

**Naresh Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Jan-04-1995

**Reported in :** 1995CriLJ1256; 57(1995)DLT399

**Judge :** P.K. Bahri and; S.D. Pandit, JJ.

**Acts :** [Indian Penal code, 1860](#) - Sections 302; [Arms Act, 1959](#) - Sections 27

**Appeal No. :** Criminal Appeal No. 67 of 1990

**Appellant :** Naresh Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Sandeep Sethi and; P.S. Sharma, Advs

**Judgement :**

**P.K. Bahri, J.**

(1) This appeal is directed against the judgment and order dated 31/03/1990, of an Additional Sessions Judge, Delhi, by which the appellant has been convicted of an offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo life imprisonment and to pay a fine of Rs.1,000.00 and in default to undergo further rigorous imprisonment for one year on the first count and sentenced to undergo rigorous imprisonment for two years on the second count with the direction that the substantive sentences shall

run concurrently.

(2) The case of the prosecution, in brief, is that the appellant's brother Jai Bhagwan had been stabbed by Tek Chand-deceased and a case was registered against Tek Chand for an offence punishable under Section 307 of the Indian Penal Code on 13/06/1987, vide copy of the F.I.R. Ex.PW9/A. Tek Chand was having an electric shop bearing No.WZ-297/C, JJ.Colony, Madipur, Delhi. On 13/05/1988, it is alleged that while Tek Chand was present in the shop at about 3.30 P.M. that the appellant came to that shop and had stabbed Tek Chand with a knife and Tek Chand had succumbed to his injuries as a result of the said assault.

(3) The police came to the spot on the basis of a report No.18 recorded at Police Post Madipur, Delhi, copy of which is Ex.PW19/A wherein it is recorded that at 4p.m. a message was received from the Police Officer in charge of a police van that Police Van-9 had removed the injured from Madipur Bus Stand to some unknown hospital. A copy of this report was handed over to Asi Om Parkash PW15 who accompanied by Constable Mahabir Singh had reached the said place and he met Rajesh Kumar PW5 and recorded his statement Ex.PW5/A in which Rajesh Kumar disclosed that he was a resident of house No.E-370, JJ.Colony, Madipur and he is also having a shop bearing No.WZ-297/C at that place and at about 3.30 P.M. he was proceeding to his house from the shop that he saw Naresh i.e. appellant coming out of the shop of Tek Chand and running away and he went to the shop of Tek Chand and found Tek Chand lying in a pool of blood and he with the help of Anil Kumar had put Tek Chand in a police jeep and Anil Kumar told him at that time that Naresh Kumar s/o Nawal Kishore of Village Madipur had stabbed Tek Chand and thereafter Anil Kumar had gone with the injured in the police jeep and got him admitted in Ram Manohar Lohia Hospital. There is also a mention that a criminal case of stabbing Jai Bhagwan, brother of the appellant, is pending against Tek Chand in the court and he had assaulted Tek Chand to take revenge.

(4) On the basis of this statement a case was registered under Section 307 of the Indian Penal Code vide F.I.R.No.166/88 at about 4.45 p.m. at Police Station PunjabiBagh as per copy of the F.I.R. Ex.PW12/B. At this stage we may point out that in the paper book the office had put a translation of the F.I.R. in English which

contains certain cuttings regarding the date and the time but we have seen the original F.I.R. which is in Hindi and find that there is no cutting either in the date or in the time. The learned Counsel for the appellant in all fairness did not pursue any further contention on the basis of such cutting appearing in the translated copy of the F.I.R. prepared by our Registry.

