

Kamal Singh Vs. the State

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Court : Delhi

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Judge : Arun Kumar and; N.G. Nandi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 307, 323 and 324

Appeal No. : Cri. Appeal No. 53 of 1992

Appellant : Kamal Singh

Respondent : The State

Advocate for Pet/Ap. : R.D. Jolly, Adv; H.J.S. Ahluwalia, Adv

Judgement :

Arun Kumar, J.

1. This is an appeal against the judgment of learned Addl. Sessions Judge, Delhi convicting the appellant Kamal Singh of an offence punishable under section 302 IPC and sentencing him to undergo life imprisonment and also to pay fine of rupees one thousand. The appellant was also convicted along with three other accused under Section 323 read with Section 34 IPC and for his conviction under Section 323 IPC he was further sentenced to pay a fine of rupees five thousand and in default of payment of fine he was required to undergo simple imprisonment

for six months. The other three accused were also tried for offence punishable under Section 302/34 IPC but were acquitted.

2. Briefly the facts are that Khushi Ram RW-16, father of the deceased went to Police Station Mehrauli, New Delhi on 31st August, 1985 and lodged a report at 8.40 p.m. vide DD No. 19-A (Ex. PW-1/A) to the effect that Kamal Singh, Sukhbir Singh, Tej Singh and Ranjit Singh had given beating to him as well as to his son Dinesh. He requested for being provided with assistance. At 9.15 p.m. the statement of Khushi Ram was recorded by SI Raghubar Dayal, Police Station Mehrauli. This statement is Ex. PW-16/A and forms the basis of the FIR in the present case. The FIR is dated 31st August, 1985 and time of registration of the FIR as given in the FIR is 9.45 p.m. The time of incident as given in the FIR is 8.00 p.m. The FIR was initially registered under Sections 307/324/323/34 IPC as the victim Dinesh was still alive. The FIR under Section 307 IPC etc. was later on converted into Section 302 IPC etc. in view of the death of Dinesh Kumar in the hospital on the same night at 12.15. In his statement Ex. PW-16/A Khushi Ram gave the following version of the incident :

'Today, I and Hatila were sitting in the house of Ram Das and my daughter namely Savitri, aged about 8/9 years, came and informed that Kamal son of Phool Singh etc. were quarrelling with Dinesh, her brother at the shop. On this information I and Hatila got up from there and headed towards my shop at 8 p.m. On the way, we witnessed that my son namely Dinesh was coming running and was being chased by Tej Singh son of Kehar Singh, Ranjit son of Kehar Singh, Kamal son of Phool Singh and Sukhbir son of Phool Singh, all residents of village Maidan Garhi, Kamal Singh was armed with a spear (Ballam) Tej Singh was armed with a sickle (daab) and Ranjit and Sukhbir were armed with lathis. On seeing us, as soon as my son, Dinesh paused for a moment Ranjit and Sukhbir caught hold of my son Dinesh and Tej Singh exhorted Kamal by stating 'What are you looking at, thrust the spear (ballam) into the enemy'. As soon as these words were uttered, Kamal Singh who was holding a spear (Ballam) in his hand thrust the same (spear) into the belly of my son, Dinesh and immediately pulled the same spear out of his belly and then all the four persons started running away when I and Hatila attempted to stop and catch hold of them, Tej Singh gave a blow on my right arm with the sickle

(daab) which he was holding in his hand. As a result of which, I also sustained injuries. My son, Dinesh has been seriously injured due to the spear (Ballam) blow given in his abdomen. When I reached back home I witnessed that these persons were pelting stones at my house and that my wife had also sustained injuries after having been bit with such stones. My son Dinesh was removed to the hospital by my another son. Ramesh and I went to the police station to lodge a report. About two months ago also, these persons had beaten up my wife, Smt. Naraini Devi and proceedings under Section 107/151 Cr.P.C. were going on against them and due to this very grudge, today itself, these persons colluded with one another made a murderous assault on my son, Dinesh and have also caused injuries to me as well as my wife. I and my wife also want that our medical examination may be got conducted. Appropriate action may be initiated against them.

