

**Gian Chand Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-25-1985

**Reported in :** 28(1985)DLT345

**Judge :** Malik Sharief-ud-Din and; Rajinder Sachhar, JJ.

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

**Appeal No. :** Criminal Appeal No. 106 of 1982

**Appellant :** Gian Chand

**Respondent :** The State

**Advocate for Pet/Ap. :** I.U. Khan and; R.P. Lao, Advs

**Judgement :**

**Malik Sharief-Ud-Din, J.**

(1) To begin with, four persons, namely, Gian Chand appellant, one Jai Chand, Rakesh Kumar and Nairn Ahmed were prosecuted under sections 302/34 and 120B Indian Penal Code and sections 27/54/59 of Indian Arms Act for conspiring and committing death of one Radhey Sham alias Lala on the night of 6th September 1980 at about 9.45 P.M. near Meera Pai Mandir in the area of Govindpuri, Delhi. The deceased Radhey a has Lala as also another Radhey Sham Public Witness 10 were carrying on embroidery business. Deceased

Radhey belonged to Chandni Chowk, Delhi. These two persons were known to each other intimately. Sant Lal Public Witness 15 was a property broker in Govindpuri area and was also known to the deceased and Public Witness 10 Radhey Sham. The four accused persons who were put on trial were allegedly working in an embroidery factory. Three of them, namely, Gian Chand, his brother Jai Chand and Naim Ahmed were employees of Kishan Chand Public Witness 2.

(2) On 6th September 190, Radhey deceased had gone to Govindpuri for repair of his embroidery machine. There he came across Public Witness 10 Radhey Sham. After he got his machine repaired and dispatched the same to his place of business, the deceased Radhey and Public Witness 10 Radhey Sham decided to have drinks together. It was already evening time and they went to a nearby hotel known as Raju's hotel of which Public Witness Raj Kumar was the proprietor. Once they settled down, to drinks, one Devi, perhaps a friend, also joined them. In the mean time, Sant Lal Public Witness 15 also appeared in the hotel and on their invitation he also joined them. Thus, the four persons settled down to drinks and were having some eatables.

(3) After about an hour the four accused persons and one Hari entered the hotel and settled down to the next table for having drinks. Kishan Lal, the proprietor of the embroidery factory, who had employed Gian Chand etc. also came and had some drink with them but there after he went away. After the drinks with the deceased and his companions, Devi also went away. Gian Chand and Naim also went away. Jai Chand, in fact, was having his meals on a table outside the hotel while Rakesh and Hari were having their meals inside the hotel. Sant Lal Public Witness is also supposed to have moved out of the hotel. At this time the deceased Radhey told his friend Radhey Sham that 'mistress' are unreliable people. Rakesh accused over-heard and objected to it but the deceased Radhey became angry and not only abused Rakesh but also slapped him. Public Witness I Raj Kumar, proprietor of the hotel, asked the accused Radhey and the other Radhey to get out of the hotel which they did. Thereafter Rakesh and Hari continued to have their meals and after finishing it they came out. There was again exchange of abuses between the deceased Radhey and other Radhey on one side and Rakesh accused on the other. There also both Radhey abused and

slapped Rakesh. Rakesh and his companion Hari went away. Soon thereafter both the Radhey and Sant Lal also left the hotel and moved towards Kalkaji Mandir in order to go to the bus stand of bus route No. 425 so as to enable the deceased Radhey to go to Chandni Chowk.

(4) The prosecution case is that when the deceased and his two companions Radhey Sham and Sant Lal reached near the turning of Meera Bai Mandir, they found five persons, namely, the four accused and Hari approaching them from behind and hurling abuses. Naim is said to have caught hold of deceased Radhey alias Lala while Rakesh caught hold of Radhey Sham PW. Both of them asked Gian Chand to stab the deceased (Lala) whereupon Gian Chand took out a knife and stabbed him in the abdomen. The deceased moaned, held his stomach and ran towards the bus stop. The prosecution case further is that thereafter Radhey Sham Pw and Sant Lal were detained by the accused persons for sometime under threats but after sometime were allowed to go. At that time it had started drizzling and even though Radhey Sham and Sant Lal looked for the deceased up to some distance but after having failed they went to their respective homes and went to sleep.

