

Raj Kumar Vs. State

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Court : Delhi

Decided On : May-30-1997

Reported in : 1997IVAD(Delhi)357; 1998CriLJ424; 1997(4)Crimes226; 68(1997)DLT77; 1997(42)DRJ283

Judge : Arun Kumar and; N.G. Nandi, JJ.

Acts : [Arms Act, 1959](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 132 of 1993

Appellant : Raj Kumar

Respondent : State

Advocate for Pet/Ap. : Sandeep Sethi,; amices Curiae and; Anil Soni, Advs

Judgement :

N.G. Nandi, J.

(1) Appellant Raj Kumar S/o Krishan Rao stands convicted for the offence under Section 302 Indian Penal Code and sentenced to suffer imprisonment for life and fine of Rs. 500.00 in default further R.I. for one year and for the offence under Section 27 of the Arms Act sentenced to suffer R.I. for three years in Sessions Case No. 10/89 in Fir No. 205/88 Police Station Ambedkar Nagar, Delhi by the

learned Additional Sessions Judge, Delhi.

(2) The facts leading to the filing of the present appeal shortly stated are that on 3.9.88 at about 10.10 P.M. from Aiims, Duty Constable Dalbir Singh conveyed a telephonic information to Ambedkar Nagar Police Station to the effect that one Arun Rao had been admitted in the hospital with stab injuries; that on receipt of this information Dd No. 17-A was recorded and Constable Vijender Singh went to the hospital and obtained Mlc of Arun Rao; that the statement of Keshav Rao, uncle of injured Arun Rao was recorded in the hospital stating that at about 9.15 P.M. near Central Market, he saw Raj Kumar who was known to him before, chasing his nephew Arun Rao entangled him with his leg with the result Arun Rao fell down and Raj Kumar gave three to four blows to Arun Rao with the knife that he was having and thereafter Raj Kumar fled towards the chowk. According to Keshav Rao, this incident was also witnessed by Babu Khan and Vijender Singh and others. That Krishan Rao, father of Arun Rao was sent for who reached the place of occurrence and took the injured Arun Rao to the hospital. The said complaint given by Keshav Rao was sent to the police station for registration of the offence on the basis of which case under Section 307 Indian Penal Code was registered vide Fir No. 205/88 and thereafter the usual investigation began. The accused Raj Kumar was arrested on the same night from a part near Baratghar situated in L-II, Madan Gir. As the accused was having injuries on his person he was sent to the hospital for medical examination. That in course of the investigation, the police lifted sample blood, blood stained earth, controlled earth from the spot, prepared the site plan, that the accused made disclosure statement and led the police party to the place wherefrom he got recovered a blood stained knife which was seized vide necessary seizure memos; that the clothes of the deceased and the kurta of the accused were also recovered. That injured Arun Rao succumbed to his injuries on 4.9.1988 in AIIMS. The Fir was then converted for the offence under Section 302 IPC; that inquest panchnama was drawn. The post mortem on the body was conducted. That the investigating agency also recorded the statements of the witnesses and filed charge-sheet against the accused for the offence under Section 302 Indian Penal Code and Section 27 of the Arms Act. The accused denied the charges leveled against him and claimed to be tried. The prosecution adduced oral as well as documentary evidence to bring

the guilt home to the accused. The statement of the accused was recorded under Section 313 Criminal Procedure Code with regard to the circumstances emerging from the prosecution evidence incriminating against the accused. The learned trial judge appreciating the evidence adduced by the prosecution and considering the statement of the accused found the accused guilty for the offence under Section 302 Indian Penal Code and Section 27 Arms Act and sentenced the accused as aforestated. It is this finding of guilt and the sentences imposed which have been assailed by the appellant/convict in this appeal under Section 304(II) of the Criminal Procedure Code.

(3) It is the case of the prosecution that the incident of stabbing Arun Rao with knife took place at about 9.15 P.M. in Central Market Chowk and that Babu Khan Public Witness -5, Vijender Singh Public Witness -7 and Keshav Rao Public Witness -1 who is also the complainant, witnessed the occurrence.

