

**Ghamalu Ram Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/697657](http://sooperkanoon.com/697657)

**Court :** Delhi

**Decided On :** Jul-27-1996

**Reported in :** 1996IIIAD(Delhi)892; 63(1996)DLT819; 1996(39)DRJ399

**Judge :** K.S. Gupta, J.

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

**Appeal No. :** Criminal Appeal No. 100 of 1993

**Appellant :** Ghamalu Ram

**Respondent :** State

**Advocate for Pet/Ap. :** Neelam Grover and; S.K. Agarwal, Advs

**Judgement :**

**K.S. Gupta, J.**

(1) This appeal by Ghamalu Ram is directed against the judgment of an Additional Sessions Judge dated 17.4.93 convicting him u/s 302 Indian Penal Code and also the order dated 20.4.93 sentencing him to imprisonment for life and to pay a fine of Rs.1,000.00 . In default of payment a fine he was to further under to Si for three months.

(2) Case of the prosecution as 'borne out from the chargesheet filed u/s 173 Cr PC, in brief, is that on 4.6.86 at about 10.25 Pm an unknown person informed on phone that a quarrel is going on at house no. 20/83 Kalyan Puri. This information was recorded in the Dd at Seriall no. 58B and a copy thereof was sent to Si Gulshan Kumar, Public Witness 23 for enquiry. Public Witness 23 along with constables Mahesh Chand, Public Witness 1, Kanta Prasad, Keshav Kumar, Public Witness 20, and Hc Ishwari Dutt reached the said place. There Public Witness 23 found Paras Ram lying in a pool of blood. He was having injury on the left side of the neck. Paras Ram was sent in a Government vehicle to the hospital through Hc Gajraj Singh, Pw 18. Ram Vilas, Public Witness 15, met Public Witness 23 at the spot and he got his statement Exhibit Pw 15/A recorded to the effect that that day at about 10.15 Pm he was present in his house and on hearing noise he came outside in the street. He saw Paras Ram and Ghamalu Ram were quarreling with each other and A gnu, Public Witness 16 was standing on one side. Within his sight Ghamalu Ram who was holding a knife in his hand, inflicted a knife blow on the left side of the neck of the Paras Ram as a result whereof he started bleeding. In the meantime Ghamalu Ram fled from the spot along with the knife. A number of residents of the mohalla reached there. Public Witness 16 was saying that the quarrel between the two had taken place on chilam. After making endorsement Ex. Pw 23/A statement Ex. Public Witness 15/A was sent by Public Witness 23 to the police station for registration of the case and thereupon Fir (carbon copy Ex. Public Witness 14/C) was recorded. It is further stated that Public Witness 23 took into possession from the place of occurrence blood, blood stained earth, control earth, one brick having blood stains and a pair of chappals allegedly belonging to Ghamalu Ram, accused vide memo Ex. Public Witness 5/A. Paras Ram was declared dead in the hospital and after conducting inquest proceedings his body was sent for postmortem. Dr. 401 Bharat Singh, Public Witness 9 by whom the postmortem was held vide report Ex. PV 9/A, has opined that injury No.1 on the neck of the deceased was sufficient to cause his death in ordinary course of nature and death was due to haemorrhage and shock resulting from the injury to the left lung. Articles seized from the spot were sent to CFSL. It is further stated that on 27.6.96 on the pointing out of Public Witness s 15 and 16 accused was apprehended at about 7.30 Pm from Janta Flat, Delhi Development Authority

Opposite Block No.8, Trilok Puri and on the disclosure statement made by him, knife Ex. Pi used for inflicting injuries to the deceased was recovered on 28.6.96. Public Witness 23 recorded statements of Public Witness s and got the scaled site plan of the spot prepared. After completion of investigation challan was filed by Sho, Kalyan Puri.

