
(2005) 07 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 240-DB of 1996

Pardeep Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2005) 15 CriminalCC 486

Hon'ble Judges : Pritam Pal, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : R.S. Cheema, with Mr. M.J.S. Waraich, in C.A. No. 240-DB of 1996, Mr. P.C. Chaudhary, in C.A. No. 362-DB of 1996, for the Appellant; Partap Singh, D.A.G., Haryana and Mr. S.K. Garg, A.A.G., Haryana, for the Respondent, Mr. B.R. Rana, for Mr. S.M. Sharma, for the Petitioner, for the Appearing Parties

Final Decision : Dismissed

Judgement

1. Separate appeals have been filed by the Pardeep Kumar son of Puran Chand resident of village Chandlana, District Kaithal, which is Criminal Appeal No.240-DB of 1996. Another appeal has been filed by Jagdeep @ Kala son of Rajender @ Lohri, resident of village Yara district Kurukshetra, which is Criminal Appeal No.362-DB of 1986. Criminal Revision No.515 of 1996 has been filed by complainant Parshotam Dass son of Jagat Ram against the judgment dated 17.4.1996 of the Sessions Judge, Kurukshetra. Occurrence being the same, both the Criminal Appeals and the criminal revision are being decided by a common judgment.

2. The learned Sessions Judge, Kurukshetra, vide his judgment dated 17.4.1996, convicted appellant Pardeep Kumar u/s 302 read with Section 34 of the Indian Penal Code and sentenced him to undergo life imprisonment and to pay a fine of Rs. 150/-. In default of payment of fine, he was ordered to undergo rigorous imprisonment for three months.

3. The case of the prosecution is unfolded by Purshotam Dass (PW9), the brother

of the deceased, by giving a statement of Karnail Chand, Station House Officer, Police Station, Shahbad (PW13), on 1.5.1994 at about 7.30 p.m., wherein he has stated that complainant (Parshotam Dass) has five brothers. Deceased Shiv Dutt was the youngest. Appellant Jagdeep @ Kala, resident of village Yara, who resided in another Mohalla, used to visit their street at odd hours. Complainant and Shiv Dutt asked him not to come to their street. Four-five days earlier to the occurrence, deceased Shiv Dutt had restrained appellant Jagdeep @ Kala from coming to their street. Due to this, there was a dispute. On 1.5.1994 at 6.00 p.m. complainant along with Basant Lal son of Banarsi Dass, who was posted as a Clerk, in High School, Yara, had gone to the school, where they saw that Jagdeep @ Kala was threatening Shiv Dutt that he would teach him a lesson for stopping him from coming to their street. He saw another boy, who was an outsider and whose whereabouts, he did not know taking Shiv Dutt in his grip from behind. Within the sight of the complainant and Basant Lal, appellant Jagdeep @ Kala gave two-three knife blows on the left arm and chest of Shiv Dutt. Complainant (Parshotam Dass) along with Basant Lal tried to over-power the appellants, but they ran away. Complainant along with Basant Lal and Rajinder Parshad brought Shiv Dutt in an injured condition to the shop of Dr. Devi Ram, resident of village Yara. On being asked by the doctor, Shiv Dutt stated that Jagdeep @ Kala gave him knife blows, while the other boy had taken him in his grip. After stating this, Shiv Dutt succumbed to his injuries. Statement of Parshotam Dass was recorded by Karnail Chand, Station House Officer (PW13) at Police Station Shahbad. Formal FIR, Ex.PL, was recorded on 1.5.1994 at 7.30 a.m. Special Report reached the Judicial Magistrate I Class, Kurukshetra on 2.5.1994 at 12.30 a.m.

4. Prosecution to prove its case, brought into the witness box, Dr.S.C.Grover (PW1), Nripjeet Singh, Sub Inspector/Station House Officer, Police Station Ismailabad (PW2), Mukesh Kumar, draftsman (PW3), Hardial Singh, Head Constable (PW4), Krishan Lal, Head Constable (PW5), Rajbir Singh, Constable (PW6), Jeet Ram, Constable (PW7), Balak Ram, Photographer, (PW8), Parshotam Dass (PW9), Dr. Devi Ram (PW 10), Rajinder (PW11), Ravi Dutt (PW12) and Karnail Chand, Sub Inspector/Station House Officer (PW13).

