

State Vs. Deepak Donyal

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Court : Delhi

Decided On : Aug-18-2011

Judge : Pradeep Nandrajog; P.K.Bhasin, Jj.

Acts : Indian Penal Code (IPC) - Section 302; Code of Criminal Procedure (CrPC) - Section 313, 157

Appeal No. : CRL.A.135/1999

Appellant : State

Respondent : Deepak Donyal

Advocate for Def. : Mr.K.B.Andley; Mr.M.L.Yadav, Advs.

Advocate for Pet/Ap. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Advs.

Judgement :

1. Criminal law was set into motion on 08.05.1993 at about 05.30 P.M. when HC Joginder Singh PW-14, recorded DD No.16, Ex.PW-11/A, that an unknown person had informed over the telephone of an incident of stabbing by knife having taken place in front of house bearing Municipal No.B-25, Sawal Nagar.

2. A copy of Ex.PW-11/A was handed over to Inspector Ram Kumar PW-11 who accompanied by Ct.Akhilesh Tyagi PW-8, went to the place in question where he met Krishan Kumar PW-1, who informed that his brother Rakesh Kumar

(hereinafter referred to as the "Deceased") has been stabbed and removed to the hospital by his neighbours and that he had witnessed the incident. Inspector Ram Kumar recorded the statement Ex.PW-11/A of Krishan Kumar and made an endorsement Ex.PW-11/B thereon, and at around 07.00 P.M. forwarded the same to the police station through Ct.Akhilesh Tyagi PW-8, for registration of an FIR. Const. Akhilesh Tyagi took the endorsement Ex.PW-11/B to the police station and handed over the same to HC Joginder Singh PW-14, who recorded the FIR No.196/1993, Ex.PW- 8/A, at about 08.00 P.M. on 08.05.1993, as recorded in the entry Ex.PW-14/C made in the Roznamcha Register. Simultaneously with the registration of the FIR Ex.PW-8/A i.e. at about 08.00 P.M. on 08.05.1993 HC Joginder Singh handed over a copy of the FIR Ex.PW-8/A to Ct.Vinay Kumar PW-15, to be delivered to the Area Magistrate as recorded in the entry Ex.PW-15/A made in the Roznamcha Register. At about 12.05 A.M. on 09.05.1993 Ct.Vinay Kumar returned to the police station after delivering the copy of the FIR Ex.PW-8/A at the residence of the Area Magistrate as recorded in the entry Ex.PW-15/B made in the Roznamcha Register. Be it noted here that an endorsement is made on the copy of the FIR Ex.PW-8/A delivered to the Area Magistrate records that the same was received by the Magistrate at his residence at about 06.00 A.M. on 09.05.1993.

3. In his statement Ex.PW-11/A, Krishan Kumar stated that today, at about 04.00 P.M. he along with Shiv Charan, Sanjay Kumar and Deepak Dangwal (hereinafter referred to as the "Accused") were playing cards in the house of Shiv Charan, at which time there was an exchange of hot words between the accused and Sanjay Kumar. At that time his elder brother i.e. the deceased was lying down on a cot kept in the house of Shiv Charan. During the course of the quarrel between the accused and Sanjay Kumar the accused picked up a pan and tried to hit Sanjay Kumar with the same, at which time the deceased got up and separated the accused and Sanjay Kumar from each other. At that time the accused extended a threat to the deceased that since he is a well-wisher of Sanjay Kumar he would finish him off today and left from there. After sometime the accused returned there with a sword in his hand. The accused attacked the deceased with the sword upon which the deceased sustained an injury on the palm of his left hand. Shiv Charan snatched the sword from the accused whereupon the accused got angry and

again extended a threat to the deceased and left from there. Thereafter the deceased went to his house where he got his palm bandaged from his father. At about 04.45 P.M. the accused came to the street in front of their house and started shouting that he would kill the deceased. Thereafter the deceased came downstairs from his house to the street and upon seeing the knife in the hand of the accused he ran from there. When he i.e Krishan Kumar reached downstairs he saw that the accused was chasing the deceased upon which he also started running behind them. After running for a distance of about 40-50 yards the accused caught hold of the deceased and inflicted several knife blows on the person of the deceased in the street in front of Decent Hair Cutting saloon. The deceased got himself freed from the clutches of the accused but the accused again got hold of him and inflicted knife blows on the person of the deceased. He shouted to save the life of the deceased upon which the accused ran towards him. He got scared and ran towards the fields. The deceased was removed to the hospital by the boys of their neighbourhood. The incident in question was witnessed by one Suryanayak and some other persons from his neighbourhood.

