

Om Parkash and ors. Vs. State

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Court : Delhi

Decided On : Feb-26-1990

Reported in : 1990CriLJ2373; 40(1990)DLT504; 1990(18)DRJ270

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

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

Appeal No. : Criminal Appeal No. 91 of 1987

Appellant : Om Parkash and ors.

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; Rajesh Batra and; G.S. Vashisht, Advs

Judgement :

M.K. Chawla, J.

(1) Shri Nishan Singh, Advocate (Public Witness -10) is a resident of 115-Bharat Nagar Delhi. On 22nd March, 1985 at about 8.30 or 8.45 P.M. while he was passing through the street just outside his house, he saw woman bleeding profusely from her left chest, lying on the ground in a pool of blood. There were large number of persons' collected there. Being a good hearted person, he performed his duty by informing the Police Control Room, which message was recorded by S.I. Ajaib Singh, in charge, P.C.R. (PW-4). Ajaib Singh immediately

informed the Police Station Ashok Vihar and also conveyed the message to the van on ambulance duty reached the spot and removed the injured to Hindu Rao Hospital, where Dr. P.K. Jain declared her 'brought dead'.

(2) Public Witness -5 Head Constable Dhara Singh was the duty officer at police station Ashok Vihar and on receipt of the information from P.C.R., he recorded the D.D. Report Ex. Public Witness -5/A and banded over the same to S.I. Balwan Singh (Public Witness -19) for investigation. On receipt of this memo, Balwan Singh Along with cannibals Mauji Garat and Kebar Dass reached the place of incident where he was informed that the injured had already been taken to the hospital in the ambulance van. On reaching the hospital, the S.I. obtained the M.L.C. of Phool Wati and recorded the statement of Surinder, son of the deceased. Underneath his statement, he made the endorsement Ex. Public Witness -5/A and sent the same through Constable Kehar Dass for registration of the case. He came back to the spot where S H.O. Yashvir Singh (PW-16) Along with S I. Devi Dayal (Public Witness -18) was present. On the direction of the S.H.O. further investigation was banded over to Devi Dayal, S.I who completed the formalities of taking into possession the various articles lying nearby and dispatched the dead body of Phool Wati for post-mortem examination through Public Witness -6 H.C. Avtar Singh.

(3) The incident has been mentioned in minute details by Surinder in his statement Ex. Public Witness -2/A to the Police, and in court while appearing as Public Witness -2 Surinder Along with his mother was residing in Jhuggi no. 121, Bharat Nagar, while his maternal uncles, namely, Om Prakash Chander Pal and Ram Phal (accused in this case), and Nand Kishore were residing in the nearby houses. They had strained relations with his mother. Narrating the sequence of events leading to the death of his mother, he stated, that on 22nd March, 1985, at about 8.30 P.M, his mother was sitting Along with his grand-mother (mother's mother) on a cot in front of house no. 149 belonging Ram Phal. In the meanwhile, Chander Bhan, accused came out of his jhuggi no. 120 and told his mother as to why she was sitting outside their house despite the fact that she had made false complaints against her brother Ram Phal to the Police. On this, there was exchange of hot words and on hearing the noise, Om Parkash and Ram Phal also reached there.

All the three then started using loose words and abusive language against his mother. He then asked his mother to go inside her jhuggi. While she was moving towards her jhuggi, accused Om Parkash exhorted his brothers to teach her a lesson for making false complaints to the Police against Ram Phal. At that point of time and at the asking of Om Parkash, accused, Ram Phal and Chander Bhan caught hold of his mother while Om Parkash gave a chhuri blow on her chest, as a result of which. Phool Wati cried and fell down on the ground. Hearing the shrieks and seeing the blood oozing out of the wound, he became nervous, Somebody informed the Police and then within minutes, the police van came there and he, with the help of Police Constables, removed Phool Wati to the hospital where she was declared 'brought dead'.

