
(1964) 05 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 7-D of 1964

Saroop Pardesi and Another	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 29-05-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1964) 05 P&H CK 0006

Hon'ble Judges : Dua, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : J.G. Sethi and R.L. Kohli, for the Appellant; Bishamber Dayal, for the Respondent

Judgement

D.K. Mahajan, J.—Saroop Singh and Salwant Singh motor drivers and residents of Inder Puri, Delhi, were convicted u/s 302, Indian Penal Code, and sentenced to death by the Additional Sessions Judge, Delhi.

2. The prosecution case is that Hukam Chand deceased owned a number of taxi cars. He had an office at Gurdwara Road. On the evening of the 21st December, 1962, he was standing in front of his office on the footpath near his car No. DLF 4311. The time of the day was 5.45P.M. His son Chander Mohan P.W. 7 was in the verandah of the office, alongwith one Harkishan Lal P.W. 5 who had come there for the purpose of making a telephone call. Sarup Singh accused armed with a kirpan and Salwant Singh armed with a scythe (drant) came from the side of the street No. 66 and started inflicting injuries on the head and neck of Hukam Chand. Hukam Chand fell down on receiving the injuries. The accused ran away towards the street No. 66 from where they had come. An alarm was raised by Rattan Lal P.W. 1, an employee of the deceased. Ram Sarup Sharma, P.W. 6, an astrologer, who has his office on the first floor of No. 2239, Gurdwara Road, on hearing the commotion rang up the Flying Squad informing them that there was some dispute (Jhagra) going on down-stairs. It is also the prosecution case that Rattan Lal chased the accused but without success. Having failed to catch the

accused, he came to the office of Ram Sarup P.W. and requested him to inform the police. Ram Sarupmang up the local police informing them that two persons had killed Hukam Chand and had run away. Within five minutes of the telephone call the Flying Squad came and removed Hukam Chand to the Irwin Hospital who was then bleeding profusely. Soon after the local police also arrived. The police recorded the statement of Rattan Lal P.W. and sent it to the police station for purposes of registration of the case. Thereafter the statement of Chander Mohan P.W. 7 was recorded. The spot was inspected and rough sketch of the spot Exhibit P.Y. was prepared. Various articles belonging to the deceased alongwith the blood-stained earth were removed and taken into custody (vide recovery memo. Exhibit P.E.). Hukam Chand died in the hospital at 8.30 p.m. without regaining consciousness. The accused persons were arrested from their houses the same night between 8 and 9 p.m. by Mehar Singh, Inspector Police, P.W. 18. The case was investigated by Sub Inspector Vidya Sagar of Karol Bagh Police Station, P.W. 25,

3. One of the accused persons, namely, Salwant Singh made a statement, on interrogation, to the police, which is Exhibit P.G. This statement read thus:

I and Sarup Singh threw one big kirpan and one scythe on the Ridge Road on (sic) long away towards Cantt, from Circle of Pusa Road beyond metalled road in the West in the bushes underneath the stones. I can point out that place.

In pursuance of this statement, the kirpan and the scythe were recovered in the presence of Bishan Singh and Dr. Baldev Das from the place pointed out by the accused Salwant Singh. The recovery memo, is Exhibit P.J. The disclosure statement was also made in the presence of the aforesaid witnesses.

4. The accused were charged u/s 302/34, Indian Penal Code, and were tried as they pleaded not guilty to the charge.

5. At the trial, the prosecution examined as many as 25 witnesses. No evidence was examined in defence. The learned Additional Sessions Judge, after taking into consideration the evidence led in the case, believed the testimony of the eye witnesses and found the accused guilty u/s 302/34, Indian Penal Code, and sentenced them to death. As already stated, the accused have filed Criminal Appeal No. 17-D of 1964 and the matter has been placed before us for confirmation of the death sentence u/s 374, Code of Criminal Procedure.

