

Mohd. Rizwan Vs State

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Court : Delhi

Decided On : Aug-10-2010

Judge : MR. Badar Durrez Ahamed, J.

Appeal No. : CRL.A. 215/1997

Appellant : Mohd. Rizwan

Respondent : State

Advocate for Def. : Ms. Richa Kapoor, Adv.

Advocate for Pet/Ap. : Mr. P.K. Srivastava , Mr. P.N. Bhan, Adv.

Judgement :

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

1. This appeal is directed against the judgment dated 29th March, 1997 and Order on Sentence dated 27th March, 1997, whereby the appellants were convicted under Section of the Indian Penal Code, read with Section 34 thereof, and were sentenced to life imprisonment and to pay a fine of Rs.5000/- each or to undergo RI for 6 months each in default.

2. The case of the prosecution is that at about 10.30 PM on 15.05.1990, the complainant Mukesh Kumar, PW-2 Ajay Kumar and deceased Ravinder were returning from Block No. 27 of Trilokpuri after purchasing sweets. When they were a little away from the shop of Kaddus, the appellants Mohd. Jalil alias Kale and Mohd Rizwan met them. On seeing deceased Ravinder, Kale told Mohd Rizwan that he was their old enemy, who had stabbed him five six months ago, and therefore should be done away with. Soon thereafter, Mohd Rizwan caught hold of Ravinder, whereas Kale took out a sharp edged weapon which looked like a razor blade, (an ustra) and hit Ravinder on his neck, as a result of which he received a very deep injury and blood started oozing out with great force. He along with Ajay lifted Ravinder and brought him to Block No. 28 where marriage of the daughter of Vijay Pal was being solemnized. Kale and Mohd. Rizwan, who were previously known to him, fled from the place of occurrence, whereas Ravinder was taken to hospital by his brother and father in a three wheeler scooter. Deceased Ravinder later succumbed to the injuries sustained by him.

3. The prosecution examined 23 witnesses in support of its case. No witness was examined in defence. The case of the prosecution rests primarily on the ocular evidence in the form of testimony of PW-1 Mukesh Kumar and PW-2 Ajay, besides circumstantial evidence comprising seizure of bloodstained clothes of the appellants and recovery of weapon of offence pursuant to the disclosure statement made by the appellant Kale. Ocular Evidence

4. PW-1 Mukesh Kumar and PW-2 Ajay Kumar claim to be witnesses of this incident. Mukesh Kumar stated that on 15.05.1990, when they were returning from Block No. 28, Trilokpuri after purchase of Burfi by Ravinder, and came just in front of shop of Kaddus at 10.30 P.M., accused Kale and Rizwan were present there. Rizwan caught hold of Ravinder, whereas Kale gave blow with a sharp edged thing, on the right side below the ear of Ravinder. He identified both the appellants in Court and further stated that about six months before this incident, Ravinder had stabbed Kale, who, for this reason, was harboring a grudge against him. He also claimed that he and Ajay lifted Ravinder and took him to the place where marriage of Vijay Pals daughter was being solemnized. Ravi, elder brother of Ravinder, and his father Tara Chand removed Ravinder in a three wheeler scooter to a Nursing

Home. He also claimed that on 16.05.1990 both the accused were arrested in his presence from near the bus stand near block No. 13 of Trilokpuri and were interrogated. The kurta of Rizwan which was found to be stained with blood was removed on the spot and was seized by the police. Similarly, shirt of the appellant Kale was also got removed and seized by the police.

5. During cross-examination by learned Addl. Public Prosecutor he admitted that the accused had taken out a sharp shining ustra which he had used for stabbing Ravinder. He also admitted that the kurta of Rizwan and the shirt of accused Kale were the same which they were wearing at the time of the incident. He further admitted that during investigation the accused Kale had made a disclosure statement that the razor was thrown by him in the safeda (Eucalyptus) trees near bus stand of block No. 13, Trilokpuri and thereafter he had taken them to trees near bus stand of block No. 13, Trilokpuri and got recovered the razor from there, under the leaves lying there.

