

Krishan Kumar Vs. State

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Court : Delhi

Decided On : Apr-08-1983

Reported in : 23(1983)DLT442

Judge : R.N. Aggarwal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302

Appeal No. : Criminal Appeal No. 119 of 1983

Appellant : Krishan Kumar

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Seema Batra and; B.T. Singh, Advs

Judgement :

R.N. Aggarwal, J.

(1) Krishan Kumar, the appellant herein, was tried in the court of an Additional Sessions Judge on the charge of murdering Ashok Kumar. The learned Additional Sessions Judge held the accused guilty and sentenced him to rigorous imprisonment for life. Against his conviction and sentence the accused has come in appeal.

(2) The deceased, the appellant, and the two alleged eye witnesses, namely, P.W.3 Ravinder Singh and P.W.4 Rajesh Vaid alias Dabba resided in Sector 12, R.K.Puram. The deceased and Ravinder Singh were neighbours. The house number of Ravinder Singh is 842 and that of the deceased was 843. The appellant and Rajesh Vaid resided in the same locality. They were students and friends.

(3) On 13/01/1979 at about 6 p.m. P.W.3 met the deceased at the bus stop of D.T.C. near Sangam Cinema. The deceased wanted to accompany P.W.3 but P.W.3 told him that he was not going to his house but was going to the goggle shop beyond Sangam Cinema. The deceased told P.W.3 that he would accompany him wherever he may be going.

(4) The house of Krishan Kumar appellant is near the said bus stop. The deceased told Ravinder Singh that he was going to the house of Krishan Kumar and he should wait for him. According to P.W.3 the deceased went to the house of Krishan Kumar and from the road side shouted for him saying 'ABEY Krishan Niche AA'. The deceased again shouted for the appellant saying 'TUJE Sunai Nahin Daita Mein Tumeniche Bula Raha Hoon, Niche AA'.

(5) Krishan Kumar felt offended against the manner in which the deceased had called him from the road side. Krishan Kumar accompanied by P.W.4 came down and protested to the deceased over the manner he had called for him and said that he should maintain his dignity in the mohalla. The deceased retorted that he had hardly any respect in the Mohalla. On that both the deceased and the appellant quarrelled and exchanged a few blows. P.Ws 3 & 4 intervened and separated them.

(6) According to P.W.3 he moved a little ahead and on looking back he saw Ashok Kumar and Krishan Kumar quarrelling and both fell in a drain; thereafter, the accused went away and he saw the deceased putting his hand on his back and on his enquiry the deceased told him that he had been stabbed with a chhuri by Krishan Kumar. (We may notice here that P.W.3 in the first report had stated that after he and P.W.4 had separated the deceased and the appellant he and the deceased moved away and in the meanwhile the appellant went upstairs and came with an Open knife in his hand and stabbed Ashok Kumar).

(7) P.W.3 removed Ashok Kumar to Safdarjung hospital where he was admitted at 6.15 p.m. He was examined by Dr. Hariharan who found a clean incised wound 1 i' long x 3/4' wide on the left lateral aspect of the lower aspect of the back of chest.

(8) Dr. R.P. Kothari (P.W.I) examined Ashok Kumar at 7. p.m. and advised that the patient should be admitted in the Emergency Ward for anoperation. Dr. Kothari performed the operation but Ashok Kumar died on the 14/01/1979 at 1.05 a.m. Dr. Dogra performed the autopsy on the dead body of Ashok and found the following injuries :

'1.Incised wound 2 x 0.8 c.m. obliquely placed 19 c.m. below the left axilla in mid-axillaries line 16.5 c.m. away from the mid-line on left lateral aspect of chest in 8th inter-costal space.2. Incised wound on left side back of chest 2.5 x 1.5 c.m. spindle shaped, not stitched, 12.5 c.m. below and in line of the inferior angle of the scapula in the 10th intercostal space 8 c.m. lateral to mid-line.'

The doctor gave the opinion that injuries 1 and 2 were sufficient to cause death in the ordinary course of nature and the said injuries could be caused by a sharp edged weapon.