(4) One of the arguments by the learned counsel amicus curiae for the appellant is that Public Witness -1 was not present at the place of incident and that he did not witness the occurrence. According to Public Witness -1, he saw accused Raj Kumar whom he knew earlier following Arun Rao at about 9.15 P.M. on 3.9.88 in Central Market Chowk. Then Raj Kumar entangled Arun Rao with his leg with the result Arun Rao fell down. Raj Kumar took out knife from the pocket of his pyjama and gave two or three blows with the knife on Arun Rao. Raj Kumar thereafter ran away with the knife towards the side of Madras Chowk. That Arun Rao was bleeding; that it was a Janamashtami night and that there was ample light on the spot; that the father of the injured, namely, Krishan Rao also came to the spot; that the witness along with Babu Khan and Krishan Rao removed the injured in a three-wheeler scooter to Aiiims, New Delhi. In the cross-examination it has been stated by the witness that his brother Krishan Rao lives at Pushp Vihar which is at a distance of about two kilometers from the place of incident; that Arun Rao lived with his father at Pushp Vihar; that Dinesh, son of the witness had gone from the house of the witness to call Krishan Rao to the spot and that Krishan Rao came to the spot within about 15-20 minutes of the occurrence.

(5) It is pertinent to note that Public Witness 1 does not state in his examination-in-chief that he sent his son Dinesh to inform Public Witness 8 Krishan Rao and that Public Witness 8 came to the place of occurrence. Public Witnesses. 1 and 8 both were in the hospital. Ex.PW-21/A Mlc of Arun Rao suggests that Public Witness 8 had taken the injured to the hospital. Public Witness 1 also in his evidence states that Arun Rao was taken to Aaiims in three wheeler autorickshaw by him, Public Witness 8 and Public Witness 5; that Public Witness 1 gave his statement in Aaiims whereupon Dd No.20-A was recorded at 12.10 a.m. on 4.9.1988 in the police station.

(6) PW-8 Krishan Rao son of Daggi Rao has stated in his evidence that Arun Rao deceased was his son and the witness identified his dead body in the hospital on 4.9.88. After the post mortem, body was handed over to the witness. This witness has not been cross examined by the accused. It is pertinent to note that the witness does not say as to who informed him about the incident and whether he reached the place of occurrence on someone telling him about the same. As far as the incident is concerned, he even does not say that he carried Arun Rao in injured state to the hospital. The witness has only deposed about he having identified the dead body in the hospital on 4.9.88 and that after the post mortem examination the dead body was handed over to him. Public Witness -1 is not corroborated by Public Witness -8 about he having been informed about the occurrence by Public Witness -1 through his son as deposed by Public Witness -1.

IT is pertinent to note that neither Public Witness 1 nor Public Witness 8 state that the name of the assailant was told by Public Witness 1 to Public Witness 8. Now if Public Witness 1 being a real uncle of Arun Rao, had witnessed the occurrence and if the assailant was known to him then he would certainly divulge the name of the assailant to Public Witness 8 who was none else but the father of the injured. More over according to Public Witness 1 after the incident he sent for Public Witness 8 through Dinesh and Public Witness 8 came to the spot after 10-15 minutes and thereafter Arun Rao was removed to AIIMS. This conduct of Public Witness 1, being uncle and not a stranger, does not appear normal and natural. Since without waiting for Public Witness 8 to come to the place of occurrence Arun Rao should have been removed to the hospital so that at the earliest medical

treatment could be provide, to the injured. Instead Public Witness 1 preferred to wait at the place of occurrence, till Public Witness 8 reached, allowing Arun Rao to remain lying in injured state at the corner of the gali/lane in the public place.