4. After registration of the FIR Ex.PW-8/A, Inspector Ram Kumar PW-11, prepared rough site plan Ex.PW-11/B of the place of the occurrence and lifted blood lying at the place of occurrence as also earth control from the place of occurrence and seized the same vide memo Ex.PW-11/D. Thereafter Inspector Ram Kumar proceeded to the hospital where he learnt that the deceased was declared brought dead at about 06.25 P.M. as recorded in the MLC Ex.PW- 10/A of the deceased.

5. In the meantime, the crime team arrived at the place of occurrence and inspected the place of occurrence and prepared the report Ex.PW-11/N at about 08.20 P.M. on 08.05.1993 and relevant would it be to note that the crime team report has left blank the column pertaining to the FIR Number in respect whereof the crime team had visited the spot and also records that the Investigating Officer is advised to record the statements of the eye witnesses.

6. Thereafter Inspector Gajinder Singh PW-16, took over the investigation of the present case.

7. Since Krishan Kumar had indicted the accused i.e. the respondent as the assailant of the deceased, the police set out to apprehend him. On 09.05.1993 the police apprehended him. Upon being interrogated by Inspector Gajinder Singh PW-16, in the presence of Inspector Ram Kumar PW-15, the accused made a disclosure statement Ex.PW-11/E wherein he stated that he can get recovered the knife used by him for murdering the deceased. Pursuant thereto, the accused led the aforesaid police officers to a park and got recovered a knife hidden in the hedges, which knife was seized by Inspector Gajinder Singh vide memo Ex.PW-11/F.

8. On the same day i.e. 09.05.1993 the body of the deceased was sent to the mortuary of AIIMS hospital where at about 11.30 A.M. Dr.M.S.Sagar PW-9, conducted the post- mortem of the deceased and prepared the report Ex.PW-9/A. The post-mortem report Ex.PW-9/A of the deceased records that following 7 external injuries were found on the person of the deceased:-

"1. Stitched wound left side of chest in V intercoastal space 15 cm long curved in shape.

2. Shoe shaped contusion left arm middle portion lateral aspect & size 8 cm x 3.5 cm.

3. Abrasion right thumb dorsal aspect 1.5 cm x 1 cm & abrasion left gluteal & lumbosacral region & size 5 cm x 3 cm.

4. Stab wound left arm & the labial aspect spleen 21 cm below axillary & 9 cm above elbow joint & size 27 X 1 cm. Irregular sharp margin inverted and obliquely placed going medially upward backward causing a track of 9 cm thigh muscles & going out at left arm medial aspect size 2.5 cm x 1 cm placed 16 cm above elbow & 14 cm below axillary.

5. Incised wound left chest placed in anterior axillary plane in IV intercoastal space in size 1.2 x 1.4 cm muscle deep spindle shape with clean cut inverted margin not penetrating into plural cavity placed 15 cm left of mid line & 16 cm below clavicular margin.

6. Incised wound left side of chest & 1.5 cm x 1.5 cm with sharp clean cut inverted margin placed vertically 11 cm left of mid line & 16 cm below clavicular margin just below left nipple, causing cut impression on 5th rib, not penetrating into chest cavity.

7. Stab wound left side of chest placed obliquely over 6th ICS of size 3 cm x 0.6 cm placed 15 cm left midline and 22 cm below clavicular margin in midclavicular plane entering into left pleural cavity through 6th ICspace causing stab wound of heart as mentioned above. The direction of the wounds is medially, upward and forward."

9. The post-mortem report Ex.PW-9/A of the deceased further records that the death of the deceased was caused due to shock as a result of afore-noted ante-mortem injuries found on the person of the deceased. Injuries Nos.4 to 7 found on the person of the deceased were caused by sharp edged weapon whereas injuries Nos.2 and 3 were caused by blunt force. Injury No.7 found on the person of the deceased was sufficient to cause death in ordinary course of nature.

10. After the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to Inspector Ram Kumar PW-11, who seized the same vide memo Ex.PW-11/L.

11. The seized materials; viz. the blood sample and clothes of the deceased and knife recovered at the instance of the accused to the Central Forensic Science Laboratory for serological examination. Vide CFSL reports it was opined that the blood group of the deceased as A and that human blood was found on the knife recovered at the instance of the accused, group whereof could not be determined.

12. During the course of the investigation of the present case, Inspector Gajinder Singh PW-16, recorded the statements Ex.PW-2/A, Ex.PW-16/A and Ex.PW-4/A of Suryanayak, Shiv Charan and Sanjay Kumar respectively, wherein they stated that they had seen the accused inflicting several knife blows on the person of the deceased.

