

**Sonu Arora Vs State**

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**Court :** Delhi

**Decided On :** Jul-21-2010

**Judge :** Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

**Acts :** Indian Penal Code (IPC) - Sections 302 ; Code Of Criminal Procedure (Cr.Pc) - Sections 161

**Appeal No. :** Cri.A. 241/1997

**Appellant :** Sonu Arora

**Respondent :** State

**Advocate for Def. :** Mr Lovkesh Sawhney, Adv.

**Advocate for Pet/Ap. :** Ms Rebecca John, 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

**ORDER**

1. This appeal is directed against the judgment dated 29th April 1997 and Order on Sentence dated 30th April 1997, whereby the appellant was convicted under

Section 302 of IPC read with Section thereof, for committing murder of one Zaheer.

2. In the night intervening 18th/19th October 1993, Police Control Room informed Police Post Sangam Vihar that two boys had been stabbed at Ratia Marg, Sangam Vihar, Gali No. 17. On receipt of this information, SI Rai Singh went to the spot, where one dead body with stab wounds was found lying. On enquiry, the name of the deceased was found to be Nizam. He came to know that the other person, injured in the same incident, had been taken to the hospital by PCR Van. When SI Rai Singh reached AIIMS, he came to know that the other injured namely Zaheer had been brought dead to the hospital. No eye-witness met him either in the hospital or on the spot. He, thereafter made an endorsement on the copy of DD No. 38 vide which the information received from the Police Control Room was recorded at the Police Station, and got the FIR registered.

3. The case of the prosecution, in brief, is that one Lalu Prasad Yadav owed some money to Mahmood, co-accused of the appellant. In the night of 18th October 1993, when Lalu Prasad Yadav was passing along with his companion Manoj from in front of Raj Karan Paan Bhandar of Ratia Marg, Mahmood met him along with his three companions namely, Nanhey, Kamal and the appellant Sonu, who were previously known to him. Mahmood demanded money, which Lalu Prasad owed to him. Since Lalu Prasad did not have money with him, Mahmood asked him to serve paan (betel leaf) to all of them. Since Lalu Prasad did not have money with him, he declined to serve paan to them, whereupon they started beating him. Seeing this, his companion Manoj called Zaheer and his other friends. Seeing the friends of Lalu Prasad coming, Mahmood and his companions ran away from the spot, but the appellant Sonu was apprehended by Lalu Prasad and his companions, who started beating him. Seeing this, Mahmood, Nanhey and Kamal returned to the spot. Mahmood caught Zaheer, whereas Nanhey caught Nizam. Kamal gave knife blow on the chest of Zaheer whereas Sonu gave two knife blows to Nizam. Both the injured fell on the spot.

4. The prosecution examined 17 witnesses in support of its case. No witness was examined in defence. One Raj Karan was examined as a Court witness. The case

against the appellant rests solely upon the testimony of two eye witnesses namely Lalu Prasad Yadav and Manoj Kumar, there being no circumstantial evidence to connect him with the commission of crimes.

5. Lalu Prasad Yadav came in the witness box as PW-2 and stated that in the night of 18th October 1993 at about 11.00 PM, he along with his friend Manoj, came out of his quarter and went to the paan shop, where Mahmood, to whom he owed Rs.10/-, met him. Mahmood, who was accompanied by three other persons, including the appellant Sonu, asked him to serve paan to them. He, however, could not serve paan to them, since he did not have money. Those persons then started beating him. Seeing this, Manoj called Zaheer, whereupon all of them, except Sonu, ran away. He further stated that they started beating Sonu. Seeing Sonu being beaten, Mahmood, Kamal and Munna alias Nanhey returned to the spot. Mahmood caught Zaheer, whereas Nizam was caught by Munna alias Nanhey. According to him, appellant Sonu then stabbed Zaheer. Nizam died on the spot, whereas Zaheer was taken to hospital by PCR Van. He further stated that both the assailants ran away, whereas he went to hospital with Zaheer, who died on the way to the hospital. He returned to the spot in PCR Van. This witness was cross-examined by the learned Addl. PP and during cross-examination, he denied that Kamal also had stabbed Zaheer. He maintained that Mahmood had held Zaheer when he was stabbed by Sonu.

