SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bias Chander Vs. State

Bias Chander Vs. State

SooperKanoon Citation : sooperkanoon.com/690559

Court : Delhi

Decided On : Nov-04-1987

Reported in : 1988(14)DRJ190

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

Acts : Indian Penal code, 1860 - Sections 34 and 302

Appeal No. : Criminal Appeal No. 14 of 1984

Appellant : Bias Chander

Respondent : State

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

Judgement :

Charanjit Talwar, J.

(1) House No. E-111, Fateh Nagar was a subject of dispute between Banarsi Lal on the one side and Avinash Chander and Bias Chander who are his nephews (sister's son). The parties live in that very house. On 11th June, 1982 there was a quarrel between Banarsi Lal and his nephews in which quarrel it is stated that Banarsi Lal and his wife Raj Rani received some injuries. Banarsi Lal proceeded towards police station Tilak Nagar for lodging a report. He was accompanied by two of his neighbours, namely, Ramesh Chander and Man Mohan Singh. When he

reached Sindhi Mandir, Ashok Nagar, which Mandir is situate near about the police station, he was assaulted by his said nephews. The time was 9.40 p.m. Bias Chander who is referred to in the proceedings of the trial court at various places as Vyas and Ved Vyas caught hold of Banarsi Lal. His brother Avinash Chander is said to have taken out a knife from his dub and inflicted stab wound on him (Banarsi Lal). The injured was taken to the hospital. He, however, expired on 13th June, 1982.

(2) Avinash Chander who had inflicted the stab wound was declared a proclaimed offender. Bias Chander was put up for trial for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. According to the first informer-Man Mohan Singh and Public Witness -15 Ramesh Chander the role played by Bias Chander was that he had caught hold of the deceased near the Sindhi Mandir when he (Banarsi Lal) was proceeding to the police station for lodging a report regarding the earlier quarrel which had occurred on that very day and in which he and his wife were given beating. It is not the case of the prosecution that Bias Chander had inflicted any injury himself.

(3) After trial the learned Additional Sessions Judge found the accused guilty and sentenced him to undergo life imprisonment. The charge framed on 15th December, 1982 reads as follows :-

'That you on 11-6-1982 at 9.40 p.m. near Sindhi Mandir, Ashok Nagar Delhi within the jurisdiction of P.S Tilak Nagar, Delhi in furtherance of the common intention of you and your co-accused Abinash Chander (P.O.) committed murder by intentionally or knowingly causing the death of Banarsi Lal and thereby you committed an offence punishable under Section 302/34 Indian Penal Code and within the cognizance of this court. And I hereby direct that you be tried by this court on the said charge. 15-12-1982 Additional Sessions Judge, Delhi.'

(4) The appellant by this appeal challenges the legality of his conviction and sentence.

(5) Mr. D.R. Sethi, learned counsel for the appellant has taken us through the relevant record. We may note at this stage that the State was unrepresented.

Yesterday when the case reached for hearing as the Government counsel was not present, the court master sent for the Standing Counsel and he was informed that Ms. Rupinder Wasu, Advocate had been entrusted the brief on behalf of the State. Accordingly, her name was shown on the cause list for today. Ms. Wasu, however, informed us in the morning that she was not the counsel. We have had no assistance from the State.

(6) Mr. Sethi has submitted that the investigation in the case is demonstrably not only unfair but malafide and, thereforee, no reliance can be placed on the testimony of the witnesses who allege that Bias Chander had played any role in the incident in question. Alternatively he submits that the common intention of the appellant herein proved by the prosecution can at the most be said to be the common intention to prevent Banarsi Lal to go to the police station to lodge a report and not the common intention to murder as is being alleged.

(7) It appears that at 10.01 p.m. on 11th June, 1982 a telephonic message was received by police station Tilak Nagar from police control room that a person had been stabbed opposite Sindhi Mandir behind Tilak Nagar police station. That message was recorded in daily diary at Item No. 82-B of the same date. It has been exhibited as DW-2/C-8. On receipt of this message a copy of the same, as recorded in the daily diary, was handed over to S.I. Bachan Singh who left for the spot along with Constable Attar Singh. Bachan Singh is the Investigating Officer of this case and has appeared as Public Witness 20. Constable Attar Singh has appeared as Public Witness 18. At this stage we may notice that the appellant at that very time, i.e., exactly at 10 p.m. had also got recorded a report at that very police station. Translation of that reads 'I reside at the address mentioned in Column No. 2. One Banarsi Lal also resides in my house. The litigation is going on in respect of his house. Tonight, at about 9.30 p.m. when I was taking my meal, he picked up a quarrel with me on that very issue. He (Banarsi Lal) has hit an iron rod on my head which has caused injury and the same is bleeding. I want to get my medical examination conducted. I have heard the statement and the same is correct.' This report was exhibited as Dw 2/C-6. This was recorded at Item No. 22-A. The steps taken at the police station have been detailed in that very report. The translation reads 'As per the statement made by the complainant, the report has

