

Gulshan Kumar Vs. State

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Court : Delhi

Decided On : Jan-15-1993

Reported in : 1993IIIAD(Delhi)601; 1993CriLJ1525; 49(1993)DLT619; 1993(25)DRJ201

Judge : Sunanda Bhandare and; Anil Dev Singh, JJ.

Acts : Children's Act, 1962; Evidence Act - Sections 11; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161

Appeal No. : Criminal Appeal No. 17 of 1988

Appellant : Gulshan Kumar

Respondent : State

Advocate for Pet/Ap. : Anjana Gosain,; amices Curiae and; R.K. Bahri, Advs

Judgement :

Anil Dev Singh, J.

(1) This appeal is directed against the judgment and order of the Additional Sessions Judge dated January 5,1988, whereby he convicted the appellant under Section 302 Indian Penal Code for committing the murder of his brother, Harish Chand and sentenced him to life imprisonment. Besides, he also convicted the

appellant under Section 324 Indian Penal Code for causing injuries to his father and sentenced him to two years rigorous imprisonment on this count. Both the sentences have been made to run concurrently.

(2) The prosecution has set up the following case against the appellant.

(3) Harish Chand, the deceased was married to Kiran Bala in the year 1983. After few months of marriage, the couple rented a separate residential accommodation as the parents of Harish Chand on the one hand and the newly weds on the other were not getting along well. Initially they stayed at Subash Nagar and subsequently in Hari Nagar, New Delhi. It seems that Harish Chand was financially hard pressed and could ill afford to pay for the rented accommodation. On September 8, 1984, Harish Chand was asked by Ram Lal to give up the rented premises and live with him. Next day, Harish Chand responded to the offer by shifting with his wife to his father's house, namely. House No.CB-61A, Janta Flats, Hari Nagar, New Delhi.

(4) MS.SATNAM Kaur, wife of Ram Lal, and Gulshan, the other son, got infuriated on the prospect of the deceased and his wife staying with them. Heated wordy dual started between Ram Lal on the one hand and Satnam Kaur and Gulshan on the other. This verbal quarrel is said to have taken place on September 9, 1984 around 10 P.M. Satnam Kaur and Gulshan hurled abuses at Ram Lal. Satnam Kaur also went to the Police Post Hari Nagar at about 10.15 P.M. to lodge a complaint against Ram Lal. The report lodged by Satnam Kaur at Police Post Hari Nagar was transmuted to P.S.Tilak Nagar over the telephone. This was entered as D.D. Report No.29A in the daily diary maintained at the said police station. Pursuant to the report the police arrived at the spot at 11 P.M. and after pacifying the quarrelling parties, left at 11.05 P.M. At 12 P.M. the same night, while Ram Lal was sleeping on a cot outside the house, it is alleged that Gulshan along with his friend Rajan James @ Bengali entered the room of Harish Chand. While Rajan is said to have secured the hands of Harish Chand, Gulshan inflicted knife blows on him as a result of which Harish Chand fell near the cot of Ram Lal. Harish while falling said to have uttered the following words:

'GULSHAN has killed me with a knife'.

(5) Gulshan and Rajan are also alleged to have assaulted Ram Lal. While Gulshan is said to have inflicted knife injuries on Ram Lal, Rajan is said to have struck a brick on his head. Information of the incident was given by Kiran Bala, wife of the deceased, to the Police Control Room (PCR) over the telephone. In turn, the police control room informed the police station Tilak Nagar at 12.20 A.M. about the occurrence which was recorded as D.D.report No.2A in the daily diary dated September 10, 1984 maintained at P.S. Tilak Nagar, New Delhi. The cryptic report merely stated that the brother-in-law of Kiran Bala had stabbed her husband. This report was not treated as an Fir by the police process of removing the injured persons to the hospital in a Pcr Van. Harish Chand and Ram Lal were taken to Ram Manohar Lohia Hospital where the former, who had succumbed to his injuries before reaching the hospital, was declared dead. Ram Lal, however, was declared fit by the attending doctor for the purpose of making a statement Accordingly, the statement of Ram Lal was recorded by the police around 3 A.M. which was treated as an Fir, and was sent to P.S.Tilak Nagar for registering the case. In his statement Ram Lal implicated his son Gulshan and Rajan as perpetrators of the crime.

