

Gobind Vs. the State

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Court : Delhi

Decided On : Apr-04-1974

Reported in : 10(1974)DLT193

Judge : Pritam Singh Safeer, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34

Appeal No. : Criminal Appeal Nos. 23, 65 and 66 of 1973

Appellant : Gobind

Respondent : The State

Advocate for Pet/Ap. : M.R. Chawla and; D.R. Sethi, Advs

Judgement :

P.S. Safeer, J.

(1) This judgment will dispose of three criminal Appeals being Nos.23, 65 and 66 off 1973. The ppellantswere convicted by Shri R. C.Aggarwal, Addl. Sessions Judge, Delhi under section 324 and 394 of the Indian Penal Code, (hereafter called 'the,Code') read with Section 34 thereof., Gobind Ram and Ram Lal were sentenced to one and a half years rigorous imprisonment under section 324 read with section 34 of the Code. They were sentenced to three years rigorous imprisonment and a fine of Rs. 250.00 was imposed on each of them in respect of

their convictions under section 394 read with section 34 of the Code. In addition to that for the latter conviction a fine of Rs,250.00 was imposed in default where of Ram Lal and Gobind were to undergo further rigorous imprisonment for six months.

(2) Babu Ram was sentenced to two years rigorous imprisonment under section 324 Indian Penal Code and to four years rigorous 'imprisonment' -under section 394 thereof. -In respect of his conviction under-section 394 a fine Of Rs. 500.00 was also imposed. In case of his failure to pay the fine Babu Ram was to undergo rigorous imprisonment for a further period of one year.

(3) The occurrence can be best appreciated in the light of the statement of Public Witness .9 who suffered the injuries at the hands of appellant Babu Ram. He stated that on the 18th of March, 1971 he was waiting for a friend near Odeon Cinema, Connaught Place, along with P. W, 10 Ram Parkash. He had closed his shop in Karol Bagh and reached Connaught Places to meet his friend. After sometime he went to a latrine to make water. Describing the incident, he stated :-

'WHEN I came out of the public latrine after making water, accused Gobind present in the Court mentioned me Gobind Ram, put his hand in my pocket immediately on my coming, out from the latrine. As I tried to catch hold of him by his neck the other accused struck me with his head on left side of my face. Babu Ram accused then started inflicting injuries with knife on my person. One knife injury was inflicted on the right side of my neck, then one injury was inflicted on my head on the front side, third injury was inflicted with the knife in my abdomen and fourthly a knife blow was given on the left side back near the arm-pit. (All these injuries' have been shown by the witness in court by pointing out the scars of wounds). I fell down on the ground and my friend rushed to wards me shouted mardia bachao bachao Ram Parkash came running towards me. Babu Lal accused threatened him also with knife and I stepped backwards in order, to save myself. All the accused-persons fled away by leaping the railings near the latrine. One of three accused had fallen on the ground while leaping over the railings, cannot say which of them had so fallen. Ram Parkash then lifted me up and narrated the whole occurrence to him, and asked him to take me to the hospital immediately. He ran hither and

thither to search for a-scooter but he could not get any. Then a police van came there and removed me to the hospital.'

THE witness Was subjected to thorough cross-examination. He affirmed that the occurrence had taken place at 9.15 or 9.30 p.m. He stated that he had gone to make water in the public latrine and that at that time his partner Ram Parkash was taking water at a piao which was at the crossing of the road at a distance of about 10-12 yards from the latrine. He was emphatic that Gobind had put his hand in the right side of his pant pocket in which apart from some coins he had a bunch of keys. He stated that he was wearing a golden ring. He was confronted with portion- A to A in a statement made before the committing Magistrate in which it was found stated that Ram Lal put his hand in his pocket. He was also not sure whether the knife was already in the hand of accused Babu Ram or the accused had taken it out from his pocket.

His testimony remained unshaken regarding the main stem of the occurrence as spelled out by his examination-in-chief. A close appreciation of his evidence leads to the following conclusions :-

(I) P. W. 9 Krishan Lal suffered four knife blows at the hands of an assailant whom he had no reason to excuse. At the trial he pointed out Babu Ram appellant as the person who had inflicted injuries by using knife. There can be no doubt that the person who gave the injuries had been seen by him. , That one of the accused persons had put his hand in his pocket. I do have before me the contradiction that he had stated before the Committing Magistrate that it was Ram Lal. In any case it stands established that one of the three persons involved in the occurrence had performed the primary act of putting the hand in the ' pocket of Krishan Lal in order to take out whatever it contained. The bunch of keys in his pocket may have been an unfortunate attraction. (iii) The incident occurred at a great speed. As soon as one of the accused put his hand inside the pocket of P. W. 9 Krishan Lal, he resisted at once. Just then one of the three struck his head on the front of his face. Why did he do that His performance was a part of the joint action attributable to all the three participants in the crime. As soon as one of them had given the knock by his forehead to Krishan Lal, Babu Ram started inflicting indiscriminate knife

injuries. The prearrangement in the mind of the three accused persons is visible from the manner of their participation.