3. Dinesh was got admitted in the hospital by his younger brother Ramesh at 9.30 p.m. as per the endorsement contained in the MLC Ex. PW-17/A. It is further noted in the MLC that it was a case of alleged history of assault approximately 45 minutes back. The patient was shown as conscious. Autopsy of Dinesh was conducted on 2nd September, 1985 at 11.30 a.m. Dr. T. D. Dogra of the All India Institute of Medical Sciences had conducted the autopsy. His autopsy report is Ex. PW-12/A. He appeared as PW-12. According to Dr. Dogra, following injuries were found on the body of the deceased :

'1. Stitched wound of 17 cm in the mid line of abdomen anteriorly placed sparing an silica's situated 6 cm above the root of penis.

2. Drainage tube in right lumber region 2.5 cm area was present.

3. Incised wound of 4 cm x 2 cm x cavity deep having stitches at four places in the corner fixing the infantine in it. It is situated in left inguinal region 5 cm lateral towards left side of lower end of injury No. 1 and was 6 cm medial to line of left anterior superior iliac spine Fat and intestine visible in the wound.

4. Incised wound on right lumber region posteriorly size 2.5 cm x cavity deep. It was 10 cm. mid line and 6 cm above the waist line.

It was obliquely placed margins are clean cut margins of injury No. 3 were also clean cut and injury Nos. 3 and 4 were communicated with each other. The direction of the track is anteroom posterior below upwards and from left to right side. On internal examination is symbol column there was cut of 2 cm c 2 cm x through and through. This was stitched and corresponding to injury No. 3. Mesenteric haemotoma was present at places. Mesentery was stitched at places. Sub-peritoneal haemotoma on left side and right side was present.

The track was closing the medially. The skin sub cutaneous tissue muscles peritoneum intestine and Mesentery were coming out.'

4. The cause of death was opined as shock and haemorrhage due to ante mortem visceral injuries. According to the doctor, the injuries could be produced by sharp edged weapon and were sufficient to cause death in the ordinary course of nature. It was further opined that injuries No. 3 and 4 joined each other through and through. The alleged weapon of offence, namely, ballam Ex. PW-1 was shown to the doctor and he opined that injuries No. 3 and 4 could be possible by that weapon. In cross-examination the doctor further pointed out that in case of injuries No. 3 and 4, the wound was in anterior wall of the abdomen and the other wound was on the posterior aspect of the abdomen which obviously suggested that the weapon had penetrated the abdominal cavity and the weapon Ex. P-1 could cause that injury.

5. The prosecution examined a number of witnesses. The material witnesses for purposes of the present appeal are PW-16 Khushi Ram, father of the deceased, PW-9 Ramesh Kumar, brother of the deceased, PW-5 Hatila. These three witnesses were cited as the eye witnesses of the occurrence. Besides these three eye witnesses Savitri, a younger sister of the deceased was examined as PW-18. She was about 8/9 years old at the time of the incident and when she was examined in Court as PW-18 she was about twelve years old. PW-11 Naraini Devi is the mother of the deceased. PW-8 Khazan Singh was allegedly a witness to recovery of a dao which was alleged to have been held as a weapon by Tej Singh, one of the accused. PW-19 Head Constable Ramesh Chander was posted at the Safdarjung Hospital on the night when Dinesh was admitted to the hospital in an

injured condition. PW-12 Dr. T. D. Dogra had conducted the post mortem on the body of Dinesh to which reference has already been made. PW-20 SI Raghubar Dayal was the IO of the case. He had arrested Kamal Singh, the appellant on 2nd September, 1985 in the afternoon and got the ballam Ex. P-1 recovered at his instance.

