

Subhash Vs. the State

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Court : Delhi

Decided On : Oct-22-1986

Reported in : 1987(1)Crimes242; 31(1987)DLT100

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Criminal Appeal No. 222 of 1984

Appellant : Subhash

Respondent : The State

Advocate for Pet/Ap. : D.R. Sethi, Adv

Judgement :

M.K. Chawla, J.

(1) Originally, accused Ram Niwas, Ramesh (deceased), Ram Chander and Subbasti, all residents of Ragbubir Nagar. Delhi were committed to the Court of Sessions to stand their trial under Sections 307/34 I.P.C. The prosecution case, which is based on the first information Report Ex. PW-2/a by Ram Kishan, brother of the injured Om Parkash, in brief, is that Kishan, brother of the injured Om Parkash, in brief, is that the complainant is residing at B-147, Raghbir Nagar, Delhi and on 28.6.82 at about 11.45 a.m , he had gone to buy some medicine from the

Chemist shop of Dr. S.K., Biswas, at a nearby place. At that time, he noticed accused Ramesh (since deceased) Ram Chander, Ram Niwas and Subhash standing near the shop. He knew them from as being the residents of the same area. He and his brother were in fact on inimical terms with the accused. On seeing him, they called out that it was a good opportunity for them to take revenge. Ram Kishan sensing trouble immediately turned his cycle and came to his house. However, after about 15 minutes of his reaching home. all the accused reached his house, where he Along with his brother Om Parkash was standing. At that time, Ramesh and Ram Niwas were armed with hockey-sticks. His brother Om Parkash enquired from the accused as to what was the matter and why they have come there. At that very moment, Ramesh exhorted his companions to kill both the brothers. Ramesh then held Ram Kishan while Subhash whipped out a knife and gave a blow on the back near the waist of Om Parkash. The injury caused profuse bleeding and he fell on the ground. In the meanwhile. Ram Niwas tried to give a hockey below on the complainant which he warded off. In the commotion and bearing the noise, one Rameshwar who had come in the neighborhood tried to intervene but he was also stabbed by Ram Chander with knife on the right side of his ribs. Ram Kishan further stated that this incident was seen by Smt. Bimla, Krishna and Sarwati. All the witnesses raised hue and cry as the result of which, the accused made good their escape leaving behind hockey sticks and a pair of chappals. Ram Kishan was removed to the hospital where he was medically examined.

(2) On being informed of the incident, S.I. Umrao Singh of Police Station Rajouri Garden, reached the place of occurrence Along with other constables. On coming to know that the injured had already been removed to the E.S.I. Hospital, he deputed two of his constables to guard the scene of occurrence and Along with another Constable Mohinder Singh reached the hospital. The sub-inspector recorded the statement of Om Parkash also and on that basis got registered a case u/s 307/34 Indian Penal Code . against the accused persons. Later on, he took into possession the various articles from the spot, including the blood control earth, a pair of chappals and hockey-sticks, etc. All the articles were sealed into separate parcels and deposited in the Malkhana. He also got the site photographed and prepared the site-plan. On the same day, he succeeded in

arresting all the accused and at the instance of accused Ram Chander and Subhash recovered two daggers Ex.P-4 and P-6 from a pit near the shop of a Bharbhunja in Raghbir Nagar itself.

(3) After the prosecution led evidence, the statement of the accused were recorded. All the accused denied the prosecution case in toto. Accused Ram Chander took the plea that he was not present at the spot whereas accused Subhash pleaded that injuries were inflicted by Ramesh, deceased and he has been falsely implicated in this case by the complainant party due to the previous enmity. However, none of them produced any evidence in defense.

(4) The learned Additional Sessions Judge on consideration of the entire material on record, came to the conclusion that accused Ram Chander and Ram Niwas deserved benefit of doubt and so far as the complicity of Ramesh is concerned, he having died during the course of recording of the prosecution evidence, no finding can be returned against him. Ultimately he held accused Subhash guilty of an offence u/s 307 Indian Penal Code and convicted him accordingly. After considering the arguments on the question of sentence the Additional Sessions Judge awarded a sentence of R.I. for 7 years Along with fine of Rs. 1000.00 in default of which he was directed to undergo further R 1. for one year.

