

Tellu and anr. Vs. State

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Court : Delhi

Decided On : Jul-31-1987

Reported in : 1988CriLJ1062; 33(1987)DLT205

Judge : R.N. Aggarwal and; Jagdish Chandra, JJ.

Acts : [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal No. 239 of 1983

Appellant : Tellu and anr.

Respondent : State

Advocate for Pet/Ap. : R.M. Tufail and; R.P. Lao, Advs

Judgement :

Jagdish Chandra, J.

(1) This criminal appeal has been preferred by the appellants-convicts Tellu and Uttam against the judgment of conviction and order of sentence passed on 18th of July, 1983 by Shri R. C. Jain, Additional Sessions Judge, whereby they were convicted for the offence under section 302 Indian Penal Code read with section 34 Indian Penal Code . and sentenced there under to undergo imprisonment for life.

(2) The first information in this case was given by Smt. Sudama wife of the deceased Ram Karan and her statement was recorded by Sub Inspector Joginder Singh of police station Nangloi, Delhi; according to which she along with her deceased husband RamKaran was living in railway quarter No. E-24/C, Nangloi, Delhi, and the deceased was working in railway department at Nangloi Station as a gang man whereas her in-laws resided in village Dhanwas, Police Station Khajni, District Gorakhpur. Accused Tellu was a resident of that very village and was known to them and had his lodging and boarding with them for about two months in the aforesaid railway quarter 8/9 months prior to the occurrence and when he went back to his village he took away some miscellaneous household goods of Ram Karan deceased with him about which even though no report was lodged with the police by Ram Karan and his wife, they continued demanding the same or compensation in lieu thereof. There was factionalism in the said village and it is alleged that the Brahmans of that village used to harass Ram Karan, and Tellu appellant who was a member of their own community also started harassing them under the influence of the Brahmans of the village and he sent 314 letters asking them to come back to the village but apprehending trouble they did not go to the village.

(3) The occurrence is alleged to have taken place at about 11 P.M. in the night intervening 13th and 14/01/1982 in the house of the deceased. As per the prosecution case the deceased along with his wife Smt. Sudama and their children were sleeping in the room in their house after taking meals and at about 11 P.M. in the night the deceased went to the court-yard of his house for urination when both the appellants Tellu and Uttam who were perhaps hiding themselves in the rear portion of his house started beating him and on hearing the alarm (Bachao Bachao) Smt. Sudama immediately came out of the room and saw that appellant Tellu who had a open knife in his right hand attacked her husband in the abdomen and appellant Uttam who too had a knife in his hand attacked her husband with the knife on his left leg and as a result of those injuries blood started oozing out from the wounds. She also raised an alarm to the effect 'Bachao Bachao' and 'Pakro Pakro' and on hearing the same the neighbours Shiv Ram and Kallu and other persons came there and the appellants fled away having open knives in their hands. Smt. Sudama brought her husband to the hospital with the help of Shiv

Ram, Kallu and other persons and got him admitted there. She complained to the police that both the appellants, with common intention, had attempted to murder her husband on account of old enmity and with the intention of taking revenge. The aforesaid statement of Smt. Sudama was recorded by S. I. Joginder Singh in Northern Railway Central Hospital, New Delhi, where the doctor declared injured RamKaran unfit for making a statement. The said statement of Smt. Sudama was forwarded by S. 1. Joginder Singh along with his own endorsement thereon to police station Nangloi for the registration of the case under sections 307/34 Indian Penal Code . and the case was accordingly registered against the appellants.

(4) The statement of Ram Karan deceased was recorded on 15/01/1982 by S.I. Joginder Singh and that statement is almost identical with the one which his wife Smt. Sudama had made to S. 1. Joginder Singh a day earlier on 14/01/1982. Ram Karan deceased, however, died on 7/02/1982, 25 days after the occurrence.

(5) Ram Karan deceased was admitted in Northern Railway Central Hospital, New Delhi, at 3 P.M. on 14/01/1982 with the following injuries on his person :-

1. One incised wound 5 cm. long, lying obliquely over middle 1/3rd of right sub costal margins. Momentum was protruding out;

2. 4 cm. long incised wound over anterior surface of upper part of middle 1/3rd of left leg;

3. 1.5 cm. long incised wound on posterior aspect of lower part of middle 1/3rd of left leg.

