

Om Prakash Dhanak Vs. the State

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Court : Rajasthan

Decided On : Sep-05-1979

Reported in : 1979WLN(UC)270

Judge : K.D. Sharma, and; S.N. Deedwania, JJ.

Appeal No. : D.B Criminal Appeal No. 393 of 75 and D.B Cr. Jail Appeal No. 779/1975

Appellant : Om Prakash Dhanak

Respondent : The State

Advocate for Pet/Ap. : Mr. S.R. Singhi

Judgement :

K. D. Sharma, J.

1. D.P. Criminal Appeal No.390/75 filed by Om Prakash Dhanak and D.B Criminal Jail Appeal No.*779 of 1975 filed by this very appellant arise out of one and the same judgment of the Additional Sessions Judge, Shri Ganganagar, dated 8th April, 1975 by which the appellant was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and Liluram co-accused was acquitted of the offence of murder.

2. The prosecution case against Om Prakash appellant was as follows:-At about 7 30 P.M. on 28th March, 1973 Hansraj deceased was sitting inside his house situated in ward No.*15 of the city of Shri Ganganagar. His father Kaluram and his brother-in-law the gainer Shri Managalchand also were present inside the house at that time. The appellant visited the house of the deceased and called him to come out Hansraj accordingly came out of his house and went away along with the appellant After half an hour or so Kaluram' father of the deceased, heard noise of a quarrel that ensued between the appellant and the deceased. On hearing the noise Kaluram and Mangalchand went out of the house and reached infront of the house of Mohanlal which was situated at a distance of about 150 paundas from the house of the deceased. Both of them saw the appellant standing there having a naked sword in his hand and the deceased also was seen standing there by the side of the appellant. The appellant was asking Hansraj to beat him, but Hansraj was telling why he should beat the appellant Kaluram and Mangalchand intervened and brought Hansraj from there along with them, Om Prakash followed the deceased having a naked sword in his hand. In the way when Kaluram, Mangalchand and the deceased were passing by the side of the house of Liluram co-accused, they saw Liluram standing outside his house At their sight, Liluram abused and cried 'Bhenchodo ko mardo katal kar do'. Thereupon at his instigation Om Prakash appellant thrust his naked sword into the left side of the chest of Hansraj as a result of which the latter fell down and lost his senses. The wound on the chest of Hansraj began to bleed profusely with the result that the clothes worn by him were wet with blood The appellant after striking the fatal blow disappeared from there. The occurrence was eyewitnessed by Sesaram P.W.3 also who had come out of his house on hearing the noise. Kaluram, Mongal Chand, Sesaram and some other persons made Hansraj to lie on a cot and took him to the police station where Kaluram father of Hansraj made a verbal report of the incident to the police the very day at 8.30 P.M. The police registered a criminal case under Section 307 and 449 IPC on the basis of the verbal report and took up the usual investigation into the matter. Hansraj died at about 9 15 P.M on 28th March, 1973 and so the case was altered from under Section 307 IPC to one under Section 302/34 IPC Shri S.L. Surolia Dy. S.P., Ganganagar rushed to the spot and deputed a Head Constable to guard the place of occurrence. Then he arrested the

appellant the very day at about 11.15 P.M. After his arrest Om Prakash gave the Dy.S.P. an information while in the police custody that he had concealed one sword having a black-sheath and a wooden 'moot' inside the beddings of one Prahlad Dhanak which were lying in his Kotari. He further informed the Dy.S.P. that he had concealed his pantaloons of blue colour and his bush shirt in an iron box lying in the Kota of his residential house and that he was prepared to get the sword and his clothes recovered at his instance. The Dy.S.P. got the above information recorded in a memo Ex. P.7 by Shri Bhanwarsingh A.S.I. at his dictation and recovered the sword and the clothes from the place mentioned by the appellant in his information. The sword and the clothes were suspected to have stains of blood on them and so they were seized and sealed immediately after their recovery. Later on the sword and the clothes of the appellant were sent to Assistant Director Biology Police forensic Science Laboratory Jaipur for analysis who detected blood on the sword & the clothes. The sword and the clothes were forwarded to the Serologist for further analysis but it appears that the report of the Serologist was not produced by the prosecution for reasons best known to it. The Dy.S-P. sent the dead body of Hansraj to the General Hospital Sri Ganganagar for post mortem examination. Dr M.P. Agarwal Medical Jurist conducted an autopsy over the dead body on the next day of the occurrence i.e. on 29th March, 19 79 and found the following injuries:

Incised wound 1-1/8' x 3/8"x chest cavity deep 3 1/2' below and medial to the left nipple (obliquely vertical) 1' lateral to the mid line.