6. Thus this is a case of direct evidence and the main question is whether the three alleged eye witnesses, namely, Khushi Ram PW-16, Ramesh Kumar PW-9, and PW-5 Hatila are to be believed or not. So far as PW-18 Kumari Savitri is concerned, she is not an eye witness of the actual incident, i.e., causing of injury resulting in the death of Dinesh by forcing the weapon of offence in his abdomen. She is a witness of events preceding the main occurrence. She was about 8/9 years old at the time of the occurrence. She stated that accused Ranjit and Sukhbir armed with lathies, accused Tej Singh armed with a dao and accused Kamal armed with a ballam started quarrelling with her brother Dinesh who was sitting at his tea shop at the relevant time. They started beating her brother Dinesh. Dinesh in order to save himself ran towards the ghair of Har Lal. She rushed to the house of Ram Dass to call her father. She said that she had taken a short cut, to reach the house of Ram Dass. At the house of Ram Dass, her father and one Hatila were present. After informing her father about the happening, she returned to the shop via the short cut. Her father and Hatila came to the spot. She did not go to the ghair of Har Lal. She only saw her father and Hatila going towards the ghair. Later at the shop she saw her father and mother in injured condition. She stated in cross-examination that her statement was not recorded by the police on 31st August, 1985 though the police had come to their house. Her statement was recorded two/two and half months after the incident. She admitted that police had come to her house several times in between. She could not tell as to how many lathi blows were given to Dinesh at the shop, though she stated that at the shop Dinesh was beaten only with lathies and not with dao and the ballam. Dinesh had not started bleeding while he was still at the shop. The quarrel took place for four or five minutes at the shop. No other shopkeeper intervened. Thus her statement is useful to the extent that she named all the four accused along with respective weapons held by them and that the quarrel involving the four accused and her brother Dinesh started at the shop of Dinesh at about 8.00 p.m.

on 31st August, 1985 and that Dinesh ran towards the ghair of Har Lal to save himself followed by the accused persons. She informed her father about this and her father, along with Hatila proceeded to the place of occurrence.

7. PW-11 Naraini Devi, the mother of the deceased Dinesh stated that the four accused had thrown brickbats at her house. She was hit on the head and the other parts of the body and thus got injuries as a result of throwing brickbats by the accused persons. The cause of the quarrel according to her was that Ranjit Singh, one of the accused had taken some articles from her shop on credit. The payment was demanded from him and he was, not paying. Rather he started abusing the complainant. She was medically examined. Her MLC is Ex. PW-17/C.

8. This brings us to the main witnesses who are allegedly the eye witnesses of the incident. PW-16 Khushi Ram, father of the deceased stated that all the accused persons were known to him since they were his neighbours. He stated that on 31st August, 1985 at about 8.00 p.m. he and Hatila PW-5 were present at the house of Ram Dass in the village when his daughter Savitri (PW-18) came there and informed that Kamal and his companions were quarrelling with his son Dinesh at the shop. On this information he and Hatila proceeded to the tea shop of Dinesh and on the way he noticed that his son Dinesh came running towards the ghair of Har Lal and he was being chased by the accused persons. Accused Sukhbir and Ranjit were armed with lathies. Kamal Singh had a ballam in his hand and accused Tej Singh had a dao in his hand. Dinesh stopped for a while seeing this witness along with Hatila. In the meantime Ranjit and Sukhbir caught hold of Dinesh and thereafter Tej Singh exhorted to Kamal 'Dekhata Kya Hai, Dushman Ke Ballam Ghused De (What are you looking at, thrust the spear into the enemy). Just then Kamal thrust the ballam in the abdomen of Dinesh. He took out the ballam and all of them fled towards their houses. The witness further stated that he and Hatila tried to stop and apprehend the accused whereupon accused Tej Singh gave a dao blow on the right fore arm of the witness as a result of which he sustained injuries. He chased the accused persons and on reaching his house he saw pelting of brickbats by the accused towards his house as a result of which his wife sustained injuries. He returned to the spot where his son Dinesh was assaulted and learnt that Dinesh had been removed to the Safdarjung Hospital by

