

Krishan Kumar Vs. State

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Court : Delhi

Decided On : Sep-11-1987

Reported in : 1987(3)Crimes758; 33(1987)DLT231

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

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

Appeal No. : Criminal Appeal No. 179 of 1983

Appellant : Krishan Kumar

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; B.T. Singh, Advs

Judgement :

Charanjit Talwar, J.

(1) By this appeal Krishan Kumar has challenged his conviction under Section 302 of the Indian Penal Code imposed by the learned Additional Sessions Judge vide his judgment of 5th August, 1983. He has also challenged the legality of the order of the same date sentencing him to imprisonment for life.

(2) The weapon of offence with which the appellant herein is stated to have stabbed the deceased Suresh Kumar and the other case property, including the clothes said to have been worn by the appellant at the time of commission of offence were not produced before us during the course of arguments. Mr. E.T. Singh, learned counsel for the State made a statement that the case property is no longer in existence as it was destroyed on 8th May, 1986. Thus we have been deprived of the benefit of assessing the case fully. Learned counsel for the appellant submits that non-production of the case property in the present case is a serious infirmity which must be held to be fatal to the prosecution case. But first the facts.

(3) The prosecution case was that at about 11.45 P.M. on 20th August, 1982 the appellant who is also known as 'Dagi' had committed murder of Suresh Kumar near the crossing of Goshala Road and Delhi Cloth Mills (hereinafter referred to as D.C.M.) School Road in the locality of Kishan Ganj Delhi. The incident had been witnessed by Santosh Kumar, a friend of the deceased and one Megh Raj Singh. The eye witnesses, the appellant and the deceased are all residents of Kishan Ganj. According to Public Witness .1 Santosh Kumar, at 11.45 Pm on 20th August, 1982 he saw the appellant and Suresh Kumar coming from the side of the Dcm school while exchanging hot words. They started quarrelling on the pavement at the corner of Goshala Road near the crossing. After a little while the appellant took out a dagger from the right side pocket of his pant and stabbed Suresh Kumar in his abdomen. The witness who had just closed his 'Pan-Beedi' shop which is nearby the place of occurrence, went to intervene when the stabbing incident took place. On his raising the alarm, Krishan Kumar ran away from the spot. Santosh Kumar and the other witness Megh Raj Singh, a shop keeper in a part of whose shop, the former sells 'Pan-Beedi' and who, it is stated, had also seen the

occurrence, chased Krishan Kumar for about 2 to 21 furlongs but the appellant managed to escape. According to prosecution version, the injured was removed to the hospital by Public Witness .2 Shri Vinod Kumar in a three-wheeler scooter. A Police party headed by Sub Inspector Ishwar Singh was on patrol duty in that very area. It reached the spot where according to Public Witness .5 Constable Bachan Singh, who was a member of the patrol party, a crowd had collected. In his own words 'We saw that a crowd had collected at the crossing and people were saying 'Mar Diya Mar Diya and not naming the person who had assaulted. When we reached the stop we learnt that the injured had already been removed to the hospital.' It was immediately thereafter that Public Witness .1 Santosh Kumar who after the chase had come back to the spot, met the Police party and made a statement (Ex. Public Witness .1/A) which is the basis of Fir (Ex. Public Witness .9/A). In that statement also the first informant stated that 'On my raising the alarm Megh Raj and some other person reached the place of occurrence but Krishan Kumar ran away from the spot. I and Megh Raj chased him but he managed to escape towards Manak Pura. When I came learnt that Vinod Kumar had already taken Suresh Kumar to the hospital.

(4) Public Witness . 2 Vinod Kumar took the injured to Bara Hindu Rao Hospital. Ex. P 17/A, the medico-legal report, shows that Suresh Kumar was declared to be brought dead at about 12.15 A.M.on 21st August, 1982. The post mortem examination on the body of Suresh Kumar was conducted on 21st August, 1982 at about 12.30 P.M. by Public Witness . 15 Dr. L.T. Rehmani, Medical Officer of the Police Hospital, Delhi. He found the following eight injuries :

1. Incised stab wound 1 cm x 0.5 cm x verticle on the left anterior auxiliary fold. Margins were regular. 2. Incised wound 0.4 cm x 0.2 cm x skin deep on the left side chest well in mid auxiliary line, 4 cm below the arm pit; 3. Incised stab wound 2 cm x 1 cm x oblique on the right side front of chest at the external border. Both ends were equal and margins were regular. 4. Incised stab wound 2 cm x 1 cm x verticle in the mid-line over xiphi sternum. Margins were regular and both ends were equal 5. Incised wound 4 cm x 1 cm x horizontal on the left costal margin. Lower end was more tapering; 6. Incised wound 2 cm x 1 cm x oblique on the left hypochondrim, 4 cm lateral to injury No. 5. Both ends were equally tapering; 7 Incised stab wound 2.2 cm x 1 cm x vertically placed on the left lumber area of abdomen. Margins were regular and both ends were equal. 8. Incised wound 1.5 cm x long x skin deep, oblique on the palmer aspect of right middle finger.