(6) After the inquest, the body of the deceased was sent for post-mortem which was performed on September 10, 1984 by Dr. L.T. Ramani, Cmo, Civil Hospital. On examination the following injuries were noticed by the doctor

'1. Incised stab wound 3 cm x 0.8 cm x placed obliquely on the left side of chest wall, in posterior axillary line 10 cm below the arm pit, margins are regular. Posterior end is acute, fluid blood is oozing out from the wound. 2. Incised stab wound 2 cm x 0.7 cm x vertical on the back of chest right side 14 cm below the inferior angle of scapula, margins are regular, lower end is tapered. 3. Incised stab wound 4 cm x 1 cm x obliquely placed on the back of the Rt thigh upper part 3 cm. below the gluteal fold, margins are regular. Upper end trailing.'

(7) According to the doctor the cause of death was hemorrhagic and shock resulting from injuries.

(8) Ram Lal was examined at Safdarjung Hospital and the following injuries were found on his person.

'1.A Clwo 1-1/2' x 1/2' irregular margins,muscle deep on lateral aspect of left gluteal region. 2.A Clwo 1' x 1/2' approx. about 2' below the above mentioned wound. 3. An incised wound 1/2' x 1/2' on the dorsal region at level of D5 2' lateral to right side spine. 4. A small abrasion scalp frontal region'.

(9) On the same day viz. September 10,1984 the appellant Gulshan and Ranjan were arrested while they were standing at Hari Nagar bus stop. On the search of Gulshan one knife was recovered which was seized and sealed in the presence of police witnesses, namely, Asi Lala Ram and constable Aman Kumar (EX Public Witness 14/G). Blood stained clothes were also seized from his person.

(10) On completion of the investigations, challan was presented against the appellant and Rajan. Both pleaded not guilty and claimed to be tried.

(11) During the course of the proceedings,it was found that at the time of commission of the offence Rajan was a 'child' within the meaning of the Children's Act,1962, and could not be tried otherwise than the procedure laid down .therein. Accordingly, the case of Rajan was referred to the Children's court. As already noticed, the appellant, the sole accused, was found guilty of the charges laid against him by the trial court, inter alias on the basis of the testimony of Kiran Bala and alleged recovery of blood stained clothes and knife from his person, and has been convicted and sentenced as referred here-to-before. In this appeal, thereforee, we are only concerned with legality of the conviction and sentence of the appellant alone,

(12) The case of the prosecution mainly depends upon the eye witness account of Kiran Bala as Ram Lal, the other eye witness has turned hostile and did not support the prosecution version.

(13) The foremost argument of Ms- Anjana Gosain, teamed amices Curiae, is that the prosecution story does not inspire any confidence. According to the learned counsel out of three important witnesses, namely. Ram Lal, Pw 1), Ms. Satnam Kaur (Public Witness 2) and Ms.Kiran Bala (Public Witness 8), first two have not supported the prosecution story and were declared hostile by the trial court.

(14) Learned counsel submitted that it will be dangerous to uphold the conviction of the appellant on the basis of the statement of Kiran Bala, who has changed her version in the court to a very great extent from the one given before the police under Section 161 Criminal Procedure Code . She has invited our attention to the contradictions in the police statement of Kiran Bala and her statement recorded by the trial court.

(15) Learned counsel also contended that according to Kiran Bala, the incident is alleged to have taken place On September 9,1984 around 11 P.M. and that she gave the call to the P.C.R. around 11.10 P.M. on the night of the incident, which falsifies the prosecution story that the incident took place at midnight and the information was received by the P.S Tilak Nagar on the telephone around 12.20 A.M. She also submitted that Kiran Bala actually did not witness the incident as she was not present in the house of her-in-laws at the time of the occurrence. According to the learned counsel, Kiran Bala had left the house of her in laws for her parental house around 8 P.M. on September 9,1984 and she only returned after the incident.

