

Abdul Kalam Vs. State

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Court : Delhi

Decided On : Jul-24-1996

Reported in : 1996IIIAD(Delhi)813; 63(1996)DLT809; 1996(38)DRJ459

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal Nos. 227 of 1992 and 8 of 1993

Appellant : Abdul Kalam

Respondent : State

Advocate for Pet/Ap. : K.B. Andley,; P.R. Thakur,; Mukesh Kalia,;

Judgement :

K.S. Gupta, J.

(1) CR. A 227/92 by Abdul Kalam and Cr. A 8/93 by Anwar @ Pappi are directed against the judgment and order both dt. 28.11.92 of an Additional Sessions Judge. In terms of that judgment and order Anwar appellant was convicted u/s 302/34 Indian Penal Code, 324 Ipc and 27 Arms Act and sentenced to undergo imprisonment for life and pay a fine of RS.1,000.00 u/s 302/34 Indian Penal Code, to one year rigorous imprisonment and a fine of Rs.500.00 u/s 324 Indian Penal

Code and to three months rigorous imprisonment and fine of Rs. 500.00 u/s 27 of Arms Act. Abdul Kalam, appellant was convicted u/s 302/34 Indian Penal Code and sentenced to undergo imprisonment for life and pay a fine of Rs.1,000.00 . Since both the appeals arise out of the common judgment and order these are being disposed of by this common judgment.

(2) Case of the prosecution as borne out from the chargesheet filed u/s 173 Criminal Procedure Code is that on 13.4.91 on receipt of an information regarding quarrel through wireless S C Sharma, Sho, Public Witness 22 along with driver Jagdish Prashad and constable Vijay Kumar, PW 15 reached near Fancy Cloth House in a jeep and there Si S B Yadav, Public Witness 8 along with constable Vandna Rao met him. Crowd had collected there and blood in sufficient quantity was lying on the road in front of Fancy Cloth House. Constables Harswroop Singh, Public Witness 7 and Naresh Kumar, Public Witness 6 had caught hold of Anwar and Abdul Kalam and the injured was stated to have been removed to the hospital. After leaving behind constable Vandna Rao to assist Public Witness 6 & Public Witness 7, Public Witness 22 along with Public Witness 8 and Public Witness 15 and driver Jagdish Prasad left for Lnjp hospital in the jeep. Public Witness 22 collected MLCs of Anil Kumar and Sohan Lal, Public Witness 5. On the Mlc of Anil Kumar doctor had reported that he was brought dead while on the Mlc of Public Witness 5 'U/O sharp' was recorded. Public Witness 5 had been sent to Surgery Ward for the management of the injury suffered. It is further stated that in the hospital itself Vijay Kumar, Public Witness I met Public Witness 22 and the former got his statement recorded to the latter to the effect that that day at about 10.00 Am his brother told him that in the morning a minor altercation took place between him and Anwar who resides in his neighborhood and whom he knew from before. He further disclosed that he had told Anwar that he and his brother-in-law Abdul Kalam get the pockets of the people picked in Delhi Gate bazar whereupon Anwar got enraged and both of them had a minor scuffle. At that time Anwar left the place saying that he was saved by the people but he would take revenge of the insult. At about 7.00 Pm he and his brother Sohan lal, were talking while standing in front of Fancy Cloth House in Delhi Gate Bazar and in the meantime his younger brother Anil came from the side of Delhi Gate and when he was at a distance of 5 to 7 paces from them and turning for going to his house in Katra Bhudan Rai Wali Gali

