

Joginder Singh and anr. Vs. State

Joginder Singh and anr. Vs. State

SooperKanoon Citation : sooperkanoon.com/910845

Court : Delhi

Decided On : Feb-28-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 304, 326

Appeal No. : CRL.A.78/1999; CRL.A.382/1998

Appellant : Joginder Singh and anr.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Ms.Manjusha Wadhwa, Adv.

Judgement :

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

1. HC Sunheri Singh In-charge of PCR vehicle 'Victor-69' had stationed the vehicle at a spot near NDSC Part II when at around 10:10 PM on 20.6.1991 he received information that a quarrel had taken place at the jhuggi complex at Gautam Nagar. He relayed the information over the wireless to PS Defence Colony at which DD No.30 was recorded at the police station at 10:30 PM. Proceeding to the jhuggi

complex, HC Sunheri Singh found two persons lying injured; namely, Om Prakash (hereinafter referred to as the 'deceased') and Kailash (hereinafter referred to as the 'injured eye witness'), both of whom he removed to All India Institute of Medical Sciences where Om Prakash was declared brought dead and Kailash was admitted for treatment. In the meanwhile, SI Mahavir Singh, ASI Prem Chand and Const.Sultan Singh were deputed for inquiry with respect to DD No.30 and they reached the hospital. SI Mahavir collected the MLC Ex.PW-6/A of the deceased and the MLC Ex.PW-6/B of Kailash and since Kailash was certified fit for statement he recorded the statement Ex.PW-14/A of Kailash and made an endorsement Ex.PW-14/B thereunder and through Const.Sultan Singh got registered the FIR Ex.PW-13/A.

2. Let us briefly note the contents of the statement Ex.PW-14/A, which is the basis of the FIR. As per Kailash he was a resident of House No.15, Sector II, R.K.Puram, New Delhi and at 9:30 PM, from South Extension side was proceeding to the house of Omi (the deceased) which was a jhuggi in Gautam Nagar as Omi was his friend. As he reached the jhuggi of one Itwari Pradhan from his meat shop, Vinod, whom he knew, abused him swearing in the name of his sister while enquiring where he was going. In view of the abuse he and Vinod had a verbal dual and Vinod gave 2/3 slaps to him. On reaching Omi's jhuggi he narrated the incident to Omi at which Omi accompanied him to lodge a complaint with Vinod and on reaching the shop of Vinod they saw Vinod sitting with two more persons. All three quarrelled with him and Omi. Vinod took out a churi and one out of the two persons took out a danda. Seeing this he and Omi ran towards the jhuggi of Omi and were chased by the three persons; 20/25 steps away the two persons caught him and one inflicted danda blows. Vinod inflicted injuries with a churi on his left arm and left buttock. Vinod inflicted churi blows on the person of Omi. I and Vinod fell down. Number of persons had witnessed the incident. Omi and myself were brought to the hospital in a police van. That he could recognize the two persons if brought before him who had participated in the crime with Vinod.

3. It may be highlighted that in the contemporaneous statement made by Kailash he had named appellant Vinod as the assailant who used the knife. He ascribed the role of catching hold to two other persons and assigned further role to one out

of the two of having beaten him with a danda. The said two assailants were not named, but Kailash stated that if brought before him, he could identify them. It may also be highlighted that as per Kailash many persons had witnessed the incident.

4. It is apparent that the prosecution sought to prove the case on percipient evidence and thus we ignore the evidence relating to the spot proceedings conducted and memos prepared pertaining to lifting of blood samples, the blood stained clothes of the deceased etc.

5. The three witnesses who deposed to as eye witnesses were, apart from Kailash, Sher Singh PW-3 and Parmanand PW-4.

6. As per the post-mortem report Ex.PW-1/A of the deceased, proved at the trial through the testimony of the author thereof Dr.D.N.Bhardwaj, it stands recorded that 1 incised wound on the right parietal area and 3 stab wounds on the left and the right side of the chest and 1 on the abdomen were inflicted and there were abrasions at the back of right wrist and right forearm. The injuries clearly suggest that the deceased was caught from his right wrist and the right arm and was assaulted 4 times. 1 assault resulted in an incised wound and 3 in stab wounds. The cause of death is haemorrhagic shock due to the injuries and the stab wounds on the chest were individually and collectively sufficient in the ordinary course of nature to cause death for the reason both stab wounds not only pierce the heart but even the lungs. It is apparent that the blows struck were hard and with considerable force.

