

(2002) 10 AHC CK 0221
In the Allahabad High Court
Case No : Criminal Appeal No. 75 of 1995

Raj Kumar Yadav (in Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Evidence Act, 1872 — Section 27, 3, 32, 32(1)
Penal Code, 1860 (IPC) — Section 299, 300

Citation : (2003) CriLJ 2075

Hon'ble Judges : Y.R. Tripathi, J; M.C. Jain, J

Bench : Division Bench

Advocate : Vijan Rathore and N.P. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Having been convicted by the then IIIrd Additional Sessions Judge, Ghaziabad by judgment dated 16-10-1994 in S.T. No. 4 of 1992 and S.T. No. 5 of 1992, the accused has preferred this appeal. Both the trials have been decided by a common judgment. He has been sentenced to life imprisonment in S.T. No. 4 of 1992 u/s 302, I.P.C. and to one year's rigorous imprisonment u/s 25 of Indian Arms Act in connected S.T. No. 5 of 1992. Both the sentence have been ordered to run concurrently.

2. The relevant facts may be stated briefly for proper appreciation. The victim of the felony, who was murdered, was Ram Kishan. The incident occurred on 16-7-1991 at about 2.45 p.m. in Sector 19, NOIDA, and the report was lodged the same day by Heera Lal, cousin of the deceased at 3.30 p.m. The deceased was alive at the time of lodging of the F.I.R. but he died later on at 7.30 pm. Ram Kishan had his shop in D-Block of Sector 21. The accused-appellant Raj Kumar had taken a loan of Rs. 2200/- from him for the payment of which Ram Kishan was pressing hard. A little before the incident, the accused-appellant came to the shop of Ram Kishan and coaxed him to accompany him on the

pretext that he would make his payment at the factory in Section 3. Ram Kishan accompanied the accused-appellant on a rikshaw to realize his money. The rikshaw was being driven by PW 2 Ram Prasad. When the rikshaw reached in Sector 4 and took a turn in the Gali of Super Cassette Factory, all of a sudden the accused-appellant took out a knife and gave knife blows to him. Ram Kishan raised alarm whereupon the informant PW 1 Heera Lal Jageshwar and PW 3 Ramesh Chandra also reached the spot. The accused-appellant ran away towards Sector 19. The informant brought his cousin brother Ram Kishan to Hospital in injured condition and thereafter lodged written report at the police station. The investigation followed. In the first instance, Ram Kishan was taken to the Hospital of Dr. Mahesh in Sector 19 itself and then to Holy Family Hospital, New Delhi where he expired the same day. The accused-appellant was arrested the next day and the weapon of offence also came to be recovered at his pointing from Nala nearby the place of occurrence where he had thrown it. Before being taken to Holy Family Hospital, New Delhi, the statement of the victim was recorded by the Investigating Officer after the lodging of the F.I.R. in the ambulance in which he was placed.

3. The post mortem over the dead body of the deceased was conducted on 17-7-1991 between 2.30-3.30 pm. He had died on 16-7-1991 at 7.30 p.m. in Holy Family Hospital, New Delhi, where he was admitted at 3.40 pm. He was aged about 25 years. The following ante mortem injuries were found on his person :--

1. Incised wound on right index finger over proximal Phalanx of size 2 cm x 0.5 cm x bone deep with clean cut everted margin.

2. Incised wound on right ring finger over proximal phalanx of size 2.5 cm x 0.5 cm x bone deep with clean cut everted margins.

3. Stab wound over left shoulder placed obliquely 6 cm below shoulder margin and 12 cm. left of midline of size 3 cm x 1.4 cm x 4 cm. with clean cut everted margin, cutting underlying the right subcutaneous tissue and muscles.

4. Stab wound right para umbilical region placed 6 cm from mid line 3 cm above umbilicus placed transversely of size 3.5 cm x 2 cm penetrating into the abdominal cavity causing mesenteric haematoma and cutting through the intestine at multiple places and going through mesentery into retroperitoneum causing retroperitoneal haematoma of an amount of 500 ML. There was incised wound of pelvic vessels. The direction of the wound was posterolateral and medially.

4. The death had occurred due to shock and haemorrhage as a result of ante mortem injury No. 4 caused by sharp edged weapon which was sufficient to cause death in ordinary course of nature.

5. The defence was of denial as per the statement of the accused-appellant recorded u/s 313, Cr.P.C. He denied even to be knowing Ram Kishan. The factum of the recovery of knife at his pointing was also denied by him.

