

Balle Ram and ors. Vs. the State (Delhi Adminstration)

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SooperKanoon Citation : sooperkanoon.com/690265

Court : Delhi

Decided On : Sep-04-1989

Reported in : 41(1990)DLT675; 1989(17)DRJ287; ILR1989Delhi29

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 14 of 1987

Appellant : Balle Ram and ors.

Respondent : The State (Delhi Adminstration)

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

Judgement :

Charanjit Talwar, J.

(1) The following accused were tried for the offences under Section 302, 147, 148, 149 and 323 of the Indian Penal Code :

1.Balle Ram

2.Satbir

3.Daya Nand

4.Khazan

5.Surender

6.Dhan Raj

Five of them, viz., Balle Ram, Satbir, Daya Nand, Khazan and Surender were convicted for the offences under Section 302 read with Section 149, Section 147 and Section 323 read with Section 149 of the Indian Penal Code. Each of them was sentenced to undergo life imprisonment under Section 302 read with 149. Indian Penal Code. Each of them was further sentenced to undergo rigorous imprisonment for a further period of six months under Section 147, Indian Penal Code. Further six months simple imprisonment was awarded to each of them under Section 323 read with Section 149 of the Indian Penal Code. All the sentences were directed to run concurrently

(2) At the outset we may notice that the acquittal of Dhan Raj was challenged by the State but its petition (Cr. Misc. 456/87) was dismissed in limine. Thus the finding of the trial court acquitting Dhan Raj are not being assailed in the present appeal.

(3) The learned trial court has noticed the prosecution case in great details. It is unnecessary for us to reproduce the same at length. In a nutshell the prosecution case was that on 16th June, 1984 at 8.43 P.M., Public Witness 10, Amar Nath gave information on telephone to Police Control Room that a fight was going on in village Khera Kalan and that some police officers be sent to control the same. On receipt of that information, which was recorded in the Daily Diary, Sub Inspector Ram Swarup who was then in charge of the police control room van arrived at village Khera Kalan at about 10 P.M. This village is within the jurisdiction of Police Station Alipur, Delhi, After parking the van at the bus stop, the police party consisting of the S.I. himself, one Head Constable and two Constables went to the village to find out as to where the quarrel had taken place. According to this witness for about an hour and a half or two hours, they were searching for the exact place but were unsuccessful. Hence they returned to the bus stop. There they found S.I. Sada Ram Along with one Constable from Police Station Alipur

present who in the meanwhile had been informed by the police control room about the quarrel. It was at that time that Public Witness 31 Si Ram Swarup found a dead body, which he later on came to know was that of Raghubir Singh. Public Witness 31 Ram Swarup was further informed that one injured person viz., Kartar Singh was lying in his house. With the assistance of the villagers, the police team from the police control room was able to remove the injured Kartar Singh from his house and take him to the Hindu Rao Hospital in the police van. The injured was accompanied by one Dharam Vir. According to the M.L.C. (Ex. Public Witness 20/A), Kartar Singh when admitted at 1.20 A.M. on 17th June, 1984, was 'deeply unconscious'.

(4) The prosecution case was actually unfolded by Public Witness 3 Mahinder Singh, an eye witness to the occurrence at the bus stop of the village, to S.I. Sada Ram, who had also as noticed above, reached the village after receipt of the information vide Daily diary No. t3-A (Ex. Public Witness 2/A). Mahinder Singh told him that on that day at about 6.45 P.M. Raghubir Singh was beaten to death by Balle Ram, Khazan, Surinder, Dayanand, Satbir and Dhan Raj, who were armed with lathies and jellies and also Kulhari near the 'Trolley Hut' Khera Kalan Railway Station. It appears that the Sub Inspector was taken to the place of occurrence by Mahinder Singh, where his statement, which is the basis of the First Information Report (Ex. P >W, 3/A) was recorded.

(5) In that statement, Mahinder Singh disclosed that he was a teacher in M.C.D. Primary School, A-Block, Jahangirpuri, Delhi but was residing in Village Khera Kalan. According to him on that date at about 6.45 P.M. when he was going to his residence via Andheri Bagh from his farm situate on the south-west of the railway line, he saw Raghubir Singh, S/o Chandgi Ram, also a resident of Village Khera Kalan coming from the opposite side of the village. Raghubir Singh's younger brother, Kartar Singh was following him at a little distance. On noticing Raghubir Singh, the six accused (whose names have already been mentioned above), who were well known to him as they were also residents of that very village, emerged from 'Andheri Bagh'. Dhan Raj (since acquitted) challenged Raghubir Singh and said :

'SAALA Chandgi Ka Aaa Gaya Hai Ise Khatam Kar Do'.