13. Needless to state, the accused was sent for trial. Charge was framed against him for having committed the offence punishable under Section 302 IPC.

14. At the trial, the prosecution examined 16 witnesses.

15. Krishan Kumar PW-1, deposed on similar lines as the contents of his statement Ex.PW-11/A. On being questioned about his return to the place of occurrence the witness stated: (Quote) „When I returned back to the scene of occurrence after about 5/7 minutes, I noticed blood lying in front of the Decent Hair Cutting Saloon. On being questioned about the time of recording of his statement Ex.PW-11/A the witness stated: (Quote) „The police had recorded my statement on the day of the incident at about 05.50 P.M. or 5.55 P.M.

16. Suryanayak PW-2, deposed that on 08.05.1993 at about 04.30 P.M. or 05.00 P.M. he was standing outside his house when he heard some loud voices coming from the side of a barber shop which was located near his house upon which he started proceeding there. Upon reaching there he saw that the accused was holding a knife in his hand and chasing the deceased. Thereafter the accused inflicted several knife blows on the person of the deceased in front of the barber shop. After sometime the deceased ran towards the main road to save his life but the accused managed to catch hold of the deceased and again inflicted several knife blows on his person. In the meantime the younger brother of the deceased Krishan Kumar came there and started crying upon which the accused started chasing Krishan Kumar. Krishan Kumar ran towards the fields to save his life. In the meantime the deceased fell on the ground and was removed to the hospital by some people from the neighborhood and one Shiv Charan. Thereafter he went to the house of the brother of the deceased to inform him about the incident. Shiv Charan and one another person whose name he does not know were also running behind Krishan Kumar. On being questioned about his relations with the deceased the witness stated: (Quote) „My house is situated very near to the house of the deceased. I know this family quite well since 1970. I am a frequent visitor in this house. Similarly, the deceaseds family used to visit my house. On being questioned about his conduct at the time of the incident of murder of the deceased the witness stated: (Quote) „I did not intervene when I saw the accused chasing

Rakesh Kumar with his knife in his hand. I did not extend any help either to save Rakesh Kumar nor made any endeavor to apprehend the accused. Nor did I raise any alarm to attract people either to save Rakesh or to apprehend the accused. I did not make any effort to lift the injured (since deceased) even after the accused had turned towards Krishan Kumar....I had not gone to the hospital to see Rakesh Kumar (deceased).

17. Shiv Charan PW-3 and Sanjay PW-4, turned hostile and did not support the case of the prosecution. The witnesses denied having given any statements to the police or that they had seen the accused murdering the deceased.

18. Ct.Vinay Kumar PW-5A/PW-15, was examined by the prosecution on two occasions, once as PW-5/A and on other as PW-15. He deposed that he had delivered the copy of the FIR Ex.PW-8/A to the Area Magistrate at his residence at about 08.30 P.M. - 08.45 P.M. on 08.05.1993.

19. Inspector Ram Kumar PW-11 and Inspector Gajinder Singh PW-16, deposed regarding the role played by them in the investigation of the present case. Be it noted here that Inspector Ram Kumar PW-11, deposed that he reached the place of occurrence at about 05.40 P.M. on 08.05.1993. On being questioned about the visit of the crime team at the place of occurrence Inspector Ram Kumar stated: (Quote) „Crime team was called at the site of crime on 8th when I reached at the site. Crime team came at about 8 or 8-30

p.m. I do not remember the exact time. It is incorrect that till arrival of the crime team, no statement of complainant was recorded nor the case was registered. The crime team at given their report by about 9-30 p.m. and thereafter, they went. The report Ex.PW11/N was given by the Crime team.

Q. I suggest it to you that even according to this report no FIR or statement of the complainant or any statement of eye witness was recorded till the submission of the report by the crime.

Ans: The FIR was recorded by that time. There may be an error in the report of the crime team.