(9) Constable Ramesh Ghander (P.W.7) was on duty at Safdarjung Hospital and he informed the police post R.K. Puram about the admission of Ashok in the hospital in an injured condition. P.W.8 constable Mohan Singh made an entry in the daily diary regarding the report made by P.W.7 and sent a copy of it to Sub-Inspector Ubraj Singh who was on patrol duty in the area. P.W.19 Ubraj Singh on receipt of the report went to the hospital and made an application to the doctor to find out if Ashok Kumar was fit to make statement. The doctor reported that the patient was not fit for, making statement. Public Witness 19 recorded the statement Ex.PW3/A of Ravinder Singh and with his endorsement Ex. Public Witness 17/A sent the rukka Ex. Public Witness 3/A to the Police Station for formal registration of the case. The formal report was recorded at the police station at 7.30 p.m.

(10) On 20/01/1979 Krishan Kumar surrendered himself in the court of Shri Tandon, Metropolitan Magistrate and he was taken into custody. On information given by the accused a woollen jersey was recovered from under the water tank

on the roof of the house. P. W.I 9 found a few blood stains on the front side of the jersey and he seized the jersey and sent it for examination to the Forensic Science Laboratory. The stains were found to be of human blood but the blood group could not be found out. The Trial Judge has not believed the recovery and, therefore, we will leave it out of consideration.

(11) The accused in his statement at the trial except admitting that he knew Rajesh Vaid denied the prosecution case in toto. The accused stated that on the date of the occurrence he was not in Delhi and had gone to his uncle in village Hond, Tehsil Bhiwani, Haryana and he returned from that place on 20/01/1979 when he was informed by his father that he was wanted by the police on which he surrendered himself in court. The accused in support of the plea of alibi examined Radhey Shyam. (D.W.2).

(12) We have examined the plea of alibi taken by the accused and we have no hesitation in holding that it has no truth in it. Actually, even the learned counsel for the appellant did not address any argument on the plea of alibi.

(13) The case for the prosecution mainly rests on the testimony of P.Ws 3 and 4 and the dying declaration made by the deceased before Dr. Hariharan and constable Ramesh Ghander. The presence of P.Ws 3 and 4 at the spot of the occurrence during the occurrence cannot be doubted at all. P.Ws 3 and 4 fully supported the prosecution case up to the stage where P.Ws 3 and 4 intervened and separated the deceased and the appellant; P.Ws 3 and 4 have not told the whole truth and tried to favor the accused.

(14) P.W.3 gave evidence that after he and Rajesh had intervened and separated Ashok and Krishan he moved away a little and on looking back he saw Ashok and Krishan quarrelling and both of them fell in the drain, and thereafter the accused went away and he saw Ashok Kumar placing his hand on his back and that when he went near Ashok Kumar he told him that he had been stabbed with a chhuri by Krishan Kumar.

(15) We have earlier noticed that P.W.3 in his statement before the police had stated that after he and Rajesh intervened and separated Ashok and Krishan, he

and Ashok moved away and Krishan went upstairs and came back with an open chhuri in his hand and he stabbed Ashok.

(16) P.W.3 has not stuck to the above version in his deposition in the court. P.W.3 in court docs does not state to have seen the accused coming with an open chhuri in his hand and giving a blow with it to Ashok. P.W.3 instead has stated that he was told by Ashok that Krishan Kumar had stabbed him with a chhuri. The above is an improvement and cannot be relied upon. We are of the view that P.W.3 in court has intentionally gone back on the statement made before the police regarding his having seen the accused giving the knife blow to the deceased. This he has obviously done to favor the accused.

(17) P.W.4 gave evidence that after he and Ravinder had intervened and separated the deceased and the accused, he went away to his house. This part of the statement of P.W.4 is not true and has been made to help the accused. P.W.4 was declared hostile and was cross-examined by the Public Prosecutor. He was confronted with his statement made before the police where he had stated that he saw Krishan Kumar coming down the stairs with an open knife in his hand and thereafter immediately he gave a knife blow in the left waist below the arm of Ashok Kumar. In spite of the fact that Rajesh was declared hostile we are of the view that his testimony regarding the first part of the occurrence can be accepted without any hesitation.

