
(1975) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : Criminal A. No. 84 of 1973

Basit Ali and another

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-12-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 174, 302, 34

Citation : (1976) J LJ 245 : (1976) MPLJ 149

Hon'ble Judges : K.K. Dube, J; J.P. Bajpai, J

Bench : Division Bench

Advocate : Rajendra Singh, for the Appellant; A.N. Mukharjee, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Bajpai, J.

This is in appeal at the instance of the accused-appellants Basitali alias Nawab and Sirajuddin alias Siraj against their conviction for the offence u/s 302 read with section 34 of the Indian Penal Code and sentence of life imprisonment awarded by the learned Second Additional Sessions Judge, Bhopal on 12-1-1973 in Sessions Trial No. 152 of 1972.

The facts leading to the appeal, are that Vinod and the accused-appellant were on inimical terms. According to the prosecution story on 23-6-1972, Vinod Kumar son of Durgaprasad set out from his house at about 5.30 A.M. for opening the hotel, which was opening the hotel, which was Situate at a distance of about 300 ft. from his residential house. The locality where the deceased resided and had his hotel, is known as Jahangirbad market in Bhopal town Both the accused Nawab and Siraj followed him on way from his house near the hotel of one Narayan. The accused-appellant Siraj caught hold of the deceased from behind and the other accused-appellant Nawab stabbed Vinod Kumar with a knife on the region of his chest. Vinod Kumar fell down and died on the spot. The accused

persons ran away from the spot immediately in different directions through two lanes nearby-one going towards the gram market and other going towards the girls school. Laxman Rao, a servant working in the hotel of the deceased, while coming to the residential house of the deceased to find out as to why the deceased had not come with the keys of the hotel to open the same saw Vinod Kumar lying on the road near the hotel of Narayan He informed Durgaprasad, father of the deceased. Durgaprasad immediately, with his other son Shyamsunder, rushed to the spot. They arranged for a tax, immediately to take Vinod Kumar to hospital where he was declared dead Shyamsunder the brother of the deceased informed the police station on telephone that his brother Vinod Kumar has been killed and thereafter the police officers came to the hospital, recorded the first information report lodged by Durgaprasad father of the deceased and commenced investigation.

In the trial Court, and also before us, it was not disputed by the appellants that Vinod Kumar died homicidal death due to the injuries inflicted on him. It was also not disputed that the accused-appellants and the deceased were on inimical terms. The defence of the accused was of innocence. It was contended that due to enmity, they have been falsely implicated by creating the concocted evidence of Kaluram, the only eye-witness connecting the accused persons with the offence, and the evidence of Mohan, Kanahaiyalal. Rammanohar Constable and Balkishan to corroborate the false version of Kaluram. According to the accused persons, the evidence of Kaluram (P.W. 2) was highly improbable and that the conduct of this witness, at the time of incident, as deposed by him and other witnesses, was also unnatural and not worthy of reliance. Though there was nothing to suggest that this eye-witness Kaluram (P.W. 2) had any animus against the accused persons, it was contended that because this witness resides in the same neighbourhood and that the father of the deceased was residing as tenant in a portion of the house belonging to the brother of this witness, he might have been interested in helping the cause of Durgaprasad.

Since the homicidal nature of death of Vinod Kumar due to knife injuries inflicted on his chest, is not in dispute and this fact also stands fully established by the medical evidence and blood stained clothes of the deceased, it is not necessary to deal with this aspect of the case. The only question that arises for determination is whether the evidence led by the prosecution to connect the accused persons with the offence, is trustworthy and conviction based on such evidence is liable to be sustained. In this connection, the prosecution has relied on the testimony of eye-witness Kaluram (P.W. 2) and on the statements of Balkishan (P.W. 3), Kanahaiyalal (P.W. 13). Mohan (P.W. 4), Rammanohar (P.W. 9) and Laxman Rao (P.W. 5). Durgaprasad, father of the deceased and Shyamsunder, brother of the deceased, have also been examined as P.W. 1 and P.W. 6 respectively. Though there has been seizure of one knife alleged to be the weapon used for the offence, the same was not got examined by the Chemical Examiner as it did not carry bloodstains. Under these circumstances, the aforesaid piece of evidence is of no relevance for the purposes of the prosecution.

