

Mahabir Singh Vs. State

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Court : Delhi

Decided On : Mar-30-1979

Reported in : 1979CriLJ1159

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

Appellant : Mahabir Singh

Respondent : State

Judgement :

1. The two appellants in this appeal are Dharambir and Mahabir. They were convicted by Shri S. C. Chaturvedi, Additional Sessions Judge, Delhi on 6-11-1975 under Section 302 read with Section 34 of the I.P.C. and were sentenced to imprisonment for life.

2. This incident took place at Wazirabad Water Works on 18-10-74 at about 10.45 p. m. when Ram Lila celebration was about to come to a close on that night. Both Dharambir and Mahabir were witnessing the programme. So was Azad (deceased). These appellants and the deceased belonged to a nearby village called Jagatpur. Several other inhabitants of the same village were also present there to witness the function,

3. It is alleged that at about 10.45 p.m. Dharambir armed with a knife and Mahabir armed with a lathi, got up and went to the place where Azad was sitting. Without any remark or throwing any challenge Dharambir started stabbing Azad on his

back with the knife. Mahabir then pulled Azad and made him lie on the ground with his belly downwards. It is further alleged that Dharambir gave more blows with his knife. In all 7 or 8 blows were stated to have been inflicted by Dharambir.

4. It is also alleged that when Azad was lying on the ground Rajpal and Mahinder PWs made a desperate bid to rescue Azad by laying themselves on him. When they were lying over Azad, Mahabir was alleged to have given lathi blows to Rajpal on his arm, neck, shoulder, back and waist. By that time Tejpal, Jai Prakash, Sukhbir and other persons arrived at the scene of the occurrence and both the assailants ran away with their respective weapons after proclaiming that they had taken the revenge of a similar incident which had taken place during such celebrations two years ago. Shortly thereafter, Constable Manohar Lal who was on duty there, also arrived.

5. Rajpal removed injured Azad to the Irwin Hospital in a taxi. Constable Manohar Lal had also accompanied them. On examination the doctor declared that Azad was already dead.

6. Shortly thereafter, the S. H. O. and other police officials arrived in the Hospital. Statement of Rajpal was recorded by the S. H. O. It was sent to the police station and on its basis a case under Section 302/34 of the I.P.C. was registered.

7. By this time Mahinder and Nathu Singh had also reached the hospital. It is alleged that the Investigating Officer started for the place of the occurrence along with Rajpal, Mahinder and Nathu Singh. In the way Rajpal was taken to the Police Hospital for his examination. The Medical Officer examined him and gave him first aid. For his medico-legal examination he was directed to be produced in the morning at 9 O'clock.

8. When the S. H. O. reached the spot some police officials had already reached there. They were guarding the place. The Investigating Officer took into possession the various Articles and blood soaked earth after turning them into sealed parcels and prepared the recovery memos. Statements of the witnesses were also recorded.

9. The post-mortem examination on the dead body of Azad was conducted by Dr, Vishnu Kumar on 20-10-74 at 11 a.m. The probable time between the death and the examination was stated to be about 36 hours. Eight incised wounds and two contused wounds were found as a result of the external examination. All the injuries were stated to be ante-mortem, caused by some sharp double edged weapon. Injuries Nos. 3, 4 and 7 were opined to be sufficient to cause death in the ordinary course of nature, both individually and collectively.

10. Rajpal was produced for examination before the Medical Officer in the Police Hospital on 21-10-74 at 10.15 a.m. A small abrasion 1/2' x 1/4' on the left side of the neck was found which was mentioned to be 3 to 4 days old.

11. Mahabir was arrested by the police on 20-10-74, while Dharambir surrendered himself in the Court on 21-10-74. The police also took the custody of Dharambir for the purposes of investigation. It is alleged that Dharambir had made disclosure statement and had got the blood stained knife recovered. Similarly Mahabir got his lathi recovered after making a disclosure statement.

12. After the completion of the investigation both Dharambir and Mahabir Were challaned in the Court of a Magistrate. They were committed to Sessions by him. The learned Additional Sessions Judge held the trial and convicted and sentenced both of them as already stated in -para. 1 ibid. These convicts have come up in appeal to this Court.

