

Ramesh Kumar and ors. Vs. the State

Ramesh Kumar and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/689132

Court : Delhi

Decided On : Aug-30-1985

Reported in : 30(1986)DLT34; 1985(9)DRJ245

Judge : S.N. Aggarwal and; Malik Sharief-ud-Din, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 301; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 87 of 1982

Appellant : Ramesh Kumar and ors.

Respondent : The State

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

Judgement :

R.N. Aggarwal, J.

(1) Krishan Kumar alias Kuddi, Raj Kumar alias Puppi and Ramesh Kumar were tried in the court of Shri T.S. Oberoi, Addl. Sessions Judge on the charges under sections 302 and 324 read with section 34 of the Indian Penal Code. The learned trial Judge found all the accused guilty of the offences charged with and sentenced each one of them to imprisonment for life on the first charge. The sentences were ordered to run concurrently.

(2) Against their convictions and sentences the accused have come in appeal.

(3) The case for the prosecution is this. There is a dramatic club by the name 'Naresh Dramatic Club' in Harijan colony, Tilak Nagar. Public Witness 4 Jagdish Kumar was the director of the said club. The club used to play Ram Lila every year during the Dussehra. The appellants during the staging of Ram Lila in the year 1979 had created trouble.

(4) On 25th September 1980 at about 7.30 p.m. Public Witness 4 Jagdish Kumar, Public Witness 6 Inder Jit, Public Witness 9 Surinder Kumar, Public Witness 14 Satish Kumar and the deceased Rajesh Kumar were going from house to house to collect funds for the celebrations of Ram Lila. As they reached near the house of the appellants. Raj Kumar and Krishan Kumar came there and they said that they would not allow Ram Lila to be staged by Jagdish Kumar and others nor would they allow them to collect funds for the same. There were exchange of abuses between Krishan Kumar, Raj Kumar and the deceased Rajesh Kumar. Ramesh Kumar appellant also came there in a three wheeler scooter. Ramesh caught Rajesh Kumar and felled him on the ground. Jagdish Kumar intervened to save Rajesh Kumar but Raj Kumar and Krishan Kumar took out chhuries and they assaulted Jagdish Kumar. Jagdish Kumar somehow managed to escape unhurt. Surinder Kumar also intervened to save Rajesh Kumar but he was hit by Krishan Kumar with the chhuri on his right arm. Thereafter, it is alleged, Raj Kumar gave knife blows to Rajesh Kumar and Satish Kumar. Rajesh Kumar received the knife blow on the left side of the chest. Satish Kumar got injuries on his right thigh and left arm. Inderjit also received injuries on the right thigh. Thereafter, it is alleged, that Krishan Kumar and Ramesh Kumar succeeded in escaping but Raj Kumar was overpowered by the prosecution witnesses at the spot, and in the process of being captured by the prosecution witnesses Raj Kumar is said to have sustained injuries on his head.

(5) One Shri Giriraj Singh informed the police control room on telephone that a quarrel is going on at Gandhi Ashram, Harijan colony, Tilak Nagar, Ex. Public Witness 17/A is a copy of the report recorded at the police control room and the time given in the report is 8.17 p.m. Sub-Inspector Om Parkash was deputed to go

to the spot of occurrence. Sub-Inspector Om Parkash recorded the statement Ex. Public Witness 4/A of Jagdish Kumar and sent the same at 9.40 p.m. to the police station for formal registration of the case. The formal report Ex. Public Witness 13/C was recorded at 9.50 p.m. at police station Tilak Nagar. Rajesh Kumar was removed to the Willingdon hospital where he was declared dead.

(6) Dr. Bharat Singh performed autopsy on the dead body of Rajesh Kumar and he found the following injuries on the body of Rajesh Kumar:-

'1. One incised stab wound on the left side chest in mid axillary line 8' below the armpit size 1' x 1/2' X The wound was placed obliquely and was spindle shaped. Margins were regular and clean cut. Blood was oozing out from the wounds. 2. Abrasion on the back of the left shoulder size 1' x 3/4' brown in colour.'

On internal examination the doctor found that injury No. 1 had entered the left side chest cavity after cutting the lower border of 9th rib and part of 9th space muscle. After this the tract is continuous on the diaphragm. After cutting the diaphragm the wound was continuous on the greater curvature of stomach on the lateral side. Size of the cut on the stomach was 1' X 1/4' X len lumen deep. Total depth of the injury was found to be 3". The doctor opined that injury No. 1 was sufficient to cause death in the ordinary course of nature. The doctor in cross-examination by the accused deposed that injury No. 2 was not caused by a sharp edged a weapon. It was an abrasion and a simple injury. As regards injury No. 1 the doctor opined that it was possible by a sharp object.

(7) Satish Kumar Public Witness , Inderjit Public Witness and the accused Raj Kumar were also examined in the hospital on 25th September 1980, and exhibits Pw 16/C, Public Witness 16/B and Public Witness 16/A are respectively the medico legal reports in respect of them. One confused lacerated wound was found on the scalp of Raj Kumar and one confused lacerated wound on the eye brow. There were two more small injuries on the body of Raj Kumar. On the body of Satish Kumar Public Witness , one sharp cut wound on the right thigh and one sharp cut wound on the fore-arm were found. The nature of the injuries was stated to be simple and were caused by a sharp object. On the body of Inderjit two sharp cut wounds on the right thigh were found. The injuries were stated to be simple

and were caused by sharp object.

