

Sat Pal Vs. the State

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Court : Delhi

Decided On : Jul-22-1985

Reported in : 28(1985)DLT325; 1986(11)DRJ242

Judge : Rajindar Sachar and; Malik Sharief-ud-Din, JJ.

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

Appeal No. : Criminal Appeal No. 43 of 1982

Appellant : Sat Pal

Respondent : The State

Advocate for Pet/Ap. : N.L. Kakkar and; R.P. Lao, Advs

Judgement :

Malik Sharief Ud-Din, J.

(1) In this case the victim is one Dasrath, son of Chedi, a Rikshaw Puller, Old Lajpat Rai Market Delhi, who after allegedly receiving a knife injury in the abdomen at the hands of the appellant was removed to Lok Nayak Jai Parkash Narain Hospital by his wife, Shakuntala, Pw 3. The incident is dated 22nd August 1979 and has allegedly taken place at the Jhugi which was occupied by the deceased Darshan and Shakuntala Pw 3. The information of the deceased having been admitted to the hospital by Pw 3 Shakuntala was conveyed to the police

station Kotwali by Duty Constable Ram Avtar pursuant to which a report Serial No. 102-B was recorded in the police diary and A.S.I. Thakur Singh Pw 1 was entrusted with the same. AS1 Thakur Singh on his arrival at the hospital procured a certificate from the doctor about the patient unfit for making a statement and finding no witness to the occurrence present in the hospital and also depending upon the medico-legal report made an endorsement on the copy of the Daily Dairy with the request that a case under section 307 Indian Penal Code be registered. A case was accordingly registered at the aforesaid police station. Asi Thakur Singh is then said to have proceeded to the scene of incident where he meets Pw 3 Shakuntala, Pw 6 Om Parkash and Pw 7 Ali Hasan, the alleged eye witnesses and records their statements. They are stated to have informed Asi Thakur Singh that it was the appellant who inflicted injury with a knife on the person of Darshan. Asi Thakur Singh further prepares with plan of the place of Incident and thereafter he is supposed to have arrested the accused in the morning hour from bus stand at Shahdara after being informed by some one that the accused was at the bus stand. He is alleged to have seized the knife which the appellant was carrying on his person besides the Pajama which the accused was wearing and which was found to be blood stained. In the morning at 11.30 a.m. the deceased is said to have succumbed to his injury and on receiving the information at the police station, the nature of the case was converted to section 302 Indian Penal Code and Si Ramphal Singh was entrusted with further investigation.

(2) It appears that since nothing else had to be done, all that Si Ramphal Singh did was to prepare inquest, make a request for post-mortem and take sample blood of the deceased into possession, procure the result of the serological analysis by the C.F.S.L. and thereafter submit a report under section 173 Criminal Procedure Code . to the Court.

(3) The post-mortem of the dead body of the deceased was conducted by Dr. B.N. Reddy who opined that the death was due to haemorrhage and shock as a result of stab injury on the abdomen of the deceased and that it was possible by the knife allegedly seized from the accused. At the time of post-mortem Dr. Reddy also noticed some operational injuries with which we are not concerned. We may at once state that the injuries sustained by the deceased and the cause of his

death is not disputed. It is also not disputed that these injuries could be caused by a weapon such as knife which has been seized in the case. We, therefore, do not propose to refer to the evidence of Dr. B N. Reddy in respect of the injuries particularly in the light of the fact that details thereof have been given in the judgment of the learned trial Judge.

(4) After considering the arguments advanced and the circumstances in their entirety we are of the view that the success or otherwise of this case depends on the fact as to how far the Pw 3 Shakuntala, Pw 6 Om Parkash, Pw 7 Ali Hasan and Pw 12 Asi Thakur Singh as also Pw 9 Ram Avtar Constable can be trusted. PWs 3, 6 and 7 afore-mentioned are supposed to be the eye-witnesses. Pw 9 is a Constable who has conveyed information about the deceased to the hospital while Pw 12 Asi Thakur Singh is the person who investigated this case.