(6) Death summary Ex. Public Witness 1/A in respect of the deceased was prepared by Dr. S. K. Gupta, Public Witness 1, who was working as Assistant Divisional Medical Officer in the said hospital and as per the same cause of death of Ram Karan deceased is recorded as 'cardio respiratory failure'. As per the death summary the deceased was operated upon on 14/01/1982, the day he was admitted, but that operation was not conducted by Dr. S.K. Gupta. Case sheet (Ext. Public Witness 1/B) pertaining to the deceased and comprising 38 sheets was filed by Dr. S. K. Gupta. Abdominal injury No. 1 set out above was opined by

Dr. S. K. Gupta to be sufficient in itself to cause the death of the deceased in the ordinary course of nature though this opinion was not incorporated in his report Ext. Public Witness 1/A. The deceased was attended by this doctor only on 20/01/1982 and treated by him thereafter.

(7) It was Dr. (Mrs) S. Chadha (PW2) Admo Casualty, Central Hospital, Northern Railway, New Delhi, who declared the deceased dead on 7/02/1982 vide her certificate Ext. Public Witness 2/A prepared and signed by her at 6.30 P.M. and which certificate mentions the cause of death of the deceased RamKaran as follows :-Cause of death Primary (1) Stab injury abdomen.Secondary % (2) (contributory) Cardio respiratory failure.

(8) On 14/01/1982 Dr. B. M. Banerjee (PW18) and Dr. (Mrs.) M. Seewal (PW19) who were working as ADMOs at the said hospital on that day opined when contacted by S. 1.Joginder Singh that the deceased was unfit to make statement.Their respective opinions on the application made by S. 1.Joginder Singh are Ext. Public Witness 18/A and Ext.PW19/A. Dr. (Mrs.)M. Seewal Public Witness 19 also examined the deceased on that very day i.e. 14/01/1982 and found the following injuries on his person vide her report Ext. Public Witness 19/B :-

1.Injury per abdominal-bleeding +, loop of intestines was coming out,

2.Cut wound in right leg.

(9) During the period the deceased remained admitted in this hospital he was treated and attended by Dr. B. M. Banerjee on various occasions.

(10) The post mortem examination on the person of RamKaran deceased was conducted at 12.15 P.M. on 8-2-1982 the next day of his death by Dr. L. T. Ramani Public Witness 24 Medical Officer, Police Hospital, Delhi, who on that day found the following external injuries on his person :-

1.An infected wound abdominal cavity deep on the right costal margin : Margins of the wound were irregular and greenish in colour. There was greenish black pus deposit on the surface of the wound;

2. A healed scar 4" long right para medial with stitched marks on either side of the scar on the upper part of front of abdomen (operational wound);

3. A healed up wound, 2' long with stitch marks on the left leg middle third on its anterior surface;

4. A healed up wound 1' long with visible stitch marks on either side of the wound on the middle of left leg medial aspect.

(11) Internal examination revealed as follows : Scalp tissues were pale, skull bones were intact, brain was pale, neck tissues were normal, ribs were intact, lungs showed patchy consolidation at places, heart was normal, abdominal cavity was full of greenish black offensive smelling pus. Injury No. 1 was communicating with abdominal cavity. Cut end of the costal cartilage was loosely hanging. Peritoneum was inflamed, thickened, and there were effusions between two layers of peritoneum and abdominal organs. Stomach was empty, liver, spleen and kidneys were congested. Bladder contained clear urine. Rectum was empty.

(12) According to him injuries were ante mortem. Injuries No. 1, 3 and 4 were corresponding in position to injuries mentioned in the M. L. C. No opinion could be offered regarding the weapons causing these injuries as they were either infected or healed up. Death was due to shock resulting from peritonitis, following abdominal injuries. Time since death was about 18 hours.

(13) Then the following specific question was put to him :-Q. Were the injuries found on the body of Ram Karan sufficient to cause death in the ordinary course of nature ? To this question Dr. Ramani replied as under :- 'The injuries were either healed up or were infected and there was no injury to abdominal organ at the time of post-mortem examination, though injury No. 1 was communicating with abdominal cavity. Under the circumstances injury No. 1 which was communicating with abdominal cavity was responsible for causing peritonitis and shock. As such it could be termed sufficient to cause death of injured Ram Karan in ordinary course of nature.'

(14) According to him the possibility of abdominal injury to the deceased referred to above by means of a dagger Ext. P-5 could not be ruled out. Dr. Ramani categorically ruled out that the death in this case was due mainly to septicemia and not on account of the injuries sustained by the injured. According to him septicemia is general sepsis of the body while peritonitis is specific sepsis of abdominal cavity.