(7) EX.PW-11/A is the copy of report No.17-A of Daily Diary dated 3.9.1988 maintained at P.S.Ambedkar Nagar, New Delhi. It is suggested that at 10.10 P.M. a telephonic information was received from the hospital sent by Duty Constable Balbir Singh to the effect that Arun Rao s/o Krishan Rao resident of D1-228, Madangir who was stabbed at main chowk of Central Market has been got admitted in injured condition in hospital by his father.... The telephonic information Ex.PW-11/A from hospital by duty constable could contain the relationship of the injured with the person who admitted the injured to the hospital, the nature of injury namely `stabbed', the place of occurrence, the residential address of the injured with house number. The father of the injured if he knew the name of the assailant, would certainly divulge the same to the duty constable in the hospital. The normal and natural reaction of the person, (P.W.1) who is the real uncle of the injured would be to divulge the name of the assailant to (P.W.8) the father of the injured who is none else but his own real brother. There can be no reason for Public Witness 1 not to reveal the name of the assailant to Public Witness 8, but that is not to be. Meaning thereby Public Witness 1 may not be in know of the name of the assailant till atleast 10.10 p.m. when Ex.PW-11/A was sent from the hospital and recorded at the police station.

(8) Another argument advanced on behalf of the appellant is that there is no evidence that the special report under Section 154 of the Criminal Procedure Code was delivered to the Duty Magistrate at all. It may be appreciated that the incident took place at about 9.15 P.M. on 3.9.1988. The Dd report No.20-A of the daily diary dated 3/4.9.1988 was recorded at the police station at 12.10 A.M. and the Fir No. 205/88 for the offence under Section 307 Indian Penal Code was registered. It need hardly be said that under Section 154 of the Criminal Procedure Code the special report/copy of Fir ought to be delivered forthwith to the Duty Magistrate. It cannot be gain said that the prosecution has not led any evidence to show that the special report under Section 154 of the Criminal Procedure Code was delivered to the Duty Magistrate. The record of the trial court suggests that the original Fir

contains endorsement of the Duty Magistrate concerned about the receipt of special report on 7.9.1988 without specifying the time suggesting the receipt of the same. We are at a loss to understand as to why copy of the Fir could not be delivered to the Duty Magistrate before 7.9.1988 though the incident took place at about 9.15 A.M. on 3.9.1988 and Fir Ex.PW-10/B stated to be registered at 12.10 a.m. on 4.9.1988. It may also be noted that as per Ex.PW-11/A the telephonic information from Aiims was recorded at about 10.10 P.M. at the police station disclosing that Arun Rao son of Krishan Rao was admitted by his father to the hospital with stab injuries, also disclosing the place of incident being the main chowk of Central Market.

THE non-sending of the special report in compliance with Section 154 of Criminal Procedure Code would give rise to suspicion about the occurrence as stated by the prosecution having taken place as also the involvement of the accused in the incident. In the case of Lala Ram & Another v. The State reported in 1989 Criminal law Journal page 572 it has been held, by the Division Bench of this Court that 'no Explanation on the part of the prosecution with regard to the extra-ordinary delay in sending of the special report to the magistrate would create a doubt about the genuineness of time and date of recording of F.I.R'. In the instant case there is no evidence at all suggesting the sending of special report to the Ilaqa Magistrate adduced by the prosecution and the endorsement on the F.I.R., as pointed out above, suggests the copy of the F.I.R. having been delivered to the Ilaqa Magistrate on 7.9.1988 without specifying the time which is after more than three days of the occurrence. This would create a doubt about the genuineness of the time and date of recording of the F.I.R.

(9) The other eye witness to the occurrence is Public Witness 5 Babu Khan son of Shahbuddin, who has stated in his examination-in-chief that he is having his sewing machine shop at Madangir Central Market; that on 3.9.1988 at about 9 or 9.15 p.m. he went to Central Market Chowk; that one Bijender was also there at Central Market Chowk, Madangir, New Delhi; that Arun Rao and Raj Kumar came there. He saw a crowd there. He also saw that Arun Rao was bleeding but he does not know how the blood came out from the body of Arun Rao. Raj Kumar ran away from there. The witness then identified Raj Kumar as the accused; that on the