6. PW-3 Manoj Kumar, whom the prosecution claimed to be the other eye witness to the incident, stated that in the night of 18th October 1993, he had accompanied Lalu Prasad to the paan shop, at about 11.00 PM. He further stated that 3-4 boys, who were present at paan shop, asked Lalu to serve paan to them. When Lalu declined saying that he had no money, those boys started beating him. He then went to Nizam and Zaheer, friends of Lalu, and called them. He further stated that when the quarrel intensified, being scared, he ran away from the spot and went to Okhla. He thus does not prove any charge against the appellant.

7. PW-11 Inspector Rai Singh is the police officer, who went to the spot in the night of 18th October 1993. He stated that when he reached the spot, one dead body was found lying there. He was informed that other injured had been taken to

hospital at PCR Van. No eye-witness met him on the spot. Leaving a Constable on the spot, he went to AIIMS, where Nizam was found brought dead. No eye-witness met him in the hospital. He made an endorsement on the copy of DD and got the FIR registered. He then returned to the spot along with Inspector Raghbir Singh, who had reached the hospital in the meanwhile.

8. PW-17 Inspector Raghbir Singh is the Investigating Officer of this case. He has stated that after returning to spot along with SI Rai Singh, he prepared the site plan at the instance of Lalu Prasad. During cross-examination, he stated that Lalu Prasad, who had first gone to the hospital and then returned to the spot from there, met them at the site of crime at about 1.30 A.M. He also stated that the statement of Lalu Prasad was recorded next day, at about 5.30 PM.

9. In his statement under Section 313 Cr.P.C. the appellant denied all the allegations against him. He also denied having met Lalu Prasad and having been beaten by him and his associates.

10. CW-1 Raj Karan has stated that he had a paan shop in Gali No. 16 Sangam Vihar, which was closed for two days. He later came to know that there was stabbing and murder at that place and the shop was opened after eight days.

11. In his statement under Section 161 Cr.P.C., Shri Lalu Prasad claimed that Mahmood had held deceased Zaheer and knife blow to him was given by Kamal. When he came in the witness box, Lalu Prasad stated that it was the appellant Sonu who had stabbed deceased Zaheer. Even during cross-examination by the learned Additional PP he maintained that it was the appellant who had stabbed Zaheer. Thus, there is contradiction in the statement given by him under Section 161 Cr.P.C. and his deposition in the court as to who had stabbed deceased Zaheer. In his Statement under Section 161 Cr.P.C. Lalu Prasad stated that Naneh had held Nizam whereas it was the appellant Sonu who had stabbed him, but, when he came in the witness box, Lalu Prasad stated that it was Kamal who had stabbed deceased Nizam. Thus, there is contradiction in his statement under Section 161 Cr.P.C. and his deposition in the Court also as to who had stabbed deceased Nizam. If the discrepancies found in the testimony of a witness are normal and attributable to loss of memory with the passage of time or they are on

matters which are peripheral or trivial, not forming the core of the case, his testimony cannot be rejected on account of such minor variations or infirmities. But, where the contradiction relates to the main incident forming core part of his testimony, that could depending upon the nature of the contradiction and other facts and circumstances of the case, seriously affect the credibility and truthfulness of the witness since he is not expected to give contradictory version with respect to the important material parts of the incident which he claims to have witnessed.