his other son Ramesh. He there after proceeded to police Station Mehrauli to lodge a report for security and protection of his family. After lodging a report he returned to his house and the police came and recorded his statement. He stated that his wife was running a small shop dealing in vegetables etc. Accused Ranjit Singh and Tej Singh had a dispute about money and despite two months after the present occurrence there was a quarrel between accused persons and his wife. The matter was reported to the police and proceedings under Section 107/151 Cr.P.C. were initiated and were still pending. He also deposed about the arrest of the accused persons in his presence when he accompanies the police and the recovery of the respective weapons at the instance of the accused persons. He stated that he had seen the danda Ex. P-3 and the lathi Ex. P-4 in the hands of accused Ranbir and Sukhbir when they had caught hold of Dinesh at the time of the occurrence. He identified the ballam Ex. P-1 which was according to him used by Kamal on his son Dinesh. According to him the ballam was produced by Kamal himself before the police after his arrest at his house. The ballam alleged had some blood stains on its blade. It was sent to the CFSL but according to CFSL report Ex. PW-20/F blood could not be detected on the ballam. Accused Tej Singh was arrested around 10th September, 1985 and he got the dao recovered from the outskirts of the village from the bushes near a hut. Khushi Ram identified the dao which was used by Tej Singh in attack on him. This witness was subjected to a very lengthy cross-examination. However, he was not shaken and he stood his ground.

9. The evidence of Hatila PW-5 is on similar lines. He also described the incident in the same manner. He knew all the accused from before. His version of the incident as well as of the respective weapons held by each accused tallied with part of PW-16 Khushi Ram. There is no need to repeat the same. He also mentioned that as a result of the attack Dinesh fell down. There was sufficient bleeding from the injury of Dinesh. Dinesh was removed to the hospital in a three wheeler scooter by his brother Ramesh. He had accompanied the police party and Khushi Ram on 2nd September, 1985 when they went to arrest Kamal Singh, the appellant herein. He is a witness to the recovery of the ballam and he described its recovery in the same manner as was described by Khushi Ram. He identified the respective weapons used by the four accused when each one was separately

shown to him. There is no inconsistency between the statement of this witness and Khushi Ram so far as the material aspects of the version of the incident are concerned. About involving an independent witness in the recovery of the ballam he stated that a constable was sent to call the village pradhan named Nathu Singh but he was not available.

10. PW-9 Ramesh Kumar is the younger brother of deceased Dinesh. He stated that :

'On 31-8-85 at about 8.00 p.m. I was coming to my shop for sleeping from my house after taking my meal. I noticed my brother Dinesh Kumar running towards the gher of Har Lal and was chased by the four accused. At that time, Sukhbir Singh was having a lathi, Kamal Singh was having a Ballam, Tej Singh had Dao and Ranjit Singh was having a danda. I also started running behind them. My brother was running towards the Gher of Har Lal. Sukhbir Singh and Ranjit Singh secured my brother Dinesh Kumar, Kanwal Singh and Tej Singh were standing at a distance of about 4/5 paces. My father and Hatila also came. They tried to intervene. Tej Singh told Kanwal Singh 'Dekhta Kya Hai, Ghuser De Dushman Ke Pet Me Ballam' Kanwal Singh trusted Ballam in the belly of my brother Dinesh. Kanwal Singh brought out the ballam after giving it a twist. My brother fell down after crying. I rendered assistance to my brother and the four accused persons ran away. My father and Hatila tried to apprehend them. Tej Singh inflicted a Dao injury on the right arm of my father. My father and Hatila continued chasing them. They ran towards our shop and their house is also situated in that direction. My house comes first and thereafter comes the house of accused in the same street. There was sufficient bleeding from the injury of my brother and his clothes were also smeared with blood. My brother was at that time wearing one checkmark bushshirt and a Kuchha.

One three wheeler scooter was passing by that side I removed my brother Dinesh Kumar in that scooter to Safdarjung hospital and got him admitted there. My brother died in Safdarjung hospital the same night.'

11. He also spoke about the motive for the crime. The motive according to him was the non-payment of the dues of her mother on account of purchases made by

the accused from her shop on credit. He also identified the ballam as well as the dao exhibits P-1 and P-2 as the weapons which he had seen being used by two of the accused persons at the time of the incident.

