

Kishan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-08-1980

Reported in : 1980WLN647

Judge : M.L. Shrimal and; K.S. Sidhu, JJ.

Appeal No. : D.B. Criminal Appeal No. 280 of 1978

Appellant : Kishan

Respondent : The State of Rajasthan

Disposition : Appeal Dismissed

Judgement :

M.L. Shrimal, J.

1. This appeal is directed against the judgement dated April, 1978, of learned Sessions Judge, Kota, whereby the accused appellant Kishan son of Gordhan Singh was convicted on the charge of murder of Balli Sardar alias Amarjeet Singh and was sentenced to imprisonment for life and a fine of Rs. 200/- or, in default of payment of fine to further rigorous imprisonment for two months.

2. The prosecution story in nut-shell is that Kailash Chandra PW 1 runs a betel shop in the name and style of Pawan Pan Bhandar situated near the temple of Mori-Ka-Hanumanji in Purani Dhandmandi, Kota. His brother Subhash's hotel is

situated adjacent to his shop. In the morning of the fateful day Kailash Chandra and his brother Subhash reached their respective shops. Jugal Kishore (PW3) and Ramesh (PW4) were sitting on the wooden platform of the said shop of Kailash Chandra. Narain a servant of Subhash served tea to Jugal Kishore and Ramesh. He then went away to serve tea at the office of Ram Krishna Transport Company. A little later, Amarjeet Singh deceased and Surendra Kumar (PW5) arrived that side, riding on a bicycle. Surendra Kumar was driving the bicycle and Amarjeet Singh was sitting on the rod in front of him. When they reached near Pawan Pan Bhandar, accused appellant Kishan rushed towards the deceased and thrust a knife blow in his chest. After taking out the knife, the accused ran away towards Purani Dhan Mandi. As a result of the injury, Amarjeet Singh felt giddy and fell down on the ground near a tree.

3. A written report, Ex. P/1 of this occurrence was lodged at the police Station, Rampura Kotwali, Kota. On the basis of that report a formal F.I.R., Ex. P/3, was drawn. The police reached the site of occurrence and prepared site plan Ex. P/4, and inquest report Ex. P/13 respectively. Autopsy on the dead body of Amarjeet Singh was performed by Dr. S.S. Baxi PW 10. The post mortem report is Ex. P/9

4. On November 26, 1977 the investigating officer arrested the accused-appellant vide arrest memo Ex. P 17. The accused expressed his desire to get the weapon of offence recovered from the place of concealment. The information was reduced into writing. It has been marked as Ex. P/18. Knife, Ex. P1 is said to have been discovered in consequence of this information. It was taken into possession vide seizure memo Ex. P 15. The accused appellant again expressed his desire to get the blood stained clothes Bushirt and pant recovered from the place of their concealment. The information was reduced into writing and it has been marked as Ex. P/19. The seizure memo of pant and bushirt Exs. 6 and 7 respectively is Ex. P/1 6. The articles recovered in consequence of the information of the accused and other of the deceased were sent for chemical examination, who found the articles stained with blood. The report of the Chemical Examiner is Ex. P/20.

5. The police after usual investigation submitted a chargesheet against the accused appellant and one Subhash in the court of Judicial Magistrate No. 2,

Kota, who committed them to the court of Sessions for trial. Learned Sessions Judge discharged accused Subhash and framed charge against the accused appellant under Section 302 I.P.C. The accused pleaded not guilty to the charge and the prosecution examined 14 witnesses in support of their case, out of whom PW1 Kailash Chandra, PW3 Jugal Kishore, PW4 Ramesh, PW5 Surendra Kumar and PW6 Prabhu Lal were examined as eye witnesses of the occurrence. PW10 Dr. S.S. Baxi was examined to prove the injuries sustained by the deceased. PW14 Samrath Singh Station House Officer is the Investigating Officer of the case. Out of the six eye witnesses all except PW3 Jugal Kishore were declared hostile and were allowed to be cross-examined by the prosecution. The learned Sessions Judge found that the prosecution case against the accused was proved beyond doubt. She totally believed the statement of PW3, PW6 Prabhu Lal, PW5 Surendra Kumar and PW 4 Ramesh. The discovery of the knife Ex. 1, pent Ex. 6 and Bushirt Ex. 7 was not relied upon as the Serologist could not ascertain the origin of the blood. After considering the above noted evidence, she held the accused guilty and convicted and sentenced him as mentioned above.