5. Learned counsel for appellant Pardeep Kumar, Mr. R.S.Cheema, Senior Advocate, assisted by Mr.M.J.S.Waraich, Advocate, has stated that there is no motive for the commission of the offence. Parshotam Dass (PW9) though has stated in the First Information Report and in his testimony before the court that he along with his deceased brother Shiv Dutt asked appellant Jagdeep @ Kala not to come to their street, but these witnesses have not spelt out the reason as to why they were stopping him from coming to their street. Parshotam Dass (PW9) in his examination-in-chief, has stated that he does not know why Jagdeep @ Kala used to come to their Mohalla/street.

6. There is contradiction between the version, as spelt out in the First Information Report and what has been stated in the court by Parshotam Dass

(PW9). As per the First Information Report, Parshotam Dass (PW9) has stated that Pardeep Kumar took deceased Shiv Dutt in his grip from behind and Jagdeep @ Kala gave him knife blows. In his statement before the court, Parshotam Dass (PW9) has stated that Jagdeep @ Kala and Shiv Dutt were grappling with each other. The word used by this witness is "Hathapai".

7. Parshotam Das (PW9) in his statement before Sub-Inspector Karnail Chand (PW13) has stated that he did not know the name of the other person. In his testimony before the court apart from Jagdeep @ Kala, Parshotam Dass stated that he knew the name of the other person at the time of recording of the First Information Report. He has further stated in his testimony before the court that half an hour before the occurrence, he had seen this boy (appellant Pardeep Kumar) with appellant Jagdeep @ Kala. Learned counsel has laid much stress on this fact that Parshotam Das (PW9) at the time of recording of his statement before Karnail Chand, Station House Officer (PW13), knew the name of Pardeep Kumar, the other assailant, but it is strange that he did not name him at the time of recording of the statement and the First Information Report. In fact, the complainant party after due deliberations, roped in appellant Pardeep Kumar.

8. Dr.Devi Ram (PW10) has stated in his testimony that Shiv Dutt was brought to his clinic on 1.5.1994 at 6.15/6.30 p.m. He has further stated that he told Parshotam Dass (PW9) to go to the Police Station to inform the Police. He has further stated that deceased Shiv Dutt was in a position at that time to make a statement and he stated to Dr.Devi Ram (PW10) that Jagdeep @ Kala had given him knife blows. Apart from Jagdeep @ Kala, he did not name any other person. Shiv Dutt stayed alive for about two/three minutes in his presence.

9. Learned counsel has further stated that the inquest report, Ex.PB/2, prepared by Sub-Inspector/Station House Officer Karnail Chand (PW13) does not mention the name of Parshotam Dass (PW9). The names of Dr.Devi Ram, Jai Parkash son of Tirlok Chand, Biru Ram son of Basheshar Nath and Rajinder son of Banarsi are mentioned, who were found present at the spot. Parshotam Dass, in fact, has been later introduced.

10. Learned counsel has stated that as identity of appellant Pardeep Kumar had not been established, a test identification parade should have been held. He has placed reliance upon the authority cited in Dana Yadav alias Dahu and others v. State of Bihar, 2003 (1) Apex Court Judgments 145 (S.C.): 2003(1) CCC 706 (S.C.): 2002 SCC (Criminal) 1698, wherein it has been held by the Hon"ble Apex Court that "ordinarily if an accused is not named in the First Information Report, his identification by witness in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above." Further, it has been held that "identification of an accused by a witness for the first time in court, should not form the basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence."

11. Learned counsel for appellant Jagdeep @ Kala Mr.P.C.Chaudhary, Advocate, has contended that the statements of the eye-witnesses, i.e., Parshotam Dass (PW9) and Rajinder (PW11) cannot be relied upon. Parshotam Dass (PW9) is the brother of the deceased and Rajinder (PW11) is the nephew of the deceased. No explanation has come forward from the side of the prosecution as to the reason as to they being present near the School on a holiday.