(5) The incident took place around 9.45 P.M. At about 9.50 P.M. a bus No. Dlp 6325 of Jaswant Singh on D.T.C. route was parked at the bus stand of bus route No. 425 by its driver Bhupinder Singh Public Witness 9 as this was the end point and the bus was to be taken away at 10.30 P.M. All the passengers had left the bus and the driver Bhupinder Singh Public Witness 9 had gone for his meals across the road to a Dhaba of one Munish situated at a distance of 50 to 60 yards. Conductor of the bus also went away. Bhupinder Singh PW9 returned at about 10.30 P.M. and noticed the dead body of deceased Radhey lying on the back foot-board of the bus all along its stairs and partly in the bus. A 'chappal' was lying towards his head and the feet were dangling down the stairs. He noticed a wound in the stomach of the dead body with intestines protruding out. He gave a telephonic message to police control room which in turn informed police station Kalkaji where D.D. report No. 27-A was recorded at 11.15 Pm and copy of the same was handed over to A.S.I. Rameshwar Dayal who immediately went to the scene and recorded the statement of Bhupinder Singh Public Witness 9. Ext. Pe

9/A. This statement along with his own endorsement (Ruqqa) Ext. Public Witness 6/A was transmitted to police station Kalkaji where F.I. R. was registered and a copy of which was handed over to S.I. Dharampal for investigation.

(6) The prosecution case further is that one Gulshan Public Witness 11 who was under-trainee conductor and whose brother owned a 'Pan' shop near Raju's hotel had noticed the quarrel going on in front of Raju's. He is supposed to have reached the bus stop where he noticed the dead body. He knew Sant Lal whom he had seen at Raju's hotel at the time of quarrel and from him the investigating officer came to know about Sant Lal being present. It is then said that Sant Lal was brought from his house at 12.30 A.M. and the facts were disclosed. Inquest report was prepared in which Neeraj, son of the deceased, and Sant Lal Public Witness 15 identified the dead body. No blood was found on the spot.

(7) The post-mortem of the dead body was conducted by Dr. Anil Aggarwal PW7 of All India Institute of Medical Sciences on 7-9-1980 at noontime and the death of the deceased was found to have been caused due to that very injury in the stomach which had out internal vital organs. Radhey Sham Public Witness was found on 7th September 1980 and his statement was also recorded. Thereafter the police went in search of the accused. Jai Chand was arrested on 9th September 1980 Rakesh accused was arrested on 11th September Gian Chand had surrendered in the court on 17th Nov. 1980, and he was taken into police custody on 18th November 1980. He was interrogated on 19th November 1980 in the custody of the police where he made a disclosure statement leading to the recovery of a knife from the bushes near Meera Bai Mandir at his instance in the presence of Shanker Lal and some police officials. This knife was duly sealed and secured after its recovery on 20th November 1980 vide memo Ext. Public Witness 17/G. Dr. Anil Aggarwal, after seeing the knife, expressed his opinion that injury found on the person of the deceased could be caused by this knife. Accused Naim was arrested on 6th February 1981.

(8) The learned Addl. Sessions Judge Shri R.P. Gupta in whose court the accused came to be tried, acquitted Jai Chand, Rakesh Kumar and Naim Ahmed accused after giving them benefit of doubt as he partially believed the evidence of the

prosecution witnesses. He however, found Gian Chand appellant guilty of having committed murder of deceased Radhey alias Lala and sentenced him to imprisonment for life and a fine of Rs. 2000.00 , in default of which he was directed to undergo six months further rigorous imprisonment. The order of conviction was recorded on 30-4-82 while the order of sentence was recorded on 7-5-82. It is against these orders that the appellant has made a grievance through this appeal.