(4) Om Parkash accused was arrested on the next day from near K-Block Jj Colony. During the course of interrogation, he made the disclosure statement Ex. Public Witness -3/B that he could get recovered the knife from the dustbin lying at the backside of the, place of occurrence. The accused then led the Police party and Kanhaiya Lal, an independent witness to the place where he had thrown the knife and got recovered the same from the dustbin. It was blood stained. After/preparing its sketch, it was converted into a sealed parcel and taken into possession vide Ex. Public Witness -3/D. On twenty three March,-1985, the other two accused were arrested from near Tapkana Pul, Jj Colony at the pointing out of Surinder and Kanhaiya,

(5) On receipt of the Report from the office of the C.F.S.L., the investigation was completed. Inspector Yashvir Singh, submitted the challan in the court. All the accused were charged to stand trial for the commission of an offence punishable under Sections 302/34 Indian Penal Code having committed the murder of Phool Wati in furtherance of their common intention. The accused pleaded not guilty.

(6) Accused Ram Phal and Chander Bhan denied their involvement and pleaded that they have been falsely implicated due to enmity with the deceased and her son. Om Parkash accused, however, set up the defense in the following words:

'It is a false case. On 22-3-1985, at 8.30 P.M. when my mother was talking with the deceased, I went there and told the deceased as to why Pirthi is visiting at her

house as she is a widow. On this Surinder became furious as he told me that I am making false allegations against his mother. He brought the knife from his house and tried to stab me by lifting his hand. In order to save me, my deceased sister came in between and Surinder accidentally stabbed her. In order to save him, he has falsely implicated me in this case. My other two brothers were not present at that time. This incident has been witnessed by my mother and other persons. I am innocent.'

(7) In support of his defense, he examined Khazani, their mother, who deposed in the same terms as is the stand of Om Parkash.

(8) Learned Additional Sessions Judge vide his detailed Judgment convicted accused Om Parkash of the offence under Section 302 Indian Penal Code and sentenced him to undergo imprisonment for, life and a fine of Rs. 1000.00 in default of payment of fine, to further suffer R.I. for one year. The other, two accused were held guilty for the offence punishable under Sections 323/34 I.P.C. and were awarded the sentence as already undergone, as by that time, they had already suffered imprisonment for about two years.

(9) The present appeals are directed against their conviction and sentenced awarded by the Additional Sessions Judge, Delhi on 19th February, 1987.

(10) The contention of the learned counsel for the appellant, in short, is that the solitary testimony of an interested witness, namely, Public Witness -2 Surender Kumar does not find corroboration from any quarter. It suffers from several infirmities which render his evidence unworthy of reliance. According to the learned counsel, Surinder was not present at the time and place of incident and this is established from his conduct, in not stopping his uncles to cause injury; in not chasing or apprehending any of the accused persons; in not removing his injured mother to the hospital and not even informing the police of the incident. If the statement of Surender Public Witness -is disbelieved, then, there is no evidence worth the name, to connect any of the accused with the offences charged. The Court, according to the learned counsel will not make out a case for the prosecution on the basis of the foolish defense set up by the accused. In the alternative, the submission of the learned counsel for the appellant is that it is a

case where the incident occurred at the spur of the moment without any pre-meditation. There was only one injury on a nominal part of the body. The offence, according to the teamed counsel, at the most would fall within the ambit of Section 304 Part II and not under Section 302 Indian Penal Code .

(11) Learned counsel for the State mainly relies on the evidence of Surender Kumar, and the surrounding circumstances, which lends corroboration to the case, set up by the prosecution.

(12) We have given our careful consideration to the arguments advanced at the bar.