6. To bring home the guilt of the accused, the prosecution examined nine witnesses out whom PW 1 Heera Lal cousin of the deceased, PW 2 Ram Prasad rikshaw puller of the rikshaw on which the deceased and the accused appellant were travelling at the relevant time and PW 3 Ramesh Chandra were eye-witnesses. PW 4 Ram Niwas alias Babu was witness of the recovery of the knife from the Nala nearby the place of occurrence, at the pointing of the accused-appellant. Rest were formal witnesses including the Investigating Officer.

7. We have heard Sri-Vijan Rathore, learned counsel for the appellant and learned A.G.A. from the side of the State. We have also carefully gone through the evidence and material on record. The submission from the side of the accused appellant is that he was falsely implicated and has been convicted on wholly incredible and insufficient evidence. Learned A.G.A. has countered these arguments advanced from the side of the accused-appellant and has supported the impugned judgment of conviction and sentence passed by the trial Court. We wish to deal with the important aspects of the case in the light of submissions made before us.

8. It is urged by the learned counsel for the appellant that he had no motive to commit this crime and the prosecution has failed to prove any. It is sufficient to observe to deal with this argument that motive is insignificant in a case of direct evidence as is the situation here. Motive is that object of the person committing the crime which is exclusively known to him. In any case, the absence of motive cannot over shadow the weight of overwhelming direct evidence against the appellant. Moreover, in the instant case the prosecution has come forward with the previous background that the appellant owed Rs. 2200/- to the deceased for the payment of which the latter was pressing him hard, even threatening that in case of non payment, he would lodge a case at the police station. In a given situation, different persons act differently depending upon their breeding, education, background and bent of mind. It is not unusual that irked by the persistent demand of money by the deceased, the appellant became extremely annoyed and took it into his head to do away with the deceased to put an end to the nagging. We do not attach any importance to the argument advanced from the side of the appellant that he had no motive to commit this crime.

9. The second submission of the learned counsel for the appellant is that it is unnatural that the appellant took with him a known rikshaw puller, namely, PW 2 Ram Prasad to reach the shop of the deceased and then to take him on that rikshaw with the promise of making payment, but attacked him with a knife in the way. It is reasoned that he would have chosen an unknown rikshaw puller for the purpose. It has been pointed out with the reading of the statement of PW 2, Ram Prasad rikshaw puller that he knew the appellant from before. Reference has also been made to the statement allegedly made by the deceased to the Investigating Officer before his death, which also shows that he knew the rikshaw puller from before.

10. It is not possible to accept the reasoning suggested by the learned counsel

for the appellant. We should point out that it is neither expected nor possible for the prosecution to explain each and every step taken by the culprit towards the accomplishment of his mission of committing the crime. It can only truthfully place before the Court what actually happened. True, it appears that the rikshaw puller PW 2, Ram Prasad was known to the appellant as well as deceased from before, but there is nothing unusual in it. No one can have a peep into the mind of the appellant as to why did he take a known rikshaw puller. It can be so that he chose him to infuse a sense of confidence in the mind of the victim whom he was taking from his shop with the promise that he would make his payment. As bad blood had come to be created between the two in some measure because of persistent demand of money by the victim, he might have felt hesitant in accompanying the appellant on the rikshaw of an unknown puller. Any way, it is not necessary for the Court to speculate the reason as to why the appellant chose a known riskshaw puller for the purpose. This aspect of the matter does not at all affect the merits of the case.

11. The third argument from the side of the appellant is directed towards the criticism of the eye witnesses, namely, PW 1 Heera Lal (cousin of the deceased) who lodged the F.I.R. also, PW 2, Ram Prasad, rikshaw-puller and PW 3 Ramesh Chandra PW 1 Heera Lal had his shop in Sector 20 whereas the shop of the deceased was in Sector 21. He had been informed at his shop by the deceased's servant, Pappu at about 2.30 p.m. that the appellant had taken the deceased with him in Sector 3 on the pretext of making of payment to him. The argument of the learned counsel for the appellant is that there could hardly be any reason for Pappu to have gone to this witness PW 1 Heera Lal to say so.

