

Ramesh Vs. State

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Court : Delhi

Decided On : Sep-20-1996

Reported in : 1997CriLJ645; 70(1997)DLT394

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

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

Appeal No. : Criminal Appeal Nos. 172 of 1993, 162 and 226 of 1994 and 49 of 1995

Appellant : Ramesh

Respondent : State

Advocate for Pet/Ap. : Sandeep Sethi,; amices Curiae and; Mukta Gupta, Advs

Judgement :

Arun Kumar, J.

(1) This judgment will dispose of four appeals filed by the four accused who were tried together and convicted by a learned Addl. Sessions Judge, Delhi vide impugned judgment dated 29th April, 1993 for offences under Sections 147/302/149, Indian Penal Code and sentenced to life imprisonment for offence under Sections 302/149, Indian Penal Code and a fine of Rs. 1,000.00 each and for six months R.I. for offence under Sections 147/149, IPC. In fact there were five

accused allegedly involved in the incident. The trial of one of them, namely, Manglu was separated because he was entitled to be tried under the Juvenile Justice Act, 1986.

(2) Briefly the facts are that deceased Kishori used to run a tea stall in front of the shop of Rajan Katyal Public Witness Public Witness 1 at 83, Chitragupta Road. Delhi. On the night between 10th and 11th June, 1991 at about 2 a.m., Kishori was allegedly beaten by the five accused as a result of which he fell unconscious. Mahender Mandal Public Witness Public Witness 9, the watchman of the area had allegedly seen the incident and was an eye witness Along with another person Harbans Yadav Public Witness Public Witness 11, a rickshaw puller who also allegedly happened to be present at the time of the incident. According to Mahender Mandal, Kishori was present at his tea stall at that time when one Manglu was passing by, Kishori asked Manglu as to why he was there at such an odd hour. He also questioned Manglu that was he there to commit theft -On this Manglu allegedly told Kishori that he was an employee working at Sapna Hotel, Pahar Ganj. Kishori snatched the danda from the watchman (Mahender Mandal) and hit Manglu with the danda. Manglu left the place saying that he will teach Kishori a lesson for beating him. After some time, he returned with four other boys. One of them, Riazuddin snatched the lathi from Mahender Mandal and gave beating to Kishori while others beat Kishori with kicks and fists. Harbans Yadav the other eye witness was also allegedly present on the scene at this time. He is also stated to have received a lathi blow at the hands of accused Riazuddin. The assailants continued to beat Kishori and he fell down. All the accused persons ran away towards the Sapna Hotel. The two eye witnesses lifted Kishori from the place he fell and placed him in front of shop No. 86. In the morning at about 7.30 a.m., Mahender Mandal went to inform about the incident to Rajan Katyal in front of whose shop Kishori was running the tea stall. Rajan Katyal came to the spot and with the help of Mahender Mandal and Harbans Yadav, he took Kishori to Irwin Hospital in a three-wheeler scooter. Kishori later in the evening died in the hospital.

(3) The Fir was registered on the basis of statement of Rajan Katyal which appears to have been recorded between 8.30 and 9 p.m. on 11th June, 1991. The

time of recording the Fir is given as 9 p.m. According to the Mlc of Kishori he was brought to the hospital by Rajan Public Witness Public Witness 1 at 8.30 a.m. on 11th June, 1991. In the Mlc Ex. Public Witness Public Witness 16/A, it is recorded that the patient was brought with alleged history of being found unconscious outside shop of the owner. He was unconscious at that time and was declared unfit for statement. According to the death summary Ex. Public Witness Pw 16/C the patient was deeply unconscious and not responding to painful stimuli. His blood pressure began to fall after admission in the hospital with pulse rate slowly increasing. Pupils began dilating after some time. His condition continued to deteriorate. At 5.30 p.m. the patient was declared dead. The cause of death was given as head injury.

(4) According to Dr. P.C. Dikshit the Public Witness Public Witness 6 who conducted the post mortem, the following injuries were found :

1. CONTUSION with swelling in an area of 5 x 3 cms. over left parietal region 5 cms. above the left ear.

2. ABRASION 2 x 1 cms. over the right side forehead .5 cms. above the inner one-third of the eye-brow.

3. INCISED looking lacerated wound 2.5 x .5 x .5 cms. with abrasion 4.5 x 1 cms. along its upper border over the outer part of right eye-brow just above the outer angle of right eye. The abrasion extending up to outer one-third of the eye brow.