(5) The version tendered by Pw 3 Shakuntala is that the appellant quarrelled with Dasrath as he was objecting to her residing with Dasrath at the roof of Dasrath's house and that on the night of occurrence when she and Dasrath were sleeping at the roof, Satpal appellant suddenly appeared there and awakened Dasrath to tell him that his time was over. The deceased according to her was also told by the appellant as to why he was keeping Shakuntala with him. According to her a quarrel ensued in which the appellant gave a knife blow in the abdomen of Dasrath and thereafter, after jumping from the height of 15 it accepted from the scene. According to her the deceased was removed to the hospital where in the morning he breathed his last. She further testified that Om Parkash Pw 6, who was also sleeping at the roof at some distance, was awakened by her and he too had seen the incident. According to her Ali Hasan Pw 7 also witnessed the incident. She further wants the court to believe that even though the deceased was crying for about five minutes and had fallen on the ground no blood had oozed out from the injuries and that she had tied the wound with a lungi.

(6) Similar version about stabbing has been given by Pw 6 Om Parkash and Pw 7 Ali Hasan though in his cross-examination Pw 7 Ali Hasan has admitted that he did not actually see the accused taking out knife and inflicting a blow on the deceased. Both these witnesses would have the court to believe that they had

returned after seeing a movie at 1.00 am. and were just lying on the cot when they saw the accused moving towards the house of Dasrath. This they would have the court to believe despite the testimony of Pw 3 Shakuntala that after the appellant started quarrelling with the deceased she awakened Om Parkash and this is so said despite the fact that normally at 2 a.m. they would be sleeping.

(7) We have great doubt about the truthfulness of all these three eye witnesses as also about the credibility of Pw 9 Ram Avtar and Pw 12 Asi Thakur Singh for the following reasons. It would be noticed that Asi Thakur Singh, Pw 12 had immediately after not finding any witness of the incident available at the hospital proceeded to the scene of incident where he prepared a site plan and allegedly met all the three eye witnesses and recorded their statements. He would like us to believe that he did not find any blood stains on the scene of incident. This is something which is intriguing even though the injury was fatal and the deceased as per testimony of Shakuntala Pw 3 had cried for five minutes and had fallen on the ground. Normally some blood was expected to fall on the scene. There is a suggestion from the prosecution that the trousers of the appellant were seized as the same was found stained with blood and the suggestion is to the effect that these blood stains were received by the accused at the time of incident. Despite this suggestion the court is required to believe that no blood had oozed out and no blood was found at the scene. Mr. R.P. Lao while arguing for the State submitted that since Shakuntala had tied the Lungi around the injury no blood had fallen on the scene. A perusal of the testimony of Pw 3 would show that she, even if believed in this regard, had tied the Lungi not till the deceased had fallen after receiving the injury. Moreover, no such Lungi has been seized. The court is required to believe that it was Shakuntala who had brought the deceased to the hospital and this is so said by Ram Avtar Pw 9 Deputy Constable as in this regard he had conveyed a message to the police station which was recorded in the daily diary. We are surprised that when soon after the incident Asi Thakur Singh visited the hospital Shakuntala Pw 3 was not found around. After all, she had been residing with the deceased and if she was so concerned as to carry the deceased to the hospital she was not expected to go into unconcern and leave the hospital immediately after dumping the deceased. If the prosecution story is believed that Pw 6 Om Parkash and Ali Hasan Pw 7 had also gone to the hospital with the

deceased then the information to police could go through them. We make these observations in order to judge the validity of the submission of Mr. R.P. Lao that all the three eye witnesses thereafter had gone to police station and on learning that police had gone to the scene, all of them went there where their statements were immediately recorded by Asi Thakur Singh.