(5) As per the post mortem report, all the injuries were ante-mortem and were caused by a sharp edged weapon. In the opinion of Dr. Rehmani injuries No. 3 to 7 were sufficient to cause death in ordinary course of nature. He further opined that the death in this case was due to haemorrhage and shock resulting from injuries. The time since death was about 12 hrs.

(6) The appellant was arrested from the bus stop near Filmistan Theatre on the 25th August, 1982 at about 5.00 Pm According to Public Witness . 21 S.I. Mahinder Singh, he had received secret information that the appellant would be reaching Rani Jhansi Road at about 5 Pm from Ghaziabad. On Krishan Kumar's alighting from the bus at bus stop Filmistan, he was apprehended and his personal search was conducted. He was taken to the Police Station where he was interrogated. His disclosure statement (Ex. Public Witness .8/B) wherein he had offered to get recovered the dagger from a refuse dump near the Dcm Lines in Kishan Ganj was recorded. He led them to the place of occurrence and thereafter to the refuse dump and produced the dagger (Ex. P. 3) from it.

(7) The prosecution case further is that Public Witness . 14 Rajinder Kumar was Along with the Police party when the appellant was apprehended at the bus stop and later when his disclosure statement was recorded and also at the time when the appellant led them to the garbage dump from where the dagger or the 'Chhuris' was recovered.

(8) According to this witness, however, the disclosure statement was made by the appellant at the place where he was apprehended, i.e., near the bus stop.

(9) The learned trial court has rejected the prosecution case regarding the recovery of dagger (Ex. P.3) from

the refuse dump on various grounds. The disclosure statement said to have been made by the appellant herein (Ex.P.W8/B) which led to the recovery of the dagger has also not been fully accepted. The prosecution allegation was that the dagger had been concealed by the appellant in the refuse dump which is very near to the place of occurrence. The finding, however, is that he could not have done so as he was being chased after the incident by the two witnesses. We agree with the submission of the learned counsel for the appellant that while being chased, the appellant could not have had the time and opportunity to do so as, if he had stopped to do so, he would have been apprehended. We may note that it is the admitted case during arguments that the refuse dump is near the road on which he was being chased and falls much shorter of the point up to which he was chased. The dump is not shown in the site plan but this seems to be admitted position that it is beyond the boundary wall of a park. We take judicial notice of the fact that the garbage is cleared practically daily in Delhi by the Municipal authorities. thereforee, even if the dagger had been thrown by the appellant while being chased on 20th August, 1982 and it accidentally fell on the dump, it would have been removed Along with the garbage by the 25th August, 1982, the date on which it is supposed to have been recovered. The learned trial court has found and in our opinion rightly so, that as the dagger was not found to be blood-stained at all, it could not be said that the dagger which was used in the commission of offence. One of the arguments urged by Mr. Sethi, learned counsel for the appellant is that in the facts and circumstances of this case it has to be held that the dagger was planted by the by the Police to involve the appellant and as such the prosecution being tainted, is liable to be rejected.

(10) The conviction of the appellant is based on the testimony of Public Witness .I Santosh Kumar. The other witness Public Witness .4 Megh Raj Singh did not support the prosecution case and was thus allowed to be cross-examined by the Public Prosecutor. In his testimony, Megh Raj Singh stated that he was a shop keeper and had allowed Public Witness .I Santosh Kumar to vend 'Pan-beedi' in a part of his shop. According to him he had closed his shop at about 10.30/10.45 p.m. and was at his house at 58-C Lines, Kishan Ganj, Delhi on the night intervening 20th and 21st August, 1982. At about midnight he was awoken by a Constable and asked to accompany to the Police post. In his deposition he showed his complete ignorance of the incident of stabbing. He denied that the Police had recovered any blood stains or had taken into possession blood controlled earth in his presence although he admitted that the memo of possession (Ex.P.W.1/B) bore his signature. His Explanationn was that Police had obtained his signatures on some papers. P. W, 1 Santosh Kumar, however, sticks to the version which he had made before the Police vide Ex. Public Witness .I/A, the basis of the Fir (Ex.P.W.9/A). According to him the deceased and the appellant were exchanging hot words at about 11.45 PM/12 midnight of 20th August, 1987 and thereafter Krishan Kumar (appellant herein) got enraged and 'took out a chhurri from his right side back pocket of Pant and stabbed Suresh Kumar several times in his abdomen with the same chhurri. immediately rushed towards Suresh and seeing me accused freed Suresh deceased and he fell down on the ground. He tried to get up three times but fell on the ground each time. I raised a noise which attracted Megh Raj Singh at the spot and both of us chased the accused who had fled towards Manak Pura side but we could not apprehend the accused after long chase and so we returned back to the spot at about 11.45/12 midnight where one Police Inspector met me and I learned that Suresh deceased had been removed to hospital by Vinod Kumar. I made my statement (Ex. Public Witness .I/A) to the said Police Officer which I signed at mark 'A' after it was read over to me.'