6. Aggrieved with the aforesaid judgement, the convicted accused-appellant has challenged his conviction and sentence by this appeal.

7. Mr. K.K. Mehrish, learned Counsel for the accused appellant has urged that there are some outstanding features of the case which, according to him, are sufficient to throw doubt on the entire prosecution case. There is no evidence of motive for commission of the crime by the accused appellant. At best, the prosecution evidence shows that the accused appellant did not like the deceased and had petty quarrel with him which cannot be considered sufficient to constitute motive to commit murder. Learned Counsel urged that the prosecution witnesses were detained by the police for two days and their statements were recorded against their wishes. The investigating officer was not fair to the accused. He compelled PW1 Kailash Chandra to write down Ex. P/1 at the dictation of the investigating officer after completing the preliminaries of the investigation. The story narrated in the first information report itself suggests that, it was not written at the time it purported to have been written. It is ante-dated. It was vehemently urged that PW3 Jugal Kishore is an unreliable witness. He had no reason to be on

the scene of occurrence. He could not have been present at the time of the alleged assault by the accused, because at the relevant time he was with DW1 Mahesh Kumar at. Railway Station PW3 Jugal Kishore did not know the accused by name and as such his identification of the accused for the first time in the Court without any test identification parade is absolutely valueless. He further urged that the prosecution had discredited PW1 Kailash Chandra, PW2 Subhash Chandra, PW4 Ramesh, PW5 Surendra Kumar and PW Prabhu Lal and cross examined them. They were discredited altogether not merely to get rid of a part of their testimony and no corroboration could be sought from the testimony of such witnesses. PW3 Jugal Kishore who is the only witness against the accused to prove the serious charge of murder, had modulated his evidence to suit a particular prosecution theory for the deliberate purpose of securing conviction of the accused. Such a witness cannot be considered as a reliable person and no conviction can be based on his sole testimony. The conduct of this witness was abnormal. He neither went to the father of the deceased nor to the police and immediately left for his work without caring to know the nature of the injury sustained by the deceased who was very well known to him since childhood. The common course of human conduct require that either he would have raised a cry for help or would have rushed after the accused to catch hold of his or at least would have taken the injured to the hospital for providing him the first aid. He further urged that the first information report Ex. P/3 was received by the Magistrate on November 24, 1977, i.e. after 24 hours of the occurrence. This inordinate delay in despatch of the first information report was recorded much later than the date and time stated therein. It afforded sufficient opportunity to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. Learned Counsel urged that in the case in hand most of the prosecution witnesses have admitted that they were detained by the police for more than 24 hours and as such in the proved circumstances of the case it can be safely said that the prosecution at first settled the story, compelled the witnesses to make statements fitting with the case set up by them and thereafter recorded the first information report.

8. Learned Additional Government Advocate, Mr. Khan with matching vehemence has supported the judgement of the trial Court on the basis of evidence relied

upon by learned Sessions Judge as well as additional grounds.

9. It is not incumbent on the prosecution to prove the motive for a crime. Often times, a motive is inducted to heighten the probability that the offence was committed by the person who was impelled by that motive. But if the crime is alleged to have been committed for a particular motive it is relevant to inquire whether the pattern of the crime fits in with the alleged motive. From the statements of PW 8 Ram Narain and PW 9 Hari Prakash it appears that accused and the deceased were notorious, known as 'Dadas' (Bad character) of their area. They were at quarrel with each other. PW9 Hari Prakash stated that nearly 15 days prior to the fateful day he saw the accused appellant and the deceased quarrelling with each other in Dhanmandi. On the night previous to the date of this murder, the accused was seen by the witness loitering in the area where the deceased used to reside. PW 8 Ram Narain stated that he had seen the accused and the deceased quarrelling with each other at Sarowar Talkies, nearly 7 or 8 days prior to this murder. He had also seen them quarrelling with each other 3 or 4 days prior to the fateful date in the locality known as Chhipa pada. The witness further goes on to state that he had seen them quarrelling 3 or 4 times, but he did not inquire from them regarding the cause of quarrel, as both of them were Dadas (bad character). Learned Sessions Judge has believed the statements of these two witnesses. She was not correct in holding that these quarrels would not have afforded sufficient motive for committing i.e., murder., Motives of man are often subjective. Often the motive is locked up in the heart of the offender. Similar events effect different persons in different ways and they react differently. The bad characters live by the exhibiting their superiority against each other. The circumstances of the case stand supported by the evidence of the motive given by these two witnesses.

