

Brij Mohan Vs. State

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Court : Delhi

Decided On : Mar-07-1972

Reported in : ILR1972Delhi213

Judge : Hardayal Hardy, C.J. and; Prakash Narain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403

Appeal No. : Criminal Appeal No. 139 of 1970

Appellant : Brij Mohan

Respondent : State

Advocate for Pet/Ap. : R.L. Tandon,; S.P. Minocha and; Y. Dayal, Advs

Judgement :

Hardayal Hardy, C.J.

(1) Brij Mohan who was a young man of 18 or 19 years of age was tried along with two of his companions, namely, Krishan Kumar and Naresh Kumar for the murder of one Subhash Chander of the same locality. Brij Mohan was also tried for the offence of possession of an un-licensed spring actuated knife. All these persons including the deceased Subhash Chander were residents of Krishan Nagar Delhi. Subhash Chander himself was also a young man of about 22 years of age while the companions of Brij Mohan were of a much younger age. Jagdish Nigam who

was the fourth accused, was so young that he was separately tried under the Children's Act while the other persons including Brij Mohan were tried by an Additional Sessions Judge.

(2) The Additional Sessions Judge held that the charge against Krishan Kumar and Naresh Kumar had not been proved beyond reasonable doubt and therefore ordered their release, but so far as Brij Mohan is concerned it was held that he was guilty of an offence under Section 302 Ipc and was

(3) The prosecution case against Brij Mohan who has appealed to this Court against his conviction and sentence, was that in furtherance of the common intention of all the four accused persons, namely, Brij Mohan, Jagdish Nigam, Krishan Kumar and Naresh Kumar, of whom Brij Mohan was possessed of an unlicensed spring actuated knife (Ex. PI), Subhash Chander was stabbed and was killed on November 18, 1969. The motive for the crime was alleged to be that a few days before the occurrence Brij Mohan had complained to Kartar Singh (PW7) that Subhash Chander had been casting an evil eye on his sister and that he should be advised to refrain from such mis-conduct in future. On November 18, 1969 at about 11.45 P.M. there was a knock at the door of Subhash Chander deceased. Ashok Kumar (PWI), brother of Subhash Chander deceased, opened the door and found Brij Mohan standing there. Jagdish Nigam another accused was also standing at the door near Brij Mohan. Both of them informed Ashok Kumar that Pushpal, a friend of Subhash Chander who had come from Bombay, was waiting for Subhash Chander at the Krishan Nagar Chowk.

(4) Subhash Chander accompanied Brij Mohan and Jagdish Nigam in the direction of Krishan Nagar Chowk. Ashok Kumar closed the door and returned to his room. Ravinder Nath (Public Witness 2), another brother of Subhash Chander, who was reading a book at that time, asked Ashok Kumar as to who had come and why? Ashok Kumar told him what he had learnt from Brij Mohan and Jagdish Nigam. Ravinder Nath got suspicious, hurriedly dressed himself up and taking Ashok Kumar with him. went outtelling Ashok Kumar that he suspected that the messsags was a hoax calculated to entrap Subhash Chander. At about 11.30 P.M. when Brij Mohan, Jagdish Nigam and Subhash Chander reached the Chowk near

Government Higher Secondary School, Krishan Nagar, Brij Mohan took out a knife from the folds of his trousers, shouting 'Pakkar to Saley Ko Jane Na Pai,' and shouting that he would be taught a lesson for casting an evil eye on his sister. Thereupon Jagdish Nigam and two other companions of Brij Mohan, namely, Krishan Kumar and Naresh Kumar who were previously waiting there, caught hold of Subhash Chander. Brij Mohan immediately stabbed Subhash Chander on the left side of his abdomen.