both Anwar and Abdul Kalam were sighted coming out of that gali. On seeing Anil, Anwar got enraged and told Abdul Kalam 'pakar saale ko aaj ise beijti ka maza chakha dete hain' (catch hold of him as he is to be taught a lesson for insulting). Thereupon Abdul Kalam caught hold of Anil and Anwar after taking out a chhuri gave blows to Anil on his chest and the abdomen on the right side. Anil fell down on the road in front of Fancy Cloth House in injured condition. When he and Public Witness 5 came to save Anil, Anwar assaulted Public Witness 5 with chhuri but he warded off that assault.' Anwar again assaulted Pw 5 with the chhuri and Public Witness 5 warded off that assault with his left hand and in that process he received injury on the left hand and he started bleeding. It is further stated that after the assault accused Anwar along with the chhuri and also accused Abdul Kalam went towards Delhi Gate and on being chased by him and Public Witness 5 they were caught at a distance of 15 to 20 paces with the help of constables Harswroop Singh and Naresh Kumar who happened to come from the opposite direction. He along with Public Witness 5 and Harish Kumar, Public Witness 2 took Anil in a cycle rickshaw to Lnjp Hospital and there doctors after checking declared him dead. As the statement of Public Witness I and both the MLCs disclosed the commission of the offence u/s 302/307/34 Ipc 'rukka' was sent by Public Witness 22 through Public Witness 15 to the police station for registration of the case against Anwar and Abdul Kalam, accused. During investigation Public Witness 22 inspected the spot and on pointing out of Public Witness I prepared the site plan besides getting the photographs taken. Public Witness 22 also lifted the blood, blood stained earth and control earth from the spot and took them into possession after preparing memos. He recorded the statements of Public Witness s and arrested both the accused on 13.4.91 itself. Chhuri recovered from accused Anwar was' also taken into possession vide a seizure memo. Blood stained cloths of Public Witness s 1 and 5 were further taken into possession vide separate seizure memos. On 14.4.91 inquest proceedings u/s 174 Criminal Procedure Code were conducted and the postmortem examination on the body of the deceased was got done by Public Witness 22. Chhuri was sent to the doctor who conducted the post mortem. In the postmortem report collected on 24.4.91 doctor has opined the cause of death as 'due to haemorrhage and shock consequent upon damage to liver via injury no.10'. Injuries on the person of the deceased have further been

opined to be caused by the chhuri recovered from accused Anwar. During the pendency of the trial reports dated 9.4.92 and 16.4.92 were also received from Cfsi whom the case property was sent for opinion.

(3) In their statements u/s 313 Criminal Procedure Code plea taken by both the accused is of plain denial. According to them Hindu Muslim riot in the area of Chatta Lal Mian took place on 13.4.91 and they received injuries for which they were treated in Lnjp hospital, at the hands of unruly mob.

(4) It was contended by Shri K B Andley, appearing for accused Anwar that considering the statement of Sohan Lal, Public Witness 5 as it stands prosecution is left only with the testimony of Vijay Kumar, Public Witness I as an eye witness of the alleged occurrence but that too is unreliable as he was not present at the time the alleged incident took place. As a part of this submission, it was further urged by him that the prosecution has failed to furnish any Explanation whatsoever in regard to the injuries found on the person of accused Anwar or on the body of deceased excepting injuries 9 and 10 and three abrasions as noted in the postmortem report Exhibit Public Witness 12/A and that being so defense taken by accused that they and also the deceased received injuries in Hindu Muslim riot is plausible and the trial court, therefore, acted erroneously in convicting and sentencing accused Anwar vide the impugned judgment and order.

(5) According to the prosecution alleged occurrence had taken place in Delhi Gate bazar in front of Fancy Cloth House and blood sample lifted from there on Chemical analysis was found to be of the group tallying with the blood group of the deceased as is evident from Cfsi report Exhibit Public Witness 22/G. That fact coupled with the photographs Exhibits P 15 and 16 fully establish that said place itself was the spot as alleged by the prosecution.

(6) Coming to the first limb of argument referred to above, Vijay Kumar, Public Witness 1 has deposed that on 13.4.91 he and his brother Sohan Lal were standing and talking in front of Fancy Cloth House in Delhi Gate bazar. His younger brother Anil Kumar came from towards Delhi Gate and when he was at a distance of about 5 to 7 paces away and was turning for going to the house in the Gali both the accused came out from that Gali. On seeing Anil Kumar, accused

