

Anil Kumar Vs. the State

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Court : Delhi

Decided On : Jan-21-1980

Reported in : 17(1980)DLT238

Judge : Prithvi Raj and; O.N. Vohra, JJ.

Acts : [Indian Penal Code 1860](#) - Sections 34, 300, 302, 323 and 324; [Code of Criminal Procedure \(CrPC\) 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 94 of 1977

Appellant : Anil Kumar

Respondent : The State

Advocate for Pet/Ap. : N.K. Chaudhry and; S.K. Agarwal, advs

Judgement :

Prithvi Raj, J.

(1) The appellant. Anil Kumar along with Smt. Shanti Devi wife of Ram Pershad and Lal Chand son of Maria Ram, were tried by Shri B.B. Gupta, Additional Sessions Judge, Delhi, under Section 302 read ^ with Section 34, Indian Penal Code, for having caused injuries on Smt. Dhanwanti resulting in her death; under Section 324 read with Section 34, Indian Penal Code, for having caused hurt with a sharp edged weapon on Kusum daughter of Shri Ladli Pershad as well as under

Section 323 read with Section 34, Indian Penal Code for having caused simple injuries to Ladii Pershad with a blunt object. The Trial Court by its impugned judgment held that Section 34, Indian Penal Code was not attracted and consequently acquitted Shanti Dsvi. The Trial Court, however, held the appellant guilty of having committed an offence punishable under Section 302, Indian Penal Code accordingly sentenced him to imprisonment for life. The appellant was also found to have committed an offence under Ssction 324, Indian Penal Code and was convicted and sentenced to undergo rigorous imprisonment for two years. The sentences awarded to the appellant were ordered to run concurrently. Lal Chand was found guilty of having committed an offences punishable under Section 323, Indian Penal Code. He accordingly was sentenced to six months' rigorous imprisonment.

(2) The appellant feeling aggrieved by his conviction and sentence has filed the present appeal.

(3) The facts of this case lie in a very narrow compass. Shanti Devi was a tenant in a portion of the house of Ladli Pershad Public Witness PW5. It is the admitted case of the parties that she was occupying one room and a kitchen. The kitchen later on was taken over by the landlord for reconstruction and the landlord was stated to have constructed a proper room out of it and also constructed a separate kitchen which he intended to give to Shanti Devi. The case of the prosecution is that on 2nd June, 1976, at about 9.30 p.m. when Ladii Pershad, his wife, Dhanwanti and his daughters, namely, Kusum and Veena (Public Witness s 3 and 4) and his son Raj Kumar (Public Witness 6) were ready to take their meals, Shanti Devi was alleged to have come at that time and picked up a quarrel as to why the room possession whereof was taken by Ladii Pershad was not being returned to her. On this some altercation followed and the appellant is alleged to have come armed with a knief and attacked Dhanwanti with the knife injuring her below the lower lip. Shanti Devi was alleged to have caught hold of Dhanwanti from the back and the appellant after the first blow given under the lower lip, according to the witnesses, gave further blows on the chest, abdomen and on the sides. Kusum (Public Witness 3) went to the rescue of her mother. Anil Kumar stabbed her, injuring her on the left arm. Lal Chand who had accompanied Shanti

Devi at that time gave a Danda blow on Ladly Pershad hitting him on the right elbow. Ladii Pershad proceeded a step towards him when Lal Chand again gave a Danda blow which instead of hitting him fell on Shanti Devi and hit her. Lal Chand also gave another Danda blow hitting Dhanwanti on the right arm. In this transaction the appellant is also alleged to have received some injuries. All the accused persons thereafter were alleged to have gone away.

(4) The prosecution version, as noted above, is supported by Kumari Kusum (Public Witness 3), Kumari Veena (Public Witness 4) daughters of Ladly Pershad, Ladly Pershad (Public Witness 5), Raj Kumar son of Ladii Pershad (Public Witness 6), Tara Chand (Public Witness S) and Gurdial Singh (Public Witness 9).

