

Kishan Lal and Etc. Vs. the State

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Court : Delhi

Decided On : Nov-30-1994

Reported in : 1995CriLJ2161

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal Nos. 42 and 56 of 1989

Appellant : Kishan Lal and Etc.

Respondent : The State

Advocate for Def. : P.S. Sharma, Standing Counsel

Advocate for Pet/Ap. : Ms. Neelam Grover and; Ms. Rebecca M. John, Advs

Judgement :

S.D. Pandit, J.

1. These two appeals are preferred by the original accused No. 1 Kishan Lal, S/o Cheddi Lal and accused No. 2 Ashok Kumar @ Kale in Session's case No. 53/85. Both the appellants stand convicted of the offence punishable under Section 302 read with Section 34 of the IPC and each of them is sentenced to suffer

imprisonment for life and to pay fine of Rs. 1,000/- and in default to undergo S.I. for three months.

2. The case of the prosecution could be stated as under : Deceased Amir Chand was having two shops in the market situated at C-27, Jahangir Puri. One of his shops was of hardwares and other was of paints. The present appellants were also working in the same market in the meat shop of one Shyam.

3. On 30-10-1984 at about 7.30 p.m. deceased Amir Chand was talking with one Joginder Singh under an electric pole situated at 5-7 feet away from his shop. When they were so talking the present appellants came there and questioned Amir Chand as to why the shop keepers were talking about them and on that questioning of him Amir Chand replied that they were not talking about them. Thereupon accused Ashok Kumar alias Kale gave abuses and he tried to grapple with Amir Chand but at that time P.W. 3 Sarwan Kumar, another shop keeper, P.Ws. 5. Ashwani, Radio Mechanic and P.W. 8 Dalip Chand, a provisional Store keeper came ahead and they rescued Amir Chand and separated him from the hands of the present appellants and then appellants went away. Thereafter Joginder Singh who was talking with deceased Amir Chand also went to his shop which was at some distance from the shops of Amir Chand and Amir Chand kept standing there near that electric pole smoking a cigarette. After about 4-5 minutes both the accused returned to the spot where Amir Chand was standing and Ashok alias Kale questioned Amir Chand as where his watch was. Thereupon Amir Chand said what watch and he did not had his watch. Thereupon accused/appellant Kishan Lal caught hold of Amir Chand and accused Ashok Kumar alias Kale took out a knife and gave 3-4 blows on the stomach, chest and neck of Amir Chand very swiftly. Thereupon Amir Chand raised a cry and then the attention of the adjoining shop keepers was drawn towards them. Then the accused left Amir Chand there and they took to their heels and started running away towards dispensary side. They were chased by P.W. 3 Sarwan Kumar, P.W. 5 Ashwani and P.W. 8 Dalip Chand. Though they chased them for about 250-300 feet and had raised hue and cry to catch the appellants, they were not able to catch hold of both the accused. Thus the appellants managed to run away. When they were so chasing somebody gave information to the police about stabbing

incident and therefore police rushed there.

4. P.W. 3 Sarwan Kumar, P.W. 5 Ashwani Kumar and P.W. 8 Dalip Chand who had gone chasing the present appellants returned to the spot where Amir Chand was lying. At that time, they found that one tehmata was spread on the dead body of Amir Chand and the police were present there. The Police Inspector Jai Bhagwan, P.W. 18 recorded the first information of Sarwan Kumar Ex. P.W. 1/A and sent the same to the police station in order to register the offence and then he started the investigation. He prepared a memorandum about the situation of the dead body and took the search of the dead body. Thereafter he prepared the panchnama of the place of incident. He then recorded the statements of P.W. 5 Ashwani, P.W. 8 Dalip Chand and others. Then he had also shown the dead body to the near relatives of the deceased who had arrived there. He then arranged to send the dead body for post mortem. On the next morning at about 7.30 a.m. he arrested the accused Kishan Lal. At that time he found blood-stains on the bushirt of the accused. He therefore, seized the bushirt on the person of the accused. He also arranged for taking the photographs and preparing the spot diagram and tried to trace Ashok Kumar alias Kale. He was not in a position to trace him. therefore he declared Ashok Kumar alias Kale as absconder and took the necessary proceedings and on the completion of necessary investigation he sent a charge sheet against the accused/appellant No. 1 Kishan Lal. The appellant Ashok Kumar alias Kale 2 was found more than one year after the incident in question and therefore, he also sent a charge sheet against him. As the offence alleged against the appellants is exclusively triable by the court of sessions the accused were committed to the court of Sessions by the learned Metropolitan Magistrate. Thereafter charge was framed against both the appellants and the trial commenced.

5. Both the accused have pleaded not guilty and their defense is of total denial. In order to prove its case against the present appellants the prosecution has examined in all 18 witnesses. The appellants had not examined any witness in support of their defense.

6. The trial court accepted the evidence of the three witnesses P.W. 3 Sarwan Kumar, P.W. 5 Ashwani and P.W. 8 Dalip Chand and came to the conclusion that the prosecution had proved its case against the present appellants beyond reasonable doubts. He thereforee found them guilty under Section 302 read with Section 34 IPC and sentenced them as stated earlier.

