
(1989) 08 DEL CK 0023

In the Delhi High Court

Case No : Criminal Appeal No's. 65 and 143 of 1986 and 159 of 1987

Kirori Mal Kallu Kalwa

APPELLANT

Vs

State
 Ved Prakash Vs State

RESPONDENT

Date of Decision : 01-08-1989

Acts Referred:

Citation : (1990) 41 DLT 560 : (1990) 19 DRJ 48 : (1989) 2 ILR Delhi 230

Hon'ble Judges : V.B. Bansal, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : K.K. Sud, Rajesh Batra, A.K. Sharma and S.T. Singh, for the Appellant;

Judgement

V.B. Bansal, J.

(1) By this judgment we will dispose of Criminal Appeal No. 65 oi 1986, Kirori Mal @ Kallu @ Katwa v. State, Criminal Appeal No. 143 of 1986, Ved Prakash v. State and Criminal Appeal No. 139 of 1987. Ved Prakash v. State since they arise out of the same judgment dated 31st March, 1986 and order dated 1st April, 1986 of the Additional Sessions Judge Delhi.

(2) Charge u/s 302 read with Section 34 Indian Penal Code was framed against both the accused to the effect that on 17-12-1984 in furtherance of their common intention they committed murder by intentionally causing the death of Suraj Bhan. Kirori Mal was separately charged for the offence u/s 27 of the Arms Act to the effect that on 18th December, 1984 at 3.00 Pm he was in conscious possession of a knife which he had used for. unlawful purpose, i.e., for committing the murder of Suraj Bhan on 17th.

(3) After trial Kirori Mal was convicted by Shri P.L. Singia, Addl: Sessions Judge, Delhi for the offence u/s 302 Indian Penal Code and Section 27 of the Arms Act while Ved Prakash was convicted for the offence punishable u/s 302 read with Section 34 Indian Penal Code Kirori Mal @ Kalwa was sentenced to imprisonment for life u/s 302 Indian Penal Code and also R.I. for one year u/s 27 of the Arms

Act with a direction that both the sentences shall run concurrently. Ved Prakash was sentenced to imprisonment for life for the offence u/s 302 read with Section 34 IPC.

(4) Feeling aggrieved from their conviction and sentence Kirori Mal and Ved Prakash have filed these appeals.

(5) Criminal Appeal No. 143 of 1986 was filed by Ved Prakash through counsel while Criminal Appeal 159/87 was sent by him through Superintendent Jail.

(6) Suraj Bhan along with his wife Smt. Indra Aggarwal and a daughter aged about 1 1/4 years was residing in H. No. C-186 Ganga Vihar, Delhi turn about 2 years prior to 17-12-1984. The house of Manohar Lal was adjacent to the house of Suraj Bhan who constructed a lavatory in front portion of his house adjacent to the door of the house of Suraj Bhan about 6-7 months prior to the date of incident. The flow of the water of the aforesaid lavatory was towards the house of Suraj Bhan. He raised objection to the flow of water and wanted Manohar Lal to change the flow of the said water in the other direction to which he was not agreeable and on this account their used to be quarrels between them. About two mouths prior to the date of occurrence a quarrel took place between Suraj Bhan and Manohar Lal when slaps and first blows were given to Suraj Bhan by Manohar Lal Kalwa and his companion Ved Prakash residents of Moujpur had sided with Manohar Lal. Both Kalwa and Ved during their visits to the house of Manobar Lal gave threats to Suraj Bhan.

(7) On 17th December, 1984 at about 7.30 P.M. Suraj Bhan was lying on a col in his room while his wife Smt Indira Aggarwal was peeling vegetables when light was being shed by a lantern hanging on the wall. At that time both Kalwa and Ved entered the house and caught Suraj Bhan after removing quilt he was having around him. The took Suraj Bhan near the door of the house and on enquiry told Smt. Indira Aggarwal that they were taking revenge for a quarrel by him with Manohar Lal. Suraj Bhan was then secured by Ved while Kalwa inflicted knife injury on the chest of Suraj Bhan who was taken out into the courtyard and thereafter both the assailants escaped. Smt. Indira Aggarwal came near her husband and found him lying dead.