(5) After infliction of the injuries, Dhanwanti and Kumari Kusum were removed to the Willingdon Hospital by Kumari Veena and R. Kumar PWs.

(6) Dr. V.K. Kapur (Public Witness 22) on 2nd June, 1976, at about 9.30 was working as Casualty Medical Officer in the Willingdon Hospital. He examined Dhanwanti and found her restless, having breathing difficulty and dragging sensation on left side chest. On examining her he found the following injuries on her person :

1. Incised wound left precordium 4 c.m.x. 1.5c.m. with prolapse of soft tissue (fat).
2. Incised wound chin 5 c.m.x. 2.5 c.m. which was superficial. He advised for x-ray of the chest. In the opinion of Dr. Kapur the injuries were caused by a sharp object.

(7) Dr. S. Mehra, Assistant Surgeon, Willingdon Hospital (Public Witness 20) at about 10.25 p.m. on 2nd June, 1976, examined Dhanwanti and found four injuries having been inflicted on her with sharp margins :

1. 5th intercostal space in the anterior axillary line l'x l/3' going downwards and medially for 4' to 5' with leakage of air and blood from the plural cavity.
2. Wound with sharp margins the left iliac fassa l/2'x l/2'x3'. This was penetrating the whole of the anterior abdominal wall causing a hole in the peritoneum.
3. Wound with sharp margins over chin l/3'xl/2'xl/3'.
4. Wound with sharp margins in the left axilla

1/2'x1-1/2'.

(8) According to Dr. Mehra x-ray of the chest showed evidence of haemothorax. Exploratory laboratory test revealed injuries on peritoneum. The condition of the patient did not improve and kept on deteriorating. The doctor further stated that the patient did not recover from pericarditis. She developed burst abdomen on 14th June, 1976, and developed omentum of the whole body and bilateral crepitation in the lungs. According to the doctor, Dhanwanti expired on 22nd June, 1976 at 7.35 a.m.

(9) Dr. L.T. Ramani(PWI6) performed the post-mortem examination on the body of Dhanwanti on 22nd June, 1976 and found the following external injuries on her body :

1. One stitched wound, infected and partly healed over the left side of the chest in the precordial area. 1" below the left clavical. It was 1 long x?
2. One stitched wound 3/4' long? on the left side of the chest placed obliquely in the line of anterior axillary fold 21' below the left nipple.
3. One stitched wound 1' long placed vertically on the left side of the chest lower part in the mid-axillary line into depth.
4. One stitched infected wound 6' long placed vertically over the abdomen 1' lateral to the midline on the left side (operational).
5. One healed scar 1/2'x1/2' in the left iliac fossa (abdomen).
6. One linear scar 1/2' long on the left side of the chin.
7. One stitched wound 1' long over the right arm upper part (vein section).

Internal examination revealed that there was a hole between second and third ribs in mid-clavicular line (underlying injury No. 1 penetrating left lung upper lobe on its anterior surface. There was ascar on the left lung half inch deep which was partly healed. Injury No. 2 had made a cut on the 6th rib and 5th intercostal space in the anterior axillary fold line, penetrating upper lobe of left lung on the lateral aspect. There was a corresponding scar on the lung. Injury No. 3 had penetrated the chest wall between 8th and 9th ribs in mid axillary line cutting left lung lower lobe near its interior border. Plural cavity was full of puss and blood-stained fluid. The left lung was partly collapsed and was adherent to the chest wall. One opening of the abdomen, it was full of puss. The omentum was stitched to the abdominal wall. There was no injury to the intestine or any abdominal viscera. According to the

doctor injury No. 5 was on the abdominal wall deep. There was one stitched wound 3/4' long, healed, noticed in the left axilla in the posterior axillary fold and was skin deep. In the opinion of the doctor the injuries were antemortem and were caused by sharp edged weapon. The cause of death was ascribed by the doctor to pericarditis, haemothorax resulting from injury to the left lung. In the opinion of Dr. Ramani the injuries were sufficient to cause death in the ordinary course of nature. This opinion of the doctor was got confirmed in the suggestion put to him in cross-examination that injuries 1, 2 and 3 were sufficient to cause death though he admitted that the said fact was not noted by him in the post-mortem report. He did not find any extraneous matter which could accelerate death. From the size and nature of the injuries on the body of the deceased Dr. Ramani stated that the injuries could have been caused from the front or from the side but not from the back.

