

Leela Ram and ors. Vs. State

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Court : Delhi

Decided On : Aug-25-1989

Reported in : 1990CriLJ296; ILR1989Delhi16

Judge : Charanjit Talwar and; V.B. Bansal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

Appeal No. : Criminal Appeal No. 128 of 1986

Appellant : Leela Ram and ors.

Respondent : State

Advocate for Pet/Ap. : I.U. Khan and; G.S. Vashisht, Advs

Judgement :

Charanjit Talwar, J.

(1) It appears that two of the appellants, i.e.. the parents of Leela Ram were also found injured after the said occurrence It is not clear as to on whose information, Chandi and his wife Smt. Chanda were removed to the Safdarjung Hospital. However, vide Ex. Public Witness 16/A, the M.L.C. in respect of Chandi, it is shown that he was admitted in the hospital at 10.15 P.M. with the alleged history of assault. It was found that he hail numerous injuries on his legs, arms and the

scalp. In fact both his legs and one of his arms were fractured. Smt. Chanda was examined in that very hospital on 6th January, 1982 at 5.45 A.M. vide Ex. DX. her M.L.C. This M.L.C. shows that she had. received one lacerated wound in the left parietal region of 40 cm X 0.5 cm and another minor injury in the right scapule. legion. We are highlighting this aspect as in the First Information Report about the occurrence, there is no Explanationn of the injuries sustained by the appellant Chandi, although it was the admitted case of the prosecution before the trial court that those injuries had been inflicted on Chandi in the course of the occurrence. In their testimony, two out of the three eye witnesses do not say a word about the injuries sustained either by Chandi or by his wife Smt. Chanda. One of the witnesses, viz. Public Witness 2 Sis Ram Las tried to give some Explanationn, which on scrutiny seems to be against the record.

(2) Public Witness 2, Sis Ram, who was related to both the deceased. i.e., Har Lal and Deepa, in his first statement recorded on 6th January, 1982 had not said anything about the assault on the accused. In his cross-examination, he admitted so, in so many words. He said :

'I have not told the Police about injuries to Chandi and Chanda in my first statement.'

(3) In his supplementary statement made under Section 161 of the Code of Criminal Procedure (Ex. Public Witness 21DB) he did give some Explanationn. This witness in his examination-in-chief, however, did not refer to that Explanationn. It was only in answer to a court question that Explanationn was deposed to by him. The question was asked when the witness in cross-examination had admitted that he did not count the ballam blows given by the appellant Leela Ram to the deceased but had stated :

'IT could be one or two'.

Then the court asked him the following question :

'YOU have just stated that you have no count of ballam blows but you have also said one or two ballam blows were given. How do you explain

While answering this question, the witness came out with the Explanationn of the injuries given to the accused as well. His reply was :

'A.Initially Lile (meaning Leela Ram) gave one ballam blow to each of the deceased persons and then Har Lal snatched it from hi mand gave a ballam blow to Chandi and then Chanda snatched it from Har Lal and Lile took it from Chanda and then gave a blow each to the two deceased persons.'

(4) We may note here that the injuries described in Ex. Public Witness 16/A show that none of them was caused by a ballam although caused by sharp and blunt objects. Public Witness 16, Shri O. N. Divedi did prove the M.L.C. (Ex. Public Witness 16/A) and admitted in his cross-examination that:

'THE nature of injuries in the instant case was opined as grievous, with sharp and blunt weapon.'

(5) D.W. 2, Dr. B. L. Kundu, in charge of the Jail Hospital certified that Chandi had multiple fractures of both his legs and numerous fractures of an elbow.

(6) Thus the assertion of Sis Ram (P.W. 2) in the answer given to the court question that Har Lal (since deceased) had snatched the ballam from Leela Ram and had given a blow to Chandi, is falsified by the medical record.