(18) We shall next deal with the dying declaration said to have been made by the deceased before P.W.12 Dr. Hariharan and constable Ramesh Chander. The occurrence took place at about 6 p.m. The deceased was removed to Safdarjung hospital by P.W.3 and the medico-legal report Ex.PW 12/A shows that Ashok Kumar was admitted in the hospital at 6.15 p.m. P.W.12 who prepared the above medico-legal report gave evidence that Ashok had told him that he had been stabbed by Krishan resident of Quarter 540, Sector 12. P.W.7 constable Ramesh Chander was on duty at the Safdarjung hospital and according to P.W.7 the above dying declaration was made by Ashok to the doctor in his presence. P.W.7 in fact on telephone the police post, R.K. Puram regarding the admission of Ashok Kumar in the hospital in an injured condition. P.W.8 who had received the

telephone message made an entry Ex. Public Witness 8/A in the daily diary regarding the report received from P.W.7. The time of the receipt of the report given in the entry Ex. Public Witness 8/A is 6 25 p.m. The entry records that the constable on duty had informed that Krishan resident of house No. 540 Sector 12 had caused the knife injuries.

(19) P.W.7 gave evidence that Ashok had told the doctor in his presence that he was stabbed by Krishan resident of 540 Sector 12 R.K.Puram and he had conveyed the said information on telephone to the police post R.K. Puram. P.W.8 corroborates the above statement of P.W.7.

(20) We have carefully perused the statements of P.Ws-7 and 12 and we find no reason to disbelieve their testimony that Ashok had in the hospital told the doctor that he was injured by Krishan, resident of Quarter 540R.K. Puram. Nothing has been brought out in the cross-examination of P.W. 12 that he had any motive to make a false statement against the accused.

(21) The occurrence took place at 6 p.m., the deceased was admitted in the hospital at 6.15 p.m. P.W.7 informed the police post R.K. Puram of the admission of Ashok at 6.25 pm. There was no time lag between the occurrence and the report Ex. Public Witness 8/A within which any false story could be invented.

(22) PW.19 Sub-Inspector Ubraj Singh on receipt of the report of the occurrence had gone to Safdarjung hospital where he had recorded the statement Ex. Public Witness 3/A of Ravinder Singh. The said statement was recorded round-about 7 p.m. P.W.3 in the first report had named Krishan Kumar as the assailant of Ashok. Again, there was hardly any time lapse between the occurrence and the first report within which any version could be cooked up. The naming of the accused as the assailant in the first report strongly corroborates the dying declaration.

(23) On a careful perusal of the record we have no hesitation in agreeing with the Additional Sessions Judge that it was the accused who had committed the crime.

(24) The crucial question that arises for determination is what offence has been committed by the accused. There can be no manner of doubt that the occurrence

took place without premeditation on a sudden quarrel in a sudden fight and in the heat of passion. The evidence is that the deceased was an unemployed youth. P.W.19 has given evidence that the deceased Ashok was a ruffian type and his photograph was hung up at the police postboard. The Investigating Officer admitted that photographs of only those persons are displayed at the police station and the police post who are previous convicts or whose names appear in register 'B'. P.W.6 Krishan Mehta an uncle of the deceased in cross-examination deposed that he knew that the photo of Ashok Kumar deceased was displayed outside the police station R.K.Puram.

(25) We have no evidence regarding the kind of friendship the accused had with the deceased and what was the purpose of the visit of the deceased to the house of the accused on that fateful evening.

(26) Both P.Ws. 3 and 4 have testified that the accused had protested to the deceased on the manner of his calling for him and on that there was a quarrel between the accused and the deceased and they exchanged blows. There is no clear evidence on the record as to how the accused came to possess the knife. No doubt, P.W.3 had in the first report stated that the accused had gone upstairs and brought the knife but in court he had not stuck to this version. A first information report by itself is not substantive evidence. It can only be used to corroborate or contradict the maker of it. The benefit of doubt in this respect must go to the accused.

(27) One of the essential ingredients for the applicability of Exception 4 to Section 300 of the Indian Penal Code is that the offender must not have taken undue advantage or acted in a cruel or unusual manner. On the facts and in the circumstances of this case we are inclined to hold that the accused had not taken any undue advantage or acted in a cruel or unusual manner.

(28) In the above view we hold that Exception 4 to Section 300 of the Indian Penal Code would be applicable and the accused would be guilty of culpable homicide not amounting to murder. We would, accordingly, set aside the conviction of the appellant under Section 302 of the Indian Penal Code and instead convict him under First part of Section 304 of the Indian Penal Code and sentence him to

rigorous imprisonment for 5 years and to a fine of Rs. 500.00 and in default of payment of fine to undergo rigorous imprisonment for 6 months. The appeal is allowed to the extent indicated above.

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