request of prosecution, the witness was declared hostile and permitted to be cross-examined by the prosecution; that in the cross-examination for the prosecution the witness admitted that Arun Rao and accused Raj Kumar came there running; that Raj Kumar hit Arun Rao with his leg with the result Arun Rao fell down; that in the presence of the witness accused Raj Kumar had not stabbed 2 or 3 times. The witness has admitted that the accused was wearing Kurta and Pyjama. It is admitted that accused Raj Kumar ran away from the spot towards Central Market, Madrasi Chowk; that Keshav Rao who is the uncle of Arun Rao and Bijender Singh took Arun Rao in gali in front of house of Arun Rao. Meanwhile Krishan Rao (P.W.8), father of Arun Rao came there and Keshav Rao and Krishan Rao took the injured Arun Rao to the hospital in three wheeler autorickshaw. In the cross-examination for the accused the witness has admitted that accused Raj Kumar did not assault any one with knife in his presence. It has been voluntarily stated that the witness saw the accused running away.

Thus, will be seen that Public Witness 5 in the examination-in-chief did not support the prosecution the main occurrence of accused having dealt knife blows on Arun Rao and in the cross-examination for the prosecution he has stated that accused Raj Kumar hit Arun Rao with his leg because of which Arun Rao fell down and in presence of the witness accused Raj Kumar did not stab 2 or 3 times Arun Rao and because of the injury Arun Rao smeared blood. It can be said from the cross-examination of the witness by the prosecution that accused hit Arun Rao with his leg with the result Arun Rao fell down; that the accused ran away from the spot towards Central Market; that Arun Rao was bleeding. The witness has stated that in his presence accused Raj Kumar did not stab Arun Rao 2 or 3 times. Taking the cross-examination as it is, it is suggested that the witness supported the prosecution as far as giving the stab injury to Arun Rao in the incident but in the cross-examination for the defense, the witness has again taken the stand that the accused did not assault anyone with knife in his presence. In other words this witness is not consistent as far as the giving of knife blows or the stab injury by accused Raj Kumar to Arun Rao. It may be seen that Public Witness 5 has been absolutely inconsistent and has been changing his stand from time to time. In our opinion Public Witness 5 cannot be regarded as reliable and trustworthy witness to the occurrence and it can not be said considering his evidence as a whole that he

supports the prosecution as far as the main occurrence is concerned. In our opinion, no reliance can be placed on the evidence of Public Witness 5.

(10) The other eye witness to the occurrence is Public Witness 7. He has stated in his examination-in-chief by the prosecution that on the day of Janamashtami 1988, the witness was returning from Krishan Mandir, Madangir at about 9 p.m. At that time in the chowk of Madangir, he stopped to purchase beetle; that Arun Rao residing on the rear side of the house of the witness was found lying injured in the gali; that Arun Rao was seen being taken to gali from the chowk by some person; that the witness can not say who had assaulted Arun Rao; that he had informed at the house of Arun Rao. At the request of the prosecutor, the witness was allowed to be cross-examined. In the cross-examination for the prosecution, it has been stated by the witness that he was busy in conversation with Babu Khan. It is denied that at that time, the witness saw accused chasing Arun Rao and the accused made Arun Rao fell by entangling the leg at the chowk and thereafter Arun Rao was assaulted with the knife twice or thrice. It is also denied that thereafter the accused holding the knife in his hand ran towards the Central Market, Madrasi Chowk. In the cross-examination for the defense it has been stated that when the witness along with Babu Khan was coming from the shop both saw Arun Rao in injured condition outside the gali; that he neither saw the incident nor heard the noise.

IT will be seen from the above that the witness does not support the prosecution at all as far as the occurrence of giving knife blow by the accused to Arun Rao is concerned. In our opinion from the evidence of this witness it can not be said that the accused gave knife blows to Arun Rao in the incident.

(11) P.W.15 Asi Mange Ram deposed in his evidence that the witness along with Const.Bijender reached the part of the Baratghar; that the accused was lying in the injured condition; that the accused was apprehended; that the accused told that because of the injuries he was unable to make any statement so the accused was sent with Const.Bijender and Nirbhay Singh to Aiims for medical examination; that the Mlc of accused was prepared. Thus it will be seen that the accused was apprehended in injured condition and the accused was sent to Aiims for medical

examination and the injuries on accused are to be seen in Ex.PW-15/C.