The shirt which the deceased was wearing on his body was found vertically cut over the region of the injury on front of left side near buttons; the size of cut was 1 3/8' in length. The doctor further detected that the left fourth rib was cut completely under the external injury. There was an obliquely vertical wound involving this rib. Size of the wound was 1 1/2' x 1/2' x chest cavity deep. Left pleura was cut under the wound. Thoracic cavity was full of dark fluid and clotted blood. Left lung covering the heart on anterior aspect was cut under the injury. Pericardium was cut over the left atrioventricular junction. Pericardial cavity was full of blood Left atrium was punctured near its junction to the right atrium. Larynx and trachea and both the lungs were congested. In his opinion the cause of death of the deceased

was injury to chest causing puncture of left lung and puncture of heart with intrathorasic haemorrhage and shock. The external injury in the opinion of the doctor was ante mortem in nature and was sufficient in the ordinary course of nature to cause death. It could be caused by sharp end of sword having a blade of the breadth of not more than one and a half inch within four inches of its end. The Dy. S.P. collected ether evidence in the case and eventually filed a charge sheet against Om Prakash & Liluram co-accused under Section 302/34 IPC in the court of Munsif Magistrate Sri Ganganagar. The learned Munsif Magistrate held an inquiry preparatory to committment and upon finding a prima facie case exclusively triable by the court of Sessions committed the appellant and Liluram co-accused to the court of Sessions Judge, Sri Ganganagar for trial under Sections 302 and 302 read with Section 114 IPC respectively. The learned Additional Sessions Judge, Sri Ganganagar tried the appellant and the co-accused for the aforasaid offences and convicted and sentenced the appellant alone under Section 302 IPC as stated earlier. Liluram co-accused was acquitted of the charge framed against him. Aggrieved by his conviction and sentence the appellant has preferred these appeals to this Court,

3. We have carefully perused the record and heard Mr. S.R. Singhi learned Counsel for the appellant and Mr. N S. Acharya Public Prosecutor for the State. As common question of laws & fact do arise in both these appeals and as they are directed against one and the same judgment of the Additional Sessions Judge, both of them are decided together by our one judgment.

4. Firstly it has been contended on behalf of the appellant that the oral testimonies of she so called eye-witnesses, namely, Kaluram PW 1, Mangalchand PW 2 and Sesaram PW 3 are not free from infirmities and it is highly doubtful whether these persons were present at the time when assault was made on the deceased. It was further averred that the eye witnesses were not independent witnesses as Kaluram PW 1 and Mangalchand PW 2 were closely related to the deceased while the name of Sesaram PW 3 did not find mention in the first information report made by Kaulram father of the deceased soon after the occurrence. According to the submission of the learned Counsel for the appellant, the trial Judge committed an error in placing reliance on the testimony of the witnesses in the absence of any

corroboration from some independent source. The learned Public Prosecutor on the other hand urged that the evidence of the eye witnesses clearly established the guilt of the appellant beyond reasonable doubt and the trial Judge was justified in basing conviction of the appellant on it.

5. We have carefully considered the rival contentions and scrutinized the evidence of the eye witnesses in the light of the criticism made against it by the learned Counsel for the appellant.

6. Both Kaluram and Mangalchand stated in their depositions at the trial that they heard noise of Hansraj deceased and the appellant in their 'house about 15 minutes or half an hour after the deceased had left his house along with appellant. They further stated that on hearing the noise they came out of their house and went to the house of Mohanlal Mehra which lay at a distance of about 150 paundas. There they claimed to have seen the appellant having a naked sword in his hand and Hansraj standing by his side. According to their version the appellant was asking Hansraj deceased to beat the former. Hansraj was telling that he would not beat any person including the appellant. Thereupon Kaluram and Mangalchand asked Hansraj to accompany them to their house. The deceased left the house of Mohanlal and proceeded to his house along with his father Kaluram and brother-in-law Mangalchand. The appellant followed him. In the way when the deceased had reached near his house, the appellant at the instigation of Kaluram thrust his sword into the chest of the deceased as a result of which he shrieked and fell down. The appellant and Liluram co-accused ran away from there. Kaluram PW 1 was confronted with and contradicted by portion A to B of his first information report Ex P.1 wherein he stated that Om Prakash appellant and Liluram came into his house while following? them. When confronted with this portion, Kaluram denied to have stated in his report that Liluram and Om Prakash appellant had come into his house. He was again confronted with his first information report where-in he did not state that Om Prakash had come to his house and called out Hansraj deceased and that Hansraj had gone out of his house at the call of the appellant. In this manner, Kaluram has improved upon the story narrated by him in the first information report. Mangal Chand PW 2 admitted in his cross-examination that the place where from the) had brought Hansraj