(15) The case of the prosecution against both the appellants appears to have been established beyond all reasonable doubts : from the statement Ext. Public Witness 22/E dated 15/01/1982 of Ram Karan deceased and of Public Witness 3 Smt. Sudama, Public Witness 4 Kallu Ram and Public Witness 15 Shiv Ram as also taking together the medical evidence set out above. The occurrence had taken place at 11 P.M. in the night intervening 13 and 14/01/1982, where after the injured Ram Karan was removed to the hospital where he remained unfit to make a statement to the police and it was only on the 15th of January 1982 that his statement Ext. Public Witness 22/E could be recorded by the police in the hospital, and even if injured Ram Karan died on 7/02/1982, 25 days after the occurrence, this statement became dying declaration of his under section 32(1) of the Indian Evidence Act, 1872 and it is immaterial that at the time of making this statement injured Ram Karan may not have been under expectation of death. It would be necessary to reproduce this provision of law and the same is reproduced below :-

'32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant-Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :-(1) When it relates to cause of death.-When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and

whatever may be the nature of the proceeding in which the cause of his death comes into question.'

(16) The Indian Law on the subject to dying declaration differs from the English Law in that under the English Law the declaration should have been made under the sense of impending death, whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under expectation of death. The authorities upon this point are *Rajindra Kumar vs. The State*, Air 1960 P&H; 310(1); *State vs. Kanchan Singh*, : AIR 1954 All 153 ; *Tehal Singh vs. State of Punjab*, : 1979 CriLJ 1031 and *Sharad vs. State of Maharashtra*, : 1984 CriLJ 1738 . Thus, in view of the aforesaid provision of law and the authorities, the view taken by the learned trial judge in the impugned judgment that such a declaration, in order to be relevant under section 32(1) of the Indian Evidence Act should have been made when the person making the same was in actual danger of death and had given up all hope of recovery at the time when he made the said declaration, is obviously erroneous.

(17) It is true that a dying declaration is not a deposition in court and it is made neither on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination by way of an exception to the general rule against the admissibility of hearsay evidence on the principle of necessity for the victim being generally the only principal eye witness to the crime, the exclusion of his statement might defeat the ends of justice. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability imposing on it an obligation to closely scrutinise all the relevant attendant circumstances, [vide *Tapinder Singh vs. State of Punjab*. (1973)(1) Scj 751](5).

(18) The learned trial judge besides rejecting the aforesaid statement Ext. Public Witness 22/E of injured Ram Karan as a dying declaration, rejected the same otherwise also with the following observations:-.. In the case in hand, to my kind statement Ext. Public Witness 22/E cannot be construed as a dying declaration of deceased Ram Karan, firstly because Ram Karan was not in imminent danger of death, and secondly, the statement was not recorded by either a Magistrate or in

presence of a Doctor, nor is it signed by the deceased. There is absolutely nothing on record to show that the deceased was incapable of signing the said statement at the relevant time. In these circumstances, no weight can be attached to this piece of evidence.'

(19) The aforesaid considerations weighing with the learned trial judge are hardly of any significance because the statement Ext. Public Witness 22 Ie was not recorded by S. 1. Joginder Singh as adding declaration but in the ordinary course of investigation of the case under section 161 of the Code of Criminal Procedure (in short Code) as that of any other witness of the crime and under section 162 of the Code such like statement, on having been reduced to writing is not to be signed by the person making it and this provision of law specifically bars the maker of a statement from signing it. Relevant portion of section 162 reads as follows:-

'162. Statements to police not to be signed : Use of statements in evidence-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when was made :

(2) Nothing in this section, shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian [Evidence Act, 1872](#) (I of 1872), or to affect the provisions of Section 27 of that Act.

(20) So, the plain reading of this provision of law makes it abundantly clear that such a statement is not to be signed by the maker thereof nor such a statement can be used for any purpose but it can be used if it falls within the provision of clause (1) of section 32 of the Indian Evidence Act as is the position in the case in hand in respect of statement Ext. PW22/E of Ram Karan injured who died subsequently. It is also a matter of wide knowledge that when statements of witnesses are recorded by the investigating police officer during investigation under section 161 of the Code, they are recorded not in the presence of any Magistrate or any Doctor is only under peculiar circumstances that Such a statement subsequently gets

converted into a dying declaration under sub-section (1) of section 32 of the Evidence Act when the maker there of who is the victim of the crime dies subsequently after the making of the statement to the police officer who did not record it as a dying declaration. For these reasons, the above quoted observations of the learned trial Judge. from the impugned judgment appear to be of no consequence.