(5) Ashok Kumar and Ravinder Nath rushed to the scene to rescue Subhash Chander. Naresh Kumar and Krishan Kumar ran away immediately after Subhash Chander had been stabbed. Jagdish Nigam also made good his escape, but not before he had himself given two first blows on the right side of the abdomen of Subhash Chander. Brij Mohan who wanted to give a second blow was caught hold of by Ashok Kumar who snatched the knife (Ex.PI) from him with the help of his brother Ravinder Nath. Ashok Kumar suffered an injury on his hand in the process of snatching the knife from Brij Mohan. Ashok Kumar and Ravinder Nath then directed their attention to their brother who had in the mean time sat down holding his wound with his hand. This gave Brij Mohan an opportunity to escape. Ashok Kumar and Ravinder Nath raised an alarm. They also brought Subhash Chander back to their house. On hearing the alarm, some residents of the locality including Kartar Singh (Public Witness 7) came to their house. Subhash Chander was laid on a sofa. Kartar Singh talked to him and asked him as to what had happened. Subhash Chander replied that Krishan Kumar, Naresh Kumar and Jagdish Nigam had caught hold of him and Brij Mohan had stabbed him with a knife.

(6) Ravinder Nath and Kartar Singh took Subhash Chander to the Trwin Hospital, New Delhi, in the car of Kartar Singh. Subhash Chander died in the hospital within half an hour of his arrival there. Meanwhile before going to the hospital, Ravinder Nath had informed the Flying Squad of the police at 11.55 P.M. that there was an incident of stabbing at House No.D5/8 Krishan Nagar. On the message being passed on to S.I. Vishan Pal, in charge of the Police Post Krishan Nagar. he rushed to House No.D5/8 reaching there after the injured had been removed to the hospital. He recorded the statement (Ex.PWI/A) of Ashok Kumar (Public Witness I) who had stayed behind in the house. The statement was forwarded to the police

station Gandhi Nagar and a formal F.I.R. was prepared by Constable Jai Narain of the Gandhi Nagar Police on the basis of that statement at 2.30 A.M.

(7) S.I.VISHAN Pal (Public Witness 15) took up the investigation, Ashok Kumar gave him the knife (Ex.PI) which had blood stains on it. Ex.PI/C is the sketch of that knife which was prepared by S.T. Vishan Pal before the knife was wrapped in a sealed parcel. He went to the spot and found a pair of chappals lying there. He prepared the site plan covering the whole area from the scene of occurrence at the Chowk near Government Higher Secondary School, Krishan Nagar to the house of the deceased. On the arrival of the Crime Branch Police at the scene he got photographs taken of the relevant places including the place where the chappals were lying. The chappals were then taken into possession and put in a sealed parcel.

(8) From the room where the deceased had been laid on a sofa S.I. Vishan Pal lifted some blood from the sofa chair, some from the floor inside the door-step of the room and some from outside the door-step. The blood thus lifted from these three different places was preserved in three separate parcels. Some vomit was also lifted from near the sofa and made into a sealed parcel.

(9) At about 3 A.M. Kartar Singh returned from the hospital and informed S.I. Vishan Pal that Subhash Chander had succumbed to his injuries in the Irwin Hospital. S.T. Vishan Pal recorded the statement of Kartar Singh and informed the Officer-in-Charge of the Police Station accordingly, requiring him to convert the case from one under Section 307/34 T.P.C. to one under Section 302/34 Indian Penal Code . Earlier than that the Constable on duty in the Casualty Department in the Irwin Hospital, New Delhi, had sent a telephonic message to the Police Station Gandhi Nagar informing the police that Subhash Chander had succumbed to his injuries Inspector Piara Singh (Public Witness 16) who was the Station House Officer of Gandhi Nagar police station, then went to the house of the deceased. He found S.I. Vishan Pal was already busy in the investigation. He supervised the investigation till 8.A.M. and took over the investigation himself. From there he went to the Irwin Hospital to conduct the inquest proceedings and after preparing the inquest report (Ex.PW 16/A) and obtaining the clothes of the deceased from the

Casualty Department, Inspector Piara Singh sent the dead body to the mortuary for post-mortem examination.