THE accused in his statement under Section 313 Criminal Procedure Code . has stated that he was injured at 8 p.m. by Mahabir, who stabbed the accused near Baratghar, Madangir and blood started coming out of his wound. He fell down and became unconscious; that four days prior to this incident, Mahabir was injured in a scuffle and Mahabir took the revenge when the accused was alone on that day as he was going to Mandir on Janamashtami day; that he did not have any acquaintance with Arun Rao and that he has been falsely implicated in this case at the instance of Mahabir and his companions who gave false information. Thus, according to the accused, the injuries on his person were caused by Mahabir.

IT can not be again said that the accused was apprehended in injured condition when he was lying in the Park of Baratghar. According to Public Witness 15 the Mlc of the accused was also obtained. According to Public Witness 15 the shirt/kurta which the accused had put on was recovered vide seizure memo Ex.PW-13/A. Perusal of Ex.PW-13/A suggests that the same is dated 16.9.1988. According to Public Witness 2 the accused was arrested at about 1.30 to 2.00 a.m. on 4.9.1988. Though the accused was sent for medical examination, no sample of blood of the accused was taken so as to find out his blood group. According to the prosecution the blood of the deceased is of B group. In absence of the blood group of the accused ascertained, it can not be said that the accused does not have blood of B group. It can not be disputed that more than one persons can have the blood of the same group. In order to suggest that the clothes recovered from the accused contained the blood group which tallies with that of the blood group of the deceased, the sample of the blood of the accused ought to have been taken and the blood group tallied with the blood found on the clothes of the accused vide memo Ex.PW-13/A and then to say that the same tallies or does not tally with that of the blood group of the deceased.

IT may be seen that the prosecution has not explained the injuries, found on the person of the accused by adducing the evidence when the accused was apprehended from the park of Baratghar in the injured condition.

(12) It may also be seen that the report of the Cfsi suggests that on the knife Ex. P-1, which is said to be weapon of offence, human blood was found but the blood group of the same could not be ascertained as there was no reaction.

(13) It may be noted that the doctor, who performed the post mortem examination, has not been examined as a witness before the court. In our opinion Ex.P-1, the knife which is said to be the weapon of offence by the prosecution, ought to have been shown in the court to the doctor concerned so as to know whether this weapon could have caused the injury noted in the post mortem report and which could cause the injury which would in ordinary course of nature result into the death of the injured.

(14) Thus, it will be seen from the above that the evidence of the only eye witness Public Witness 1 Keshav Rao, in our opinion, can not be said to be wholly reliable and trustworthy, especially considering his conduct soon after the occurrence of not removing the injured to the hospital and waiting for Public Witness 8 to come keeping the injured at the corner of the gali in injured state, not revealing to Public Witness 8 the name of the assailant. Public Witness 8 not stating that Public Witness 1 revealed the name of the assailant with the result non-disclosure of the name of the assailant in Ex.PW-11/A. Public Witness 5 and 7 also can not be relied for the aforesaid reasons. The Cfsi report for the aforesaid reasons can not suggest the involvement of the accused in the incident beyond all reasonable doubts. In our opinion, considering the prosecution evidence as a whole coupled with the fact that the special report u/s.154 Criminal Procedure Code . was not sent till 7.9.1988, would render the prosecution version not free from reasonable doubt and in the totality of the evidence, in our opinion, the appellant/convict would be entitled to the benefit of doubt as the prosecution can not be said to have established the guilt beyond all reasonable doubt and the conviction and the sentence imposed by the learned trial Judge, in our opinion, does not deserve to be confirmed.

(15) In the result, the appeal is allowed. The appellant/convict is given benefit of doubt and conviction and sentence imposed in Sessions Case No. 10/89 in Fir No. 205/88 Police Station Ambedkar Nagar, Delhi under Section 302 Indian Penal

Code and 27, Arms Act by the learned trial Judge are hereby set aside.

THE appellant/convict be set at liberty forthwith, if not required in any other case.

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