Before proceeding to discuss the evidence of Kaluram (P.W. 2), on whose sole testimony the accused person have been convicted and sentenced, it will be relevant to mention that early in the morning at about 5.30 A. M., there is not much of traffic and movement of persons on the road in the locality. Various shops in the market are not open and only persons connected with hotels or supply of milk etc. commence their activities in the early hours. It will also be relevant to note that the residential house of Durgaprasad is at a distance of about 150 ft. towards North from the place of murder and the hotel of Durgaprasad is at a distance of about 200 to 225 ft. towards the South from the place of incident. The incident took place near the shop of Narayan and at a distance of about 15 to 20 ft. from that place, there are two lanes going to opposite directions, i.e., one towards the grain market and the other towards the girls school. There is a Tonga stand where taxis are also available at a distance of about 400 to 500 ft, from the place of occurrence.

Kaluram (P.W. 2), the eye-witness, is also a hotel-keeper in the same locality and has got she-buffaloes. He had stated that at about 5.30 A.M., after collecting the cow-dung of his cattle, he came to the tap to wash his hands and then proceeded towards the corner of Pan Ki Gumti on Jahangirbad Road. This Pan Ki Gumti is at a distance of about 47 ft., as shown in the map of the spot (Ex. P-4), from the place of murder on the other side of road. Kaluram (P.W. 2) has stated that he reached the corner and saw Vinod Kumar near Narayan's hotel coming from the direction of his house and going towards his hotel. He also saw the accused persons Nawab and Siraj just about 2 to 4 paces behind Vinod Kumar. He has; further deposed that immediately thereafter, accused Siraj caught hold of the mouth of Vinod Kumar from behind and the accused Nawab came in front and stabbed Vinod Kumar with a weapon like knife or Gupti on his chest and Vinod Kumar fell down crying . This witness further stated that immediately thereafter, the accused Siraj ran away through the lane going towards the girls school. This witness states that seeing Nawab running towards the lane going to the girls school, he immediately followed him for about 20 to 25 paces, but could not set Nawab, because he had disappeared from the point where there was further bifurcation into two opposite directions and therefore, he had to return. While returning, he met Mohan (P.W. 4), who was coming from the direction of the place of incident. This witness states that when Mohan (P.W. 4) asked him as to why he was in hurry, he told him that Nawab and Siraj have run away after stabbing Vinod Kumar near Narayan's hotel. Mohan (P.W. 4) also told him that while coming, he had seen one man lying on the road side. Kaluram (P.W. 2) further stated that he thereafter came to Jahangirbad Road and saw Vinod Kumar being carried by Durgaprasad (P.W. 1) and Shyamsunder (P.W. 6) on a taxi. At that time, he also talked Kanahaiyalal (P.W. 13) and others, who had come on the road when Nawab and Siraj have run away after stabbing Vinod Kumar. He then milked the she-buffaloes and went to his hotel. He has also stated that on reaching the hotel, he talked to his servant Baikishan (P.W. 3) about the incident and told him that Nawab and Siraj have stabbed Vinod Kumar.

It was not disputed that Vinod Kumar deceased and accused persons Nawab and Siraj were already known to this witness before the incident. It was also not suggested that Kaluram (P.W. 2) had any animus against the accused persons. The criticism of his evidence was based on the following grounds as urged by the learned counsel for the appellants before us:

(i) that the conduct of this witness, on seeing that Vinod Kumar was stabbed by the accused persons, was unnatural, inasmuch as, instead of going towards the deceased, he started pursuing the running accused Nawab;

(ii) that this witness Kaluram (P.W. 2), despite having returned back on spot after unsuccessful pursuit of the accused Nawab, did not tell either Durgaprasad, father of the deceased or Shyamsunder, brother of the deceased, who were seen by him carrying Vinod in a taxi to hospital. The version of this witness, that when he reached on the spot, he told Kanahaiyalal (P.W. 13) and others, was not worthy of reliance;

(iii) that there were material contradictions and omissions in the diary statement and the statement made before the Court; and

(iv) that the setting up witnesses like Rammanohar (P.W. 9), constable, Mohan (P.W. 4), Balkishan (P.W. 3) and the contents of their statements indicate that the prosecution has fabricated false evidence to anyhow connect the accused persons with the offence.

Similar grounds of criticism were also urged before the trial Court, as is evident from the perusal of the judgment of the learned Sessions Judge. While dealing with the aforesaid contentions raised on behalf of the accused persons, the learned Sessions Judge has scrutinised the evidence and has recorded reasons for rejecting the grounds of criticism and concluding that the testimony of witness Kaluram (P.W. 2) was worthy of reliance and established the guilt of the accused persons beyond reasonable doubts.