7. As regards Kailash his MLC Ex.PW-6/B establishes that Kailash had received 3 incised wounds, 1 on the left forearm and 2 on the left buttock.

8. As per the prosecution the two associates of Vinod were, co-appellant Joginder and one Dinesh whom we note has been acquitted at the trial.

9. It be noted that the learned Trial Judge has not believed that Sher Singh PW-3 and Parmanand PW-4 were eye witnesses. The reason is the abnormal conduct of Sher Singh in not even attempting to rescue the deceased and the injured in view of the fact that Sher Singh is the brother of the deceased and not even

accompanying the deceased to the hospital. As regards Parmanand, the learned Trial Judge has held that he was not an eye witness to the incident but had reached soon thereafter and had probably heard from persons around as to what had happened. The learned Trial Judge has used his testimony as *res gestae* evidence of contemporaneous utterances of people who had gathered and were naming appellant Vinod and appellant Joginder as the assassins. The learned Trial Judge has believed Kailash who appeared as PW-20, but only qua the appellants and has given the benefit of doubt to the third co-accused Dinesh finding evidence being not only inchoate but contradictory qua him, notwithstanding Kailash naming Dinesh as the third person associated in the assault. The learned Trial Judge has noted that the name of one Hira as an assassin was emerging through the testimony of PW-2 and in the brief facts noted in the inquest papers Ex.PW- 21/C.

10. It is apparent that our job is to grapple with the testimony of the injured eye witness Kailash PW-20. But before that we may record that the weapon of offence was never recovered, but appellant Vinod, pursuant to his disclosure statement got recovered a blood stained vest stated to have been worn by him at the time when the crime was committed on which, as per FSL Report Ex.P-Y human blood of the same group as that of the deceased was detected. Appellant Joginder, pursuant to his disclosure statement got recovered a towel on which human blood of the same group as that of the deceased was recovered.

11. In his testimony Kailash PW-20 deposed that on 20.6.1991 around 7:00-8:00 PM he was going to the jhuggi of Omi from South Extension side and when he crossed a meat shop where 4-5 persons were sitting who asked me where was I going and I told them that I was going to meet Om Prakash. 1 out of them abused me and he is present in Court today. I ignored the abuse and went to Om Prakash. I told Om Prakash that people trouble on the way to his house at which Om Prakash told his wife to fetch his slippers and both of us reached the shop where 3/4 persons were sitting. He tried to counsel them not to trouble people at which the said boys retaliated by becoming physical resulting in a scuffle. Vinod ran and brought a knife on seeing which they ran but were chased and overpowered. Vinod stabbed Om Prakash and thereafter he stabbed me and that the other two

accused had caught him.

12. We eschew reference to the further testimony of Kailash PW-20 pertaining to police rescuing the two i.e. him and Om Prakash and removing them to the hospital and further events which transpired in the night as nothing turns on the same.

13. We note that during arguments, feeble attempts were made to show trivial discrepancies here and there in the testimony of Kailash PW-20 with respect to his cross-examination, but counsel for the appellants could not show any material or substantive discrepancy to discredit Kailash. We may note that qua appellant Vinod, Kailash had named him as the one who had used the knife soon after the incident and this fact gives credence to the testimony of Kailash qua Vinod, against whom no motive on the part of Kailash to falsely implicate him has emerged. Qua appellant Joginder, we would note that no such motive for Kailash to falsely implicate him has emerged. It may be true that in his statement made to the police on which FIR has been registered, Kailash has neither named Joginder nor the third co-accused Dinesh, but we find that he had a sufficient opportunity to witness and hence recognize those who had participated in the assault and we must highlight that in his statement to the police he has clearly stated that if brought before him, he can recognize the two other co-participants in the crime. It may be true that qua Dinesh a benefit of doubt was given by the Judge, and rightly so, on account of discrepant evidence whether he or Hira was the third person associated in the assault and suffice would it be to state that merely because discrepant evidence emerges against one co-accused, it does not mean that the case of the prosecution has to be thrown out lock, stock and barrel qua the others. The only thing required is for the Judge to be on the guard and more cautious in evaluating the evidence against the others.

