

Kishen Gopal Vs. the Crown

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Court : Rajasthan

Decided On : Sep-21-1948

Reported in : 1950CriLJ209

Judge : Ram Labhaya, J.C.

Appellant : Kishen Gopal

Respondent : The Crown

Judgement :

Ram Labhaya, J.C.

1. This is an appeal by the accused who has been found guilty by the Sessions Judge, Ajmer-Merwara, of the offence of murder Under Section 302, Penal Code, and sentenced to undergo transportation for life. The trial was held in the Sessions Court with the help of three assessors, who were of opinion that the accused is not guilty. The Sessions Judge, however, held the assessors' unanimous opinion to be wrong and perverse, and came to the conclusion that the accused had been proved to be guilty of murder.

2. The facts of the case are set forth in paras, and 5 of the Session Judge's judgment. The murder of Ishwari Prasad, who was a clerk employed in the Oriental Life Assurance Company, Limited., at Ajmer, is alleged to have taken place in daylight on a public road in Balupura Eoad, Ajmer, at about 1-15 p. M. on 23rd May 1947. It is alleged that there was previous enmity between the family of

the deceased and the family of the appellant, Kishen Gopal, who was an employee of the B. B. & C. I. Eailway Loco Workshop. On 22nd May 1947 the accused is alleged to have left his work sometime in the afternoon after about 1-30 p. M., and at about 4-15 p. M. he stabbed the deceased with a knife in Balupura Road in front of the Shop of one Paras Earn, a witness in the case. The accused followed the deceased from behind, and is alleged to have inflicted three stab wounds with a knife on the deceased, one on his back and two on his left hip. The attack is said to have been seen by persona present in the locality. The deceased is also said to have given the name of the accused as being his assailant at the spot where he fell down, and later on in a dying declaration recorded on the same day at about 4-60 p. M. by the police in the presence of two doctors, at the Railway Hospital, Ajmer, before he succumbed to his injuries. It is alleged the accused absconded after the murder. The polios took action Under Sections 87 and 88, Criminal P.C. and it was on 4th July 1047 that they were able to arrest him. The accused's defence was that he had not stabbed the deeeasec Wshwari Prasad, and that a false case had been sent up against him. He pleaded alibi and stated that on 22nd May 1947, the day of the alleged offence, he was at his work in the Eailway Workshop up to 5 P. M. With effect from 22nd May 1917, according to him, he was on leave, first for 22 days, which leave he subsequently extended by 15 days. He further stated that he of his own accord went and reported himself on 4th July 1947 at the house of the Police Sub-Inspector Murli Manohar.

3. It is not disputed that somebody did inflict stab-wounds on the person of the deceased Ishwari Prasad on 22nd May 1947 and thereby caused his death. The crucial point in dispute is whether it. was the accused-appellant who attack, ed the deceased as alleged by the prosecution near the shop of Parasram; and if so can it be said that he intended to cause his death by inflicting such injuries as he knew were likely to cause death

4. I have gone closely and carefully into the evidence, and I find it impossible to disagree with the conclusion arrived at by the learned Sessions Judge. There is very conclusive evidence in the case to show that the deceased Iswari Prasad was attacked and stabbed by the accused Kishen Gopal on the evening of 22nd May 1947, somewhere near the shop of one Parasram in Balupura Road. Every link in

the prosecution case has been supported by clear and reliable evidence, and in the circumstances of the case, I think there is no doubt that the unanimous opinion of the three assessors was quite wrong and perverse. It is true, there are some discrepancies in the oral evidence of some of the principal witnesses, but all these discrepancies are on minor and unimportant points. The main prosecution story which has been deposed to and corroborated by a large number of eyewitnesses, and by circumstantial evidence, and by the dying declaration of the deceased man, stands entirely unshaken. I find that most of the discrepancies have been dealt with by the learned Sessions Judge in his judgment, and I think he has given the discrepancies their due and proper consideration.

5. The eye-witnesses in the case are 5. They are (i) Jagdish Pershad, (ii) Eanhailal, (iii) Shankerlal, (iv) Eamcharan and (v) Nathilal. Jagdish Pershad saw Ishwari Pershad pass down in the direction of Nasirabad Road, and he deposes to having seen the accused come after Ishwari Pershad. Jagdish Pershad also witnessed the attack and he says that at the corner of a flour mill, the accused Btabbed the deceased with a knife on his buttock and back. It is true Jagdish Persad does not say that he heard Ishwari Persad mention the name of the assailant, but that appears to have been because Jagdish Persad did not go near the injured man. I do not think much importance can be attached to the discrepancy as regards the length of the blade of the knife that was used by the accused; nor is there any force in the contention that it is not clear how far inside or outside the shop this witness was, when he is said to have seen the attack.

6. The next eye-witness Kanhaiyalal corroborates Jagdish Persad as to the main version of the attack on Ishwari Persad. As remarked by the Sessions Judge, it makes no difference to the evidence of Kanhaiyalal whether the injured man uttered the name of the assailant or not.

