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Ramesh Vs. State

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Court : Delhi

Decided On : Feb-06-1979

Reported in : 1979CriLJ727

Judge : Vyas Dev Misra and; F.S. Gill, JJ.

Appellant : Ramesh

Respondent : State

Judgement :

Vyas Dev Misra, J.

1. Ramesh alias Tuyan has been convicted by Shri Joginder Nath, Additional Sessions Judge. Delhi under Section 302 of the Indian Penal Code and has been sentenced to imprisonment for life. The convict has come up in appeal to this Court.

2. The prosecution case is that on 22-7-1973 at about 9 P. M. Krishan Kumar, Phool Chand, Chander Bhan, Shri Ram, Sher Singh alias Sheri, Madan Lai and Bal Kishan had collected outside Krishan Kumar's house and were discussing about the installation of an idol of Durga Mata in Basti Sat Narain Mandir, Nabi Karim, when Ramesh alias Tuyan, Chattar Singh, Sher Singh son of Khiali and Sada Nand came there with open knives in their hands. It is alleged that immediately on arrival, Tuyan pointedly remarked. 'Chiri maro bahar nikle, turn

logon ne mujhko police se najaiz paker-way hai' (O' you 'chiri maro', come out, you are the persons who had got me false ly arrested by the police). At that time Chattar Singh also proclaimed that they had come to take revenge. Phool Chand (since deceased) asked the appellant and his companions to retreat and not to raise any trouble over the installation of the idol, but Chattar Singh exhorted his companions to attack and finish their adversaries. Thereupon, Ramesh alias Tuyan gave three knife blows to Phool Chand on his back, Chattar Singh also gave him two knife blows, one pierced his abdomen and the other struck his left thigh. When Bal Kishan and Madan Lai tried to intervene, Sada Nand attacked the former and gave him a knife blow on the back side of his right shoulder; whereas Sher Singh gave a knife blow to Madan Lai on the left side of his chest. Krishan Kumar went to his house and brought a stick from there. In the meanwhile the assailants climbed the roof of Chattar Singh's house and started pelting bricks and soda water bottles from there.

3. After receiving the injuriesboth Phool Chand and Madan Lai ran towards their houses. They fell in the way but soon thereafter they were removed to the Irwin Hospital. Bal Kishan injured, however, went to his house. Police was informed about the incident on the telephone. S.I. Chanan Parkash along with the S.H.O. and other police officials rushed to the spot. On learning that Bal Kishan injured was in his house, Chanau Parkash went there and took him to Irwin Hospital, where he was also admitted.

4. Doctors reported that none of the injured was in a fit condition to make the statement. So, S.-I. Charan Parkash went back to the spot and recorded there the statement of Krishan Kumar at about 11.25 P.M. The same was sent to the Police Station and on its basis a case under Section 307/34 of the I. P. C. was registered.

5. At about mid-night Phool Chand died in the hospital. On receiving this information, the police changed the offence for investigation from Section 307 to Section 302 of the I.P.C. Inspector Nawal Singh then took over the investigation from the Sub-Inspector and sent Phool Chand's dead body to the mortuary for post-mortem examination. Dr. Bharat Singh performed the examination and found the following external injuries on the dead body:

1. Abrasion on the left side of forehead size 1.3/4'.

2. One incised stab wound over the left hypochondrium 3' above and lateral to umbilicus placed obliquely with upper end directed outwards and upwards size 1' x 1/4' x? angle were tapering.

3. One incised stab wound over the left thigh outer upper parts 6' below the iliac crest placed vertically size l' x 1/4'' x l'. No major blood vessels were cut.

4. One stab wound over the right iliac crest size 1/2' x 2/10' x 2/10'.

5. One incised wound over the back in the midline 12' below the nape of neck placed horizontally size 1.1/4' x 2/10' x?.

6, One incised wound over the back 1' below injury No. 5 placed horizontally size 1.1/4' x 2/10' x?.

7. One slab wound over the right lumber area placed obliquely 1.1/2' x 1/10' x? covered by blood.

He opined that injuries numbers 5, 6 and 7 were sufficient to cause death in the ordinary course of nature singly or in combination. Death was stated to be due to haemorrhage and shock as a result of the injuries. He further reported that the other injuries were not fatal m nature.

6. Madan Lal injured also died in the hospital on 26-7-73. His dead body too was sent to the mortuary for post mortem examination. The examination was conducted by Dr. Bharat Singh on 27-7-73.

7. After the completion of the investigation Otn Parkash, Sher Singh s/o Khiali Ram, Ramesh alias Tuyan, Harish Chattar Singh and Sada Nand were challaned under Sections 148, 302/149 and 307/149 of the I.P.C. The learned Additional Sessions Judge tried them for the said offences, but acquitted them all, excepting Ramesh alias Tuyan. who was convicted for Phool Chand's murder and was sentenced to imprisonment for life, Ramesh alias Tuyan felt aggrieved from this judgment and preferred the present appeal.