(9) We have heard Mr. I.U. Khan, learned counsel for the appellant at great length and we have also heard Mr. R.P. Lao, counsel for the state. We may at once point out that the cause of death in this case is neither in doubt nor in controversy. The injury sustained by the deceased is not disputed, that the injury could be caused by knife of the quality seized in this case is not controverted. In fact this incident constitutes of two events one taking place in the hotel of Public Witness I Raj Kumar and the subsequent fatal event allegedly having taken place near Meera Bai Mandir. The witnesses to the first event are Public Witness 1 Raj Kumar, Public Witness 10 Radhey Sham, Public Witness 11 Gulshan and Public Witness 15 Sant Lal. There is, however, a major discrepancy in the testimony of Public Witness 10 Radhey Sham and Public Witness 15 Sant Lal as to the persons between whom altercation took place at the hotel of Public Witness I Raj Kumar. Whereas Radhey Sham Public Witness 10 has deposed that altercation took place between Rakesh and the deceased Radhey in which there was exchange of abuses and the deceased slapped Rakesh Public Witness 15 Sant Lal wants the court to believe that altercation took place between appellant and the deceased. Public Witness 10 has further deposed that at that time Gian Chand, Naim Ahmed and Jai Chand had already left the hotel. Public Witness I Gulshan was at the betel (Pan) shop of his brother situated nearby and noticed the quarrel taking place at Raju's hotel from a distance. He does not know the persons who were involved in the quarrel and since he had seen Sant Lal present there, he is said to have named Sant Lal before the police. He claims that he knew the address of Sant Lal who was residing in Gali No. 2 at Govindpuri and that he has seen his residence.

(10) Another witness who has testified to the event that took place in the hotel on the night of occurrence is Public Witness 1, Raj Kumar who has deposed that a

quarrel took place between the four accused on the one hand and the deceased Radhey alias Lala on the other band and that on his and Sant Lal's intervention all of them were turned out of hotel. He, however, said that nobody took any liquor in his hotel and he does not allow it. Public Witness 10 Radhey Sham would like the court to believe that two bottles of liquor were consumed by the deceased and his companions in the hotel and they had some eatables also.

(11) Thus, we find that there is abundant evidence on record that the accused together with deceased Public Witness 10 Radhey Sham and Public Witness 15 Sant Lal was in the hotel immediately before the incident and that altercation took place between Gian Chand appellant and Radhey deceased, as stated by Public Witness 15 Sant Lal, or between Rakesh and Radhey deceased as stated by Public Witness 10 Radhey Sham, or between all the accused on one side and the deceased Radhey on the other side. Be That what it is, the fact of the matter is that there was some sort of altercation between the deceased and the accused immediately preceding the incident in the hotel of Raju and there is also abundant evidence on record to show that the deceased accompanied by Public Witness 10 and Pw 15 proceeded towards the bus stop of bus route No. 425 with a view to enable the deceased to catch the bus and go to his residence at Chandni Chowk.

(12) It would thus be seen that the prosecution case in respect of the second event in which actual stabbing is stated to have taken place hinges on the testimony of Public Witness 10 Radhey Sham and Public Witness 15 Sant Lal. Radhey Sham Pw 10, however, does not support the prosecution case that they were either caught by the accused or that the appellant stabbed the deceased in his presence. He has also refused to subscribe to the prosecution case that he and Sant Lal were detained. All that he had said is that while they were proceeding towards bus stop, four or five persons came there raising noise and hurling abuses but then they went ahead of them. Deceased also went towards bus stand and he turned towards the street and went to his house. He, however, admits that he identifies Rakesh, Gian and Naim amongst these five persons.

(13) The whole case as such, as alleged by Mr. I.U. Khan, depends upon the fact as to whether the testimony of Sant Lal Public Witness 15 who claims to have

seen the incident of stabbing by Gian Chand, can be safely relied upon or not. Its inherent infirmities are also to be judged in the light of the testimony of Radhey Sham Public Witness 10 who admittedly was a fast friend of the deceased and would not normally and ordinarily like to screen the murderer of his close friend. The testimony of Sant Lal Public Witness 15 will also have to be viewed from the angle of his abnormal conduct and also in the light of the entries appearing in the inquest report which was admittedly prepared on the same night and sent to the doctor at 7 Am on the next morning. It is also to be borne in mind that Sant Lal as he himself has side, did not know the accused before and no identification parade has been done in this case. It would be seen that Sant Lal was so closely known to the deceased that they even sat together for drinks and meals. He claims to be an eye witness to the incident along with Radhey Sham. PW10. Radhey Sham Public Witness 10 has not supported his version of the incident. Sant Lal Public Witness 15 would like the court to believe that after the deceased was stabbed he and Radhey Sham were detained by the accused from going after the deceased and helping him and that if they do so it will be at the risk to their life. He would also like the court to believe that seen thereafter they were allowed to go and they went in search of the deceased 69 to 80 yards and after finding no trace of him both he and Radhey Sham Public Witness 10 quietly went to their homes and slept. One fails to understand as to why Radhey Sham Public Witness 10, who was very close to the deceased and would naturally be interested in bringing the culprit to book does not support this version of Sant Lal Public Witness 15.