12. In his cross-examination, Lalu Prasad stated that he had put Zaheer in PCR van and bloodstains had come on his shirt. He also stated that the bloodstains were shown by him to the police but his clothes were not seized by the police. There is no explanation for not seizing the bloodstained clothes of Lalu Prasad despite his having shown them to the police. The failure of the Investigating Officer to seize the clothes of Lalu Prasad is an indication that, in fact, he had not witnessed the actual stabbing and had not put Zaheer in PCR van, as claimed by him. Had he done so, the Investigating Officer would definitely have seized his bloodstained shirt. It would also be pertinent to note here that though Lalu Prasad claims to be a friend of deceased Zaheer and also claims to have accompanied him to AIIMS in PCR van, his name does not find mention in the MLC of the deceased against the name of relative/friend and it is name of HC Virender Singh which has been shown against the relative/friend column of the MLC. If Lalu Prasad had accompanied deceased Zaheer to the hospital, as claimed by him, his name and not the name of the police official would have been recorded against the column of relative or friend of the injured brought to the hospital. These facts and circumstances lead to a strong inference that either Lalu Prasad had not witnessed this incident at all or he had left when the quarrel intensified and that is why, he did not meet the police officer either on the spot or in the hospital and his shirt was not seized by the police.

Also, had Lalu Prasad witnessed the stabbing of Zaheer and Nizam, there would have been no contradiction, in the statement given by him to the police on the one hand, and his deposition during trial on the other hand, with respect to the core part of his testimony i.e. who had stabbed Zaheer and who had stabbed Nizam.

13. In his deposition Lalu Prasad stated that Raj Karan, Paanwala, was present at his shop and he must have witnessed the incident. The Investigating Officer did not examine Raj Karan, despite the claim made by Lalu Prasad about his having witnessed the incident. When Raj Karan was examined by the court, he contradicted Lalu Prasad by saying that his shop was closed on that day, since he had an ulcer in his body. He was also emphatic that no one else had opened his shop in his absence.

14. There is no MLC or any medical examination of Lalu Prasad though he claims to have been beaten during the incident. It is quite strange that despite the fact that the dispute had arisen between Lalu Prasad and Mahmood, no physical injury was caused to him while giving fatal knife blows to his friends Zaheer and Nizam, who had come to the spot only to save him from Mahmood, Sonu, Kamal and Munna @ Nanhey. In fact, Lalu Prasad should have been their first target when they returned to the spot, seeing their friend Sonu being beaten by them. Therefore, absence of any physical injury on the person of Lalu Prasad is yet another indication that he had fled from the spot before Zaheer and Nizam were stabbed and that is why no physical injury was found on his person.

15. The case of the prosecution is that the appellant Sonu was beaten by Lalu Prasad and his companions and seeing Sonu being beaten, his friends Mahmood, Kamal and Nanhey had returned to the spot. It is also the case of the prosecution that at that stage the appellant Sonu took out the knife which he was carrying with him and stabbed deceased Nizam. If the appellant was carrying a knife with him, he would have used it, when he was being beaten, so as to save himself from further beating. But, admittedly, knife was not even taken out by the appellant Sonu while he was being beaten. Once Mahmood, Kamal and Nanhey @ Munna @ Anis had joined him, there was no occasion for him to take out knife, since being four in number, they were in a position to out power deceased Zaheer and Nizam. It is difficult to accept that a person despite having a knife with him would not use it when he is being beaten but would choose to use it when he has already received help in the form of his friends who came to his rescue. Therefore, it is difficult to accept the version of stabbing given by Lalu Prasad.

16. Ex.PW-17/C are the brief facts prepared by the Investigating Officer on 20th October, 1993. The case of the prosecution is that the statement of Lalu Prasad was recorded at 5.30 pm on 19th October, 1993, meaning thereby that these brief facts were prepared after the statement of Lalu Prasad had been recorded. In the brief facts prepared by him, the Investigating Officer did not attribute any stabbing to the appellant Sonu. The facts recorded by the Investigating Officer, to the extent they are relevant, are as under: "Finding no one there, associates of Lalu Prasad Yadav came back but deceased Zaheer and M.Nizam kept their presence at Ratiya Marg, near Gali No. 16,

17, Sangam Vihar, the accused persons Mahmood and Anis who were concealing into lanes were joined by their associates Kamal and Sonu. The accused sent their associate Sonu to find out as to what Zaheer and Nizam are planning. Zaheer and Nizam caught Sonu and started beating him. Finding that their associate is being beaten, accused persons Mahmood, Anis and Kamal came out of lanes and attacked on Zaheer and Nizam with knives and caused their death."

