

**Ashok Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Dec-05-1975

**Reported in :** ILR1976Delhi359; 1976RLR462

**Judge :** S. Rangarajan and R.N. Aggarwal, JJ.

**Acts :** [Children Act, 1960](#); Criminal Law; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161 and 288

**Appeal No. :** Criminal Appeal No. 111 of 1974

**Appellant :** Ashok Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** A.N. Mulla,; D.C. Mathur and; R.N. Dixit, Advs

**Judgement :**

**R.N. Aggarwal, J.**

(1) Ashok Kumar, aged 17 years, was tried in the court of Shri S. C. Chaturvedi, Additional Sessions Judge, on the charge of murdering Rajinder Kumar aged about 23 years, with a knife. Along with Ashok his younger brother Vijay Kumar was also challenged for the above said offence but since he was below' the age of 16 years on the date of the offence, he was sent for trial under the [Children Act, 1960](#). The Additional Sessions Judge found Ashok Kumar guilty of the offence

charged with and sentenced him to imprisonment for life. Against his conviction and sentence he has preferred this appeal.

(2) Hukam Chand (Public Witness 1). father of Rajinder Kumar, lived with his family in House No. 273, Kucha Ghasi Ram, Chandni Chowk. Delhi. The said house was owned by the uncle of the accused. On 1st June. 1971, Jai Bhagwan, father of the accused, had lodged a report that Rajinder had kidnapped his daughter Saroj Kumari. Saroj was recovered from the possession of Rajinder at Ahmedabad. Rajinder was charged for offences under sections 366 and 376 of the Penal Code and that case was still pending when the present occurrence took place. In July 1971. Hukam Chand had shifted to House No. 55-C5 Mor Sarai which is at a distance of about 3/4th of a mile from Kucha Ghasi Ram. The above is said to be the motive for this crime.

(3) The prosecution version of the occurrence is that on 22nd May, 1973 at about 7 P.M. Hukam Chand was returning to his house from Chandni Chowk. When he reached near the Gate Mor Sarai he saw his son Rajinder Kumar surrounded by Ashok Kumar and Vijay Kumar. Ashok was holding Rajinder from his hands and Vijay was standing behind Rajinder. Public Witness 1 heard the accused saying that they would take revenge for his having abducted their sister and that the court may or may not punish him. Thereafter Ashok released Rajinder and took out a knife from his 'dab'. Vijay also look out a knife. Ashok gave a knife blow on the face of Rajinder and Vijay gave a blow which was received by Rajinder, while trying to ward off the blow, on his right hand. Rajinder ran towards Mor Sarai quarters. The two accused ran after Rajinder and overtook him and gave two knife blows on the back of his waist and one blow on the back of his left thigh. On receipt of the blows, Rajinder fell on the patri. Both the accused while brandishing their knives passed by Hukam Chand in the direction from where they had come. Besides Hukam Chand, the occurrence was alleged to have been witnessed by Mohar Singh (Public Witness 2), Rajinder Kumar Jain (Public Witness 3) and Puran Singh (Public Witness 4).

(4) Hukam Chand sent for a taxi and removed Rajinder to Irwin Hospital where he was attended upon by Dr. U. Kaul (Public Witness 12) who had found the following

injuries on his person:-

1. Stab wound 4'X2' left interscapular region with surrounding surgical emphysema.
2. Stab left lumbar region 2' X 2'.
3. Stab left thigh 2' X1'.
4. Stab left cheek 2' X 2'.
5. Stab left hand 4'X 1' on the dorsum.