(10) Dr. Vishnu Kumar conducted the post-mortem examination on November 19, 1969 at 12.45 P.M. He was examined as a witness as (PW3) in the committing magistrate's court and his statement was transferred to the trial Court for being read in evidence. He found the following injuries on the dead body:-

'(1) Small superficial incised wound 0.3 cm on the right thumb near its tip on the side of index finger. (2) Cut open drip wounds one on each leg in lower and inner part (operational). (3) Two nearly parallel transverse abrasions as if made by a pointed object, 3 cm each and 1 cm apart situated on the back and outer side of left upper arm in the middle region. (4) Incised punctured wound 2.8 x 1.3 c.m. vertical on the left side front abdomen wall 5.2. cm from mid line, above the level of umbilicus lower end being 7 c.m. from it and inside mid-clavicular line. Omentum was coming out of the wound with blood on pressure over abdomen. On opening abdomen paritoneal cavity was full of blood. Injury No. 4 was directed backwards to the right and slightly upward. After entering in abdominal cavity it was marking through and through cut on the stomach near pyloric end of greater curvature border, and then cutting the under surface of liver going through its substance and coming out at the upper right part-size being 0.4 c.m. At this point it was causing a cut of 0.3 c.m. in the diaphragm and the chest wall opposite to the diaphragm. Dr. Vishnu Kumar measured the depth of the injury from the skin to the finishing point as being about 17 c.m. In his opinion the death of Subhash Chander had occurred due to haemorrhage and shock as a result of this injury. He further opined that this injury was sufficient in the ordinary course of nature to cause death.'

S.I. Vishan Pal arrested Krishan Kumar and Naresh Kumar from their respective houses on the morning of November 19, 1969. Brij Mohan and Jagdish Nigam were arrested from the main bazar Krishan Nagar on November 20, 1969 at about 1.40 P.M.

(11) After the four accused were sent up by the police the Additional Sessions Judge made an inquiry as to the age of Jagdish Nigam. He found that he was a

child and accordingly it was directed that he shall be charged and tried separately. The Additional Sessions Judge also amended the charges. The amended charges read as under :-

'(1)Regarding Brij Mohan, Krishan Kumar and Naresh Kumar. 'That you on or about 18th day of November, 1969, at about 11.30 P.M. at Chowk Krishan Nagar, Delhi in furtherance of common intention of you all and one Jagdish Kishan Nigam who is being tried separately, did commit murder by intentionally causing the death of Subhash Chander and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code.'

(2)Regarding Brij Mohan alone. 'That you on or about 18th day of November, 1969 at Chowk Krishan Nagar were found in possession of a spring actuated knife without any license and thereby committed an offence punishable under Section 25, Arms Act.'

The three accused denied these charges and claimed to be tried. As Krishan Kumar and Naresh Kumar have been acquitted, and there is no appeal against their acquittal, it is not necessary to deal with their cases. But so far as Brij Mohan is concerned, the prosecution case against him rests on the testimony of Ashok Kumar, Ravinder Nath, Kartar Singh, Bishamber Singh who have all supported the prosecution case against him.

(12) In his statement under Section 342 Criminal Procedure Code, Brij Mohan denied the allegations against him and complained that he had been falsely implicated in this case. He accused Kartar Singh and Bishamber Singh being hostile to him. He pleaded that Ashok Kumar had himself committed the murder and was trying to throw the burden on him with the help of Kartar Singh and Bishamber Singh. He did not produce any evidence in defense.

(13) We need not re-capitulate the evidence of Ashok Kumar and Ravinder Nath because the prosecution case as out-lined above substantially re-produces their version of the transaction. Turning now to the more important question for determination as to who caused the fatal injury to the deceased, we find that the evidence of Ashok Kumar and Ravinder Nath can be described as ocular

evidence in the case. Both of them deposed about the knocking at the door of their house at about 11.15. P.M. on November 18, 1969. Ashok Kumar responded to the knock and found Brij Mohan and Jagdish Nigam standing outside the house. He also deposed to the excuse put forth by these two persons and about the visit of Subhash Chander in their company to meet Pushpal. He also deposed to Ravinder Nath and himself following their brother after Ravinder Nath expressed suspicion about the intention of Brij Mohan.