(13) It is case of direct evidence. Surender Kumar, Public Witness is not only the son of the deceased, but also the only eye-witness of the occurrence as per the prosecution story. The corroboration that is required in the case of a testimony of a relation witness is not what would be necessary to support the evidence of an approver but that would only lend assurance to the evidence before the Court and satisfy the court that the particular persons were really concerned in the murder of the deceased. Relationship, by itself, is not a ground to discredit the testimony of the witness if it is otherwise found to be consistent and true. Ordinarily, a close relative would be the last person to screen the real culprit and falsely implicate an innocent person. All that is necessary is to scrutinise the evidence of such like witnesses with more than ordinary care and circumspection with reference to the part or role assigned to each of the accused. The court is required to make effort to sift the grain from the chaff; to accept what appears to be true and to reject the rest.

(14) No doubt Surender Kumar is a very close relative of the deceased but he cannot be called an 'interested' witness. 'Related' is not equivalent to 'interested'. A witness may be called interested only when he expects some benefit from the result of a litigation; in the decree in a civil case, or in seeing the accused persons punished. A witness whose presence at the time and place is natural and is the only possible witness in the circumstances of the case, cannot be said to be interested. This is so as the evidence had to be weighed and not counted.

(15) With this background, we have to appraise the evidence of Surender Kumar, ignoring for the time being, the defense version. After the death of his father about three years prior to the incident, he had been residing with his mother. The house of the deceased and those of her brothers are very close to each other if not adjoining. At the time of the incident i.e. at about 8.30 P.M., Surender's presence at the spot is but natural, when his mother was having a chat with her mother just in front of their houses in the Gali. He has described in minute details the sequence of events of verbal altercation between his mother and the accused; catching hold of his mother by Raja Phal and Chander Bhan, and Om Parkash accused hitting his mother on her chest with a knife. It is true that Surender did not make any effort to catch hold of the accused immediately after the fatal blow was given to his mother, but he has explained this lapse by saying that on seeing her mother bleeding profusely, he became nervous and on coming to his senses, he rushed to the Police Station for lodging the report while asking his wife to take his mother to the hospital. At the Police Station, he was informed that the information of the incident had already been recorded and entrusted to the Investigating Officer. He did not tell the names of the assailants to the Duty Officer as it was not enquired from him. Even otherwise, if the Police Officer at the Police Station has failed to record his statement, the fault is their and not with Surender. He immediately can back to the spot where by that time, the Ambulance van had reached. It is his case that he with the help of the Police Officer removed his mother to the hospital where he met the Investigating officer, who recorded his statement.

(16) The foremost duty of the officer in charge of the Ambulance is to immediately remove the injured to the hospital. They are not expected to make enquiries and to find out or record the statements of the eye-witnesses. It is the duty of the local police. The local police, in fact, reached the place of incident after Phool Wati had already been removed to the hospital and for that reason, they did not come across any eye-witness.

(17) We do not find any substance in the argument of the learned counsel for the appellant that Surender was not present in the hospital, because his name is not shown in the MLC, as the person who got admitted Phool Wati in the hospital or

that he did not give the name of the assailants to the doctor. In fact, the presence of Surrender at the hospital is established as not only his statement was recorded by the 1.0. but he also received the belongings of his mother from the doctor who first examined Phool Wati. This is so because in the Mlc, Public Witness -11/A, there is an endorsement indicating (hat the ear-rings, the finger-ring and Rs. 13.00 were removed from the body of the deceased and handed over to her son Surinder Kumar. From this endorsement, it is obvious that Surinder Kumar had taken his mother to the hospital and this fact further negatives the arguments raised on behalf of the accused that after the incident, he himself was hiding and later on coined this version to implicate the accused.

(18) The other argument of the learned defense counsel is that Surinder, Public Witness did not raise any alarm nor did he try to protect his mother at the time of incident. So far as the raising of an alarm is concerned, it differs from a person to person as to how he reacts to a particular situation. Admittedly, the occurrence could not have lasted very long so far as the act of holding of the deceased by her two brothers and stabbing by the third one is concerned. There was hardly any occasion of Surinder to come forward to her mother's rescue. We do not find this objection, as a cogent reason to reject the version of his statement. There might be some minor discrepancies in the statement of Surinder but the totality of the circumstances do lend support to the conclusion that he was present and has disclosed the incident as it happened.

