

Ram Singh and anr. Vs. State

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Court : Delhi

Decided On : Feb-01-1990

Reported in : 41(1990)DLT600; 1990(19)DRJ72

Judge : Malik Sharief-ud-Din and; M.K. Chawla, JJ.

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

Appeal No. : Criminal Appeal No. 167 of 1986

Appellant : Ram Singh and anr.

Respondent : State

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

Judgement :

Malik Shrief-ud-Din, J.

(1) The appellants and one Daya Ram were convicted under Section 302 read with Section 34 of the Indian Penal Code on 24th of October and by a separate order of even date were sentenced. to under go to imprisonment for, life. All of them are aggrieved of the aforesaid order

(2) Brief facts regarding the incident are unfolded by the statement of one Radhey Sham (Public Witness -3) and marked as Ex. Public Witness 3/A dated 3rd

October 1982, alleged to have been made by him before PW-16 Sharda Ram A.S.I. of Police Station Paharganj. This statement was recorded at Willingdon hospital. Public Witness Sharda Ram came, to the Willingdon hospital pursuant to a report lodged by one Smt. Dhapo Devi wife of Ram Kishan, deceased herein. This report was, to the effect that. some quarrel is going on between her husband Ram Kishan and Singh. This report was recorded at the . police station as D.D. No. 23-A and was handed over to PW-16 Shardh Ram who proceeded to the .scene of the incident and from there to the Willingdon hospital

(3) Based on the statement of Radhey Sham (Public Witness -3-) the prosecution case detail is that on. 3rd of Octoberr 1982 at about 9.45 AM. Radhey. Sham along with Ram Kihan and Smt. Billo, the real sister of Radhey Sham were. going to the house 'of his sister, namely,Dropadi.residing at 52 Quarters. Paharganj. The accused persons Ram Ram Singh Hoti Rani and Daya Ram who also reside at Nabi Katim came there. Daya Ram and Hoti Ramallegty caught bold of Ram Kishan and fell him down On the exhortation of accused Hoti Ram. Ram Singh accused took out a knife and gave two knife .blows on the chest of Ram Kishan who fell unconscious, the accused then escaped from the scene. According to Radhey. Sham, all of them including Dropadi his sister, who had also appeared on the scene, took: Ram Kishan to Willington hospital. Radhey Sham in his statement Ex PW-3/A further claims that this incident has been witnessed by him and his sister Billo and many other persons who had gathered at the scene of the incident. Narrating the background, he stated that some days ago a quarrel had taken place between Ram Kishan and one Ram Candor the brother of Ram. Singh accused, audio that quarrel Ram Chander had sustained knife injury. According to,him, the accused with a view to take revenge and with an intention to kill Ram Kishan 'had inflicted injuries on Ram Kishan who is in a precarious condition.

(4) Although it is claimed by Radhey Sham that many people had seen the incident the prosecution examined only PW- Radhey Sham PW-2 Smt. Billo. PW-S Richpal Singh, PW-9Raju and PW-19 Smt.. Dropadi as eye witnesses We may also notice that all the aforesaid eye witnesses are closely related to each other

(5) There is hardly any need for us to advert to the medical evidence regarding the cause of the deceased. This is for the reason that neither the injuries sustained by the deceased nor the cause of death is in controversy. The real controversy with which we are faced is as to whether the incident has taken place in the manner in which it is suggested by the prosecution and whether on the basis of the evidence adduced, the accused can be said to be involved in the commission of this crime. While dealing with this aspect of the matter one has to bear in mind the fact that PW-3 Radhey Sham is a man with criminal background as told to us by Shri Vijay Kumar (DW-2). According to whom Radhey Sham was convicted for an offence under Section 302 I. P.C in Mr No. 568 of police station Paharganj, though in appeal he had been acquitted by the High Court. The deceased Ram Kishan himself was a knife as told to us by Radhey Sham (Public Witness -3).

(6) If the evidence of the aforesaid set of eye witnesses is to be approached mechanically and is believed on its face value then there is no difficulty in arriving at the conclusion that the accused persons are connected with the commission of this crime and the incident took place in the manner as told to us by these eye witnesses. We may at this stage recall that the deceased died in the hospital at 12.15 P.M on the same day and death was due to the injuries he had sustained with the knife.

(7) Mr. Dr. Sethi, learned counsel for the appellants, has taken us through the entire evidence and the surrounding circumstances with a view to press his point that the prosecution case and the evidence suffer from some incurable infirmities and material contradictions and that since it is basically a case the fate of which depends upon the evaluation and assessment of evidence the eye witness account in this case has to be scrutinised with utmost care.