been entered in the Roznamcha which has been read over to him who admitting the same to be correct, put down his signature in English which I attest. The aforesaid person has been referred to the O.P.L. under the escort of constable Ramanand No. 364/W after completing the injury sheet. The copy of report, having been prepared separately, has been sent through constable Hari Ram No. 506 to Sh. Bachan Singh S.I. who will take proper action after the medical examination. Scribed by : Durga Singh, A.S.I.' It has been brought on record that constable Ramanand had brought back the appellant before us to the police station after he had been medically examined ai the police hospital. The Mlc brought by constable Ramanand Dw 3 was handed over to S.I. Bachan Singh. According to Dd Ex. Dw 2/C-4 report in which the return of constable Ramanand with the accused has been recorded, it appears (hat Ramanand had returned from the hospital at 2.30 A.M. with the accused and it further proves that at that time S.I. Bachan Singh was also in the police station as the Mlc of the appellant was handed over to him.

(8) According to Mr. Sethi the alleged role of the appellant herein, namely, that he had caught hold of Banarsi Lal at 9.40 p.m. on 11th June, 1982 is obviously an afterthought. If that had been the case at 2.30 A.M. on 12th June, 1982 on the return of constable Ramanand along with the accused, he (accused) would have been arrested by S.I. Bachan Singh who admittedly earlier recorded the Fir of this case around Ii p.m. in the hospital. The Fir is exhibited as Public Witness 6/A and the police proceedings (Rukka) has been exhibited as Public Witness 20/A. The time of dispatch shown in that proceedings is 11.15 p.m)

(9) Another fact on which reliance has been placed to show that the prosecution case as laid regarding the participation of the appellant in the incident is not worthy of credence is that on the bail application which was moved on 12th June, 1982 not only on behalf of the appellant herein but also on behalf of his mother-Sumitra Devi, his younger brother Pappu and his sister-Usha, the effort of the prosecution agency was firstly to show that none of them was in their custody and secondly tu show that it was only on 13th June, 1982 that the appellant was arrested. The bail application is Ex. Cw 1/A at page 130 of the record. The police report on this bail application is Ex.PW20/DX (Page 128). curious fact emerges from reading of this report. The first portion is in the hand of the Investigating Officer Bachan Singh

who has marked it to the duty magistrate but the S.H.O. had further put an endorsement. In between the reports of the Investigating Officer and the S.H.O. a sentence has been added which is apparently neither in the hand of the Investigating Officer nor the S.H.O. That sentence reads 'Smt. Sumitra Devi, Vyas Chander and Usha and Pappu are not in the police station. Ved Vyas accused has been arrested in this case today'. It is clear that this sentence has been interpolated. Reference to Vyas Chander as well as Ved Vyas is to the appellant herein. The learned magistrate before whom this report was produced was summoned as court witness. He is Cw 1. He admits that the report was seen by him at 3.40 p.m. on 13th June, 1982. It is useful to quote the note of the S.H.O.' Forwarded with the report that in the above cited case one accused Ved Vyas who was by name in the Fir has since been arrested today. Submitted PI.' As far as this report's concerned it makes it clear that Bias Chander referred to as Ved Vyas had been arrested at least on 13th June, 1982 at 3.40 p.m. but the Investigating Officer's testimony is to the effect that the appellant had been arrested on that day, but late in the evening at 9.25 p.m. from his house. Mr. Sethi is right when he says that the report lodged by the appellant Ex. Dw 2/C-6 read with the report Ex.DW C/4 relating to the return of constable Ramanand together with the police report Ex. Public Witness 20/DX, partly quoted above, makes the prosecution case qua the appellant very suspicious. It is probable that the appellant herein was not permitted to leave the police station after he had come back from the police hospital with constable Ramanand at 2.30 A.M. on 12th June, 1982. Not only the appellant, his other members of the family had to move a bail application which was referred by the learned magistrate for report to the S.H.O, Police Station TilakNagar. By then the Investigating Officer, it appears, did not want to show the arrest of the appellant and, thereforee, there is no reference in his report regarding the arrest. The report which was to be submitted to the duty magistrate through the S.H.O. was, however, changed to show that the appellant had already been arrested on that day. But that did not fit in with the theory of the Investigating Officer. He has admitted that he had shown the arrest of the appellant at 9.20 P.M. on 13th June, 1982. In this state of affairs it is unsafe to hold that the appellant had any common intention with his brother to inflict the stab injuries which eventually resulted in the death of Banarsi Lal.)

(10) After going through the record we are of the opinion that Bias Chander is entitled to benefit of doubt. The appeal is allowed. Conviction and sentence of the appellant are hereby set aside. We are informed that Bias Chander is on bail. The bail bond is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com