10. Then we have got the evidence of eye witnesses. The main point which arises for decision is whether we can safely act upon the evidence of PW3 Jugal Kishore and the evidence of PW6 Prabhu Lal. None of these witnesses is either relative of the deceased or enmical to the accused. Jugal Kishore stated that on November 23, 1977, at 8 00 or 8.15 he was taking tea at Jai Bharat Restaurant. Balli Sardar (since deceased) came from the side of the Arya Samaj on a bicycle which was being driven by another body. Accused appellant Kishan who was already present

there inflicted a knife blow on the neck of Balli Sardar while the latter was on the bicycle. As a result of the injury Ballia alighted from the bicycle. He felt giddy and fell down near the gutter and the boy who was driving the bicycle ran away with the bicycle. The accused appellant after inflicting the knife blow ran towards the purani Dhanmandi. At the relevant time PW4 Ramesh was with him and was taking tea on the hotel. The witness stated that both of them were taking tea sitting on the protruding portion of the betel shop. The witness was cross examined at length. In spite of the lengthy cross-examination the witness has not faltered on the main points. Learned Counsel for the accused appellant urged that according to this witness the knife blow was inflicted to Balli Sardar on his neck, whereas Bali Sardar sustained injury on the chest. The portion of the body on which the deceased sustained the injury is just in proximity of the neck. The witness is not a highly educated man and it could not be expected of him to describe the portion of the body with anatomical precision. The criticism of the learned Counsel that the conduct of the witness was most unnatural in not attempting to rescue the victim or chasing the accused to catch hold of him or going near the victim and providing him first aid has not impressed us much. The witness conducted himself just as normally as any other ordinary person would conduct himself in such a situation. It is too much to expect from an unarmed man to chase a desperate criminal on the run armed with a lethal weapon. In urban areas people bother more about their own work than assisting the victim of assault. During the course of cross-examination the witness stated that he did not stop the man with the bicycle, because he suffered from fear. He also stated that he did not go to inform the father of the deceased, because he feared that by doing so he may unnecessarily get involved in this affair. In answer to a question put by the counsel for the accused, the witness stated that his statement was recorded in the morning of the date of occurrence as he was called by the police from the place he had gone for work within half an hour of the occurrence. The witness also admitted that he remained in the police after half an hour and thereafter the witness was allowed to go. During the course of long-cross-examination he has given correct description of the clothes and shoes which were being worn by the deceased. The name of this witness has been mentioned in the first information report, which is alleged to have been recorded on November 23, 1977, at 8.15 p.m. just after the occurrence.

The presence of this witness on the scene of occurrence at the time of the assault has been admitted by PW4 Ramesh who is an obliging witness to the accused. DW1 Mahesh Kumar has tried to prove that PW3 Jugal Kishore could not have reached on the scene of occurrence at the time of assault. This witness admits that the correct time for Dehradun Express reaching at Kota Junction is 7.25. He further admits that the train leaving for Baran starts from Kota Junction at 7.55. Shri Atel Behari Bajpeyee had delivered the speech and thereafter boarded the train leaving for Baran. The distance between Kota Junction and the scene of occurrence is nearly five miles and according to this witness PW 3 Jugal Kishore came with him to the city in his car. As such it cannot be said that it was not possible for the witness to be on the scene of occurrence at the time alleged by PW 3 Jugal Kishore. DW1 Mahesh Kumar was conscious of the fact. He has tried hard to avoid the presence of PW3 Jugal Kishore on the scene of occurrence at the time of assault. For the purpose of achievement of this object he has tried to state that on the relevant date Dehradun Express as well as the train leaving for Baran were 'late. This queer coincidence of both the trains being late is not easily digestible. The statement of this witness stands corroborated by the recovery of change from the scene of occurrence. The witness is resident of nearby lane, opening on the road where the occurrence took place and as such his presence near the tea stall for taking tea was most natural. The statement of DW1 Mahesh Kumar does not inspire confidence and his statement is not sufficient to exclude the presence of PW 3 Jugal Kishore on the scene of occurrence at the time of assault.