(8) The most significant circumstances against the prosecution in this regard is that the Mlc, which the Asi Thakur Singh Pw 12 is supposed to have procured from the doctor about the unfitness of the deceased to make a statement, has been suppressed. Our experience while dealing with innumerable such cases is that when an injured is carried to hospital the Casualty Medical Officer does make a record of the fact as to who brought the injured to the hospital. This is normally and invariably so recorded, in the present case the suppression of this record clearly goes to show that the deceased was brought to the hospital not by Shakuntala but by someone else and since Shakuntala is imported as an eye witness it is to be somehow shown that she in fact was the person who brought her to the hospital. This is deliberately done to clothe her testimony with certain amount of credibility and to show that she was an eye witness to the incident. As we have indicated, the fact that no blood was found at the scene of incident together with the fact that Shakuntala in fact had not brought the deceased to the hospital clearly goes to show that the incident of stabbing the deceased has taken place at a place and under the circumstances different than those which the prosecution wants the court to believe. Our belief in this regard is further strengthened when a reference is made to Mlc which has gone with the inquest report Ex. Pw 8/C. This document has been sent to the doctor conducting postmortem by Si Ramphal Singh and this document has come into existence at 11.20 a.m. on 22-8-1979 immediately after the deceased had died. In this document the Doctor who authored it has clearly mentioned that the patient was presented to Casualty Medical Officer with stab in the abdomen when he was involved in a fight. The doctor has further said that all their efforts to save the patient proved abortive and the patient could not survive. This would go to show that this history has been recorded from some record maintained in the hospital and the record is to the effect that patient was presented to Casualty Medical Officer with stab in the abdomen which he had received while he was involved in a

fight. This clearly goes to show that the story which the prosecution has brought out now about Pw 3 Shakuntala having brought the deceased to hospital and that Shakuntala Om Parkash and Ali Hasan being the eye-witnesses was not in existence at all. We, therefore, have no doubt that stabbing of the deceased has taken place in circumstances and at place different than what the court is required to believe

(9) This by itself is sufficient to throw out the prosecution case. We may, however, make a reference to some other facts which clearly stare in the face. Asi Thakur Singh Pw 12 would have the court to believe that immediately after the recording of the statements of the three eye witnesses at the scene of incident, he got information that the accused could be apprehended from Shahdara bus stand in the early hours of that morning. According to him he accompanied by the informer and another H.C. Mangal Dass went there and arrested the accused and recovered a knife from him and then also on finding his Pajama stained with blood seized the same. He further goes on record to say that the informer was not made to sign the seizure memo in respect of the recovery of knife from the accused. We are surprised as to who was he informer, who had seen the accused waiting at the bus stand at Shahdara travelled such a long distance in the early hour of the morning to inform the Asi about the presence of the accused at Shahdara bus stand. We are told that from Lajpat Rai Market to Shahdara there is a long distance and one fails to understand that accused would have waited at Shahdara bus stand till the informer conveys the message to Asi and till the Asi comes to apprehend him. That goes to show that the accused was not arrested in the circumstances as stated by him and was arrested in all probability from his house situated in Vishwas Nagar, Shahdara. That also accounts for the lapse of the Investigating Officer in not associating any independent witness with the recovery of knife from the accused,

(10) To us it appears that since the accused had to be involved in the commission of this crime and since a solution had to be provided to the case, Pw 9 Ram Avtar Constable was made to state that he conveyed the information, about Shakuntala having brought the injured to the hospital, to the police station. Nobody else excepting this gentleman says that Shakuntala had brought the deceased to the

hospital and the contemporaneous record made in the hospital in this regard was therefore suppressed. We may, however, reiterate that document Ex. Pw 8/C which has gone with the inquest report clearly shows that the prosecution is not supported by the hospital record in this regard 12. The other evidence that was pressed into service to connect the accused with the commission of this crime was the opinion of the C.F.S.L. that Pajama seized from the accused was having human blood of group 'B'. We are surprised at the callous type of investigation. In order to connect the accused, on the basis of this record, with the commission of crime it was necessary for the prosecution to prove that the blood group of the deceased was 'B'. In this regard the sample blood of the deceased which was seized by Si Ramphal Singh was never sent to the C.F.S.L. This appears to have been deliberately done as otherwise after seizing the sample blood if the idea was to find out whether the stains on the Pajama of the accused were of the blood group of the deceased then there was no reason for the Investigating Officer not to send the sample blood for analysis. The C.F.S.L. has found the blood on the knife too small for serological analysis and in the absence of any evidence about the blood group of the deceased it cannot be said that the blood on the Pajama of the accused was that of the deceased. Moreover, since the court is told that no blood had fallen at the scene of incident it is impossible to believe that it could stick to the Pajama of the accused. With these observations we find that the eye witness account in the present case is most inconsistent with the circumstances and cannot be relied upon. The result is that this appeal has to be accepted. We, therefore, accept the appeal and acquit the appellant.