13. There are five eye-witnesses in this case. They are Rajpal PW 1, Mahinder PW 2, Tejpai PW 3, Jai Prakash PW 4 and Sukhbir Singh PW 5.

14. Statement of Sukhbir Singh can be discarded without much probing as the reasons are very obvious. Firstly, the name of this witness does not appear in the F.I.R. Secondly, he was examined by the police after four days of the occurrence. There are also several material discrepancies in his statements made before the police and later in the Court. The learned Counsel for the State has also not made any effort to justify the acceptance of this witness's testimony. The learned trial Court had rightly disbelieved Sukhbir. We see no reason to take a different view.

15. It is pointed out by Shri Bhardwaj that the other four eye-witnesses are close relatives of the deceased. Mahinder PW 2 has admitted that Azad deceased was his brother-in-law. Jai Parkash PW 4 has admitted his relationship with Rajpal and Tejpal PW 5, inasmuch as Jai Parkash's grandfather was the brother of Rajpal PW's father Chetan. It is also pointed out that Karam Singh PW 16 is father of Jai Parkash PW 4 whereas Karam Singh PW 16 and Ram Kala PW 17 are brothers.

16. After having noticed the inter se relationship amongst the prosecution witnesses, it will be relevant to refer to the existing inimical postures between the parties. Prior to the present incident, a case under Section 307/34 of the I.P.C. had been registered in Police Station Civil Lines on the report of Dharambir Singh against Azad Singh and Mahipal. It was alleged that Dharambir had been stabbed by the said two persons. The said case was still pending trial in the Court of Shri D. C. Aggarwal, Additional Sessions Judge, Delhi when the present occurrence had taken place. It is admitted that Mahabir appellant was a prosecution witness in the said case. Previous enmity is clearly established.

17. Motive to commit the crime was very much there, but it is a double edged weapon. If it can be a ground to commit a crime, it can also be an equally good reason to falsely inculcate innocent persons. The evidence, therefore, requires to be scanned with a note of caution.

18. Rajpal PW 1 is the complainant. This case was registered on the basis of his statement. He has claimed to be an eye-witness and has stated that he had laid himself on Azad in order to save him and that when he was in that posture Mahabir had given him lathi blows on his arm, neck, shoulder, waist and back. If the statement of Rajpal about the receipt of the injuries be believed, it has necessarily to be corroborated by medical evidence, an independent source. Such corroboration has thus assumed more value and importance. But actually his statement has been totally belied by the medical evidence.

19. Rajpal was produced before Dr. A.K. Acharya of Police Hospital (PW 19) at 1.20 a.m. on 19-10-74, but his examination was not conducted at that time. The doctor had given first aid and had directed that the injured be produced next morning at nine 'for MLC action'. The Investigating Officer did not choose to

produce him as directed but actually produced him in the same hospital before Dr. S. Chaudhary (PW 38) on 21-10-74 at 10.15 a.m. Dr. Chaudhary has stated that on examination Rajpal had complained pain in the neck on the left side. She had found a small abrasion 1/2' x 1/4' over the left side of the neck. The abrasion was dark in colour as skin had dried up. The duration of the injury was stated to be 3 to 4 days.

20. There is no plausible Explanationn as to why Rajpal was not produced on 20-10-74 at 9 a. m. as directed by the Medical Officer. Secondly, when he was actually examined on 21-10-74 no injury on his arm, shoulder, back or waist was found. Even the small neck injury was held to be 3 to 4 days old. According to the prosecution version, Rajpal had laid himself on Azad to protect him from further harm. In this process he had received lathi blows on various parts of his body from Mahabir. In the circumstances the alleged blows were given, they would have been with full vigour as the intervention was to protect Azad from the fury of ememies' assault. It is incomprehensible and astounding how Rajpal came out of the crisis without any injury. All this raises grave doubts about the authenticity of the prosecution version qua the participation of the appellants in the crime.

21. Mahinder PW 2 is another witness, who had also acted like Rajpal by laying himself on the body of Azad. He has deposed that he had 'managed' to save himself, while Rajpal got lathi blows. We are unable to understand how a saviour, who is lying flat on another person to protect him could manage the warding off of the blows given by the assailants. In our view the presence of Mahinder PW 2 at the spot as an ocular witness was also highly doubtful.