(8) We have carefully considered the contentions raised by Mr, Sethi. To begin with, we are one with Mr Sethi that the very story as placed before the court does not appeal to reason when the eye witness account is critically examined. We may recall that the incident has taken place at 9.45 A. M. Surprisingly, even though all the so-called eye witnesses are closely related to the deceased, none of them, has

reported the matter to the police. But Radhey Sham (Public Witness -3) has attempted to provide an Explanationn that they all want to hospital Along with the deceased. To our, mind, this does not seem to be true. The hospital record show that only Dropadi accompanied the deceased, in our view, if male members closely related to the deceased had accompanied. the deceased to hospital, it is unlikely that the lady would have produced herself before the doctoral the person who brought him. This is not only unnatural but something abnormal. Police Post Nabi Karim is not far away from the alleged scene of incident, but it is amazing to notice that none of the closely related eye witnesses makes a report to it about the incident. Smt. Dhapo wife of the deceased who is not an eye witness only reports that Ram Singh and Tony were picking up quarrel with her husband. This is so recorded in the daily diary marked Ex PW-16/A According to PW-24 Scot Dhapo, this information was given to her by Radhey Sham (Public Witness -3). Contents of Ex PW- 16/A would reveal that at the time she lodged the report she was not aware about the place of the incident and other details. Earlier in her statement, she had stated that it was some passers-by who had informed her about it and his name is Radhey Sham. If she is to be believed that Radhey Sham had only told her an much as is mentioned in the document Ex. Public Witness 16/A, it means that Radhey Sham (Public Witness -3) did not even know where ihe quarrel had taken place Despite all this, PW-3 Radhey Sham would like the court to believe that he saw the incident while he along with his sister Billo and the deceased were on their way to the house of Dropadi. Even Richpal (Public Witness -8) who is also a close relation and would like the court to believe that he saw the incident does not report the matter to police and so is the case with Raju (Public Witness -9) though admitted as per the testimony of Radbey Sham (Public Witness -3) these two persons did not accompany them to the hospital.

(9) In respect of place of incident there are different versions on this aspect of the case, though all the witnesses are agreed on one point that the place of incident was near the house of Dropadi (Public Witness -19), In the first information report the place of incident is mentioned as 52 Quarters, the quarter of Dropadi We may recall that PW-3 Radhey Sham, PW-7 Smt. Billo and Ram Kishan deceased belong to Nabi Karim. On the aspect of the site of incident Radhey Sham (Public Witness -3) says that it took place near Dropadi's house and that it was 5 to 6

houses from the place of Dropadi and was visible from her house. At one place he testifies 'when we were near the doors of Dropadi, all accused came from opposite direction'. Smt. Billo (PW-7) has testified that the place of incident is near 52 Quarters. She also says that the house of Dropadi is after 3-4 house after a turn from the place of the incident. In the sue plan the house of Dropadi has not been shown deliberately. PW-8RichpalSingb, uncle of Dropadi, says that the quarrel took place at a distance of 30 to 35 paces from the main entrance of Smt. Dropadi. Further states that rhe said murder took place at the corner of the lane at which Dropadi's house is situated. Further states that the house of Dropadi lies 4 to 5 houses away from the said corner of the lane. He further states that the incident took place on the corner of the lane which passes through the main road and runs in front of the house of Dropadi, bui that incident took place after by-passing the front gate of the house of Dropadi and the place of incident is visible from the front main door of Dropadi and he saw the incident when he along with Dropadi was coming out of her house and while they were at the main door.

(10) Public Witness . 9 Raju, again a dose relation, says that from the place of incident for going to the house of Lal (husband of Dropadi.) one has to take only one turn. Again says, that the said way to the house of La! turns at a distance of 100 to 150 feet from the place of incident and the house of La! lies at a distance of about 30 feet from the turning.

(11) Public Witness . 19 Dropadi says that the place of occurrence is about 3 to 4 paces from her house. Again adds that it is incorrect that if she goes from her house to the place of incident there is a turning in between. Yet at another place she admits that the place of incident would not be visible from her house. On this point Public Witness . 5 Jagmohan Chadha has staled that the site. plan Ex Public Witness 5/A was prepared at the pointing out of Radhey Sham. The place of Dropadi and the place where the blood bad fallen has not been indicated. therein. We may recall that Public Witness . 3 Radhey Sham in his testimony has stated that the blood had fallen on the spot. On the facts and circumstances of this case, it is rather difficult to assess the evidence properly in the absence of the prosecution taking the court- into confidence with regard to the location of Dropadi's house. In this case we find that every eye witness is converging in and

out of the house of Public Witness 19 Dropadi. Sharda Ram (P.W. 16) on this aspect has deposed that he visited the place of incident near 52 Quarters. Shiv Shankar (P.W. 18) says that Dropadi Devi had pointed out her house from the spot and the house is situated in a gali after 50 to 60 paces from the corner of the street. Public Witness . 20 Inspector Gurmail Singh says that he had not visited the house of Dropadi though Dropadi had told him that her house is 3 to 4 houses away from the corner of the gali. The case of the other eye witnesses is that they were outside the house of Dropadi (P.W 19).

