
(1988) 05 DEL CK 0035

In the Delhi High Court

Case No : Criminal Appeal No's. 116 and 131 of 1984

Ram and Another
 Thakur Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-05-1988

Acts Referred:

Citation : (1988) 05 DEL CK 0035

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : D.R. Sethi, Rama Sahni, P.N. Kohli, M. Saleem and Saleem Siddiqui, for the Appellant;

Judgement

M.K. Chawla, J.

(1) By this Judgment, we propose to dispose of two connected criminal appeals bearing No. 116/84 filed by Lala Ram and Om Parkash, and criminal appeal No. 131/84, filed by Thakur Singh. These appeals arise out of the order of Shri T.S. Oberoi, Addl. Sessions Judge, Delhi., dated 1st May, 1984. by which they were held guilty of offences u/s 302 read with Section 34 of the Indian Penal Code, and sentenced to imprisonment for life, Accused Thakur Singh and Lala Ram were also sentenced to R. 1. for a period of 3 years for the offence punishable u/s 27 of the Arms Act. Both the sentences were ordered to run concurrently.

(2) In order to appreciate the arguments raised by the appellants, it is necessary to keep in mind the prosecution version of the incident. Few days prior to the present occurrence, a quarrel had taken place between Padam Singh (deceased) and the accused persons. With the intervention of the father and brother of Padam Singh, the dispute was amicably settled. However, on 9th February, 1982, at about 4. 15 P.M. as the story goes, when Padam Singh was passing through Gali No. 4, Than Singh Nagar, and was near the back portion of house of S. Gurbax Singh. the three accused caught hold of him, saying that earlier he was saved by his father and brother, but today, they would not leave him. At that

time, Babu Ram, the father of Padam Singh, was 15 to 16 paces behind his son. He was the accused Om Parkash catching hold of Padam Singh from behind while the other two accused took out daggers and started inflicting injuries on the front and back of his son. Padam Singh, on receipt of several injuries fell down on the ground. On seeing this, Babu Ram raised alarm, on bearing of which Pearey Lal, who was standing nearby, with the help of another bystander, Sua Lal, chased Thakur Singh and caught hold of him at some distance. Babu Ram, succeeded in apprehending Lala Ram whereas Prabhu Dayal caught hold of Om Parkash at the place of occurrence itself. After a few minutes, a police party headed by S.I. Dharam Pal reached there. All the three accused were produced before the Police.

(3) SUB-INSPECTOR Dharam Pal recorded the statement (Ex.PW-3/A) of Shri Babu Lal underneath which he made his endorsement (Ex PW-8/A) and sent the "ruqa" to the Police Station for the registration of the case. PW-8, A.SI. Jaipal Singh, Duty Officer, on the receipt of the report recorded to Dharam Pal the formal F.I.R. Ex. PW8/B and sent the copy of the same for investigation. He also sent the special reports to higher authorities and the Ilaqa Magistrate for information.

(4) The Investigating Officer prepared the site plan (Ex. PW15/A) and took into possession blood, bloodstained earth from near the dead body and converted them into separate sealed parcels. Pearey Lal produced one "Khanjar" (dagger) which had a broken tip. This dagger was alleged to have been thrown in a nearby drain by accused Thakur Singh. 1st sketch Ex. PW4/A was prepared and it was taken into possession vide memo Ex. PW4/A. Similarly, after preparing the sketch of the handle of the knife, which handle was found at the spot, it was taken into possession vide memo Ex. PW4/C. The blood-stained clothes of the accused persons were also taken into possession. The scene of occurrence was got photographed. Along with the body, the weapons of offence were forwarded to the post-mortem doctor for his opinion. All the accused were arrested. The case property was sent to the Director, C F.S.L. for his reports, where from the report Ex PW15/C was received. After completion of the investigation, the challan was filed in Court.

(5) The prosecution in all examined 15 witnesses to prove their case whereas accused produced Shri R.K. Yadav, the then Metropolitan Magistrate to whom the special report was sent and a Head Constable from Police Station Patel Nagar, to produce the correct copies of the D.D. Reports concerning this case. The learned Addl. Sessions Judge relied upon the evidence of the eye-witnesses and the surrounding circumstances to case the conviction of the accused and sentenced them as stated above. Those findings are under challenge in these appeals.