(14) This aspect of the story was supported by Bishamber Singh (Public Witness 10) when he stated that on his way back to his house from the house of a relation that night he saw Brij Mohan knocking at the door of Subhash Chander deceased and Ashok Kumar opening the door and talking to Brij Mohan.

(15) Ashok Kumar and Ravinder Nath also stated that they followed Brij Mohan, Jagdish Nigam and Subhash Chander from the street up to the chowk of the Government Higher Secondary School, Krishan Nagar, Delhi where according to them, Subhash Chander was stabbed with a knife by Brij Mohan.

(16) Learned Additional Sessions Judge was, however, of the view that this part of their testimony may or may not be true and there was a possibility of its being not true. He was therefore not prepared to rely on it. Counsel for Brij Mohan made capital out of it and submitted that according to Ashok Kumar, Brij Mohan had told Subhash Chander that Pushpal was waiting for him at Krishan Nagar Chowk but the scene of occurrence is on the opposite side of that chowk. In the two plans prepared by the police (Exs. Public Witness 4 and Public Witness 2/A), Krishan Nagar Chowk has not been shown. But the Government Higher Secondary School Chowk has been shown. According to these plans, the stabbing took place near the foot-path opposite Government Higher Secondary School Chowk, but there is a fairly long distance between this chowk and the Krishan Nagar Chowk. The street in which Subhash Chander was residing and in which the houses of Kartar Singh and Bishamber Singh are shown runs for some distance towards the east and then it joins another road. While going towards Krishan Nagar Chowk one has to turn to the North while going towards Government Higher Secondary School Chowk one has to turn to the South. The two chowks are therefore in two

opposite directions. Learned Additional Sessions Judge was therefore right in observing that there was some interval between the time when Brij Mohan, Jagdish Nigam and Subhash Chander left the latter's house and the time when Ashok Kumar and Ravinder Nath went out to follow them. According to the learned Additional Sessions Judge, the time lag was enough for the first group to have disappeared from the street long before Ashok Kumar and Ravinder Nath came out of their house.

(17) From this the learned Additional Sessions Judge concluded that he was not prepared to believe that Ashok Kumar and Ravinder Nath kept following Jagdish Nigam and Subhash Chander deceased in the street keeping them within their sight right up to the time they reached the chowk of the Government Higher Secondary School, Krishan Nagar, Delhi. Brij Mohan, Jagdish Nigam and Subhash Chander deceased must have reached the Government Higher Secondary School Chowk within three or four minutes after they left the house of the deceased because the distance between the two places as testified by Tirath Raj Singh the draftsman who prepared the site plan (Ex. Public Witness 2/A), is 635 feet only. If Ashok Kumar and Ravinder Nath had really gone out of their house nearly seven minutes after the first group had left the place they would be heading according to the learned Judge, towards the Krishan Nagar Chowk where according to the information, Brij Mohan and Jagdish Nigam had taken Subhash Chander deceased to meet his friend Pushpal. The distance between Krishan Nagar Chowk and the Government Higher Secondary School Chowk is as admitted by Ashok Kumar, about one and a half furlongs. If the two brothers really went out, as they claimed, they must have in the first place gone to Krishan Nagar Chowk and from there after some inquiry etc. to the school chowk. This would necessarily take further time. Brij Mohan and his companions would not be waiting for them at the school chowk for such a long time before stabbing the deceased.

(18) We do not think this is a correct approach to the problem. It is not necessary that it took the two brothers seven minutes before they left their house. It may have taken them much less. After crossing the distance from their house to the end of the street the two brothers could enter another road, one side leading to the Government Higher Secondary School Chowk while the other side going in the

direction of Krishan Nagar Chowk. On entering that street, they must have looked out and since it was fairly late in the night and there was no traffic on the road they could see Brij Mohan and his companions and Subhash Chander near the foot-path of Government Higher Secondary School Chowk. They need not therefore go in the direction of Krishan Nagar Chowk and instead move over towards the chowk where the assailants and Subhash Chander were standing. To ensure that this distance did not take seven minutes as mentioned by the learned Additional Sessions Judge, we with the help of the counsel for the State and the counsel for Brij Mohan inspected the site and it took us four minutes to traverse that distance.