7. Having felt aggrieved by the said decision the appellants have come in appeal before this court. It is submitted by the learned advocates for the appellants that the trial court was not at all justified in accepting the evidence of the three prosecution witnesses P.W. 3 Sarwan Kumar, P.W. 5 Ashwani and P.W. 8 Dalip Chand and from the material on record it is not possible to hold the accused guilty of the offence with which they are charged. It is also further submitted by Ms. Grover, learned counsel for the appellant Kishan Lal that from the material on record Appellant Kishan Lal could not be held guilty of the offence punishable under Section 302 read with Section 34 of the IPC.

8. It is not at all in dispute that deceased Amir Chand has met with homicidal death. The prosecution has produced sufficient material on record to show that deceased Amir Chand had sustained stab injuries between 7.30 p.m. to 7.45 p.m. on 30-10-1984 when he was standing under an electric pole near the market situated at C-27, Jahangir Puri. The evidence of P.W. 13 Dr. L. N. Ramani and the post mortem report on record clearly shows that there were four incised stab wound injuries. Dr. Ramani further deposed that injuries at numbers 1, 2 and 4 were individually sufficient to cause death of the deceased in the ordinary course of nature. thereforee, in view of the said evidence the learned trial court has recorded the finding that the deceased Amir Chand met with a homicidal death. That finding is not at all disputed before us.

9. The prosecution case rests principally against the present accused on the evidence of the three prosecution witnesses P.W. 3 Sarwan Kumar, P.W. 5 Ashwani and P.W. 8 Dalip Chand. If the evidence of all three witnesses is considered then it would be quite clear that their evidence is quite clear, cogent and consistent. Their evidence clearly shows that on that late evening on 30-10-1984 deceased Amir Chand was talking with one Joginder Singh under an electric

pole and when they were so talking the present appellants had questioned Amir Chand as to why the shop keepers - the Hindi word used is market wale are discussing about them. Amir Chand told them that they were not at all talking regarding them. After raising a quarrel the appellants had also started grappling with Amir Chand and at that time P.W. 8 Dalip Chand and other two persons intervened and separated Amir Chand from the hands of the appellants and then appellants went away. Their evidence further shows that thereafter Joginder Singh went away and after going of Joginder Singh both the accused came there within 4-5 minutes and then they again raised a question to Amir Chand as where the watch of appellant Ashok Kumar alias Kale was and thereupon Amir Chand said what watch. Then appellant Kishan Lal caught hold of Amir Chand and accused Ashok Kumar took out a knife and gave 3/4 blows of the knife one after another very swiftly and then they took to their heels. Though they were chased by three witnesses and others, they were unable to catch hold of the appellants. It is very pertinent to note that there is nothing in the cross examination of all the three witnesses to hold that they have any animosity or ill will towards the appellants. It is also not possible to hold that all the three prosecution witnesses were anyway interested in the deceased or anyway related to the deceased. Their evidence also clearly shows that both the accused were known to them and they were also working in the same market in a meat shop. That claim of three witnesses is not also disputed and denied. Their claim that there was sufficient light to see the incident as well as to see and identify the present appellants has also remained unchallenged in their cross examination.

10. No doubt there are few inconsistencies in the evidence of these three witnesses. Those inconsistencies are as regards both the appellants had questioned deceased Amir Chand or whether only appellant Ashok Kumar had questioned Amir Chand. Similarly as regards both the appellants or whether only Ashok Kumar alias Kale had abused the deceased. But those inconsistencies are as regards their deposition in the court and their statements under Section 161 before the police but it must be remembered that the incident in question had taken place on 30-10-1984 and these witness had deposed on 12-12-1987. Thus their deposition about the said incident after 3 years clearly indicates and shows that the witnesses were not tutored witnesses. On the contrary if after such a lapse

of time if the witnesses had given their evidence in exact words and in exact manner as they had given their statements under Section 161 Cr.P.C. three years ago then it is possible to infer that they were tutored witnesses. Thus in our opinion those inconsistencies rather indicate and show that the witnesses are not tutored witnesses.