(5) Vijay Kumar, Constable (Public Witness 7) who was on duty at Irwin Hospital, informed the Police Station Kotwali about the admission of Rajinder Kumar in the Hospital. Constable Ram Saran (Public Witness 14) made an entry in the Daily Diary about the report received from the Irwin Hospital. He sent a copy of the report to S.I. Diwan Singh (PW20) who proceeded to the Hospital. He obtained the medico legal report Ex. Public Witness 12/A and enquired from the doctor if Rajinder was fit to make a statement. The doctor declared that Rajinder was not fit to make a statement vide his endorsement Ex. Public Witness 20/A. Pw 20 recorded the statement Ex. Public Witness 1/A of Hukam Chand and with his endorsement Ex. Public Witness 13/A sent it to the Police Station for registration of a case. On the basis of the 'rukka' Ex. Public Witness 13/A, Ast Kidar Nath recorded the formal First Information Report, copy of which is Ex. Public Witness 20/B. Hukam Chand produced his blood stained kurta and towel which were seized by Public Witness 20 vide Memo. Ex. Public Witness 1/B. Thereafter, Public Witness 20 went to the spot and picked up blood stoned earth from the spot of occurrence and took it into possession vide Memo. Ex. Public Witness 1/C. Public Witness 20 recorded the statements of Puran Singh (PW 4), Rajinder Kumar Jain (Public Witness 3) and Mohar Singh (Public Witness 2).

(6) Rajinder succumbed to the injuries at 11.35 P.M. The Police Station was informed of the death of Rajinder. The investigation was taken over by Public Witness 21 Sardar Singh, Station House Officer, Police Station Kotwali. Public Witness 21 inspected the scene of crime and got it photographed. He prepared the inquest report and sent the dead body of Rajinder to the mortuary for post-mortem. A search was made for the accused but they were not found at their house.

(7) Vijay Kumar was arrested by the Police on 23rd May, 1973 from near Bhagirath Palace. He was wearing a pant and a bushirt. His clothes appeared to be stained with blood and accordingly Public Witness 21 took them into

possession vide Memo. Ex. Public Witness 1/E. On 25th May, 1973 Ashok Kumar was arrested near Jat Dharamshala in Jamuna Bazar. His clothes were also found to be stained with blood and they were taken into possession vide Memo. Ex. Public Witness 1/F.

(8) On 26th May during interrogation Ashok Kumar disclosed that he had concealed a knife near the Sant Nagar Ridge in Kalkaji and he could have it recovered. On the information given by Ashok Kumar a knife Ex. P 7 was recovered from under the stones near the Sant Nagar Ridge in Kalkaji. It was found to be stained with blood. The Investigating Officer after preparing its sketch seized it vide Memo. Ex. Public Witness 1/J. The knife and the pant of Ashok Kumar were sent to the Serologist for examination and report. The Serologist found the pant and the knife to be stained with human blood of 'B' group which was also the blood group of the deceased.

(9) An autopsy was performed on the dead body of Rajinder and the doctor found the following injuries:-

1. An incised wound 0.8 X 0.2 cm. at the side of distal phalanx of middle finger of right hand towards the index finger.
2. An incised wound 5.6 X 2 cm. at the dorsum of right hand. muscle deep.
3. Cut open drip wound right lower & inner part of leg.
4. An incised wound 2.5 x 0.8 cm. back of upper part of left thigh, 8 cm. deep.
5. An incised punctured wound 3 x 1 cm. over the left cheek 1.2 cm. away from left angle of mouth, which has cut the gum at left upper premolar tooth.
6. Stitched wound 4 X 0.4 cm. with two stitches at the left side of chest at anterior axillary line, 13 cm. below the left nipple.
7. An abrasion 0.7 X 0.5 cm. at the middle of epigastric region.
8. An incised punctured wound 6 x 2 cm. at the left interscapular region.

9. An incised Wound 3X1.2 cm. just left to the mid-line back of body lower part 10 cm. above the left iliac crest, muscle deep and hit against the vertebral column. Depth 5.4 cm.

(10) It may be clarified here that injuries No 3 and 6 are operational wounds.

(11) The doctor found that injury No. 8 punctured through the space between 4th and 5th rib and cut the inner part of the upper lobe of left lung, the depth of which was 9 cm. The doctor gave the opinion that death was due to shock and haemorrhage consequent to stab injury to lung and further opined that injury No. 8 was sufficient to cause death in the ordinary course of nature.