(19) Another circumstance which appears to have weighed with the learned Additional Sessions Judge is that while Ashok Kumar and Ravinder Nath were following Brij Mohan, Jagdish Nigam and Subhash Chander deceased, they did not alert their brother by shouting to him that they were coming behind to his help. The circumstance again does not appear to us to have much validity. Neither of the two brothers could have suspected that Brij Mohan and his companions were out to stab Subhash Chander deceased. Ravinder Nath had his suspicion but that by itself did not warrant a further suspicion that Subhash Chander was likely to be stabbed. Brij Mohan and his companions were comparatively younger lads while Subhash Chander was a young man of 22 years of age. The two brothers followed Subhash Chander but without anticipating that he was being decoyed by Brij Mohan and his companions to a place where he was going to be stabbed. We therefore do not agree with the learned Additional Sessions Judge that the ocular evidence of Ashok Kumar and Ravinder Nath should not be relied upon.

(20) Counsel for Brij Mohan next submitted that no blood etc. was seen by the Investigating Officer at the scene of occurrence or any where on the way right up to the house of the deceased. Dr. K.B. Shah (Public Witness 9) who had examined the deceased when he was brought to the hospital, found the omentum protruding out of the wound. The postmortem examination also revealed that the stab wound caused to the deceased was 17 centimetre deep. It had entered the abdominal cavity cutting the stomach through and through near the pyloric and of the greater curvature border and then cutting the under-surface of the liver going through its substance and coming out at the upper right part. It had further caused a cut in the

diaphragm and the chest wall opposite to the diaphragm. Learned additional Sessions Judge felt that such a serious and extensive wound must have caused profuse bleeding. The absence of blood at the school chowk or anywhere from there to the house of the deceased, it was urged, made it difficult to accept the version of Ashok Kumar and Ravinder Nath that their brother had been stabbed by Brij Mohan at the school chowk within their sight.

(21) For these reasons the learned Additional Sessions Judge kept out the ocular evidence and instead depended upon circumstantial evidence, evidence regarding dying declaration and motive, to hold that Brij Mohan had stabbed Subhash with a knife and that the said injury proved fatal. While rejecting the evidence of Ashok Kumar and Ravinder Nath the learned Additional Sessions Judge however felt fully convinced that both these brothers were telling the truth to the extent that Brij Mohan and Jagdish Nigam accused had taken away Subhash deceased from his house on November 18, 1969 at about 11.15 P.M. on the pretext that Pushpal was waiting for Subhash at the Krishan Nagar Chowk. In doing so, reliance was also placed on the statement of Bishamber Singh. This according to the learned Additional Sessions Judge constituted circumstantial evidence in the case for it proved that the deceased was last seen un-injured in the company of Brij Mohan and Jagdish Nigam.

(22) As regards motive, the only evidence led was that of Kartar Singh (PW7). He deposed that nearly 5 or 6 days before this occurrence Brij Mohan had complained to him that Subhash deceased had been casting an evil eye on his sister and that he should speak to him and his father about it. Kartar Singh deposed that he assured Brij Mohan that he would himself watch Subhash and if he found him misbehaving as alleged, he would certainly speak to him and also to his father. Kartar Singh is a respectable and reliable witness. He belongs to the same locality to which Brij Mohan and the father of the deceased belong. In fact he was living in the neighbour hood of the appellant.