14. In view of the testimony of Kailash, which has not been shaken, a clear role of the appellants has emerged and we hold that the appellants would not be entitled to the same benefit as was extended to the third co-accused Dinesh, for qua them, no discrepant evidence has emerged.

15. The only other issue which we now need to determine and decide is whether the appellants would be entitled to Exception IV to Section 300 which states that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or active in a cruel or unusual manner. As per the explanation to the Exception it is immaterial in such cases which party offers the provocation or commits the first assault.

16. The Jurisprudence behind the philosophy of the IVth Exception is that where an unexpected event clouds a man's sober reason and urges him to deeds which he would not otherwise do, the criminality of the act is lowered and not that it is to be taken that the man has committed no offence. The act would still be an offence but of a lower degree.

17. We now revisit the testimony of Kailash and must state that it is human nature to play down one's role in an untowards incident and highlight, with or without exaggerations, the role of the opponent. This is a normal human failing and Kailash who is no saint would presumably be a man with normal human failing. He states that on the way to Omi's house, 4-5 persons abused him. But we note that in his statement Ex.PW-14/A made immediately after the incident he said that Vinod asked him where was he going and interlinked in the query was a verbal abuse in the name of his sister. What did Vinod say? It is not difficult for us to recreate the sentence. The common man's way of questioning by intertwining an abuse would render the query in the following words: 'Behanchod kahan ja raha hai'. Though in his testimony in Court, Kailash claims to have ignored the abuse, but in his statement Ex.PW-14/A he has clearly stated that he chastened Vinod who slapped him 3 or 4 times. Deposing in Court he states that he told Omi that he was abused on the way to his house, but from the fact that he and Omi returned to the place where the earlier incident had taken place, it is apparent that Kailash must have told Omi that there was an altercation on the way and that Vinod had slapped him 3 to 4 times. Normal human conduct of Omi, if told by Kailash that Vinod had used an expletive would be to ignore the same as people on the street, while addressing and querying intertwine expletives and we have heard thousands and thousands of persons doing so and thousands and thousands of persons

against whom expletives are directed, ignoring the same. But, when Kailash told Om Prakash that Vinod had slapped him it is natural conduct for Om Prakash to go with Kailash to the person who slapped his friend and settle a score. While deposing in Court, Kailash has watered down his and Om Prakash's role by stating that Om Prakash counselled Vinod and at that Vinod and the other accused retaliated by becoming physical, but in his contemporaneous statement he stated that an altercation took place between him and Omi on one side and the accused on the other and during the altercation Vinod took out a knife and launched the deadly assault.

18. The evidence probablizes the fact that the deceased and the injured eye witness returned to the meat shop of Vinod to settle a score with Vinod who had given 3/4 slaps to the injured eye witness Kailash and this settlement of the score which commenced with a verbal slinging match turned physical. There was pushing and jostling followed by Vinod, acting on the spur of the moment, taking out a knife and assaulting. We may highlight that the site plan Ex.PW- 18/A brings out the place where the stabbing took place and the meat shop, which we note are at a distance of about 20- 25 steps away. Now, we do not know, and we say so for the reason there is no clear evidence whether the spot where the stabbing took place was the distance covered when jostling and pushing was on and Vinod running back to his shop and bring the knife or that it was the spot where they reached after the chase. In this view of the evidence being blurred on a very critical factual aspect, we are constrained to extend the benefit thereof to the appellants. That apart, assuming that the appellants chased Omi and Kailash, law treats an action even with a small chase, but which commences upon a sudden quarrel at par with an act without a chase for the reason the application of the IVth Exception to Section 300 simply requires that the heat of the passion was still on and there was not enough time for passions to cool and where there is evidence that parties have worked themselves into a furry on account of the verbal altercation in the beginning, both situations would be at par.