6. The prosecution story is supported by the testimony of two eyewitnesses, Har Kishan Lal P.W. 5 and Chander Mohan P.W. 7. Chander Mohan is the son of the deceased. The third eye-witness, whose statement formed the basis of the First Information Report, is Ratan Lal, P.W. 4, who had been won over and was declared hostile. He was cross-examined by the Public Prosecutor. He has completely gone back from his statement, which, as already stated, formed the basis of the first information report,

7. Before dealing with the prosecution evidence and the various contentions

advanced by the learned counsel for the accused persons, it will be proper to settle the question, whether the statement of Ratan Lal on the basis of which the first information report, Exhibit P.C/1, was recorded can be treated as the first information report or not? The learned Additional Sessions Judge has held that this statement cannot be treated as the first information report. The reason given for this finding is that the police had received a telephonic message to the effect that Hukam Chand had been injured by two persons who had run away and that Hukam Chand was lying at the spot. It is on the basis of this message that the police came to the spot and anything done by the police thereafter would be in the course of investigation. The statement of Ratan Lal, therefore, on the basis of which Exhibit P.C/1, was recorded having been recorded during the course of investigation cannot be treated as the first information report. In this connection, reliance is placed on section 154 of the Code of Criminal Procedure. We are, however, clearly of the view that this finding is wholly erroneous. The telephonic message, which is Exhibit P. U. reads thus:

Ram Sarup Sharma resident of No. 2239, Gurdwara Road, Karol Bagh, Delhi, gave an information on telephone that two men had run away after injuring Lala Hukam Chand with a sword, near Sethi Tent House. Gurdwara Road in front of the Oriental Bank and that police may be sent immediately. Hence on receipt of the telephone a report was entered in the roznamcha.

This message cannot be held to be first information report within the meaning of section 154 of the Code of Criminal Procedure. This report does not disclose the identity of the assailants. It was not lodged by an eye witness though it was pursuant to Ratan Lal's request in any case; it is a cryptic message conveyed by a person who admittedly is not an eye-witness and thus is purely hearsay. In *Shakti Rai v. State* (Cr. A. No. 80-D of (1961) Cr. A. No. 80-D of 1961 decided on 29th June, 1962 *Capoor and Gurdev Singh, JJ.* had an occasion to consider a similar report and a similar argument. This argument was disposed of by the Bench as follows :-

The correct view appears to be that whether a particular information amounts to first information report or not, is essentially a question of fact depending upon the circumstances of each case- *Gurusami Naidu alias Chinnasami Naidu Vs. Villis Guruswami Naidu*, . It would probably not be correct to say that a telegram or a telephone message received in the police station, within the jurisdiction of which a certain offence has been committed, can in no case, be treated as the first information report, if in the telephone or telegram sufficient details such as the names of the informant, the victim and the culprits and the manner of the commission of the offence, are stated, and investigation starts thereon. In such cases the requirements of section 154 of the Code of Criminal Procedure would appear to be substantially complied with. The Telephone message in the present case (Exhibit P.W. 43/A) is however, very exiguous. Neither the name of the victim nor the names of the culprits are give and the man who has purported to send the message dots not claim to be an eye witness.

It is no doubt true that the learned Judges ruled out the telephonic message in the case with which they were dealing principally on the ground that there was a fundamental objection in treating that report as a first information report because it was not given to the officer-in-charge of the police station which was one of the essential requirements of section 154, Code of Criminal Procedure. However, the decisions in *Chiramel Varied Devassikutty v. State* AIR 1953 Irav. Cochin 275, *Meherali Lalji v Emperor* AIR 1931 Sind. 13, *Public Prosecutor v. Chidambaram* AIR 1928 Mad. 791 and *Kachi Hazam v. Seraj Khan* AIR 1985 Cal 493 clearly lay down that telephonic or telegraphic messages cannot be treated as first information reports. We are in respectful agreement with the rule laid down in the aforesaid decisions. No case to the contrary has been brought to our notice by the learned counsel for the appellants. It must, therefore, be held that the learned Additional Sessions Judge was in error in ruling out Exhibit PC/1 from consideration altogether. It is no doubt true that "the first information report is not substantive evidence, but can only be used to corroborate or contradict the evidence of the informant give in Court or to impeach his credit." See the *The State of Bombay Vs. Rusy Mistry and Another*,

