feet. No grievance can, therefore, be made of the fact that this witness was residing at Gandhi Nagar across the Jamuna and could not be present at the scene of crime. We, therefore, see no reason to take a view different from that of the trial Judge.

(22) The arrest of the appellant and the recovery of knife Exhibit P I from him are assailed on the ground that no independent person was joined at the time of the arrest and the recovery. It is in evidence that for practically a period of two months after the date of crime the appellant was not traceable. On September 23, 1975 the police had organized a picket in Chowk Azad Market on the basis of a secret information. They had waited for about half an hour before the appellant was seen passing that day. Now organizing a picket for the apprehension of an accused wanted in a murder case has to be kept a closely guarded secret indeed. And then persons from the public are very reluctant to join such a picket. No one would like to run the risk of deposing against a murderer who had been absconding. It is suggested that the appellant was in fact arrested the same morning while on his

way to the courts for surrendering himself. Except the bald statement of the appellant, there is nothing to show on record that he was arrested that morning. There is nothing also to show that he had any intention to surrender in court. We would, therefore, uphold the conviction and sentences of the appellant and dismiss the appeal.

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