22. The manner of causing the injuries by Dharambir with the knife is also incredible. According to the eye-witnesses Dharambir had first given stab blows to Azad on his back and then Mahabir had laid him on the ground with his face downwards. There can be something plausible if a companion catches hold of the victim while he is standing. It does not stand to reason in the circumstances of the case that Mahabir would have laid Azad on the ground with his face downwards so that more injuries be caused by Dharambir. If the intention was to cause the murder then there looked no sense in laying with the face downwards as the vital

parts of the body are on the other side. The deceased could be held by his arms or legs for facilitating the causing of the injuries by the assailants. According to the prosecution Mahabir was armed with a lathi. How could he deal with Azad for laying him on the ground with his stick in the hand. More so, when close relatives of the deceased were present nearby to hit back to save Azad. According to the eye-witnesses Mahabir had given a number of lathi blows to Rajpal, while Mahinder had managed to save himself. There is absolutely no evidence that Mahabir had held the deceased from any part of his body when he was being stabbed. In our view the inculcation of Mahabir is evidently false.

23. The above scrutiny of the statements of Rajpal, Mahinder, Tejpal and Lal Parkash PWs coupled with the attending circumstances, adequately show that their evidence is unworthy of belief. The added grounds are their relationship with the deceased and the contradiction provided by the medical evidence about the alleged injuries to Rajpal. Moreover the relations between the appellants and the deceased were also inimical.

24. Rajpal PW had made the statement in the hospital and on its basis the case was registered. According to Rajpal. Mahinder and Nathu Singh had also reached the hospital and that all of them had accompanied the Investigating Officer to the spot. In the way Rajpal was, however, rendered first aid by the doctor in the Police Hospital. Inspector Tirlochan Singh, PW 36 has stated that he recorded the statement of Mahinder between 10 A. M. and 12 noon. He has further deposed that he had not recorded any statement at the spot before 10 A.M. In his statement the I. O. has further stated that the various Articles were taken into possession from the spot between 9 and 11 a.m. No plausible Explanationn has been furnished on behalf of the prosecution as to why the Articles were not taken into possession till 9 A. M. or the statements of the witnesses were deferred till 10 A. M. although the Investigating Officer had reached the spot at about 1.30 or 2 A. M.

25. It is also argued on behalf of the appellants that the inquest report was delayed as the names of the culprits were not known and that the case was not registered at the time it was purported to have been registered. It is contended that it had been registered at a much later time. Dr. Bishnu Kumar PW 21, who performed

the post-mortem examination, has made very significant statement. He has deposed that he had made endorsement on Ex. PW 21/D that the Investigating Officer had not completed the papers even up to 3 p.m. on 19-10-74 and, therefore, the post-mortem examination could not be held on that day. In his statement the Investigating Officer has admitted that there was some delay in preparing the papers for the postmortem examination but he has added that the doctor was pre-occupied and, therefore, the post-mortem examination could not be held on the 19th. No question regarding pre-occupation was put to the doctor. Fact, however, remains that the post-mortem examination was delayed for a day. The learned Counsel for the appellants has urged that this delay alone is sufficient to cast a doubt about the authenticity of the F. I. R. Reserving our comments on this aspect of the matter for the present, we may observe that the delay in sending an inquest report to a Medical Officer is a circumstance which goes against the prosecution.

26. An important counter-check about the time of the registration of a case is the sending of the copy of the F. I. R. to the Ilaqa Magistrate as contemplated by Section 157 of the Cr. P.C. There is no evidence on record to show as to when this copy was sent. After the recording of the F.I.R. there is, however, a mention in the police proceedings that the special report was being sent to the higher authorities. This is a very vague type of expression.

27. It is being argued in most of the cases that the F.I.Rs. are not recorded at the time they are purported to have been written. This point has also been debated in the present case. We will presently consider the same.

28. It has been impetuously argued by the appellants' counsel that there had been flagrant disregard of the provisions of Section 154 and Section 157 of the Cr. P.C. and that of Punjab Police Rules as applicable to the territory of Delhi because of their persistent non-compliance. Since similar arguments are being advanced before us in several cases, we would like to deal with them at some length.