7. The 3rd eye-witness, Shankerlal, saw the attack from his shop. He gives the place where the injured man fell down as being near the shop of Farasram. On this point the statement of Jagdish Pershad is somewhat different as he says the injured man fell near the Chakki. But it makes no practical difference whether the place was near the Chakki or near Parasram's shop as the distance between the

Chakki and Parasram's shop is only of a few feet. It is natural that when different witnesses depose to the place in their own way, there should be some difference, case in the manner of their description of the spot where the deceased was attacked. It is important to note that the spot where the attack is said to have taken place, as described in the deceased's dying declaration, is said to be near Parasram's shop. Considering that the attack was made on a man who was walking, and who after the first blow was dealt, was alarmed and began to run, it is not surprising that some witnesses should describe the attack as having taken place near a Chakki, and some as having taken place near Parasram's shop. But since the Chakki is very near Parasram's shop there is no material difference. In describing the spot where the attack took place, reference has been made in one part of the record to the Electric Power House, But it is not disputed that the Electric Power House is not far from the scene of the offence. That no doubt is the reason why the Power House is mentioned in order to locate the scene of the offence.

8. The next eye-witness is Ramcharan. He states that he was bringing water in a pot from Balupura Road when he saw the accused deal three knife blows to Ishwari Persad. According to Ramcharan, the injured man uttered words to the effect that his uncle should be called, but he did not utter the name of his assailant. When dealing with oral evidence one cannot insist on cast-iron consistency as to every point that is made out as arising from the oral evidence. It is quite possible that the thought uppermost in the deceased's mind at the time; when Ramcharan went near him was that his uncle should be called, and he may not have [thought at that particular moment of naming the assailant.

9. The last eye-witness is Nathilal who had gone to get his wheat ground at the Chakki, According to him when the deceased Ishwari Persad reached the corner of the Chakki, the witness saw the accused stab him twice on his buttocks and again on his back. It is immaterial if this-witness said in his police statement that 'he was handing over wheat for being ground' when he saw the occurrence. For even if he was actually in the act of handing over his wheat to the man in the mill, it does not necessarily follow that it was impossible for him to look on the road and see what happened there. On the whole I can see no reason whatever why witness after witness should come forward and implicate the accused in a false

case especially as nothing was urged against these witnesses which can go to doubt their veracity and show why their testimony should be discarded.

10. Quite apart from the direct evidence of the eye-witnesses, there is other unimpeachable material on record to bring home the charge to the accused. To begin with there is a dying declaration of the dead man Ishwari Persad (Ex. 32), which was recorded in the hospital shortly after he had arrived there. The dying declaration is attested by no less than three doctors of whom two doctors, Sunder Narain and M. C. Sharma, have been examined as witnesses in the case. There appears' not the slightest reason why these doctor should have agreed to sign a dying declaration which it is urged the dying man never made.

11. The dying declaration was attacked on the ground that it is not written in Hindi, and that it bears the thumb impression and not the signature, of the deceased. It was also attacked on the ground that Ishwari Persad was so seriously injured that he could not have been physioally fit to make a dying declaration. I think there is no substance whatever in any of these criticisms levelled against the dying declaration. It is true it would have been better had the dying declaration been written in Hindi, but it makes no difference to the statement itself whether it is in Hindi or in English. It is on record that the deceased was familiar with English, and so it makes no material difference if it was written in English. Since it appears the deceased was not in a fit condition to hold a pen and write his signature below the dying declaration, the two doctor and the Sub-Inspector decided to take the deceased's thumb impression. It was argued that the dying declaration is a concocted document, but I do not see why the two doctors, who had no axe to grind in the matter, should have been parties to such a fraud. Assuming for the sake of argument that the Sub-Inspector and the two doctors conspired to concoct a document, they could easily have concocted it in Hindi if the argument that if it was in Hindi it would have carried more weight, is to prevail, For these reasons the dying declaration must be ac cepted as being a genuine document and it very strongly and conclusively corroborates the version sworn to by the eye-witnesses.

12. There is the evidence of Babulal, an uncle of the deceased, who was informed of the occurrence by Kashi Ram. Babu Lal's evidence is that he ran to the spot

where his nephew was lying, and there the injured man told him that he had been stabbed by Kiahen Gopal. Babulal made arrangements to send his nephew to the Railway Hospital, and he himself without loss of time, went to the Putlighar Police Outmost to lodge the first information report. Considering that very little time elapsed between the attack on the injured man and the lodging of the first information report, I think there is no substance in the argument that a false report was lodged by Babulal. Witnesses Ganga Sahai and Parasram Corroborate Babulal and say that the injured man was heard to say before he fell down that he had been stabbed by Kishen Gopal. If any corroboration were needed to the statement of Bahulal, who it has been urged is a relation of the accused and, therefore, suspect, it is to be had in the testimony of Ganga Sahai and Parasram.