(8) Prem Chand Sharma has been Secretary of the residents of Ganga Vihar and was residing in House No. D-18, Ganga Vihar. He on coming to know of a quarrel at H.No. C-186 went to the police station and made a statement on the basis of which Dd No. 16-A was recorded and its copy was given to S I. Gurdas Ram who along with Constables Bal Singh and Dharamvir Singh left the police station for going to the spot.

(9) S.I. Gurdas Ram along with the constables reached the spot and found dead body of Suraj Bhan lying in the court-yard. He met Smt Indira Aggarwal wife of Suraj Bhan and recorded her statement who made a statement as per the details given in paragraph above. The statement of Smt. Indira Aggarwal was sent by Si Gurdas Ram to P.S. Yamunapuri on the basis of which Fir No. 311 was recorded

and investigation was entrusted to him.

(10) The Investigating Officer got the spot photographed, took inquest proceedings and sent the dead body to the mortuary for post-mortem examination. He recorded the statement of the witnesses and on 18-12-1984 Kalwa @ Kallu @ Kirori Mal and Ved Prakash accused were arrested. Kirori Mal (c) Kalwa accused made a disclosure statement and thereafter got recovered a knife which was seized after preparing its sketch and converting it into a sealed parcel. A separate rukka was sent to P.S Yamunapuri on the basis of which Fir No. 312 was recorded and investigation of this case was also entrusted to S I Gurdas Ram.

(11) The Investigating Officer took into possession the parcels given to him by the constable after post-mortem examination and the case property was deposited with Malkhana Moharrar. He arranged to send the sealed parcels to the CfsI wherefrom reports were obtained. The sealed parcel containing the knife was produced before Dr. L.T. Ramani who opined that the injuries found on the body of Suraj Bhan could be caused by the said knife. After completing the investigation the challans were filed,

(12) We have heard Shri K. K. Sud. Learned counsel for the appellant Kirori Mal @ Kalwa and Sodhi Teja Singh learned counsel for the State Shri Ashok Kumar Sharma had advanced arguments on behalf of Ved Prakash appellant.

(13) According to the case of the prosecution Suraj Bhan was residing in House No. C-186, GangaVihar where he received injury and died at the spot. This part of the prosecution story is proved from the testimony of Smt. Indira Aggarwal (Public Witness -1) who is the wife of the deceased and had been reading with him in the house. S.S.GurdasRam(PW-13) was the Investigating Officer who on getting copy of the D.D. No. 16-A came to the spot while accompanied by Prem Chand and found the dead body of Suraj Bhan lying in the courtyard of his house. He got the dead body photographed and thereafter took inquest proceedings Ext. Public Witness -13/C and prepared brief facts Ext. Public Witness -13/D. The dead body of Suraj Bhan was identified by Smt. Indira Aggarwal (Public Witness - I) and Prem Chand (Public Witness -3). Thereafter the dead body along with the inquest papers was sent to the mortuary and Dr, L.T. Ramani (PW 2) conducted post-mortem examination on the dead body of Suraj Bhan vide his report Ext. PW-2/A. The relevant portion of his testimony is as under:-