20. In his statement under Section 313 Cr.P.C. the accused denied everything and pleaded false implication.

21. After holding that (i) the testimony of Krishan Kumar PW-1, is unconvincing because of following reasons; namely, (a) the conduct of Krishan Kumar of running away from the place of occurrence and not save his brother i.e. the deceased from the clutches of the accused makes his presence at the place of occurrence at the time of the incident suspect; (b) even if it is believed that Krishan Kumar ran away from the place of occurrence in order to protect himself from the accused the conduct of Krishan Kumar of not returning to the place of occurrence at the earliest to remove the deceased to the hospital despite knowing that the deceased was critically injured by the accused again makes his presence at the place of occurrence at the time of the incident susceptible; (ii) the testimony of Suryanayak PW-2, also does not inspire confidence for the reason the conduct of Suryanayak of not even making an effort to save the deceased from the clutches of the accused despite being on good terms with the family of the deceased is most unnatural and makes his presence at the place of occurrence at the time of the incident susceptible; (iii) entry Ex.PW-15/B made in the Roznamcha Register recording that Ct.Vinay Kumar returned to the police station at about 12.05 A.M. on 09.05.1993 after delivering the copy of the FIR Ex.PW-8/A to the Area Magistrate runs in teeth of the endorsement made by the Area Magistrate in the copy of the FIR Ex.PW-8/A delivered to him that he received the same at his residence at 06.00 A.M. on 09.05.1993 and that the said discrepancy between the entry Ex.PW-15/B made in the Roznamcha Register and the copy of the FIR delivered to the Area Magistrate strongly suggests that the FIR registered in the present case was ante-timed which turns raises a serious question mark on the veracity of the case of the prosecution and (iv) mere recovery of a blood-stained knife at the instance of the accused is not sufficient to convict the accused particularly when the group of the blood found on the said knife could not be ascertained, vide impugned judgment dated 26.07.1997 the learned Trial Judge acquitted the accused.

22. Aggrieved by the impugned judgment dated 26.07.1997 passed by the learned Trial Judge acquitting the accused of the charge framed against him the State has

obtained Leave to Appeal against the impugned decision.

23. During the hearing of the present appeal, following 3 submissions were advanced by the learned counsel for the State:-

A. That the learned Trial Judge committed an illegality in discarding the evidence of Krishan Kumar PW-1 and Suryanayak PW-2, merely because the said witnesses did not come to the rescue of the deceased when he was being attacked by the accused. Learned counsel for the State argued that the criminal courts should not expect a set reaction from any eye-witness on seeing an incident of murder. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some run away to keep themselves as far away from the spot as possible. Some rush to the rescue the victim, even going to the extent of counter-attacking the assailants. Learned Counsel argued that unless the reaction demonstrated by an eye-witness is so improbable or so inconceivable from any human being pitted in such a situation it is unfair to dub his reactions as unnatural. Learned counsel further argued that in the instant case witnesses Krishan Kumar and Suryanayak were unarmed whereas the accused was armed with a knife. In a situation like this the instinct of self-preservation can be the dominant instinct. That being the position, the inaction of the said witnesses in not coming to the rescue of the deceased cannot be a ground for discarding their evidence.

B. That the learned Trial Judge committed an illegality in discarding the case set up by the prosecution against the accused on the ground that there was a delay in sending the copy of the FIR registered in the present case to the Magistrate. Learned counsel for the State argued that it is settled legal position that delay in sending the FIR to the Magistrate is not sufficient for throwing out the entire prosecution case as being fabricated if the prosecution had produced reliable evidence to prove the guilt of the accused.

C. That the learned Trial Judge committed an illegality in not attaching due importance to the circumstance that human blood was detected on the knife recovered at the instance of the accused. Learned counsel for the State argued that the aforesaid circumstance speaks volumes about the guilt of the accused

particularly when the accused did not offer any explanation as to how human blood was detected on the knife recovered at his instance.

24. Before proceeding further, let us note following legal principles which the appellate courts are required to keep in mind while adjudicating an appeal against an order of acquittal:-

I The order of acquittal generally shall not be interfered with because the presumption of innocence of the accused is further strengthened by the acquittal of the accused.

II If the reasons which have formed the basis of the order of the trial court acquitting the accused are reasonable and plausible and cannot be entirely and effectively dislodged or demolished the appellate court should not interfere with the order of acquittal.

III The appellate court should interfere with the order of acquittal of the accused only when there are compelling and substantial reasons to do so.

IV A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of the accused.

25. More often than not, FIRs are ante-timed to gain time to plant eye-witnesses or to provide sufficient time to the maker of the FIR to enable him spin a false story. The promptness in registering an FIR lends an assurance to the truthfulness of the facts stated therein for the reason anything said spontaneously by a person is presumably the truth for the reason to create and spin lies the evil mind has to be put to work and fed on the malice inside, which needs time.

26. Section 157 of the Code of Criminal Procedure, 1973 requires sending of copy of an FIR to the Magistrate promptly and without undue delay. The importance of prompt dispatch of a copy of the FIR to a Magistrate can be hardly overemphasized. The time at which an FIR is received by a Magistrate goes a long way in coming to the conclusion as to the time at which the FIR was registered. No doubt, the non-compliance of Section 157 does not constitute a ground to throw away a prosecution case but is a factor to be seriously reckoned

with while appreciating the evidence led by the prosecution.

