

**Kishan Lal Vs. the State**

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**Court :** Delhi

**Decided On :** Nov-19-1985

**Reported in :** 30(1986)DLT263

**Judge :** R.N. Aggarwal and; Mahk Sharief-ud-Din, JJ.

**Acts :** [Indian Penal code, 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 187 of 1982

**Appellant :** Kishan Lal

**Respondent :** The State

**Advocate for Pet/Ap. :** K.K. Sud,; R.S. Chauhan and; R.P. Lao, Advs

**Judgement :**

**R.N. Aggarwal, J.**

(1) Kishan Lal, the appellant herein, along with his brother Ram Lal and one Gulshan Kumar, was charged with the offences of conspiracy and murder of Mohan Lal. They were further charged with the offence of attempt to murder Vinod Kumar (Public Witness 2) and Satish Kumar (Public Witness 6). Kishan Lal was further separately charged and tried under the Arms Act for being in unlawful possession of a revolver.

(2) The trial Judge found Kishan Lal guilty of the offence of intentionally murdering Mohan Lal and sentenced him to imprisonment for life and a fine of Rs. 5,000.00 and in default to undergo simple imprisonment for one year. He was also found guilty of the offence of attempting to murder Vinod Kumar and Satish Kumar and was sentenced to rigorous imprisonment for 7 years and a fine of Rs. 2,000.00 and in default simple imprisonment for six months. The substantive sentences of imprisonment were ordered to run concurrently. As regards the charge under the Arms Act the trial Judge found that the possession of the revolver had not been established beyond reasonable doubt and, therefore, acquitted him on the charge under the Arms Act. Ram Lal and Gulshan Kumar were acquitted of all the charges.

(3) Kishan Lal being dissatisfied with his convictions and sentences has come in appeal.

(4) The motive for the crime is 'vengeance' and is rooted in an incident of 1971 in which Inder Singh (brother of the deceased Mohan Lal) was killed by one Sub-Inspector Chander Badan Singh. Chander Badan Singh was prosecuted on the charge of murder of Inder Singh but was acquitted. An appeal was filed against the acquittal but that failed (State v. Chander Badan Singh).

(5) In the above said case Arjun brother of the appellant Kishan Lal was a prosecution witness. He did not support the prosecution case at the trial. The complainant party on that account nursed a grudge against Arjun. The prosecution case further is that on 3-9-1978 Mohan Lal on some pretext had called Arjun and his maternal uncle Sita Ram to his shop and murdered them. Mohan Lal along with one Madan Lal was prosecuted on the charge of murdering Arjun and Sita Ram. The charge failed and Mohan Lal and his co-accused were acquitted on 9-4-1980. The above is alleged to be the motive for the present crime on 24th May 1980.

(6) The prosecution case as unfolded by the eye-witness Satish Kumar (PW 6) is that on 24th May 1980 Mohan Lal had a case in the court of an Additional Sessions Judge at Patiala House Courts. He and Pw 2 Vinod Kumar accompanied Mohan Lal to the courts. They had gone to the courts in a taxi

bearing No. Dlt 5514 driven by Mohan Lal. After the hearing was over Mohan Lal accompanied by PWs 2 and 6 went in the taxi Dlt 5514 to Batra Cinema at 3 40 p.m. They saw a movie. After seeing the movie at about 6.15 p.m. they left in the taxi for dropping Vinod Kumar at his house in Model Town. Mohan Lal was at the wheels. Satish Kumar was sitting in the front seat, next to Mohan Lal. Vinod Kumar sat in the rear scat. As they reached near Parmanand Colony, a three-wheeler scooter came parallel to the car. A young man, later on identified as Gulshan Kumar, was driving the three-wheeler scooter. Kishan Lal and Ram Lal were seated in the back seat. Ram Lal sat on the right side and Kishan Lal on the left side. According to PWs 2 and 6 as the three-wheeler scooter came parallel to the car Kishan Lal fired a revolver at Mohan Lal and the bullet hit him in the temple. On receiving the bullet injury Mohan Lal slumped on Satish Kumar. Kishan Lal fired a second shot. Satish Kumar ducked and the bullet passed through the window. Another shot was fired by Kishan Lal at Vinod but Vinod opened the door and jumped out and that bullet also missed the mark and went out through the window. All the three assailants escaped on the three-wheeler scooter. The taxi went on to the Patree (foot-path) on the left side and stopped after dashing against a two-wheeler scooter bearing No. Dhs 4423, parked in front of Ajay & Co.