"EXTERNAL Injuries: 1. An abrasion 1/2" X 1/2" on the left side of forehead just above- the left eye brow. 2. Abrasion 1/2" X 1/2" near outer end of right eye-brow. 3. Abrasion 1/2" X 1/2" on the tip of nose. 4. Small abrasions scattered on the right cheek- bone area 1" X 1/2." 5. Incised wound 1 1/2 X 1/2" placed transversely on the left side chest 2 below and medial to left nipple, tapering medially. 6. Incised wound 1" X 1/2" X ? present obliquely placed on the front of chest lower part of sternum in mid line. Right lower end was more acutely cut. 7. Small punctured wound 1/4" into skin deep on the left hypochondria just below

the costal margin. 8. An incised wound 3/4" X 1/2" X ? obliquely on the middle of left arm lateral aspect. Anterior end was tapering. 9. Incised wound 1/2" X 1/4" X? on the posterior aspect of middle of left arm 1" behind to injury No. 8. Both the wounds (injury No. 8 and 9) were communicating and were the result of one blow. 10. Incised wound 3/4" X 1/4" X muscle deep on the outer aspect of left elbow.

Internal Examination: Scalp tissues were normal. Skull bones were intact Brain was pale. Neck structures were intact. Trachea was normal. Injury No. 5 communicates with left chest cavity through 4th inter costal space and had cut. Left ventricle up to its chamber (1,2 cm. deep). Total depth of wound was 2j" from the body surface Injury No 6 bad cut 6th costal cartilage, pericardium and right ventricle up to its chamber (1.3 cm). Total depth was 2 1/2" approximately. Both chest cavities were full of fluid and clotted blood. Lungs were pale. Stomach contained 5 to 6 Oz digested food mixed with water. Mucoasa were pale. No typical smell could be identified in the stomach contents. Other organs were normal."

(14) According to Dr. Ramani injuries Nos.1 to 4 were caused by blunt force/fall while injuries Nos. 5 to 10 were caused by sharp edged weapon. He has further opined that injuries Nos. 5 and 6 were individually sufficient to cause death in the ordinary course of nature and time since death was about 16 hours. There has not been anything material in the cross-examination of these witnesses so as to doubt their testimony in this regard. Even otherwise it has not been contested by the learned counsel for the appellants that it is an unnatural death caused due to injuries.

(15) The important question for consideration is as to whether the accused are responsible for inflicting the injuries to Suraj Bhan. Shri K.K. Sud, the learned counsel for Kirori Mal has submitted that Smt. Indira Aggarwal w/o Suraj Bhan (deceased) is the only eye witness examined by the prosecution who has not mentioned the parentage or address of the two accused in her statement before the police or even in her statement as PW-1 in Court. He has further submitted that there is no evidence on record from the side of the prosecution to show that Kirori Mal was at any lime known as Kalwa @ Kalla He has further submitted that there has not been any description of the accused persons in the statement of Smt. Indira Aggarwal, nor there is any allegation from the side of the prosecution that her supplementary statement was at any time recorded giving the description of the accused persons. He has further submitted that there has not been any test identification parade for getting the appellants identified from Smt. Indira Aggarwal during the investigation of the case and in these circumstances the identification of the appellants for the first time in court cannot be of any help to the prosecution. He has further submitted that no independent witness has been joined at the time of the interrogation of Kirori Mal or even at the time the alleged recovery He has further submitted that the knife, Infect, has been planted on Kirori Mal appellant. He has further submitted that there is on cogent

evidence no record to prove motive on the part of the appellants for the commission of the offence. He has, Therefore, prayed for acquittal of the appellants.

(16) Sodhi Teja Singh learned counsel for the State has, on the other band, submitted that Smt Indira Aggarwal (Public Witness 1) is that most natural witness examined by the prosecution with regard to the motive as well as the actual incident. He has further submitted that there are no material discrepancies in her testimony and the recovery knife at the instances of Kirori Mal @ Kalwa stands proved from the testimony of ASI Chander Pal (Public Witness 12) and S.I. Gurdas Ram (Public Witness 13). He has further submitted that both the appellants had been visiting Manohar Lal with whom Suraj Bhan had a quarrel over the flow of water from the lavatory and on account of friendship with Manohar Lal both the appellants sided with him and they committed this offence on account of the aforesaid motive. He has further submitted that there could possibly be no valid reason for Smt. Indra Aggarwal to falsely implicate the appellants and to allow the real culprits to escape punishment He has, thus, submitted that the learned trial court has correctly concluded holding the appellants guilty and prayed that the appeals may be dismissed.