(12) Ashok Kumar accused in his statement at the trial denied the 'allegations of the prosecution. He admitted that his father had lodged a report against Rajinder deceased for having kidnapped his sister Saroj and that Rajinder was arrested in that case and that case was pending on the date of the present occurrence. The accused denied that he was arrested by the Police on 25th May, 1973 at Delhi near Jat Dharamshala. He stated that he was arrested by the Police at Agra and brought to Delhi. The accused denied that the clothes Ex. P5 and P6 were seized by the Police from his person. The accused also denied to have made the disclosure statement leading to the recovery of the knife. The accused stated that the case against him was false and he had been implicated on account of enmity.

(13) The accused in support of his defense examined Ram Sarup (DW 1), Naresh Chander Sharma (Dw 2), Jai Bhagwan (DW 3), Trilok Chand, Head Constable (DW 4), Paras Ram (DW 5) and Munna Lal (DW 6). The defense evidence is in support of the places that Ashok Kumar was not in Delhi on 22nd May, 1973 and that he was arrested at Agra on 24th May, 1973.

(14) The prosecution case admits of no doubt that Rajinder Kumar had died on 22nd May, 1973 on account of violence. The only question is whether it was the appellant Ashok Kumar who had committed the crime. The prosecution, to prove its case, has produced both direct and circumstantial evidences. The direct evidence consists of the testimony of Hukam Chand (Public Witness 1), Mohar Singh (Public Witness 2), Rajinder Kumar Jain (Public Witness 3) and Puran Singh

(Public Witness 4). The indirect evidence consists of : (a) recovery of blood stained clothes from the person of Ashok, (b) recovery of blood stained knife on information given by Ashok, and (c) motive. Eye Witnesses:

(15) The occurrence is alleged to have been witnessed by Public Witness 1 Hukam Chand, Public Witness 2 Mohar Singh. Public Witness 3 Rajinder Kumar Jain and Pw 4 Puran Singh. At the trial. Public Witness s 2. 3 and 4 turned hostile and they were permitted to be cross-examined by the Public Prosecutor. PWs 3 and 4 had supported the prosecution case in its entirety before the committing Magistrate and their depositions were transferred for being read in evidence at the trial under section 288 of the Code of Criminal Procedure.

(16) Shri Mulla challenged the reliability of Public Witness 1 on the following grounds : (1) Public Witness I is a chance witness and the version put forward by him is not probable, (2) the medical evidence belies his testimony, (3) he is not a wholly reliable witness inasmuch as his testimony in regard to the arrest of the appellant at Delhi on 25th May. 1973 and recovery of the knife at the instance of the accused has been disbelieved by the trial Judge and in the absence of corroboration it will not be safe to sustain the conviction on his solitary testimony.

(17) Public Witness 1 gave evidence that on 22nd May, 1973 at about 7 P.M. he was returning to his home from Chandni Chowk and when he reached near the gate Mor Sarai he saw Ashok and Vijay surrounding his son Rajinder. that Ashok was holding Rajinder from his hands and Vijay was standing behind him and they were saying that they would take revenge for his having abducted their sister, that Ashok released the hands of Rajinder and took out a knife and gave a blow on- the face of Rajindcr, that Vijay also took out a knife and gave a blow which was received by Rajinder on his right hand in an attempt so ward off the blow. that Rajinder ran towards Mor Sarai quarters, that both the accused ran after him and overtook him and gave two blows on the back above the waist of Rajinder and one blow on his thigh while he was running away that Rajinder on receipt of the blows fell on the patri, that besides him Mohar Singh. Rajinder Kumar Jain and Puran had witnessed the occurrence. He further testified that he sent for a taxi and removed Rajinder to Irwin Hospital where the Police came and recorded his

statement Ex. Public Witness 1 /A.