(3) In the statement recorded u/s 313 Criminal Procedure Code plea taken by the accused is that he was a tenant under. Ram Vilas, Public Witness 15 who wanted him to be evicted from the tenanted accommodation. Public Witness s 15 and 16 and Bachu Lal, Public Witness 8 are related to each other. He had gone to his native village in district Basti, many days before the alleged occurrence and when he returned he was arrested by the police and implicated falsely in this case at the behest of Public Witness s 15, 16 & 8. He has further stated that he came to know that Param Ram received injuries in a quarrel at the hands of Public Witness 8.

(4) Case of the prosecution rests on the ocular testimony and recovery of chhuri. Ex. Pi which was allegedly used for committing the murder of Paras Ram on the pointing out of the accused.

(5) Ocular evidence adduced by the prosecution consists of the statements of Ram Vilas, Public Witness 15 and Agnu, Public Witness 16. Public Witness 15 has deposed that Paras Ram used to reside in his neighborhood in house no. 20/85 at the time of occurrence. On 4.6.86 at about 10.15 Pm he heard notice from outside and he came out. He saw accused Ghamalu Ram having a chhuri in his hand and giving a chhuri blow on the left side of the neck of Paras Ram. Agnu who too resides in his neighborhood in house no. 20/81, was present there. Accused escaped along with the chhuri. Police reached the spot and recorded his statement Ex. Pw 15/A. While running away accused left his chappals on the spot and Ex. P2 & P3 are those chappals. Police lifted blood, blood stained earth, control earth, one piece of brick having blood stains and a chilam from the spot and those were taken into possession after converting them into separate parcels and sealing vide memo Ex. Public Witness 15/B. In cross-examination he has stated that there is house of Ram Singhara in between his house and that of Paras Ram and the house of Agnu is situated after leaving one house from his house.

He, Agnu, Paras Ram and the accused are co- villagers. It is further in his cross examination that when he came out of his house he saw Paras Ram near house no. 84 and the accused reached near Paras Ram. There were public tubelights near the place of occurrence on one side- Public tubelight was also available near house no.85 and the police conducted the proceedings under that light. Agnu had gone to inform the police and the police had come along 402 with Agnu. It is also in his cross- examination that he had disclosed the name of the deceased to the police when he was being shifted into the police van besides narrating the incident which resulted in injuries to him. Police remained at the spot up to 11.00 Pm and the police had again come there in the morning. He has emphatically denied the suggestion that the accused was a tenant under him or any rent was due from him. In his deposition Public Witness 16 has fully corroborated the statement of Public Witness 15 on the point of inflicting chhuri blow on the neck of Paras Ram by the accused and the latter having escaped with the chhuri thereafter. He has further deposed that at the time of occurrence only he and Ram Vilas were present and both of them remained with the police throughout the night on the spot. He did not know who had informed the police and the police had conducted the proceedings while sitting at the house of Ram Vilas under the light of kerosene lamp as it was raining outside. Submission advanced by Ms. Neelam Grover, for the accused was that Public Witness s 15 and 16 are false witnesses and in support of that contention she has drawn our attention to the parts of the depositions of Public Witness s 15 and 16 to the effect that Hc Gajraj Singh, Public Witness 18 who had taken the deceased in a van to the hospital, was told the name of the deceased and also the facts leading to the occurrence. According to her still in the Mlc Ex Public Witness 10/A name of the deceased is noted as unknown besides history being recorded as not available and non-mentioning of the name of the deceased as also history in the said Mlc clearly indicate that neither of these two witnesses was present at the spot at the time the alleged occurrence took place. Public Witness 18 in his cross examination has admitted that at the time the injured was removed in the vehicle his name was told to him but he forgot the same and had tried to enquire it from the injured on the way but he could not speak. Obviously, omission of the name of the deceased in the above Mlc was because of the fault on the part of the Public Witness 18. Further as