(7) Public Witness 6 Satish Kumar drove Mohan Lal in the taxi to Hindu Rao Hospital where on examination by the doctor, Mohan Lal was pronounced dead.

(8) An anonymous caller informed the police control room about the occurrence (DD 16/A, Ex. Public Witness 10/B-10) Public Witness 26 Dev Raj Anand was entrusted with the investigation. Public Witness 26 first went to the spot of occurrence and there on learning that the injured had been taken to the hospital reached Hindu Rao hospital. At the hospital Public Witness 26 was met by Public Witness 6. Public Witness 26 recorded the statement Ex. Public Witness 6/A of Public Witness 6, and with his endorsement sent the report to the police station for formal registration of the case, on the basis of which the formal report Ex PW15/A was recorded at 8.20 p.m. The clothes worn by Public Witness 6 were found to be stained with blood and they were also taken into possession. Public Witness 6 also produced three cinema tickets Exts. Public Witness 30 to Public Witness 32, which were seized by Public Witness 26. The tickets were stained with blood. The

crime team was summoned. Public Witness 26 got the scooter No. Dhs 4423 (with which it is alleged that the taxi after the occurrence had dashed) photographed. The taxi in which the deceased and PWs 2 and 6 are alleged to have travelled was also photographed. Public Witness 26 also recorded the statement of Public Witness 2 Vinod Kumar. His shirt was also found to be stained with blood and that was taken into possession.

(9) Dr. Bharat Singh performed autopsy on the dead body on 25th May 1980 at 1.45 p.m. On examination the doctor found the following injury on the body :

'ONE rounded punctured wound over the right temple 2 cm lateral to the right eye-brow (outer end) and 5 cm in front of the trigs of right ear. Size of the wound was 5 cm in diameter, surrounded by abrasion which was more wider on the medial side of the wound, and also on the lower part (as shown in the diagram). Total diameter of the wound including the abrasion was 1 cm. Margins were inverted. There was no blackening, charring and tattooing around the wound. There was no singeing of the hair in this area. Wound was covered by clotted blood. There was no foreign material present over the surface of the wound. There was mild swelling ground the wound.'

(10) On internal examination a deformed bullet was extracted from the skull and preserved. The doctor gave the opinion that the injury was antemortem and caused by a fire-arm and that the fire-arm had been fired from a distant range. The doctor further opened that the injury was sufficient to cause death in the ordinary course of nature. The doctor testified that the blood stained pant (P 1), shirt (P 2), Baniyan (P 3) and the underwear (P 35) which the body was wearing were removed and handed over to the police.

(11) The appellant Kishan Lal and Ram Lal surrendered themselves before a Magistrate on 3rd June 1980. They were taken into police custody on 5th June 1980. On 8th June 1980 on a disclosure made by Kishan Lal a revolver was recovered. Both the revolver and the bullet recovered from inside the body of the deceased were sent to the Forensic Science Laboratory for examination and report. The report is that the revolver is in working order and had been fired through and that the mutilated lead bullet could have been fired from the revolver

in question but a positive linking could not be established. The clothes of the deceased and those of PWs 2 and 6 were also sent for Chemical examination and report. The report is that the clothes of the deceased and PWs 2 and 6 are stained with human blood. The trouser of the deceased was found to be stained with human blood of 'O' group. As regards the remaining clothes the report regarding blood group is 'no reaction'.

(12) Gulshan Kumar, driver of the three-wheeler scooter, was arrested on 19th June 1980. On a disclosure made by him, a three-wheeler scooter was recovered abandoned in a deserted place.

(13) Kishan Lal accused denied the prosecution case. He started that Mohan Lal had many enemies and that he is innocent and has been roped in the case by the investigating officer who is in league with criminals.