(18) Some of the salient features of the case are : that the occurrence had taken place at 7 P.M. near the gate Mor Sarai, that the deceased was taken to Irwin Hospital in a taxi and was admitted and examined in the Hospital at 7.30 P.M., that a constable on duty at the Irwin Hospital had informed the Police Station about the admission of Rajinder in the Hospital and the said report was recorded at 7:40 P.M. Public Witness 20 Diwan Singh, Sub-Inspector, had reached the Hospital round about 8 P.M. and recorded the statement Ex. Public Witness I/A of Public Witness I at about 8.30 P.M. The said report was dispatched to the Police Station at 9 P.M. and a formal First Information Report was recorded at 9.30 P.M. Public Witness 1 had in his statement Ex. Public Witness 1/A given a detailed version of the occurrence and named Ashok Kumar and Vijay Kumar as the assailants of his son. The medico-legal report Ex. Public Witness 12/A evidence that Hukam Chand had accompanied the deceased to the Hospital and this fact was not disputed before us during the course of arguments. The above fact would bring out that the deceased was in the hospital within less than half-an-hour of the occurrence. There is no evidence on the record about the distance between the place of occurrence and the Hospital but judicial notice can be taken that the distance between the two places is not less than a mile and a half. It must have taken the taxi about 15 minutes to reach the Hospital. If Public Witness I was not at the spot as contended, it would not have been possible for the deceased to have reached the Hospital within less than half-an-hour of the occurrence. Public Witness 1 lived in the locality where the occurrence took place and his presence at the spot of occurrence is probable. The house of Public Witness 1 is at a distance of 300 yards from the spot of occurrence and it was contended that it is possible that Public Witness I on being informed of the occurrence reached the spot immediately and then removed Rajinder to the hospital. We have given our anxious consideration to this contention but in our view the circumstances proved suggest that Public Witness 1 was present when the occurrence took place, for otherwise it would not have been possible for him to remove the injured to the hospital in such a short time.

(19) Public Witness 1 in his statement Ex. Public Witness 1/A has given a vivid description of the injuries inflicted on the deceased. The medical evidence shows that the deceased had one incised wound on the left side of his face, two incised wounds on the right hand which could be the result of one blow, one incised wound in the scapular region, one incised wound in lumber region and one on the back upper part of left thigh. As stated earlier, Public Witness 1 stated that the first two injuries were given at the first spot and the other three at a distance of 40 or 50 yards from the first spot when the deceased was running away. This part of the statement finds support from the medical evidence. It was contended that the injuries on the upper part of the waist and the thigh could not have been inflicted in the manner deposed to by Pw 1 and that showed that he had not witnessed the occurrence. The contention is that the injury in the scapular region was found to be 9 cm deep, the injury in the lumber region 5.4 cm deep and in the left thigh 8 cm deep and that these injuries could have been caused only if they were given with a force and these could not be inflicted from the back while the deceased was running away. This argument at first blush appeared to be attractive but on a deeper consideration we are of the view that it has no force. We examined the knife said to be the weapon of offences and we find that it is a sharp pointed knife having a blade 5 1/2' long and a handle 6 1/2' in length. It may not be possible to say as to which of the last three injuries was inflicted first but it is likely that after the first injury, out of three, was inflicted the deceased could not have continued running and he must have staggered and the other two injuries were given in quick succession thereafter. In the situation Public Witness 1 was he could not have clearly seen the sequence of infliction of the injuries. We find nothing inherently improbable in the statement of Public Witness I in regard to the manner of infliction of the injuries. On the contrary, the sites of the injuries lend support to the truthfulness of the testimony of Public Witness 1. If he had not witnessed the occurrence he could not have stated as to how the injuries were received by the deceased. The first report was lodged within an hour and a half of the occurrence and there was no time lag between the occurrence and the lodging of the first report for Public Witness 1 to have invented or given a tutored version of the occurrence. It may be stated that nothing has been brought out on the record to show that the first report was not recorded at the time and place it purports to have

been recorded.

(20) The evidence on the record shows that the deceased was 5-7' in height and he had a stout body. It is also in evidence that he used to wrestle. Ashok Kumar was aged 17 years and Vijay about 16. The deceased would have put up strong resistance if there was only one assailant. All the attending circumstances suggest that there was more than one assailant. This circumstance also lends credibility to Public Witness 1. Arrest of Ashok Kumar, recovery of the clothes and the weapon of offence.