11. The second limb of the same argument is that Jugal Kishore did not know the accused by name and as such identification of the accused for the first time in the Court without any test identification parade is absolutely baseless. In support of his contention he placed reliance on Chonampara Chellappan v. State of Kerala : 1974 CriLJ674 and Kanan and Ors. v. State of Kerala : 1971 CriLJ305 . In our considered opinion this argument is also without force and cannot be accepted. Jugal Kishore knew the accused from his childhood. No doubt this witness admitted that he did not know the name of the accused, but in the same breath he stated that he knew the accused as he has seen him in Rampura (a locality of Kota). He further stated that he knew Chhota and Kishan (accused) by their faces

from their childhood. The necessity for holding an identification parade can arise only where the accused is not previously known to the witness. The absence of test identification parade in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. A similar question which has been raised before us was raised before their Lordships of the Supreme Court in *Jadunath Singh and Anr. v. State of U.P.* : 1971 CriLJ305 . On the facts of that case their Lordships held that the accused of that case were known to the witnesses by sight and the trial was not vitiated on the ground that the accused persons were denied identification. It would be worthwhile to note here that the witness is a resident of the nearby locality where the accused used to reside. He has specifically assigned in detail the part played the accused. There was also no cross-examination directed against the identification of the accused appellant by the witnesses. The accused was named in the first information report which was given within a short time of the occurrence. No rule of law requires that oral testimony of a witness should be corroborated by evidence of identification. The accused had not asked at any stage of the proceedings that identification parade be held. If the accused would have taken the risk of being identified in a parade and the same would have been denied, it would have been an important point in favour of the accused. The evidence of test identification is admissible under Section 9 of the Evidence Act; it is, at best, supporting evidence. It can be used only to corroborate the substantive evidence given by the witness in Court regarding identification of the accused as the doer of the criminal act. The earlier identification made by the witness at the test identification parade, by itself, has not independent value. Nor is the test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification of the accused, in court, as the perpetrator of the crime. The identity of the culprit can be fixed by circumstantial evidence also. Reference may be made to *Sampatayada Shinde v. State of Maharastra* : 1974 CriLJ674 and *State of Rajasthan v. Ranjita Ladhuram* . The accused in his statement recorded under Section 313 Cr. P.C. has not stated that he was not known to the witnesses. It is true that this witness was not asked to identify the appellant at the test identification parade, but it is not sufficient to detract the value of his evidence given in the Court, as the accused was known to him from his childhood. It is not a case where the witness had only a

glimpse of the accused for the first time in life and as such the cases relied upon by the learned Counsel for the appellant, which relate to dacoity cases are of no relevance in this case.

12. The statement of this witness stands corroborated in material particulars by the statement of PW6 Prabhu Lal. He stated that on November 23, 77 on the date when Shri Atal Behari Bajpayee visited Kota at 8.30 a.m. the witness was going from Gandhi park towards the street leading to the temple known as Mori-Ka-Hanumanji. When he reached near Rama Restaurant, he saw accused appellant Kishan running away with a blood stained knife in his hand. At the same time, he saw Balli Sardar (since deceased) lying near the gutter adjacent to Chabutra. At that time Balli was bleeding profusely, and the change falling from the pocket was scattered here and there. The witness further goes to state that he met the mother of Balli deceased and informed her that Balli was lying injured near the gutter in the above noted lane. The witness had seen the accused running with a blood stained knife at the time when the accused was at a distance of nearly 15 or 20 kadam from the place where Balli deceased was lying injured. A close reading of the statement of this witness in conjunction with the statement of PW 3 Jugal Kishore leaves no doubt in our mind that the accused appellant inflicted the fatal blow to Balli Sardar with a knife, at the time and place alleged by the prosecution. It is true that this witness was allowed to be cross-examined by both the parties, but it is wrong to assume that the only purpose of cross-examination of a witness is to discredit him, it ignores the hard truth with another equally important object of cross-examination to elicit admission of facts which would help to build the case by cross-examination. When a party with the level of the court confronts his witness with his previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from prior statement is not deliberate, but is due to faulty memory of a like cause, there is every possibility of the witness reverting to his former statement. Thus, showing faultiness of the memory in the case of such a witness would be another object Of cross-examination. A witness is allowed to be cross-examined by a party calling the witness not because the witness has already forfeited all rights to credit, but because from his antepathetic attitude or otherwise, the Court feels that for doing justice, his evidence will be more fully giving the truth more effectively extricated