Anwar shouted 'pakad to sale ko' and they will teach him a lesson for insulting them in the morning that day. Thereupon accused Abdul Kalam caught Anil by his arm while accused Anwar took out chhuri and inflicted blows on his chest and belly on the right side and Anil fell down and started bleeding. He has further deposed that when he and Sohan Lal came forward to save Anil accused Anwar attacked Sohan Lal on his chest but he warded off that attack. Accused Anwar again assaulted Sohan Lal and in the process of warding off that assault Sohan Lal received injury on the palm of his left hand. Thereafter both the accused ran towards Delhi Gate. He and Sohan Lal chased them and at a distance of 15 to 20 paces both were apprehended with the chhuri with the help of two constables who happened to reach there from the opposite direction. With the help of Sohan Lal and Harish, Public Witness 2 Anil was taken to Lnjp Hospital in a rickshaw where he was declared dead. His statement Exhibit Public Witness I/A was recorded by the police in the Hospital. His shirt Exhibit P2 was stained with blood of the deceased while taking him to the hospital in his lap and after converting that shirt into a parcel same was taken into possession vide Exhibit Public Witness 1/J by the police. In cross examination he has stated that on hearing the lalkara' from accused Anwar he did not try to intervene to save Anil as a he did not expect that such an episode will occur. Accused did not allow opportunity to save Anil. It is further slated in his cross examination that accused Abdul Kalam caught hold of the left arm of the deceased with his left hand.

(7) Statements of Hc Harswroop, Public Witness 7 and Naresh Kumar, Public Witness 6 are also significant as regards the controversy at hand. Public Witness 7 has deposed that on 13.4.91 he and constable Naresh Kumar were on patrol duty at Delhi Gate bazar and at about 7.00 Pm when both of them were going to Tiraha Behram Khan and reached in front of 'Rain Basera' they saw two persons out of whom one was holding a chhuri in his right hand, running towards their side. Those two persons were being chased by another two persons whose names were later known as Vijay Kumar and Sohan Lal. He with the help of constable Naresh Kumar had apprehended both of them and the chhuri held by accused Anwar having blood stains was snatched. Both the accused thereafter were taken to the place of occurrence where Anil was lying in injured condition. Anil Kumar was taken to the hospital by Vijay Kumar, Sohan Lal and Harish in a rickshaw.

Around 7.30 Pm S C Sharma, Sho, Public Witness 22 along with Si S B Yadav, Public Witness 8 came there and he produced the chhuri before Public Witness 22 and the same after converting into a parcel was seized vide memo Exhibit Public Witness 1/4. Likewise is the statement of Public Witness 6.

(8) It is in the evidence on the record that chhuri Exhibit P 1 as well as shirt Exhibit P 2 of Public Witness 1 were sent to Cfsi and as per report Exhibit Public Witness 22/G blood appearing on both Exhibits P1 and P2 was found to be of Group A that of the deceased.

(9) We have carefully gone through the statements of HCs Harswroop Singh, and Naresh Kumar and there seems to be absolutely no reason to disbelieve them on the point of both the accused being chased by Vijay Kumar, Public Witness 1 and Sohan Lal and recovery of chhuri Exhibit P1 from accused Anwar immediately after the occurrence. Two strong circumstances of Public Witness 1 having chased the accused from the scene of occurrence up to the place they were apprehended by Public Witness 6 and Public Witness 7 and the presence of blood of the group of the deceased on the shirt, P2 of Public Witness 1 make the attendance of Pw 1 at the spot at the time of occurrence highly probable and thus there is absolutely no ground to disbelieve him in regard to the part played by both the accused in inflicting two fatal blows with the chhuri Exhibit Pi on the person of Anil deceased as deposed to by him. In the authority of Kartik Malhar vs . State of Bihar : 1996 CriLJ889 , Supreme Court has held that conviction can be recorded on the basis of statement of single eye witness provided his credibility is not shaken by any adverse stance appearing on the record against him and the court, at the same time is convinced that he is a truthful witness. That being the legal position sole testimony of Vijay Kumar, Public Witness 1 is sufficient to bring home the charge(s) leveled against both the accused.

(10) Turning to the second limb of argument, Exhibit DW-1/A is the Mlc pertaining to accused Anwar and the nature of injuries suffered by him have been shown therein thus: -

'I) Incised wounds-wounds of average size of 6 cm to 12 cm/obliquely placed on front of chest. Wounds are superficial; ii) Two incised wounds superficial on left

side of neck/obliquely placed'.