(8) Krishan Kumar accused was examined by Dr. Mukhtiar Singh of the police hospital on 1st October 1980 and he found four scabbed wounds on the various parts of the body of Krishan Kumar, the first was on the left side chest, the second on the back of the right shoulder, the third on the left side of the iliac crest and the fourth on the anterior part of the scalp left side. Exhibit Public Witness 15/A is the report of the doctor in respect of Krishan Kumar. Dr. Mukhtiar Singh in cross examination stated that all the injuries found on the body of Krishan Kumar could not be self inflicted. The doctor stated that all the injuries could be by the same weapon as the nature of all the injuries is almost the same.

(9) Raj Kumar accused in his statement under Section 313 of the Code of Criminal Procedure denied the prosecution case. As regards the injuries on his person he stated that on 25th September 1980 at about 7.30 p.m. he had gone to the municipal water tap for bringing water, that he was only in a kachha and baniyan that a quarrel had taken place somewhere else between Surinder, Satish, Inder and some other persons, that Surinder raised alarm and came to the water tap and he gave a lathi blow on his head and Satish and Inder were armed with knives and one person was having a sword and they all started beating him, that after receiving the head injury he tried to go to his house but he became unconscious and fell there, that he regained consciousness in the hospital. The accused further stated as under :

'Jagaish Kumar the Fir maker is the brother of Satish, Surinder, the injured, and also real brother of Sunder Lal who is a witness in this case. Smt. Chandu is the mother of Inderjit. All the above persons except Inderjit are sons of Ram Parsad who is a very influential man in Harijan Basti and he remained as Pradhan in Harijan Basti for several years. In one of the Presidential Election in which Ram Parsad was the candidate, I along with my brothers and other family members supported the other candidate and later on Sunder Dass who is one of the sons of Ram Parsad had illegally occupied 28 plots in the Harijan Basti and sold each for his own economic gains for Rs. 500.00 each, to the non-allottees, and in the same way, Surinder Public Witness has also illegally occupied eight such plots in the

Harijan Basti and sold the same for the consideration of Rs. 500.00 each, to the nonallottees, even inspire of great agitation by the other poor allottees. My brother Ramesh, myself, along-with my father and Kishan Kumar brother raised a voice against this illegal act of Sunder Lal and Surinder, both sons of Ram Parsad in the colony and we have also put this thing in the meeting of the colony and due to this reason Ram Parsad and his sons became inimical towards myself and my family members. They have also grudge that my brother Ramesh had managed one more allotment which is adjacent to my father's house and that they all were considering us as a 'roara' in their way. While there was a quarrel somewhere else I was encircled near the water tap on 25 9.80 and there I was attacked. I sustained injuries and became unconscious When I was in the hospital, I was made accused in this case and was falsely implicated at the instance of above said persons. I am innocent.'

Krishan Kumar accused in his statement at the trial stated that he had sustained injuries at the hands of Surinder, Satish, Inder and their colleagues. Ramesh Kumar denied the prosecution case and stated that the case against him is false. He further made a statement similar to the statement made by his brother Raj Kumar. The accused in support of their defense examined a few witnesses.

(10) We have heard Mr. Khan on behalf of the appellants and Mr. Lao on behalf of the State and have also perused the record. The prosecution case admits of no doubt that on 25th September 1980 at about 7.45 p m. an occurrence took place near the house of the accused in which Rajesh Kumar, Satish Kumar and Inderjit in the complainant party, and Raj Kumar and Krishan Kumar from the accused party had received injuries. Rajesh Kumar had died. We are not satisfied with the truthfulness of the prosecution case regarding the origin of the fight. It seems to us that both the parties happened to meet near the municipal tap and a quarrel developed in which both the parties abused each other and some out of them were injured. The fight was sudden and without any premeditation. The evidence does not show that the appellants had taken undue advantage or acted in a cruel or unusual manner.

(11) P. Ws. 4, 5 and 6 have attributed the stab injury to the deceased to Raj Kumar and Krishan Kumar. The prosecution case is that both Raj Kumar and Krishan Kumar were armed with chhuries. Only one stab wound was found on the body of the deceased. therefore, the statement of Public Witnesses 4, 5 and 6 that Raj Kumar and Krishan Kumar had given knife blows to Rajesh is not true. Public Witnesses 9 and 14 have attributed the stab injury to the deceased to Raj Kumar alias Puppi. Assuming that it was Raj Kumar alias Puppi who had caused the knife injury to the deceased and which proved fatal we are of the view that the offence committed by Raj Kumar would fall under Section 304 part Ii of the Indian Penal Code, and not under Section 302 of the Indian Penal Code. The injuries to Satish Kumar and Inderjit were found to be simple and caused with a sharp weapon. The injuries to Satish Kumar and Inderjit are also attributed to Raj Kumar and Krishan Kumar. We may straight away say that on the evidence produced on the record it cannot be held that there was any common intention between the accused in causing the injury to the deceased. As regards the injuries caused to Satish and Inderjit, Raj Kumar and Krishan Kumar would be guilty only of the offence under Section 324 of the Indian Penal Code, No injury is attributed to Ramesh Kumar. The prosecution case is that while the deceased Rajesh and Raj Kumar and Krishan Kumar were exchanging abuses Ramesh Kumar had come in a scooter rickshaw. In the facts and circumstances of this case, we do not think it would be safe to hold that there was any common intention between the accused in inflicting the injuries to the complainant party.

(12) For the reasons stated, we would set aside the conviction of the appellants on the charge under Section 302 read with Section 34 of the Indian Penal Code. We convict Raj Kumar of the offence under Section 304 part Ii of the Indian Penal Code and sentence him to rigorous imprisonment for five years. We maintain the conviction and sentence of the appellants Raj Kumar and Krishan Kumar on the charge under Section 324 of the Indian Penal Code. The sentences imposed on Raj Kumar on both the charges shall run concurrently. We allow the appeal by Ramesh Kumar and acquit him of all the charges.

(13) The appeal is disposed of accordingly.