29. Section 154 is the only provision which says that on receipt of information relating to the commission of a cognizable offence it should be reduced to writing and be authenticated by the person giving it. The substance of the information is

required to be entered in a book to be kept by the officer in-charge of the police station in such form as the State Government may prescribe in this behalf.

30. Section 157 provides for the sending of the report of information forthwith to the Magistrate empowered to take cognizance of the offence. If on information received or otherwise the officer in-charge of the police station has reason to suspect the commission of an offence, he is empowered to investigate under Section 156 of the Code.

31. For implementing the above provisions of the Code, Punjab Police Rules, issued under Sections 7 and 12 of the Police Act (Act No. V of 1801) supply an authoritative guide to the Police Officers. As already observed, these Rules apply mutates mutants to Delhi Territory.

32. Rule 24.5 of the Punjab Police Rules (Vol. III) is quite relevant for our present purpose. It imposes certain important duties on the police officers. This rule is in these terms:

24.5 (1) The First information Report Register shall be printed book in Form 24.5(1) consisting of 200 pages and shall be completely filled before a new one is commenced. Cases shall bear an annual Serial number in each police station for each calendar year. Every four pages of the register shall be numbered with the same number and shall be written at the same time by means of the carbon copying process.

The original copy shall be permanent record in the police station. The other three copies shall be submitted as follows:

(a) One to the Superintendent of Police or other Gazetted Officer nominated by him.

(b) One to the Magistrate empowered to take cognizance of the offence as is required by Section 157, Cr. P.C. In murder cases the following procedure shall be followed:

- (i) The F.I.R. shall be sent to the Magistrate concerned immediately in his Court during Court hours and at his residence thereafter.
- (ii) If the Magistrate concerned is out of Station, the F. I. R. shall be submitted to the Duty Magistrate.
- (iii) If the Magistrate is not available after Court hours, the copy of the F.I.R. shall be left at his house by the messenger noting the date and hour of delivery on the cover with the contents,
- (iv) If on account of difficulties of communication or other causes the delivery is delayed, the reasons and delay shall be noted on the cover.
- (v) As soon as the F.I.R. is received by a Magistrate he shall affix his initials therefor and note thereon the date and hour at which the report has been received by him. In the case of a delayed F.I.R. if he disagrees with the reasons given by the Police Officer for such delay, he shall also give his own reason for the same, if any.
- (vi) In cases where the Police Station is not situated in the same place where the Magistrate resides or where the Police Station is situated in an out-of-the way place, the carbon copy of the F.I.R. after it has been recorded, shall be posted at once at the nearest post office, before the first clearance of the dak. In such cases the Magistrate shall check that the F.I.R. has been dispatched by the earliest post after its registration in the Police Station as shown by the time recorded on it.
- (c) One to the complainant-unless a written report in Form 24.2(1) has been received in which case the check receipt prescribed will be sent.
33. The form of the first information report under Rule 24.5(1) has also been prescribed in these Rules, necessarily for guidance and for giving effect to.
34. This rule prescribes the method how the original and the three copies of the F.I.R. are to be maintained and distributed. Inter alia it lays down that one copy of the F.I.R. be immediately sent to the Magistrate concerned; while one be given to the maker of the report. No grievance has been made before us about the non-

supply of the copy to the complainant. So we need not dwell on it any further. In the present context we will mainly confine ourselves to the sending of the report to the Magistrate.

35. It has been argued on behalf of the State that failure or delay in sending the report to the Magistrate does not vitiate the trial. There is no row about this proposition as sending of such a report is directory and not mandatory.

36. Its directory nature, however, does not mean that the police officers can profane or violate without any legal consequence. Taken singly, such a delay or failure may not be sufficient to lead to the conclusion that the investigation was tainted or unfair. But when considered in conjunction with other infirmities or discrepancies, it may assume great importance and may cause suspicion about the purported time of its recording or even about its contents. First information report is expected to reflect the occurrence truly, without embellishment or fabrication. Its recording without any reasonable delay also excludes the possibility of conjuring up of a false case by the police. Thus to save the report from any kind of attack and also to derive assurance and authenticity to the facts stated in this report, compliance of the provisions of the Code and also of the Punjab Police Rules is essential. But in actual practice it has been noticed that this rule is observed more in breach.