(17) We may note that identity of the appellants is the most important question to be proved in the instant case. Smt. Indira Aggarwal (PM1) has stated that on 17-12-1984 at about 7.30 P.M. she was peeling vegetables in her house while her husband was sitting on a cot having a quit around him when both the accused came. She has claimed that Kirori Mal accused was known to her as Kalwa @ Kallu and the other accused as Ved. She went on to state that both the accused pushed out her husband out of the quit and took him near the outer door of the house and on enquiry they proclaimed that they would not leave him alive. According to her Ved accused secured her husband while Kalwa gave three knife injuries to her husband and thereafter they threw her husband in the courtyard and ran away. According to her one Sheetal Pershad was passing by the side of her house and she told him that Kallu and Ved were leaving after killing her husband She has also stated that her statement Ext. PWI/A was recorded by the police at the spot.

(18) Smt. Indira Aggarwal did not give the parentage or address of the two accused in her statement Ext. PWI/A which forms the basis of the Fir, not even in her statement on oath as Public Witness .I. During cross-examination she has stated that she could not say if she had known the name of Kallu @ Kalwa accused as Kirori Mal or not. She has further stated that she came to know about the name of Kalwa @ Kallu as Kirori Mal when he was arrested in the case, i.e. 2-3 days after 17-12-1984. According to her it was being mentioned to her by the neighbours but she was unable to give the names of the neighbours. She has denied that both the accused persons had not visited her house on 17th December, 1984 and had not inflicted injuries to her husband. She has claimed that she knew Kallu @ Kalwa for about 6-7 months before this incident and

denied that Kirori Mal accused was not known as Kalwa @ Kallu.

(19) S.I. Gurdas Ram (Public Witness 13) has claimed that on 18th Dec., 1984 ASI Chander Pal Singh was present with him when he arrested both the accused persons from near Moujpur culvert. During cross-examination he has claimed that Smt. Indira Aggarwal gave to him the name of Kirori Mal at about 10.00/1030 or 11.00 P.M of 17-12-1984 itself. He has denied that this name was not given to him by her. According to him he came to know about the address of the accused persons during the night between 17th and 18th of December, 1984 and the same night he had visited their houses. According to him the address of both the accused persons were given to him by secret informer and Smt. Indira Aggarwal met him in the police station in the morning of 19th Dec. 1984.

(20) Accused person to Yamuna Vihar Road towards Moujpur upon which both the accused persons were arrested. He has admitted that he did not know the two accused earlier and he came to know their names when they were interrogated by the Investigating Officer. He has also admitted that the Investigating Officer had not disclosed to him the name of Kirori Mal as Kalwa.

(21) There is no doubt that the Investigation Officer S.I. Gurdas Ram has claimed that the name of Kalwa @ Kallu was given to him as Kirori Mal by Smt, Indira Aggarwal at the spot the same night. He has, however, been contradicted by Smt Indira Aggarwal (Public Witness I) when she had stated that she came to know name of Kalwa @ Kallu as Kirori Mal 2-3 days after his arrest.. She was unable to give the names of the neighbours who gave the name of Kalwa @ Kallu as Kirori Mal. The Investigating Officer has nowhere claimed having recorded the supplementary statement of Smt. Indira Aggarwal mentioning the name of Kalwa as Kirori Mal or giving the parentage or address of the accused persons. She has not been able to give the address of the accused persons in her statement in court. When examined u/s 313 Cr PC. Kirori Mal accused has made a categorical statement that he is not known as Kalwa @ Kallu. It is not the case of the prosecution that the accused/appellants were asked to muffle their faces or that at any time during investigation Smt Indira Aggarwal was asked to identify them. It is, thus, apparent that the two accused have for the first time been identified by Smt. Indira Aggarwal in Court. In case Mohd. Abdul Hafeez Vs. State of Andhra Pradesh, it has been held that identification of accused for the first time in Court four months after the incident when the accused were not known to the complainant earlier cannot form the basis of conviction. However, we are clearly of the view that the case of the prosecution would not fall on account of the absence of test identification parade when the prosecution case does not rest on the testimony of that witness alone and there are other corroborative circumstances lending enough support to the involvement of accused in the crime. We find support for this view from the case Harbajan Singh Vs. State of Jammu and Kashmir, .