(7) Another fact may also be noticed on this aspect. Sis Ram in his statement of 17th March, 1988 had attributed the snatching of the ballam to Deepa, the other person (since deceased) and not Har Lal. By itself that contradiction is not important, but, the fact is that no injury was caused by a ballam. It is clear that the injuries caused to Chandi were by blunt object like lathi and also by a sharp object, i.e., there were two weapons used against him, most probably by two assailants. The theory propounded by the prosecution, which as we have noticed above, is not in the First Information Report, through the prosecution witness Sis Ram is not at all satisfactory. It has to be re-emphasised that the investigating agency knowing fully that Chandi had received grievous injuries, at the time of occurrence or most probably during the scuffle, did not consider it proper or fit to investigate that aspect. It further appears that it was only when the Legal Branch of the Police

found out this infirmity that a supplementary statement of Sis Ram (P.W. 2) under Section 161 of the Code was recorded. Put even that witness did not utter a word about it during his examination-in-chief.

(8) Mr. I. U. Khan, learned counsel for the appellants submits that the prosecution having suppressed the genesis and the origin of the incident, has not presented the true version; the version unfolded is unreliable and, therefore, the appellants are entitled to acquittal. He relies on *Laxmi Singh and Others v. State of Bihar*, : 1976 CriLJ1736 . (1)

(9) In the present case, two out of the three eye witnesses are interested witnesses. They are interested in the outcome of the case as they were related to the deceased. Public Witness L Veer Wati at the time of occurrence was a young girl of about 14 years. The deceased Har Lal was her father and the other deceased Deepa was her Mause (Mother's sister's husband).

(10) Public Witness 2, Sis Ram admitted that both the deceased were his relations. According to him, immediately after witnessing the occurrence, he left the spot and went to inform the brother of Har Lal, who lived in a Village, Brahampur. about 15 miles away in the District of Gurgaon.

(11) The third eye witness, Public Witness 6 Smt. Ratti was a neighbour of the accused as she lived across the street but no credence can be given to her testimony as according to her after the incident, all the accused ran away. As is clear from the M.L.C. (Ex. P.W. 16(A), Chandi was not in a position to run away or even walk because he had multiple fractures of both his legs. We would revert to the testimony of this witness a little later to discuss the case of the prosecution on merits. But suffice it to say at this stage that this is one of those cases where it was incumbent on the prosecution to have thoroughly explained the injuries sustained by the appellants, specially by the appellant Chandi. The injuries sustained by Chandi cannot be said to be minor or superficial and it is very clear that there is no Explanationn about the same. The finding of the learned trial court that the eye witnesses were simply suppressing the truth on this aspect but otherwise they were trustworthy cannot be upheld. In our view the testimony of the witnesses cannot be said to be independent or dis-interested or that it outweighs

the effect of omission on the part of the prosecution.

(12) The injuries sustained by the deceased were found to have been caused by blunt objects like lathi as well as by a sharp object. During the course of investigation, the prosecution had seized two lathies from the house of the appellants and one ballam at the instance and pointing out of accused Leela Ram. It was their case that these were the weapons which had been used by the accused. According to the prosecution, Leela Ram was armed with the ballam and the other two accused with a lathi each.

(13) Public Witness 31, Dr. Chander Kant. who conducted the post mortem on the bodies of Deepa as well as Har Lal, was emphatic that the ballam (Ex. P. 1) was not the one with which one of the injuries had been caused to the deceased. In his opinion given in the post mortem reports (Ex. Public Witness 31/A and 3110 as well as in his testimony he stated that injury No. 9 (in case of Deepa) and injury No. 6 (in case of Har Lal) were likely to be caused by a sharp edged weapon. According to the prosecution case. Ex. P. 1 the ballam had caused those. But the Doctor, as noticed, declined to affirm this fact. Those injuries have been described as follows on Deepa

'(9)One punctured wound 3 cms below left shoulder joint, margins are abraded with both angles are acute shape elliptical size 1.5 cms X 1 cm depth 1.9 cms.'

on Har Lal

'(6)One incised wound on the right ear lobule exposing the upper part of ear cartilage size 2.8 cms dividing the ear lobule into two halves.'