8. We may observe at the very outset that the present appeal is limited in its ambit as it only relates to the murder charge of Phool Chand. For this murder Ramesh alias Tuyan, alone has been held guilty. This appellant has, however, been acquitted of the other charges, while the remaining accused have been acquitted of all the charges. State has not filed any appeal against these acquittals.

9. It will also be relevant to point out here that none of the deceased persons had made any statement before their death. So much so, even Bal Kishan injured was declared unfit to make a statement after his admission in the hospital. The case was, thereforee, registered on the basis of Krishan Kumar's statement, which he made to the police at the spot at 11.15 p.m. on the very day of the occurrence.

10. The learned Counsel for the appellant has assailed the authenticity of the F.'I.R. and has contended that it had not been recorded at the time it was purported to have been written. According to him this had been actually recorded after 1 a.m. on 23-7-73. It is accordingly submitted that this document had completely lost its sanctity, being highly blemished in character. In this regard it is argued that S. I. Chanan Parkash had reached the venue of the occurrence shortly after the incident and had contacted one of the injured, namely, Bal Kishan, whom he had later taken to the hospital. It is urged that this injured must have narrated the entire occurrence to this Sub-Inspector, as he (the injured) was admittedly not unconscious when he was taken from his house to the hospital. It is submitted that the first, reporting was intentionally withheld for the simple reason that it did not inculpate the present appellant.

11. The various contentions questioning the genuineness of the F.I.R. do not forge any way when they are tested in the light of the situation attaining at the time of the occurrence. There was an unlawful assembly, members of which had pelted stones and soda water bottles on the opponents before the arrival of the police. Two persons, who had been seriously injured, had already been removed to the hospital. The third was lying injured at his house. In such an aghast and tense atmosphere, the natural impulse of the Sub-Inspector was to be, to take the injured to the hospital without any loss of time and provide the best medical aid. He would also have been envious to know about the condition of the other two

injured, who had already been taken to the hospital. In the circumstances he naturally concentrated all his efforts and employed all his means, for the well-being of the injured instead of sitting at the spot and start examining the injured and other persons. Surely, the welfare of the injured was of paramount importance at that moment and the Sub-Inspector had rightly acted in that direction.

12. After the injured had been admitted and medical aid had been rendered, the next step obviously was to examine the injured and get the case registered. When the Sub-Inspector approached the doctors he was informed that none of them was in a fit condition to make any statement. He was thereforee impelled to go to the spot and proceed in the matter. Accordingly, the Sub-Inspector came to the venue of the occurrence and examined an eye witness, namely, Krishan Kumar. His statement was completed at 11.25 p.ru. which was immediately sent to the police station and on its basis a case was registered at 11.40 p.m.

13. The learned Counsel has tried to make capital out of a sentence occurring in the cross-examination of Krishar Kumar that his statement was recorded at. the spot and then he had taken his brother along with him. Immediately thereafter this witness has added that his statement was recorded at 11 or 11.15 p.m. In the subsequent part of the cross-examination conducted on behalf of Harish accused, Krishan Kumar has stated that it was correct that his statement Ex PWl/A was recorded by Chanan Parkash at 11.15 p.m. after he had come back from the hospital. This minor discrepancy does not impair his testimony for two reasons. Firstly, his statement was recorded after an year and a half of the occurrence and secondly, when he was subjected to such a lengthy cross-examination he was prone to err unwittingly in describing the minor details without comprehending their import or implication. Such discrepancies in fact leave s trail of imprint that the witness is untutored and credible.

14. Further, the learned Counsel for the appellant has also tried to take advantage of the statement of Inspector Nawal Singh (P. W. 23) when he has stated that he had not come to know till 1 A.M. about the names of the assailants; or the witnesses. The case was originally registered under Section 307/34 of the I.P.C. and S.I. Chanan Parkash was conducing the investigation. Nawal Singh took over

the investigation after the information regarding the death of Phool Chand was conveyed to the police, S.I. Chanan Parkash has stated that at about 1.15 A.M. on 23-7-73 he had received the information about Phool Chand's death in the hospital and accordingly the offence was changed from Section 307 to Section 302 of the I.P.C. He has further added that thenceforth the investigation of the case was taken over by the S.H.O. himself. Statement of Inspector Nawal Singh that he had come to know about the names of the assailants or that of the eye witnesses at 1 A. M. is quite believable when it is read in conjunction with the statement of S.I. Chanan Parkash.