12. Learned counsel for the appellant has attacked the testimony of these eye witnesses on various grounds. As already observed, the entire prosecution case hinges on the fact whether these eye witnesses are to be believed or not. About PW-16 Khushi Ram and PW-5 Hatila it is contended that they could not have witnessed the incident because there was hardly any time gap between Dinesh running from his shop towards the ghair of Har Lal and the four accused running after him and apprehending him near the ghair of Har Lal. In such a short time Khushi Ram and Har Lal could not have reached the spot near the ghair of Har Lal from where they allegedly witnessed the occurrence. The learned counsel submitted with reference to the site plan Ex. PW-10/A on the record that it was impossible that within such a short time Khushi Ram and Hatila could have covered the distance from the house of Ram Dass up to the place of occurrence. To examine this argument the evidence of PW-8 Savitri, younger daughter of Khushi Ram becomes relevant. She stated that she had gone to the house of Ram Dass from a short cut to inform her father Khushi Ram about the quarrel which was going on between the four accused on the one side and Dinesh; her brother on the other. In the site plan Ex. PW-10/A the house of Ram Dass has not been shown. thereforee, it is difficult to say how much distance Khushi Ram and Hatila had to cover to reach the spot from where they witnessed the occurrence. Moreover, the statement of Khushi Ram Ex. PW-16/A which formed the basis of the FIR contains a complete version of the incident. This very version of the incident was given by Khushi Ram when he appeared as PW-16. The same version is further corroborated by the version of Hatila PW-5. The way the entire incident has been narrated by both the witnesses appears to be very natural. In fact the first version given by Khushi Ram which was the basis of the FIR appears to be spontaneous. It was given soon after the incident, i.e., after a gap of about one hour from the incident. We do not consider it worthwhile to discard the evidence of Khushi Ram and Hatila on the basis of this specious argument advanced on behalf of the appellant. The distances allegedly indicated in the Site Plan Ex. PW-10/A cannot be taken as gospel truth specially in the absence of

cross-examination of the draftsman on this aspect.

13. Savitri PW-18 says she went to inform her father about the quarrel and she took a short cut to reach the house of Ram Dass for this purpose. The location of the house of Ram Dass not being available on record it is difficult to say how much time it would take to reach the place of occurrence from the house of Ram Dass and how much time it would take to reach the house of Ram Dass from the shop of Dinesh through short-cut allegedly taken by Savitri PW-18. Thus we are unable to accept this argument advanced by the learned counsel for the appellant.

14. The presence of Khushi Ram and Hatila at the scene of occurrence and the fact that they are the eye witnesses of the occurrence was also attacked on the ground that neither of them stated in their statements in Court about the presence of Ramesh PW-9 at the scene of occurrence. It was submitted that Ramesh, the younger brother of the deceased who had removed the deceased to the hospital must have been noticed by Khushi Ram and Hatila if they were present at the time of occurrence. Not mentioning the name of Ramesh by these witnesses is, therefore, being held out as a ground to challenge their presence at the scene of occurrence. To examine, this argument it is relevant to point out that Ramesh Kumar while appearing as PW-9 stated that his father (Khushi Ram) and Hatila tried to apprehend the accused persons, Tej Singh one of the accused inflicted a dao injury on the right arm of his father. His father and Hatila continued chasing the accused. The accused ran towards the shop of Dinesh. The house of the accused is also situated in that very direction. This shows that Ramesh clearly mentioned the presence of Khushi Ram and Hatila at the scene of occurrence. He also noticed Khushi Ram being attacked with a dao by Tej Singh when he tried to apprehend the accused persons. Simply because Khushi Ram and Hatila did not mention the presence of Ramesh while describing the incident does not mean that they were not present at the time of the incident or that they did not witness the incident. In the heat of the moment and seeing his son Dinesh being brutally attacked where after he ran after the accused persons, Khushi Ram might not have noticed Ramesh. Same can be said about Hatila. Moreover the incident took place at 8.00 p.m. when it is normally dark and Ramesh had come from the opposite direction. He must have been on the other side. therefore, we are

unable to attach much significance to non-mentioning of the name of Ramesh as a person present at the scene of occurrence by Khushi Ram and Hatila.

