

Vasu Dev Vs. the State

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Court : Delhi

Decided On : Jan-28-1982

Reported in : 21(1982)DLT313; 1982(3)DRJ150

Judge : J.D. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 326

Appeal No. : Criminal Appeal No. 257 of 1981

Appellant : Vasu Dev

Respondent : The State

Advocate for Pet/Ap. : K. Kalia and; D.R. Sethi, Advs

Judgement :

J.D. Jain, J.

(1) The appellant has been convicted of an offence under Section 326, Indian Penal Code, by an Additional Sessions Judge vide judgment dated 4th November, 1981 and has been sentenced to rigorous imprisonment for two and a half years and a fine of Rs.1,000.00 . In default of payment of fine, he has been awarded further rigorous imprisonment for nine months. However, half the amount of the fine, if and when realised, has been directed to be paid to the injured Kashmiri Lal by way of compensation. Feeling aggrieved he has preferred this appeal against

his conviction and sentence.

(2) The prosecution version succinctly is that on the night intervening 4th and 5th November, 1979, at about 11.15 P.M., Kashnoiri Lal, a vegetable seller in Subzi Mandi, Azadpur, was talking to Ashok Kumar, also a vegetable vendor in the same market in front of shop No.A-361, Subzi Mandi, which belongs to one Subhash. The appellant came over there and stood close by to Kashmiri Lal and Ashok Kumar. Kashmiri Lal objected to the same and asked the appellant to go away as they were having some private talk. The appellant, however, retorted by saying, 'Does this place belong to your father ?' and he refused to move away. Kashmiri Lal then gave him a push and the appellant went away. However, after a few minutes the appellant again emerged on the scene and dealt a blow with a Chhuri on the right side of the abdomen of Kashmiri Lal with the result that he fell down and became unconscious. One Ravinder (Public Witness 5) who happened to be present nearby and Kashmiri Lal chased the appellant, who then took to his heels, for some distance but he managed to escape. Ravinder then removed the appellant to Hindu Rao Hospital where he was medically examined and admitted for treatment. In the meantime, someone informed the police control room about the admission of Kashmire Lal to Hindu Rao Hospital in injured condition and on the message being fleshed by the police control room to Police Station Adarsh Nagar, Asi Pehiad Singh who was entrusted with the investigation of the case reached Hindu Rao Hospital on a motor-cycle and after permission of the doctor, who declared the injured Kashmiri Lal to be in a fit condition to, make statement, recorded statement Ex. Public Witness 3/A of Kashmiri Lal. A case under Section 307/34, Indian Penal Code was then registered on this basis. The injured was operated upon for the abdominal injury sustained by him and eventually he was discharged from the hospital on 8th December, 1979.

(3) The prosecution version has been unfolded by the injured Kashmiri Lal as Public Witness 4 and has been duly corroborated by Ravinder (Public Witness 5) and Ashok Kumar, Public Witness 8, who happened to be present at the time & place of occurrence. The evidence of all these witnesses is fairly uniform and consistent except for some minor discrepancies here and there. For instance, according to Kashmiri Lal, this incident took place on 11th May, 1979 although

there is positive documentary evidence to show that the incident actually took place on the night intervening 4th and 5th November, 1979. Such like lapses may will be attributed to the fact that the witnesses are not literate.

(4) The defense of the appellant is of total denial. He has alleged that he has been falsely implicated in this case on mere suspicion because of old enmity between him and the injured.