6. PW-2 Ajay Kumar stated that on 15.03.1990 a tent was put up near their house on account of marriage of the daughter of Vijay Pal, whose house was situated in front of their house. When they reached near the shop of Kaddus at 10.45 P.M., both the accused were present there. Accused Jalil alias Kale, on seeing them, told his co-accused Mohd. Rizwan that Ravinder had beaten him and since he had met them they should settle score with him. Rizwan thereupon caught hold of Ravinder from behind, whereas Kale attacked him with a blade (ustra) and injured him on the right side of his neck. He and Mukesh took Ravinder to his house, wherefrom his father Tara Chand and his brother took him to the hospital.

7. PW-21 Ravi is the brother of the deceased. He stated that on 15.05.1990 his brother deceased Ravinder had gone to attend a marriage in the neighborhood. They received an information that his brother had been stabbed. He and his father came in the street and saw his brother Ravinder lying in injured condition, about 20-25 paces away from their house, and took him to a Nursing Home, in an auto rickshaw. From the Nursing Home, he was taken to Irwin Hospital. Since his shirt had got stained with blood, it was seized by the police. The deposition of PW-21 has been corroborated by his father PW-22, Tara Chand who stated that he, along

with his son, took Ravinder to a clinic in Mayur Vihar and from there to Irwin Hospital. His son was taken to Operation Theatre, but, about 2-3 minutes after, they were told that he was dead. The case of the appellants

8. In their statements under section 313 of Cr.PC the appellants denied all the allegations against them and claimed that they were innocent. The appellants claimed that riots had taken place between Hindus and Muslims and the deceased had died in those riots.

9. The learned counsel for the appellants has pointed out a number of material contradictions in the testimony of PW-1 Mukesh Kumar and PW-2 Ajay Kumar who are the only eye-witnesses in this case. The case of the prosecution, as set out in the FIR, is that when these two witnesses, who were accompanying the deceased Ravinder, met the appellants, the appellant Kale, on seeing the deceased Ravinder, told the appellant Rizwan that he was their old enemy, who had stabbed him about five six months ago and, therefore, should be done away with. In his examination-in-chief the complainant Mukesh Kumar maintained that the accused persons did not utter a word before Rizwan caught hold of the deceased and Kale gave a blow to him using a sharp edged thing for this purpose, though he did say that about six months before this occurrence Ravinder had stabbed the appellant Kale, who, for this reason, harbored a grudge against the deceased. Even during cross-examination by the learned Addl. Public Prosecutor he denied having told the police that on seeing Ravinder the appellant Kale had exhorted Rizwan saying that he was their old enemy and should be done away with. He then stated that in fact these words were used by the appellant Rizwan and were addressed to Kale. On the other hand PW 2 Ajay Kumar stated that on seeing them the appellant Kale told Rizwan that Ravinder had beaten him and therefore they should settle score with him. It was also pointed out that according to PW 1 Mukesh Kumar, they had taken the deceased Ravinder to the marriage pandal whereas according to PW 2 Ajay Kumar they had laid him on the street. It was also pointed out that according to PW 1 Mukesh Kumar they had accompanied the deceased to the Nursing Home where he was taken for treatment, whereas PW 21 Ravi, brother of the deceased, and PW 22, father of the deceased, have denied this. The contradiction as to who had exhorted whom,

cannot be said to be insignificant or on a peripheral issue unrelated to the main incident and pertains the core part of their testimony. Admittedly, deceased Ravinder was facing trial for stabbing the appellant Kale and not for stabbing the appellant Rizwan, as is evident from the copy of the FIR No.26/90 (a copy of which is available on record) lodged by the appellant Kale alias Jalil at PS Trilokpuri, on 13th January, 1990 and the statement of IO.

10. Even if the contradictions pointed out by the learned counsel for the appellant are excluded from consideration, the conduct of these witnesses casts a very serious doubt on their presence at the time of incident. Both of them claim to be companions of the deceased and were attending a marriage with him on that day. In the ordinary course of human conduct, if a person is fatally stabbed in the company of his friends, their first step would be to either take him to a hospital or to inform his family members, in case they happen to be residing nearby, so that they may take the deceased to the hospital. It needs to be kept in mind that, according to PW 1 and PW 2, deceased Ravinder did not die on the spot and had travelled for some distance with the support provided by them to him. Therefore, their first reaction should have been to ensure that he gets medical aid, at the earliest. Admittedly, the house of the deceased is situated very close to the place where the incident took place. Therefore, in the ordinary course of human conduct, either PW 1 and PW 2 would have taken him to hospital or they would have gone to his house and informed his family members about the incident. Neither of these courses was however, adopted by these witnesses, which indicates that in fact they had not witnessed the incident and this is why they claimed to have acted in a manner which cannot be said to be natural.