(23) Counsel for the appellant argued that Karlar Singh had been running a godown in the locality for storing goods without obtaining a license from the Municipal Corporation and that Brij Mohan had taken an objection to trucks coming

to the godown at all hours of the day and night for loading and un-loading purposes thereby creating nuisance and that Kartar Singh harboured an ill will against Brij Mohan on that score. The suggestion made on behalf of the appellant was not accepted by the learned Additional Sessions Judge and we too are not impressed by it. Assuming for the sake of argument that Brij Mohan had protested as alleged, yet Kartar Singh being an old man of 52 years of age and a neighbour of the appellant would not come forward to give false evidence in a case of murder. It is also true that Kartar Singh had not taken out any license for running a godown in the locality, but the circumstance has no bearing on the case at all. There is nothing on the record to justify the contention that Brij Mohan had incurred the dis-pleasure of Kartar Singh by taking objection to his trucks coming to the godown for loading and unloading purposes.

(24) A similar objection had also been taken to the evidence of Bishamber Singh and it was alleged that on a complaint to the police by Brij Mohan the police had ordered Bishamber Singh to remove the tether of his buffalo from the side of the house of the appellant to the opposite side. The suggestion was denied by the witness. Bishamber Singh frankly admitted that Brij Mohan was his neighbour, but they were not on visiting terms with each other. Learned Additional Sessions Judge accepted the evidence of Kartar Singh and held that Brij Mohan and complained to him a few days before the occurrence that Subhash deceased had been casting an evil eye on his sister and that Kartar Singh should do something to stop him from his misbehavior.

(25) The next piece of evidence on which the prosecution relied consisted of two dying declarations made by the deceased. One of these declarations was made to Kartar Singh who -after hearing the noise from the house of the deceased and seeing a number of persons collected in front of it, rushed into that house and found Subhash lying injured in a sofa chair. In the presence of Ashok Kumar and Ravinder Nath brothers of the deceased, Kartar Singh asked Subhash as to what the matter was and Subhash told him that Krishan Kumar, Naresh Kumar and Jagdish Nigam had caught hold of him and that Brij Mohan had stabbed him with a knife.

(26) Ashok Kumar and Ravinder Nath lent support to Kartar Singh's testimony on this point. Kartar Singh further stated that in the Irwin Hospital also on inquiry by the doctor Subhash told the doctor in his presence that Brij Mohan had stabbed him with a knife.

(27) While we are impressed with the first part of the testimony of. Kartar Singh, we find it difficult to accept the later part of his testimony. Dr. N. K. Gupta who had written the medico-legal report (EX.PWII/ A) had clearly written under the head 'History-of being stabbed by some body.' If Subhash had made a declaration to the doctor as alleged by Kartar Singh, the entry would probably have read 'Stabbed by Brij Mohan.'

(28) It is no doubt true that Dr. N. K. Gupta was not available at the trial and it is also true that it is no part of the duty of the doctor to make inquiries as to the identity of the assailant, but when a statement made by an injured person is being treated as adying declaration, there must be a proper evidence as to that statement, and since Dr.N.K. Gupta was not available and the medico-legal report did not support what Kartar Singh had stated, we are not inclined to believe the testimony of Kartar Singh on this point notwithstanding the fact that the learned Additional Sessions Judge saw no reason to disbelieve him on that point. We are however prepared to believe Kartar Singh with regard to the first part of his testimony because apart from his own respectability and reliability, his version is supported by Ashok Kumar and Ravinder Nath.

(29) The result of the above discussion is that we have not only the ocular testimony of Ashok Kumar and Ravinder Nath but also the evidence of motive furnished by Kartar Singh and the dying declaration made to Kartar Singh by the deceased while he was lying injured in sofa chair in his house. This evidence coupled with the circumstantial evidence of the deceased having been seen un-stabbed before he left his house in the company of Brij Mohan and Jagdish Nigam, fully justifies the inference that the deceased received a stab wound at the Government Higher Secondary School Chowk.