If Lalu Prasad had witnessed the stabbing and his statement has been recorded by 5.30 pm on 19th October, 1993, there was no reason for the Investigating Officer not to mention this, being one of the most material facts of the case, in the note prepared by him. In his note, the Investigating Officer gave a detailed version of the incident that took place in the night intervening 18/19th October, 1993. Despite that, there is no mention of the appellant Sonu having given knife blow to deceased Zaheer or to deceased Nizam. In fact, the way the incident has been narrated in the brief facts prepared by the Investigating Officer, it appears that Lalu Prasad had come back from the spot and only Zaheer and Nizam remained present at Ratia Marg, Near Gali Nos.16 & 17 and thereafter the accused persons sent the appellant Sonu to ascertain what Zaheer and Nizam were planning and it was at that time that Zaheer and Nizam caught Sonu and started beating him. The Investigating Officer specifically records that Mahmood, Anis and Kamal came out of lanes in which they were concealing themselves and attacked Zaheer and Nizam with knives and caused their death. Thus, he clearly imputed the murder of Nizam and Zaheer only to Mahmood, Anis and Kamal, and did not say a word about any role having been played by the appellant Sonu in their murder.

Therefore, the brief facts recorded by the Investigating Officer on 20th October, 1993 totally demolish the version given by Lalu Prasad, as far as the appellant Sonu is concerned.

17. In *Balaka Singh & Others v. The State of Punjab*: AIR 1975 SC 1962, in the brief facts attached to the Inquest Report, the names of the accused Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh were mentioned. Also, there was no reference at all to the accused Makhan Singh, Sucha Singh, Teja Singh and Inder Singh. It was not mentioned in the report that accused Teja Singh and Inder Singh had incited or exhorted the other accused persons, which the case of the prosecution was. There was no reasonable explanation for this important omission in the inquest report. The High Court, in these circumstances, held that omission of the name of four accused, namely, Makhan Singh, Sucha Singh, Teja Singh and Inder Singh, who were acquitted by it, was a very important circumstance which went in favour of the accused. The view taken by the High Court was upheld by the Supreme Court which felt that the omission, in the first place, threw doubt on the complicity of the aforesaid four accused and, secondly, it also casts serious doubt on the veracity and authenticity of the FIR itself. The Supreme Court found no justification for not mentioning their names in the inquest report despite the claim of the prosecution that they had taken an active part in the assault on the deceased.

In the present case also there is no explanation for the absence of any role to the appellant Sonu in the brief facts prepared by the IO despite the case of the prosecution that the statement of the eye-witness Lalu Prasad had been recorded before the brief facts were prepared.

18. According to the Investigating Officer, though Lalu Prasad had met him on the spot at about 1.30 am and he had also obtained signatures of the witness on the memos prepared on the spot, his statement under Section 161 Cr.P.C. was recorded by him only at 5.30 pm. There is absolutely no explanation from the prosecution for this abnormal delay in recording the statement of Lalu Prasad.