(14) Sant Lal Public Witness 15 has probably given this Explanationn about detention by the accused with a view to explain his abnormal behavior as to why if at all he was an eye witness, he did not behave in the manner in which he should have otherwise behaved as a normal human being and as a friend. The behavior of Sant Lal is abnormal, usual and unnatural. It is strange that his friend has been stabbed and he does not go in search of him and instead quietly walks into his house and goes to sleep. It is his locality and he could have raised hue and cry and could have attracted the nearby people who were known to him. He did not make even the slightest effort to locate the deceased and remove him to hospital. This he does even though he knew that the deceased had sustained a fatal injury. He does not report the matter to anyone including his family members and the

police. Strangely, the court is required to believe by the investigating officer Dharampal that on the same night at 1.30 Am the statement of Sant Lal was recorded by him which means that all the facts were known to the investigating officer at 1.30 AM. and on the same night he has recorded the inquest report Ext. Pw 22/D-2 wherein the brief facts of the case have been mentioned. This inquest report does not disclose the fact that accused were responsible for committing this offence. This is so despite the fact that this inquest report is sent at 7 Am in the morning. All that is recorded in the inquest report is that it came to light that Sant Lal Devi, deceased etc. had drinks in the evening at the hotel of Raj Kumar where the deceased had a quarrel with Gian Chand, Jai Chand Naim and Rakesh who were also taking meals after drinks. The deceased had come towards the bus stand for getting bus plying on route No 425 for going to his house and where he met with this incident. Probably, these boys might have committed this incident. The actual position leading to the murder could not be ascertained as yet.

(15) Ought we to know what does this indicate Is it that when Sant Lal made this statement at 1.30 Am on the night of incident he also was in dark Apparently it is so. Even when the inquest report was sent it is only suspected that these accused persons might have committed this offence because if Sant Lal had made a categorical statement that he had seen the occurrence there is no reason why that fact should not have been mentioned in the inquest report and why it was not categorically stated that Sant Lal has pointed towards involvement of the accused in the commission of this crime that goes to show that Sant Lal at that stage had only expressed his suspicion the basis of altercation that had taken place between the accused and the deceased at Raju's hotel and was not an eye witness to the actual incident. That also goes to explain the most abnormal and unusual conduct of Sant Lal about which mention has been made above.

(16) Strangely, we find most material contradiction in his statement made before the police and before the court at trial. In his statement which he says was recorded by the police at 12.30 Am on the same night he has not said that there was exchange of abuse between the deceased and Gian Chand. He has also not stated that the accused after stabbing detained him and Radhey Sham Public Witness 10 from helping the deceased. Only at trial he says so, perhaps,

forestalling that he would be asked questions about his abnormal behavior. Further, in his statement before the police he has not said that he continued to remain at the scene of occurrence till the accused finally released Radhey Sham Public Witness 10. This otherwise seems to be most unnatural as accused in all probability after stabbing the deceased would run in panic. In his police statement he has also not said that the accused had threatened them in case they tried to go after the deceased. He has also not said in the police statement that they looked for Radhey Sham deceased but he was not visible. He states that he did not know Gian and that after the day of incident he has next seen him in the court. He also did not know Naim or Jai Chand accused prior to the incident. He further states at trial that he had only given the name of Rakesh and no other accused to the police. These material improvements he has made in his statement now only to explain his unusual and abnormal conduct. This goes to show that he was not in fact an eye witness to the incident of stabbing and he has in all probability not disclosed the same when he was called by the police at 12.30 AM. It is clearly established by the observation made by the investigating officer in the inquest report. Together with this, one has to take notice of Public Witness 20. Niraj Kumar, son of the deceased who reaches the scene where the dead body was found at 3 Am on the same night He was not told as to who has committed this offence. Could it, therefore, be said that Public Witness 15 who claims to be a witness to this occurrence, was an eye witness and has disclosed the same to the investigating officer on the same night From all that goes before us it is abundantly clear that he has only expressed his suspicion but was subsequently made to depose as eye witness to the incident of stabbing. One does not know how he was persuaded to do so? Pw 22 Dharampal, I.O. in his statement (at page 94 of the paper book) when he was asked a question by the defense counsel gives an interesting answer. It reads : Question : Was it possible that somebody might have stabbed Radhey Sham and thus killed him and later on put the dead body on the back steps of the bus Answer : I am unable to comment about. This gentleman has investigated the case and has laid a positive case before the court that appellant Gian Chand had stabbed the deceased within the view of PW 10 Radhey Sham and Public Witness 15 Sant Lal. Instead of emphatically, denying the suggestion he himself seems to be in doubt. This is very curious situation

