

Babu Lal Vs. State

Babu Lal Vs. State

SooperKanoon Citation : sooperkanoon.com/697018

Court : Delhi

Decided On : May-16-1995

Reported in : 1995CriLJ3773; 60(1995)DLT43

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

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

Appeal No. : Criminal Appeal No. 73 of 1991

Appellant : Babu Lal

Respondent : State

Advocate for Pet/Ap. : Meenakshi Jain and; N.K. Handa, Advs

Judgement :

P.K. Bahri, J.

(1) So, we do not find that the place of occurrence had been changed while giving evidence in Court by this witness or by other witnesses. The place of occurrence is also pin pointed from the lifting of the blood and other articles from the spot. It has been urged that the police had found at the place of occurrence half filled bottle of liquor and some broken pieces of glass and the same have not been linked With the details of the occurrence given by the eye witness Ram Kishan.

(2) It must be emphasised that attention of Ram Kishan and Baljit was attracted towards the place of occurrence when they were entering the small gate on hearing a noise of quarrel coming from the place of occurrence. So, they are not witnesses to the whole of the occurrence which might have taken place before they reached near the place of occurrence and saw Babu Lal attacking Nathu with a 'Pharsa'. Rather the witness. Ram Kishan, has not tried to embellish the story in order to give any false version of having witnessed the whole of the occurrence which may have resulted in breaking of some glass after some drinking bout taking place at the spot.

(3) It has been urged that there is some discrepancy in the testimony of Ram Kishan as to whether Babu Lal had assaulted Nathu when Nathu was standing or sitting on a bench. We do not think that this particular discrepancy which appears in the statement of Ram Kishan goes to the root of the matter. The testimony has been given by Ram Kishan in Court after about 15 months of the occurrence. So, such discrepancies on some immaterial points do appear in statements of even most truthful witnesses. It is to be emphasised that Ram Kishan is not a literate person so that he could narrate the facts without making any mistakes.

(4) It was argued that Public Witness 3 Ram Kishan could not have been present at the spot as he has not given any reason as to how Nathu came to be placed on a bedding and admittedly, the bedding and other articles were blood soaked and were recovered at the spot. It has already come in the statement of Public Witness 3 and also in the F.I.R. that Ram Kishan and Baljit had gone after the assailant in order to apprehend him and that had taken about 4/5 minutes and it is obvious that when they returned, they found the dead body of Nathu lying on a bedding on a bench. It is evident that some other persons, who might have collected at the spot, had put Nathu on a bedding before Ram Kishan and Baljit returned to the spot after having failed to apprehend the assailant.

(5) It is, then, urged that Ram Kishan, in the F.I.R, had given the details of the dispute that appellant was having with the deceased. It is well-known principle of law that F.I.R. is not a document which must contain all the details and if all the details are not contained in the F.I.R, it cannot be inferred in law that the author of

the F.I.R. was not aware of the details at the time he got recorded the F.I.R.

(6) The statement of Ram Kishan in Court that the appellant had gone to his native place for a few months and had handed over the possession of the shop to Nathu was not challenged in cross-examination. It is on account of the accounts of the shop of Babu Lal, when Babu Lal came back and took over the possession of the shop, that differences arose between the appellant and the deceased which ultimately culminated in murder of Nathu at the hands of the appellant.

(7) Even the hostile witness, Baljit Singh, Public Witness 11 had stated that the appellant had gone away somewhere and had given his shop to deceased Nathu for running in his absence about two years back prior to the occurrence and he also admitted that the appellant returned after 5 / 6 months and took back his shop .As far as Baljit Singh, Public Witness 11, is concerned, for reasons best known to him, he had not supported the prosecution version. He even denied that he knew Public Witness 3 Ram Kishan. According to him, he had only heard, soon after the occurrence when he reached there, that Babu Lal had ran away after attacking Nathu and he claim to have informed the police. According to him, even the Tharsa' had been taken into possession by the police lying under a tempo. He has been confronted with his statement given to the police, Ex.PW 11/A to various portions but he denied having given such version. He, of course, admitted that various articles and the blood were lifted in his presence by the police and he had signed the recovery memos, Ex.PW 3/B to Pw 3/F.

(8) Referring to the statement of Public Witness 14, Khushi Ram, who was having his tempos being plied by Nathu and Babu Lal at some point of time and he is also member of Delhi Transport Union having its office at Ajmeri Gate, it has been urged that although Khushi Ram came to the spot soon after learning about the occurrence, yet he had not deposed that he had found Ram Kishan, Public Witness 3 present at the spot, although he refers to the police being present.

(9) It is pertinent to mention that no question has been put to him either in examination-in-chief or in cross-examination with regard to his having noticed Pw 3, Ram Kishan, present at the spot or not soon after he came to the spot. So, it cannot be said that there has come about a serious discrepancy in the prosecution

version casting any doubt on the question of Ram Kishan being eye witness of the occurrence.

(10) Now, coming to the recovery of the weapon of offence, the Investigating Officer, Khushi Ram and Ram Kishan have deposed about the arrest of the appellant on being pointed out by Ram Kishan and thereafter he being interrogated and then he having got recovered the 'Pharsa' from the hollow place of the tree near the temple. It has been urged that the Pujari of that temple, who was examined as DW-1, although was claimed to have been present at the time of the alleged recovery, yet he was not made a witness to that recovery. It is not disputed that the said Pujari, DW-1, is a blind man. So, there could not have been any possibility of his having been made a witness to the recovery of the weapon at the instance of the appellant.

(11) Pujari, DW-1, had further not made any statement that on 24th October, 1984 itself, the appellant had not come with the police to the said temple and had not made any recovery of the weapon. DW-1 appears to be a false witness procured just to support the appellant because he had referred to visit of the police after few days of the assassination of Indira Gandhi which took place on 31st October, 1984. So, his statement does not in any manner throws any doubt on the version of the prosecution. There is no earthly reason to disbelieve the Investigating Officer, Pw 15, S.I.Keshav Ram, Public Witness 14, Khushi Ram and Public Witness 3 Ram Kishan that appellant was arrested in the manner stated by them who had made a disclosure statement which led to the recovery of the weapon of the offence.

(12) Learned Counsel for the appellant has not been able to pointed out any serious discrepancy appearing in the statement of these three witnesses which could throw any doubt with regard to their veracity. Human blood was detected on the said 'Pharsa' when it was sent to C.F.S.L, although group of the blood could not be determined by the experts of C.F.S.L.

(13) Be as it may, we have come to the conclusion that Additional Sessions Judge was right in believing the testimony of Public Witness 3. Mere fact that Public Witness 3 is a relation witness does not mean that his statement is not to be given

any credence. The law- only requires that in case the eye witnesses are relations, the Court should scrutinise their evidence with more care and caution. There was no reason for Ram Kishan to have falsely implicated the appellant for the murder of his brother.

(14) In view of the above discussion, we find that the conviction of the appellant is well based for offence punishable under Section 302 Indian Penal Code . for having caused the murder of Nathu.

(15) We, hence, do not find any merit in this appeal which we hereby dismiss. We confirm the conviction and sentence of the appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com