

Chander Kant Vs. State

Chander Kant Vs. State

SooperKanoon Citation : sooperkanoon.com/688467

Court : Delhi

Decided On : Feb-02-1987

Reported in : 32(1987)DLT68; 1987(13)DRJ283

Judge : N.C. Kochhar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34; [Arms Act, 1959](#) - Sections 27

Appeal No. : Criminal Appeal No. 83 of 1976

Appellant : Chander Kant

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur and; P.S. Sharma, Advs

Judgement :

N.C. Kochhar, J.

(1) This judgment will also dispose of Criminal Appeal No. 84 of 1976 also styled as Chander Kant v. State. By this appeal, the appellant has challenged his conviction and sentence in Session Case No. 84/75 and in Criminal Appeal No. 84 of 1976, he has challenged his conviction and sentence in Sessions Case No. 85/75, vide two judgments dated 4th March, 1976 announced by Shri Joginder Nath, Additional Sessions Judge, Delhi.

(2) The prosecution story, in short, was as under : Public Witness 1 Arjun Singh is a business man. He received anonymous telephone calls at his factory premises between 9th and 11th November 1970. The caller had told him that he belonged to a dangerous gang. Initially Arjun Singh was directed to pay a sum of Rs. 1,00,000 but ultimately he was told to bring a sum of Rs. 3000 at about 4 p.m. on 11th November, 1970 at Rajghat where a person wearing black jacket and yellow muffler would meet him. Arjun Singh contacted Shri Singhal, the then Superintendent of Police and under the direction of the latter, he reported the matter to Sho Darya Ganj Police Station. Shri Om Parkash Sdpo of Patel Nagar Police Station organized a raiding party in which he included Shri G.R. Gupta, SDPO of Police Station Darya Ganj, Shri A.L. Chadha, Sho, Police Station Darya Ganj, P.C. Malhotra, Harminder Singh. Davinder Singh and other police officials. Three bundles, each having one note of rupees ten on the top and bottom and remaining having papers of that size, were prepared and kept in a brief case and Arjun Singh was directed to go to the spot where the police party in advance had been sent in plain clothes. Arjun Singh reached Rajghat at the appointed time. Chander Kant appellant who was wearing black jacket and yellow muffler met Arjun Singh and signalled him to move towards bushes and Arjun Singh asked him to show him his boss. The appellant gave a signal whereupon four other persons, namely, Ravi Kant, Prashant Nigarn, R.V. Raghavan and Kanwar Kakkar who were hiding in the bushes came out and surrounded Arjun Singh. Some of them were having hockey sticks, Prashant Nigam was having a knife and one of them was having a hunter, chloroform and packets containing chilly powder. The appellant took out a knife Ex. P 14 and snatched the brief case Ex. P 4 containing the three bundles Ex. P 1 to Ex. P3. In the meanwhile police party came and apprehended the appellant and four other persons. A case was registered vide Fir No. 1381/70 in police station Darya Ganj under Sections 395/397/34 I Pc and under Section 25/27 of the Arms Act. After completion of the investigation, the police filed the challan against the appellant and four above said persons under Section 395 and 397 Indian Penal Code and another case against the appellant under Section 27 of the Arms Act. The cases were committed to the Court of Sessions where the former case was tried as Session Case No. 84 of 1975 while the latter was tried as Session Case No. 85 of 1976.