(5) Coming back to the case, PW16 Si Harpal Singh had also on reached the place of occurrence and on being informed that the injured Tek Chand had been removed to the hospital, he reached there and obtained the Medico Legal Certificate of Tek Chand which disclosed that he had been shown as brought dead. He took into possession the two sealed parcels containing a shirt and a vest of the deceased vide memo Ex.PW11/A. He recorded the statements of Prabhu Dayal and Anil Kumar in the hospital. PW9 Inspector Sumer Singh, SHO of the Police Station concerned, had conducted the inquest proceedings and prepared the necessary papers which are Ex.PW8/A and had sent the dead body of Tek Chand for post-mortem vide application Ex.PW8/B Along with brief facts Ex.PW8/C. The post-mortem on the dead body of Tek Chand was performed by Dr.L.K Baruah. He found in all six injuries out of them five were incised wounds and he opined that injury No.5 was sufficient to cause death in the ordinary course of nature and he also gave the opinion that injuries were possible with the knife, which was later on allegedly recovered at the instance of the appellant on the basis of his disclosure statement, which was also sent to the doctor for his opinion.

(6) The appellant was arrested on 15/05/1988 and was interrogated in presence of PW1 Mahesh Kumar and PW2 Khazan Singh, brother of the deceased and is stated to have made a disclosure statement Ex.PW2/A and got recovered the knife from a drain nearby the place of occurrence of which sketch was prepared and the same was also converted into sealed parcel. The appellant's shirt, which was having some blood stains and appeared to have been washed, was also taken into possession. The case property was sent to the Central Forensic Science Laboratory. The reports of the CFSL Exs.PW16/C1 to C4 disclose that there was human blood present on the knife which was of 'O' group and the said 'O' group human blood was also found on the clothes of the deceased and so also his sample blood. However, the blood stains found on the shirt of the appellant were

found to be of 'B' group, hence that shirt is not connected with the commission of the crime.

(7) The learned Additional Sessions Judge has believed the testimony of PW3 Prabhu Dayal and had sought corroboration to certain material facts from the testimony of PW4 & PW5 and had also believed the recovery of the knife at the instance of the appellant which was blood stained and the blood stains were found to be same group 'O' which was the blood group of the deceased and thus brought home the offences to the appellant beyond any reasonable doubt.

(8) The learned Counsel for the appellant has in his usual vehemence contended that the prosecution case is not made out beyond reasonable doubt in as much as Prabhu Dayal has not been named as an eye witness in the F.I.R. whereas Anil Kumar, who is alleged to have disclosed the name of the appellant to Rajesh Kumar (PW5), has turned hostile and did not support the prosecution case on this point and even Rajesh Kumar had turned hostile by deposing that he has not been disclosed the name of the appellant by Anil Kumar and thus, there was no credible witnesses examined by the prosecution which could have supported the prosecution version. He has also urged that although Tek Chand's death had come to the notice of the police soon after the information was sent by the Duty Constable to the Police Post which was recorded at 4.45 p.m. in Daily Diary No.22, copy of which is Ex.PW19B, but no special report is proved to have been sent to the higher authorities including the Metropolitan Magistrate of the area concerned. So, it is urged that in the present case in the absence of these safeguards and also absence of any proof of any corresponding copy of the Daily Diary which is required to be recorded as soon as the F.I.R. is recorded containing the substance of the Fir, it must be inferred that F.I.R. in the present case must have been ante-timed and the name of the appellant has been falsely implicated in this case perhaps due to the enmity which the appellant had with the deceased.

(9) The learned Counsel for the State, on the other hand, has contended that mere lapses of the investigating police in not complying with the various provisions of the Code of Criminal Procedure which require that the substance of the F.I.R. must be recorded in the Daily Diary and as soon as heinous crimes like murder is

shown to be committed, a special report may be immediately sent to the higher authorities including Metropolitan Magistrate, are not sufficient to throw away the prosecution case which is clearly made out on the basis of credible and truthful statements of the eye witnesses which find due corroboration from the recovery of the weapon of offence at the instance of the appellant. He has urged that the various apparent contradictions pointed out by the learned Counsel for the appellant with regard to the statements of the witnesses particularly of the witnesses to the recovery of knife are innocuous and do not go to the root of the matter and the case of the prosecution is well made out particularly when the blood stains found on the knife were found to tally with the blood of the deceased and that knife was also opined to have been used for stabbing Tek Chand. The cut marks found on the shirt of the deceased were opined to have been possible with the aforesaid knife.