12. To us, the argument appears to be superfluous. Being aware of the previous background that the appellant had not made the payment despite persistent demand made by the deceased, his servant Pappu might have scented some foul play which inspired him to immediately reach PW 1 Heera Lal at his shop in Sector 20 to persuade him to follow them, lest some quarrel might take place between the two. The distance between the shop of the deceased and this witness was only about half a kilometer and Pappu could reach him in no time on a cycle, which he used. From his own shop PW 1 Heera Lal went to the shop of his brother Jageshwar at a distance about 100 yards where he met Jageshwar and PW 3 Ramesh Chandra. Both of them also accompanied him. The submission of the learned counsel for the appellant is that these witnesses could not reach in time to witness the stabbing of the victim by the appellant. We note from the statement of rikshaw puller, PW 2 Ram Prasad that after starting from the shop of the deceased for Sector 3, the appellant and the deceased had stopped on a kiosk to purchase bidi/cigarette. Naturally, some time must have been consumed in it whereafter which they started journey on rikshaw, reaching the place where the incident took place. The distances were not significant at all. PW 1 Heera Lal has stated that he had heard the shouts of the victim near Super Cassettes Factory in Sector 4. It was at a distance of only 20-25 yards from his own shop. The incident took place on the lonely road to be reached after turn from Super

Cassettes Factory. Therefore, the testimony of PW 1 Heera Lal and PW 3 Ramesh Chandra is perfectly believable that they saw the appellant inflicting 2-3 knife blows on the deceased including in his back. A look at the post mortem report would show that the deceased received two incised wounds and two stabbed wounds. First stab wound was on left shoulder and the other one was in the abdomen. It very well fits in the scheme of things that victim raised shouts on the infliction of first knife blow by the appellant on him and the rest knife blows were witnessed by these witnesses. Incised wounds were on right index finger. The same are also self explanatory that on the infliction of the first knife blow, the victim must have tried to save himself with the raising of his palms and to catch the blade of the knife. The defence mechanism is provided by the nature in every living being and that part of body swings in action in automation which is capable of resisting or averting the attack or the danger. We do not find any black spot in the testimony of the rikshaw puller Ram Prasad either who has stated that he was pulling the rikshaw and when the rikshaw turned on the road from the side of Super Cassette Factory, he heard the cry of Ram Kishan, "Bachao-Bachao". Then he saw that the appellant was attacking Ram Kishan with knife. He has further clarified in his cross-examination that he saw the knife blow being inflicted on the back and the hand of the victim, but he did not see the blow inflicted in his abdomen. It sounds to be natural, because his attention was diverted towards back only on hearing a cry of the victim and the same must have been raised on receiving first knife blow. It is likely that the appellant first stabbed the victim in the abdomen. Therefore, the witnesses, namely, PW 1 Heera Lal and PW 3 Ramesh Chandra could only see remaining blows of the knife being inflicted on the victim: It may also be pointed out here that PW 1 Heera Lal may be termed as an interested witness being cousin of the victim, but PW 2 Ram Prasad and PW 3 Ramesh Chandra are wholly independent witnesses who were neither thick with the victim nor inimical to the appellant. Their names found place in the F.I.R. also promptly lodged by PW 1 Heera Lal. On careful scrutiny, the testimony of PW 1 Heera Lal also has ring of truth. There is no rule that the testimony of an interested witness cannot be believed. In the instant case, his testimony finds support from the evidence of PW 2 Ram Prasad and PW 3 Ramesh Chandra also, besides other attending circumstances. We find the criticism advanced from the side of the appellant against testimony of eye witnesses as wholly unwarranted.

13. Another argument of learned counsel for the appellant is that the Investigating Officer did not examine the bloodstains on the rikshaw of PW 2 Ram Prasad. Making reference to his statement, it has been pointed out that he had not shown the blood stained rikshaw to the Investigating Officer. Rather he had washed the bloodstains. To us, it appears to be wholly immaterial.

14. An important piece of evidence in this case is the own statement of the injured recorded by the Investigating Officer (before his death) at the police station. The Investigating Officer PW 5, Harjit Singh Chima, S.I. has stated that victim had been brought at the police station on 16-7-1991 in an ambulance

belonging to Sanatan Dharma Mandir (from the nursing home of Dr. Mahesh which was only at a distance of 100-150 yards from the police station as per the statement of PW 1 Heera Lal). At that time, the victim was perfectly conscious and had given his statement, which was recorded by him. The said statement of the victim has been proved on record as Ex.Ka 12. It was after the recording of his statement that he had been taken to the Holy Family Hospital, New Delhi in the same ambulance. In his statement, the victim described the incident with the previous background and it proves that he had been stabbed by the appellant. The time, place and manner of the incident are clearly borne out from this statement of the deceased, which is consistent with the ocular testimony and medical evidence. The learned counsel for the appellant wanted us to disbelieve this statement of the deceased as a fabricated one. We do not find anything to discard the same. It is to be treated as dying declaration of the deceased. This statement of the deceased that the accused inflicted knife blows on him is admissible u/s 32(1) of the Indian Evidence Act.