4. MULTIPLE abraded contusion in an area of 6x3 cms. over the right side face 1 cm. below the outer angle of right eye.

5. ABRASION 1.5x1 cms. over the outer part of right clavicle.

6. ABRASION 1 x 1 cms. over the upper outer of right shoulder joint.

7. ABRASION 3x1.5 cms. over the superior angle of right scapula.

8. CONTUSION along with abrasion 2.5x1.5 cms. over the lower back of right thigh.

9. ABRASION .8 x .5 cm. over inner upper part of left knee.

(5) As per the opinion of the doctor, the death was due to craniocerebral damage consequent upon blunt force impact to the head via injury No. 1. Injuries No. 1,2,3,4,5,6,7,8 and 9 were produced by blunt forced impact on surface. All the injuries were ante-mortem and recent. Injury No. 1 was sufficient to cause death in ordinary course of nature. In cross examination the doctor further stated that the injury No. 1 could be caused by falling down against a big mass of stone and rest of injuries No. 2 to 9 could be caused by fall on a hard surface.

(6) S.I. Rajinder Singh, Public Witness Public Witness 17 conducted the investigation into the case. In the morning on 11th June, 1991 he went to the Lnjp Hospital on the basis of information received at Police Station Pahar Ganj and recorded vide Dd Entry No. 7-A (Ex. Public Witness Pw 17/A). The information was sent by the duty constable at the hospital, namely, Jit Singh. He obtained the Mlc of Kishori from the hospital but could not see him because he was declared unfit for statement as per endorsement of the doctor on the Mlc at point Ex. Public Witness Public Witness 16/B. From there he came to the spot from where he could not gather any information. At 8.15 p.m. information was received at the Police Station that Kishori had died in the hospital. The 10 contacted Rajan Katyal in front of whose shop Kishori used to run a tea stall. Rajan made a statement Ex. Public Witness Public Witness I /A on the basis whereof the Fir was recorded at 9 p.m. on 11th June, 1991. Mahender Mandal and Harbans Yadav whose names were mentioned by Rajan Katyal in his statement were also surnamed for interrogation. These two persons are the alleged eye witnesses. According to these persons, the assailants were said to be working in Sapna Hotel belonging to Jaswant Singh Public Witness Public Witness 12. Along with these persons he went to Hotel Sapna and asked Jaswant Singh to produce his employees. As per the statement of the IOasPW17,JaswantSingh produced all hisemployees, out of them Harbans Yadav and Mahender Mandal identified four persons, namely, Riazuddin, Ramesh Kumar, Ajay Kumar and Manglu as the assailants. These four accused allegedly told the 10 that the fifth accused was not present at that time. The four persons identified by Mandal and Yadav were arrested then and there. Their perusal search was conducted which did not yield much. The 10 admitted in his cross examination that he recorded the statements of the said two alleged eye witnesses after this, i.e., later in the night of 12th June, 1991 at about 1.00 or 1.30 a.m. The

fifth accused was arrested some time later.

(7) The main evidence against the appellants is that of Rajan Katyal Public Witness Public Witness 1 and Mahender Mandal Public Witness Public Witness 9 and Harbans Yadav Public Witness Public Witness 11, Rajan Katyal Public Witness Public Witness 1 is not an eye witness of the occurrence. He came on the scene later after receiving information from Maheer Mandal, the watchman. He came to the spot in the morning and with the assistance of the two alleged eye witnesses he took Kishori to the Lnjp Hospital. In cross examination Katyal admitted that he did not inform the police about what had happened to Kishori. The significant admission emerging from his cross examination is about the fact that his statement was recorded by the police in the night of 11th June, 1991 after the accused persons were arrested. According to Mahender Mandal Public Witness Public Witness 9, Manglu had told Kishori that he was working at Sapna Hotel and that he was returning after meeting his brother residing at Aram Bagh. This was on Kishori questioning Manglu about his movements at that hour of the night and suggesting that he was out to commit theft. Kishori is 'said to have given danda blow to Manglu. Manglu left the place weeping and threatening to teach a lesson for this. He returned Along with four other boys. Out of them Riazuddin snatched the lathi from the hands of the witness, Mahender Mandal and started beating Kishori with that lathi. The other boys alleged bit Kishori with kicks and fists. He identified the accused persons present in Court on the date his statement was recorded in Court. He and Harbans Yadav were present at the time of this incident. Harbans Yadav Public Witness Public Witness 11 was stated to be a rickshaw puller. Mahender Mandal says he also was given a lathi blow by accused Riazuddin with the same lathi on his forehead. Harbans Yadav was also beaten by Riazuddin and he ran away. The accused persons kept on beating Kishori till he fell down. After Kishori fell down, the two eye witnesses lifted him and made him in front of shop No. 86 He was a witness to the police formalities which were carried out at the scene of occurrence. The lathi was sent to Cfsi for its report. It did not have any blood stains. The recovery of the lathi is imputed to the accused. It is said to have been recovered from a place in Sapna Hotel at the instance of one of the accused. A significant fact mentioned by Mandal in his cross examination is that some cement heaps were lying on the spot which were 2-3 in number. The

deceased fell on a stone in the mud. He also stated that he continued with his duty as watchman after the incident. About the other alleged eye witness Harbans Yadav he stated that after the incident he went and slept in his three wheeler. He admitted that he went to inform Rajan Katyal about the incident next morning at about 7 a.m. He further stated that accused persons were taken to the police station at about 10 p.m. after their arrest whereas his statement was recorded in the police station at about 12 midnight on that date.