37. The intendment of the legislature or that of the makers of the Rules is clear. No doubt the non-compliance of Sections 154 and 157 of the Code or that of the Rules does not constitute a ground to throw away a prosecution case but it does emerge as a factor to be seriously reckoned with while appreciating the entire evidence. Its non-observance is bound to cast some shadow on the case, obviously to its detriment, because of the adverse inference. Its degree depends upon the facts of a particular case.

38. It is further argued on behalf of the State that the intention of sending a copy of the report to the Magistrate is to apprise him about the commission of the crime in his local jurisdiction and also about the fact that cognizance has been taken by the police. On receipt of this information he is able to control the investigation and has the power to give appropriate directions under Section 159 of the Code. It is legally

true. The retention of these provisions even in Act No. (2 of 1974) Cr. P.C. 1973 has its own impact. More so, when the legislature has, in its wisdom, neither deleted nor amended them. Thus Sections 154 and 157 have enormous importance and cannot be treated as a mere surplusage. They are very salutary provisions, which can be utilised for counter-checks and balances for testing or evaluating the other evidence.

39. It may be remarked here that the task of the courts is becoming more difficult every day as there is an unfortunate tendency to embellish a version by mingling falsehood with truth. When such evidence creeps in, the necessity to test the authenticity of a particular fact from an independent source assumes more importance.

40. If the provisions of the Code and that of the Rules are scrupulously followed by sending a copy of the first information report to the Magistrate concerned after the case is registered, it would eliminate the oft-repeated plea that the F.I.R. had been actually recorded at a subsequent time and not at the time purported to have been written. It leads to further assertion that during the intervening period a preliminary inquiry was held, which afforded an opportunity to inculcate innocent persons and introduce false witnesses.

41. The meticulous compliance shall eliminate all such unwarranted criticism about the working of the police and also its consequent effect upon the manner of investigation of a case. Results apart, it would go a long way in removing the impression from the minds of the public that there had been any manipulation at the hands of the police. This would bring much needed confidence.

42. Now reverting to Section 154, one statutory requirement of this section is to reduce into writing the information given to the police. The other requirements mentioned therein and intended to be complied with by the officer in charge of the police station are merely procedural. The omission of one or more of them cannot have any tangible legal consequence unless it is shown that the accused has been prejudiced as a result thereof when considered in the light of other evidence.

43. The information referred to in Section 154 is in the nature of accusation or information of a crime. Its object is to put the law in motion through the police. The police is then duty bound to start investigation and find out whether the information given is true or not. The delay in sending the copy of the F. I. R. to the Magistrate demonstrates the conduct of the police officer. The court cannot ignore or acquiesce to such kind of conduct on the part of the police officers. It has to remind them of their statutory duty and at the same time appreciate the evidence in the light of the non-compliance of the procedural requirements.

44. If a kind of practice or convention is established by the police to avoid the compliance of the salutary, though directory, provisions of Sections 154 and 157 of the Cr. P.C. and of the Police Rules, the courts would certainly be at a disadvantage in arriving at the truth while appraising the evidence. If the statutory procedure is strictly followed, the task of the courts is bound to be made comparatively easy.

45. The method to comply with the provisions of Sections 154 and 157 has been very elaborately and lucidly laid in the police rule reproduced earlier. What is needed, is its rigorous compliance.

46. Correspondingly, a duty is also cast on the magistrates to record the time and date of the receipt of the copy of the F.I.R. and to keep the important document in his safe custody. The magistrates are also required to make entries in the register, which they are supposed to maintain. It is this copy of the F. I. R. which should be attached with the challan papers by the Magistrates. It has been noticed that this copy is not usually appended and that another copy is supplied and got proved by the Prosecutors. This practice is highly reprehensible as it is exposed to serious imputations and criticism.

47. We further notice that some of the columns (especially column No. 7 relating to date and hour of dispatch from police station') of the form prescribed under Rule 24.5(1) for recording the first information report, are either left totally blank or are incompletely filled in. This results in making the provision almost nugatory. This is a statutory form. It is, therefore, required to be filled in completely by the police officer registering the case. There can be no justification for its willful disregard or

non-compliance.