15. Next the learned counsel for the appellant tried to persuade us to discard the evidence of Khushi Ram on the ground that while making a police report by DD entry No. 19/A Ex. PW 1/A soon after the incident, Khushi Ram only stated that the four accused persons whose names were given to the police, had given beating to him as well as his son Dinesh. In the said report Khushi Ram did not say that his son Ramesh had been brutally attacked with the ballam and that he had been given a blow and he had been attacked with a dao and injury was caused to him on his right arm. It was argued that the said report is after the incident and if Khushi Ram had witnessed the incident, he would have certainly mentioned the nature of injuries caused to Dinesh and caused to himself by the accused persons. True that in the normal course the injuries should have been mentioned in the police report by the person who had witnessed the incident and who was making the report to the police. It has to be seen in the report that Khushi Ram only requested to be provided police assistance. This is apparently for the reason that the accused persons were still pelting brickbats at his house. Both the parties were neighbours. Khushi Ram was apprehending further attack at the hands of the accused-persons. He was, therefore, at that stage more concerned with calling the police to the spot to safeguard himself and his family than anything else. Khushi Ram was also cross-examined on the point as to why he did not mention about the injuries in this report to the police. He said that he had mentioned about the injuries but the police did not make a note of it. He felt that since the police was to follow him to the place of occurrence the formality regarding the report to the police etc. could be completed at the spot. He did not want to waste time at the Police Station. We are inclined to believe that at the stage when Khushi Ram went to the police station at 8.40 p.m. he was more anxious to first get the police to his place so as to protect his family. The way he and other eye witnesses have described the incident leaves no manner of doubt in our minds about the presence of Khushi Ram at the spot and he being an eye witness of the incident.

16. The learned counsel for the appellant tried to highlight a contradiction in the testimony of Khushi Ram when compared with the testimony of Hatila. The alleged contradiction is that Hatila did not say that he and Khushi Ram chased the accused persons after they had attacked Dinesh and Khushi Ram which fact was stated by Khushi Ram. This argument is factually incorrect because in cross-examination Hatila has clearly stated that he and Khushi Ram had given a chase to the accused persons after the incident when they were running away from the place of occurrence.

17. The evidence of Savitri PW 18 has been challenged on the ground that her statement under Section 161, Cr.P.C. was recorded after about two and half months from the date of incident. Savitri has admitted that the police had been visiting her house in the intervening period. It appears from her statement that for quite some time nobody attached any significance to the role of Savitri as she was only eight or nine years old at that time. In his cross-examination the I.O. (PW-20) has stated that he did not record the statement of Savitri as she was a minor. This shows that on account of Savitri being a minor, the I.O. over looked her. In fact the I.O. has gone on to say that he recorded the statement of Savitri because the prosecution directed him to do so. From this it is obvious that delay in recording the statement of Savitri is to be attributed to the mistaken belief entertained by the I.O. about the value of evidence of a child witness.

18. The learned trial Judge has made observations regarding this child witness before he proceeded to record her statement as PW 18. From these observations it appears that she was intelligent enough to speak about the incident to the extent she had witnessed the same. We are not inclined to discard the testimony of Savitri to the extent she had described the incident. We are unable to attach any weight to the argument that Savitri has been set up as a witness to plug certain loop holes. For the sake of argument it will not be too much to say that even without the statement of Savitri, if the other three eye witnesses are believed the prosecution case could be sustained. therefore, there is no question of prosecution trying to plug loop holes in its case by producing Savitri.