(21) Reliability of the dying declaration Ext. Public Witness 22/E of Ram Karan deceased stands established beyond all reasonable doubt from the F.I.R. recorded at 4.15 P.M. on 14/01/1982 recorded on the statement of Smt. Sudama wife of the deceased recorded on 14/01/1982 soon after the occurrence which had taken place at 11 P.M. in the night intervening 13th and 14/01/1982, as also from the testimony of Smt. Sudama Public Witness 3, Kallu Ram Public Witness 4 and Shiv Ram Public Witness 15 whose names also appear in the dying declaration Ext. PW 22(E as also in the initial statement, of Smt. Sudama on the basis of which the F.I.R. was compiled. The dying declaration and the initial statement Ext. Public Witness 31A of Smt. Sudama are almost identical in regard to contents. There was no reason for the deceased, his wife Smt. Sudama and the witnesses Kallu Ram Public Witness 4 and Shiv Ram Public Witness 15 to have falsely implicates the appellants as assailants in such a serious crime of murder, and consequently the dying declaration Ext. Public Witness 22/E of Ram Karan deceased appears to be a truthful version of the circumstances of the transaction which resulted in his death (including the names of the assailants).

(22) We shall now examine the testimony of the eye witnesses examined in court. The testimony of Smt. Sudama Public Witness 3 is almost identical with her initial statement Ext. Public Witness 3/A dated 14th January, 1982 on the basis of which the F.I.R. was recorded and which initial statement has already been referred to above for which reason her testimony in court need not be reiterated. However, a few lines from her cross-examination need to be noted wherein she stated that she had gone to the courtyard immediately on hearing noise of her husband and that her husband was already bleeding from his wounds and even his intestines had come out when she reached the court-yard. She further stated that the accused started running on seeing her and that she had seen the faces of both the

accused persons(present in the trial court) in electric light before they had fled from the spot and that the electric bulb was lighting near the court-yard as it was generally left lighting during the night and that the accused had fled from the door of the court-yard after the occurrence. From this cross-examination it is made out that when she reached the court-yard of her house which is the place of occurrence, the injuries had already been caused to the deceased Ram Karan who was seen already bleeding from his wounds by her. So. even though she was an eye witness to the actual giving of injuries by the appellants on the person of the deceased,she had immediately rushed to the place of occurrence on hearing the noise of her husband and she saw fully the faces of both the assailants who started running on seeing her. Further, eventhough her testimony-in-chief as Public Witness 3 to the effect that in her presence and sight appellant Tellu stabbed her husband RamKaran in his abdomen while appellant Uttam stabbed him on his left leg, is not correct on account of her aforesaid statement in her cross-examination, the identity of the assailants stands established from her testimony-in-chief and cross-examination when she deposed in her examination-in-chief regarding the alarm raised by the deceased saying 'bachao bachao Tellu Uttam Hame Mar Rahe Hain' on hearing which she went to the court-yard and saw both the appellants having a knife each in their hands and also because, as stated above in her cross-examination, the appellants started running on seeing her from the court-yard after the occurrence. The aforesaid noise indicating the appellantsTellu and Uttam as beating Ram Karan deceased also finds mention in the initial statement Ext. Public Witness 3/A dated 14/01/1982 of Smt. Sudama.

(23) Kallu Ram Public Witness 4 and Shiv Ram Public Witness 15 are close neighbours of the deceased and both of them have deposed that on hearing the cries of Smt. Sudama they came out of their houses and they saw both the appellants coming out of the rear side of Ram Karan deceased and that they had one knife each in their hands at that time whereupon they went inside the quarter of Ram Karan deceased whom they found lying injured in his courtyard and they removed him to the hospital. Shiv Ram Public Witness 15specifically stated that when he ran inside the quarter of the deceased, the deceased was bleeding from his abdomen and leftleg. He had also specifically stated that the cries of Smt. Sudamaon hearing which he and Kallu ran to the spot were to the effect that the

appellants Uttam and Tellu were beating her husband Ram Karan.