(12) In our view, the most important feature on this aspect of the case is that it is left vague. It is impossible for the court to believe that no blood had fallen on the spot. In fact, the first informant Radhey Sham (P.W. 3) categorically says that the blood had fallen on the scene but on investigation no blood was found on the alleged spot of incident pointed out by the eye witness. This is something intriguing and it makes it absolutely doubtful as to whether the place of incident as indicated in this case was really the place where the incident took place. Richpal (Public Witness 8) and Dropadi (P.W. 19) could not have seen the incident as both of them claimed that while they were in the main gate of Dropadi's house and they saw it from there Dropadi (P.W. 19) further admits that the place of incident is not visible from her house and we believe that, to this extent she has spoken the truth. From the evidence it is amply clear that the alleged place of incident is somewhere on about 3 to 4 houses away from the corner where the service lane starts. Obviously, the place of incident as alleged by the prosecution could not be visible from her house. In that view of the matter, both Richpal (P.W. 8) and Dropadi (P.W. 19) are not eye witnesses to the incident. In our view, they have been simply introduced to cater to the requirements of the prosecution case. Since they are related to the deceased, they have been conveniently procured.

(13) Normally in a case like this blood is expected to fall on the scene of the incident (P.W.3 Radhey Sham says that the blood did fall on the ground though on investigation no blood was found at the alleged site of the incident. The absence of blood on the scene of incident, to our mind is one of the most significant circumstances that goes to show that the incident took place not in the manner and at the place as indicated by the prosecution Public Witness . 3

Radhey Sham at one place has said that lot of blood had fallen on the ground but the police did not lift it though it was photographed. This is yet another feature of the case that renders the prosecution case suspect. Photographer Sri Prakash (P.W.6) has denied the presence of the blood on the alleged scene of the incident. In his statement Radhey Sham (P.W.3) has also admitted that both his and Dropadi's clothes were stained with blood view, non-seizure of blood stained clothes of Dropadi may not be of any significance in view of the admitted position that it was she who removed the deceased to the hospital but non-seizure of the blood stained clothes of Radhey sham is significant because had that been done it would have then supported the claim of Radhey Sham (P.W.3) that he had also accompanied the deceased to the hosp[ital] and that the incident had taken place in his presence. There was no reason for the investigating offer not to seize the blood stained clothes of Radhey Sham. Had that been done it would have cleared all the doubts about his presence at the scene of the incident Public Witness . 5 Jagmohan Chadha has also stated that no blood is shown in the site plan.

(14) We may notice that it was only after the examination of these witnesses on this aspect that a shift took place in the prosecution case in this regard and the witnesses who were examined thereafter started coming with a story that no blood had fallen on the scene of the incident. Public Witness .7 Smt Billo whi was examined after the aforesaid set of witness was examined says that no blood had fallen on the scene. she goes to the extent of stating that in fact no blood came out of the injuries. Public Witness . 8 Richpal Singh who according to us, could not have seen the incident from the house of Dropadi also says that no, blood had fallen at the scene and to the same effect is the testimony of Public Witness . 9 Raju and Public Witness . 19 Dropadi. It would thus be seen that it was only after the examination of Public Witness . 7 started that the prosecution case that no blood had fallen on the spot was brought into existence. Earlier to this, the ace witness of the prosecution Radhey Sham (P.W. 3) was categorical about a lot of blood having fallen at the scene of the incident Public Witness . 22 Dr. L.T. Ramani, autopsy surgeon, says that both injuries must have bled. In this state of evidence and the peculiar circumstances of this case, we think there is a lot of force in the suggestion of Mr. Sethi, learned counsel for the appellants, that it is safer to conclude that the incident has not taken place in the manner and at the

place as suggested by the prosecution. This powerful suggestion of Mr. Sethi, in our view, cannot be brushed aside as all the circumstances of the case do appear to support the contention.