(10) So far as the presence of Kumari Kusum, Kumari Veena, Ladli Pershad and Raj Kumar, Public Witness PWs. 3 to 6 respectively at the time of the occurrence is concerned, the same cannot be doubted. They are the residents of the house and naturally at 9.30 p.m. they were expected to be in their house. Tara Chand (Public Witness S) and Gurdial Singh (Public Witness 9) are the residents of the neighborhood and had witnessed the occurrence while they were returning to their houses. Their presence at the spot also cannot be said to be unnatural. Despite lengthy cross-examination their testimony that Anil Kumar had attacked Dhanwanti with the knife, injuring her below the lower lip and also having given injuries on the chest and in the abdomen, remained unscathed. We have no reason to discard their testimony; more so when the above aspect of their testimony has not been challenged in cross-examination. We accordingly see no reason to differ from the view taken by the learned trial Court in holding that the appellant was guilty of having committed an offence punishable under Section 302, Indian Penal Code. In the opinion of Dr. Ramani (Public Witness 16) injuries 1 to 3 were sufficient in the ordinary course of nature to cause death of the deceased and we have every reason to accept this opinion of Dr. Ramani as many of the injuries are peritoneum ruptures. The case of the appellant would, therefore, be covered by 3rdly of Section 300, Indian Penal Code.

(11) Shri N.K. Chaudhry, appearing for the appellant, strenuously contended that it was in the testimony of the witnesses that besides Tara Chand and Gurdial Singh Public Witness PWs some other persons were also present at the time of occurrence. He accordingly submitted that the said witnesses could have thrown light on the incident but they have been designedly and deliberately withheld so as to secure conviction of the appellant. We see no merit in this submission. It is well-settled that the real question for determination is not as to what is the effect of non-examination of certain witnesses as the question whether the witnesses examined in Court on sworn testimony should be believed or not. Once the witnesses 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 these witnesses. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point (See Nirpal Singh v. State of Haryana (1977) 2 S C G 131). Besides, the defense version unfolded by the appellant in his statement under Section 313 of the Code of Criminal Procedure is self-discrediting version. According to him Krishan Kumar alias Billa, son of the deceased, came armed with a knife and wanted to hit him but unfortunately Dhanwanti deceased intervened and in the process a blow fell upon her. This version has been rightly discarded by the trial Court holding that it was not possible to believe that after one blow on Dhanwanti had been given by mistake by Krishan Kumar he would have continued inflicting blow after blow on her and also would inflict injuries on the wrist of his sister. The appellant was also rightly convicted under Section 324 Indian Penal Code for having caused injuries to Kumari Kusum with a sharp edged weapon.

(12) The learned counsel for the appellant then contended that the prosecution has offered no Explanation for the injuries which were found on the person of the appellant as deposed to by Dr. R. P. Sarawat (Public Witness 2). According to Dr. Sarawat he found one lacerated wound over left frontal region, size of which was 2'x1/6'x1/8' and another lacerated wound between left middle and ring finger extending up to palm of the size of 1'x1/16'x1/8'. In the opinion of the doctor the said injuries were simple having been caused by a blunt object. The duration of the injuries was stated to be 5 to 6 hours. Anil Kumar was examined by the doctor on 3rd June, 1976, at 1.05 a.m. The fact that Anil Kumar had been injured is

mentioned in the First Information Report itself. The injuries found on the person of the appellant are too inconsequential to cast any doubt on the prosecution version.

(13) No other point was urged on behalf of the appellant.

(14) The appeal accordingly fails and is hereby dismissed.

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