The exhortation freely translated means that he (Raghubir Singh) should be done away with. On seeing them, Raghubir Singh retracted and started running towards the village, but according to the first informant, all the accused chased and surrounded him. Balle Ram and Satbir were alleged to have given jelly blows and Dhan Raj, who was holding an axe in his hand, gave blow on the head of the deceased. Surinder. Daya Nand and Khazan assaulted Raghubir Singh with lathies.

(6) In the said statement, Mahinder Singh further stated that immediately after the attack, Raghubir Singh fell down on the ground and when Kartar Singh, his brother tried to rescue him, he was also attacked by Satbir and Daya Nand with jelly and lathi respectively. It was at that stage that the first informant raised an alarm 'Pakro Pakro' but the accused fled away. After a short while, Chattar Singh, Daya Nand, Kaptan Singh. Charan Singh and some other persons of the village came to the spot. Daya Nand brought a cot from the railway quarters and Raghubir Singh was put on the cot and removed towards the village. It is alleged that Raghubir Singh died on the way; Kartar Singh was given support by the first informant and brought to his house.

(7) According to the endorsement of Sada Ram made on the statement of Mahinder Singh, Rukka was dispatched to the Police Station at 11 P.M. on 16th June, 1984, as noticed above, it is the prosecution case that the occurrence had taken place at about 6.45 P.M.

(8) At this stage it is appropriate to notice that at about the time the statement of Mahinder Singh Along with the endorsement of S.I. Sada Ram reached the Police Station Alipur, three of the accused named by the first informant who had taken part in the assault had been got admitted in the J.P.N. Hospital, New Delhi by one Vijender Singh, Ex. Public Witness II/A the M.L.C. of Surinder shows that he was admitted at 11.45 P.M.. on 16th June 1984 with the alleged history of 'fight with a group' and also alleged history' of 'positive unconsciousness'. At the time of admission, however, it was noticed that the patient was conscious but drowsy and irritated. He had one contused lacerated wound on the scalp 5 cm with irregular

margins, bruises on the right arm and tenderness on right wrist, elbow and shoulder' Fracture was suspected. It was opined that the injuries were simple caused by a blunt weapon.

(9) The M.L.C. (Ex, Public Witness 21/B) of Khazan Singh shows that he was also admitted at that very time, i.e. 11.45 P.M. on 16th June, 1984 He was brought by Vijender Singh with the alleged history of 'fight with a group' and also history of 'unconsciousness'. At that time he was found to be 'deeply drowsy.. variably responds to deep painful stimuli (some times responds)'. It was noticed that he had also a contused lacerated wound on the scalp. in size 5-7 cms. According to the Doctor, this patient had suffered possibly two fractures. But the injury was found to be simple caused by a blunt object,

(10) The third named accused Daya Nand was also got admitted by Vijender. It seems that he had taken Along with the three injured accused as the Mec in respect of Daya Nand shows that he too was admitted at 11.45 P.M. As per that M.L.C. (Ex. Public Witness 21/C, the alleged history given was 'fight with a group and positive unconsciousness'. It was found that although conscious at the time of admission, the patient was drowsy and was poorly responding to 'verbal commands'. The injuries found were :

'A contused lacerated wound on the scalp 7 cms. right hand side; tenderness on left scapular region and posterior part of chest (left)'.

it was opined that the injury/injuries caused to him were grievous. It may be noticed that vide Ex. Da it has been brought on record that Daya Nand in fact had suffered' a fracture of the left scapula. That finding has been given on the back of the X-ray requisition slip in Medico Legal Case in respect of Daya Nand.

(11) It is apparent from the record that the prosecution admitted that these three accused had received injuries during the occurrence. But in the statement of Mahinder Singh, which is the basis of the F.I.R..there is no mention whatsoever as to how and by whom were those injuries caused to the said three accused, who had been on the prosecution's own showing, admitted in the hospital, approximately two hours before Kartar Singh, Public Witness 7 was admitted in

Hindu Rao Hospital vide M L.C. (Ex. Public Witness 20/A). The injuries received by Kartar Singh were opined to be simple caused by a blunt object.