As regards the first ground that the conduct of Kaluram (P.W. 2) was highly unnatural, inasmuch as, on seeing Vinod Kumar being stabbed and falling down, he, instead of rushing towards Vinod Kumar and as crying for help, preferred to follow the running accused in the lane. It would suffice to observe that we do not find any improbability in the conduct of this witness, as we had already stated earlier, that in the early hours of morning when the incident took place, there were hardly few persons moving on the road or to the scene in the vicinity of the place of occurrence. When this witness reached the corner of Pan Ki Gumti and saw Vinod Kumar going towards the hotel and the accused persons following him at a distance of few paces, there was nothing to apprehend that what is going to happen. All of a sudden, the incident took place within seconds and Vinod Kumar was stabbed. He had fallen down groaning and the accused persons started running from the spot. As Vinod Kumar was known to this witness and he had already seen that the accused persons have stabbed him and are now running away, there was nothing unnatural if on the spur of moment he decided to follow

the running accused through the lane, which was towards the side of road from where this witness was passing. He might have expected that it may be possible for him to apprehend the running accused with the help of somebody who might be available in the lane. He had already seen that Vinod Kumar had been stabbed. All this took place within a fraction of second. It was not a case of scuffle or fight going on so as to expect that this witnesses, on seeing the same should have gone to Vinod Kumar to save him by crying and calling others. Since he was seeing the assailants immediately running at nearby distance from him, there was nothing unnatural if he immediately followed him in the lane upto the point where he could reach. However, ultimately, having found that the accused disappeared at the point where the lane was again bifurcated in two different sides, he left the idea of farther pursuing him and started coming back. It will not be proper to reject the testimony of this witness only on this ground that instead of behaving in the manner he did, he should have preferred to behave in the manner suggested on behalf of the appellants. From the facts, as stated earlier, there was nothing unnatural. Had Vinod Kumar been unknown, he might not have preferred to take the trouble of following the accused who was running. We, therefore, agree with the approach adopted by the learned Sessions Judge while meeting this criticism.

The second contention urged on behalf of the appellants, that on returning back to the place of spot after the pursuit, this witness disclosed the names of assailants first to Mohan (P.W. 4) on way and then to Kanahaiyalal (P.W. 13) and others on the spot, but did not tell Durgaprasad, father of the deceased or Shyamsunder, brother of the deceased about the assailants, is not tenable on the closure scrutiny of evidence in this respect. This witness has stated that when he returned to the place of occurrence, he saw Vinod Kumar being carried by Durgaprasad and Shyamsunder in a taxi. It was absolutely normal and natural that the father and brother of the deceased must be in hurry at the moment to anyhow rush Vinod to the hospital in the hope that it might be possible to save his life. It might be so that by the time this witness reached the place, the taxi might have started and therefore, there was nothing unnatural, if this witness talked about the incident to other persons, who were left on the spot. This witness has not stated that when he reached the spot, Durgaprasad or Shyamsunder were simply standing there. He has said that he saw them carrying Vinod in a taxi. Under these circumstances, even when he had reached the spot and was talking to others, it is quite probable that Durgaprasad and Shyamsunder might not have heard his version being in hurry to anyhow put Vinod Kumar in a taxi and take him to hospital. We, therefore, do not find any improbability in this respect and this explains as to why Durgaprasad did not mention the fact in the first information report that Kaluram (P.W. 2) had seen the accused persons assaulting Vinod Kumar. Similarly, Shyamsunder was, therefore, also not in a position to tell about Kaluram (P.W. 2) or names of assailants to the police on phone. It was contended by Shri Rajendrasingh, learned counsel for the appellants that even at about 8 a.m. when the form of