11. According to the complainant, he and PW 2 Ajay Kumar lifted Ravinder and took him to the place, where they later left him. Since the deceased admittedly was profusely bleeding on account of stabbing injuries given to him, the blood must necessarily have come on the clothes of these witnesses in the process of giving support to the deceased. In his cross-examination PW 1 stated that his clothes as well as clothes of Ajay Kumar had got stained with blood when they lifted the deceased and carried him from the spot of occurrence. He further stated that the police had seen blood stains on their clothes. He also stated that police

had arrived after about half an hour of the occurrence and when he was called from his house on arrival of the police, he as well as Ajay Kumar were wearing those very bloodstained clothes. He also stated that the police did not seize their bloodstained clothes.

We find it very difficult to accept this part of the deposition of the witnesses. Had the police seen bloodstains on the clothes of these witnesses, who claim to be eye- witnesses of the stabbing, their bloodstained clothes would definitely have been seized. No police officer will be so incompetent as not to seize the bloodstained clothes of the eye witnesses of a murder, even after seeing them wearing those very clothes. This is more so when admittedly, the police officer was vigilant enough to seize clothes of brother of the deceased, who had simply taken him to the hospital and had not witnessed the incident of stabbing. We, therefore, find it difficult to believe that these witnesses had given support to the deceased in taking him up to the place where he was left by them, which, in turn, indicates that they did not witness the incident of stabbing.

12. The case of the prosecution is that deceased was accompanied by two persons, namely, Mukesh Kumar and Ajay Kumar, whereas the appellants were only two persons. Despite that, no attempt was made by either of them to save the deceased from the appellants. It is true that mere failure of the witness to make an attempt to save the deceased does not by itself show that he had not witnessed the incident. We can understand a witness not trying to save the victim if he is alone or the number of the assailants is quite large or the incident happens at a secluded place or in a closed place like a house, where he cannot expect immediate help in case there is any risk to his own life on account of intervention made by him. We can also understand if a witness does try to intervene but is intimidated by the accused and, therefore, retreats, in order to save his own life. But, in the facts and circumstances of this case, where as many as three young boys were confronted by two boys and the incident took place at a place where a number of shops were still open at that time as admitted by PW 1, we find it difficult to accept that had these witnesses been present at the time of incident they would not even have made an attempt to save the deceased. These witnesses do not even claim that they had tried to shield the deceased, but were

threatened by the appellants and, therefore, could do nothing to help him.

13. As noted earlier, according to PW 1 Mukesh Kumar they had taken the deceased to the pandal where the marriage of the daughter of Vijay Pal was being solemnized. No reason has been assigned by the witness for taking the deceased to the marriage pandal instead of taking him to a hospital. No medical aid could have been available to the deceased in the marriage pandal. Hence, we are unable to accept the deposition of PW 1 Mukesh Kumar in this regard which in turn indicates that he had not witnessed the incident and that is why he claimed that the deceased was taken to the marriage pandal. It would be worthwhile to note here that according to the brother and father of the deceased they had found him lying on the street. They did not claim to have found him in the marriage pandal. They have, thus, contradicted the testimony of the complainant in this regard, thereby creating a serious doubt on his credibility and trustworthiness as a witness. As noted earlier, according to PW 2 Ajay Kumar they had laid down the injured in the street in front of his house, though in cross-examination he stated that they had laid him near his house and not in front of his house. He also claims that from the place where they had laid the injured in the street, they went to the police station where they remained for about half an hour. However, this is nowhere the case of the prosecution that the PW 1 and/or PW-2 had come to the police station soon after this incident. In fact, in the second paragraph of his cross-examination, PW-2 contradicted himself by saying that he and Mukesh Kumar did not go to the police post to inform the police and kept standing at the place where the injured was lying, till the time he was removed to the hospital. According to him, for 10-15 minutes they stayed at the spot, where the injured was lying in the street, and then they moved to the pandal. Thus, he contradicts the earlier part of his deposition when he stated that they had gone to police station, whereas they left the injured in the street. Even otherwise, it would be very unnatural on the part of these witnesses to attend the marriage while leaving their fatally injured friend on the street. In the ordinary course of human conduct, no one is likely to behave in this manner.