8. We have gone through the testimony of the eye-witnesses. In our view, there is no reason to discard the same. It is significant that the accused persons were arrested within almost two hours of the occurrence. This could only be done if the identity of the accused persons was known. There is no reason why the eye-witnesses should have implicated the accused persons and the eye witnesses A suggestion has been made that the accused had enmity with one Niranjana Singh driver of the deceased and it is at the instance of Niranjana Singh that they have been implicated. There is no reason why the eye-witnesses should have named the accused persons at the instance of Niranjana Singh. No evidence was examined by the accused persons to show that Niranjana Singh was inimical to them. Barring the bare assertion of the accused persons, no material has been placed on the record to show the alleged enmity. The time between the occurrence and the arrest of the accused is so short that in the very nature of things it would not be possible for any confabulations to be held for the purposes of falsely implicating any persons against whom there could be any suspect on for assaulting the deceased. The flying-squad arrived at the spot within a few minutes of the occurrence and was followed very shortly by the local police. The presence of the eye-witnesses at the spot at the time of occurrence is amply proved from the evidence on record. If a false case was being hatched out, most of the loopholes which are now being pointed out would have been plugged. If the eye-witnesses were not present at the spot, they would have placed before the Court a tutored version of the story, but there is so much divergence in their testimony that one has to rule out this possibility. We are fully convinced that the eye witnesses were present at the spot and saw the occurrence. There is no reason to disbelieve their testimony.

9. We now proceed to examine the various contentions raised by the learned counsel for the appellants for the suggestion that the eye-witnesses were not

present at the spot, that no one saw the occurrence and that the accused persons had been falsely named as the assailants.

10. P.W. 5 Harkishan Lal's testimony has been attacked principally on the grounds that he is a chance witness; that he came from his school direct to the place of occurrence and did not go home; that even if his story is believed that he had an engagement with his sister's husband at 50.30 p. m. and in spite of the fact that the sister's husband did not turn up at that time he went to ring at the telephone when the telephone was out of order, that the attack was made within ten minutes of the arrival of the witness; that his conduct in not informing the police or the family members of the deceased is also indicative of the fact that he was not present at the time of the occurrence. He is, it is being urged, a friend of the deceased and would have immediately gone to the police-station and lodged the report, and, in any case, would have at least, informed the family members of the deceased.

11. These considerations are not such as would enable us to definitely hold that this witness is not telling the truth. Human affairs and human reactions are very complex. Different people react differently to the same situation. The son of the deceased was present at the spot. It could not, therefore, be expected that this witness should do all that the son would have done in the natural course of things. While dealing with the testimony of a witness, one has to closely examine if there is any reason for the witness to make a false statement? He is a highly educated person and is employed in the noble profession of teaching. It is highly inconceivable that a man of his status would perjure himself and try to implicate innocent persons. The mere fact that he had good relations with the deceased is no ground to hold that he will go out of his way and try to implicate innocent persons. There is no reason to reject his explanation given on oath, why and how he happened to be at the spot. All these considerations were placed before the learned Additional Sessions Judge and were rejected by him. He has accepted the testimony of this witness and we do not see any reason to reject it. This witness had not tried to prevaricate and has made a straightforward statement irrespective of the fact whether his statement would out and out support the prosecution case or not.

12. With regard to the testimony of Chander Mohan P.W. 7 the argument of the learned counsel for the appellant is the same, namely, that he was not present at the time of the occurrence. The reasons for this suggestion are-

1. that Chander Mohan was bound to go to the hospital with his deceased father and would not stay at the spot to make the statement to the police;
2. that the basis for the first information report would have been the statement of Chander Mohan and not that of Ratan Lal. Ratan Lal was only picked up because Chander Mohan was not at the spot;
3. that there were some contradictions between the statement of Chander Mohan and those of Vidya Sagar and Harkishan Lal; and

4. that Chander Mohan never sent any information to his other family members.