(6) Learned counsel for the accused persons have challenged the correctness of order of conviction and sentence on numerous grounds by pointing out various infirmities in the case as laid before the Court. The first and foremost submission is that the First Information Report in this case has not been recorded at the earliest available opportunity as disclosed by the witnesses. According to the

prosecution, the incident took place at 4.15 P.M. According to S.I. Dharam Pal, he Along with his staff reached Gali No. 4, the place of incident at 4.35 P.M. He recorded the statement of Babu Lal and dispatched the writing to the Police Station at 5.00 P.M. The copy of the formal F.I.R. Ex. PW8/B is timed as 5.35 P.M. Immediately thereafter, it is alleged, the special report was dispatched to the higher authorities through PW-11, Constable Abdul Jabar.

(7) This time schedule stated to have been meticulously followed has been proved to be wrong, thus giving rise to doubt the correctness of the prosecution version.

(8) It has come in the evidence of almost all the alleged eye witnesses of the occurrence that immediately after the accused person? inflicted the fatal blows on the person of Padam Singh, they (the accused) tried to run away from there. In that process, Thakur Singh accused threw away the dagger in the drain while a handle of the knife which had been wielded by Lala Ram was recovered from near the dead body. According to Babu Ram, when the Police came to the spot, they immediately took the handle of the dagger, and the "Khol" into possession. Similarly, Pearey Lal, Public Witness brought the dagger and handed over the same to the I.O. within two or three minutes of their arrival. It comes to that the weapons of offence were with the Police even before the statement of Babu Lal Ex. PW3/A was recorded. The accused persons were also in the custody of the Police. Rather this fact is mentioned in the statement Ex. PW3/A of Babu Lal. Unfortunately, these very significant events do not find mention in the substance of the information Ex. PW16/A which has been recorded in Rojnamcha maintained at the Police Station Patel Nagar. What is its effect ?

(9) Section 154 of the Code of Criminal Procedure lays down that, Every information relating the commission of a cognizable offence, if given orally to an officer in charge of a Police Station, shall be reduced to writing by him or under his direction-and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

(10) According to Rule 24.1 of the Punjab Police Rules, Volume Iii 1959 edition, the substance of the report is to be entered in the Daily Diary. The relevant part of the rule reads as under :

"EVERY information covered by Section 154, Criminal Procedure Code, must be reduced to writing as provided in that section and substance thereof must be entered in the police station daily diary, which is the book provided for the purpose. It is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the police officer to whom it is given which compels action u/s 157, Criminal Procedure Code."

In this cases. Ex. PW-16/A is the entry of the Daily Dairy. This entry reads as

under:

"AT this time, a writing in Hindi, prepared and signed by Si Dharam Pal. I.O. Pp Anand Parbat, Delhi, on the basis of the statement made by Shri Babu Ram s/o Shri Prem Singh R/o House No. 187-A, Gali No. 7, Than Singh Nagar Anand Parbat, New Delhi, has been received at the Police Station for registering a case punishable u/s 302/34 Indian Penal Code . through constable Ram Phal No. 569/C. On the basis of ruqa, a case Fir No. 110 u/s 302/34 Indian Penal Code . was prepared."

It is clear from the entry reproduced above that the substance of the first information report was not entered in the daily diary, inasmuch as, neither the names of the accused nor the names of the witnesses nor any other details in regard to the occurrence are given. Even PW-8 Jai Pal Singh in his opening words of cross-examination admits this fact. He says :

"ADD Report No. 16A dated 19.2.82 by which the present case was registered, there was no mention made about the names of the accused, the names of the witnesses, the place of occurrence, the weapon used and the substance of the offence."

Thus the entry does not in the our opinion comply with the requirements of Section 154 Cr.P.C. and Rule 24.1 of the Punjab Police Rules. The failure to enter the substance of the F.I.R. in the Daily Dairy is indicative of the fact that when the said entry was made, full facts in regard to the occurrence were not known.

(11) The next precaution which the prosecution was expected to comply with, was the sending of the special reports to the different higher police officers as well as Ilaqa Metropolitan Magistrate. Even this safeguard has not been taken. As stated earlier, the formal Fir, a copy of which is Ex. PW8/B allegedly came into being at about 5.30 P.M. The time of its dispatch through Constable Abdul Zabar vide Ex. PW17/A is shown at 5.55. P.M. At about the same time, he left the Police Station According to him he delivered the copy of the special report to the wife of the Metropolitan Magistrate at his residence, at about 6.40 P.M. and came back to the Police Station at about 8 or 8.30 P.M. The report was not delivered as tried to be made out by the Prosecution. The evidence of the Magistrate is otherwise. Admittedly in the Roznamacha, there is no entry showing the return of Abdul Zabar after delivering the copies of the special reports to the higher police officers and the Ilaqa Magistrate. PW-8 Jai Pal Singh admits that he had deputed Constable Abdul Zabar to deliver the copies of the Fir to the Ilaqa Magistrate and other higher officers but his return is not mentioned in the Rojnamacha "A" till 12 mid-night, so long as he remained on duty. In fact, .according to him, Abdul Zabar is shown to have come back to the Police Station at 7.35 P.M. in connection with the checking of the crime as per Dd No. 72-B. near Vivek Cinema.