(5) The learned counsel for the appellant has made a two fold submission. In the first instance, he has urged that the ocular witnesses could not possibly see the real assailant who had stabbed Kashmiri Lal because there was darkness due to failure of street-lights at the time of this incident. So, the injured person has roped in the appellant on mere suspicion because the relations between the two were inimical. In this context he has invited my attention to the cross-examination of various witnesses. Kashmiri Lal admitted during cross-examination that the street-lights were off when he was stabbed by the appellant. However, he asserted that he could see the assailant because there was light in the shop. On further cross-examination he admitted that he was taken unawares when he was stabbed but hastened to add that immediately he became conscious of the fact that he had been stabbed by the appellant and then he later ran away. He has denied that any other person was behind him, or nearly him when he was stabbed in the right flank. Similarly Ashok Kumar admitted that there was no light at the time of stabbing incident but he too asserted that he saw the appellant when he fled after stabbing Kashmiri Lal. Ravinder (Public Witness 5) has, however, struck a discordant note. In that according to him there was electric light in the street at the time of the occurrence. Any how, from these facts it cannot be readily inferred that Kashmiri Lal or for that matter the other witnesses were unable to see or identify the appellant who was quite well-known to them because the street-lights were off. The Explanationn given by Kashmiri Lal that there was light in the shop has a ring of truth. Even otherwise, virtually nothing has come on the record to suggest that Kashmiri Lal could have a motive to falsely implicate the appellant and screen the real offender. Kashmiri Lal has denied that there was any previous enmity or hostility between him and the appellant. However, he admitted that the thara (open platform) where the appellant used to sell vegetables was near the place where he

sold vegetables. He denied the suggestion that he used to quarrel with the appellant with a view to compel him to go away and vacate that thara. But Ashok Kumar admitted during cross-examination that there was a quarrel between Kashmiri Lal and the appellant regarding thara and marpitai used to take place between them on that account. So even assuming that the appellant and the injured had some quarrels prior to this incident it does not stand to reason that Kashmiri Lal would have falsely implicated the appellant as his assailant because of ill-will arising out of petty quarrels between them. There is no history of litigation between them on that account. On the contrary it is more probable that the appellant felt slighted on Kashmiri Lal giving him a push after objecting to his presence there and, therefore, he retaliated by attacking him with a knife. Hence, the prosecution story has been rightly believed by the learned Additional Sessions Judge.

(6) The learned counsel for the appellant has then canvassed with great fervour that the learned Additional Sessions Judge slipped into grave error in finding that the injury sustained by Kashmiri Lal was grievous in nature. His contention precisely is that it was imperative for the prosecution to produce the doctor who examined his injury as well as the doctor who operated and attended upon him during the course of his medical treatment and failure on the part of the prosecution to examine any of the said doctors as prosecution witnesses has deprived the appellant of a valuable right to cross-examine them and elicit the requisite information with regard to the nature of injury suffered by Kashmiri Lal. Thus, it is urged that in the absence of best evidence the trial court was in error in relying upon the mere ipsi dixit of the doctor (ShMahabir Singh) who had labelled the injury in question as grievous in the medico legal certificate. Ex. Public Witness 6/A, without giving any reasons in support of his opinion.

(7) Kashmiri Lal was examined by Dr. G. S. Varshney in the Casualty of Hindu Rao Hospital at about 12 A.M. on 5th November, 1979. He was admitted to the surgical ward under the charge of Dr. R. C, Kakkar. He was operated upon by Dr. R. C. Kakkar, who was, of course, assisted by some other doctors and thereafter he remained in the hospital as indoor patient until 8th December, 1979. Later on. Dr. MahabirSingh characterised the injury found on the person of Kashmiri Lal to

be grievous vide his opinion dated 24th January. 1980. Unfortunately, none of these doctors was produced by the prosecution. However, the medico-legal certificate as well as the case-sheet of the injured showing the nature of-injuries, the nature of operation performed on him and his post-operative treatment was produced by Kanwar Singh, Record Clerk, Hindu Rao Hospital (Public Witness 6). He explained that the said doctors had since left the service of Hindu Rao Hospital and their present where about were not known. However, he claimed to be conversant with their handwritings and signatures and he identified the same. Since these documents, viz , medico legal certificate and case-sheet etc. were prepared by the doctors in discharge of their official duties and they were produced from proper custody, there can be hardly any objection to their admissibility in evidence much less their relevancy. Thus, the learned Additional Sessions Judge was perfectly justified in looking at the said records for finding out the nature of the injury sustained by Kashmiri Lal and no fault can be found with this approach.