making the entire investigation and the testimony of Sant Lal most unreliable.

(17) It would be noticed that PW15 Sant Lal most testimony has been disbelieved by the learned Addl. Sessions Judge qua the role attributed by him to the other accused which in other words, means that he has been partially believed and partially disbelieved. From his (Sant Lal) own admission it would appear that he did not know the accused excepting Rakesh and he had seen the accused for the first time on the date of incident and thereafter when he came to make statement before the court he says that he did not name the accused. It was, therefore, essential that the investigating officer should have conducted a test identification parade which he failed to do in this case. This is something fatal. The doctor does not say that the dead body smelt of alcohol nor was any solid Or semi-digested food found in the bowels of the deceased. In order to over-come the requirement of test identification parade the investigating officer has resorted to a novel method of saying in the statement made under section 161 Cr. P.C. that the names of all the accused were given by Sant Lal PW15. All this goes to show that Sant Lal was not eye witness and he had refused to become an eye witness even upon 7 Am next morning when the inquest papers were dispatched. Apparently, it was only thereafter that he was persuaded to become eye witness and one does not know how We can only guess.

(18) The most important reason for distrusting this witness (Sant Lal) is the indifferent manner in which he has acted vis-a-vis his friend who was allegedly stabbed before his own eyes and the most important thing in this regard is that the incident has taken place, according to him in his own locality and if he had not acted abnormally, defense would not have possibly invoked this argument. In a situation such as this defense can only show its innocence by reference to the probabilities on the basis of proved circumstances. It would be seen that in order to over-come the basic infirmities from which the statement before police was suffering, Sant Lal Public Witness 15 has made hectic efforts to fill up the lacuna in the prosecution story and this he has done for the first time at trial. That also makes his testimony unreliable. In view of the testimony of Radhey Sham Public Witness 10 it is impossible to believe that he was accompanying the deceased when the incident took place. Half of the body of the deceased was found inside

the bus while legs were dangling on the staircase. According to the medical evidence the deceased would have bled for an hour but no blood was found in the bus is covered and rain and could not wash away the blood. The Explanation given is that there were rains may be it washed away the blood. That goes to show that the deceased was killed at some other place under the circumstances different than the ones stated by prosecution and the body was dumped in empty bus in dark night. PW1 has categorically stated that there was electric failure at the time.

(19) We are, therefore, of the view that in fact there is no eye witness to the incident and for reasons stated above we are not at all inclined to believe that Sant Lal Public Witness 15 was an eye witness. One can at the most, on the basis of evidence tendered in the case, accept that there was some altercation between the parties at Raju's hotel and suspect that the accused might have committed this offence but one cannot, on the basis of such evidence be sure of as to which one of the accused actually had done it. In this regard we are left guessing. Sant Lal Public Witness 15's evidence is about exhortation, about one of the accused catching hold of the deceased and the appellant stabbing. The trial court has disbelieved the evidence about exhortation and catching hold of the deceased and has acquitted all the accused excepting the appellant. Finding is that Sant Lal and other PWs are partially reliable. Thus, coupled with the infirmities, as pointed out by us, it will be highly unsafe to base a conviction on such evidence. State has not preferred any acquittal appeals against the accused already acquitted.

(20) In the ultimate analysis we, therefore, find that the entire case against the appellant depends upon the testimony of Sant Lal Public Witness 15 and for the reasons stated by us we do not find that he was an eye witness to the incident and as such cannot be relied upon. We, therefore, accept this appeal and acquit the appellant.