(12) It is also the case of the prosecution that special reports are sent to the Ilaqa Magistrate in a sealed envelope. Ex. PW11/DA is the said envelope which

admittedly was written in the hand of PW8 Jai Pal Singh. This witness further admits that as and when the special report is delivered to the Metropolitan Magistrate, he (the Magistrate) is obliged to give the time and date of receipt under his signature. Envelope Ex. Pwi I/DA bears the signature of the learned Metropolitan Magistrate, but with a different date and time. The defense took precautions to examine Shri R.K.. Yadav, the then Metropolitan Magistrate holding charge of Police Station Patel Nagar. His evidence reads as under :

"I have seen Ex. PW8/B, copy of Fir No. 110, dated 19.2.82. As per the endorsement encircled red at point "A", this Fir was received by me on 20.2-82 at 10 A.M. in my court. In case any copy of the Fir as special report is received by me or delivered at my residence, an endorsement to that effect is invariably given by me."

This witness has not been cross-examined, which conclusively proves that the copy of the special report was not delivered to him as tried to be made out by the prosecution Section 157 of the Code of Criminal Procedure 1898, as well as of 1973, require the First Information Report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No Explanation is offered for this extraordinary delay in sending the report to the Magistrate. In a judgment reported as Ishwar Singh Vs. State of U.P., the Supreme Court has adversely commented upon the delay in sending the special reports in these words :

"THE extraordinary delay in sending the F.I.R. as a circumstance which provides a legitimate basis for suspecting that the First Information Report was recorded much later than the stated date and are affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence".

This long delay in sending the report throws a reasonable doubt in our mind about the genuineness of the time and the date of recording of the first information report The testimony of Public Witness Constable Abdul Zabar does not inspire confidence and is to be rejected.

(13) There is yet another circumstance which goes to the root of the matter and for which there is no worthwhile Explanation from the side of the prosecution, it is the prosecution case that immediately after the occurrence, not only the accused were apprehended but also the weapons of offence were taken into possession. The formalities of the registration of the case were completed by 5.30 P.M. The other incriminating articles were separately sealed and taken possession of within an hour or so Even though according to the Investigating Officer he made enquiries from the residents of the area, but did not record the statement of any other witness except the alleged eye-witnesses. The last formality for preparing the Inquest Report was complete by 7.30 P.M. yet he remained at the spot from 4.35 P.M to 1 AM. in the night. Till then all the 4 witnesses also remained at the spot. It is not made clear as to why the dead

body was not removed from the spot till 1.10 A.M. After 7.30 pm. nothing more was required to be done except to remove the dead body to the mortuary. Even this formality was not complied with, at the earliest. The 10. tried to explain the delay by deposing that he had requisitioned the truck for removing the dead body but it reached quite late. This Explanation to our mind is devoid of any substance as there is no corroboration from any quarter, particularly, when he failed to name the Police Officer through whom the truck was requisitioned or the reasons for its delayed delivery.

(14) Similarly, all the three accused even though apprehended at the spot, their formal arrest was shown only at about 1. 30 A.M. It is admitted that they were brought to the Police Post Anand Parbat at about 2.00 A.M. and put in the lock-up at about 2.30 A.M. or 2.45 A.M. on 20.2.1982. If all of them had been arrested immediately after the incident and their search as well as clothes had been taken possession of, there was no necessity of keeping them for such a long time at the spot. The only inference is that the accused were not arrested at the stop as alleged.

(15) The manner of the catching hold of the deceased by Om Parkash and the giving of Khanjar blows by the other two is also not convincing. According to the prosecution version, accused Om Parkash secured the deceased in his grip (koli bhar lee) from behind. Accused Thakur Singh was in front of Padam Singh while accused Lala Ram was at his back. Both the accused gave several dagger blows on the chest and back of Padam Singh. The deceased fell down only after Om Parkash loosened his grip. The blade of one of the daggers was found stuck in the middle of the lower part of the back.

(16) Dr. Bharat Singh while conducting post-mortem on the body of Padam Singh besides other injuries noticed injury no. 8 as "an incised wound on the lumbar area placed on the spine horizontally through which a broken knife was visible at the surface of the wound which was 1? X 1" x ?. The wound was spindle shape. Knife could be taken out with difficulty, its size and shape shown in the diagram."