(10) It is true that name of Prabhu Dayal PW3 does not find mention in the F.I.R. or in the sketch prepared by the Investigating Officer at the place of occurrence. If we keep the testimony of Prabhu Dayal in view it is evident that he on seeing the appellant running away from the shop of Tek Chand had pursued him to some distance and thereafter he had gone to the hospital learning that the injured had been removed to the hospital and it is in the hospital that he met the Investigating Officer and had disclosed that he was the eye witness and he gave the statement. It is quite clear as far as law is concerned that it is not absolutely necessary that names of all the eye witnesses must figure in the F.I.R. It depends upon the facts of each case to see whether a particular eye witness is a truthful witness or not and also to examine the reason as to why his name could not come in the F.I.R. If the Court is satisfied that there was no lapse on the part of the Investigating Officer in recording the F.I.R. and the eye witness was not available at the time the F.I.R. was recorded, it cannot be said that eye witness was later on put up just to support the prosecution case.

(11) Prabhu Dayal PW3 is totally independent witness. He has no links either with the appellant or with the deceased or with the other eye witnesses. It is evident that when he saw the occurrence his attention was directed towards the appellant running away from the shop of Tek Chand and he thought it fit to pursue him. It is

possible that Rajesh Kumar or even Anil the other witnesses produced by the prosecution might not have noticed Prabhu Dayal so that his name could be also disclosed in the F.I.R.

(12) It has been urged on behalf of the appellant that the testimony of Prabhu Dayal is not natural inasmuch as he had not raised any hue and cry while pursuing the appellant in order to attract the passers by or persons who might be present on the very busy Bus Stand located just near the shop of Tek Chand. It is true that Prabhu Dayal has stated that he has not raised any hue and cry while he was pursuing the appellant, but it has not come in evidence that there was any public person present at the Bus Stand at that time whose attention could have been attracted by raising hue and cry. When a person is following another person it is not always necessary that it would come to his mind to raise alarm because that person himself is not affected by the crime committed by the either person. We have gone through the testimony of Prabhu Dayal closely and we find that he is straightforward and truthful witness. He had seen the appellant coming out of the shop of Tek Chand and he just followed him. He had also seen Tek Chand being stabbed by the appellant. The learned Counsel for the appellant has pointed out to the testimony of Anil PW4 where, while being hostile to the prosecution, he has stated that there were chics both on the front side of the shop as well as on the rear side. The contention raised is that any person walking in front of the shop of Tek Chand would not have been in a position to witness the occurrence which took place inside the shop. Anil Kumar is hostile witness and he has not supported the prosecution version with regard to his having witnessed the stabbing and he was duly confronted With his police statement where he had given the eye witness account. It is clear from the testimony of the Investigating Officer who had prepared the sketch that no question had been put to him that there were any chics found at the shop of Tek Chand and no such chics have been shown in the sketch prepared at the spot. Mere fact that hostile witness Anil Kumar had thought it fit to show favor to accused in his cross-examination by admitting that there were chics present at the shop of Tek Chand at the time of the occurrence does not mean that whatever he is telling the court is true. 'We should not forget that he has already turned hostile to the prosecution and in his anxiety to support the appellant, he has come out with the fact which is not alluded to by any of the other

witnesses. The defense has not cross examined other witnesses or the Investigating Officer to elicit this fact whether there existed any chics or not at the shop of Tek Chand. The sketch of the premises prepared soon after the occurrence does not show the presence of any such chics. So, on this score it cannot be said that Prabhu Dayal could not have seen the occurrence taking place in the shop of Tek Chand when he had come there for unloading certain goods from his hand-driven cart. There is not even a suggestion to Prabhu Dayal that he has any reason to falsely implicate the appellant for this crime.