The injuries which were possibly caused by lathi were. 3, 4, 5, 6, 7, 8, 10 and 11 (Ex. Public Witness 30/K) in respect of Deepa and injuries 2, 3 and 4 in respect of Har Lal (Ex. Public Witness 30/J)

(14) Thus the ballam (Ex. P. 1) cannot be said to have been used in the occurrence at all either by the appellants or by the deceased in inflicting injuries to anyone. The lathies, it is stated, were found near the entrance door of the appellants house. It is not possible to believe that after use of those very lathies,

the accused or anyone on their behalf would so conveniently place them so that they (the accused) could easily be involved. At any rate, one lathi does not look different from another and it is very difficult to pin point or hold that the lathies seized were the ones used in the scuffle.

(15) The prosecution case seems to be that after the occurrence, all the three accused had escaped. We have carefully scrutinised the evidence regarding the injuries received by the appellant Chandi. We are of the view and we hold so that he was not in a position to run or walk. It was the duty of the prosecution to produce evidence as to on whose initiative or asking did the Police remove that appellant and from where. According to Public Witness -6 Smt. Ratti, the third eye witness, when she saw that Deepa and Har Lal had been stabbed with ballam in the street, she closed the door of he', house but according to P.W. 1 Veer Wati, the fight started in the street and eventually ended in the compound of Public Witness 6, Smt. Ratti's house. In fact, some blood and also blood controlled earth were removed from. the compound of the house of Smt. Ratti, the wife of Public Witness 3 Bhag Mal. It may be noticed that Bhag mal does not claim to be an eye witness. If the door of the house, as stated by Smt. Ratti was closed, the injured could not have entered that house but they did in fact reach there and it seems collapsed in that very compound. It is safer to assume that Smt. Ratti was not an eye witness. Public Witness 2, Sis Ram also, to our mind, was not an eye witness. He admitted that immediately after seeing the occurrence, he left the spot. He did not bother to look after the injured, take them to the hospital or inform the police or get a doctor. He thought since a fight had occurred, he must go to the house of one Diga, brother of Har Lal whose house was situated at about 15 miles away and he claims to have gone there on foot.

(16) Public Witness 1, Veer Wati in her cross-examination admitted that her statement was recorded in the police station, which she thumb marked. Obviously, she is referring to the statement which is the, basis of the F.I.R. She also admitted that she returned to her house from the police station in the morning of 6th January, 1982 after making a statement. It has come on the record that no special report of this case was sent. to the higher authorities by the Duty Officer., as he thought that the case had been registered under Sec. 307 of the Indian Penal

Code and thus there was no necessity of sending it. We may note that Deepa. who had been admitted in the hospital vide Ex. Public Witness 23/B (M.L.C.) at 9.10 P.M. on 5th January, 1982, died a little after midnight. i.e.. 00.30 hrs. on 6th January. 1982. Har Lal died at about 7.35 A.M. on 6th January, 1982. The Investigating Officer was in the hospital at that time and it seems that it was thereafter that the offence was converted into murder punishable under Section 302 of the Indian Penal Code. Atleast at that time. the necessity of sending the special report to the higher authorities had arisen.

(17) It is therefore, not possible to verify exactly as to when the First Information Report was recorded.

(18) There is another aspect. When Public Witness . 28. Si Bishamber Dass arrived in the Village after receiving message from the main control room about the occurrence a little after 8.30 P.M. on 5th January, 1982, he did not find anyone of the eye witnesses at the spot. Only the Pradhan of the village was present and Bishamber Dass Along with the Pradhan took the injured to the hospital. The M.L.Cs. in respect to Har Lal and Deepa, Ex. P.W. 23/A and Public Witness 23/B show that it was the Pradhan of the village who Along with Bishamber Dass had got the injured admitted in the hospital.

(19) In view of the inherent probabilities and the serious omissions, we hold that the prosecution has not been able to bring home the guilt to the accused. The result is that the appeal is allowed. The conviction and sentence of the appellants for the offence punishable under Section 302 of the Indian Penal Code are set aside. We are informed that two of the appellants viz., Chandi and Smt. Chanda are on bail. Their bail bonds are discharged. The appellant Leela Ram, if not required in any other case, be released forthwith.