19. The other eye witness is Ramesh P.W. 9, the younger brother of the deceased. We have already discussed the argument of the learned counsel for the appellant challenging the presence of Ramesh while discussing the fact that Khushi Ram and Hatila did not mention the presence of Ramesh at the scene of occurrence. We noted there that in fact Ramesh has mentioned about the presence of Khushi Ram and Hatila at the time of the occurrence and Khushi Ram having sustained injury while trying to apprehend the accused persons. therefore, the argument suggesting absence of Ramesh from the place of occurrence cannot be sustained. Another ground on which Ramesh's presence as an eye witness is being challenged is non-recovery of his blood stained clothes. It has come in evidence that Dinesh was profusely bleeding from his injury in the abdomen. His clothes had blood on them. Ramesh picked up and supported Dinesh for taking him in a three-wheeler scooter to the Safdarjung hospital. In the process it is natural that the clothes of Ramesh must have received blood stains. The fact that Ramesh got Dinesh admitted in the hospital stands proved on the basis of the MLC of Dinesh Ex. P.W. 17/A where the name of Ramesh is mentioned as the person who brought the patient to the hospital. In these facts mere non-recovery or failure of the police to take the clothes of Ramesh into possession cannot lead to the conclusion that Ramesh did not perform the role assigned to him. Ramesh is not an accused in the case. He besides witnessing the incident performed the role of taking injured brother to the hospital. The blood stains which he would have received on his clothes would be possible only during the period when he performed the role of taking his brother to the hospital. When this role is not in doubt, the non-recovery of his blood stained clothes loses its significance. therefore, we are unable to attach any significance to non-recovery of blood stained clothes of Ramesh.

20. Ramesh being an eye witness was also challenged on the ground that P.W. 19 who was the duty constable in the Safdarjung hospital at the time when Ramesh got his brother Dinesh admitted stated that Ramesh had told him that the injury had been caused through a knife. P.W. 19 stated that he had made an entry in his register to this effect on the basis of information received from Ramesh P.W. 9. In cross-examination he added 'may be Dinesh (deceased) told him that he had sustained injuries by a khife'. On the basis of this statement of P.W. 19 it is urged

that if Ramesh had witnessed the incident he would not have stated that the injury was caused by a knife because the prosecution case is that the injury was caused by a ballam. We have seen the statement of P.W. 19 as a whole. We do not think that much credence can be placed on the same. Firstly, the witness is vague as to whether Ramesh told him about the knife or Dinesh told him about it. Secondly, the entry he allegedly made in the register has not been produced. In the face of other preponderance of evidence we are unable to find fault with the prosecution case on the basis of this type of evidence of P.W. 19.

21. Khushi Ram has also been attacked on the ground that his conduct at the time of the occurrence as well as thereafter was unnatural. The unnatural conduct is imputed to him for the reason that he did not try to save his son from the attack by the accused persons nor he tried to remove him to the hospital after he sustained the injury. To answer this argument first we have to note that different persons react differently to a given situation. Khushi Ram must have been more concerned about the safety of his entire family because the accused persons started running towards his house after the incident. First he gave them a chase and when he got a dao blow on his right arm he might have thought it better to run to the police station. In this behalf it is also to be noted that the accused were four persons armed with weapons. Two of them were at least having lethal weapons and the incident occurred so fast. When exhortation was allegedly given and ballam was thrust in the abdomen of Dinesh, there was hardly any time to save Dinesh from the accused persons. Thus on the basis of this plea we cannot reject the testimony of Khushi Ram.

22. Thus we do not find any merit in any of the arguments advanced by the learned counsel for the appellant to challenge the veracity of the evidence of the three eye witnesses and that of the child witness Savitri P.W. 18. The statements of the eye witnesses in so far as they describe the incident are consistent with each other. The version of these witnesses of the incident is consistent and tallies with each other. The presence of Khushi Ram at the scene of occurrence is quite natural. He was the father of Dinesh who was being attacked by the appellant and as soon as he got information about the attack it was natural for him to rush to rescue him on the spot. Hatila was present along with him at the house, of Ram

Dass and, therefore, on hearing about such a grievous attack it was also natural for Hatila to accompany Khushi Ram to the spot. Ramesh is the younger brother of Dinesh and was returning to the shop of Dinesh from his house after taking his meal. It was quite natural that he would have come to know about what was happening and therefore, he rushed to the spot. We find support for this view from the fact that all the three eye witnesses correctly identified the weapons of offence held by each accused while appearing as witnesses in Court.

