

Hari Kishan Vs. State

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Court : Delhi

Decided On : Mar-20-1986

Reported in : 1986(2)Crimes431; ILR1986Delhi473

Judge : R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

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

Appeal No. : Criminal Appeal No. 24 of 1983

Appellant : Hari Kishan

Respondent : State

Advocate for Pet/Ap. : A. Ahlawat and; R.P. Lao, Advs

Judgement :

Malik Sharief-Ud-Din, J.

(1) Two persons, one Ramesh Babu and the appellant Hari Kishan were charged by the learned Addl. Sessions Judge, Delhi, for the murder of Ram Ditta Mal. Ramesh Babu was acquitted while [Hari Kishan appellant was convicted by his order dated 24-12-81. By a separate order of even date the appellant was sentenced to undergo imprisonment for life. There is no acquittal appeal against the acquittal of Ramesh Babu. We are not as such concerned with it.

(2) The facts are that the deceased Ram Ditta Mal in partnership with Public Witness 2 Tajinder Singh was running Vikas Restaurant. D-L-F-32, Najafgarh Road, Industrial Area Moti Nagar. On the relevant date he was at the cash counter of the restaurant in the absence of his partner who had gone to see a movie. It was on 28th November 1980. At about 11.15 P.M. while he was closing and counting cash he asked the appellant, who was a waiter in the restaurant, to place his dinner at the first table near the counter. After counting and closing the cash he came and sat on the chair to dine. Hari Kishan appellant was standing nearby when the acquitted accused Ramesh, who was also working in the restaurant and used to bake Rotis, came and stood behind the appellant. Hari Kishan is then alleged to have suddenly attacked the deceased from behind with a dagger which hit him under armpit. The dagger got stuck in the body. The deceased grappled with the appellant and when the appellant made attempt to take cut the dagger its handle was broken, and the blade fell on the ground. The appellant is again alleged to have lifted the blade and attacked again which the deceased allegedly warded with his right arm. Ramesh who was allegedly holding the deceased then exhorted the appellant to give another blow and not to miss the opportunity. Thereafter, the appellant is again alleged to have attacked which the deceased again warded with his left hand. On the alarm being raised by the deceased both the appellant and Ramesh are said to have escaped from the rear door. The deceased then came out from the front door and after informing Public Witness 1 Ramesh that he has been stabbed by Hari he fell unconscious. Till this is the story unfolded by the deceased himself in his dying declaration recorded by Harbans Lal S.I. and testified to by Dr. P. C. Mahakud Public Witness 18.

(3) The version of the incident as put forward by Public Witness 1 Ramesh Chand is that immediately after the incident the deceased Ram Ditta Mal came out of the hotel and told him that he has been stabbed by Hari Kishan who has escaped, that after saying so the deceased fell down and he was bleeding profusely. He has further added that he stated looking for a scooter but in the meantime Ramesh baker also came out of the Vikas restaurant and told him that he has also been injured by Hari Kishan.

(4) It was actually Public Witness I Ramesh Chand who removed both of them to Willingdon Hospital. While he was there police also arrived and recorded his statement Ex. Public Witness 1/A on which the F.I.R. is based. He then came- to the spot of incident where in his presence the handle of the dagger and its blade were taken into possession together with blood stained floor pieces.

(5) Third version of the incident is given by Ramesh Babu acquitted accused in his statement under Section 313 Criminal Procedure Code . According to him about ten days before the date of this incident appellant had committed sodomy with a minor employee of the restaurant on account of which appellant had been severely beaten by the deceased; that the appellant used to remain in the hotel till midnight and would serve alcohol and meals to the deceased; that appellant used to share meals and drinks with the deceased; that he (Ramesh Babu) used to sleep in the restaurant that he had gone to sleep that he was awakened by an alarm, and saw the appellant with a knife in his hand attacking the deceased; that he intervened and in the process he also received injuries; that the appellant then ran away and deceased came out; that he himself also came out and gave information about the incident to Ramesh Klimar, Public Witness I.

(6) The deceased died on 10-12-80. There is, no need for us to overburden this judgment by the medical evidence. Suffice is to say, the fact that the deceased had received injuries with a dagger is not in dispute that the deceased died of the injuries received in this incident is also not in controversy. It is also not in dispute that Ramesh Babu was also injured at the same time in the same incident and the injuries on his person were also with a sharp edged weapon. The only point that is to be determined with reference to the evidence adduced is, as to whether appellant is connected with the commission of this crime. There is no eye witness to the incident.