inquest was filled, it was not mentioned in the inquest report as to who assaulted the deceased or under what circumstances he was assaulted. On the basis of this fact, the learned counsel wanted to assert that, had Kaluram (P.W. 2) been the real witness, his version, as already told by him to others, must have reached the police at least by 8 a.m. when the inquest report was prepared and this fact must have found place in the same. It is not possible to accept this contention for the reason that proceedings u/s 174 relating to inquest report have a very limited scope. The object of the proceedings is to ascertain whether a person had died under the circumstances, which were doubtful or an unnatural death and if so what is the apparent cause of the death. The question regarding the details, as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is beyond the ambit and scope of the proceedings u/s 174, Criminal Procedure Code. In *Pedda Narayana and Others Vs. State of Andhra Pradesh*, it has been observed by the Supreme Court that such details are foreign to the ambit and scope of proceeding u/s 174 of the Code of Criminal Procedure (1898) and neither in practice, nor in law, was it necessary for the police to mention these details in the inquest report. The Investigating Officer, Ramkumar S.O. (P.W. 16) has clearly stated, on being questioned by the Court, that he had examined Kaluram (P.W. 2), Kanahaiyalal (P.W. 13), Balkishan (P.W. 3) Mohan (P.W. 4) in between 10 to 11 a.m. on the date of incident, i.e. 23-6-72. This version was not challenged in further cross-examination by the accused persons. Under these circumstances, nothing can be made out on the ground that the inquest report did not contain the details of the incident or the names of the assailants. It will be relevant to note that though Durgaprasad was not sure about the names of the assailants, he had stated, while lodging the first information report, that his son was on inimical terms with Nawab and Siraj and he feels that they might have assaulted his son. From the evidence of Mohan (P.W. 4), it is established that he was the first man who met Kaluram (P.W. 2) in the lane after he has seen the incident. Kaluram (P.W. 2) has told Mohan (P.W. 4) about the incident and also the names of the accused persons. If this is so, then under the circumstances stated earlier, if Kaluram (P.W. 2) could not tell Durgaprasad or Shyamsunder or Durgaprasad or Shyamsunder did not hear his talking to others, is not very much material. Even if it is assumed that Durgaprasad, father of deceased and brother Shyamsunder were present on spot, it is apparent that they were faced with shocking situation and might have been in very hurry to anyhow take Vinod, who was being unconscious, to the hospital, could not be expected to behave in normal manner or became attentive to talks of persons standing on spot. If on meeting Mohan (P.W. 4) and on being asked about his hurried movement, he would not have told the names of the assailants or the incident, it could have been possible to contend that his testimony is doubtful and not worthy of reliance.

As regards the third contention, in respect of contradictions and omissions in the diary statement and the statement ultimately made before the Court or before the Committing Magistrate, we would like to deal separately with every such item

pointed out to us by the learned counsel for the accused-appellants, and while doing so, the reasons given by the learned Sessions Judge will also be examined.

It was first pointed out that Kaluram (P.W. 2) had stated before the trial Court that when he returned to the place of occurrence on Jahangirabad Road, he saw Vinod Kumar being taken away in a taxi, but before he could reach his hotel, the taxi had left. He however, saw Kanahaiyalal (P.W. 13) and 3 or 4 more persons standing there and told them of his own that Nawab and Siraj have run away after stabbing. In the committal Court, this witness stated that on his return to the place of occurrence, he saw Durgaprasad and Shyamsunder along with their servant Laxman Rao (P.W. 5) lifting Vinod Kumar for putting him in a taxi. Kanahaiyalal (P.W. 13) had also come there. He told them that Nawab and Siraj have run away after stabbing. The actual words used by the witness are . The learned counsel for the appellants contended that by using the words this witness included Durgaprasad and Shyamsunder also and since Durgaprasad or Shyamsunder have not mentioned the names of the assailants in the first information report the story deposed by this witness Kaluram (P.W. 2) should not be relied. On perusal of the statement before the committal Court as a whole, we find that this witness has stated that not only Durgaprasad and Shyamsunder were there, but Kanahaiyalal (P.W. 13) and others had also come there. Thereafter he states that he had told these persons about the assailants. It will not be safe to infer in accordance with strict grammatical construction that the words (these persons) must necessarily referred and included Durgaprasad and Shyamsunder, particularly, when the witness had already stated that there were other persons like Kanahaiyalal (P.W. 13) on the spot. Even if it is taken that by using the words the witness wanted to refer Durgaprasad and Shyamsunder also along with others, the possibility cannot be ruled out that the father and brother of the deceased, who were faced with the situation that the son was lying unconscious with stab wound on his chest and were busy in lifting him and putting in a taxi, might not have been attentive and could not hear or carry a definite impression about the talk of Kaluram (P. W 2). For these reasons, we are not inclined to accept that there is such material contradiction, which would render the testimony of this witness doubtful or it will be proper to brand this witness as a liar, particularly in view of the admitted position that this witness had no animus with the accused persons and in the absence of any circumstances sufficient to indicate that he was interested in Durgaprasad, father of the deceased so as to go to the extent of falsely implicating the two young boys for a capital offence.