(12) Surinder, Khazan and Daya Nand were not found fit to make statements at 4.35 A.M. on 17th June, 1984 by Dr. K.S. Rekhi. His endorsements have been proved as Ex. Public Witness 21/G, 21/H and 21/K respectively by the Record Clerk, Shri K.K. Chibber (Public Witness 21). It appears from the testimony of Public Witness 23, constable Dayal Chand that two police officers had visited that hospital at about 5.30 A.M. on 17th June, 1984; the timing given by this witness seems to be wrong as in fact the Doctor had opined that the patients were unfit to make statements at 4.35 A.M. It is, however, clear that the Investigating Officer, Si Raghubir Singh, Public Witness 19 had visited the hospital along with St Sada Ram obviously to question these persons during the course of investigation as they had been named in the F.I.R. As per the testimony of this Constable who was on duty in the hospital, they remained there up to 6.15 AM. It is not explained as to by whom and on whose asking these very three accused were discharged at about 8.30 AM on that very day, i.e., 17th June, 1984. The prosecution did not summon the doctor who had examined them at 4.35 AM. However, according to Public Witness 23 Dayal Chand, the entry in the register maintained by the duly constable at the hospital confirms the fact that they were discharged at that time. Public Witness 23 had stated so after verifying the fact from the register which is maintained in the hospital. From endorsements on Ex. Public Witness 21/A, B and C, the time of discharge of these three accused is not clear but the averment of Dayal Chand, Public Witness 23 has to be taken for granted as there is no other evidence produced by the prosecution on this aspect. Mr. Sodhi, learned counsel for the State, however, during arguments controverted the assertion of the witness and submitted that these three accused must have left the hospital on their own initiative. According to him they were not discharged as they could not have been discharged at that time. We will advert to this aspect of the case a little later.

(13) Mahinder Singh, Public Witness 3 in his testimony deposed to the facts which he had stated in the First Information Report. He supported the prosecution case that Dhan Raj (since acquitted), who was armed with a 'kulhari' had attacked Raghubir Singh that day that Dhan Raj was the accused who had exhorted the

others by proclaiming 'Saala Chandgi Ka Aaa Gaya Hai Ise Khatam Kar Do' was highlighted by him. It was in that statement that for the first time he gave some sort of an Explanationn about the injuries which had been received by the three accused, namely, Surinder. Khazan and Daya Nand. He stated that :

'RAGHUBIR Singh was having a case in his hand which he had used as the time he was surrounded by the six accused persons. Daya Nand, Khazan Singh and Surinder Singh accused received injuries at the hands of Raghbir Singh. The cane in the hand of Raghbir Singh was about 4 1/2 feet in length and about 1 1/2' to 2' in diameter.' One iron ring was fixed at the bottom of that cane. Raghbir Singh fell down after receiving injuries All the six accused persons ran away towards the fields, taking with them their respective weapons.'

(14) Public Witness 7, Kartar Singh. brother of the deceased, who was also injured, has supported Mahinder Singh on this aspect, He stated that :

'MY brother Raghbir Singh used his bant (danda) in his defense. I went near my brother to save him Satbir and Daya Nand attacked me with jelly and lathi, on account of which I received injuries on my left cheek, left arm and left leg'

THIS witness had earlier stated that Dhan Raj had given a kulhari blow on the head of Raghbir Singh. According to him, Mahinder Singh had supported him (Kartar Singh) in going to his house after the occurrence. He admitted that he was removed to the Hindu Rao Hospital by the police from the house and that on the way to the hospital, he became unconscious. He supported the theory that it was Dhan Raj, who had exhorted others to finish Raghbir Singh; that he was the one who had given an axe blow on the head of Raghbir Singh and that Raghbir Singh in his defense had wielded a cane and in that process, the accused got injured.

(15) Mr. D.R. Sethi, learned counsel for the appellants has contended that no reliance can be placed on the testimony of these two witnesses. The two main reasons urged are that first the learned trial court has disbelieved them regarding the role attributed to Dhan Raj and secondly the prosecution has suppressed the genesis and the origin of the incident. The plea is that it has not presented the true

version unfolded is unreliable, therefore the appellants are entitled to acquittal.

(16) As we have noticed, the State had filed a petition seeking leave to appeal challenging acquittal of Dhan Raj. That petition was dismissed in limine.