Keeping in view the foregoing conclusions, the deposition by Public Witness . 9 that Ram Parkash had reached the spot receives support from the statement which Ram Parkash himself made as P. W. 10. He state- ed:-

'I immediately ran towards the latrine and saw that Gobind accused present in the Court and Ram Lal accused present in the Court had caught hold of Kishan Lal and Babu Ram was giving knife blows to him. Babu Ram accused also tried to give me knife blows but I stepped behind in order to save myself.'

THE acts ascribed to the three assailants were simultaneous. In view of that state of evidence the learned counsel appearing for the appellants has rightly not pressed that section 34 of the Code would be inapplicable. The occurrence by itself affirms that there was common intention in all the three appellants to achieve the object of robbing their victim by using force and in the course of the crime one of them recklessly caused injuries by using the knife wherever it could fall.

In order to find the common intention the Court will have to take into consideration:--

(i) How did the occurrence start (ii) How did the events move How was the crime committed (iii) what were the individual acts contributed by the criminals while participating in the commission of the crime (iv) Their conduct immediately after the occurrence In this case as soon as Krishan Lal P. W. 9 came out of the latrine all the three assailants who had deliberately collected at the spot by their common participation at a dramatic speed committed the crime. One of them put his hand in the victim's pocket, the other at once gave the knock with his forehead and the third one started inflicting injuries with the knife which he had. As seen as P. W. 10 rushed towards P. W. 9 all the three simultaneously with the same impulse rushed towards the railings to cross over and escape. Their running away together from the scene of occurrence in this case fortifies me in concluding that they throughout had the common intention to commit the crime. The testimony of P. Ws. 9 and 10 by itself suffices in bringing home the guilt to the accused, I am not placing reliance on the statement of P. W. 13 and for that reason I do not find it

necessary to discuss his evidence.

WHEN the police took the injured Public Witness .9 to the hospital he was not fit to make a statement. The injuries on his body were examined and the evidence of P. W. 18 Dr. Y. C. Mathur shows that apart from the four injuries described by Public Witness .9 who had suffered them he had abrasions on the left temporal region.

the accused-appellants examined three witnesses in defense. Public Witness . 18, Investigating Officer, had mentioned the name of Lal Chand. Lal Chand was examined as D.W.1. He stated that Gobind Ram and ^Ram Lal, along with him were taken from his jhuggi to the police station. He was not implicated in the case. He stated that he was arrested Under the Bombay Act and all the three accused were arrested in the knife case. He stated that Gobind Ram, was employed with him for the past ten years, but when cross-examined he was unable to state as to which place Gobind Ram belonged. D .W.I. admitted that Babu Ram was the son of his maternal uncle but in respect of his arrest he had not complained to the higher police authorities that he had been falsely implicated. D.W. Ramji Lal deposed that on the 18th of March, 1971, at about 10.00 or 1030 p.m. he had seen the police taking away Babu Ram with them.

IF anything, the evidence of the three defense witnesses affirmed the version given by P. W. 16 that he was able to arrest all the three appellants on the night of occurrence. In this case the clothes which the accused were wearing were taken into possession. A small quantity of blood was extracted from the body of Krishan Lal and sent for examination. It was analysed and compared with the stains of blood found on the shirt of Babu Ram. Ex. R. W. I 11/A along with the concerned evidence establishes that the bloodstains on the shirt of Babu Ram were, of the same group as the blood which was- found on the shirt and bunian of Krishan Lal injured. Krishan Lal's blood taken while he was in the hospital was also of the same group. Two torn pieces of the shirt of Gobind had been seized from the railings over which he had jumped while effecting escape. Apart from the evidence discussed above there is Ex. Public Witness . 10/C the disclosure statement by Babu Ram in consequence of which he got recovered the chhuri'(knife) by which the crime had allegedly been committed. That part of the disclosure statement in

consequence whereof the weapon of offence was discovered enjoys the protection of section 27 of the Indian Evidence Act.

It is urged on behalf of the three appellants that even while maintaining their convictions they deserve to be leniently dealt with. -It- is submitted that all the three are young men and- the occurrence is their first performance. May be, this is the first performance which the police came to know. The record discloses that Babu Ram had been in custody for some time when the proceedings were going on before the Committing Magistrate. He remained in custody for about three and a half months during the course of the trial by the Additional Sessions Judge. Similarly, Ram Lal was also in custody during- the proceedings before the committing Magistrate for about three months. He remained in custody during the course of the trial by the Additional Sessions Judge for about five days. I am of the view that it will secure the ends of justice if the sentences imposed on the appellants, are reduced to three years rigorous imprisonment in respect of Babu Ram's conviction under section 394 of the Indian Penal Code and to two years rigorous imprisonment each in respect of Ram Lal and Gobind so far as their convictions under section 394 read with section 34 of the Code are concerned. There will be no imposition of fine. The sentences imposed on each of the appellants' in respect of their convictions under section 324 read with section 34 of the Code for lesser periods need not be interfered with. The sentences will run concurrently. With the modification, indicated above, the appeals are dismissed.

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