(19) The defense set up by the accused that Surinder went and brought the knife and tried to stab Om Parkash and when the deceased tried to intervene and came forward, she incidentally was got stabbed is improbable and has eighty been rejected by the court below. Smt. Khazani was produced to support the defense version. Her presence at the spot has not been disputed even by the prosecution. The reasons for her not being examined by the prosecution are obvious as it was very unlikely that she would have supported the prosecution, to make a statement against her three sons.

(20) We are in agreement with the learned counsel for the appellant that the statements made by the accused under Section 313 Criminal Procedure Code .

should be read as a whole. It should not be dissected and considered only in part where that part is inextricably connected with the other part which is not being taken into consideration. However, we cannot lose sight of the fact that examination under Section 313 Criminal Procedure Code . is primarily to be directed to those matters on which evidence has been led for the prosecution, to ascertain from the accused his version or Explanationn, if any, of the charge and his defense. By Sub-section (4), the answer given by the accused may 'be taken into consideration' at the enquiry or the trial, . If the accused person in examination under Section 313 Criminal Procedure Code . confesses to the commission of the offence charged against him, the Court may, relying upon that confession, and procedure to convict him but if he does not confess and while explaining the circumstances appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.

(21) In this case, as is submitted by the learned counsel, we do not propose to dwell on the defense version explaining the injury on the person of the deceased but there is no doubt the presence of Surinder and the incident having taken place as stated by him. The reasons are obvious because the accused persons ran away from the spot after the incident and. could only be apprehended a day later. Further more, if Surinder was the assailant then in the normal circumstances, he would be the first person to run away and the accused would be the persons to remove the deceased to the hospital and .would have reported the matter to police. Here, the evidence is otherwise. Surinder, in fact, has removed his mother to the hospital whose presence cannot be disputed.

(22) The totality of the circumstances proved on record go to show that even though the case against the accused rested on the evidence of single eye-witness; it is enough to sustain the conviction based on the testimony of a competent and honest man like Public Witness -2 Surinder. We hold his testimony worthy of credence.

(23) The next question that requires consideration is as to what offence is made out and against whom in the circumstances of this case. Accused Ram Phal and

Chander Bhan have been convicted under Sections 323/34 Indian Penal Code for having caused simple hurt to the deceased while holding her both arms with the common intention to commit this offence. We do not agree with the finding of the learned lower court on this aspect. Section 34 Ipc reads as under :-

'When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for the acts in the same manner as if it were done by him alone.'

This Section requires that there must be a general intention shared by all the persons concerned in the offence, that is to say, when several persons unite with a common intention to do any criminal offence, all those who assist in the accomplishment of the object would be equally guilty. It follows, therefore, that common intention is an intention to commit a crime actually committed and everyone of the accused should have participated in furtherance of the common intention and there must be a prior meeting of minds. The meeting of the mind can take place at the spot but in case like the present one, it has to be seen whether the knife was already known to be available, with the accused Om Parkash, by his co-accused or not.

(24) It is obvious from the statement of Surinder as reproduced above that accused Om Parkash was not carrying the open knife in his hand and there was no evidence to show that this fact was in the knowledge of the other accused. Even Om Parkash had not given any call to his brothers that Phool Wati should be stabbed to death. Otherwise also, all the accused had not come together and for that reason it is difficult to assume that they all had a prior meeting of mind to cause the death of their water. The words used by Chander Bhan were to teach Phool Wati a lesson turn making a complaint against accused Ram Phal. At the most the intention was to beat their sister, to detest her from making false accusations. Keeping in view the close relationship, it is difficult for us to assume that all of them had shared common intention to kill Phool Wati. Under these circumstances, there was no reason for the court below to hold any of these two accused guilty of an offence punishable under Section 323/34 Indian Penal Code. We accept their appeals and acquit them of the charge.