14. Since PW-1 and PW-2 claim to be friends of the deceased, who were accompanying him when this incident took place, it would be absolutely an

unnatural behaviour on their part to leave him in the street near his house instead of either waiting for his family members or themselves taking him to a hospital.

15. In his cross-examination, PW-1 Mukesh stated that after leaving the injured Ravinder at the place where the marriage was taking place, he had gone to his house to change his clothes and had then immediately returned to the place where Ravinder was stabbed. He thus contradicts his own statement that he and Ajay were still wearing the same bloodstained clothes when he was called by the police from his house, after arrival of police. He also stated that he was taken to police station from his house next day in the morning and it was in the morning that his statement was recorded by the police. If this is so, that would mean that the FIR, which is shown to have been recorded at about 12.45 am in the night, was ante-timed by the police. In fact, according to PW-2 Ajay also, his statement was recorded in the police station next day in the morning.

16. In his cross-examination, PW-1 Mukesh stated that he had not accompanied Ravinder either to Nursing Home or to the hospital. On the other hand, PW-22 Tara Chand, father of the deceased, stated that he had accompanied them to a clinic in Mayur Vihar, Phase-I.

17. According to PW-2 Ajay Kumar, the deceased whom they had taken to the marriage pandal, remained there for 20- 25 minutes. This is contradictory to the deposition of PW-21 Ravi, brother of the deceased and PW-22 Tara Chand, father of the deceased, who claimed that the deceased was found lying in the street in the injured condition. Had the deceased been taken to marriage pandal, as claimed by PW-2 and had he remained there for 20-25 minutes before he was taken to doctors, bloodstains were bound to have come in the pandal since according to the witnesses, blood was oozing out profusely when he was shifted by them from the place where he was stabbed. However, no blood was seized from the pandal though it was seized from the place of occurrence vide Ex.PW-1/B. Recovery of Weapon of Offence

18. PW-10 Inspector Tej Pal Singh stated that on 15.05.1990, the accused Mohd. Jalil pointed out near Safeda (Eucalyptus) trees in block No. 13 of Trilokpuri and got recovered from there a razor Ex.P/6 which was seized by them . The testimony

of PW-10 has been corroborated in this regard by PW-11 Inspector Jeet Singh who stated that the razor Ex.P/6 was got recovered by the accused Mohd. Jalil and was seized by them.

19. PW-23 Dr. Vishnu Kumar conducted post-mortem on the dead body of the deceased and found the following injuries on his person:-

"1. Deep i/w 10x4.5 cms. on the right front and outer surface of neck running obliquely from above downwards from the angle of mandible to big line and just across it to its left at the level of the lower border of cricoids cartilage, lower ad being 146 cms. above heel underneath wound was cutting neck muscles, thyroid cartage body on its right side obliquely, cricoids throng at the level of upper border of thyroid cartage rice thyroid membrane had caused communication with the laryngeal area in the troches(wind pipe). Plenty of blood effusing in neck tissues as well as around was present.

2. Multiple fall abrasions in an area of 5x3.5 cms. on the back of right fore arm in upper part just below elbow was present."

20. In his cross-examination, PW-11 Ajit Singh stated that after making disclosure statements, the appellants took the police party to the jungle in front of Block-13, Trilokpuri on 16th May, 1990, but recovery of razor could not be effected on that day. He further stated that the accused then again took the police party to the same jungle on 19th May, 1990 and on that day, the appellant Mohd. Jalil alias Kale took out the weapon from near Eucalyptus trees under some dry grass. He also admitted that the accused remained in police custody from 16th May to 19th May, 1990 and during this period, he kept on interrogating them.