The same reasons apply to the acceptance of the testimony of Chander Mohan as have been mentioned by us in the case of the testimony of Harkishan Lal. The police had arrived at the spot at the time when the deceased was being removed to the hospital. The Sub-Inspector of Police wanted to record the testimony of the eye-witnesses and it would, therefore, be natural for Chander Mohan to stay on, particularly when he was asked by the Sub-Inspector of Police to stay on. It is also in evidence that the other family members of Chander Mohan had arrived at the hospital though there is no evidence as to who informed them of the occurrence. As soon as Chander Mohan's statement was recorded by the Sub-Inspector, he proceeded to the hospital. Moreover, there is no point in the first information report being not recorded on the basis of the testimony of Chander Mohan. If the police were out to concoct a false case they could have done so. But they did not, the reasons being that the telephonic message was sent at the instance of Ratan Lal. It was Ratan Lal who had not only seen the accused persons but had also named them. It appears, therefore, that the Sub-Inspector thought it proper to record the statement of Ratan Lal first and to make it the basis of the first information report. Ratan Lal has been won over. There can be no two opinions about this and he has deliberately made a false statement in Court but the fact remains that his statement, which is the basis of the first information report, clearly mentions that the accused persons, Sarup Singh and Salwant Singh, were the assailants and this statement being the first information report can be pressed into service for corroborating the testimony of Chander Mohan and Harkishan Lal. In this report, it is mentioned that the other two eye witnesses were Chander Mahan and Harkishan Lal. Moreover, we are in agreement with the observation of the learned Additional Sessions Judge that Chander Mohan seems to have lost nerve at the sight of this ghastly tragedy and, therefore, his conduct must be judged in the light of this patent circumstance. Keeping in view all the considerations placed before us by the learned counsel for the accused-appellants, we are clearly of the view that there is no reason whatever to reject the testimony of the eye-witnesses. The contradictions as a matter of fact, show that the eye-witnesses are telling the truth, and they are not tutored witnesses. As already stated, there is no reason why these respectable and educated persons would implicate innocent persons merely to satisfy the whim of Niranjana Singh, particularly when they had no close affinity to and were not under any obligation to Niranjana Singh.

13. This brings us to the consideration of the recovery evidence. The disclosure statement, Exhibit P. J., was made in the presence of Dr. Baldev Das and Bishan Singh, who have been examined as P.W. 9 and P.W. 8 respectively. This statement led to the recovery of the weapons of assault. The report of the Chemical Examiner is that these weapons were stained with human blood. The quantity of the human blood was not enough to enable the chemical examiner to fix its grouping, but the fact remains that they were detained with human blood. The testimony of the aforesaid witnesses has been accepted by the learned

Additional Sessions Judge and we see no reason to reject the same. The main criticism levelled against them is that they are stock witnesses of the police and that they are chance witnesses. There is not much substance in this criticism. After going through their testimony we are of the view that the learned Additional Sessions Judge was perfectly justified in accepting their testimony. This evidence certainly goes heavily against Salwant Singh accusad. It also corroborates the testimony of eye-witnesses. There is no such statement by Sarup Singh. So far as he is concerned, his complicity in the crime is fully borne out by the testimony of the witnesses.

14. There is yet another fact which cannot be lost sight of. That is, that the accused persons refused to participate in the identification parade. The ground on which they refused to participate was that they had been shown to the witnesses previously and that at the time when they were arrested their driving licences were taken by the police. The driving licences, it is alleged, had the photographs of the accused persons and those photographs must have been shown by the police to the witnesses. There is positive evidence on the record that at the time of the arrest and the search no driving licences were taken into possession. It is also in evidence that the accused were told that an identification parade would be held and that they should muffle their faces. The accused, whenever they were taken out, kept their faces muffled. There is no reason to reject this evidence. In this situation, it is therefore, obvious that the accused persons refused to participate in the identification parade because they had the apprehension that the eye-witnesses would have identified them, particularly Ratan Lal, who seems to have been won over after the date fixed for the identification parade. If Rattan Lal had been won over earlier, the accused persons would have readily agreed to the identification parade. If because in that event Ratan Lal would have positively stated that the accused persons were not the assailants. This conclusion is irresistible if the testimony of Rantan Lal is read as a whole. He has tried his best to help the accused persons. Therefore, the conduct of the accused on not participating in the identification parade Hoes give rise to the inference that if they had participated in the parade they would have been identified by the eye-witnesses.

15. The only other argument which was vehemently urged-and which remains to be examined-was to the effect that the injuries were inflicted by one person. The argument is that all the injuries are on the right side and two persons could not have inflicted the injuries on one side of the body. It is argued that if there were two persons assaulting, there would be injuries on two different sides of the victim, because it is unlikely that both the accused would have assaulted from one side. This argument cannot be accepted, in the first instance, for the reason that the injuries are by two types of weapons and, secondly, because the argument is purely conjectural that injuries could not have been inflicted by two persons from the same side. Moreover, the medical evidence also negatives this argument.

16. After giving the matter our careful consideration, we are clearly of the view that the charge of murder has been brought home to the accused persons and that the learned Additional Sessions Judge was right in convicting them u/s 302/34, Indian Penal Code, and in sentencing them to death. We accordingly reject the appeal. Uphold the decision of the learned Additional Sessions judge and confirm the sentence of death.

Dua, J.

17. I agree.