
(1997) 01 DEL CK 0071

In the Delhi High Court

Case No : Criminal Appeal No's. 50 and 77 of 1994

Subhash @ Bassi

APPELLANT

Vs

State (Delhi Administration)

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 147

Citation : (1997) 6 AD 345 : (1998) CriLJ 719 : (1997) 4 Crimes 435 : (1997) 69 DLT 560 : (1997) 43 DRJ 643

Hon'ble Judges : Y.K. Sabharwal, J;A.K. Srivastava, J

Bench : Division Bench

Advocate : K.B. Andley and Mukta Gupta, for the Appellant;

Judgement

A.K. Srivastava, J.

(1) These two appeals filed by two convicts against one judgment and order passed by Shri P.K. Dham, Additional Sessions Judge, Shahdara, Delhi in Sessions Trial No. 105/86 arising from Fir No. 18/86 under Sections 147/506/149/148/302/149/307/409, Indian Penal Code, Police Station Krishna Nagar, are being decided by this common judgment and order.

(2) In the said Sessions trial four accused persons, namely, Subhash @ Bassi, Ashok @ Chhidi, Niranjana and Babu were tried. By the impugned judgment and order, Niranjana has been convicted under Sections 302 and 324, Indian Penal Code, Ashok @ Chhidi and Babu have been convicted u/s 323 read with Section 34 of Indian Penal Code and Subhash has been convicted u/s 325, IPC.

(3) Out of the above four persons convicted, Subhash @ Bassi and Niranjana only have filed these appeals being Nos. 50/94 and 77/94 respectively.

(4) The case of the prosecution before the lower Court was that on the night of 13th January, 1986 Lohri festival was being celebrated at the house of one Anil Khanna where besides others Anil, Brijesh, Shyam Lal, Ram Gopal and Surender were present. In that festival ladies of the family were dancing. At about 8

O'clock in the night accused Niranjan started dancing with the ladies which was objected to by the male members resulting in a quarrel.

(5) Accused Niranjan Along with Babu, Chhidi @ Ashok, Subhash @ Bassi and Harkesh left the aforesaid place of Lohri festival and went away. At about 9.30 p.m. when Brijesh, Om Prakash, Shyam Lal, Surender Kumar and Anil were returning to Chandni Chowk from the aforesaid place of Lohri festival and when they had reached near Shiv Mandir, Shankar Nagar opposite the shop of Shiv Halwai, accused persons Niranjan, Subhash @ Bassi, Ashok @ Chhidi, Babu and Harkesh gheraoed them. Niranjan was armed with a knife, Subhash @ Bassi was armed with a hockey and the rest three were armed with dandas. It is said that accused Niranjan stabbed Surender and accused Subhash attacked with hockey and the rest attacked with dandas. After injuring Subhash and Surender, the accused persons fled away after giving threat of dire consequences if any report was lodged with the police.

(6) In the aforesaid incidence, surender and Shyam Lal received injuries. Shyam Lal succumbed to the injuries on 18th January, 1986.

(7) Injured Shyam Lal was examined in the Hindu Rao Hospital on 14th January, 1996 at 1. a.m. in the night by Dr.V.K. Goel, who found the following injuries: "(i) Two 1" long stitched wound on the left side of chest in the seventh intercostal space, one in the anterior auxiliary line and the second was posterior auxillary line. Surgical emphysema was present and air entry was diminished in the left side. (ii) Incised wound on left fore-arm. (iii) Tenderness at the middle third of right leg." After Shyam Lal died, post-mortem of his dead body was made by Dr.L. T. Ramani, Public Witness 15 and he found the following injuries: "(i) Stitched wound 2" long placed antero-posteriorly on the vault of the skull. (ii) Stitched wound 1" long placed vertically in the left auxillary line 6" below the armpit. (iii) Small incised wound half an inch x one and one fourth inch x depth placed transversely on the left side of chest wall in mid-axillary line 7" below the armpit: (iv) Small incised wound of 1/4" x 2/10" x skin deep size on the left side of the chest one and one fourth inch below injury No. 2. (v) Drainage wound with a corrugated drain on the left lumbar were abdomen (operational). (vi) Laparotomy stitched wound 7" long, left paramedain present between xiphoid process and umbilicus (Operational). (vii) Superficial incised wound 3/4" x 1/4" x 1/4" skin deep on the back of the left forearm middle. The edges were regular and both ends were equal. (viii) Bruise 2" x 2" with swelling on the dorsum of left hand. (ix) Swelling on the dorsum of right hand. (x) Small laceration 1/2" x 1/4" x bone deep on the front of right leg skin with bruising around the fracture of shaft of right tibia. (xi) Two stitched wounds each measuring 1" placed 1" apart on the left side posterior auxillary wall."