(14) Ram Lal accused made a statement similar to the brother Gulshan Kumar stated that the case is false and concocted. Kishan Lal accused in support of his defense examined two witnesses.

(15) The learned Additional Sessions Judge disbelieved the recovery of the revolver and acquitted Kishan Lal on the charge under the Arms Act. There is no appeal by the State against the acquittal under the Arms Act. The Additional Sessions Judge after a discussion of the statements of Public Witness 1 Kuk Raj and Public Witness 3 Avinash Chander found that they are chance witnesses and their evidence is not free from blemishes and, therefore, rejected their testimony. The learned Additional Sessions Judge discussed the depositions of Public Witness 2 Vinod Kumar and Public Witness 6 Satish Kumar at length and believed that they were accompanying the deceased at the time of the occurrence. Acting on the testimony of PWs 2 and 6 the Judge held that it was Kishan Lal who had fired the revolver at Mohan Lal and killed him. Thus, the prosecution case mainly rests on the testimony of PWs 2 and 6.

(16) We have heard Mr. K.K. Sud, learned counsel for the appellant, at length and have also perused the entire record. We are inclined to agree with the learned Additional Sessions Judge that PWs 2 and 6 were accompanying the deceased in

the taxi at the time of the occurrence and they are reliable witnesses particularly Public Witness 6. We find clear and clinching evidence on the record proving the presence of Public Witness 6 along with Mohan Lal at the time of the occurrence. Ex. Public Witness 10/B8 is the medico legal report regarding the admission of Mohan Lal in the hospital. The occurrence took place round about 6.25 p.m. Public Witness 6 testified that after Mohan Lal was bit by the bullet the taxi went out of control and it went on to the pavement and after moving a little distance hit against a scooter, that he got on to the driver's seat and drove the taxi to Hindu Rao Hospital where on examination Mohan Lal was declared dead. The time of admission recorded in the hospital in Ex. Public Witness 10/B8 is 6.40 p.m. The said document further shows that Satish Kumar was accompanying Mohan Lal at the time of the admission in the hospital. The statement Ex. Public Witness 6/A of Satish Kumar was recorded by Public Witness 26 at about 7.30 p.m. that is, within about an hour of the occurrence. The report Ex. Pw 6/A was dispatched to the police station at 7.55 p.m. and the formal report was recorded at 8.20 p.m. The report Ex. Public Witness 6/A is a fairly detailed document and it contains the entire account including names of the assailants (except that of the driver of the three-wheeler) and the motive for the crime.

(17) Shri Sud contended that Public Witness 6 is a history sheeter and his name is entered in the register of bad characters and further that he has been under police surveillance since 1961-62 and that it would not be safe to rely on the testimony of such a witness. It is on record that the deceased had a number of criminal cases against him. The well known proverb 'birds of the same feather flock together' would be very much attracted in this case. Only a bad character would keep company of another bad character. Good people are bound to avoid company of a bad character.

(18) Public Witness 13 Baldev Raj is the owner of the scooter Dhs 4423. Public Witness 13 testified that on 24th May 1980 at about 6 or 6.30 p.m. he after parking his scooter No. Dhs 4423 was present at the shop of Ajay & Co. and that his attention was diverted outside the shop when the taxi hit his scooter parked on the pavement, that some people removed his scooter from in front of the taxi and thereafter the taxi was driven away, that a person had come out of the taxi and

driven it away. The witness further testified that his scooter was damaged and it was taken into possession by the police. The deposition of Pw 13. He is completely an independent witness. His testimony corroborates the statement of Public Witness 6 that after the taxi had hit the scooter he had come out of the taxi, taken the driver's seat and driven the taxi to the hospital.