(3) The prosecution examined Arjun Singh, P.C. Malhotra, Govind Lal, R.R. Gupta, Chaudhry Om Parkash, Harminder Singh, S.I. Om Parkash, and Inspector A.L. Chadha and Public Witness 1 to Public Witness 8 respectively. The case set up by the appellant and his co-accused in the cross-examination of the witnesses and in their statements under Section 313 Cr. P.C. was that they had been falsely implicated and that there was a car rally at Rajghat on the day of the alleged occurrence and that they had gone there to see that rally. It was further the case of the appellant, that Ravi Kant, the younger brother of the appellant, was class fellow of Raj Kanwal alias Bobby son of Jagdish Mitter, an employee of Arjun Singh complainant and be used to cut indecent jokes with his brother and on that account he had given severe beating to Raj Kanwar and he has been falsely implicated. It was also his case that neither the complainant nor any of the witnesses had come to Rajghat and that some police men had been sent there to bring a person wearing black jacket and yellow muffler. R.K. Bhanot, Vinod Kumar, Sudhir Datta and Vijay Kumar Sehgal were produced as Dw 1 to Dw 4 respectively. The learned trial court did not believe the case of the prosecution in regard to the involvement of the other four above mentioned persons and in regard to the recovery of the materials like chloroform bottle, knife, hockey sticks etc. from them and held that the possibility of their having gone to Rajghat to see the car rallye and having been apprehended by the police could not be ruled out. The learned trial court, however, found the appellant guilty on the ground thus the case property had been recovered from him. The appellant was thus convicted under Section 394 read with Section 397 Indian Penal Code in Sessions case No 84 of 1975 and under Section 27 of the Arms Act in Sessions Case No. 85/75 and was sentenced to undergo rigorous imprisonment for seven years in the former and rigorous imprisonment for one year in the latter with a direction that the sentences in both the cases would run concurrently. Feeling aggrieved, the appellant has filed these two appeals.

(4) I have heard Shri D.C. Mathur, learned counsel for the appellant, Shri P.S. Sharma, learned counsel for the State and have also perused the record of the case.

(5) Out of the above said 8 witnesses. Public Witness 3 Gobind Lal and Public Witness S.I. Om Parkash are formal and their statements do not help the prosecution all in any way, the reason being that Public Witness 3 Gobind Lal was working in Telephone Exchange and was asked to trace some calls but with no result Public Witness 7 S.I. Om Parkash had recorded the statement of Public Witness 3 Govind Lal. Public Witness 2 P.C. Malhotra is the partner of Public Witness 1 Arjun Singh. He has only posed that on 9th November 1970 he had a talk with the latter about threatening calls being received by him, and that a report was lodged the police.

(6) The case of the prosecution that when Public Witness 1 Arjun Singh reached the spot, the appellant met him and after taking out knife, snatched the bag from him is supported by Public Witness 4 G.R. Gupta, Public Witness 5 Chaudhary Om Parkash, Public Witness 6 Harminder Singh and Public Witness 8 Inspector A.L. Chadha. Their statements, however, are in variance with the statement of the complainant Arjun Singh. According to him, when he reached the spot, the appellant had only signalled him to move towards the bushes and shortly thereafter 6/7 boys came there and surrounded him and that one of them took out a knife and the other boy snatched the bag from him and that in the meanwhile police came there and apprehended the boy who took out the knife and the boy who had snatched the bag from him. According to him, therefore, it was not the appellant who had taken out the knife or had snatched the bag from him.

(7) There are other significant contradictions in the statements of the above 5 witnesses. According to the case of the prosecution, K.C. Malhotra, Harminder Singh and Devinder Singh were included in the raiding party and this fact has been deposed by Public Witness 4 G.R. Gupta, Public Witness 6 Harminder Singh and Public Witness 8 A.L. Chadha (1.0.). According to Public Witness 5 Choudhary Om Parkash only Arjun Singh and K.C. Malhotra were there whereas according to Public Witness Arjun Singh, P.C. Malhotra, K.C. Malhotra and Harminder Singh were joined in the raiding party.

(8) According to Arjun Singh the boy who had taken out knife and also the boy who had snatched the bag from him were apprehended at the spot but the other