(8) In the opinion of Dr. L. T. Ramani, Public Witness 15 all the injuries were ante-mortem. Injuries No. 8, 9 and 10 were caused by blunt object, injuries No. 5 and 6 were operational and the rest of the injuries were caused by sharp edged weapon. According to him, injuries No. 2 and 3 were individually sufficient to

cause death and that the death was caused due to peritonitis.

(9) Injured Surender Kumar was examined in Hindu Rao Hospital on 13.1.1986 at 10.30 p.m. by Dr. Aniranjn Jain, Public Witness 4 and the following injuries were found on his person. (i) Clw upper aspect nose measuring 1" x 1/4" Nasal deformity was present and bleeding from both nostrils was there. (ii) Clw 1/2" x 1/4" x 1/4" left frontal region which was bleeding. (iii) Two CLWs 1/2" x 1/4" x 1/4" each on upper aspect of left leg. Bleeding was there and local tenderness was present."

(10) According to the prosecution, there were five eye witnesses of the incident, namely, Ram Gopal, Brijesh, Om Prakash, Surender Kumar and Anil. The Fir in the case was registered at Police Station Krishna Nagar on 13th/14th January, 1986 at 2.30 a.m. on the basis of a Rukka prepared as per statement of Ram Gopal; one of the aforesaid alleged eyewitnesses of the incident. The case was registered under Sections 307/506/34, Indian Penal Code but as a consequence of death of Shyam Lal, and on receiving medical reports, chargesheet was filed under several other sections as well including Sections 302 and 324 of the Indian Penal Code. The prosecution examined the aforesaid alleged eyewitnesses Surender Kumar as Public Witness 1, Ram Gopal as Public Witness 8, Om Prakash as Public Witness 9, Brijesh as Public Witness 10 and Anil Kumar as Public Witness 13. The prosecution also examined Anil Khanna Public Witness

(11) Rest of the prosecution witnesses are the doctors, who examined the injured and performed the post-mortem examination, some police personnel Investigating Officer Inspector Bhim Singh Public Witness 20 and some formal witnesses.

(12) Learned Additional Sessions Judge has believed the prosecution story taking into account the statement of the injured witness Surender Kumar, Public Witness 1 and the corroborating evidence on record.

(13) Both the appellants ha challenged their convictions and sentences by filing the aforesaid two separate appeals and taking their own grounds, some of which are common to both. The main grounds of challenge, inter alia, may be enumerated as follows: (i) Independent witnesses, namely, Anil Khanna, Public Witness 7 Ram Gopal, Public Witness 8, Om Prakash, Public Witness 9, Brijesh, Public Witness 10 and Anil Kumar, Public Witness 13 have not supported the prosecution version; (ii) the only remaining witness, namely, Surender Kumar, Public Witness 1 could not be believed as he was an interested witness; (iii) Surender Kumar Public Witness 1 has made material improvement in his statement in Court over his statement recorded u/s 161 of the Criminal Procedure Code; (iv) when according to prosecution story, three persons were armed with blunt objects, it was not safe to conclude that the fracture received by Public Witness 1 Surender Kumar was the result of any blow given by appellant Subhash; (v) the injured Surender Kumar has not received any knife injuries; (vi) place of occurrence is doubtful as no blood was found at the spot.

(14) We have heard at length Mr. K. B. Andley, Advocate for appellant Subhash and Mr. Chandra Shekhar, Advocate for appellant Niranjana.

(15) At the very outset, we may say that on perusal of the record of the lower Court, no doubt can be created regarding cause of death of Shyam Lal and receiving of injuries by Surender Kumar Public Witness 1. These have not been challenged. Further, the time of incident has also not been challenged.

(16) Thus, the main examination in these appeals is whether the sole witness Public Witness 1 Surender Kumar, should be believed in the face of the rest of the alleged eyewitnesses not supporting the prosecution version. No doubt before us there is solitary testimony of Public Witness 1 Surender Kumar as the other alleged eyewitnesses have been declared hostile by the prosecution but considering the fact that he is an injured witness and he was examined by the Doctor at Hindu Rao Hospital soon-after the alleged time of incident, it would be difficult to disbelieve him unless there are cogent reasons for the same. Let us examine.

(17) Learned Counsel for the appellants have advanced vehement arguments to dislodge the statement of this injured eyewitness on the grounds, inter alia, that Shyam Lal, the deceased did not go straight to the Hindu Rao Hospital and instead got his wounds bandaged by some private doctor in a private hospital and reached Hindu Rao Hospital at 1 a.m. on 14.1.1986; that Surender Kumar Public Witness 1, the injured witness did not give the names of the assailants to the doctor, who medically examined him at the Hindu Rao Hospital; that Surender Kumar Public Witness 1 did not receive any knife injury in his right thigh, though in his statement u/s 161 of the Code of Criminal Procedure he had specifically stated that Niranjana gave knife blow on his right thigh; that though Surender Kumar Public Witness 1 stated before Court that Subhash had given hockey blow to him causing fracture but in his statement u/s 161 of the Code he did not state so and as such he has improved his statement in the Court.