(30) Two contentions were however urged by the learned counsel for the appellant to discredit that inference. One of these relates to the complete absence of blood

at the scene of occurrence or any where from that place to the house of the deceased. It was urged that if the deceased had received such a serious injury he must have been profusely bleeding and therefore when he was brought from the School Chowk to his house, blood must have dripped on the way. This argument appears to have certainly made a great impression on the mind of the learned Additional Sessions Judge. What however appears to have gone un-noticed is that according to the post-mortem examination the injury was 17 centimetre deep and the deceased was all along keeping a hand on the wound. Dr. Vishnu Kumar who was examined as Public Witness 3 in the committing court, found that the abdomen paritoneal cavity was full of blood. Instead of the blood dropping on the way, a substantial part of it remained inside the abdominal cavity. The deceased was also wearing a shirt which on examination by us was found to be stained with blood. He was also being held by his two brothers and that is why Ashok Kumar stated that while removing the injured Subhash from the scene of occurrence to his house he had got his clothes smeared with blood. The clothes of Ashok Kumar which were taken into possession by the police vide memo (Ex. Public Witness I/D) consisted of an open shirt and a pyjama. There is thus every possibility of some blood having come out of the body of the injured on his way from the chowk to his house which was absorbed by clothes worn by Ashok Kumar.

(31) The second contention of the learned counsel for the appellant was that the fact that the police took into possession the clothes of Ashok Kumar and also lifted blood from the sofa chair where Subhash had been laid and the vomit of Subhash, lent support to the defense theory that murder had actually taken place in the room itself and the murderer was Subhash's brother Ashok Kumar when there was a scuffle between the two brothers. One other circumstance was also pressed into service by the learned counsel and that is the police report made to the Flying Squad. Ravinder Nath had informed the Flying Squad of the police at 11.55 P.M. that there was an incident of stabbing at House No. D5/8 Krishan Nagar which was the house occupied by the deceased and his brothers. At the time when the police was informed the injured person had already been brought to the house and therefore when the message was sent to the police the intention was that they should arrive at the house where some of the witnesses were also present.

(32) Ravinder Nath explained that there was no point in his telling the police that the occurrence had taken place in the chowk because by that time the injured had already been removed from the chowk to the house and by giving that information to the police a confusion would have been created and the police would have reached the chowk instead of their house.

(33) One other circumstance was also adverted to by the learned counsel for the appellant and that is about Ashok Kumar not having gone to the hospital. It was urged that Ashok Kumar having stabbed Subhash Chander deliberately stayed behind. The argument has no substance. According to Ashok Kumar their parents were away to Jullundur on that day. Three other brothers were away to their uncle's house that evening for dinner. Ashok Kumar and Ravinder Nath were also invited for dinner but they had returned home after having dinner there. When the deceased was to be removed to the hospital by Ravinder Nath and Kartar Singh some one had to stay in the house and that is why Ashok Kumar remained at home.

(34) Barring a suggestion made in cross-examination, no material was placed on record to show that there was any quarrel between Ashok Kumar and the deceased. The report with the police was lodged without any delay and there was no opportunity for an innocent person like the appellant being implicated in a murder charge. None of the circumstances urged by the learned counsel for the appellant therefore dis-credit the inference to which we have already adverted.

(35) Counsel for the appellant finally raised a question of law. He submitted that according to the evidence of Ashok Kumar and Ravinder Nath the stabbing took place with the knife (Ex. PI) which was handed over by Ashok Kumar to S.I. Vishan Pal (Public Witness 15). The appellant was charged not only with respect to an offence under Section 302 Indian Penal Code read with Section 34 Indian Penal Code , but also with an offence punishable under Section 25 of the Arms Act for having been found in possession of a spring actuated knife without a license. The learned Additional Sessions Judge dis-believed the evidence of Ashok Kumar and Ravinder Nath and held that he was not prepared to believe that Ashok Kumar and Ravinder Nath had snatched the knife from Brij Mohan before

he managed to escape. In the absence of any other evidence on record to prove that Brij Mohan was possessed of the knife (Ex.PI), the learned Judge held that the charge under Section 25 of the Arms Act must fail.