Ex.PW-17/A is the site plan stated to have been prepared by the IO in the night of 18/19 October, 1993 at the instance of Lalu Prasad. The site plan indicates Point

G as the place where Lalu Prasad had fight with accused persons and was beaten in front of Paan shop of Raj Karan by Mahmood and Anis @ Munna @ Nanhey. It has also been noted in the plan that Lalu Prasad and Raj Karan saw the incident from the rear point G. These notings on the site plan show that the Investigating Officer had already examined Lalu Prasad in respect of the incident in question. Without questioning him, the Investigating Officer could not have known the point where Lalu Prasad had fight with the accused persons and was beaten in front of the Paan shop of Raj Karan. Similarly, without talking to him the Investigating Officer could not have known the place from where he had seen the incident taking place. No explanation, however, has been given by the prosecution for recording the statement of Lalu Prasad at 5.30 pm, i.e., after a gap of about 16 hours from the time he met the Investigating Officer. The unexplained delay in recording the statement of Lalu Prasad needs to be viewed in the light of the fact that he did not meet the police officer, SI Raj Singh, either on the spot when he reached there on receipt of information from Police Control Room or in the hospital, despite his claim that he had accompanied PCR officials to the hospital in their van and had returned to spot with them in the same van and no official on duty in PCR van has been produced to prove that Lalu Prasad had met them on the spot, had accompanied them to AIIMS and then returned to spot with them in their van. The delay also needs to be viewed in the light of the fact that there is material contradiction in the statement given by Lalu Prasad to the police and his statement in the court as regards who stabbed whom Raj Karan.

19. As held by the Supreme Court in *State of UP v. Mundrika & Others*: (2001) 9 SCC 346, the unexplained delay in recording of statement of material eye-witness throws a serious doubt as to whether he was really an eye-witness or not. If the delay in recording the statement of eye-witness remains unexplained, the inference is that either he was not an eye-witness or the version of the incident given by him was a fabricated version. In *Maruti Rama Naik v. State of Maharashtra* : (2003) 10 SCC 670, a witness examined as PW-3 was examined by police after one day of the incident. The explanation given by the Investigating Officer with regard to the delay in recording his statement was that the witness was injured and had to be taken to Bombay and brought back to Panvel for treatment. Considering the nature of his injury and the opportunity available to the

Investigating Officer to record his statement, Supreme Court rejected the explanation and disbelieved the witness.

20. In the present case, no attempt at all has been made by the Investigating Officer to explain the abnormal delay of 16 hours in recording the statement of Lalu Prasad despite his being available to the police and his signatures having been taken on the memos alleged to have been prepared on the spot. The delay on the part of the Investigating Officer in recording the statement of Lalu Prasad when considered in the light of the fact that there is material contradiction in his statement to the police and his deposition in the court as to who had stabbed whom, there was no visible injury on the person of Lalu Prasad despite the incident having started on account of an altercation between him and accused Mahmood, the version of the incident given by him as regards the role attributed to the appellant Sonu is contradictory to the version recorded in the brief facts prepared by the Investigating Officer on 20th October, 1993. He did not meet the Investigating Officer either in the hospital or at the spot, his clothes were not been seized despite his assertion that he had shown bloodstained clothes to the Investigating Officer and Raj Karan, Paanwala, has not supported his claim regarding his (Raj Karans) being present at his shop creates, serious doubt on the truthfulness of the deposition of this witness. There is a strong probability of Lalu Prasad having left the spot before the stabbing took place. That also explains his not having met the Investigating Officer either in the hospital or at the spot, no bloodstained clothes of this witness having been seized, contradiction being found in his statement, as to who had stabbed whom and absence of any role attributed to the appellant Sonu in the brief facts recorded by the Investigating Officer on 20th October, 1993.

21. Of course delay in recording the statement of eye- witness is no ground for doubting and discarding the case of the prosecution on this ground alone. But, the delay puts the court on guard to search for an explanation, if any. If the delay is explained, testimony of the witness cannot be rejected on this ground. If the delay remains explained, there is a possibility of embellishment creeping in and a coloured or distorted version of the incident being introduced by the witness, which can prove to be fatal to the prosecution.

22. As noted earlier, PW-3 Manoj has not supported the prosecution. Since we are not inclined to rely upon the testimony of PW-2 Lalu Prasad, as far as the role attributed to the appellant Sonu is concerned, and there is no other evidence against the appellant, he is given benefit of doubt and is hereby acquitted.

23. The appeal stands allowed.

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