deceased at a distance of 40 or 50 'paundas' only from the house of Kaluram while Kaluram stated in his deposition that the place where the deceased and the appellant were quarrelling at a distance of 150 Paundas from his house. If the statement of Kaluram is true, it is very difficult to believe that Kaluram and Mangal Chand could hear the noise of the appellant & the deceased inside their house at 8 PM from a distance of 150 Paundas which upon calculation comes to about more than 200 yards. Hence the statement of Kaluram and Mangalchand that upon hearing a noise of the deceased and the appellant while sitting inside their house, they came out and went to the house of Mohanlal does not appear to be true. Likewise their statements that the appellant came to the house of Kaluram and called out Hansraj deceased and the deceased went away with the appellant at the latter's call are not believable, in view of the fact that Kaluram did not state in the FIR that the deceased was called out and taken away from his house by the appellant about 15 minutes or half an hour prior to the occurrence. Sesaram PW 3 also claimed to have eyewitnessed the occurrence. His evidence is that immediately prior to the occurrence he was sitting inside his house. All of a sudden he heard a noise. On hearing the noise, he came out of his house and saw Om Prakash appellant & Hansraj running from the side of Mohanlal's house. He further deposed that Kaluram and Mangalchand were also running at that time. According to his version, Om Prakash appellant thrust his sword into the chest of Hansraj near the house of Kaluram at the instigation of Liluram co-accused who had cried in an abusive language ('Khatam kardo bhan chode ko'). The evidence of this witness inspires confidence as it has not been shaken at all in cross examination. The learned counsel for the appellant could not assail the evidence of this witness on any reasonable ground. The presence of this witness cannot be doubted because his house is situated near the place of occurrence and he could be expected to be present in his house at 8 P M. Hence from his evidence it is proved beyond reasonable doubt that no other person but the appellant was responsible for causing an injury to the chest of the deceased with a sword. Even if the presence of Kaluram and Mangalchand at the spot is held to be doubtful for the reasons stated above, the evidence of Sesaram PW 3 clearly established the guilt of the appellant beyond reasonable doubt. Hence we are of the view that the learned Addl. Sessions Judge committed no error in holding that the fatal blow

was struck by the appellant on the chest of the deceased with his sword.

7. The evidence of Sesaram finds corroboration as to the presence of the injury on the chest of the deceased and the manner in which it could be caused by a sharp edged weapon from the testimony of Dr. Shri M.P. Agar-wal who conducted post mortem examination over the dead body and found an incised wound $1\frac{1}{8}$ ' x $\frac{3}{8}$ ' x chest cavity deep $3\frac{1}{2}$ ' below and medial to the left nipple (obliquely vertical) $1\frac{1}{2}$ ' lateral to the mid line) In the opinion the doctor, this injury was ante mortem and could be caused by sharp end of a sword having blade of the breadth of not more than $1\frac{1}{2}$ ' within the 4' of its end.

8. The prosecution led further evidence of recovery of sword at the instance of the appellant and in consequence of his information which he had furnished to Shri S.L. Surolia Dy S.P while in the police custody The recovery of the sword from the room of Prahlad Dhanak wherein it was lying under 'he beddings is amply proved by the evidence of Shri S.L. Surolia, Mst Reshma wife of Prahlad Dhanak and Shersingh Motbir PW 5. Likewise recovery of one pantaloons and bush shirt of the appellant from his house at his instance and in consequence of his information recorded under Section 27 of the Evidence Act is proved by the testimony of Shri S.L. Surolia Dy.SP and Shersingh Motbir The sword and the clothes were suspected to have stains of blood on them so the clothes were seized and properly sealed soon after the recoveries thereof. Later on the sword and the clothes were sent to the Police Forensic Laboratory Jaipur for analysis. The report of the Director Police Forensic Science Laboratory Jaipur is Ex P. 13. The Director found the sword and the clothes stained with blood but it is not proved by the prosecution that these articles were stained with human blood. Although these articles were sent to the Serologist for further analysis but the report of the Serologist is not on the record as it has not been produced by the prosecution. Hence, we are of the view that the recoveries of sword and the clothes of the appellant are of no value In the absence of any evidence that they were found stained with human blood.