23. While on identification of the weapons of offence by the three eye witnesses we may also note that Savitri P.W. 18 had also described these weapons as well as the fact as to which weapon was held by each accused. The three eye witnesses also attributed the same weapon to the particular accused as told by Savitri, P.W. 18. Savitri mentioned about the arrival of the four accused with their respective weapons at the shop of Dinesh and about the beginning of the quarrel between four accused on the one side and Dinesh on the other. She also deposed about Dinesh having started running from the spot in order to save himself and the four accused chasing him. This version given by Savitri contains the starting point of the incident while culmination of the incident is revealed by statements of the other eye witnesses. Thus if the statements of Savitri and the three other eye witnesses are read together, a complete version of the incident becomes available.

24. The FIR corroborates this eye witness account of the incident. It contains same version of the incident as has been given by the three eye witnesses. Of course the maker of the FIR was none other than Khushi Ram whose statement was recorded as soon as the police reached the spot and the said statement was the basis of the FIR. In fact the learned counsel for the appellant tried to raise an argument that there was lack of sufficient time gap between the report Ex. P.W. 1/A to the police by Khushi Ram at 8.40 p.m. and the statement of Khushi Ram to the police at 9.15 p.m. which became the basis of the FIR. The learned counsel for the appellant argued that it was impossible that within such a short time the two statements could have been made and recorded. We are unable to attach any significance to this argument. As per the case of the prosecution after making the report to the police at 8.40 p.m. at the police station Mehrauli, Khushi Ram

returned to the place of occurrence. In the report at the police station he had requested for immediate police assistance. The police almost immediately appears to have followed Khushi Ram to the spot where his statement was recorded. In our view the importance being attached to the absence of the time gap between the two is immaterial.

25. The learned counsel for the appellant also argued that the recovery of ballam at the instance of the appellant Kamal Singh was very doubtful. In support of this contention it was submitted that firstly the case of the prosecution is that the ballam was brought from inside the house by Kamal Singh after he was arrested from his residence. This according to the learned counsel, was highly improbable. Secondly the recovery is challenged on the ground that there are no independent witnesses to the recovery. About associating independent witnesses to the recovery it may be recalled that Hatila P.W. 5 had stated that the police officer had sent for the village Pradhan at the relevant time. However, he was not available. Khushi Ram and Hatila are the only witnesses to the recovery of the ballam. The other aspect about the ballam being produced from inside the house by Kamal Singh can be said to be not beyond suspicion. The crux of the matter is when we have believed the eye witnesses about the manner in which the entire occurrence took place, recovery of the weapon at the instance of the accused becomes secondary. the circumstances of the case are such that an argument challenging the manner of recovery can possibly be raised but in view of the other clinching evidence on record, we feel that we need not be bogged down with this argument.

26. Lastly it was argued that the three co-accused have been acquitted. The trial Court did not accept the prosecution case regarding invoking of Section 34, I.P.C. The State did not challenge the trial Court judgment in this behalf. From this it is urged that Kamal Singh, the appellant has been convicted for his own individual act. According to the learned counsel Kamal Singh had no motive of his own to commit the crime. It was also submitted that the incident took turn for the worst at the spur of the moment. therefore, the case ought to be treated as one under Section 304, Part II, I.P.C. Kamal Singh had no intention to kill Dinesh. Whatever had happened was as a result of a sudden fight. We are unable to accept this argument. The nature of the weapon used by Kamal Singh while committing the

offence and the part of the body of the deceased where it was used do not leave any scope for this argument. Ballam the weapon used by accused Kamal Singh had a long blade with sharp edges on both sides. It was pointed on its top. It has a sufficiently long handle. According to the eye witnesses the accused thrust the ballam in the abdomen of Dinesh. This was an act the consequence of which must be well known to the accused. The attack with this kind of a weapon coupled with the fact that the accused was accompanied by three others at the time of the attack shows his intention. The evidence of existing enmity also cannot be ignored. These facts leave no manner of doubt about the fact that the present case is a case for conviction under Section 302, I.P.C.

27. The result of the above discussion is that we find no merit in this appeal. The appeal is dismissed. The conviction of the appellant under Section 302, I.P.C. and the sentence awarded to him by the trial Court are upheld. The appellant is on bail. His bail bonds are ordered to be cancelled. The appellant is directed to surrender before the trial Court on or before 16th May, 1997 to serve out the remaining sentence.

28. Appeal dismissed.