21. We find it difficult to believe that the appellant, despite having disclosed to the police on 16th May, 1990 itself that the razor had been concealed near Eucalyptus trees in the jungle in front of Block 13 of Trilokpuri, did not take it out or get it recovered on that day, but got it recovered after three days on 19th May, 1990. Since they had already disclosed the place where the weapon had been concealed to the police and the weapon is alleged to have been recovered later from that very place, there could have been no reason for the appellant Kale not to

take it out on 16th May, 1990 and then decide to take it out on 19th May, 1990. The Investigating Officer has not told the Court as to why he did not make an attempt to search the weapon of offence on 17th and 18th May, 1990. According to the PW-23, the razor was sent to him by police for obtaining opinion as to whether injuries to the deceased could have been caused by that weapon and vide opinion Ex.PW-23/A, he was of the view that the injury on the body of the deceased could be caused by that weapon. However, since we are not inclined to believe the alleged recovery of the razor, the opinion of PW-3 does not, in any manner, connect the appellants with the murder of the deceased. Recovery of bloodstained clothes

22. The case of the prosecution is that at the time of arrest of the appellants on 16th May, 1990, the appellant Mohd. Rizwan was wearing a kurta which was found stained with blood, whereas the appellant Jalil alias Kale was found wearing a bloodstained shirt and both the clothes were seized by them. This is also the case of the prosecution that the appellants were arrested and the bloodstained clothes were seized in the presence of PW-1 Mukesh and PW-2 Ajay. However, PW-2 Ajay stated in his cross-examination that after arrest of the appellants and before taking them to police station, the police party took them to their house, from where their clothes were brought and in the police station, the appellants were directed to remove their clothes and wear those clothes which the police had brought from their house. This witness, therefore, contradicts the case of the prosecution that the appellants were wearing bloodstained clothes when they were arrested from near the bus stand on 16th May, 1990.

23. A perusal of the report of CFSL Ex.PW-11/E would show that blood of Group A was found on the shirt alleged to have been recovered from the appellant Mohd. Jalil alias Kale, whereas blood of Group O was found on the kurta which according to the prosecution the appellant Mohd. Rizwan was wearing at the time of his arrest. No blood of Group A was found on that kurta. There is no explanation from the prosecution as to how blood of Group O was found on the kurta of the appellant Mohd. Rizwan. This is not the case of the prosecution that blood group of appellant Mohd. Rizwan was O. More importantly, this is not the case of the prosecution that the appellant Mohd. Rizwan was found injured or was having a

wound at the time he was arrested and, therefore, the blood of Group O could be his own blood.

24. Even otherwise, we find it difficult to accept that the person, who commits a murder, will be wearing a bloodstained cloth at a public place near a bus stand and that too the cloth which he was wearing at the time of commission of offence. Considering the normal course of human conduct, the attempt of the offender would be to either wash his bloodstained clothes or to destroy them at the very first opportunity, since he knows it very well that in the event he of his being caught wearing a bloodstained cloth, he will have to explain the presence of blood on his clothes and the recovery of a bloodstained clothes from him would become a strong piece of evidence against him. This is not the case of the prosecution that the appellants were on the run before they were arrested and, therefore, did not have an opportunity to destroy the bloodstained clothes which they were wearing at the time of commission of offence by them. According to PW-10, the appellants were arrested at 09.00 pm on 16th May, 1990. Hence, they had more than ample time available to them, not only to change the clothes, but also to wash them, in case there were any bloodstains on them. In fact, if PW-2 is to be believed, they had been to their respective houses and the clothes seized by the police were recovered from their house. If the appellants had the opportunity to go to their house, they would have washed the bloodstained cloths, instead of preserving them and that too in their own house. This is more so, when the accused knew that, murder committed by them, was witnessed by two persons, who were known to them and, therefore, were likely to inform the police about their involvement in the murder. We, therefore, find it difficult to believe the alleged recovery of bloodstained clothes from the appellants.

25. Taking into consideration the facts and circumstances of the case, including the fact that the deceased Ravinder was facing trial for causing injuries to the appellant Mohd. Jalil alias Kale, the possibility of PW-1 and PW-2 having not witnessed the incident of murder and the appellants, having been implicated only on account of suspicion arising from the fact that deceased Ravinder had earlier caused injuries to the appellant Mohd. Jalil alias Kale, cannot be altogether ruled out in the facts and circumstances of this case, though it cannot be disputed that

this very factor could also have been the cause for the murder of the deceased by the appellant Kale. For the reasons given in the preceding paragraphs, the appeals are allowed. The appellants are given benefit of doubt and are, hereby, acquitted. Their Bail Bonds stand discharged.

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