15. For all these reasons we hold 1hat there is no substance in the contention that the F.I.R. had been recorded at a subsequent time and not at the time it was purported to have been written.

16. It is next argued that the entire prosecution story be disbelieved as a substantial part thereof, as given in the F.I.R., has not been supported before the court. It is true that at the trial, Krishan Kumar and other eye-witnesses have inculpated the appellant alone and have not said anything incriminating against the other accused but it does not follow, as a corollary, that the allegations against the appellant should be held to be false. Before arriving at any conclusion, the whole evidence required to be fully scanned.

17. While considering the force of submission made by Shri Sethi, the principles governing the appreciation of the evidence have to be applied. This unfortunate fact cannot be lost sight of that in our courts there is a general tendency on the part of the witnesses not to tell the whole truth. They often resort to exaggeration and embellishment when narrating an incident. In this way the entire fabric becomes so polluted that the courts have to disengage the truth from falsehood. While performing such a function the entire evidence, coupled with the attending circumstances, has to be sifted. In that process it has to be found whether truth and falsehood are so inextricably mingled that it is not possible to sever one from the other. After an elaborate and comprehensive treatment, the intrinsic credibility of the witnesses, who testify, has to be determined and conclusion arrived at. For weighing such evidence there can be no specific1 canon as each case depends

upon its own facts and peculiarities. Infirmities, which creep in the statements, have to be sufficient in nature to reach thu core of the prosecution case.

18. With the above observations, we now advert to the evidence in the present case. We find that in the F.I.R. some injuries have been attributed to Tuyan, while others to the remaining accused. It is stated therein that Chattar Singh had given two knife blows to Phool Chand, one in his abdomen and the other in the thigh; while Sher Singh had given knife blows to Madan Lai. Sada Nand was also alleged to have inflicted a knife blow to Bal Kishan. In his 'statement in the court Krishan Kumar (PW 1) has attributed all the knife injuries to Ramesh alias Tuyan alone. He has completely exonerated the other accused. To the same effect are the statements of the other eye witnesses, namely, Sher Singh PW 2, Sri Ram PW 3, Chander Bhan PW 4, and Rattan Lai PW 5.

19. It will thus be noted that in the F.I.R. the injuries inflicted on the back of Phool Chand have been attributed to the appellant alone and that this fact also finds corroboration in the statements of all the eye witnesses. These injuries were fatal in nature as has been categorically stated by Dr, Bharat Singh, who performed the post-mortem examination. This Doctor has also candidly opined that injuries Nos, 5, 6 and 7, found on the back of Phool Chand, were sufficient to cause his death in the ordinary course of nature both severally and jointly. So the failure of the eye witnesses to support a part of the prosecution story does not mean that the whole of it be branded as false and be discarded on that account. In our opinion the part attributed to the appellant in the F.I.R. stands amply proved by the statements of all the eye witnesses. Obviously with a view to save the other accused due to some social compulsions and influences, the parts played by the other accused have also been assigned to the present appellant. That cannot absolve the appellant of the criminal liability, which he is to be visited, as a result of the fatal injuries caused by him to the deceased.

20. The next submission made on behalf of the appellant is that the sequence of events, as stated in the F.I.R., is not in accord with the statements of the witnesses made before the trial court. According to the F.I.R., Tuyan had given three knife blows to Phool Chand on his back and thereafter two knife blows were

inflicted to him by Chattar Singh causing injuries in his abdomen and left thigh. However, before the trial Judge Krishan Kumar has deposed that Tuyan had opened the attack by giving a knife blow in the abdomen of Phool Chand and thereafter 2/3 blows were given on his back. The narration of the order of the infliction of injuries does not in any way detract the value of the testimony of this witness. The number and seat of back-injuries caused by the appellant is the same both in the F.I.R. and the statement made in the court. The prosecution story cannot be brushed aside merely on the ground that an injury in the abdomen was described earlier than it had been actually caused, Krishan Kumar's statement made in the court against Ramesh alias Tuyan is substantially the same as has been given in the F.I.R, The minor variation in the sequence of the causing of injuries is not of much consequence when, for obvious reasons, the witnesses were determind to save the other accused.

21. Lack of motive on the part of the appellant was the other point canvassed. In our view the appellant's state of mind Is amply demonstrated by the pertinent remarks which he uttered at the time he arrived at the spot. His grievance against the 'Chiri Mars' was that they had got him arrested by the police without any cause. It is contended on behalf of the appellant that these remarks, as appear in the F.I.R. and as stated before the court are not identical. On scrutiny we find that they practically convey the same meaning and intention. There is bound to be some deviation in narration at different times. That goes to show the truthfulness of the witnesses, having not made parrot like statements.