(16) With regard to the recovery of the alleged weapon of offence and the blood smeared clothes from the accused, learned counsel submitted that the recovery was not effected in the presence of independent witnesses. As a sequitur she urged that the recovery of the knife and the blood stained clothes from the person of the. appellant was vitiated.

(17) On the other band,learned counsel Mr.Raj K. Babri, appearing on behalf of the State, contended that the eye witness account given by Kiran Bala was enough to convict the appellant. He contended that there are no major contradictions between the statement of Kiran Bala recorded by the trial court and the one recorded by the police under Section 161 Cr P.C. He submitted that in spite of the contradictions the substratum of the prosecution story remains intact. According to him, the recovery and seizure of the knife and the blood stained clothes from the person of the appellant can neither be questioned nor can be viewed with suspicion merely on the ground that independent witnesses were not associated with the search of the appellant. Learned counsel contended that there

is nothing to show that the police witnesses, in whose presence search and seizure were made, were biased against the appellant, or they were harbouring any ill will against him.

(18) Learned counsel invited our attention to the statement Dr.L.T.Ramani, CMC), Civil Hospital, Delhi (Public Witness 9) and contended that the medical evidence corroborates the prosecution story. He also pointed out that the doctor had opined that the knife recovered from the person of the accused could cause injuries found on the body of the deceased.

(19) We have considered the respective submissions of the learned counsel for the parties.

(20) It is correct that Ram Lal,(PW 1) and Satnam Kaur (Public Witness 2) parents of the appellant, have not supported the prosecution version. But Ram Lal, though having substantially resiled from the statement earlier made to the police, admitted in his statement before the trial court that the deceased had shifted to his house. He also admitted that on the fateful night, around midnight, two persons entered the house and gave knife blows to Harish Chand, and when he interceded to rescue Us son, he was also assaulted with the knife due to which he sustained four injuries. The factum of Harish Chand having moved to his father's house, number of assailants attacking Ram Lal and the deceased, and the time of the incident, is corroborated even by the statement of Ram Lal. This part of the statement of Ram Lal can be accepted as the court is not precluded from taking into account the statement of a hostile witness 'altogether and it is not necessary to discard the same in toto. In Sat Paul Vs . Delhi Administration : 1976 CriLJ295 ,the Supreme Court while considering the evidentiary value of the statement of a hostile witness observed as follows:

'FROM the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his

testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness, stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.'

(21) The same view was taken by the Supreme Court in *Sri Rabindra Kumar Dey Vs . State of Orissa : 1977 CriLJ173* and *Bhagwan Singh Vs . State of Haryana : 1976 CriLJ203* .

(22) therefore to the extent indicated above, the statement of Ram Lal can be relied upon for fixing the place of occurrence, the number of assailants taking part in the crime and the time of the incident.

(23) Next we turn to the testimony of Kiran Bala (Public Witness 8) victim's wife. In her examination-in-chief she, inter-alia, stated that at 8 P.M. on the night of the incident, the appellant, came back from work and after taking his meals, while she and deceased were about to sleep in their room, be, her mother-in-law and father-in-law started quarrelling with each other, that Satnam Kaur called the police, who pacified them, that thereafter the police went away, that around 11 P.M. Gulshan entered their room and threw chilly powder in the eyes of the deceased and then stabbed him, that she did not know Rajan James and that it was wrong that accused Rajan accompanied Gulshan. Since part of her version that Gulshan threw chilly powder in the eyes of the deceased and Rajan James did not accompany him, was at variance with the one given before the police, the trial Court allowed the State counsel to cross-examine her. In her cross-examination by the App she, however, admitted the presence of Rajan James and the part played by him in the crime. In this regard, the following part of her statement is, relevant:-

'.....IT is correct that when my husband tried to get up after receiving the first blow at the hands of Gulshan, he was caught by Rajan accused present in the court and then Gulshan gave a second knife blow to my husband. It is also correct that my husband started running outside and simultaneously he was making noise. It is

also correct that both accused Gulshan and Rajan chased him. It is also correct that accused Gulshan gave third knife blow on the body of my husband outside the room. It is also correct that on receipt of the third blow, my husband fell. It is also correct that when my husband, father-in-law Ram Lal tried to save Harish Chand, accused Gulshan also gave a knife blow to Ram Lal. It is also correct that accused Rajan gave a brick blow on the head of my father-in-law, as a result, of which my father-in-law fell there.'