and his credit, move adequately decided by questions put in a more pointed penetrating and searching way. This witness on a question put by the public prosecutor when contradicted with his prior police statement wherein he had stated that he had seen the accused Kishan inflicting a knife blow in the chest of Balli Sardar, admitted that his police statement was correct and he forgot to state so in the Court due to lapse of time. The position of law is that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court by the party calling him his witness, cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge to consider in each case whether as a result of such cross-examination and contradiction the witness stands thoroughly discredited or can still be believed in regard to a part of his statement. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness as a whole, with due caution and care except in the light of the other evidence on the record, that part of this testimony which he finds to be credit worthy and act upon it. The ratio decidendi of *Jagir Singh v. State* : 1975 CriLJ1009 relied upon by the learned Counsel for the appellant was not approved in a later case *Satpal v. Delhi Administration* : 1976 CriLJ295 and it was held that the entire evidence by a hostile witness need not be discarded and reliance on a part of the statement of such a witness by both the parties was permissible. In *Bhagwan Singh v. State of Haryana* : 1976 CriLJ203 where conviction of the accused of that case was based on the solitary testimony of the statement of Jagat Singh, a witness in that case, who was allowed to be cross-examined by the public prosecutor. Their Lordships held on facts that the prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act, but the fact that the Court gave permission to the prosecution to cross-examine his own witness, thus characterising him, what is described as a hostile witness does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to pass a conviction upon his testimony if corroborated by other reliable evidence. On the facts of that case their Lordships held that the above noted test was satisfied and the testimony of Jagar Singh stood amply corroborated.

13. In the case in hand, the trial court has rightly used the statement of this witness to corroborate the testimony of PW 3 Jugal Kishore. PW 1 Kailash Chandra stated that the written report Ex. P/1 was in his hand. He further stated that the witness as well as his brother Subhash and two of his employees Mahavir Prasad and Narain were called by the police in the evening. All of them were detained in the police lock-up and they were released on the next day. During the course of their stay in the police lock-up the witness was compelled to write Ex. P/1 on the basis of the above statement and the fact that the first information report reached the court on November 24, 1977, learned Counsel urged that the F.I.R. is a spurious document and it is ante-dated.

14. We have carefully read the statement of PW 1 Kailash Chandra. He appears to have been won over by the accused and his statement has been rightly discarded by the trial Court. Besides the statement of this witness who had been won over, there is nothing on record on the basis of which it can be said that the F.I.R. was not written at the time it is alleged to have been given in the police. The genuineness of the F.I.R. could be decided on the basis of the daily diary, but it was not done so by summoning the document. The investigating officer was cross-examined on this point and he categorically stated that the F.I.R. was not ante-dated. The occurrence is of 23rd November, 1977, and in usual course the F.I.R. sent by post must have reached the Court on November 24, 1977. It was not obligatory for the investigating officer to send the F.I.R. by hand through a constable to the Court on the same day. The autopsy on the dead body of Balli was performed at 10.20 a.m. on November 23, 1977, The site inspection memo Ex. P/4 was also prepared on the same day. It bears F.I.R. No. 250/77. The other documents prepared on the same day also bear the number of the F.I.R. In the proved facts and circumstances of the case we do not find sufficient ground to hold that F.I.R. Ex. P/3 and written report Ex. P/1 are spurious documents, which were prepared later on after the completion of the investigation and were ante-dated.

15. Lastly, it was urged that the accused did not intend to commit the murder of Balli. He inflicted only one blow and thereafter immediately ran away. The blow was not intended on the part of the body it fell and as such the trial Court

committed an error of law in convicting the accused under Section 302 I.P.C. He could have been at the most convicted under Section 304 part II, I.P.C.

16. We find no merit in the above argument. The law on this point stands well settled by a number of decisions of the Supreme Court. Time and again the case of Virsa Singh v. State of Punjab : 1958 CriLJ818 has been followed. It has been proved by the evidence of PW 3 Jugal Kishore read with the statement of PW 6 Prabhulal the accused Kishan inflicted a Knife blow into the chest of Balli. There is nothing to hold that it was accidental or unintentional or some other kind of injury was intended. The injury sustained by Balli was found to be sufficient in the ordinary course of nature to cause death. The direct evidence when considered with the evidence of motive clinches the issue and the case of the accused falls squarely under clause thirdly of Section 300 I.P.C. The above noted case of Virsa Singh : 1958 CriLJ818 was followed in subsequent cases of the Supreme Court in Andavarapu Punnayya and Ors. v. The State of Rajas than : 1966 CriLJ171 and State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. : 1977 CriLJ1 .

17. The net result of the above discussion is that the appeal filed by the accused fails. It is dismissed. The conviction and sentence awarded by the trial court are affirmed.