(15) The aforesaid observations made by us would appear quite reasonable and logical in the light of our agreement with Mr. Sethi on the next peculiar feature of the case. Mr. Sethi has urged before us that the facts of this case were not in all probability known to any one even till 4th of October 1982, that is, 2 days after the alleged date of incident. Mr. Sethi has invited our attention to the F.I.R. and has registered his doubts as to the time and date when it appears to have been recorded. The Contention is that if the court finds that the registration of the F.I.R. was delayed then it is logical that the facts were not known and there was no eye witness to the incident. On this point we may notice the claim of Public Witness . 3 Radhey Sham that both he and Dropadi removed the deceased to the hospital. As already observed, this claim of Public Witness . 3 Radhey Sham to our mind, does not appear to be truthful, and this is for the reasons we have already given. Furthermore, S. I. Dasharath Singh (P.W. 13) has disposed that Dropadi had got the injured admitted to the hospital has stated that the injured was got admitted by Dropadi at 10.20 A.M. M.L.C. marked Ex. Public Witness . 17/A records that the injured was brought by Dropadi at 10.20 A.M. At no place has the name of Radhey Sham been mentioned or shown to be one of the persons who was accompanying the deceased to the hospital. In normal course of human behavior, if Radhey Sham had also accompanied the deceased to hospital he would be in the forefront and not the woman. This is something unnatural. We may notice that Dropadi (P.W. 19) has not said a word about the persons who were the assailants or about the place of the incident. Hanuman Singh (P.W. 14) the duty constable has not made any enquiry from Dropadi in respect of the assailants and the place of the incident. Surely the names of the assailants and the place of the incident is one of the most important aspects of the information and Dropadi could not have forgotten to mention these details if she had known the facts. In our view, the duty constable who is in the hospital with a purpose also would not have failed on his duty to ask about the names of the assailants and the place of the incident and had he been told he would not have forgotten to convey this information to the police station, Strangely, according to Dropadi (P.W. 19) her statement was

recorded at 5 P.M. on that day.

(16) In Jagat Singh V. The State (Delhi Administration) : 1975 CriLJ1009 , the Supreme Court has dealt with this aspect of the case and it has been held that it is the duty of the constable on duty to get facts from the deceased or from the person who gets him admitted and the names of the assailants and the place of incident are facts which are to be enquired into essentially. It has been further held that it is the duty of the witnesses to inform the duty constable about these matters immediately. In our view, on the facts and circumstances of this case, these observations of the Supreme Court are on all fours and the failure on the part of Dropadi whoever was accompanying the deceased to the hospital to give details about the place of incident and the assailant together with the failure of the duty constable to extract these details is of utmost importance. This will be particularly so in view of the fact that in this case all the eye witnesses are closely related to the deceased and all of them are not accompanying the deceased to the hospital. Neither those who are alleged to have taken the deceased to the hospital have made these details available nor those witness like Richpal Singh (P.W. 8) and Raju (P.W. 9) who did not accompany the deceased to the hospital have made these details available to the police immediately after the incident.

(17) These facts together with the fact that in this case no special report was sent forthwith as required under Section 157 Cr. P.C. go to show that neither the assailants nor any other detail of the incident was known to the alleged eye witnesses. While mandating that the special report shall be sent forthwith to the Magistrate concerned the legislature meant to ensure that the F.I.R. is not open to suspicion of concoction. In that view of the matter failure on the part of the investigating agency to comply with this mandate should put the court on its guard. In this case we have before us the testimony of D.W. 4 Shri Ajit Bharihoke, Metropolitan Magistrate, who has testified that the P.I.R. of this case was sent to him at 10 A.M. on 5th of October 1982 and he has made a record of this fact on the F.I.R. in his own hand. It was, in fact, the duty of the prosecution to show that the sending of the F.I.R. to the Magistrate was not delayed but in this case it has deliberately remained silent on this aspect, it appears that the prosecution attempt was not to allow this fact to surface and to catch the eye of the court P W. 16 A S

