

Dharamvir and ors. Vs. State

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Court : Delhi

Decided On : Sep-06-1985

Reported in : 31(1985)DLT3; 1985(9)DRJ206

Judge : R.N. Aggarwal and; Malik Sharief-ud-din, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 38 of 1982

Appellant : Dharamvir and ors.

Respondent : State

Advocate for Pet/Ap. : A.P.S. Ahluwalia and; R.P. Lao, Advs

Judgement :

Malik Sharief-ud-din, J.

(1) The appellants were tried for the murder of one Shiv Charan and were convicted under Section 302/34 Indian Penal Code and sentenced to undergo imprisonment for life by the Additional Sessions Judge, Delhi, against which the present appeal has been filed.

(2) Two persons) namely, Dharamvir and Satpal, both brothers are the accused. The incident is of 3rd April 1980 at about 1.45 Pm and the place of incident is the

shop No. 18 Wadhwa Market, Kingsway Camp which is at a distance of one kilometer towards South East from Police Station. FIR in this case is based on the statement marked Ex.P.W. 15/B of Harpal Singh PW5 which was recorded in the hospital by Public Witness 15 S.I. Ramesh Pal Singh. Earlier to this one Nirmal Singh had informed the police station from a Public Call Booth that an incident had taken place at Wadhwa Market. This information had gone to the police station at 2.45 Pm and came to be recorded as D.D. No. 16-A dated 3-4-80. It was actually in pursuance of this information that S.I. Ramesh Pal Singh Public Witness 15 went to the scene of incident. He did not find eye witnesses there and on learning that deceased has been removed to Hindu Rao Hospital, he went there and got into contact with Harpal Singh whose statement marked Public Witness 15/B was recorded and sent for registration of the case.

(3) The facts are that the appellants, who are brothers, were working as barbers at shop No. 23 Wadhwa Market and for about two years the deceased and Public Witness 5 Harpal Singh were also working at the shop of the appellants as his employees. Sometime before the date of incident they left that employment and started a barber's shop independently at shop No. 18 in the share market. It is alleged that this was not relished by the appellants and they had expressed their displeasure to the deceased and Public Witness 5 Harpal Singh. The prosecution case is that on this account the appellants harboured a grudge against the deceased and Harpal Singh Public Witness 5. It is said that on 3rd April 1980 at about 1.45 Pm while the deceased and Public Witness 5 Harpal Singh were present at shop No. 18, Dharamvir appellant came there with his razor and started sharpening the same after procuring the stone from the deceased. While doing so Dharamvir allegedly started talking to Shiv Charan deceased about their having opened a barber's shop and some unpleasant words were used. In the meanwhile Satpal appellant, brother of Dharamvir, another appellant, came there and caught hold of Shiv Charan deceased. Soon thereafter Dharamvir appellant is said to have inflicted a razor blow on the right side neck of Shiv Charan as a result of which he received a fatal injury and started pleading profusely. Kirpa Ram Public Witness 6 helped him after the deceased came out of the shop and the deceased was carried to a nearby table outside the shop. Harpal Singh P. W. 5 made an attempt to apprehend the accused but they are said to have escaped towards the

back of Hudson lane. The deceased was removed in a taxi to Hindu Rao Hospital where he was examined by Public Witness 1 Dr. V. Khanna who on examination declared the patient dead. Dr. V.K. Khanna prepared M.L.C. Ex. Public Witness 1/A and noticed an incised wound about 5' long on the right side of the neck with exposed muscles and blood vessels.

(4) The stand taken by appellant Dharamvir before the learned Addl Sessions Judge is that he was not present on the spot on the date of incident and that at the time of incident he was present in the court of Shri Gurdeep Kumar Metropolitan Magistrate in connection with challans under Motor Vehicles Act and that he was produced before the said Magistrate in custody at about 2.05 P.M. The stand of Satpal appellant is that on 25-1-80 he got a case under Section 324 I Pc registered against Public Witness Kirpa Ram for having inflicted a razor injury on his person and that Kirpa Ram Public Witness for that reason was inimical towards him and Harpal Singh Public Witness 5 is speaking against him at the instance of Kirpa Ram.