boys had tried to slip away and the police apprehended them after chasing for 20/30 yards ; according to Public Witness 4 G.R. Gupta and Public Witness 8 A.L. Chadha, all of them were over powered at the spot and none of them tried to run away whereas according to Public Witness 6 Harminder Singh, the appellant Chander Kant had run for 15 to 30 yards and the other boys had run for a distance of 15/20 yards before they were over powered by the police. According to Public Witness 1 Arjun Singh they all had remained at the spot for about an hour ; according to Public Witness 4 G.R. Gupta they were there for 20/25 minutes ; according to Harminder Singh they were there for about four hours ; according to Public Witness 8 A.L. Chadha they remained there for 5 to 6 hours ; and according to Public Witness 5 Ch. Om Parkash he had stayed there for a short time. According to Public Witness 1 Arjun Singh 20/25 persons had assembled at the spot and 10 to 12 taxis were already lying parked there ; but according to Public Witness 4 G.R. Gupta and Public Witness 8 A.L. Chadha, no taxi was lying parked at the spot and none had come there and according to Public Witness 6 Harminder Singh he did not remember if any tax is were lying parked at the spot. According to G.R. Gupta, he and the members of the police party had gone to Rajghat on foot from the police station Darya Ganj but Chaudhary Om Parkash had gone in a private car whereas according to Chaudhary Om Parkash, he had taken G.R. Gupta and other members of the police party from police station Darya Ganj in a car and according to A.L. Chadha, all the members of the police party had gone on foot from police station Darya Ganj to Rajghat. According to Chaudhary Om Parkash and A.L. Chadha, all the members of the raiding party including G.R. Gupta had concealed themselves behind the bushes but according to G.R. Gupta, he had kept standing by the side of the slope. According to Arjun Singh the caller had told him to come to Rajghat in a taxi and a taxi was arranged by the police and the taxi driver was made to sit in the police station and one police man had remained in the taxi when he had gone to Rajghat whereas according to G.R. Gupta, Chaudhry Om Parkash, Harminder Singh and A.L. Chadha, Arjun Singh had come to the spot in his own car and G R. Gupta had even mentioned the number of the car which also finds mention in the statement of Harminder Singh recorded by the police under Section 161 Cr. P.C.

(9) It may also be mentioned that neither Davinder Singh nor K.C. Malhotra have been examined and neither any of them nor G.R. Gupta nor Chaudhry Om Prakash has signed any of the recovery memos which had been prepared by A.L. Chadha and have been attested by Arjun Singh and Harminder Singh only.

(10) As noted earlier, in Sessions Case No. 84/85, the appellant and four other persons were standing trial. In his cross-examination, Public Witness 1 Arjun Singh could not state whether the persons other than the appellant present in the court as accused were the same persons who were apprehended at the spot. It is interesting that although Harminder Singh has supported the prosecution version in toto, in his cross-examination he could not identify the appellant as the person who was wearing black jacket and yellow muffler and even when appellant was pointed out to him and asked whether he was the person wearing those clothes, he could not say so.

(11) It is also significant that although in his statement on oath before the trial court Arjun Singh deposed that he had gone to the spot in a taxi, in his statement before the committing court with which he was duly confronted, he had deposed that he had gone to the spot in his own car. He denied that he knew Davinder Singh and also denied that he had given his name and address in his statement under Section 161 Cr. P.c but was duly confronted with the said statement where the name and address of Davinder Singh are mentioned. Statement of Arjun Singh was recorded in Session Case No. 84/75 on 15th April 1974 and in Session Case No. 85/75, under the Arms Act, was recorded on 15th January 1976. Although in his statement made in the Session Case No. 84/75 he did not state that it was the appellant who had taken out the knife and snatched the bag from him, in his later statement, under the Arms Act, he deposed in this regard against the appellant and was confronted with his statement made in the Session Case No. 84/75.

(12) It is the case of the prosecution that Arjun Singh had gone with bag Ex. P 4 on receipt of the telephone call from the caller and it is nobody's case that Arjun Singh resisted handing over the bag and it appears strange that the appellant should have taken out the knife for taking the bag from Arjun Singh.

(13) On reading the entire evidence it is not possible to hold that the above said members of the raiding party were at the spot and as such the argument that on receipt of report from Arjun Singh, some police men were sent to Rajghat to bring the person wearing black jacket and yellow muffler is without force. The prosecution has, thus, failed to bring home the charges to be appellant.

(14) In the result I accept this appeal as well as Criminal Appeal No. 84 of 1976, set aside the conviction and sentence passed on the appellant in both the cases and acquit him. He is on bail. He need not surrender to his bonds which stand discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com