48. Another provision of the Code which is not being properly followed is Section 174. It relates to inquest reports. Rule 25.39 of the Punjab Police Rules (Vol. III) is relevant in this behalf. It reads as under:

25.39. When an injured person or a body is sent to a medical officer, Form 25.39 shall, in addition to any other report prescribed, be prepared by the carbon copying process and given to the police officer, in duplicate, who accompanies the injured person or goes in charge of the body. The form shall be prepared in English, if possible.

There is also a form prescribed under this rule. It has been noticed that this form is also not generally completed and some of its columns are either left blank or are incompletely filled in.

49. This is also an important and meaningful provision for a countercheck. If the dead body is sent for postmortem examination within a reasonable time, it gives an assurance that the case was registered at the time alleged in the F.I.R. But if the inquest report is unreasonably delayed then begins the scope for questioning the genuineness of the F. I. R. both qua its contents and the time of its recording.

50. The object of the above observations is to remind the police and other officers about the statutory duties which they are required to perform. Unfortunately a tendency has developed to ignore these procedural requirements, which have been incorporated by the legislature with a definite purpose. Their deliberate non-compliance does not bring credit to anyone. The common object of the police and courts is to promote administration of justice and bring the guilty to book. To achieve that end, the procedure prescribed by the Statute and Rules requires to be followed scrupulously. This would result in better appreciation of the evidence by the courts and would also avoid unnecessary and scathing criticism about the conduct of the officers.

51. We have found it necessary to highlight the above procedural requirements and features as their non-compliance has vitally affected the decision of the

present case. There is absolutely no evidence to show as to when the F.I.R. was sent to the Magistrate or when it was received by him. So, there is no counter-check. We further find that some of the columns in the form prescribed for recording the first information report have been left blank or incompletely filled in. Apart from this, the inquest report was also sent on the third day for the post-mortem examination of the dead body. No doubt these facts alone are not fatal to the prosecution case but when considered in the light of other evidence and circumstances, they do influence the mind of the court and leave an impression that there had been some wrangling about the time of the registration of the case. This breeds serious doubts with regard to the genuineness of the prosecution story, including the names of the offenders and the eye witnesses.

52. Lastly, we come to the evidence of the recovery of knife and lathi from the appellants. Recovery of the lathi was alleged to have been made at the instance of Mahabir appellant on 20-10-74. On that day he was arrested in the fields across the Yamuna river. It is alleged that he made a disclosure statement while in police custody to the effect that he had concealed the lathi above the rafters in a 'Chhappar' located near his fields and could get the same recovered. In pursuance of this statement he got the recovery effected in the presence of Dhan Pal and Karan Singh PWs. We find that there is a discrepancy in the statement of these witnesses about the exact place of recovery. Karam Singh PW 16 has deposed that the lathi was recovered from the roof of the 'chhappar', whereas Dhan Pal PW 15 has stated that it was taken out from inside the 'Chhappar'. The recovery evidence looks to us to be highly unsatisfactory and not worthy of credit.

53. The other recovery is of the knife at the instance of Dharambir appellant. It is stated by the Investigating Officer that on 25-10-74 while in custody Dharambir had made a disclosure statement that he had buried the knife in sand near Wazirabad Ghat and that he could get the same recovered. Recovery was then effected from the said place at his instance in the presence of Ram Kala, Om Dutt, Brahm Pal and Abdul Aziz. To prove this fact the prosecution has examined Brahm Pal PW 18, Om Dutt PW 25 and Abdul Aziz PW 26, apart from the Investigating Officer. Of these witnesses, Abdul Aziz met the party near the bank of river by sheer chance. The place of recovery is a thoroughfare and is accessible

to everyone. It is not believable that the knife could have been buried there. The entire evidence at this recovery also seems to us to be highly unsatisfactory. Moreover, when the eye witnesses have been disbelieved for good reasons, the recovery evidence does not advance the case of the prosecution any further.

54. The result of the above discussion is that the charges against both the appellants are not satisfactorily proved. We accordingly accept this appeal and set aside their convictions and sentences.

55. Before parting we want to add that a copy of this judgment be sent to the Delhi Administration for taking a note of the lapses on the part of the police officers in the matter of investigation and to take appropriate action in this behalf.

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