15. Another criticism advanced by the learned Counsel for the appellant is that the knife which is said to have been recovered at the instance of the appellant was not subjected to chemical examination to prove that it contained human blood. The evidence on record is that the appellant had been arrested on 17-7-1991 at about 6.10 pm. at the crossing between Sections 1 and 14 and the same day the weapon of the offence (knife) had been recovered at his pointing from the Nala nearby the place of occurrence at 7.30 p.m. There is an independent public witness also of this recovery, namely, PW 4 Ram Niwas alias Babu besides police witnesses, namely, PW 5 S.I. Harjit Singh Chima and PW 7 Inspector K.K. Sharma. Recovery of the weapon of offence at the instance of the appellant is beyond the pale of doubt. It provides additional evidence to prove the guilt of the appellant. It is not much significant that it was not subjected to scientific examination in view of the fact that the case does not rest on recovery alone. Rather there is eye witnesses account of three eye-witnesses in addition to the own statement of the deceased which has the character of this dying declaration.

Yet another argument advanced by the learned counsel for the appellant is that the Doctor who conducted the post mortem over the dead body of the deceased was not examined. The post mortem report of the deceased was proved by PW 8 S.D. Dhimani Record Incharge, A.I.I.M.S. New Delhi, whereas the post mortem was conducted by Dr. M.S. Sagar. There was justifiable reason for non examination of the Doctor that he was suffering from renal failure. Under such circumstances, secondary evidence could be given which has been rightly accepted by the lower Court. Therefore, the proof of the post mortem report by the secondary evidence cannot be subjected to criticism. It may also be observed at this juncture that PW 9, Mahendra Verma, Record Clerk of Holy Family Hospital, New Delhi proved the medico-legal report of Ram Kishan (Ex. Ka 13). It would be recalled that the victim had first been taken to the said hospital and admitted there on 16-7-1991 at 3.40 p.m. He died there the same day at 7.30

pm. He had been examined there by Dr. Anil D. Reikhi, who had left the service of the said hospital in 1992 and had gone to USA. This being so, medico legal report could also not be proved through the secondary evidence given by PW 9 Mahendra Verma. The injuries recorded in this report are the same as found at the time of post mortem.

16. It may also be stated as passing reference that in this medico legal report it is recorded that the injuries had been caused to the victim by some person by stabbing over some altercation. Actually, no time gap had intervened for any manipulation or fabrication after the incident till the victim was admitted in Holy Family Hospital, New Delhi where he died a little later.

17. Lastly, the learned counsel for the appellant argued that in any case the appellant committed the offence of culpable homicide not amounting to murder punishable u/s 30 I.P.C. and should be dealt with accordingly, he having already undergone imprisonment for more than eleven years. We do not find any merit in this argument. The offence was committed with premeditation and planning. The appellant reached the shop of the victim with knife concealed on his person and lured him to accompany him on a rikshaw to Sector 3 on the pretext of making payment to him. Everything was calculated and pre planned. In the way, he stabbed him including on vital part abdomen with intention to cause his death. Everybody is supposed to know the natural and probable consequences of his Act. A bare look at the post mortem report indicates that injury No. 4 (stab wound in the abdomen) was sufficient to cause the death of the victim in ordinary course of nature. This fact is found clearly recorded in the post mortem report also. We are in judgment that the appellant actually committed murder punishable u/s 302, I.P.C. and it is wholly unmerited to argue that he only committed culpable homicide not amounting to murder punishable u/s 304, I.P.C.

18. The offence of Section 25 Indian Arms Act was also rightly found proved against him for the recovery of the knife of prohibited dimension.

19. Finding no merit in this appeal, we hereby dismiss it. The judgment and order dated 26-10-1994 passed by the trial Court are affirmed. The appellant Raj Kumar is already in jail and he shall serve out the sentences passed against him.

20. Let a copy of this judgment along with record of the case be immediately sent to Court below for needful action and necessary entries in the relevant register under intimation to this Court within one month.