(24) There could be no difficulty for injured Ram Karan and Smt. Sudama in identifying the appellants as the assailants because Tellu appellant had been living with them for quite sometime in their quarter and hailed from the same village from which Ram Karan hailed and while the other assailant Uttam was a cousin of Tellu and was a resident of village Barahara which was near to the village of Ram Karan.

(25) Moreover, Kallu Ram Public Witness 4 stated that he knew both the appellants as appellant Tellu used to live for some time with Ram Karan deceased while the other appellant Uttam also used to visit him. Shiv Ram Public Witness 15 also stated that appellant Tellu had stayed with Ram Karan deceased for some time prior to the occurrence while appellant Uttam used to visit Ram Karan at times. He further stated in his cross-examination that Tellu appellant had stayed at the house of Ram Karan deceased for 3/3 months, about 4-5 months prior to the occurrence, and he may have seen Uttam visiting Tellu 5-6 times during that tenure. Even though he had no talk with them at any time he however knew their names as told to him by Ram Karan deceased. He also stated in his cross-examination that his quarter is situated three quarters away from the quarter of Ram Karan deceased and one of those three quarters is occupied by Kallu Public Witness 4. Both these witnesses live in the Railway Quarters in the neighborhood of the quarter where the deceased along with his wife and family members was living. Smt. Sudama Public Witness 3 stated in her cross-examination that houses of these two witnesses Shiv Ram and Kallu Ram are two or four houses away from her house. She also stated that appellant Uttam used to visit them (she and her husband) in Delhi also besides having met them when they stayed in the village. She also talked of the stay of appellant Tellu having accompanied them from the village to Delhi and also having stayed at their house for about ten days. There is, thus, no doubt that Ram Karan deceased and his wife Smt. Sudama intimately knew both the appellants and for them there could be no manner of doubt in identifying both of them at the time of occurrence and immediately thereafter when they fled away with one knife each in their hands from the rear portion of their quarter where the occurrence took place. Shiv Ram and Kallu could also be said

to identify both the appellants while coming out from the rear side of the house of Ram Karan deceased with one knife each in their hands and then fleeing away. When these two witnesses saw the appellants coming out of the rear portion of the quarter of the deceased, the contention raised by the learned counsel for the appellants that they could not see the faces of the appellants as according to Kallu Ram Public Witness 4, in his cross-examination, both the appellants were fleeing in the same direction in which they were going to the house of Ram Karan, is without merit. Similarly, the further statement of Kallu Ram in his cross-examination that the back of the appellants was towards him when the appellants were running after coming out of the house of Ram Karan, can be of no avail to the appellants. The same is the position with regard to Shiv Ram Public Witness 15, and he made the position further clear unmistakably in reply to the court question wherein he stated that he had also seen the appellants' faces at the time when they came out of the back portion of the quarter of Ram Karan and saw their back when they were fleeing towards the oppositedirection. He further clarified in his cross-examination that in fact he had seen both the appellants present in the back courtyard of the quarter of Ram Karan and on seeing him they ran out of the quarter. In the dying declaration Ext. Public Witness 22/E dated 15/01/1982 of the deceased Ram Karan and the initial statement Ext. Public Witness 3/A dated 14/01/1982 of Smt. Sudama there is mention of appellant Tellu being their co-villager and having been known to them and having had lodging and boarding with them for about two months in their aforesaid railwayquarter. Though in these two statements there is no mention of the visits of the other appellant Uttam to their railway quarter, there is sufficient evidence on the records of the case to implicate him also in this case as an assailant along with appellant Tellu, with a common intention to murder Ram Karan deceased.

(26) The learned counsel for the appellants also contended that Shiv Ram Public Witness 15 had wrongly deposed that they had also informed Station Master, Nangloi, that the appellants Tellu had stabbed Ram Karan when persons of the locality including him went to the said Station Master after the occurrence, as Gopal Krishan Public Witness 11 Assistant Station Master, Railway Station Nangloi stated in his cross-examination that none of the Gang Men or wife of Ram Karan deceased disclosed the name of assailant of Ram Karan. This discrepancy does

not appear to be of any appreciable significance.