(13) At any rate the testimony of Rajesh Kumar PW5, who is author of the F.I.R., also shows that he had also seen the appellant running away from the shop of Tek Chand. This part of his statement was not challenged in cross-examination. It is true that on certain facts, which he had given to the police in the F.I.R., he had been confronted with as he had not given those facts in his statement in court as he deposed that Anil Kumar had not told him that the appellant had stabbed Tek Chand which fact stands mentioned in the F.I.R. given by this witness. At any rate Rajesh Kumar is also an independent witness. He is a neighbour shopkeeper and has no axe of his own to grind by falsely implicating the appellant in this crime. The statement that he had seen the appellant coming out of the shop of Tek Chand after the commission of the crime and running away from the spot is quite credible and in our view has been rightly believed by the Lower Court.

(14) The learned Counsel for the appellant has cited various judgments in support of his contention that as there has taken place lapses on the part of the investigating agency in not proving the Dairy Diary report containing the substance of the F.I.R. and not showing that any special report was sent to the Metropolitan Magistrate, thus it should be held that the F.I.R. in this case was not recorded at the time purported to have been mentioned in the F.I.R. He has made reference to *The State of Punjab v. Tarlok Singh*, : 1971 CriLJ1063 . In the said case it was found that F.I.R. purported to have been lodged at 3.45 p.m. but the special report had not was lodged without lapse of unnecessary time. We have gone through the judgment and we find that witnesses who were examined were not truthful. So, keeping in view all these facts, the High Court had acquitted the accused in that case which acquittal was upheld by the Supreme Court.

(15) He has also referred to *Balaka Singh & Others v. The State of Punjab*, : 1975 CriLJ1734 . In the said case, there was omission to report the names of some of the accused in the inquest report and keeping in the various facts appearing in that case the Supreme Court held that such omission led to some doubt of complicity of the four accused who were not mentioned in the inquest report. It was also found as a fact that in all probability the F.I.R. was recorded after the inquest report was prepared.

(16) Reference is then made to *Ishwar Singh v. The State of Uttar Pradesh*, : 1976 CriLJ1883 , wherein the extraordinary delay took place in sending the F.I.R. in a case pertaining to serious offences, it was held that extraordinary delay in sending the F.I.R. is a circumstance which provides a legitimate basis for suspecting that the First Information Report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. He has also cited *Vijinder Singh v. The State*, 1984 (1) Cri 237, where the eye witnesses made many improvements of grave magnitude in the statements in court and there were deeply interested witnesses, a Bench of this Court in that case had found that there delay in sending the F.I.R. to the Magistrate as required under Section 157 of the Code of Criminal Procedure and thus, held that this delay has resulted in false implication of the accused in that case.

(17) He has also cited the case *Lala Ram b Another v. State*, : 36(1988)DLT8 , in which also it has been highlighted the necessity of complying with the requirement of Section 154 of the Code of Criminal Procedure read with Rule 24.1 of the Punjab Police Rules for recording the substance of the F.I.R. in the Daily Diary and for sending the special report to the Ilaqa Magistrate in a case of murder promptly.

(18) It is true that these safe-guards have been provided by the statute to ensure not only the fair investigation being done by the prosecution but also that there is prompt recording of the F.I.R. which sometimes lead the court to believe the prosecution version as it has come out without any delay.

(19) He has also referred to Jagjit Singh v. State, 1990 (2) Delhi 135, where again same principles have been laid down by this Court. Lastly he has referred to Arjun Marik & Others v. State of Bihar, : [1994]2SCR265 . In the said case the evidence was found to be shaky and inconclusive. There were infirmities in the prosecution evidence coupled with that there was delay in sending special report to the Magistrate and thus, the court held that all these facts are fatal to the prosecution case.