(17) According to the opinion of the doctor, injuries nos. 2,3,5, and 8 were sufficient to cause death in the ordinary course of nature separately. The position of injury No. 8 is such that it was not possible for Lala Ram to have given this blow. According to Babu Ram, when Om Parkash caught hold of his son Padam Singh, the position was as under :

"THE hands of my son were above the grip of Om Parkash who was clinching my son into his grip from his back having his arms around the body of my son."

Padam Singh fell on the ground as soon as Om Parkash released his grip, so says, PW-7 Sua Lal. He confirms this fact in his cross-examination by admitting that accused Om Parkash continued to hold Padam Singh in his grip so long as Padam Singh was inflicting knife injuries Even though the case of PW-6 Prabhu Dayal in court is that Om Parkash caught hold of Padam Singh from his waist but it is not so in his statement u/s 161 Cr.P.C. It is the common case of the parties

that Om Parkash did not receive any injury during this incident. The position of injury No. 8 is such is that it could not have been caused if Om Parkash had caught hold of the deceased from his back. No injury was inflicted on the deceased after he fell on the group. So the manner of causing of injury at the back is just not possible as has been deposed by the eyewitnesses. This is also a circumstance which throws doubt on the correctness of the prosecution version.

(18) To start with Babu Lal was hesitant to admit acquaintance or his association with any of the other three eye-witnesses but while under cross-examination, he had no option but to admit the following facts :

(19) Pearey Lal resides in gali No. 11 and he is the brother-in-law of Sua Lal who lives in Gali No. 12, Prabhu Dayal is a resident of the same area and is known to the remaining eye-witnesses from before. All these persons have been appearing as witnesses and supporting each other in numerous criminal cases. On the morning of the date of the occurrence, they had attended the court of Shri R. K. Yadav, at Tis Hazari in connection with a case of rioting Babu Ram had also appeared as a Pw Along with Pearey Lal, and Sua Lal in a case lodged by Pearey Lal, u/s 324 Indian Penal Code . He Along with Prabhu Dayal was also a witness for Pearey Lal in a case under sections 448/380 I P.C. Yet another case, u/s 325 1.P.C., got registered by the mother of Pearey Lal, Prabhu Dayal was cited as a prosecution witness. From the above admissions and the surrounding circumstances, we have no hesitation to hold that each of the eye-witnesses was not only known to the others from before but they were the birds of the same feather, inasmuch as they were either appearing as witness or were facing charges together in numerous criminal cases. The possibility of their having joined hands in deposing against the accused persons cannot thus be ruled out.

(20) This finding finds corroboration from another angle. According to Pearey Lal, at the time of the occurrence, about 40 to 50 persons were present near the water tank from where he Along with Sua Lal witnessed the occurrence. He stated that when he produced the dagger before the police, a large number of persons were present at the roof tops of the houses and also in the street. Similarly, Prabhu Dayal admitted that the lane no. 3, where, the incident took place, was full of persons of the nearby houses at the time of the incident. It is the case of the prosecution that the 1.0. immediately on reaching the place of occurrence interrogated a number of persons but did not record the statement of any of them. He only preferred to record the statement of the alleged eye-witnesses. It cannot be, that except for these witnesses, no other person of the lane. had witnessed the actual stabbing. It is a strange coincidence that the incident was seen by Pearey Lal and Sua Lal from the right corner of the gali No. 3 whereas Prabhu Dayal happened to be present on the other corner of the Gali at that very time. It is not satisfactorily explained why no effort was not made to join the persons from the lane who happened to be present there and had seen the occurrence. Even no attempt was made to join any other witness at the time of taking of possession of the articles from the place of occurrence. All the

memos are attested by Babu Ram and Prabhu Dayal. For these reasons, a grave doubt is created in our mind that an honest investigation was not carried out, in so far as naming the eye-witnesses whose presence at the place of occurrence is very much doubtful and in not joining the witnesses of the locality who admittedly were present and must have seen the actual incident.