I. Sharda Ram has deposed that he did not record the statement of Dropadi in the hospital, though he met her there. In our view, the only reason for not doing so is that no facts were known even to. Dropadi at that time Further, there is no mention of the assailants in the brief facts marked Ex. 20/E which are purported to have gone with the inquest papers on 3rd of October 1982, These papers were seen by the autopsy surgeon on 4th of October 1982 Public Witness . 20 Gurmail Singh admits to at no names of the assailants were mentioned in the brief facts. He also states that the dated body Along with these papers was sent at 7.30 P.M. on 3rd of October 1982. This means that even at 7.30 P.M. on 3rd of October 1982 facts were not known. Radhey Shan. (P.W. 3) says that his statement, on which the F.I.R, is based, was recorded in the hospital At another point he deviates from this stand and stays that it was done at the police station where be thumb impressed the documents. Smt. Billo (P.W. 7) says that she remained on spot and it was on spot that her statement was recorded This is belied by Sharda Ram (P.W. 16) who says that Radhey Sham, Smt. Billo and Richpal Singh did not meet him on the spot. Public Witness 19 Dropadi says that her statement was recorded at 5 P.M. on the spot. She did not know the names of the assailants. When confronted with her statement under Section 161 Cr.P.C. the names of the assailants were found to have been mentioned therein. It was, in fact, the information Ex Public Witness 16/A given by Dhapo wife of the deceased which had set the police in motion and not the information from the duty constable. In her information, Dhapo had stated that it was Radhey Sham (P.W. 3) who had told her about the incident though this fact is denied by Radhey Sham (Public Witness 3). it Dhapo is to be believed that Radhey Sham had given her the information mentioned in Dd Ex. Public Witness 16/A then the court has to conclude that Radhey Sham knew nothing beyond what Dhapo had reported to the police. We further notice that the substance of the alleged facts given by Radhey Sham in his statement Ex. Public Witness 3/A has not been recorded in the daily diary as mandated by Section 154 Cr.P.C. All these facts in their totality lead to one Irresistible conclusion that the F.I.R. was not in existence on 3rd of October 1982 and may be even till late on 4th of October 1982 and this was so because the facts leading io this incident were not known. We are told by Dropadi (P.W.19) that at the time of the incident she raised alarm which attracted many people but none are known to her. To believe that none is known

to her is to believe that no neighbour of 52 Quarters was attracted. This is unnatural and in all probability it is so said because the incident has not taken place in the manner as suggested by the prosecution.

(18) Apart from this, there are some inherent weaknesses in the prosecution evidence. Public Witness . 3 Radhey Sham says something unusual by stating that he does not know the further's name and address of Ram Kishan. This is stated despite the fact that he is his cousin brother and Ram Kishan's further is his maternal grand father. This probably he is doing to advance his case of being an independent witness. He does not talk about any other person . excepting himself and Billo having witnessed the incident as such and rules out the presence of Raju, Richpal and Dropadi. We will be failing in our duty if we do not take notice of the. strange coincidence which is that each one of the eye witnesses at the time of the incident is converging in or out of Dropadi's house. The wife of Public Witness . 9 Raju is the real sister of Dropadi (P.W. 19) Billo .(P.W. 7) says that she remained on the spot and thumb impressed her statement but we know from the investigating officer that when he went on the spot he found none of the witnesses present. Surprisingly. Smt Billo (P.W. 7) does not inform Dhapo wife of the deceased about the incident, nor does she talk about the eye witnesses other than herself and Radhey Sham being present. Public Witness . 8 Richpal Singh is the uncle of Dropadi and was coming out of Dropadi's house at the time of the incident but he does not go to the police station even after he was summoned and only went to the police station at 4 P.M. when, according to him, no enquiry was made from him. At one place he admits that he did not see the stabbing, though earlier he mentions having seen the incident. He does not talk about the presence of Radhey Sham and Billo. Public Witness . 9 Raju has said that his statement was recorded at 330 at 3.45 P.M. in the evening He does not talk to any one about the incident and quietly goes back to work forgetting about what he had seen. Ought we to know if this could be the natural conduct expected of a man in whose presence his close relation was stabbed He also does not talk about the presence of Dropadi though he is also converging into her house. P W. 19 Dropadi did not know the accused from before but still the names of the accused are mentioned in her statement under Section 161 with which she was confronted. She also made the statement only at 5 P.M.. She fails to disclose the names of the assailant to the

duty constable. According to her, the place of incident is not visible from her house, obviously, she is not speaking the truth when she says that she witnessed the incident. It has been admitted that no police officer had gone to the house of the accused. This is so admitted, by the I.O. Gurmail Singh and Inspector Shiv Shankar, If the names of the accused were known then the police would have definitely visited the houses of the accused to arrest them after the statement of Radhey Sham marked Ex. Public Witness 3/A. was allegedly recorded at 11.40 A.M. on the date of the incident. All these facts go to show that the facts of this incident were not known and that is why the FIR. was not sent to the Magistrate till 5th and the names disclosed were not mentioned in the brief facts nor was the substance of the information indicating the names of the accused mentioned in the daily diary.

(19) For all that goes on before us, on the facts and circumstances of this case, the conduct of the witnesses and the broad human probabilities we are of the view that the entire case of the prosecution is riddled with suspicion. It is, therefore, not safe to have a conviction on the quality of the evidence adduced in this case. We allow the appeal, set aside the conviction and sentence passed by the trial court and acquit the accused. They shall be released forthwith unless required in any other case. Hoti Ram and Daya Ram are on bail and their bail bonds are discharged.