(18) They have also advanced arguments that the Fir was anti-timed; that there are material contradictions; that the place of incident has been changed by the prosecution; and, that the investigation has been irregular and defective.

(19) On the other hand, learned Counsel for the State argued that the prosecution has been able to prove its case beyond any reasonable doubt; that there is ample evidence on record to prove that the Fir had not been anti-timed; and, that no improvement had been made by the prosecution during the trial. According to him Surender Kumar, Public Witness 1 is the star witness being the injured witness and there is no reason to disbelieve his testimony. He further contended that neither there are material contradictions nor the investigation had been defective so as to demolish the prosecution case. He invited our attention to the following pronouncements of this Court, namely, 1985 CrL. L.J. 1625, Ishwar Singh v. State, 1991 CrL. L.J. 2619, Bachittar Singh and Another v. State (Delhi Administration) and 1995 Iad (Del) 516, Jugal Mehta v. State (Delhi

Admn.) in support of his arguments that mere delay in delivery of Fir to the local Magistrate would not render Fir anti-timed and anti-dated: that non-recovery of blood from the place of incident would not be fatal, if there is other reliable evidence to fix the scene of occurrence; and, that the testimony of injured witness should not be discarded unless there are cogent reasons to do so.

(20) We have gone through the record of the case and have carefully considered all the contentions urged before us by the learned Counsel for the appellant and the State. On the basis of evidence on record and the facts and circumstances of the case, we are of the view that the appeals have no force and deserve to be dismissed. We will take up the contentions of the learned Counsel for the appellants one by one.

(21) Surender Kumar Public Witness 1 is an injured witness. The time of incident is said to be 9.30 p.m. and he was examined in Hindu Rao Hospital on that very day at 10.30 p.m. Public Witness 16 Constable Azaad Singh was posted as Duty Constable in Hindu Rao Hospital on 13.1.1986. He informed Police Station Krishna Nagar about admission of Surender Kumar in the hospital. On that report Dd No. 15A was recorded which is Ex. Public Witness 12/B. On perusal of that document, it would transpire that the time of the recording of Dd No. 15/A was 10.45 p.m. on 13.1.1986. This Dd was proved by Public Witness 12 Asi Ravi Chand. There is nothing in his cross-examination to show that the aforesaid information had not been received in the Police Station on the aforesaid date and time. Thus, from the Mlc and the entries in the concerned police station, there is no doubt that this injured witness was examined at the Hindu Rao Hospital at 10.30 p.m. on the date of incident. On receipt of the information, the Investigating Officer reached Hindu Rao Hospital and the Rukka was prepared which named the accused persons and also mentioned that Surender Kumar and Shyam Lal had received injuries in the aforesaid incident. The Rukka was dispatched to the concerned Police Station at 1.40 a.m. on 14.1.1986 and consequently the Fir was recorded at 2.30 a.m. on 14.1.1986. Public Witness 1 Surinder Kumar is fully corroborating the contents of the Rukka and the FIR. His statement was recorded by the Investigating Officer in the night of 13/14.1.1986. There are no material contradictions. his statement has all through been consistent. He appears to us to be a truthful witness. We see no reason why this witness would be telling lies to falsely implicate the appellants and to spare the real assailants. Even if his testimony has not been corroborated by the other alleged eyewitness of the incident, we do not consider it to be a ground to reject his testimony specially when he is the injured and star witness of the prosecution.

(22) The contentions of learned Counsel for the appellants regarding non-receiving of knife injury by this witness on his leg does not appeal to us because in his statement u/s 161 of the Code the only thing which is stated to be said by him is that Niranjana gave knife blow on his leg. Giving of blow does not necessarily lead to a knife injury. The statement appears to be more natural

because before such statement, he did not try to ascertain whether he had received any knife injury in his leg or not. In case his statement u/s 161 of the Code had been a twisted one, he would not have stated therein that a knife blow was given on his leg. In our view, these alleged contradictions are not at all material. The overall facts and circumstances have to be viewed in order to find out as to what is the truth.