(5) We have carefully gone through the record and have also heard the learned counsel for the parties. There are three eye-witnesses to the incident, namely, Public Witness 5 Harpal Singh, Public Witness 6 Kirpa Ram and Public Witness 10 Mahinder Pal. PW5 Harpal Singh and Public Witness 6 Kirpa Ram have lent unqualified support to the prosecution story. Harpal Singh Public Witness 5 further has said that while talking Dharamvir suddenly gave razor blow on the neck of Shiv Charan deceased. Kirpa Ram Public Witness 6 has admitted that he was involved in a case under Section 324 Indian Penal Code at the instance of Satpal appellant but he has denied that he is testifying against the accused because of his enmity with Satpal. Public Witness 10 Mahinder Pal has partly supported the prosecution case in as much as he has only testified to the fact that on the date of incident at about 2 Pm while he was passing by the shop of the accused and when he reached near the shop of deceased he saw Shiv Charan deceased present in the shop and also noticed accused Dharamvir and Public Witness 5 Harpal present. Dharamvir accused was seen by him sharpening his razor while talking to Shiv Charan deceased. He says that since he was in a hurry he went ahead and did not see the incident.

(6) We find no sufficient reason to disbelieve these witnesses. They are the most natural witnesses to the incident. There is no reason for them to depose falsely against the accused.

(7) At this stage we may turn to the testimony of Public Witness 4 Dr. Bharat Singh who conducted postmortem on the dead body of the deceased. Dr. Bharat Singh noticed on incised wound over the neck placed horizontally at the level just below the lower border of thyroid cartilage. Size of the wound was 4' x1"x 1" (deep in the central area). On the left side wound was reaching just left to the mid-line of the neck, and on the right side, wound was reaching 1" above the lateral end of the right clavicle. Wound was covered by fluid and clotted blood. Margins were clean-cut and regular. Both angles were equally pointed. On further examination of this wound it was seen that all the major blood vessels and nerves including muscles were cut sharp in one line. Tracheal wall was cut on its right side, lumen deep. There was a cut on cervical spine on the right side (superficial sharp cut). Maximum depth of the wound was on the right side of the neck in the central area of the wound. The Doctor further opined that the injury was ante mortem, possible by a sharp weapon and was sufficient to cause death in the ordinary course of nature. Death was due to shock and hemorrhage resulting from injury to the neck and the time since death was 22 hours. Dr. Bharat Singh further opined that the razor Ex. P 1 seized in this case could cause this injury. He is further of the view that after receiving the injury the deceased, under certain circumstances, could also walk some distance. This would clearly show that the eye witness account in this case is consistent with the medical evidence.

(8) The next limb of the prosecution evidence is regarding the disclosure statement made by the appellant Dharamvir on 4-4-80 marked Ex. PW6/A. In this regard besides the Investigating Officer Ramesh Pal Singh PW15 the prosecution has examined Asi Satpal Public Witness 9 and Kirpa Ram Public Witness 6. All these witnesses have deposed to the fact that accused Dharamvir made a disclosure statement that he can get the razor recovered from his house in Kishan Ganj and that after recording the disclosure statement Ex. Public Witness 6/A, they along with appellant Dharamvir went to the house of Dharamvir where he took out a razor from a box which was lying in the room and the razor was taken

into possession vide seizure memo Ex. Public Witness 6/B and was sealed and secured. On a Serological examination of the blood of the deceased, the same was found to be of 'O' group and even though human blood was detected on the razor the result about its group could not be determined and was reported inconclusive. We are therefore not attaching much importance to the recovery of razor on the disclosure of accused Dharamvir. We, however, find that the eye-witness account in this case is credible and trustworthy and since the eye witnesses have given consistent and clear details about how and at whose hands the incident took place, we need not attach undue importance to the fact that this very razor is not connected with the commission of the offence.

(9) The next limb of the prosecution evidence is regarding the fact that the accused in fact on the day of incident had attended the court of Shri Gurdeep Kumar Metropolitan Magistrate, Public Witness 11, but he was released at about 1.0 or 1.15 P.M. It appears that the accused Dharamvir had taken the same stand before the Investigating Officer as he has taken before the learned Additional Sessions Judge during trial which made it necessary for the investigation to investigate as to when Dharamvir accused had actually been released from the custody. Public Witness 11 Gurdeep Kumar has deposed that challans pertaining to accused Dharamvir were disposed of by him on 3-4-80 before 12.15 Pm but since the entire fine was not deposited he directed the Naib Court to keep the said person in custody till the time the entire fine is not paid. He also stated that he had left instructions to release the said person on payment of fine. He further says that he resumed the work at 2.15 Pm after attending a meeting in the court of Chief Judicial Magistrate and after he finished the rest of work he went to his chamber and he was informed by his Naib Court, that since the accused had paid the entire fine, he had released him. Public Witness 13 Jai Bhagwan deposed that he was posted as Naib Court in the court of Shri Gurdeep Kumar Public Witness 11 and knows Dharamvir accused who had come to the court of the aforesaid Magistrate on 3-4-80 in order to clear his four challans and that a total fine of Rs. 2000.00 was imposed upon Dharamvir at about 11 or 11.15 AM. Further says that since Dharamvir accused could not immediately pay the entire fine he was directed by the Magistrate to keep him under detention till such time the full fine is not paid. He further states that the accused was released at about 1.0 to 1.15 PM. According to