(21) Public Witness 21 gave evidence that a search was made for the accused on the night of 22/23rd May but they were not found at their house. that Vijay was arrested on 23rd May at about 9-45 P.M. from near Bhagirath Palace and Ashok was arrested on 25th May from near the Jat Dharamshala in Jamuna Bazar. The defense of the accused is that he was arrested on 24th May at Agra where he had gone to attend a wedding on 4th May. The trial Judge has rejected the plea of alibi but believed the defense evidence that Ashok was arrested on 24th May at Agra. As stated earlier, the accused had in support of his defense examined DWs 1,2,3,5 and 6. Dw 3 Jai Bhagwan. father of the accused, gave evidence that on 22nd May, 1973 Police had come to his house and enquired about his son Ashok and he had told the Police that he had gone to Agra to attend a marriage, that on the next day he had gone with Manohar Lal, Head Constable and Balbir Singh, Constable, by the night train to Agra where they reacted in the morning, that Ashok was in the house of his maternal uncle. that he along with Ashok Kumar and the Police left by bus for Delhi and at Mathura the bus developed some mechanical defect and there he went to meet his brother-in-law, Paras Ram, who met him in the courts where Shri Ram Sarup Verma, Advocate (DW 1) was also present, that he had told his brother-in-law about the arrest of Ashok and that Shri Verma and his brother-in-law had gone to the bus stop and met Ashok. The above evidence was supported by Dw 5 Paras Ram, Dw 6 Munna Lal and Dw 1 Ram Sarup. Dw 1 testified that Paras Ram was with him in the court at about 11 A.M. on 24th May, 1973 and Jai Bhagwan had come to meet him. that Jai Bhagwan had told them the circumstances in which Ashok was arrested by the Police, that he had enquired from Jai Bhagwan if the Police had produced Ashok before the

Additional District Magistrate, Agra and on being informed in the negative he had told them that the Police should have produced him before the Judicial Magistrate at Agra and the procedure adopted by them was not right, that he had accompanied them to the bus stop where he saw Ashok with the Police. To the same effect is the statement of Paras Ram (DW 5). Dw 6 Munna Lal had testified that his sister Prem Lata was married on 10th May, 1973 and Ashok, who is a cousin of his, had come to attend the wedding and Dw 3 had come to Agra 13 or 14 days after the wedding and told him that the Police wanted Ashok in a murder case and he had left for Delhi. Besides the above evidence, two letters Ex. D W2/A and Dw 3/B have been produced in support of the defense plea. Dw 2/A is a letter dated 22-5-73 said to have been addressed by Ashok to his brother-in-law living at Meerut. Dw 3/B is a letter dated 24-5-73 said to have been written by Ashok to Dw 3 from Agra.

(22) The trial Judge believed the plea of the accused that he was arrested from Agra on the ground that the Police party must have taken with them someone who could have helped them in tracing out the accused and therefore, the defense version and evidence that Dw 3 had accompanied the Police to Agra is probably true. We are unable to agree with this finding. If the Police party wanted to take someone with them for the purpose of identification, they would not have taken the father of the accused but someone out of the complainant party. Dw 3, who was vitally interested in the accused, could have easily put the Police on a wrong track. It appears that on getting information that some relations of Ashok lived at Agra and Mathura, a Police party was sent to those places to apprehend the accused. Head Constable Manohar Lal and Balbir Singh had returned and reported at the Police Station on 25th May, 1973. If Ashok was in their custody they would have made an entry to that effect in the Daily Diary register. Moreover, if the accused had, in fact, been apprehended at Agra on 24th May, we fail to see why the Police should have falsely shown his arrest at Delhi on 25th May. The evidence in regard to the breakdown of the bus at Mathura and the meeting of Dw 3 with DWs 1 and 5 appears to be unnatural. If the bus had broken down as alleged, the Police party would have got another bus for Delhi.

(23) The letters Ex. Dw 2/A and Dw 3/B appear to have been manufactured to support the defense pleas. Ex. Dw 3/B is a letter dated May 24, 1973 alleged to have been written by Ashok to his father at Delhi. According to Dw 3 he had reached Agra on 24th morning and left for Delhi along with Ashok and the Police party that very morning. There could be no occasion for Ashok to write to his father on the 24th May.