(24) The above portion of her statement is a virtual reiteration of what she stated before the police. Learned amices Curiae, however, argued that the statement of the witness is not worthy of credence in view of the contradictory stands taken by her from time to time. She also submitted that the entire testimony of Kiran Bala must be rejected as a whole on the principle based on the maxim *falsus in uno and falsus in omnibus*. We regret our inability to accept the contention of the learned counsel. In a situation like this it is the duty of the court to closely scrutinise the statement and if possible separate falsehood from truth. It is well settled that the maxim *falsus in uno and falsus in omnibus* does not apply to criminal cases. But, if the falsehood is so inextricably mixed with the truth that it is not possible to disassociate the two from each other, only then the entire statement needs to be rejected. In case, however, it is possible to disengage the grains of real from the chaff of deception and lies then the court must undertake that exercise for doing justice. Following this principle, we have scrutinised the evidence and find that the version of Kiran Bala that the appellant assaulted and stabbed the deceased and Ram Lal with a knife, has a ring of truth and finds strong corroboration from other facts and circumstances which we proceed to cull out from the evidence on record.

(25) It is significant to note that Ram Lal was also injured in the incident and he named the appellant as one of the assailants in the Fir (Ex.PW 19/B) which was recorded at 3 A.M. on September 10, 1984 in the hospital by the police. An un-doctored First Information report is of a great value because it is the version of the incident given at the first available opportunity by the informant and shows on what material the investigation commenced and what was the story then told. An Fir recorded without any loss of time is likely to be free from embroideries, exaggerations and without anybody intermeddling with it and polluting and

adulterating the same with lies. The purpose of Fir is to obtain the earliest account of a cognizable offence, before there is an opportunity for the circumstances to be forgotten and embellished. It is well settled that Fir is not a substantive piece of evidence and can be used to corroborate or contradict the statement of the maker thereof. It is also equally established that trustworthiness of the prosecution story can also be judged from the FIR. Besides first information report is relevant as it may be a part of the *res gestae*. In *Dhirendra Nath Vs . State* : AIR1952 Cal621 the Calcutta High Court while emphasising the value of the Fir observed as follows:

'...I am aware that the first information report is. at times, regarded as part of the 'res gestae' and on . that basis . it is sometimes used, not merely for the purpose of corroborating or contradicting the person who lodged it but also for the purpose of lending some assurance to or negating the general account as given by other witnesses.'

(26) The Orissa High Court also in *The State Vs.Mukund Harijan and another* 1983 Cri.L.J.1870 while holding the same view observed as follows:

'NO doubt, a first information report can, strictly speaking, be used only to corroborate or contradict the maker of it. But omissions of important facts, affecting the probabilities of the case, are relevant under section 11 of the Evidence Act in judging the veracity of the prosecution case.'

(27) In *Ram Kumar Pande vs . The State of Madhya Pradesh* : 1975 CriLJ870 , their Lordships of the Supreme Court have laid down as follows:

'NO doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of

the prosecution case'.

(28) Having regard to the above authorities, it is write saying that the Fir can also be used to test and measure the trustworthiness of the prosecution story as a whole.

(29) Accordingly We hold that Fir (EX.PW 19/B) lends assurance to the statement of. Ms.Kiran Bala that the knife injuries on the person of the deceased and Ram Lal were inflicted by the appellant.

(30) Testimony of Ms.Kiran Bala also finds support from -medical evidence. According to her three knife injuries were inflicted on the body of her husband by Gulshan. This narration is confirmed by the statement Of Dr.L.T.Ramani. He has given the details of.all the three injuries found on the person of the deceased.