(23) The second ground on which the statement of this witness has been attacked is that he did not, in his statement u/s 161 of the Code stated that Subhash had given hockey blow to him thereby causing the fracture. We have perused the statement of this witness given u/s 161 of the Code wherein he has stated that Bassi gave hockey blows and Chhidi, Babu and Harkesh gave danda blows. No doubt in his statement u/s 161 of the Code it was not specifically stated that the fracture received by this witness was the result of hockey blow given by accused Subhash but in our view, it would not discredit his statement on oath before the Trial Court when he stated that Subhash had given the hockey blow resulting into the fracture. We do not see any reason why this witness would name accused Subhash solely responsible for the fracture and would spare the co-accused Chhidi and Babu had it not been the truth. There is nothing in his cross-examination to lead us to believe that due to any enmity specifically with accused Subhash, he fastened liability on him and spared the other two accused persons.

(24) Regarding the contention that Mlc does not have the names of the assailants, in our view, it was not necessary for injured Surender Kumar to have told the names of the assailants to the Doctor, who medically examined him.

(25) Deceased Shyam Lal was medically examined in Hindu Rao Hospital on 14.1.1986 at 1 a.m. Much was urged before us by the learned Counsel for the appellants to disbelieve the prosecution case on the grounds that Shyam Lal, the deceased, reached Hindu Rao Hospital on 14.1.1986 at 1 a.m. when the incident is said to have taken place at 9.30 p.m. on 13.1.1986. Their contention is that the delay is not explained and it leads to a conclusion that Shyam Lal was not injured in the alleged incident of this case. In our view, the prosecution has Explanation for the same. Public Witness 11 Hari Chander stated that at about 10 p.m. on 13.1.1986, he received a telephonic message from his father that his (Hari Chander) brother Shyam Lal was in injured condition, that consequently he reached the spot and removed the injured to the Hindu Rao Hospital. The delay in medical examination of Shyam Lal been explained by Public Witness 17 Bishan Lal, who stated that on 13.1.1986, a boy named Shyam Lal came to him in a rickshaw at about 10.30 p.m. in injured condition; that Shyam Lal used to visit his sons earlier; that he offered to take him (Shyam Lal) for medical aid but Shyam Lal declined telling him that he had already got his injuries bandaged and had taken medicines; that Shyam Lal requested him not to tell the fact of having sustained the injuries to his family members but he went to the house of Shyam Lal and approached his father Prahlad, who took his son Shyam Lal to the

hospital. The statement of Public Witness 17, Bishan Lal, explains the circumstances of Shyam Lal reaching Hindu Rao Hospital late and his medical examination having taken place at 1 a.m. on 14.1.1986. Thus, the facts and circumstances proved on record are rather in favor of the prosecution to settle receiving of injuries by Shyam Lal as per the prosecution version.

(26) To us the Fir does not appear to be anti-timed. There is clinching evidence on record that Duty Constable Azaad Singh Public Witness 16 had informed the concerned police station about admission of Surender Kumar Public Witness 1 in the Hindu Rao Hospital. His information was recorded as Dd No. 15/A in the concerned police station at 10.45 p.m. on 13.1.1986. On receipt of this information, Bhim Singh, who was posted as Sub-Inspector at the concerned police station proceeded for Hindu Rao Hospital and reached there at 11 p.m. and recorded the statement of Ram Gopal at about 11.10 p.m. On that statement a Rukka was prepared and was dispatched to the concerned police station at 1.40 a.m. of 14.1.1986 vide Ex. Public Witness 20/A. The Fir was registered at 2.30 a.m. on 14.1.1986. Asi Ravi Chand, Public Witness 12 had recorded the FIR. We have gone through his cross-examination and find no ground to disbelieve his testimony that the Fir was recorded on 14.1.1986 at 2.30 a.m. From the cross-examination of this witness, we find that other FIRs were also recorded on 13.1.1986 and 14.1.1986 and such recording settles the time and date of Fir of the case before us. In these circumstances, we are not inclined to agree with the contention of the learned Counsel for the appellants that the Fir is anti-timed.

(27) We conclude that testimony of Surender Kumar, Public Witness 1, is truthful and worth-believing. We believe his testimony and hold that the prosecution has proved its case beyond reasonable doubt. We are also of the view that there are no such defects in the investigation which may demolish the prosecution case itself. In investigations, the learned Counsel for the accused persons may successfully point out technical and other defects but the Courts have to view them in order to find out whether the technical and other defects are so vital as to demolish the prosecution case. If they are not so, they should be ignored. The Courts have to take into account the overall evidence on record to find out whether it makes out a case for prosecution and leads to the conclusion of guilt of the accused persons. In this case, we do not find that the defects are pointed out by the learned Counsel for the appellants are so material as to demolish the prosecution case.

(28) Considering the facts and circumstances of the case and taking overall picture, we do not find any merits in the appeals. They deserve to be dismissed. Accordingly, they are dismissed.

(29) The convictions of the appellants and the sentences ordered are maintained. The appellant Subhash is on bail. He shall surrender forthwith. his bail bonds stand cancelled.