(17) The learned trial court while dealing with the Explanation of the prosecution regarding the injuries sustained by Surinder, Khazan and Daya Nand has held in paragraph 21 and 22 of the impugned judgment as follows :

'21.Both Mahinder Singh and Kartar Singh stated that immediately after this occurrence, all the six accused ran away from the place of occurrence, It is also undoubtedly true that no cane was recovered from the place of occurrence or from near the place where Raghubir Singh fell down and from where he had been put on the cot and brought to the bus-stand. No such cane was at all recovered from anywhere. This means that the theory of the cane having been used by Raghubir Singh deceased is an afterthought and is an improvement by both Mahinder Singh and Kartar Singh Public Witnesses in their deposition before the court.

22.Now the question would arise, as to how the injuries on the person of Surinder Singh, Khazan and Daya Nand are to be explained. Neither Mahinder Singh saw any injuries on the person of these three accused nor did Kartar Singh observe injuries on their person. The accused persons had escaped from the place of occurrence. They made themselves scarce before the police and were not available to the police. The possibility of injuries on their person being caused by a friendly band in order to escape the consequences of their having committed the murder of Raghubir Singh, cannot be ruled out. The prosecution is not obliged to explain the injuries on the person of the accused Surinder, Daya Nand and Khazan accused, because they were never got admitted in the hospital by the police and they themselves left the ward of their own and they were not available to the police for any purpose whatsoever.'

(18) Although we agree with the learned trial court that the Explanation given by Mahinder Singh and Kartar Singh about the injuries sustained by the three said accused is an improvement on their earlier statements, yet the conclusion reached that there was a possibility that friendly band had caused those injuries and that it

was not for the prosecution to explain those injuries because the police had not got them admitted in the hospital, cannot be upheld.

(19) As we have noticed above, Public Witness 31, S.I. Ram Swarup was the first police official to reach the village Khera Kalan after receipt of the message that a quarrel was going on there. According to him :

'WE were going here and there in the village for about 1 1/2 or 2 hours making enquiry regarding the place of quarrel.'

IT seems that the enquiry was not fruitful and, therefore, they came back to the bus stop where they had parked their van. therefore, it is safe to assume that it was about midnight, before (Public Witness 3) was able to find out as to who had been injured. Admittedly, he took Kartar Singh in the police van and got him admitted in the Hindu Rao Hospital at 1.20 A.M. on 17th June, 1984.

(20) It is to be noted at this stage that this witness, i.e., Public Witness 31 S.I. Ram Swarup was allowed to be cross-examined by the Additional P.P.- In that cross-examination, it is not even suggested that in fact the witness had reached the village earlier than 10 P.M or that he had not taken prompt action or steps to remove Kartar Singh from his house and have him admitted in the hospital. This witness reiterated that he returned to the bus stop at about 11.30 P.M. or 12.00 O'clock and it was at that time that he had met S.I. Sada Ram. It is unnecessary for us to analyze his statement further as it is the timings given by him, which we have to assess. It is admitted at the Bar that the said Village is about 20-25 Kms. from the J.P.N. Hospital. The three injured accused were admitted at 11.45 PM. It must have taken at least 45 minutes from the village to the hospital for Vijender Singh who had got them admitted and for that matter for S.I. Ram Swarup who had taken Kartar Singh injured from the village to the Hindu Rao Hospital. It is apparent that till about 11 P.M., when the statement of Mahinder Singh which is the basis of the F.I.R. (Ex. Public Witness 3/A) was recorded, the police were not able to find out any details about the incident. This statement was 'dispatched by S.I. Sada Ram at 11 P.M. and the F.I.R. was recorded at 1120 P.M. By then the three injured accused had been removed to the hospital.

(21) In our view no blame can be put on the defense or the three accused for having got themselves admitted or having left the place of occurrence before the police reached there. From the reading of the three MLCs it is obvious that Daya Nand had received grievous injuries. All of them had an alleged history of 'positive unconsciousness' and were infact drowsy and semi-conscious when admitted in the hospital. Admittedly a message had been given to the police control room about the occurrence at 8.43 P.M. by Amar Nath. This time is not being disputed. The F.I.R. was recorded almost three hours thereafter, and one of the injured' was got admitted at 1.20 A.M. on the next day S.I. Ram Swarup is very clear that for an hour and a half or two hours, he and his party were roaming about in and around the village to find out as to where and how the occurrence had taken place but as nobody could tell them anything, they came back to the bus stop where the police van had been parked. On being asked whether Kartar Singh had been injured and was to be taken to the hospital by him, Si Ram Swarup stated that :

'WE took the vehicle from outside the village as there was no passage for the vehicle from inside the village. With the help of villagers we brought injured Kartar Singh to our vehicle. One Dharam Vir was also taken Along with the injured in that vehicle. I brought injured Kartar Singh and got him admitted to Hindu Rao Hospital. Dharam Vir was left in the hospital.'