(22) We would thus, examine the submission of the learned counsel for the State with regard to the other evidence corroborating the prosecution story.

(23) The learned counsel for the State has submitted that Kirori Mat made a disclosure statement and thereafter got recovered the knife which was found to be stained with human blood and according to Dr. L.T. Ramani the injuries on the person of Suraj Bhan could be caused by this knife Ext. P2. It would, thus, be appropriate to discuss the evidence with regard to the recovery of this knife. In order to prove this recovery reliance has been placed upon the testimony of Asi Chander Pal Singh (Public Witness 12) and the Investigating Officer S.I., Gurdas Ram (Public Witness 13). According to Asi Chander Pal Singh (Public Witness 12) after his arrest accused Kirori Mal was interrogated who disclosed that he kept concealed blood stained knife under the earth below a shrub on Ganda Nala Main Moujpur Road which he could get recovered. upon this his disclosure statement Ext. PW12/C was recorded which he signed. He has further stated that Kirori Mal @ Kalwa accused thereafter got recovered knife Ext. P2 and the Investigating Officer prepared a sketch Ext. PW12/B and thereafter took the same into possession vide seizure memo Ext. PW12/E after converting it into parcel sealed with the seal of "CPS". He has admitted that there was a rush of traffic on the Moujpur culvert and 55 denied that constables Shri Pal and Bal Singh were not present with him and accused Kalwa did not get recovered knife EXI. P2. According to S.I. Gurdas Ram ASI Chander Pal and Constable Bal Singh and Shri Pal were present with him when accused Kirori Mal made a disclosure on 18th December, 1984 that he had kept blood stained knife near Ganda Nala Main Moujpur Road and could get the same recovered, regarding which disclosure statement Ext. PW12C was recorded by him He has also claimed that Kirori Mal thereafter got recovered knife Ext. "2 after removing earth with his hands and that he prepared sketch Ext. PW12/D of the knife Ext. P2 which he took into possession vide seizure memo Ext. PW12/E after converting it into a parcel sealed with the seal of "CPS". He has during cross-examination denied that Constable Bal Singh was not present with him on that day and claimed that a rukka for the registration of the case under the Arms Act against Kirori Mal was sent by him through Constable Bal Singh. He has admitted having not obtained the signatures of the constable on any memo, nor had he recorded the statement of constable u/s 161 Cr PC. He has admitted having not joined any witness at the time of the recovery but claimed that a one was available. He has denied that Kirori Mal did not get recovered any knife.

(24) It is pertinent to note that according to these two witnesses the recovery was effected during day time and there was a rush of traffic on Moujpur culvert as stated by ASI. Chander Pal Singh (Public Witness 12). No effort has, however, been made by the Investigating Officer to join any person from the public knowing it fully well that he was investigating a case of murder. We may also note that the disclosure statement Ext. PW12/C, sketch Ext. PW12/D and seizure memo Ext. PW12/E bear the signatures of Asi Chander Pal as a witness. There is no Explanation forthcoming as to why the signatures of even a constable were not obtained in the absence of any witness from the public. It is not disputed that normally there are two attesting witnesses of disclosure statement and

seizure memo The learned counsel for the State has, however, not been able to explain the lapse on the part of the Investigating Officer in not making any effort to join persons from the public and in not obtaining the signature of even the constables if actually they were present there. In these circumstances, no explicit reliance can be placed even on the recovery of the knife Ext. P2 at the instance of Kirori Mal.