11. Then it is further urged before us by the learned advocates for both the appellants that as per the evidence of these three witnesses P.W. 3 Sarwan Kumar, P.W. 5 Ashwani and P.W. 8 Dalip Chand that when they returned to the spot where the dead body was lying, the dead body was lying with the face downwards and one tehmata was spread on the dead body whereas according to the two prosecution witnesses P.W. 11 Devi Dayal and P.W. 14 Bhim Sain when they came to the spot and when they were asked to identify the dead body, the body was lying on the back with face upward and there was not tehmata. therefore, in view of the said evidence it is contended by them that the version given by the three eye-witness must not be true and correct. But if the evidence of these two witnesses P.W. 11 Devi Dayal and P.W. 14 Bhim Sain is considered then it would be quite clear that both of them got an information about the killing of Amir Chand after about 9.15 p.m. and thereafter they came from their respective shops. The shops of these two persons are not in the area of the said market situated at C-27 Jahangir Puri. The evidence of P.W. 18, Inspector Jai Bhagwan as well as the evidence of the three eye-witnesses clearly show that police had arrived at the spot before these eye-witnesses returned to the spot after they were unable to catch hold of the accused whom they were chasing. Then the evidence, of the eye-witnesses as well as the evidence of Inspector Jai Bhagwan also clearly shows that Jai Bhagwan had drawn a panchnama and at that time he seized the tehmata which is described as article No. 3 in the said panchnama. The panchnama of P.W. 3/A had taken place before the arrival of these three witnesses. At the time of preparing the panchnama the dead body must have been searched as per the evidence of three witnesses as well the P.W. 18. therefore, it must have been lying on the ground with face upward when these two witnesses had arrived. therefore, in the circumstances, when these two witnesses had arrived after the attachment of the tehmata and after the preparation of the panchnama it is but natural that when they arrived at the spot they had not found tehmata on the dead

body and the body facing the sky. therefore, in the circumstances, the evidence of these two witnesses P.W. 1 Devi Dayal and P.W. 14 Bhim Sain does not falsify the evidence of the three eye-witnesses.

12. Thus the evidence of the three eye-witnesses could not be doubted. The trial Court was quite justified in accepting the evidence of three witnesses and holding that the present appellants were the assailants of the deceased. No doubt there is no recovery of the knife in this case but when the appellant Ashok Kumar, alias Kale had absconded for more than one year one cannot expect that he would preserve and keep the evidence against him intact so as to enable the police to recover the knife used by him. therefore, merely due to the fact that the police are unable to recover the knife it could not be said that the prosecution case must be thrown out.

13. Then it is further urged before us by the learned advocates for the appellants that the prosecution has not examined Joginder Singh who was a material witness in this case. According to both of them as per the prosecution case Joginder Singh and deceased Amir Chand were talking together and at that time some altercation had taken place between Amir Chand and the accused and therefore. Joginder Singh was a material witness and his non examination should be taken into consideration and adverse inference be drawn against the prosecution. But it must be remembered that as per the case of the prosecution Joginder Singh was not present there at the time of the assault on the deceased. The material brought out in the cross-examination of P.W. 3 and P.W. 5 as well as P.W. 8 Dalip Chand clearly shows that Joginder Singh had already left the spot before the arrival of the appellants at the time of the fatal assault on the deceased. therefore, in the circumstances, Joginder Singh could not be said to be material witness for this offence of murder against the present appellants. It must be remembered that it is undoubtedly the duty of the prosecution to lay before the Court all the material witnesses which are necessary for upholding its case but it would be unsound to lay down as a general rule that other witnesses must also be examined even though those witnesses may not be very material. In the case of *Narpal Singh v. State of Haryana*, : 1977 CriLJ642 , the apex Court of our country has laid down the following principle (para 16) :

'When the witness examined by prosecution are believed by the Court and the Court comes to the conclusion that their evidence is trustworthy the non-examination of other witnesses will not affect the credibility of the witnesses.'

therefore, we are unable to hold that failure of prosecution to examine Joginder Singh could be taken into consideration and adverse inference could be drawn against the prosecution.

14. The learned advocate for the appellant Ms. Grover has cited the notes of case reported in Inderjit alias Inter v. State, (1985) 28 DLT 2 and put reliance on the following head note.

'Held that is difficult to believe that the appellant Inderjit had any knowledge that the Prem Shankar was carrying a dagger or that Prem Shankar was going to attack the deceased with knife and inflict fatal blows. He cannot, therefore, be said to be possessed of any knowledge that Prem Shankar was either carrying a murder weapon or intended to commit murder of the deceased. The maximum that can be said about Inderjit is that he wanted to pick up a quarrel with the deceased. Under the circumstances, therefore, it is difficult to hold that he had a common intention to murder Rajinder Kumar deceased though it cannot be ruled out that he had common intention to pick a quarrel with Rajinder Kumar.

Consequently held that for these reasons we are of the view that the case against Inderjit is distinguishable. We, therefore, accept his appeal No. 27 of 1982 and acquit him.'

15. It appears that in that case the appellant Inderjit was merely present with the assailants and he had not taken any part in the assault on the deceased and therefore, it was held that he could not be held guilty under Section 34 but in the case before us the evidence of the three prosecution witnesses clearly shows that the appellant Kishan Lal had tightly caught hold of deceased Amir Chand till the appellant Ashok Kumar had finished him by giving the four blows of the knife one after another and then both of them left him there and took to their heels. therefore, in the case before us there is active participation of appellant Kishan Lal in assaulting the deceased and hence the appellant Kishan Lal is rightly held

guilty under Section 302 read with Section 34, I.P.C.

16. Thus there are no grounds to interfere with the findings recorded by the trial Court. The trial Court has rightly and correctly accepted the evidence of the three eye-witnesses and held the appellants guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. thereforee, the present appeal deserve to be dismissed. We, thereforee, dismiss the present appeal and confirm the order of conviction and sentence passed by the trial Court.

17. Appeal dismissed.

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