12. He has further stated that it is a case of blind murder. The Investigating Officer was not sure as to who had committed the murder. A tailor by the name of Kukal, whose shop was situated near the house of the deceased, was taken into custody by the police, but he was released after one or two days. The police released Kukal on the basis of a decision of a Panchayat, which had been convened, who had pleaded with the police that Kukal was innocent. He further stated that the police were, at the time, groping in the dark as to the persons, who had committed the murder.

13. Learned counsel has further stated that at the most, an offence u/s 304 Part II of the Indian Penal Code is made out. Grappling had taken place after a sudden fight erupted between the deceased and the appellant.

14. Learned counsel for the State has stated that the First Information Report has been lodged promptly. There is no delay in sending the Special Report to the Ilqa Magistrate. The motive for committing the offence was that appellant Jagdeep @ Kala used to come to the street of the deceased. Complainant party did not like it, as Jagdeep @ Kala was a vagabond. Both these witnesses, i.e. Parshotam Dass (PW9) and Rajinder (PW11) are natural witnesses. Their houses were situated only about 150 yards away from the place of occurrence.

15. We have heard the learned counsel for the parties and perused the record with their assistance.

16. Parshotam Dass (PW9), the brother of the deceased, has stated in his testimony before the Court that though he did not know the reason for appellant Jagdeep @ Kala coming to their Mohalla/street, but Jagdeep @ Kala was a vagabond. No self respecting person would like a vagabond to roam around near their house. This was resented to by the complainant-party. Stopping of appellant Jagdeep @ Kala from coming to the street of the complainant party, upset the appellant. Appellant, who was a vagabond, took offence to this. Four-five days earlier to the occurrence, a quarrel had taken place between Jagdeep @ Kala and the complainant party.

17. Deceased Shiv Dutt, on receiving injuries from appellant Jagdeep @ Kala was taken to the clinic of Dr.Devi Ram(PW10). Dr.Devi Ram, in his testimony, has stated that Shiv Dutt stayed alive for two-three minutes in his clinic. He was in a condition to make a statement. Deceased Shiv Dutt stated before him that Jagdeep @ Kala had given him knife blows. Shiv Dutt did not name any other person. On being questioned by the Public Prosecutor, Dr.Devi Ram (PW10) has stated that he did not tell the police that Shiv Dutt had also told him that

Pardeep @ Deepa had taken him (Shiv Dutt) into his arm. The police reached his clinic within half an hour, after he had told Parshotam Dass (PW9) to go and inform them. The Station House Officer Karnail Chand (PW13) enquired from Dr.Devi Ram, who stated that Shiv Dutt had named only Jagdeep @ Kala for causing him injuries.

18. Parshotam Dass (PW9) in his cross-examination, has stated that he knew the name of Pardeep Kumar earlier at the time of recording of the First Information Report, but he forgot to tell his name to the Investigating Officer, as he was not in a fit state of mind due to the murder of his younger brother. Dr.Devi Ram, Rajinder, Basant Lal and himself did not tell the name of Pardeep Kumar to Karnail Chand, Sub Inspector/Station House Officer as long as he stayed at the shop of Dr.Devi Ram. He has further stated in his testimony that he had seen appellant Pardeep Kumar along with appellant Jagdeep @ Kala roaming in their street about half an hour before the occurrence. This fact was not told to the police.

19. It is clear from the testimony of these two witnesses, i.e. Parshotam Dass (PW9) and Dr.Devi Ram (PW 10), appellant Pardeep Kumar was not present at the time of occurrence. Deceased Shiv Dutt made a statement to Dr.Devi Ram (PW10), wherein he named Jagdeep @ Kala only. Deceased Shiv Dutt did not mention the name of Pardeep Kumar. Similarly, Parshotam Dass (PW9), who is the real brother of the deceased, has stated in his testimony before that court that at the time of recording of the First Information Report, he knew the name of the appellant Pardeep Kumar. He has not given any reason as to why he did not name appellant Pardeep Kumar at the first instance.