(25) The learned counsel for the State has submitted that there was a strong motive on the part of the appellants for the commission of this heinous offence. Reliance in this regard has been placed on the testimony of Smt. Indira Aggarwal.

(26) According to Smt Indira Aggarwal (Public Witness ") there used to be quarrels between her neighbour Manohar Lal and her husband over the flow of water from the lavatory of Manohar Lal in front of their house. She has also stated that both Kalwa and Ved used to visit Manohar Lal and sided with him in the aforesaid dispute. She has also stated that both the appellants used to visit Manohar Lal at various intervals and had been giving threats to her husband of taking revenge on account of his quarrel with Manohar Lal. As she has stated that both the appellants were in no way related to Manohar Lal the prosecution has not produced any other witness to show that both the appellants were frequent visitors to the house of Manohar Lal or at any time they had sided with Manohar Lal in any such quarrel. Manohar Lal has not been examined during the investigation of this 56 case and was not cited as a witness, in his statement as PW-13 S.I. Gurdas Ram has claimed that Manohar Lal did not meet him at the spot and he did not return to his house during the night till the time he remained at the spot. He has, however, been contradicted by Smt. Indira Aggarwal (Public Witness I) who has stated that Manohar Lal came to his house when the police was still present at the spot. According to her wife and children of Manohar Lal were present in their house at the time of the incident but she could not say if police had interrogated any lady of the mohalla or not. Even if Manohar Lal was not available during that night it was incumbent on the Investigating Officer to examine him, his family members or other persons residing in the neighborhood to collect evidence about motive. We are constrained to say that there has not been proper investigation in the case No. evidence has been brought on record to show that there was any relationship between Manohar Lal and the appellants or that they were even on visiting terms. We may note that in Ext. PW13/D, the brief facts forming part of the inquest proceedings it has been mentioned that Kallu and Ved are the relation? of Manohar Lal. However, there is no material on record to show about such relationship. Very often it may be difficult to bring on record evidence about the motive but in the instant case as per the prosecution story there was a quarrel between Manohar Lal and Suraj Bhan (deceased) and the accused persons used to aide with Manohar Lal and on account of the said dispute both the accused took steps for the murder of Suraj Bhan, However, the prosecution has failed to prove by cogent and reliable evidence any link between the appellants and Manohar Lal and, thus, we are clearly of the view that the prosecution has not been able to prove motive against the accused/appellants. In

her statement as P W.I Smt. Indira Aggarwal has stated that after the running away of the assailants and on her raising alarm she noticed one person, namely, Sheetal to whom she narrated that Kallu and Ved were leaving after killing her husband. This witness Sheetal could, thus, give corroboration to her testimony but prosecution has not been able to produce him as a witness Smt. Indira Aggarwal has also claimed having given the names of the accused person to Prem Chand at the spot. She has, however, not been corroborated in this regard by Prem Chand who has appeared as Public Witness .3.

(27) It is really unfortunate that Suraj Bhan has been killed in his own house by inflicting knife injuries. However, the prosecution has not been able to connect the accused persons with the commission of this offence. As already discussed no motive has been proved against the appellants and their identity was not established during the investigation of this case and they have for the first time been identified in court. No explicit reliance could be placed on such identification in the absence of corroborative evidence which in the instant case is not forthcoming. Even the recovery of knife at the instance of Kirori Mal @ Kalwa is doubtful, to these circumstances, we are clearly of the view that the prosecution has not been able to bring home guilt against the appellants beyond reasonable doubt on account of which they are entitled to acquittal.

(28) As a result appeals filed by Kirori Mal and Ved Parkash are accepted. Both Kirori Mal @ Kalwa @ Kallu and Ved Prakash appellants are hereby acquitted. They are in custody and shall be released forthwith, if not required in any other case.