(11) In his cross-examination this witness has admitted that at that time no other shop was open as by 11.00 P.M. all his neighbouring shops are usually closed. He further admitted that Megh Raj also used to close his shop generally by Ii P.M. as it was the closing time of the market. He further admitted that the deceased was not only well known to him but that he was co-accused with him in two cases. He further admitted that he had been prosecuted in a number of cases. The suggestion put to him that he suspected that the appellant was the person on whose information he (the witness) had been involved in an opium case, was denied by him. He, however, could not identify the dagger which the accused is said to have taken out from his pant pocket and stabbed the deceased. He denied in his cross-examination that he had stated before the Police that besides Megh Raj Singh, some other persons also reached the spot. He was confronted with his previous statement where it was found to have been so recorded.

(12) The testimony of this witness is being challenged on various grounds. It is stated that actually it is Megh Raj Singh who is telling the truth. Megh Raj Singh had closed his shop as stated by him before the closing time and thereafter had gone to his residence. Public Witness .1 Santosh Kumar who runs 'Pan-Beedi' business in a part of that shop could not have been present in the shop as it was closed. It is further submitted that the deceased was a partner in crime with this witness (P.W.1) who has himself admitted that atleast in two cases the deceased was his co-accused. The witness was himself involved in a number of other cases. Thus the plea is that on the sole testimony of a self-confessed criminal, the conviction cannot be sustained particularly in the view that the weapon of offence said to have been used, had been planted.

(13) One of the submissions made is that the dagger (whose sketch is Ex. Public Witness .8/D) could not be concealed in the back side pocket of the pant by the appellant as alleged by the prosecution. We find from the sketch that the length of the blade of that weapon said to have been recovered is 5.6' and including the handle it measures 8.9'. The prosecution does not allege that it was being kept in any sheath. If there was a sheath, its length would be almost the same, i.e., about 9'. Normally such a weapon even if in the sheath, cannot be hidden in the back pocket of the pant as it would certainly protrude out. In our opinion such a weapon without any covering or sheath cannot be kept or concealed in the back pocket at all as such a sharp edged weapon would cut the pocket and most probably in the process hurt the person hiding it. But as noticed earlier, the dagger was not all produced before us. According to Mr. Sethi, non-production of the dagger and the other case property is an infirmity which has to be held to be fatal to the prosecution case. It relies on *Mohd. Ibrahim v. State*, : AIR1969 Delhi315 . In that case, the appellant was found by the trial court to be in possession of some dyes and moulds which could be used to manufacture counterfeit coins. He was found guilty under Section 235 of the IPC. But by the time the appeal came up for hearing, those dyes and moulds were not available for examination by the Court as by then the Police had destroyed them. Non-production of the case property was held to be serious infirmity and was considered to be fatal to the prosecution case. A careful perusal of the judgment shows that even on facts, Dua, Cj (as his Lordship then was) found that there was no material on the record which could be said to exclude the possibility of innocent possession by the appellant of the dyes and moulds. In the present case we are satisfied that on the material on record it is not at all safe to hold the appellant guilty without there being any corroboration on material particulars of the testimony of Public Witness .1 Santosh Kumar, specially so in the absence of the weapon of offence alleged to have been used by the appellant and the clothes said to have been worn by the appellant. We are not called upon to go into the general question whether non-production of case property before the appellate Court or a revisional Court is an infirmity which is fatal to the prosecution case. In the present appeal it can be held so as was held in *Mohd. Ibrahim* (supra) case.

(14) We are of the view that the appellant is entitled to benefit of doubt. We hold accordingly. The appeal is allowed. The judgment dated 5th August, 1983 is set aside. Consequently the order dated the 5th August, 1983 of sentence is also set aside. We are informed that the appellant is on bail. The bail bonds are cancelled.