(19) Mr. Sud contended that the trial Judge has disbelieved the presence of PWs 1 and 3 and this would prove that an effort was made by Public Witness 6 to introduce false witnesses to the occurrence, and that the above circumstances taken with the fact that the recovery of the revolver at the instance of Kishan Lal has also not been believed shall render the entire investigation not trustworthy. The counsel relied on the following authorities : (1) Abdul Sattar v. The Crown, 2nd 1936 Lah 460 (2) Naurang Singh and others v. The State 1961 Plr 908 and State (Delhi Administration) v. UJagar Singh and another, 18 (1980) Del. L.T (SN) 20

(20) We have given our earnest thought and consideration to the above contentions of Mr. Sud and we regret we are unable to agree with the sweeping proposition that if the presence of some of the eye witnesses is doubted the entire prosecution case has to be rejected. The court has in such a case to weigh the other evidence with utmost care and find out whether the other eye-witnesses are reliable and can be safely acted upon. There are, in our view, a number of circumstances which prove beyond any doubt the presence of Public Witness 6 in the taxi at the time of the occurrence. The circumstances are: (1) the taxi admittedly after the occurrence along with the deceased was driven to the hospital, (2) the medico legal report Ex. Public Witness 10/B8 established that Satish Kumar was accompanying the deceased at the time of the admission in the hospital. Public Witness 13 whom we have found to be an independent and reliable witness testified that after the taxi had hit against the scooter one person had come out of the taxi and driven it away. The presence of Pw 6 with the deceased at the time of admission in the hospital would prove that the person who had driven the taxi from the spot where the taxi had crashed against the scooter could be no other than Public Witness 6. This, in turn, would prove that Public Witness 6 was in the taxi at the time of the occurrence. (3) Public Witness 26 on reaching the hospital was met by Public Witness 6. Satish Kumar made the

statement Ex. Public Witness 6/A before Public Witness 26. The statement was recorded sometime at about 7.30 p.m. The time of the dispatch of the report Ex. Public Witness 6/A recorded is 7.55 p.m. The formal report was recorded at 8.20 p.m. Ex. Public Witness 6/A is a detailed report and it mentions the names of the assailants. There is hardly any time left between the occurrence and the recording of the first report within which a twisted or thought out version of the occurrence could be given.

(21) Public Witness 25 constable Gurcharan Singh stated that on 24th May 1980 at about 9 p.m. he was given the envelope containing the special report regarding Fir No. 472/80 and the same was delivered by him to the illaqa Magistrate at his residence at 6 a.m. on 25th May 1980. The said report is on the record and it shows that it was received by Shri D.S. Bawa, Metropolitan Magistrate on 25th May 1980 at 6 a.m. We further find that a copy of the first report was also sent along with the inquest papers to Dr. Bharat Singh and he had received the same on 25th May 1980. We do not find any such delay in the delivery of the special report which may be indicative that the first report was not recorded at the time and place it purports to have been recorded. We have no hesitation in holding that the first report Ex. Public Witness 6/A was recorded at the time it purports to have been recorded. (4) Public Witness 6 gave evidence that after the deceased was hit with the bullet he had slumped on him. The shirt and the trouser worn by Public Witness 6 had got stained with blood. The blood stained clothes of Public Witness 6 were taken into possession by Public Witness 26. The said clothes were on Chemical examination found to be stained with human blood. This, to our mind, is a clinching circumstance and it establishes the presence of Public Witness 6 at the time of the occurrence beyond any pale of doubt.

(22) Another important circumstance established on the record is that the cinema tickets F-30 to P-32 were produced by Public Witness 6 before Public Witness 26 on 24th May 1980 and they were taken into possession by Public Witness 26. The criticism of Mr. Sud against these circumstances is that in the first statement as well as in the supplementary statement of Public Witness 6 the fact of Public Witness 6 having produced the cinema tickets before Public Witness 26 is not mentioned. This to us, seems to be only an omission. The cinema tickets are

stained with blood, found to be human blood. We find no reason for the investigating officer to have attempted to conceal this piece of evidence. Public Witness 6 has in the first report stated that after the court hearing they had gone to the Batra Cinema and seen the Matinee show which finished at about 6.15 p.m. We find no reason at all to disbelieve Public Witness 6 that he had produced cinema tickets P-30 to P-32 before the investigating officer on 24th May 1980. Ex. Public Witness 2/G is the memo regarding the seizure of the cinema tickets and it is witnessed by Satish Kumar and Vinod Kumar. It is possible that the investigating officer did not feel the need of recording the supplementary statement of Satish Kumar regarding his producing the cinema tickets since the seizure memo was witnessed by Satish Kumar.