(7) It is disturbing to notice that the short sighted I.O. failed to record the statement of the only eye witness Ramesh Babu acquitted, accused. At the time when Ramesh Babu was admitted to the hospital with injuries on his person, he was not even remotely connected with the commission of this crime. He E being himself injured should have necessarily been examined under Section 161 Criminal

Procedure Code . He was made an accused in this case only after 3-12-80, when his name as one of the assailants was known from the deceased himself. Admittedly on the same day he was declared fit to make a statement. The Investigating Officer Public Witness 17 S.I. Harbans Lal should have known that he was an important witness at least till 3-12-80 when he was identified as one of the culprits for the first time We are not satisfied with the Explanationn of Public Witness 17 that when he made an attempt to record his statement. Ramesh Babu asked him not to talk to him as he was having a severe pain. Why if we may so ask, no attempt was made to record his statement on the next day before he was discharged No attempt is made to contact him as an important witness after the date of his discharge from the hospital till the date of his arrest. All this can only be attributed to the casual approach and incompetence of Public Witness 17. He had a stab Injury. Oua him a cognizable offence had been committed but no notice was taken. This is very deplorable and sad.

(8) Unfortunately in this case we had. been deprived of the assistance by the learned counsel for the appellants as be failed to turn up on the date of hearing. We, thereforee, appointed Mrs. Avinash Ahlawar as amices curia to represent the appellant. We have heard the learned counsel for both the besides and they have fairly taken us through the record. As already stated, there is no eye witness to this incident. The only. person apart from the deceased and the appellant present at scene of incident i.e. Ramesh Babuwas made accused. He has been acquitted, so, we are not now concerned with him, The whole case-of the prosecution rests on the dying declaration both oral and written.

(9) Oral dying declaration was made by the deceased first. immediately after the occurrence, before Public Witness 1 Ramesh Kumar flowerist, thereafter also before Public Witness 2 Tejinder Singh and Public Witness 10 Ram Prakash. Public Witness 2 Tejinder Singh has stated that after some days of the incident the deceased had informed him that Hari Kishan accused had caught hold of him and Ramesh had stabbed him. The witness was a partner of the decease 1 in Vikas Restaurant. P.V. 10 Ram Prakash brother of the deceased has testified that the deceased had told him that Ramesh Babu and Hari Kishan had stabbed him. In appears there is some confusion in the mind of Public Witness 2 TeJinder Singh

This we Say, in view of the consistent stand of the deceased that, it was actually the appellant who had stabbed him. The next witness to the oral dying declaration is Public Witness 1 Shri Ramesh Kumar flowerist. According to him he along with his brother were selling flowers near Vikas , Restaurant. He has given evidence that at the time of incident he brought food from his home for his brother and after serving the same he sat on a cot. In the meantime. Ram Ditta Mal owner of Vikas Restaurant came out and told him that he had been murdered and further added that, Hari Kishan had injured him. That after a few seconds Ramesh accused also came out from the gate and told him that HariKishan had inflicted blows on him and on Ram Ditta Mal. It is Public Witness 1 Ramesh Kumar who helped the injured and took them for hospital Fit is a on his statement. He has consistently taken this stand and we see no reason to disbelieve him. He. in the circumstances of this case is a natural witness. In fact there is -no challenge to his testimony.

(10) This testimony is fully corroborated by the written dying declaration recorded on 3-12-80 by Public Witness 17 Harbans Lal in the presence of Public Witness 18 Dr. P.C Mahakud. Both these P.W.3 have tendered evidence that this statement F.x. Public Witness . 17/C was made by the deceased, soon after he was declared fit to make a statement by Public Witness 8, Dr. Lala Tandon Sarangi; vide his report' Ext. Public Witness 8/B. Public Witness S has proved the correctness of the certificate about fitness issued by him. We need not reproduce the contents of this dying declaration as a reference to it has already been made by us in Para 2 of this judgment. Suffice is to say that in this dying declaration he has also entrusted a role to Ramesh Babu in the commission of this crime. Be that what it is, if will bs noticed that the consistent stand of the deceased is that, it was actually the appellant who had inflicted fatal blows. Under the circumstances of this case and, in view of the statement of witnesses, we are of the view that there is all the justification to base a Conviction against the appellant.