(36) It was argued by the appellant's counsel that against acquittal of the appellant on that charge, no appeal was filed by the State. The verdict of acquittal therefore became binding and conclusive in all subsequent proceedings between the parties. Basing himself on a decision of the Supreme Court in *Pritam Singh & another; v. The State of Punjab* : 1956 CriLJ805 , learned counsel maintained that the maxim *res judicata pro veritate accipitur* is no less applicable to criminal than to civil proceedings. In that case the possession of a revolver was a fact in issue which had to be established by the prosecution before the accused could be convicted of an offence under Section 19(f) of the Arms Act. That fact was found against the prosecution and the accused was acquitted. In a subsequent proceeding under a charge of murder, that fact could not be proved against him. The evidence against the accused in the later proceeding had to be considered regardless of the evidence of recovery of the revolver from him.

(37) The same principle was re-affirmed by the Supreme Court in another judgment in *Gurcharan Singh and another v. State of Punjab* : [1963]3SCR585 where it was observed that if the order of acquittal under Section 19(f) had been pronounced before the judgment the principal case was delivered, namely, a charge of murder, then in the later case the prosecution would not be entitled to contend that the appellant Gurcharan Singh was in illegal possession of the firearm.

(38) The argument advanced by the appellant's counsel was that principles of estoppel and *res judicata* were not merely confined to civil cases but they also operated in criminal proceedings. The rule of issue of estoppel in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and if a finding has been reached in favor of an accused, such a finding would constitute an estoppel or *res judicata* against the prosecution. That would however not bar the trial and conviction of the accused for a different or distinct offence. But it would preclude the reception of evidence to disturb that finding of

fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2) Criminal Procedure Code. This aspect of the matter was elaborately dealt with in a judgment of the Supreme Court written by N.Rajagopala Ayyangar J. in Manipur Administration, Manipur v. Thokohom Bira Singh 1965 Sc 87

(39) It seems to us that there is an under-lying fallacy in the argument of the appellant's counsel. In Pritam Singh's case the question raised for decision was whether where an issue of fact had been tried by a competent court on a former occasion and a finding had been reached in favor of the accused, such a finding would constitute an estoppel or *res judicata* against the prosecution for a different or distinct offence, it was held that it could not be treated a bar in appeal to the conviction of the accused for a different or distinct offence, but it would preclude the reception of evidence to disturb that finding of fact when the accused is tried subsequently for a different offence.

(40) The observations in Gurcharan Singh's case were also to the same effect. In the present case however we are concerned with the appellant being tried in the same proceeding with two different offences. The case is on all fours with the decision of the Judicial Committee of the Privy Council in *Malak Khan v. Emperor* which was followed by a Division Bench of Kerala High Court in *Manidevi Avva and others v. State of Kerala* : AIR1958 Ker8 of the report a long passage from the judgment of Lord Porter who had written the judgment of the Privy Council was extracted. We need not re-produce the entire passage which also appears at page 19 of . The following extract from that passage will however make the position clear :-

'It could not, in their Lordships' opinion, be objected to as evidence in another case, criminal or civil, though no doubt its weight would be diminished. Before the Sessions Judge it was given for two purposes' 1) as corroboration of the testimony given in the charge of murder and (2) as direct evidence of robbery. Before the High Court its use for the first purpose was in no way precluded even though no appeal was taken against the dismissal of the charge of robbery. In such circumstances, to appeal from the acquittal would be a mere idle form when the

question at issue was whether the accused man was guilty of murder or not.'

(41) In the present case, in view of the fact that we have disagreed with the learned Addl. Sessions Judge and have accepted the testimony of Ashok Kumar and Ravinder Nath not only with regard to their having witnessed Brij Mohan stabbing Subhash with a knife, but also with regard to their having snatched the knife from him before he managed to escape, the question of law raised by the learned counsel does not arise at all. In any event, in view of the decision of the Judicial Committee of the Privy Council and the decision of Kerala High Court, the evidence with regard to Brij Mohan being in possession of the spring actuated knife (Ex. PI) could not be objected to as evidence on the charge of murder. It may be, as was observed, that its weight would be diminished in another case, but in the present case we are concerned with it in the same case.

(42) These being the only grounds raised by the appellant's counsel, the appeal fails and is dismissed.

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