(24) The contents of the letter Ex. Dw 2/A read as follows:- 'Respected Jijaji and Didi, I am quite well here and hope you to be in the same state. Why you did not attend the marriage What is the matter Arc you angry All including Nanaji and Mamiji (maternal grandfather and maternal aunt) waited for you but you did not come. Jiji and Babuji etc. have left for Delhi but I am still here. I shall be coming after the vacation. You must at least drop a letter. You may come just for one day if you get the opportunity. Everybody is wailing for you. Respect to Babuji and Mummi, Namastey to elder Jijaji, Didi, Subhash Jijaji and Anil.'

(25) Dw 2 Naresh Chander Sharma testified that he had received the letter Ex. Dw 2/A at Meerut on 25th May. In cross-examination he denied that the letter is not written by Ashok. The contents of the letter Ex. Dw 2/A show that there was no occasion for Ashok to have written this letter to Naresh Chander. The letter is addressed to D. C. Sharma and not to Dw 2 N. C. Sharma. It has not been brought out on the record as to who is D. C. Sharma. At the trial Ashok Kumar in his statement did not take any plea that he had 'gone to Agra on 4th May and stayed there till 24th May, 1973 when he was arrested by the Police. He also makes no reference to the above mentioned two letters. It is pertinent that the letters Ex. Dw 2/A and Dw 3/B were produced for the first time during the course of examination by the concerned witnesses on 27-3-1974.

(26) On a careful perusal of the evidence we are of the view that Ashok Kumar accused was arrested at the time and place alleged to by the prosecution and not at Agra.

(27) At the time of his arrest Ashok was wearing a shirt and a pant which were found to be stained with blood and were seized by the Police. The recovery memo. Ex. Public Witness 1/F was attested by Hukam Chand (Public Witness 1) and

Rajinder Kumar Jain (Public Witness 3). On 26th May on interrogation Ashok disclosed that he had hidden a knife in the ridge near Sant Nagar and he could point out that spot and have it recovered. The disclosure statement Ex. Public Witness 1/G was attested by Public Witness s 1 and 3 and also signed by Ashok. On 28th May the accused led the Police party to a spot on the eastern side of Kailash-Kalkaji road and got a knife recovered from underneath the stones. The knife was found to be stained with blood and it was seized by the Police vide Memo. Ex. Public Witness 1/J which was attested by Public Witness 1 and Public Witness 4. Both the above exhibits were sent to the Chemical Examiner and Serologist for examination and report. The finding was that the knife and the pant were stained with human blood of 'B' group which was also the blood group of the deceased.

(28) The trial Judge disbelieved the recovery of the clothes on the ground that the prosecution case in regard to the arrest of Ashok at Delhi was not believed by him and the recovery of knife was disbelieved on the ground that there was a delay of two days in the recovery of the knife after the disclosure made by the accused. Shri Mulla had also criticised the recoveries on the ground that Hukam Chand who was The main prosecution witness was associated by the Police at all material stages of the investigation.

(29) We have earlier found that the prosecution case in regard to the arrest of Ashok Kumar at Delhi appears to be true. The disclosure in regard to the knife was made by Ashok on 26th May at 9.30 A.M. Pw 21 gave evidence that he could not go to the spot named by the accused on 26th May for recovery of the knife as he had to produce the accused before the court on that day that on the next day he took the accused to Kalkaji but the accused could not point out the spot where he had thrown the knife and he had asked for more time to recollect about the spot where the knife was kept by him, and that on 28th May the accused had pointed out the spot in pursuance of which the knife was recovered. There is no doubt that the Explanationn given by Public Witness 21 for his not making an effort to recover the knife on 26th May does not appeal to reason. Public Witness 21 must have prepared a Memo. in regard to the search made on 27th May but no effort was made by the defense counsel to pursue the cross-examination on that line.