(23) The above discussed pieces of evidence, in our view, prove beyond any doubt the presence of Public Witness 6 in the taxi along with the deceased at the time of the occurrence. Public Witness 6 has given evidence that Public Witness 2 was accompanying the deceased at the time of the occurrence. The version of Public Witness 2 is that when the third shot was fired he opened the left rear door and jumped out of the taxi. The name of Public Witness 2 is mentioned in the first report. Public Witness 2 was employed with Inder Singh brother of the deceased Mohan Lal in about 1971. PW2 no doubt had long association with the family of the deceased.

(24) Shri Sud vehemently criticised the testimony of Public Witness 2 on the ground that he was a witness in the earlier two cases (State v. Chander Badan Singh and State v. Mohan Lal and another) and in both these cases Public Witness 2 was found to be an interested and unreliable witness, and according to Mr. Sud the testimony of such a witness, should be straightaway rejected.

(25) We know of no rule of evidence that if the testimony of a witness is disbelieved in a case, his evidence in any later case should on that ground automatically be rejected. The rule of prudence is that testimony of an interested witness or a witness of shady character should be astutely examined. Shri Sud also referred to some of the inconsistencies and contradictions in the statement of Public Witness 2.

(26) We have an independent circumstance which goes to prove that there was a third person with the deceased at the time of the occurrence. Pw 6 produced three cinema tickets Ex. P-30 to P-32 which were seized by the investigating officer. Both PWs 2 and 6 have stated that from the Patiala House courts they had accompanied the deceased to Batra Cinema and after seeing the movie at about 6 15 p m. they were going along with the deceased to Model Town for dropping Public Witness 2. This part of the version finds full support from the cinema tickets P-30 to P-32.

(27) There is another piece of circumstance showing that PW2 was with the deceased at the relevant time. The blood stained shirt of PW2 was seized the same evening by Public Witness 26. The shirt was found to be stained with human blood. Mr. Sud contended that Public Witness 2 had not come into contact with the deceased and, therefore, the shirt of Public Witness 2 could not have received the blood, Pw 2 gave evidence that after the taxi had struck against the scooter and stopped he went and felt the pulse of Mohan Lal which was feeble and he had advised Public Witness 6 to immediately rush Mohan Lal to the hospital and he himself had gone to the house of the deceased to inform his family of the occurrence. We find nothing unusual or suspicious in the prosecution version that the blood stained shirt of Public Witness 2 was seized by Public Witness 26. The clothes worn by the deceased were extensively stained with blood. The car seat was also extensively stained with blood. The clothes worn by Public Witness 6 were also stained with blood. The shirt worn by Public Witness 2 could have received blood in the process of handling of the deceased in the car by Public Witness 2.

(28) We have carefully perused the testimony of Public Witness 2 and we are inclined to agree with the trial Judge that Public Witness 2 was in the car at the time of the occurrence.

(29) The only question remains whether PWs 2 and 6 could identify the assailants. PWs 2 and 6 have testified that when the taxi reached near Parmanand Colony a three-wheeler scooter came parallel to the taxi and Kishan Lal stretched out his arm and fired the revolver at Mohan Lal. On bearing the gun shot fire the attention

of PWs 2 and 6 was found to be diverted towards the scooter rickshaw PWs 2 and 6 knew Kishan Lal and Ram Lal very well. Even if they only had a glimpse of Kishan Lal they could not have made mistake in identifying him. The name of Kishan Lal as the man who had fired at the deceased followed by two more shots is mentioned in the first report. Keeping in mind the previous enmity between the family of Mohan Lal and the appellant Kishan Lal we have no hesitation in believing PWs 2 and 6 that it was Kishan Lal who had fired the revolver at Mohan Lal and killed him.

(30) For the reasons stated we affirm the convictions and sentences of the appellant Kishan Lal and dismiss the appeal.

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