(20) It depends on the facts of a particular case to see as to whether such lapse of the prosecution should lead the court to disbelieve eye witness or not. Reference may be made to Murder Reference No.8 of 1976, State v. Dharampal, decided by a Division Bench of this Court on 6/05/1977. It was found that there was no name of the accused mentioned in the substance of the F.I.R. recorded in the Daily Diary, still keeping in view the facts of that case as the witnesses were truthful the court held that this lapse on the part of the investigating agency would not go to show that F.I.R. was ante-timed to falsely implicate the particular accused.

(21) The learned Counsel for the State has cited State of U.P. v. Gokaran & Others, : 1985 CriLJ511 , where it was laid down by the Supreme Court that it is not that as if every delay in sending a delayed special report to the District Magistrate under Section 157 of the Code of Criminal Procedure would necessarily lead to the inference that the F.I.R. has not been lodged at the time stated or has been ante-timed or ante-dated or that the investigation is not fair and forth-right.

(22) It is an absurd proposition of law that if there takes place lapse at the level of the police investigating the crime, this lapse should result in every case in drawing an inference against the prosecution that the witnesses put forward by the prosecution as eye witnesses are not truthful witnesses or have been just put up to support the prosecution version at a belated stage. It is also settled law that even if there is one solitary eye witness whose evidence is truthful and credible such an eyewitness's testimony alone can be sufficient to bring home the offence to a particular accused. Reference may be made to Vahula Bhushan @ Vehuna Krishnan v. State of Tamil Nadu, : AIR 1989 SC236 , in this connection.

(23) In the present case, we find that the Additional Sessions Judge has rightly placed implicit reliance on the straight-forward and truthful evidence of Prabhudayal PW3 which finds due corroboration also from the testimony of author of the F.I.R. PW5 Rajesh Kumar.

(24) However, in the present case we also find that there is recovery of the weapon of offence at the instance of the appellant on the basis of the disclosure statement made by him. It is true that PW2 Khazan Singh is the brother of the deceased and PW1 Mahesh is his friend and they would be, of course, anxious to see that the culprit in the case is apprehended and for that purpose they had come to the police to find out whether the culprit has been arrested or not. It is in their presence that the police had interrogated the appellant on 15/05/1988, which led to the recovery of the weapon of offence at the instance of the appellant. Of course, there are certain discrepancies appearing in their statements with regard to the drain from which the knife was allegedly recovered. Pw1 has stated that the drain was located at a distance of 10-15 paces from the place of occurrence whereas PW2 had stated that it was at a distance of 400-500 yards. Some persons have little sense of distance. So, such a discrepancy would not go to show that the statements of the witnesses are not credit-worthy with regard to the core of the matter regarding the disclosure statement having been made which led to the recovery of the weapon of offence at the instance of the appellant. It has been then pointed out that Pw1 has stated that there was some grill covering the drain from where the knife was got recovered whereas PW2 has stated that it was uncovered drain. It has not been pin-pointed from the statements of the witnesses in cross-examination as to whether the whole of the drain was uncovered or a particular portion of the drain was uncovered or a particular spot of the drain was covered. It is possible that particular spot of the drain might have the grill over it while the other portion might not have any such grill. So, it cannot be said that there has occurred any such serious discrepancy in of these witnesses which could lead this court to draw an inference that this knife has been just planted on the appellant. Presence of the blood of the same group as that of the deceased on the knife ensures that this knife was the weapon of offence and these witnesses are also supported by the police officials, namely, PW10 Constable Harpal Singh and PW16 Si Harpal Singh that the appellant had made a disclosure statement

and had got recovered the said knife from the said drain.Hence, we hold that the recovery of knife also gives due corroboration to the prosecution case.So, in view of the above discussion, we hold that the conviction of the appellant is well based and we, thus, dismiss the appeal and maintain the conviction and sentences of the appellant.

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