(27) The learned counsel for the appellants also contended that there was hardly any motive with the appellants to have caused the murder of the deceased Ram Karan. The motive finds mention in the dying declaration Ext. Public Witness 22/E dated 15/01/1982 of Ram Karan deceased and also in the initial statement Ext. PW3/A dated 14-1-1982 of Smt. Sudama, as also in the testimony of hers as Public Witness 3 and the motive revealed from the same has been set out in the second para of this judgment and the same need not be repeated. That is a motive only against appellant Tellu. The other appellant namely Uttam is only a cousin of Tellu. Even though the motive against appellant Tellu not very strong in the case of murder and Uttam is only his cousin, these factors do not appear to undermine the case of the prosecution which appears to have been established beyond all reasonable doubts from the testimony of the ocular witnesses of the occurrence who, as already pointed out above, cannot be disbelieved especially when the initial statement Ext. Public Witness 3/A of Smt. Surama wife of the deceased was made by her to the police with hardly any loss of time, and the statement of Ram Karan deceased was also recorded by the police as soon as he was certified by the doctors to be fit to make a statement in the hospital, and they had hardly any leisure at their disposal to implicate falsely the innocent persons in this crime of a very serious nature, whereas the two independent neighbours of the deceased Kallu and Shiv Ram Public Witnesses had hardly any reason to implicate the appellants falsely in this case. In the face of such unimpeachable evidence the question of motive becomes more or less academic. The contention that the appellants' motive was To films is no reply to the unshaken testimony of credible and natural eye witnesses who had no motive whatsoever to implicate the appellants falsely. It has been held in *Molu and others v. State of Haryana*, : 1976 CriLJ1895 as follows :- 'It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved; sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them the question whether there is any motive or not becomes wholly irrelevant.'

(28) Even if the genesis of the motive of the appellants may not be proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on that account, if otherwise it was reliable. The mere fact that one of the appellants was not connected with the dispute is not sufficient to hold that he could not have formed a common intention with the other when he went with the other armed (vide Kartar Singh vs . State of Punjab,). The court may not consider the question of motive when the court is satisfied that the accused is the assailant (Vide Narain Nathu Naik vs . The State of Maharashtra, : [1971]1SCR133). Thus, appellant Uttam being a cousin of Tellu appellant could not be said to have no common intention with Tellu appellant when he went armed along with Tellu appellant to the house of the deceased RamKaran and both the appellants hid themselves in the night in the rear portion of the house, even though Uttam had no apparent motive for the crime. Thus, the contention of the learned counsel for the appellants on the question of motive cannot be accepted.

(29) In the medical evidence, as already pointed out above, the abdominal injury caused by appellant Tellu on the abdomen of Ram Karan deceased has been opined to be sufficient in itself to cause the death of the deceased in the ordinary course of nature by Dr. S. K. Gupta Public Witness 1, Dr. (Mrs.) S. Chadha Public Witness 2 (vide her certificate Ext. Public Witness 2(A) as also by Dr. L. T. Ramani, Medical Officer, Police Hospital, Delhi, who conducted the postmortem examination on the person of the deceased. It may be again pointed out that Dr. Ramani categorically ruled out that death in this case was mainly due to seprecmia and not one account of the injuries sustained by the injured. Although in the death summary Ext. Public Witness 1/A in respect of the deceased prepared by Dr. S. K. Gupta Public Witness 1 cause of death of Ram Karan deceased is recorded as 'Cardio respiratory failure', he was of the categorical opinion that the abdominal injury was sufficient in itself to cause the death of the deceased in the ordinary course of nature, though this opinion was not incorporated in his aforesaid report Ext. Public Witness 1/A. The abdominal stab injury has been mentioned as the primary cause of death in the certificate Ext. PW2/A prepared by Dr. (Mrs.) S. Chadha Public Witness 2 whereas 'cardio respiratory failure' has been described only as the secondary (contributory) cause of death. Both Dr. S. K. Gupta and Dr. (Mrs) S. Chadha were working as Assistant Divisional Medical

Officers in Central Hospital, Northern Railway, New Delhi, where the deceased Ram Karan was got admitted by his wife and where he ultimately died. Thus, there is left no manner of doubt that the abdominal injury caused by appellant Tellu on the abdomen of the deceased was sufficient in itself to cause the death of the deceased Ram Karan in the ordinary course of nature, and, as already pointed out above, the other appellant Uttam who was also carrying a knife with him and accompanied appellant Tellu and had hid himself along with Tellu in the rear portion of the house of the deceased at night and caused injury on the left leg of the deceased, was having common intention with appellant Tellu to cause the murder of the deceased.

(30) No other point was urged by the learned counsel for the appellants at the Bar and consequently in view of what has been stated above, the conviction under sections 302/34 Indian Penal Code and order of sentence against both the appellants under appeal are maintained and the

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