Public Witness 18 was not an eye witness of the occurrence he could not have possibly furnished the history of the case to Dr. Rajiv Gupta, Public Witness 10 who prepared the Mlc, Ex. Public Witness IO/A. thereforee, no inference can legally be drawn because of absence of name of the deceased and also the 'history in the above Mlc that Public Witness s 15 and 16 were not present at the time the occurrence took place. As a part of the said submission our attention was further invited by Ms. Grover to the contradictions appearing in the statements of both Public Witness s 15 and 16 in regard to the place the writing work was done by Pw 23 (10) on the night of the occurrence and the time at which the police left the spot. As is evident from the testimony of Public Witness 15, he and Public Witness 16 are the residents of house nos. 20/83 and 20/81, Kalyan Puri respectively while the occurrence had taken place near house no. 20/84. These houses are situated in the same row as is manifest from the scaled site plan Ex. Public Witness 11/A. Thus both Public Witness s 15 and 16 having their residence close to the spot were the natural witnesses who could have witnessed the occurrence. It will not be out of place to mention here that although in his statement u/s 313 Criminal Procedure Code accused has 403 - taken the plea that he was a tenant under Public Witness 15 and he (Public Witness 15) wanted to get the tenanted accommodation vacated from him but neither in that statement nor in cross examination with Public Witness 15 the number of the alleged accommodation was disclosed by the acused. Public Witness 15 has categorically denied that accused was either a tenant under him or any rent was due from him, as alleged. There is no cogent reason forthcoming why both Public Witness s 15 and 16 would like to implicate the accused falsely far committing henious offence of murder of Paras Ram who happened to be the co villager not only of both of them but also the accused. It is true that inconsistencies in the statements of Public Witness 15, on the one hand, and Public Witness 16, on the other hand, who are illiterates and whose statements were recorded after about one and a half years of the occurrence do occur as pointed by Ms. Neelam Grover but taking into consideration the facts noted above merely on the basis of those minor inconsistencies their testimony in regard to the main occurrence cannot be disbelieved.

(6) Turning to the alleged recovery of chhuri Ex Pi, Rajinder, Public Witness 17 and Pritam Singh, Public Witness 7 are the witnesses of recovery. Public Witness 17 has deposed that he is employed as safai karamchari in the office of Dda, Kalyan Puri and on 28.6.86 about 10.15 Am police reached 20 Block, Kalyanpuri where he was on duty. Accused was in the custody of the police and he pointed out a place near the pulia inside 'ganda nala' where chhuri was thrown by him. At the instance of the police he tried to locate the chhuri with the help of a spade but in vain. Thereafter he took off his clothes and entered into 'ganda nala' and on making search he found the chhuri Ex Pi inside the mud under the water. Police prepared the sketch of the chhuri Ex Public Witness 7/D and the same was taken into possession after converting into a parcel and sealing vide memo Ex. Public Witness 7/C and both the memos bear his signatures. In cross examination he has stated that chhuri was stained with mud and the police officer cleaned it. He has emphatically denied the suggestion that chhuri Ex Pi was not taken out from inside ganda nala by him. Public Witness 7 has deposed that on 28.6.96 he visited Ps Kalyan Puri at about 9/9.30 Am and there he was joined in the investigation by Si Gulshan Kumar Kakkar. Disclosure statement Public Witness 7/A made by the accused bears his signature at point A. Accused led the police party including him to ganda nala near the house of the deceased in Kalyan Puri and pointed out the place where the chhuri was thrown by him. One sweeper took out the chhuri Ex Pi from the ganda nala. Memos Ex. Public Witness 7/B and Public Witness 7/C bear his signatures. In cross examination he has stated that he had gone to the police station to meet Si Madan Lal in connection with some dispute nature whereof he does not recollect now. Contention advanced by Ms. Grover-was that as per the statement of Public Witness 17 at the time of recovery chhuri Ex Pi was stained with mud and was cleaned thereafter. therefore, there was no occasion of blood having been found on it and the Cfsi report Ex. Public Witness 23/K according to which blood was detected on chhuri Ex Pi is erroneous. Chhuri Ex P1 along with other articles was sent to Cfsi for opinion and Ex Public Witness 23/K & Public Witness 23/J are the Cfsi reports. Although blood was detected on chhuri Ex Pi as per report Ex. Public Witness 23/K but the group thereof could not be ascertained as is evident from another report Ex. Public Witness 23/J. Both these reports seem to have been received in evidence by the trial court u/s 293 Criminal Procedure