(8) Harbans Yadav, the other eye witness stated that Manglu had come in a three wheeler scooter when he was questioned by Kishori. This fact about Manglu coming in a three wheeler scooter was not mentioned by Mahender Mandal Public Witness Public Witness 9. Rest of the version of the incident given by this witness is the same as that of Mandal Pw 9. He also states that R.azuddin gave lathi blows to him as well as to the other eye witness Mandal. He also admitted that accused persons continued beating Kishori till he fell on a stone in the mud. After this the accused persons are stated to have left the scene Along with the danda. He supports the fact that he Along with Mandal made Kishori lie in front of shop No. 86 after lifting him from the mud. He was also medically examined. On his and Mandal's pointing out, the accused persons were apprehended. According to him also, the incident had taken place at about 2 a. m. He admitted in his cross examination that he went to sleep after making Kishori lie in front of the shop in his unconscious state. He further admits that he remained sleeping till Rajan Katyal came to the place in next morning. He also stated that he knew the accused persons by face but did not remember their names. He admits that he did not tell about the incident to any one.

(9) The learned Counsel appearing for the appellants have highlighted an important feature of the case which according to them knocks the bottom out of the prosecution case. This is that according to both the alleged eye witnesses, Kishori fell on a stone in the mud after receiving the beating at the hands of the accuser persons. As per the post mortem report as well as the death summary coupled with the statement of Dr. P.C.Dikshit Public Witness Public Witness 6 who conducted the postmortem on the body of the deceased, the cause of death of Kishori was injury No. 1, i.e., the head injury. The doctor had opined that injuries

No. 1 to 9 were produced by blunt force/impact on surface. The injuries were ante-mortem. Further about the head injury, the opinion of the doctor was that death was due to cranio cerebral damage consequent upon blunt force impact to the head via injury No. 1. Thus it is admitted that death occurred on account of head injury which was caused due to impact on the head of blunt force which was possible from fall on stone. Fall on stone is admitted by both the alleged eyewitnesses. From this it is concluded that it cannot be said to be a case where the fatal injury can be imputed exclusively to the accused. So far as danda blows are concerned, the alleged eye witnesses stated that several danda blows were given to Kishori by accused Riazuddin but injury No. 1 as per the post mortem report and evidence of Dr. Dikshit is contusion with swelling in an area of 5 x 3 cms. over left parietal region 5 cms. above the left ear. This injury could have been caused due to impact of fall on the stone as well as the danda blow. Thus it is not possible to say that the fatal injury was caused by a danda blow alone. The possibility of the fatal injury being caused due to fall on stone being very much present, there is scope for doubt about the role assigned to the accused Riazuddin by the prosecution. When there is an element of doubt as to how the fatal injury was caused, the benefit of doubt must go to the accused. This is settled law.

(10) About the charge under Section 149, Ipc, it has been urged by the learned Counsel appearing for the appellants that the present case cannot be said to be a case showing common object on the part of the accused persons. Firstly, admittedly none of them came to the spot armed with any weapons not even lathis/dandas. A lathi was allegedly snatched by Riazuddin from Mandal Public Witness Public Witness 9 and admittedly only Riazuddin is alleged to have given lathi blows to Kishori. The other accused persons who are alleged to have given fists and kick blows cannot be said to be having a common object with Riazuddin of causing death of Kishori. On his basis it was urged that the other co-accused cannot be foisted with the liability for murder of Kishori with the aid of Section 149, IPC.

(11) It has also been urged by the learned Counsel appearing for the appellants that the conduct of the alleged eye witnesses is so unnatural that it leads to an inference that they are unreliable - either they have been planted or there is

padding and embellishment in their version. About the conduct of the two eye witnesses, it is pointed out that their own testimony shows that after witnessing the crime and after making Kishori, the victim of the crime who was unconscious, lie in front of shop No. 86, one of them who was a watchman continued with his duties as a watchman and the other went to sleep. The watchman Public Witness Public Witness 9 allegedly went to the house of the Rajan Katyal next morning at 7.30 a.m. to inform him about the accident. After witnessing such an event where a person known to them fell unconscious on account of being beaten by five assailants, a normal person would not leave the injured in an unconscious state alone on the road. They were two persons. Least that was expected of them was that they would take the injured to the hospital especially when one of them, Harbans Yadav Public Witness Public Witness 11 had access to a three wheeler scooter in which he allegedly slept after the incident. In view of this unnatural behavior of the two allegedly eye witnesses, it has been submitted that they should not be believed.