The learned counsel for the accused-appellants, thereafter, pointed out that in the diary statement to police, this witness has stated that when he came back to the place of occurrence, he learned that Vinod Kumar had been taken away to the hospital, whereas, in the statement made before the Court, he had said that when he came to the spot, he saw Vinod being taken away in a taxi. According to us, nothing can be inferred against the credibility of this witness. In the statement made before the Court, he had simply stated that he saw Vinod Kumar

being carried in a taxi. The fact that he was carried to hospital might have been learnt by him after reaching the spot from others who were there.

It was further pointed out that in the diary statement, this witness had stated that the accused had come out from the lane and followed the deceased. In the Court, when he was precisely questioned, he stated that he could not say whether the accused had come out of the lane, but he stated that the lane was just near the place where he saw the accused persons following Vinod Kumar, a few paces behind him. As such the contradiction to some extent, if any, stands explained and cannot be made a ground to reject the testimony of this witness.

Much was sought to be made out on the basis of the diary statement of this witness to the police, where he had stated that Kanahaiyalal (P.W. 13) and he had followed Siraj. Before the Court, it was stated that the witness followed Nawab and not Siraj. It is true that there appears to be contradiction, but the closer persual and scrutiny of the diary statement, read as a whole, creates a clear impression that Kanahaiyalal (P.W. 13) and this witness, both had seen the accused persons-Nawab and Siraj-running away and Kanahaiyalal (P.W. 13) followed one of the accused on the lane connecting Jahangirabad road and grain market, whereas this witness followed the accused persons running through the lane towards girls school. Since Mohan (P.W. 4) had corroborated that he saw the witness Kaluram (P.W. 2) entering the lane leading to the girls school, there remains no doubt and it appears that the contradiction in the diary statement is the outcome of the loose way of recording the statement. We have gone through the contents of Ex. D-2. It makes it clear that the witness had made a specific statement that Nawab ran towards the lane leading to the girls school and Siraj towards the lane leading to the grain market. From the map (Ex. P-4), it is apparent that both the lanes are on different sides. Under these circumstances, keeping in view the corroborating statement of Mohan (P.W. 4) who had seen the witness Kaluram (P.W. 2) on the lane towards girls school, it is not possible that Kaluram and Kanahaiyalal both chased Siraj. We are, therefore, not inclined to brand this witness, as a liar, for such discrepancies, particularly, when the witness is neither shown to be having any animus with the accused persons, nor is highly interested in the family of the deceased.

We have gone through the statement of Balkishan (P.W. 3) and Mohan (P.W. 4) along with the statement of the witness Kaluram (P.W. 2). The three statements read together clearly create the impression that the version of Kaluram (P.W. 2) is truthful and there is no reason to discard his testimony, even if the evidence of Rammanohar (P.W. 9), constable, is discarded on the ground that no documentary evidence was produced in the shape of Sanha report showing the assignment of the duty to go to that locality at the particular time for calling some lady constable and the evidence of Kanahaiyalal (P.W. 13) even if liable to be discarded as he was declared hostile, the evidence of Kaluram (P.W. 2) corroborated by the statement of Balkishan (P.W. 3) and Mohan (P.W. 4) fully established the case against the accused persons beyond all reasonable doubts in

view of the discussion contained in the earlier paragraphs.

The criticism of Rammanohar (P.W. 9) was based on the grounds also that if he had seen the accused persons following Vinod Kumar near about the hotel of Narayan and according to the prosecution, the incident took place near about the same time after a few minutes, the aforesaid witness must have heard an alarm even if he had entered into the lane and was not at the place to see the incident. It is true that the incident had taken place immediately after Rammanohar (P.W. 9) left the road and entered into the lane, but it cannot be presumed that the groaning voice of Vinod Kumar might have been so loud so as to presume that Rammanohar (P.W. 9) must have heard the same from a lane through which he was passing at that time with many buildings in between. It is true that the prosecution did not file any documentary evidence showing the assignment of the duty at the particular time to this constable, which would have ruled out all doubts against the probability of his not being there. It was contended on behalf of the prosecution that sometimes various petty assignments like sending somebody to call a particular police staff from his residence are not entered in Roznamcha. In any case, even if we discard the testimony of the police constable, there is sufficient evidence of Kaluram (P.W. 2) corroborated by the statements of Mohan (P.W. 4) and Balkishan (P.W. 3) to connect the accused persons with the offence.

The appeal, therefore, fails and the conviction of the accused-appellants and the sentences awarded to them by the learned Sessions Judge are confirmed.