Code without examining the authors thereof. If the accused felt that the report Ex. Public Witness 23/K was wrong, he should have moved the trial court for summoning K V Sambasiv Rao who prepared the report Ex. Public Witness 23/K for the purpose of cross examination. As the accused has not availed of that opportunity correctness of what has been noted in that report cannot be doubted. We do not find any ground to disbelieve either Public Witness 17 or Public Witness 7 on the point of recovery of chhuri Ex. P1 on the pointing out the accused in the manner deposed to by them. Undisputably postmortem on the body of Paras Ram deceased was conducted by Dr. Bharat Singh, Public Witness 9 on 5.6.86 and as per his statement injury no I on the neck of the deceased could possibly be caused by Chhuri Ex. P1. That part of this deposition has not been challenged on behalf of the accused.

(7) Relying on the authority of HariRam vs . State of Haryana : 1983 CriLJ346 and Tamil Mani vs. State A I R 1996 290 it was further urged by Ms. Grover that it being a case of single chhuri blow in a sudden fight in the heat of passion and without pre-meditation the accused can only be convicted u/s 304 Indian Penal Code Statements of Agnu Public Witness 16 and Bachu Lal, Pw 8 are relevant in the matter. Public Witness 16 has, interalia, deposed that on 4.6.86 at about 9.30 Pm a quarrel took place between Paras Ram and the accused on smoking sulfa. He was present outside the gate of his house. He went, intervened and separated them and also sent the deceased to his house and brought the accused to the roadside. After about 15 to 20 minutes accused again came and raised a quarrel with the deceased and the former gave a knife blow to the latter on the left side of neck near the shoulder. In cross examination he has stated that in the first instance quarrel took place between the accused and the deceased inside the house of the deceased and at the time of that quarrel one white wash contractor was also present at the house of deceased and perhaps his name was Bachu Lal. Public Witness 8 has stated that on the date of occurrence at baout 9.30 Pm he had gone to the house of Paras Ram for arranging casual labour for his work. Accused came there and had an altercation with Paras Ram on smoking sulfa. He intervened and separated them and thereafter the accused went to the street and he came back to his house. Thereafter he heard the noise and on coming out of the house he saw Paras Ram lying in injured condition. In cross examination he

has stated that the deceased used to work with him and he had stayed at his house for about 10 to 15 minutes and heard the voice after 15 minutes of the coming to his house. He has denied the suggestion that he inflicted injuries to the deceased and thereafter absconded. From the statements of both these Public Witnesses whom we have no reason to disbelieve, it is established that 10-15 minutes before the actual occurrence of stabbing accused had been to the house of the deceased and had an altercation with him on smoking sulfa and on the intervention of both PWs 16 and 8 the accused was sent back to the street. That being so, assault by the accused with chhuri Ex Pi on the deceased on the second occasion near house no-20/84 cannot be said to have been made in a sudden fight in the heat of passion and without premeditation, as urged. Authorities of Hari Ram and Tamil Mani (supra) are of no help to the accused.

(8) In his deposition Dr. Bharat Singh, Public Witness 9 has opined that injury no.1 on the neck of the deceased was sufficient to cause his death in the ordinary course of nature. Statements of Public Witness 15 and 16 coupled with the recovery of chhuri Ex. Pi which was used in the commission of the offence, on the pointing out of the accused, prove the guilt of the accused beyond any shadow of doubt and the trial court had thus rightly convicted him u/s 302 Indian Penal Code in terms of the impugned judgment.

(9) Appeal has no force and is, therefore, dismissed.

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