him after 10 to 12 days when police came to him and Dharamvir was shown to him, he identified him as one who cleared those challans on and there he also made a statement about the time when accused Dharamvir was released from his custody. Public Witness 14 Rattan Kumar who on the relevant date was serving as Reader to Shri Gurdeep Kumar Magistrate has deposed that Dharamvir accused was taken into custody for non-payment of fine but he could not say with certainty whether the accused paid fine before lunch or thereafter. He, however, states that there were about 30/40 persons who had come to clear the challans and some of them had paid fine before lunch. He also says that after lunch at 2 Pm four persons were produced from the custody in respect of whom receipts were issued after the receipt Ex. Public Witness 14/A to Ex. Public Witness 14/D.

(10) The learned Additional Sessions Judge has relied upon the testimony of Jai Bhagwan Public Witness 13 that Dharamvir was released from custody at about 1 Pm or 1.15 Pm and from our point of view rightly so as he was the person who was actually having the custody of Dharamvir for non-payment of fine. On the basis of the testimony of Jai Bhagwan we are of the firm belief that the stand of the accused that at the time of incident he was in custody of the court of Magistrate is not correct.

(11) There is yet another aspect of this matter. It would be seen that Dd No. 16-A dated 3rd April 1980 marked Ex. Public Witness 15/A came to be recorded at police station Kingsway Camp at 2.45 Pm on an information transmitted by one Nirmal Singh from Public Call Booth which is to the effect that an accident had taken place in Wadhwa Market. Public Witness 5 Harpal Singh and Public Witness 6 Kirpa Ram have deposed about the time of incident at 1.45. The aforesaid message on telephone by Nirmal Singh was recorded at Police Station at 2.45 PM. Obviously this information must have been transmitted to police station immediately after the incident. That goes to strengthen our belief that Public Witness 5 Harpal Singh and Public Witness 6 Kirpa Ram have given the time of incident by approximation and that it necessarily need not be the exact time and the incident has taken place somewhere between 2 Pm and 2.45 PM. That answers fully the objection of the learned counsel for the appellant, Mr. A.P. Singh Chauhan that even if it is assumed on the basis of the testimony of Public Witness

13 Constable Jai Bhagwan that Dharamvir was released from his custody at about 1.15 Pm he could not have reached the place of incident within half an hour as admittedly the place of incident is situated at a distance of about 5 kilometres from the court of the said Magistrate.

(12) We are, therefore, of the view that in the presence of eye witness account and also in view of the aforesaid observations, the prosecution has fully established that Dharamvir appellant was responsible for inflicting the fatal injury on the person of Shiv Charan deceased. The appeal to that extent is dismissed.

(13) Regarding involvement of Satpal appellant we are, however, of the view that his conviction and sentence with the aid of Section 34 Indian Penal Code cannot be maintained. In the first place the only role assigned to him is that while Dharamvir was talking to the deceased and sharpening his razor he suddenly appeared on the scene and caught hold of the deceased. There is evidence of Public Witness 5 Harpal Singh that while talking to the deceased the appellant Dharamvir suddenly inflicted injury on the neck of the deceased which goes to show that Satpal accused could not be said to be possessed of the knowledge that Dharamvir appellant was intending to kill Shiv Charan deceased. In the second place we may make a reference to the stand taken by Satpal that earlier to this incident Kirpa Ram Public Witness 6 had inflicted an injury on his person with a razor regarding which he had got a case under Section 324 Indian Penal Code registered against him. This is a fact which is not even denied by Kirpa Ram. It is suggested that because of this enmity Kirpa Ram was deposing against him and that Public Witness 5 Harpal Singh has deposed against him at the behest of Kirpa Public Witness 6. This fact by itself is sufficient to cloud the testimony of eye witness to this extent. Least that can be said therefore is that the testimony of eye witnesses to this extent is doubtful particularly in view of the role which is assigned to Satpal. With these observations we do not find any case made out against Satpal appellant and to that extent the appeal is allowed. Satpal appellant is, therefore, acquitted of the charge and it is directed that he be released from the custody forthwith.

(14) The result 'is that appeal is allowed as regards Satpal appellant but it is dismissed in respect of Dharamvir appellant.

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