20. In his statement before the Investigating Officer, in the First Information Report, Parshotam Dass (PW9) has stated that he saw another boy, who was an outsider, whose whereabouts he does not know. Not only did Parshotam Dass (PW9) as per his testimony before the Court know the name of appellant Pardeep Kumar, while recording of the First Information Report, but Parshotam Dass (PW9) had also seen Pardeep Kumar roaming with Jagdeep @ Kala half an hour before the occurrence.

21. As per the First Information Report, Ex.PL, the second person had not been identified. Appellant Pardeep Kumar along with tailor Kukal had been taken into custody of by the police, though tailor Kukal was released after a few days, he being found innocent. It was incumbent upon the Investigating Agency to hold a test identification parade for Pardeep Kumar. In Dana Yadav's case (supra), the Hon'ble Apex Court has categorically held that if an accused is not named in the First Information Report, his identification in the court cannot form the basis of conviction. In the case in hand, appellant Pardeep Kumar was not named in the FIR, but his identification was done in the court for the first time.

22. Charge against appellant Pardeep Kumar @ Deepa has not been proved. He is acquitted of the charge framed against him. Conviction and sentence qua

Pardeep Kumar @ Deepa is set aside. Appeal qua Pardeep @ Deepa is allowed.

23. It has come in evidence that the occurrence had taken place on 1.5.1994 at 6.00 p.m. FIR, Ex.PL, came into existence on 1.5.1994 at 7.30 p.m. It reached in the safe hands of the Judicial Magistrate I Class, Kurukshetra on 2.5.1994 at 12.30 a.m. The distance between the place of occurrence and the Police Station Shahbad is 10 kms and distance between the Police Station, Shahbad and Kurukshetra is 23 kms. Occurrence had taken place late in the evening and by 12.30 in the night, the special report was in the safe hands of the Judicial Magistrate I Class. Distance between Police Station Shahbad and Kurukshetra is about 23 kms. Appellant Jagdeep @ Kala was named in the First Information Report. We are of the considered view that recording of the First Information Report and sending of the Special Report is prompt. It goes a long way in proving the case of the prosecution.

24. Dr.Devi Ram (PW10), who has stated on oath that deceased Shiv Dutt had stated to him that Jagdeep @ Kala had given him knife blows. Both the witnesses Parshotam Dass (PW9) and Rajinder (PW11), whose houses are situated about 150 yards away from the place of occurrence, are natural witnesses. Their testimony cannot be disbelieved qua appellant Jagdeep @ Kala.

25. Learned counsel for the appellant Jagdeep @ Kala, Mr.P.C.Chaudhary, Advocate, has laid much stress on this point that it is a blind murder. Promptness in lodging of the First Information Report and the name of Jagdeep @ Kala mentioned in the First Information Report, goes a long way in establishing the case of the prosecution and demolishes this argument of the learned counsel for the appellant. In fact, this is a case of an eye-witness account. Parshotam Dass (PW9) and Rajinder (PW11) have stood by their statements in Court though having to go through a lengthy cross-examination. The First Information Report had been recorded promptly. Kukal tailor had been taken into custody for interrogation as the Investigation Agency was in doubt whether Pardeep Kumar or Kukal was involved in the occurrence. Jagdeep @ Kala has been named in the First Information Report. Learned counsel for appellant Jagdeep @ Kala has laid much stress that Parshotam Dass (PW9) and Rajinder (PW11) are closely related to the deceased. This fact cannot be brushed aside that the houses of Parshotam Dass (PW9) and Rajinder (PW11) are very near to the place of occurrence (150 yards), and the occurrence having taken place in the evening at 7.30 p.m., it was natural for these witnesses to be present near their houses.

26. Criminal Appeal No.362-DB of 1996 qua appellant Jagdeep @ Kala is dismissed. We do not find any merit in criminal revision No.515 of 1996 filed by Parshotam Dass. It is also dismissed.