22. Moreover motive is not an ingredient of the offence of murder. Sometimes very heinous crimes are committed on most flimsy grounds. In the present case the appellant had nourished grievance against the 'Ghiri Mars', including the deceased, as they were alleged to have falsely got him arrested by the police. Clearly, there appeared a motive behind, whether strong or otherwise.

23. It has been further argued by Shri Sethi that no blood had been lilted from the place of the occurrence which was outside house No. 6007 (belonging to Krishan Kumar), as it was taken from a place in front of the shop of Kirori Mai. It is submitted that Kirori Mai has not been examined and that this casts a grave doubt

about the venue of the occurrence. We do not find any force in this contention. Lifting of the blood in this case is not very important. All the injured had run away from the place of the occurrence. Blood could fall at several places in the way. There are unanimous statements of all the witnesses that the place of the occurrence was outside the house of Krishan Kumar, which was also very close to the place where idol of Durga Mala was to be installed. The object of lining the blood from a particular place is to show that the occurrence had taken place at that spot. In the present caso, statements of Krishan Kumar, Sher Singh, Sri Ram and Chander Bhan PWs. abundantly prove that the occurrence had taken place in the street as has been recorded in the F.I.R. The contention of the learned Counsel being devoid of any substance is repelled.

24. Another attack against the judgment has been made on the ground that the witnesses produced by the prosecution are from the brotherhood of the deceased and, thereforee, they are incredible. It is further submitted that failure to examine Kirori Mai, an independent person, casts a serious doubt in the authenticity of the prosecution version. It may be observed that only persons of one brotherhood had collected for a common cause and, thereforee, they were the only natural witnesses. Their evidence, thereforee, cannot be disbelieved on the ground of kinship. Secondly, non-production of Kirori Mai is also of no consequence as the occurrence had taken place at about 9 P.M. and no question was put to any winless whether or not the shop of Kirori Mai was open at that time. No one has stated that Kirori Mai was present at the shop. It is pointed out on behalf of the State that there is a curve between the place of occurrence and the shop of Kirori Mai and, thereforee, even if Kirori Mai had been there, he would not have been able to see the incident. Moreover, when there is any rioting the shopkeepers are very prompt to close their shutters. For these reasons the contention of the learned Counsel deserves to be ignored.

25. It is further argued that the prosecution has suppressed the telephonic information received from the Policy Control Room. It is not necessary to produce every witness. The F.I.R. was recorded shortly after the occurrence, The name of the appellant and the part played by him and other persons had been explicitly stated therein. For that s reasons the argument has no basis.

26. It is next argued that there hat) taken place a fight with soda water bottles, bricks etc. but no witness has been produced to prove this incident. It is further contended that it is not established as to who had been injured during the pelting of these articles, nor even the medical examination of any injured witness was conducted. These developments were after the murderous assaults. Consequently, they had paled into insignificance. This alleged omission in no way minimises the value of the evidence appearing against the appellant.

27. It has also been argued that a substantial part of the prosecution evidence has crumbled and, thereforee, a small part cannot sustain. It is accordingly contended that the case against the appellant be held to be doubtful. It is the appraisement of the evidence on which we find that the part attributed to the appellant about causing of the fatal injuries to Phool Chand is amply proved. Regarding the other parts we need not probe as the other accused have been acquitted and there is no appeal against acquittal. We are fully satisfied that the appellant had caused the fatal injuries to Phool Chand by giving the knife blow. Doubt has to be such as should shake the prosecution version. It has not to be only airy or fanciful doubt. In our view there is ample unimpeachable direct evidence to link the appellant with the causing of the fatal injuries to Phool Chand. The contention of the learned Counsel has, thereforee, no force.

28. The last argument advanced in the appeal is about the nature of the offence. It is contended that at the most the injuries caused to the deceased would make out a case under Section 326 of the I.P.C. We are afraid we cannot subscribe to this contention for two important reasons, Firstly, the knife blows had been repeated more than once, which clearly shows the intention of the assailant and] secondly, the injuries caused were sufficient in the ordinary course of nature to cause the death either singly or collectively, (c. f. statement of Dr. Bharat Singh. PW 16).

29. Before concluding it will be relevant to point out that the only surviving injured Bal Kishan appeared as PW 15 on 22-1-1975. His examination-in-chief was recorded but on the request of the Additional Public Prosecutor he was allowed to put such questions as are put in cross-examination. The A. P P. cross-examined him, but the cross-examination by the accused was deferred on that date.

Thereafter this witness has not been produced. The part of his statement recorded on 22-1-1975 is inadmissible in evidence. It has, thereforee, been totally ignored, being non-existent in the eyes of law.

30. For the reasons stated above, we find no merit in this appeal, which is hereby dismissed and the conviction and sentence of the appellant are affirmed.

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