(31) Next piece of Corroborative evidence is to be found in the statement of Satnam Kaur (when she was recalled for examination as court witness) who admits that Harish uttered the words 'HAI Mar Gaya Hai Mar GAYA'. In the Fir it is stated that Harish at the time of the incident had said that 'GULSHAN Has Killed ME". It is quiet understandable that Satnam Kaur, being the mother, would like to shield the appellant, who is her own son, but one thing is absolutely clear from her statement that Harish did utter words which were connected with the incident. Statement of Kiran Bala is also suggestive of the fact that the deceased was making noise when he was being assaulted. This also reinforces our conviction that Kiran Bala was present at the time of the incident. Besides Satnam Kaur in her cross-examination has stated that she deliberately did not ask as to who .had inflicted injuries on the person of the deceased and Ram Lal as she knew that Gulshan had assaulted both of them. If it was somebody else who had assaulted the deceased and Ram Lal, Satnam Kaur would have been the last person to shield him and the first reaction would have been to lodge the report against the real culprit. The very fact that neither Ram Lal nor Satnam Kaur has named any other person as the assailant gives credence to the prosecution story.

(32) Manohar Lal Public Witness 7, father of Kiran Bala, . who reached the place of occurrence after the incident, stated that he found Harish Chand lying dead and

the other victim of the assault, Ram Lal, having injuries on his person. On enquiry Ram Lal told him that Gulshan had killed Harish Chand and also caused injuries to him. This statement is also relevant as a part of the rest gestae showing immediate reaction of Ram Lal to the incident in question. The statement was substantially contemporaneous with the occurrence as the same was made shortly thereafter and the words of the victim, were instinctive and poured out spontaneously and naturally under the immediate influence of the incident explaining the same and would form part of the same transaction.

(33) The theory sought to be propounded by the defense that Kiran Bala was not an eye witness to the incident, as she was in the house of her parents at the time of the occurrence, is negated by the statement of Manohar Lal, who has no axe of his own to grind and does not stand to gain anything by falsely implicating the appellant.

(34) The presence of Kiran Bala in the house immediately before and at the time of the incident cannot be doubted on consideration of another relevant circumstance, emerging from her testimony. According to her the incident was preceded by a quarrel and police was also called by Satnam Kaur. This statement finds support from the evidence of Public Witness 14, Si Lala Ram, who repaired to the house of Ram Lal at 11 P.M. on the night of occurrence pursuant to the report lodged by Satnam Kaur.

(35) Much criticism has been leveled by Ms. Gosain, learned amicus Curiae, against the trustworthiness of the statement of Kiran Bala on the ground that the latter had given time of the incident as 10.30 P.M. at one place and 11.30 P.M. at another, which does not tally with the prosecution version. According to the prosecution, the incident took place around 12 A.M. on the night intervening September 9, 1984 and September 10, 1984. This is not a discrepancy of which serious notice can be taken. Public Witness 12 Asi Jai Narain in his statement clearly pointed out that on September 10, 1984 at about 12.30 A.M. Kiran Bala informed the Pcr that her husband had been stabbed by her brother-in-law. Again Public Witness 14 Si Lala Ram has stated that on September 10, 1984 at about 12.20 A.M. Asi Jia Lal of Pcr informed him that Kiran Bala conveyed through

telephone that her brother-in-law had stabbed her husband. Even Ram Lal stated that the incident took place at 12 A.M. on the night between September 9,1984 and September 10,1984. Statements of the aforesaid police witnesses and Ram Lal amply prove that the incident took place around midnight. In the circumstances of the case, we are of the opinion that Kiran Bala though not very clear about the exact time of the incident was nevertheless an eye witness to the occurrence.

(36) The last submission of the learned counsel for the appellant that the recoveries were not made in the presence of the independent witnesses cannot affect the core of the prosecution story, which has been found to be correct.

(37) Having regard to the above discussion, we find no merit in the above appeal which is hereby dismissed. Accordingly, the conviction and sentence passed by learned Additional Sessions Judge by his judgment and order dated January 5,1988 is upheld. Before parting with the judgment, we consider it appropriate to express our appreciation for the valuable assistance rendered by Ms. Anjana Gosain, learned amicus Curiae, in conducting the matter on behalf of the appellant.