(11) The dagger used in the crime with its handle was found at the scene of incident.. These were stained with human blood of Ab group, a blood group similar to that of the deceased, as is evidenced by the report of C.F.S.L. No. '80/B-4423/Ser 401/80. This also lends credence to the dying statement of the deceased that, during the course of stabbing the handle of the dagger got snapped from the

blood.

(12) Another circumstances in the series which goes to show that the appellant committed this offence is the fact that soon after the incident the appellant absconded. There is sufficient evidence on record that, on the date and time of incident, the appellant was employed as a waiter in Vikas Hotel. However, soon after the commission of this crime he was not traceable despite the fact that the Investigating Officer even went to his village Madibun in Bihar. He was only apprehended on 4-1-81. The stand of the appellant that, he was not working in Vikas Restaurant is a blatant falsehood. If he were not working, in the restaurant, how could he be named by the deceased. There is no reason to disbelieve Public Witness 2 Tejinder Singh on this point. He, as one of the working partners of Vikas restaurant was and is expected to know the persons employed therein. He has identified the appellant.

(13) Unfortunately, due to the incompetent handling of the case by Public Witness 17, the Court is left guessing about the motive for murder. If Ramesh Babu had been examined under Section 161 Criminal Procedure Code when he was not an accused, perhaps, he could have thrown some light on this feature of the case. In any case the mere proof of motive cannot be made a basis for conviction. It is equally true that, if otherwise an accused is found connected with the commission of crime, the mere absence of proof of motive cannot be of any assistance to him.

(14) Last question with which we are faced in this case is, as to the nature of offence committed by the appellant. To us it appears this question can only be fairly answered by keeping in view the circumstances in which the offence was committed the nature of injuries and the manner in which these were inflicted. The appellant in all probability was the most trusted employee of the deceased. It was in that situation that out of most of the employees he was alone selected for serving his deceased master in the late hours of the night. It appears, from the facts of this case that, the deceased had complete faith in him. That being the case, the deceased could hardly entertain a thought of betrayal by the appellant. The attack was made from the back. The appellant was armed with knife in advance. Had the appellant come from the front, the deceased may have noticed

his intention and, may even have been able. to defend himself. The facts of this case clearly go to show that the act was premeditated and intended. Even the time for commission of the offence was so planned as to make sure that appellant is not detected and also to ensure the following three injuries on the person of deceased :

1. An inflicted wound 1/4 x 1/4 on the left side of chest wall on mid auxiliary line 6' below the arm pit. 2. Stitched wound partly healed, infected at places, placed obliquely 1' below the injury No. 4, Size 2'. 3. Stitched wound 2-112" long over the right hand between the thumb and index finger.

(15) This would go to show that the first injury was inflicted at the most vital part and the second was also aimed at a similar part of the body. The first injury had ruptured the spleen. It is probably for this reason that spleen had to be removed. In the opinion of Public Witness 6 L.T. Ramani both injury Nos. 4 and 5 were individually sufficient to result in death in the ordinary course of nature. Could under these circumstances it be argued that, the killing was not aimed There has been no provocation no higher. To us, on the facts of this case it is clear that the murder was intended and planned.

(16) Indeed, the death was due to shock resulting from septicaemia following petition Public Witness 6 Dr. L.T. 'Ramani has gone on record to state.

'SEPTICAEMIA in this case was on account of the injuries of Ram Ditta Mal. The septicaemia is indirect result of injury. Rant Ditta Mal could have died due to the aforesaid injuries even in the absence of septicaemia. The possibility of periton IT is developing on account of careless handling treatment and lack of proper medicine cannot be ruled out. The possibility of periton IT is being caused by some facts other than the injuries cannot be ruled out.'

(17) This is his opinion. Infact, had the deceased not sustained injuries, periton IT is in this case was-out of question. There is no proof, whatsoever that, the deceased was handled carelessly or was not given proper treatment. The very fact that the deceased died after a number of days the incident by itself goes to show that the doctors-attending on him have made E all the possible efforts to save him.

In this case septicaemia was clearly an indirect result of injuries. The evidence of Public Witness 6 that injuries Nos. 4 and 5 were individually sufficient to result in death in our view clinches the issue.

(18) With these observations we find that the appellant has rightly been convicted under section 302 and the sentence of imprisonment for life. is quite justified. The aforesaid medical evidence does in no way dilute the nature of the offence. With these observations we find no merit in this appeal. The appeal as such is dismissed.

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