(25) So far as the case of Om Parkash is concerned, we have first to examine if the incident satisfies the requirements of Section 300 Indian Penal Code. Dr. Bharat Singh, who conducted the post-mortem examination of the body of Phool Wati, found that the injury had entered the chest cavity deep. In his opinion, the injury was sufficient to cause death in the ordinary course of nature and the death was due to shock and haemorrhage.

(26) The contention of the learned counsel for the appellant is that Om Parkash had no intention to cause such bodily injury on the person of Phool Wati which may result in her death. In fact, the accused had not come armed to the place of incident. The quarrel had developed suddenly and in a fit of anger, Om Parkash inflicted only one blow which fell on a non-vital part of the chest. Thereafter, he made no other attempt and ran away from the scene of occurrence. According to the learned counsel, the case would squarely fall within the provisions of Section 304 Part II Indian Penal Code. This proposition is not acceptable to the counsel for the State who draws our attention to illustration (c) appended to Section 300 of the Code. His contention is that the culpable act attributed to the appellant is fully covered.

(27) On these facts, the question that now requires going into is whether the offence can be said to be covered by 'thirdly' of Section 300 or Part II of Section 304 of the Code. Part 'thirdly' of Section 300 requires that the bodily must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one, the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. Keeping in view the injury caused by the accused Om Parkash, we think that the first part is complied with because the injury which was intended to be caused was the one which was found on the person of Phool Wati. But the second part, in our opinion, is not fulfilled because but for the fact that the injury caused the severing of superior vancouver, death might not have ensued. In other words, looking at the matter objectively, the injury which Om Parkash intended to cause did not include specifically the cutting of the

superior vancouver but to injure Phool Wati in the neighborhood of the clinical. thereforee, we are of the opinion that 'thirdly' of Section 300 does not cover this case.

(28) As the death in this case has been caused the matter then must come within at least culpable homicide not amounting to murder. There again. Section 299 is in three parts. The first part deals in the doing of an act with the intention of causing death As we have shown above Om Parkash did not intend the causing death and as such the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Om Parkash. The matter, thereforee, comes within the third part. The act which was done with the knowledge that Om Parkash was likely by such act to use the death of Phool Wati. The case, thereforee, fails within the third part of Section 299 and will be punishable under the 2nd part of Section 304 of the Indian Penal Code as culpable homicide not amounting to murder.

(29) In similar circumstances, in a case reported as Gokal Parsharam Patil v. Stale of Maharashtra (1981) 3 SC 331 where the accused is alleged to have attacked the deceased with a knife giving the latter a single blow above the left clinical where it caused a muscle deep incised wound having the dimension 1-1/4x1/3 inches. The autopsy surgeon while certifying the existence of that wound also found that the superior venacava had been cut, the damage so caused being sufficient in the. ordinary course of nature to cause death. On these facts, the Supreme Court observed :-

'The question thus is whether the particular injury which was found to be sufficient in the ordinary course of nature to cause death in the present case was an injury intended by the appellant. Our answer to the question is an emphatic 'no'. The solitary, blow given by the appellant to the deceased was on the left clinical a non-vital part and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. Even a medical man perhaps may not have been able to judge the location of the superior venecana with any

precision of that type. The fact that vernacular was cut must, therefore, be attributed to a non-intentional of accidental circumstances'.

The appeal under these circumstances was partly accepted and the appellant's sentence of the charge of murder was converted to one under Part II of Section 304 Indian Penal Code and the accused was sentenced to 5 years R.I.

(30) The facts of the above said case are exactly similar to the case before us and we have no reason to take a different view.

(31) In the result, we partially accept the appeal of Om Parkash and set aside his conviction for an offence under Section 302 Indian Penal Code and substitute in its place, one under Part II of Section 304 of the Code. The appellant has already undergone imprisonment for 5 years. In our opinion, the ends of justice would be fully met if his sentence is reduced to one already undergone. He be set at liberty if not required to be detained in any other case.

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