(12) Various other flaws in the prosecution case as also in the investigation have been pointed out to demolish the prosecution case by the learned Counsel appearing for the appellants. These are:

1. DELAY in recording of FIR. The incident is of 2 a.m. of the night between 10th and 11th June, 1991. The Fir was recorded at 9 p.m. on 11th June, 1991.

2. THERE is nothing on record to show that the substance of the Fir was recorded in the daily diary which is a mandatory requirement.

3. NEITHER in the statement of Rajan Katyal (Rukka) on the basis of which the Fir was recorded nor in the Fir the names of the accused persons or even their description was given. Even in the Dd entry No. 7-A (Ex. Pw 17/A) recorded at Police Station Pahar Ganj at 8.15 a.m., the only fact mentioned was that Rajan had brought the person named Kishori to the hospital in unconscious state. Likewise in the Mlc Ex. Public Witness Public Witness 16- A, no names of the accused were given.

4.FOURout of the five accused were arrested from Sapna Hotel even before statements of any of the witnesses were recorded. The eye witnesses admittedly did not know any of the accused persons or their names. It is only that one of them Manglu had told Mahender Mandal Pw 9 that he worked in Sapna Hotel. The accused were arrested from the Sapna Hotel on being identified by the alleged two eye witnesses. The owner of the hotel paraded all his employees before the police and the alleged eye witnesses pointed out towards four out of them who were picked up and arrested. No identification parade was held. It is stated that a tip was a must in the facts of the case.

5About the recovery of danda at the instance of one of the accused, it has been pointed out that no blood stains were found on the danda. The danda was never sent to the CfsI nor the danda was shown to the doctor for his opinion whether the injuries found on the person of the deceased could be caused by that danda. The danda is a usual kind of stick and has no distinctive features. It was got recovered from a place which itself was not specifically used for concealing it. It has come in evidence that at the place in the Sapna Hotel from where the danda was got recovered, the other employees used to keep their clothes and other belongings.

(13) According to the learned Counsel appearing for the appellants, all these things show that the investigation was conducted in a very slipshod manner and contrary to the requirements of law.

(14) We have considered the points raised on behalf of the appellants. We agree that injury No. 1 found on the head of the deceased and which had been opined as the cause of his death, has not been clearly and exclusively related to appellant Riazuddin. The evidence on record leaves lot of scope for the view that the fatal injury was caused on account of fall on the ground and the impact of the stone which was lying there on the head of the deceased. The head of the deceased could have struck against the stone. The medical evidence supports this possibility. It is most important for the prosecution to establish that the fatal injury was caused by the accused who is sought to be convicted under Section 302, IPC. The prosecution has failed to do so in the present case. On the basis of the facts on record the possibility of the head injury being caused otherwise than the danda

blow imputed to Riazuddin cannot be ruled out. In such a situation the benefit of doubt must go to the accused. Once there is doubt about the fatal injury, i.e., as to who caused the fatal injury, the other accused who are sought to be convicted under Section 302, Indian Penal Code with the aid of Section 149, Indian Penal Code have also got to get the same benefit. The main accused Riazuddin who is said to have wielded the danda and given the danda blows to Kishori is getting the benefit of doubt. The other accused who are said to be with him and to whom fist and kick blows are imputed cannot be convicted under Section 302 read with Section 149, Indian Penal Code in these circumstances. The result is that all the appellants have to be acquitted of the charges under Sections 302/149, IPC.

(15) The learned Counsel for the State also argued that at least a case under Section 323, Indian Penal Code is made out against all the accused persons. In view of the doubt cast about the veracity of the evidence of the two eye witnesses and in view of the various flaws pointed out in the present case, we are not persuaded to hold that even conviction of the appellants under Section 323, Indian Penal Code is called for. We are also conscious of the fact that even if the appellants are to be convicted under Section 323, Ipc, all of them have served sentences for a period around five years and they ought to be let off on the basis of period of custody already undergone by them. We are not inclined to accept this argument of the learned Counsel for the respondent.

(16) All the four appeals are accepted. The judgment of the learned Add. Sessions Judge convicting all the appellants is set aside. The appellants are acquitted and ordered to be set at liberty unless required to be detained in connection with any other case or cases.

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