19. The above evidence is corroborated by circumstantial evidence which shows that the accused absconded for sometime after the murder of Ishwari Prasad, and it was on 4th July 1947 that he was arrested, after proceedings had been taken against him Under Sections 87 and 88, Criminal P.C. The accused's defence on this point was that he was absent from Ajmer from 22nd May 1947 as he had taken 22 days' leave, and that this leave he subsequently extended by 15 days. There is some evidence on record to show that from about 23rd May 1947 the accused was to go on leave, but no evidence was produced by the accused in support of his plea that he got his original leave extended by 15 days. According to him, he was at his work in the Railway Workshop up to 5 P. M., on 22nd May 1947, but the evidence led by the prosecution shows that he was last seen at the workshop on the above day upto about 1 30 P. M. After that it appears he slipped out of the workshop and was later seen at about 4 p. m. by eye witnesses when he went and attacked the deceased. In this connection, the evidence of Mr. Bakarnaulfc, Foreman, is important. According to him it is not impossible for a workman to get out of the workshop premises without a gatepass. That being so, it does not necessarily follow that if the accused had no gate-pass it was impossible for him to get out of the workshop and go and attack the deceased; in this conception it must be noticed that the defence evidence cited by the accused is largely of chance witnesses who say that they saw the accused in the workshop up to about 3 or 4 p. M. In view of the evidence of eye witnesses, which is corroborated by the dying declaration and by witnesses Ganga Sahai and

Parasram, I think the Sessions Judge was right in rejecting the defence evidence as being flimsy and unreliable. Witnesses Shiv Dutt and Rajendra Kumar prove the fact that in fact the accused was seen outside the Railway workshop after about 2 P. M., on 22nd May 1947. I have therefore no hesitation in agreeing with the conclusion reached by the learned Sessions Judge, which conclusion must be upheld as it appears to me to be correct.

14. The next question is, of what offence is the accused guilty It was urged by Mr. Parmatma Swaroop on behalf of the accused in the Sessions Court and also before me, that even if it is held to be proved that the accused attacked the deceased with a knife, the offence would at the most be one of causing grievous hurt by a dangerous weapon Under Section 326, Penal Code, and not murder Under Section 302, Penal Code. It was argued that since the accused aimed his blows at the deceased's back and hips, he appears to have chosen a non-vital part of the deceased's body. But I cannot agree with this argument, because in the first place it is not correct to say that a man's back is a non vital part of the body, and secondly, there is nothing to show that the back was deliberately chosen in preference to the neck or the abdomen. The evidence is that three stab wounds were inflicted and since the victim was moving and was not stationary, the blows fell, one on his back, and the other two on his left buttock. There is nothing to show that with any degree of choice or deliberation the assailant tried to cause only such injuries as were not likely to cause death, The medical evidence is that the injury on the back was sufficient in the ordinary course of nature to cause death, and since as many as three stab-wounds were inflicted, it will not be wrong to say that the accused intended to cause such injuries as he knew would, in the ordinary course of nature, cause death. It does not make any difference if some of the witnesses do not agree as to the number of the stab-wounds, that is to say, whether they were two or three. As the incident took place in a few minutes allowance must be made for individual powers of observation. I therefore think, it is clear from the evidence that the offence was one of murder, and not the lesser offence Under Section 326, Penal Code.

15. Coming to the question of sentence, the learned Sessions Judge has in awarding the lesser sentence taken into consideration the youth of the accused,

He is a young man aged between 28 and 25 years, and the Judge has also considered the fact that there appears to have been no premeditation. On the other hand, the deceased's mother, Mt. Jai Devi, has filed in this Court a revision application asking me to exchange the lesser sentence of transportation for life to the death penalty. Her application has been argued before me along with the appeal of the accused. There is no doubt that the accused is a young man, but as to premeditation, it is possible that another Court trying this case might possibly have taken the view that there certainly was premeditation, since the accused had armed himself with a knife and appears to have found out the deceased man's whereabouts and followed him in order to kill him, This view of the case was argued before me on behalf of Mt. Jai Devi. But in a case of this kind the point which I must take into consideration is whether the sentence passed by the learned Sessions Judge can be said to be manifestly so wrong and lenient that I must in its place substitute the death penalty. And I am not prepared to say that the sentence of transportation for life is in this case so manifestly lenient that it should be enhanced to the extreme penalty provided by law. It is natural that Jai Devi, the deceased's mother, should be moved to make such an application, because of the murder of her son who was a young man. But her feelings in the matter cannot and should not be allowed to influence the Court in deciding the question of sentence. The sentence inflicted by the Sessions Judge i. e., transportation for life must therefore be confirmed. I accordingly confirm the conviction and the sentence and dismiss this appeal. The revision application filed by Mt. Jai Devi is also dismissed.