9. Now the pertinent question that requires consideration is as to what offence has been made out against the appellant. Mr S.R. Singhi, learned Counsel for the

appellant vehemently contended before us that the crime was committed without premeditation on a sudden verbal altercation that took place between the appellant and the deceased before the injury was inflicted and as the injury was caused in the heat of passion, the offence committed by 'he appellant was culpable homicide not amounting to murder because only one injury was caused and that also by thrusting the sword which the appe-Uant had in his hand for guarding the locality from the growing manace of a habitual murderer known as Hathora-maar in Ganganagar District. In support of his above contention he jelled on the following authorities and contended on their strength that the act committed by the appellant was done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death:

- (1) Babulal v. State of Rajasthan 1976 RLW 345
- (2) Gani Mohammed v. State of Rajasthan 1970 RLW 5
- (3) Prabhoo v. Emperor AIR 1941 All 402
- (4) Hans Raj Singh v. Emperor AIR 1946 Lah 41
- (5) Harjinder Singh v. Delhi Administration : 1968 CriLJ1023
- (6) Mahindersingh and Anr. v. The State of Delhi 1975 Cr LJ 214
- (7) Chamru Budhwa v. State of M P : AIR 1954 SC652
- (8) Amrithalinga v. State of Tamil Nadu : 1976 CriLJ848
- (9) State of HP v. Wazir Chand AIR 1978 SC 315

The above contention is not without substance. There is evidence of one Mohanlal PW 6 on the record to show that a wordy quarrel ensued between the appellant & the deceased before the injury was caused by the appellant on the chest of the deceased. Mohanlal clearly stated in his deposition that when he was sitting outside his house on a cot Om Prakash, and Hansraj deceased came to his house and sat on the cot. They asked for Birees from him for smoking Thereupon

Mohanlal supplied Birees to them and both began to smoke Birees. While they were smoking Birees, Om Prakash appellant asked the deceased to bring 250, grams of wine for him Hansraj replied that he was a poor man and had no money to purchase wine for the appellant Thereupon Om Prakash appellant taunted the deceased that the latter had not supplied wine to his guests even and it was futile to expect from him that he would supply wine to the former. This led to exchange of hot words and abuses between the two Thereafter both got up and went towards the house of the deceased. It is further evident from the statement of Mohanlal Pw 6 that Om Prakash appellant used to work as a Chowkidar or guard in the Mohalla at the instance of the inhabitants thereof in those days on account of fear of habitual murderer known as Hathora-maar in Ganganagar and that he used to keep a naked sword in his hand for this purpose Sesaram PW 3 also stated in his deposition that immediately before the occurrence he had seen the deceased and the appellant running from the side of Mohanlal's house. The prosecution story that the appellant thrust the sword into the chest of the deceased at the instigation of Liluram co-accused has been disbelieved by the Additional Sessions Judge himself and Liluram co accused was acquitted of the charge framed against him Likewise the earliest version of the father of the deceased in the FIR that the appellant came to his house and called out Hansraj and Hansraj went away with the appellant at the latter's call and that after about 15 minutes or half an hour the appellant came into the house of Kaluram and thrust the sword into the chest of the deceased is held by us to be unworthy of credence. It appears from the facts and circumstances established on the record that the quarrel arose all of a sudden between the deceased and the appellant and that as a result of verbal altercation between the two. the appellant in a heat of passion, inflicted the injury on the chest of the deceased with a sword which he had in his hand for the purpose of guarding the mohalla against the growing menace of the babitual murderer known as 'Hathora-maar' in those days. It is borne out from the record that the appellant had no previous enmity, ill will or grudge against the deceased No motive has been ascribed to the appellant for the commission of the murder of Hansraj Kaluram, father of the deceased, clearly admitted in his deposition that there was no quarrel or enmity between the appellant and the deceased prior to the occurrence and that he could not say why fatal blow was

struck by the appellant on the chest of his son Hansraj. Hence no higher intention could be imputed to the appellant than to cause an injury which was likely to cause death. The prosecution could not prove beyond reasonable doubt that the offence committed by the appellant fell within the purview of murder. In the circumstances established on the record it can safely be held that the crime was committed without premeditation in a sudden fight upon a sudden quarrel in the heat of passion. Only one injury was caused by the appellant with his sword and that also was a thrust blow. The appellant has not taken any undue advantage or acted in a cruel or unusual manner. The act appears to have been done with the intention to cause such bodily injury as was likely to cause death

10. We accordingly allow the appeal in part and alter the conviction of the appellant from offence under Section 302 IPC to one under Section 304 part I, IPC and reduce the sentence to eight years rigorous imprisonment. Further the period of detention undergone by the appellant during the investigation, inquiry or trial of this case before the date of his conviction shall be set off against the term of eight years rigorous imprisonment imposed on him under Section 304 part I IP 1 The appellant is in jail. He shall serve out the sentence imposed on him by this Court.