(22) From the sequence in which Ram Swarup has deposed the facts, it is clear that as far as he was concerned, he only came to know at about 11.30 P.M. 12.00 midnight about the injured Kartar Singh, it was not possible for the police van to go up to the house of Kartar Singh. It is clear that it would not have been possible for any other vehicle also to go into the village for evacuating the three accused, who according to the testimony of two eye witnesses had escaped towards the fields Along with the other accused. Nevertheless those three injured were in fact admitted into the hospital at 11.45 P.M. In our view no blame can be attached to these three injured accused for having sought medical help when they required it simply because the police at that time had not been able to contact them.

(23) Further Vijender Singh, who had taken the three injured accused to the hospital, has not been produced. Likewise, Dharam Vir, who had gone Along with

Si Ram Swarup when injured Kartar Singh was taken to the hospital, has also not been produced. therefore, the court has to assess only from the MLCs and the statements of the police officials whether the three accused by getting themselves admitted into the hospital were trying to escape the consequences of their having given injuries to Raghubir Singh, as has been found against them by the trial court. We are of the view that the prosecution was obliged to explain the injuries received by them. The finding that as those three accused got themselves admitted on their own, the police were absolved from doing so, cannot be sustained. The finding that those injuries sustained by the three accused could be caused by a 'friendly hand', is also to be over-ruled. We may note that this was not the prosecution case at all. Their positive case though not stated in the First Information Report and submitted for the first time during the trial was that those injuries were caused by Raghubir Singh (deceased) in self defense by wielding a cane. The learned trial court and in our view rightly so, did not accept that Explanationn. The theory that a friendly hand could have caused those injuries, has been propounded by the court. Mr.Sodhi, learned counsel for the State frankly submits that he cannot support that theory.

(24) Thus we have to agree with Mr. Sethi that the testimony of two witnesses i.e., Public Witness 3, Mahinder Singh and Public Witness. 7, Kartar Singh having been disbelieved on two major counts, they cannot be said to be reliable witnesses. Dhan Raj, who was stated to have played a major role in this offence has been acquitted. Further the Explanationn given by these two witnesses about the injuries to the three said accused has been held to be false by the trial court. We thus hold that it is unsafe to act on the testimony of Mahinder Singh as well as Kartar Singh. Their statements cannot. be made the basis of conviction of the appellants before us.

(25) As we have noticed, the circumstances under which Surinder, Khazan and Daya Nand were got discharged, have not been explained. The argument of Mr. Sodhi that they must have left on their own apprehending their arresi, cannot be accepted in view of the testimony of Public Witness 23 Constable Dayal Chand. He stated that the register maintained by the duty constable showed that the three accused were discharged at 8.30 A. M. on 17th June, 1984. The fact of discharge,

as we have noticed above, is mentioned in the MLCs but not the time. Dr. Rekhi at 4.35 AM. i.e , about four hours prior to their discharge had opined that the accused were unfit to make any statement. The submission of Mr. Sethi that it must have been on the asking or initiative of the Investigating Officer, Public Witness 30 Si Sada Ram that they were got discharged, cannot be brushed aside. In the First Information Report, these three persons had been named as the accused. The Si did visit the hospital in the early morning of 17th June, 1984 and remained there, as stated by him, up to 6.15 A.M. He was wanting to interrogate them but he could not as all the three accused were declared to be unfit for making statements. It is stated that these very three persons still armed with lathies, which had been used in the evening of 16th June, 1984, were arrested at about 2.00 P.M. on 17th June, 1984 from their village. The trial court has disbelieved the alleged recovery of lathies from them. The prosecution was wanting the court to hold that these three injured persons had most probably taken the weapon of offence with them to the hospital and kept them all through the day there on 17th June, 1984 in spite of the fact that all of them were semi-conscious at the time they were admitted in the hospital. This contention cannot be accepted. We are of the view that the investigation in this case has not been thorough and on some aspects slipshod.

(26) The result of the above discussion is that the prosecution has not been able to prove its case against the appellants herein. Their appeal is allowed. Their convictions and sentences awarded to them as per the impugned judgment and the order are hereby set aside. We are informed that Balle Ram appellant is on interim bail. His bail bonds are discharged. The other appellants viz., Satbir, Daya Nand, Khazan and Surinder be released forthwith, if not required in any other case.