(11) Point similar to the one at hand came to be considered by the Supreme Court in the authority of A.M. Kunhikoya @ Koya vs . State of Kerala : [1993]2SCR692 and it was held that 'it is well settled that if the evidence of the eye witnesses are held to be reliable and inspire confidence then the accused cannot be acquitted solely on the ground that some superficial injuries found on the person of the accused concerned, had not been explained by the prosecution'. This authority applies on all fours to the facts of the instant case and as the injuries noted in Mlc Dw 1/A on the person of accused Anwar were superficial in nature accused cannot be acquitted solely on the ground of those injuries having not been explained explained by the prosecution.

(12) As regards the presence of injuries other than 9 and 10 as shown in postmortem report Exhibit Public Witness 12/A on the body of deceased, looking at their location those seem to have been sustained by the deceased while warding off two chhuri blows inflicted on him by accused Anwar. In our view presence of injuries 1 to 3, 6 and 7 as noted in Exhibit Public Witness 12/A in no way renders the prosecution case doubtful.

(13) It may be noted that the defense taken up by the accused that they and the deceased sustained injuries in Hindu Muslim riot which broke out in the area on 13.4.91, is mainly based on Dd reports 15A (copy Exhibit Public Witness 22/0). It was Si Dharamvir Dutt, Public Witness 4 who recorded this Dd 15A. It is in his deposition that on 13.4.91 at about 7.30 Pm he received information from Cdcr on phone that one Ajay Gupta has informed from public call that a dispute between Hindus and Muslim have taken place at Chatta Lal Mian and this information was brought by him to the notice of the SHO. Later on Cdcr informed that only two three persons had entered into an altercation and there was no quarrel between Hindus and Muslims and this fact too was record in Dd 15A. Obviously later part of this statement totally belies that there was any Hindu Muslim riot in the said area on the said date and time. That being so how the accused and deceased could have suffered injuries on their person in the alleged riot.

(14) It was urged by Shri Andley that special report of the occurrence was not sent to the Ilaka Metropolitan Magistrate as required by Statute. Asi Balraj Singh, Public Witness 3 who was posted as duty officer, Ps Darya Ganj on 13.4.91, has inter alia deposed that after recording the formal Fir (carbon copy Exhibit Public Witness 3/B) he made entry in the Dd at no. 18A (copy Exhibit Public Witness 3/D) in regard to the registration of the case and the special report with regard to that Dd entry was sent by him to the higher authorities through constable Ram Babu and the latter returned to the police station after handing over the special report to the officers at 12.30 AM. An entry to that effect was made in the Dd and copy thereof is Exhibit Public Witness 3/E. In cross examination he has admitted that in Dd 18A it is written only that the copies of the special reports were sent to 'aala afsran' (higher authorities) volunteered higher authorities meant 'Ilaka Mm, Additional Cp, & Dcp of the area. Constable Ram Babu, Public Witness 19 has stated that duty officer Ps Darya Ganj on 13.4.91 handed over probably five envelopes containing the copies of the Fir and he directed him to deliver them to Acp, Dcp, Ilaka Mm and Additional Commissioner of Police. He accordingly went on motor cycle no. Dde 6114 and after delivering the envelopes he returned to the police station and told the duty officer about the delivery. In cross examination he has stated that he started from the police station at 9.10 Pm and in his statement he had told the 10 that the duty officer gave him the instructions to deliver the copies of the Fir to Acp, Dcp and Ilaka MM. He was confronted with the statement u/s 161 Criminal Procedure Code Exhibit Public Witness 19/DA where reference is made only in regard to senior officers. It is true that DD/18A and Exhibit Pw 19/DA only speak of sending special reports to higher/senior authorities but at the same time both Public Witness s 3 and 19 in their depositions have explained that Additional Cp, Dcp, Acp and Ilaka Mm are the higher/senior authorities to whom the special reports were sent and delivered. Authority of Bir Singh and Ors vs. State of Uttar Pradesh 1977 Scc (CRI) 640 relied on behalf of the accused Anwar was rendered in a different context and is of no help to him.