(30) One important circumstance has been left out of consideration by the trial court in regard to the recovery of the clothes and the knife. The knife and the pant of Ashok were found by the Serologist to be stained with human blood of 'B' group. The Chemical Examiner and the Serologist had submitted their reports on 31st July, 1973. On 25th May or 28th May the Investigating Officer could not have possibly thought that the blood group of the deceased would be 'B'. This circumstance goes a long way to prove the genuineness of the recoveries. If the Investigating Officer was out to fabricate this part of the evidence, there was no difficulty for him to have shown the recovery of the knife on the day the disclosure was made. The disclosure in regard to the knife was witnessed by Hukam Chand and Rajinder Kumar Jain and the recovery and seizure of the knife was witnessed by Hukam Chand and Puran Singh. Hukam Chand has fully supported the prosecution case. Public Witness s 3 and 4 in court did not support the prosecution case. They were examined before the committing Magistrate and their depositions in the committing court were transferred for being read in evidence at the trial under section 288 Criminal Procedure Code . In their statements before the committing Magistrate they had supported the recovery of the clothes and the knife. At the trial they admitted to have made the statements before the committing Magistrate but stated that they had made those statements under pressure of the Police. The witnesses were cross-examined by the defense counsel. Nothing has been brought out in their cross-examination to show that they were Police witnesses or that they were under the influence of the Police. Their bald statement that they had made the earlier statements under pressure of the Police cannot be accepted in the absence of some material to support that allegation. The statements of Public Witness s 3 and 4 made before the committing Magistrate have gone completely unchallenged.

(31) Shri Mulla contended that Public Witness s 3 and 4 were not confronted with the contradictory portions of their statements made before the committing Magistrate and, therefore, the transfer of their depositions under section 288 Criminal Procedure Code . is not legal. We find no substance in this argument. Public Witness s 3 and 4 had made the statements before the committing Magistrate on the lines of the statements made by them before the Police. They were confronted with their statements made before the Police and they had denied

to have made those statements before the Police. They were then confronted with their statements made before the committing Magistrate and they admitted to have made the statements with the rider that those statements were made under the threat and influence of the Police. Public Witness s 3 and 4 were given full opportunity to explain the contradictory statements made by them in the committing court. As stated earlier, their Explanationn was that they had made those statements under the threat of the Police. We have found his Explanationn not to be true. The statements made by PWs 3 and 4 before the committing court were on the lines of the statements made by them before the Police. In cross-examination by the Public Prosecutor they were given an opportunity to explain the contradictory statements made by them before the Police. It would have been a futile exercise to confront the witnesses again with the portions of contradictory statements made in the committing court. In the circumstances of this case, we find no infirmity in the order of the Additional Sessions Judge transferring the statements to the Sessions file under section 288 Criminal Procedure Code .

(32) The contention of Shri Mulla that Public Witness 1 was associated by the Police at all the important stages of the investigation and that renders his testimony open to serious challenge, overlooks the consideration that both the accused after the occurrence had absconded and the Police required the help of someone to identify and trace out the accused. The Police must have joined Public Witness 1 in the investigation for that reason.

(33) For the reasons stated we find that the recovery of the clothes and the knife is genuine.

(34) Even if the recovery of the knife is excluded from consideration, we are of the view that there is sufficient other independent evidence corroborating the statement of Public Witness 1. Public Witness s 3 and 4 had in their depositions before the committing Magistrate fully supported the prosecution case. Public Witness 4 is a milk vendor and he had stated that after supplying milk to Annapurna Bhandar at about 7 P.M. he was going back via Mor Sarai. He further deposed in regard to the occurrence. The testimony of Public Witness 4 before the committing court had gone unchallenged. At the trial also there was no challenge

to his statement before the committing court. The presence of Public Witness 4 at the place of occurrence is natural and probable. As stated earlier, Public Witness 3 had also in the committing court fully supported the prosecution case. Nothing has been brought out on the record to show that he had any motive to make a false statement against the accused or favor the complainant. We are inclined to accept the statements made by Public Witness s 3 and 4 before the committing court.