(8) Section 320, Indian Penal Code, designates only certain types of hurts as grievous. A person cannot, therefore, be said to cause grievous hurt unless the hurt caused is one of the classes thus specified. Under clause eighthly thereof any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, for unable to follow his ordinary pursuits will be grievous hurt. So, the question for consideration precisely is whether the material on the record justifies the designation of the injury by Dr. Mahabir Singh as grievous. There can, however, be no two opinions about the duty of the .prosecution to produce the doctor who had the occasion to examine the injured person to ascertain whether the injury is of any of the kinds mentioned in Section 320. However, The function of a medical expert, by and large, is to inform the Court about what he observed while examining the patient and then it is for the Court to determine whether it is simple or grievous on the basis of data available on record. Opinion of medical men based on hearing the evidence of other witnesses without observing facts is not of much value. In other words, opinion of a doctor based mostly on prescription and on his general knowledge of the course of a disease is always indirect evidence and is not of much weight when compared with evidence of a doctor who personally attended the patient. A medical witness

called in as an expert is not a witness of fact. His evidence is really of an advisory character given on the facts submitted to him. However, when a medicalman who attended the patient during his illness gives his testimony as to the bodily or mental state of the injured his evidence is not purely that of an expert but is of a man who has observed' relevant facts and whose evidence derives an enhanced value from the circumstances that he had favorable opportunity and peculiar facility for accurate observation and his training would fit him to appreciate and describe what he observed. In other words, the data based on the observation of a medical expert constitutes a valuable piece of evidence for the Court to form its own opinion about the nature of a particular injury and discern for itself the reasons which may or may not justify the opinion given by a doctor regarding the nature of the injury.

(9) As per medico-legal certificate, there was only one incised wound, (size 1 1/2 x 1 1/2 1' above the superior iliac fossa, Its edges were sharp and live structure (omen turn) was exposed. Bowel sounds were absent. The case, sheet further shows that laparotomy was done and abdomen was opened in layers. There was about 1 cm perforation in the left wall of caecum which was stitched in layers. There was also peritoneal haematons. The appendix was also pathological about 9/10 cms long and routine appendectomy was done. After exploration the stab wound was closed and peritoneal toilet was done. Abdomen was closed in layers. Of course, the condition of the patient remained good during and after the operation.

(10) Abdomen is certainly a vital part of human body. The large intestine begins in the lower part of the abdomen on the right side. As the small intestine opens into its side a few inches from the end, a cul-de-sac known as the caecum, lies here, into which the appendix vermiformis opens. (See 'Black's' Medical Dictionary, 28th Edition, page 483, which inter alia contains an illustration indicating the relative position of the caecum and appendix etc. in the intestine of a human being). So having regard to the delicate nature of parts which were injured in the instant case, there can be little doubt that the injury sustained by Kashmiri Lal could on danger life Hence, the opinion expressed by Dr,...Mahabir Singh about the nature of the injury would appear to be well-founded.

(11) There is another aspect of the matter. Admittedly the injured remained in the hospital for more than a month. The case-sheet shows that upto 25th November, 1979, he was not well and he was running high temperature. It was only on 30th November, 1979, that the doctor recorded for the first time 'wound healthy granulation tissue' and this condition was noticed on subsequent dates of examination too. Hence, by no stretch of reasoning it can be said that Kashmiri Lal was quite capable of following his ordinary pursuits but he remained in the hospital merely for complete cure. Thus, looked at from any angle, the conclusion arrived at by the learned Additional Sessions Judge appears to be well-founded.

(12) To sum up, therefore, I find no cogent ground to take a contrary view. Even the sentence awarded is quite reasonable having regard to the gravity of offence. Surely, easy resort to knife on slightest provocation, even if there be any, must be severely dealt with. Under the circumstances, conviction as well as sentence of the appellant is maintained and this appeal is dismissed.

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