(21) During the course of arguments, learned counsel for the appellants wanted to show from the case property that the injuries alleged to have been caused by Lala Ram and Thakur Singh were not possible by the weapons offence alleged to have been recovered from near the place of occurrence, inasmuch as the dagger Ex. P-1 had a broken tip whereas the knife Ex. P-2 had no blade. They also wanted to prove that injury no. 8 could not have been caused without the corresponding cut on the shirt of the deceased. Similarly, their contention is that the clothes which the accused were wearing and were taken into possession immediately after their arrest did not belong to them. This could only be possible, had the case property been retained and kept in safe custody. To our utter surprise, learned counsel for the State after making enquiries was constrained to admit that the case property has since been destroyed by the Police. This has a far-reaching effect not only on the fate of the appeal but also on the deplorable working of the prosecution agency. The fact remains that this court of appeal is deprived of their right to examine and form any opinion about the offending weapons of offence and other articles taken into possession during the course of investigation.

(22) Sections 451 and 452 of the Code of Criminal Procedure lay down the procedure for the disposal of the case property at the conclusion of the trial. Sub-section (4) of Section 452 reads as under :-

"EXCEPT where the property is live-stock or is subject to speedy and natural decay or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months or when an appeal is presented, unless such appeal has been disposed of."

Explanation (b) to Section 451 defines the property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. Admittedly, in the present case, Ex.P-1 and P-2 are the weapons of offence alleged to have been used for causing fatal injuries to the deceased. The non-availability of these weapons of offence for examination by the court will render it improbable to find out if they were capable of being used for causing the injuries alleged to have been found on the person of the deceased. The non-production of the weapon of offence in the present case to our mind may even be said to be factual to the prosecution case. In case reported as Mohd. Ibrahim Vs. State, , I.D. Dua, J. took strong exception to the destruction of the case property before disposal of the appeal or revision. It was a case of recovery of dies and punching machine used for the manufacture of counterfeit coins. The prosecution was required to prove not only the possession of the instruments but also to prove that the possession was with the knowledge

and intention of using the same for the purpose of manufacture of counterfeit coins. Before the disposal of the appeal, the infringing articles have been destroyed. The non-availability of the moulds and dies for examination of the appellate court was held to be violative of the mandatory provisions contained in Chapter 11-E, Vol. III of the High Court Rules and Orders. Relying on the said Rules, during the course of the judgment it was observed as under :

"ACCORDING to the High Court Rules and Orders, Vol. III Chapter 11-E, articles like counterfeit coins together with implements for their manufacture such as dies, moulds, etc, have to remain in the custody of the Police department pending the disposal of the case and at the end of the case and not till after the appeal or revision. If any, the court shall send them to the Treasury or Sub-Treasury together, with a short description of the case. The reason for this rule is obvious. The Appellate Court and the Revisional Court is entitled, while scrutinising the case against the accused, to have complete material before it on which the prosecution relies for proving the case against the accused persons. In the present case, "to deprive this Court of the benefit looking at the dies, is a serious infirmity which must be held to be fatal to the prosecution case. The record without the moulds is not complete and it is difficult for me to appreciate the circumstances in which an order for disposal of the moulds and the coins should have been made by the Court below."

The Court further observed as under ;

"BEFORE concluding, I must draw the attention of all concerned to the mandatory requirement of preserving all the necessary exhibits till the appellate or revisional Court disposes of the appeal or the revision, as the case may be and also of forwarding all those exhibits to such Court so that justice is properly administered."

In view of the mandatory provisions contained in the Code of the Criminal Procedure as well as in the High Court Rules and Orders, the prosecution was duty bound to keep in safe custody the case property so that the appellate and the revisional court had the opportunity to examine and scrutinise the material before it on which the prosecution relied for proving their case against the accused persons. In the present case, to deprive the High Court of the benefit of examining the weapons of offence and other articles taken into possession was a serious infirmity which must be held to be fatal to the prosecution case. Against this argument, learned counsel for the State has no answer. The prosecution under the facts and circumstances has failed to prove their case beyond any reasonable doubt.

(23) Before parting, we are constrained to observe that it has come to our notice that in majority of cases the police official in-charge of Malkhana destroy the case property after the decision of the criminal case by the lower court. As observed in Mohd. Ibrahim's case (supra) it is a clear violation of the mandatory rules framed under the High Court Rules & Orders Vol. II. On enquiry learned

counsel for the State informed us that in each case the property is destroyed after obtaining orders from the Court of Metropolitan Magistrate in-charge of the police station where the offence originally took place. We are sure that the learned Metropolitan Magistrate must not have been told about the pendency of appeals/revisions against the orders of lower court. However, whatever may be the reason, we hereby direct all the concerned Metropolitan Magistrate that in case an order for the destruction of the case property is passed, it must be verified that the appeal or revision, if any pending, has been finally disposed of.

(24) In the result, we accept the appeals and set aside the order of conviction and sentence against the accused persons. They be set at liberty forthwith unless required to be detained in any other case.

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