

Kundan Lal Vs. State

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Court : Delhi

Decided On : Apr-15-1998

Reported in : 1998IIIAD(Delhi)871; 1998CriLJ3142; 1998(3)Crimes276; 73(1998)DLT256; 1998(46)DRJ4

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304(I)

Appeal No. : Cri. Appeal No. 223/77

Appellant : Kundan Lal

Respondent : State

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. J.P. Gupta, Adv

Judgement :

Dalveer Bhandari, J.

1. The appellant is aggrieved by the judgment of the learned Additional Sessions Judge, Delhi dated 20.5.1997, by which the appellants were convicted under Section 304 (Part -I), IPC read with Section 34 IPC and were sentenced to rigorous imprisonment for three years. Appellant No. 2, Bhim Sain was further

sentenced to R.I. for three years under Section 304 (Part I) for causing the death of Lachman. The sentences of appellant No.2 were to run concurrently.

2. During the pendency of this appeal before this court an application under Section 482 Code of Criminal Procedure was filed by the learned counsel for the appellant Shri J.P. Gupta, in which it was mentioned that Kundan Lal expired on 10.3.1993. The application that supported with a death certificate issued by the Union Territory of Delhi. In view of this death certificate, the appeal against appellant No.1 Kundan Lal had already abated.

The brief facts, which are necessary to dispose of this appeal are recapitulated as under:-

3. In the night intervening 22/23-5-72 a report at Seriall No. 12 in the roznamcha register maintained at Police Post Azadpur was recorded. Pyare Lal S/o Durga Dass had given information to the police and according to him, Ghanshyam had teased the wife of his son. It is further stated that when he was coming to the police post for making the report about this incident at 2.00 p.m. then Munshi Lal came and stopped him and assured that Ghanysham will not include in any such act in future and their differences were sorted out for some time.

4. On 25.5.1972 Bhim Sain, Kundan Lal, Attar Singh came to Munshi Ram father of Dwarka Dass and started hurling abuses. Dwarka Dass was also present outside the gali . Bhim Sain inflicted a lathi blow on the head of Munshi Ram and Kundan Lal threw a brick on the chest of Munshi Ram. Dwarka Dass stated that he went inside the house for bringing a lathi in order to save his father but he was encircled by the said three assailants. Upon his raising alarm Gajraj Singh, Om Parkash and Gopal Dass came at the spot and rescue their father from the clutches of the above mentioned assailants.

5. Munshi Ram received some injuries and was admitted to Irwin Hospital on 25.5.1972. There he expired on 31.5.1972. Similarly, Lachman received injuries and he also died due to head injury on 1.6.1972. A case under Section 304 IPC was registered.

6. The prosecution examined 18 witnesses in support of its case. The appellant/accused has denied the entire incident in his statement under Section 313 Cr.P.C. Mr. J.P. Gupta, learned counsel appearing for the appellant submitted that there are many infirmities in the prosecution version and no conviction can be recorded on the basis of the evidence on record. Mr. Gupta submitted that the incident had taken place on 25.5.1972, whereas the F.I.R. was lodged on 31.5.1972. There is no Explanation whatsoever for this unduly long delay in lodging the F.I.R. He placed reliance on : 1995 CriLJ4165 Satguru Singh v. State of Punjab. In the said case there was a delay of 9 days in lodging the F.I.R. and the Court held that the accused persons were entitled to the benefit of doubt and consequently the conviction was set aside. Apart from the delay, the court also found that the conduct of the eye witness was also quite unnatural. The court gave benefit of doubt to the accused and set aside the conviction.

7. The another significant feature of this case was that Ishwar Singh, Sub Inspector, Police Post Azadpur was present when the incident had taken place.

According to prosecution he went to the spot and found Radhey Shyam @ Ghan Shyam, Vidya Ram, Lachman (deceased), Munshi Ram (deceased), Pyarelal, Dwarkadas in an injured condition. All these persons escorted by Gyan Chand, A.S.I. and were taken to Irwin Hospital. Mr. Gupta submitted that even according to the prosecution there were injuries on the persons of Radhey Shyam @ Ghanshyam and the injuries were not explained by the prosecution. This serious lacuna also casts serious doubt on the entire credibility of the prosecution version. Mr. Gupta placed reliance on a recent judgment reported in 1988(II) Apex Decisions at page 372 Ram Kumar and another v. State of Haryana. In this case it has been observed that when the prosecution fails to explain the injuries on the accused persons, then the credibility of the prosecution Version suffers seriously. According to the prosecution in the instant case not only there were injuries on the persons of accused Ghanshyam, but he had to be hospitalized also. In view of the totality of the facts and circumstances of this case the accused is entitled to get the benefit of doubt. Mr. Gupta also submitted that though Munshi Ram was injured in the incident on 25.5.1972 but he was fit according to the medical report, even then he was not examined. This also casts shadow on the credibility of the

prosecution version. Mr. Gupta also placed reliance on Satguru Singh's judgment (supra) to strengthen his argument.

8. I have heard the learned counsel for the accused and the State. The prosecution in this case has failed to give any Explanation whatsoever for the long delay of 6 days in filing the F.I.R. The prosecution has also failed to explain injuries on the person of the accused Radhey Shyam alias Ghan Shyam. The Prosecution also did not examine Munish Ram though he was fit according to the medical report. These are serious infirmities in the prosecution version and according to the settled principles of the criminal jurisprudence, the accused-appellant Bhim Sain of course is entitled to the benefit of doubt, I order accordingly.

9. The appellant's bail bonds are directed to be cancelled. The appeal filed by the appellant Bhim Sain is allowed and the impugned judgment of the trial court is consequently set aside. The appellant Bhim Sain shall be set at liberty, if not otherwise required in any other case.

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