(5) Subhash is not satisfied with the conclusion of his guilt and has challenged his conviction and sentence in the present appeal. The appeal was filed by Shri Ravinder Singh and Shri A S. Sohal, Advocates. This appeal was listed for hearing before this Court before the October-break. But in spite of that, no body cared to put in appearance. Even today, none of the counsel has cared to pursue present appeal. I have heard the counsel for the State and with his assistance gone through the record car, fully.

(6) In this case) the prosecution has examined PW-I,OrnParkash,tbe injured, PW-2 Ram Kishan, the complainant, Public Witness -12, Smt. Bimal.as the eye-witness of the occurrence. The first two witnesses have withstood the test of cross-examination and in spite of my going through the entire evidence, I have not been able to find out any sentence or a word which may throw doubt on the veracity of their testimony. PW-2, Ram Kishan has also been held as wholly reliable by the

learned Addl. Sessions Judge with which finding I am in entire agreement, Om Parkash is the person concerned and he has given in minute details the circumstances under which he was stabbed by Subhash. His testimony in my opinion is consistent with the testimony of his brother Ram Kishan, he cannot be doubted nor the cross-examination suggests this witness is an unreliable one. There are of course some minor discrepancies regarding the actual manner of catching hold of Om Parkash and the manner how the dagger blow was given to Om Parkash by Ramesh. These discrepancies to my mind are wholly minor in character and have rightly been ignored by the learned Addl Sessions Judge by giving valid reasons. About the actual occurrence as a result of which Om Parkash received the knife blow from Subhash no discrepancy appears from the evidence. Similarly, Smt. Bimla was responsible for forming a cloth-sheet on the wound of Om Parkash before he was removed to the hospital. She is a neighbour of the injured and had no motive to falsely implicate any of the accused. She also supported the ocular testimony of the brothers inasmuch as by categorically stating that Om Parkash was stabbed by Subhash, she appears to have given true facts to the Court.

(7) From the careful perusal of the evidence of Dr. Sinha, who performed the operation upon Ram Kishan, I find that the medical evidence is quite consistent with the ocular testimony of the injured and the other eye-witnesses. It is true that in the M.L.C., Ex. PW-9/A, the name of Ramesh is mentioned as one of the assailants but that fact, by itself, will not absolve Subhash, whose name was specifically mentioned in the First Information Report Ex PW-2/A lodged by Ram Kishan immediately after his brother was admitted in the hospital. Name of Ramesh appears to have been mentioned in the M.L.C. as apparently he was the ring-leader of the group. Similarly, I do not find any substance in the ground taken in the appeal that the place of occurrence is wrongly mentioned in the D.D. Report Ex PW-7/A vide which the Investigating officer had reached the site. This D.D. Report admittedly was recorded on the telephonic message given by one Ram Dei, Public Witness ., but this aspect cannot overcome the unimpeachable evidence regarding the site of the incident as deposed not only by the eyewitnesses but also from the recovery of the articles taken into possession from in front of house No. B-147, Raghbir Nagar. The photographs and the site plan

also bear the testimony to the place of occurrence.

(8) No other point appears to have been made in the grounds of appeal nor does it require going into. I am in entire agreement with the reasoning applied by the learned Addl. Sessions Judge by which the accused was held guilty of the offence charged with.

(9) However, on the question of sentence, I am inclined to interfere. The order of Learned Addl. Sessions Judge by which the accused was sentenced to R.I, for a period of 7 years is dated 15-10-84. From the perusal of the order sheet, I find that the accused is still in jail and near about 2 years have already expired. The only injury on the person of Om Parkash alleged to have been caused by the present appellant was on the left loin under his left limber region. The injury was described as dangerous and caused by a sharp-edged weapon. The injured was immediately operated upon and was ultimately discharged from the hospital on 8-7-82 i.e. after a period of 9 days or so. The accused prima facie appears to be a person of no means At the time of commission of the offence, the age of the accused was about 17 years. He has already served the imprisonment for a period of about 2 years. Keeping in view the extenuating circumstances of the accused, the ends of justice, in my opinion, will be fully met if the sentence of 7 years is reduced to a period of 3 years. In default of payment of fine, he will be required to undergo further R.I. for a period of six months. In case the accused is still undergoing imprisonment, he be released immediately after the completion of the sentence awarded by this Court. If he is on bail, he be taken into custody to undergo the remaining part of the sentence. The appeal is disposed of in these terms.

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