27. Inspector Ram Kumar PW-11 claims to have recorded the statement Ex.PW-11/A of Krishan Kumar PW-1 and sent the rukka at 7:00 PM on 8.5.1993 as per the endorsement Ex.PW-11/B. The FIR purports to be recorded at 8:00 PM as per Ex.PW-14/C and as per Ex.PW-15/A Ct.Vinay Kumar PW- 5A/PW-15 left the police station around same time to deliver FIR to the Area Magistrate. Entry Ex.PW-15/B shows Ct.Vinay Kumar having returned to the police station after delivering FIR to the Area Magistrate at 5 minutes past 12 in the midnight.

28. But, the Area Magistrate received the FIR at 6:00 AM as per the endorsement to be found on Ex.PW-8/A. It assumes importance that the crime team arrived at the place of occurrence at 8:20 PM and as per the testimony of Inspector Ram Kumar PW-11 left at 9:30 PM. The relevant column in the proforma of the report where FIR Number had to be recorded was left blank and the crime team advised the IO to record the statements of the eye witnesses. Now, the crime team which reached at the spot at 8:20 PM remained at the spot as per the testimony of Inspector Ram Kumar till 9:30 PM and it remains a mystery that in the report of the Crime Team the column pertaining to FIR number remained blank. The cumulative of the aforesaid circumstances i.e. FIR being admittedly received by the Magistrate at 6:00 AM but DD entry 15-B recording that Ct.Vinay Kumar had returned to the police station at 5 minutes past 12 in the midnight after delivering copy of the FIR to the Area Magistrate as also the documentary and oral evidence pertaining to the report of the Crime Team creates great suspicion on the time when the FIR was recorded and there is every possibility of the FIR being ante-timed and this time being used to plant eye-witnesses.

29. This takes us to deal with the reason predicated upon the conduct of witnesses Krishan Kumar PW-1 and Suryanayak PW-2, given by the learned Trial Judge to acquit the accused.

30. Suryanayak PW-2, deposed that Shiv Charan and Sanjay Kumar were following Krishan Kumar at the time when he was running behind the accused who was chasing the deceased. Shiv Charan and Sanjay Kumar were the friends of Krishan Kumar and the deceased as evident from the testimony of Krishan Kumar

PW-1. Krishan Kumar and Suryanayak together with Shiv Charan and Sanjay Kumar could have overpowered the accused at the time when he was attacking the deceased and rescued the deceased but they did not do so. According to Krishan Kumar, the accused attempted to attack him when he tried to rescue the deceased due to which he got scared and ran away from the place of occurrence. One could have understood the conduct of Krishan Kumar of running away from the place of occurrence in order to protect himself had he been all alone with no help from any quarter, which was not the case. If evidence of Suryanayak PW-2, is to be believed, Krishan Kumar was surrounded by three well-wishers namely Suryanayak, Shiv Charan and Sanjay Kumar at the time when the accused was attacking the deceased. As regards Suryanayak PW-2, there was no reason for him to not come forward to rescue the deceased despite being a well-wisher of the family of the deceased.

31. The matter can also be looked at from another angle. The incident in question happened around 05.00 P.M. on 08.05.1993. Inspector Ram Kumar PW-11, was the first police officer to reach the place of occurrence after receiving the information of the incident. Inspector Ram Kumar reached the place of occurrence at about 05.40 P.M. and allegedly met Krishan Kumar, the younger brother of the deceased. By that time, the deceased was removed to the hospital. The natural conduct would be to rush to the hospital and not stay at the spot to make a statement before a police officer. We concur with the reasoning of the learned Trial Judge that the conduct of the two stated eye witnesses is most unnatural and belies the claim of the two being eye witnesses.

32. We would be then left with the incriminating evidence of a knife being recovered at the instance of the respondent on which human blood was detected.

33. As observed in the decisions reported as *Deva Singh v. State of Rajasthan* 1999 Cri LJ 265 (SC), *Prabhoo v. State of U.P.* AIR 1963 SC 1113 and *Surjeet Singh v. State of Punjab* AIR 1994 SC 110, mere recoveries of a blood stained knife or an axe and/or recovery of blood stained clothes stated to be worn by the assailant pursuant to the disclosure statement of the assailant, without any further evidence, are insufficient circumstances leading to a conclusion on a reasonable

hypothesis that the person concerned is guilty of the offence.

34. The view taken by the learned Trial Judge is a reasonable probable view and thus we dismiss the appeal.

35. TCR be returned.

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