(35) There was one other important witness to the occurrence, namely, Mohar Singh (Public Witness 2). He was employed with a concern which had its office near the place of occurrence and his presence at the spot of occurrence was natural. He had supported the prosecution case in his statement recorded by the police under section 161 Criminal Procedure Code . At the trial, he turned hostile. He stated that by the time he reached the spot the assailants had run away. In cross-examination by the Public Prosecutor, he stated that Rajinder Kumar was stabbed and he saw the assailants, who were boys, running away but he only saw them from their backs. The above testimony was not challenged by way of cross-examination. The question arises, 'What value can be attached to the above statement made in court ?'

(36) In *Jagir Singh v. State (Delhi Administration)*, : 1975 CriLJ1009 , a Division Bench of the Supreme Court had said the following in regard to the testimony of a hostile witness :

'It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony.'

The value to be attached to the evidence of a hostile witness was again the subject matter of consideration by the Supreme Court in *Sat Pal v. Delhi Administration*, Criminal Appeal No. 137 of 1971 decided on 30th September, 1975(2). Bhagwati and Sarkaria, Jj, while explaining the decision in *Jagir Singh* (supra), to which Bhagwati J. was also a party, held :-

'FROM the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law. be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness as a whole, with due caution and care, accept, in the light of the other evidence or. the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case the whole of the testimony of the witness is impugned, and in the process the witness stands squarely and totally discredited. the Judge should, as a matter of prudence, discard his evidence in toto.

'It was in the context of such a case, where as a result of the cross-examination by the Public Prosecutor the prosecution witness concerned stood discredited altogether, that this Court in Jagir Singh v. State (Delhi Admn.) with the aforesaid rule of caution, which is not to be treated as a rule of law-in mind, said that the evidence of such a witness is to be rejected en block.

'In the light of the above principles, it will be seen that. in law, a part of the evidence of the Panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public prosecutor. could be used or availed of by the prosecution to support its case. But as a matter of prudence. on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination their credit was substantially, if not wholly, shaken. It was, thereforee, not proper for the courts below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.'

(37) Keeping in mind the rule laid down in the above case, we will examine the testimony of Public Witness 2. Public Witness 2 had gone back completely on his statement made before the Police. He was thoroughly cross- examined and

contradicted by the Public Prosecutor with his inconsistent statements made before the Police. During cross-examination the witness admitted to have seen the assailants running away even though he stated that he could not identify them as he had seen them only from their backs. The witness stated that the assailants were boys. It is important that this witness was not subjected to cross-examination at all. In the circumstances of this case, we feel that the court can rely upon the statement of Public Witness 2 that he had seen the assailants running away and they were boys. His deposition that the assailants were boys strongly supports the statement of Public Witness 1. Thus, the evidence of Public Witness 1 that it was the accused who had given the knife blows to the deceased finds ample corroboration from the statements of PWs 2, 3 and 4.

(38) The last circumstance against the accused is the motive. Hukam Chand with his family lived in Kucha Ghasi Ram where the family of Jai Bhagwan, father of the accused, also resided. On 1st June, 1971 a report was made by Jai Bhagwan in regard to the Kidnapping of his daughter Saroj by Rajinder (deceased). Saroj was recovered from the possession of Rajinder at Ahmedabad. Rajinder was charged with offences under sections 366 and 376 of the Penal Code and that case was still pending when the present occurrence took place. The above facts are not disputed. Shri Mulla contended that when the case of kidnapping took place, the appellant was too young to understand its implications and seriousness and this could not be the motive for him to commit the crime. We find it difficult to agree in this contention of the counsel. At the time of the occurrence, the appellant was over 17 years of age and he must have come to know of the incidents of kidnapping. It is in evidence that prior to the occurrence in question, on three occasions an attempt was made to assault Rajinder and the last attempt was made as late as May 8, 1973, in regard to which even a report was made at the Police Station. The above evidence would disclose that right up to the time of the occurrence the accused was simmering under the insult suffered on account of the kidnapping of his sister by the deceased and this could be a motive for him to commit the crime.

(39) On a consideration of the entire evidence on the record, we find that the prosecution has established the charge against the accused beyond any doubt. In

the result, the conviction and sentence of the appellant are affirmed and his appeal is dismissed.

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