(15) Next submission advanced by Shri Andley, Advocate that inquest report etc. were not forwarded along with the dead body as required by law, has to be stated to be rejected. Dr. S K Khanna, Public Witness 12 in his examination-in-chief itself has stated that after postmortem, postmortem report along with 16 inquest papers

bearing his signatures were handed over to the police. In cross examination it was not even remotely suggested to him that either 16 inquest papers were not received along with the dead body or those were not returned therewith to the police. There is also reference in regard to 16 inquest papers in postmortem report Exhibit Public Witness 12/A. Further Exhibit Pw 22/D is the application for postmortem addressed to the Professor Mamc, Delhi sent by S C Sharma, SHO, Public Witness 22. On the back of this application 3 rubber stamps appear under the signature of Public Witness 12 and those indicate that body was received along with death summary and 16 inquest papers were returned after postmortem to Public Witness 22.

(16) It was lastly argued by Shri Andley that there was delay in lodging the Fir and that fact by itself renders the prosecution case highly doubtful. Needless to repeat that the occurrence is alleged to have taken place around 7.00 Pm while Fir on the basis of the statement of Vijay Kumar, Public Witness 1 was recorded at 9.10 PM. It is in the deposition of Sc Sharma, Sho, Public Witness 22(10) that information regarding a quarrel at Chatta Lal Mian received from Central Room of Central District was conveyed to him and he immediately rushed to Delhi Gate Bazar opposite Fancy Cloth House; that Si Sb Yadav along with the staff met him there and on learning that the injured has already been removed to the hospital he along with Public Witness 8 reached the hospital and obtained the MLCs of Anil Kumar, Public Witness 13/A and Sohan Lal, Ex.PW 13/B. On Exhibit Public Witness 13/A, Anil Kumar was recorded to have been brought dead. Vijay Kumar, Public Witness 1, brother of the deceased Public Witness 1 met him in the hospital and Public Witness 8 recorded his statement Ex. Public Witness 1/A on his dictation as narrated by Public Witness 1. In cross-examination he has stated that he received the message about the quarrel at Chhata Lal Mian at about 7.40 Pm and reached the spot for the first time at about 8,00 PM; that he received Mlc of Sohan Lal, Exhibit Public Witness 13/B at about 8.15 PM. Ordinarily after an occurrence priority is accorded in providing medical aid to a victim rather than rushing to the police station for lodging the FIR. Thus the delay up to the time of the recording of the statement Public Witness 1/A of Public Witness I, who must be busy in connection with the treatment, stands explained satisfactorily. Exhibit Public Witness I/A along with the endorsement made by Pw 22 for registration of the

case was sent around 9.00 Pm and immediately thereafter Fir was registered against the accused at 9.10 PM.

(17) Relying on the authority of *Om Prakash & Ors. v. State* 1991(2) Scc 330 it was urged by Shri Mukesh Kalia representing accused Abdul Kalam that prosecution has failed to prove that there was prior meeting of mind in between both the accused for committing the offence complained of and, therefore, Abdul Kalam cannot be convicted u/s 302 Indian Penal Code with the aid of Section 34 Indian Penal Code In the authority of *Yallappa & Ors vs . State of Karnataka : (1994)1SCC730* it has been held by the Supreme Court that common intention can generate on the spot itself and such common intention can be reasonably inferred from the facts and circumstances of the case and the nature of the injuries caused. Dr. S K Khanna, Public Witness 12 in his deposition and also in the postmortem report Ex. Public Witness 12/A has opined that two blows on the chest and the abdomen of the deceased as noted at Seriall no. 9 and 10 were sufficient to cause death of Anil in ordinary course of nature individually and collectively. These two injuries were inflicted with the chhuri, Ex. Pi by accused Anwar. From the deposition of Vijay Kumar, Public Witness 1 it is proved that on the exhortation of accused Anwar, Abdul Kalam, accused caught hold of the left arm of the deceased and he continued to hold the same till the assault lasted and after the assault was over both the accused ran away together from the spot. Taking these facts together and the nature of injuries suffered by the deceased one may safely infer that accused Abdul Kalam shared common intention with Anwar to commit the murder of Anil Kumar as is the case of the prosecution.

(18) Trial court was, therefore, fully justified in recording the finding of guilt against both the appellants.

(19) Both the appeals have no force and are, therefore, dismissed.

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