19. To summarize, what the evidence probablizes, the incident took place in the following manner: Kailash was going to the house of Om Prakash and had to go pass the meat shop of Vinod who in street language, using an expletive asked

Kailash as to where was he going. Kailash took objection at the expletive used. While raising the objection Kailash provoked Vinod who gave him 3 or 4 slaps. Kailash went and complained to Om Prakash who was relaxing in his jhuggi. He told his wife to fetch his slippers and wearing the same he and Kailash returned to settle a score. A verbal fight turned ugly resulting in pushing and jostling followed by Vinod using a knife and inflicting the injuries. It is clear that there was no premeditation and unexpected events overtook the deceased and the injured. It was upon a sudden quarrel that the furry went out of control resulting in the unfortunate death of Om Prakash and injuries upon Kailash. In our opinion, qua the death of Om Prakash, appellants would be entitled to the benefit of Exception IV to Section 300. It is true that 3 stab wounds were inflicted upon the person of the deceased, but similar was the case of 3 stab wounds being inflicted in the decision reported as AIR 1989 SC 1094 *Surender Kumar v. Union Territory of Chandigarh*. We note that in the decision reported as 2004 (11) SCC 381 *Prakash Chand v. State of HP*, a verbal altercation triggered by the dogs of the accused entering the kitchen of the deceased ending in the accused taking out a gun and firing a shot from a distance of 35 feet causing death of the deceased was held attracting the offence punishable under Section 304 Part I IPC. In the decision reported as AIR 1976 SC 1133 *Amrithalinga Nadar v. State of Tamilnadu*, commencing with a scuffle and followed by a chase; a 9 inch long knife used to inflict stab injuries on the neck of the deceased was held to be an act punishable for the offence punishable under Section 304 Part I IPC.

20. Thus, qua the death of Om Prakash, we hold in favour of the appellants that their concerted acts are punishable for the offence under Section 304 Part I IPC.

21. We note that qua the injuries caused to Kailash, the appellants have been convicted for an offence punishable under Section 326 IPC i.e. voluntarily causing grievous hurt by a dangerous weapon for which Vinod has been sentenced to undergo imprisonment for 7 years and pay fine in sum of `1,000/-, and Joginder has been sentenced to undergo imprisonment for 5 years and pay a fine in sum of `500/-, a sentence which we find to be excessive keeping in view that the injuries suffered by Kailash were fairly superficial and were simple incised wounds skin deep. But we need not bother about the said

sentence for the reason altering the conviction of the appellants pertaining to the death of Om Prakash for the offence of murder to the offence punishable under Section 304 Part I IPC and the sentence we propose to inflict, would entitle the two to the sentences to run concurrently.

22. The nominal roll of appellant Vinod shows that he had suffered imprisonment for 7 years and 4 months as of 6.7.1999. Order dated 25.10.1999 shows that he was admitted to bail on said date. Arranging for a surety and completing the formalities, treating 31.10.1999 as the date when he got released on bail, Vinod would have undergone a sentence of 7 years and about 8 months. Similarly, Joginder had undergone a sentence of 7 years, 6 months and 41 days as on 22.7.1999, the date of his nominal roll and he was admitted to bail on 25.7.1999 and taking the date of his release as 31.8.1999, he would have undergone a sentence of 7 years, 5 months and 15 days.

23. The nominal roll of the two show that their jail conduct was satisfactory.

24. The date of the crime is 20.6.1991 and today is 28.2.2011 i.e. 19 years and 8 months and 10 days have gone by. Both of them were aged between 23 years to 25 years when they acted rashly. Today the two would be between the age of 42 years to 44 years. They were admitted to bail 11 years ago and no useful purpose would be served in sending them to jail.

25. Accordingly, we hold that it would be adequate sentence to be imposed upon the two to sentence them to undergo imprisonment for the period they have already undergone for having committed the offence punishable under Section 326 IPC and the offence punishable under Section 304 Part I IPC and accordingly both the appeals stand disposed of by partially allowing the appeals; conviction of the appellants for the offence of having murdered Om Prakash is modified to the offence of having committed an offence punishable under Section 304 Part I IPC. Upholding their conviction for the offence punishable under Section 326 IPC the sentence imposed is modified from that of undergoing imprisonment for life to undergo imprisonment for the period already undergone.

26. In view of the sentence imposed, the bail bonds and the surety bonds furnished by the appellants are discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com