

Om Prakash Alias Omla

Vs

State of Delhi

Criminal Appeal No. 176 of 1970

(A. N. Ray, C. A. Vaidialingam JJ)

16.02.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment, dated May 26, 1970, of the High Court of Delhi, confirming the sentence of death passed on the appellant by the Sessions Judge on a charge under Section 302 of the Indian Penal Code.
2. The charge against the appellant was that on or about December 13, 1968, at about 9.15 p.m. at Ram Nagar, Nai Basti, Delhi, the appellant committed murder by intentionally or knowingly causing the death of Lachhman Dass and thereby committed an offence punishable under Section 302 of the Indian Penal Code.
3. The prosecution case was that Lachhman Dass son of Raja Ram a young man of about 23 years of age was running a tea shop at Ram Nagar, Nai Basti, Delhi. He had his residence in the same Katra. Adjacent to his shop was the shop of his uncle Bahadur Chand who also resided in that Katra. On December 13, 1968 at about 9.15 p.m. Om Parkash came to the shop of Lachhman Dass and asked for tea and eggs on credit. Lachhman Dass told Om Prakash that he should first clear his previous account. Om Parkash took it as an insult and told Lachhman Dass that he would teach him a lesson. Om Parkash took out a knife and inflicted two stab-wounds, one on the abdomen and the other on the chest of Lachhman Dass. Lachhman Dass cried "Lala, Omla Chaku mar gaya" (father, Omla has stabbed me with a knife). After inflicting the injuries Om Prakash took to his heels. Some persons who had witnessed the occurrence ran after him but as soon as Om Parkash entered Arakashan Road, he boarded a three wheeler scooter which was already standing there with its engine on and escaped. Raja Ram telephoned the Police Control Room. The Flying Squad van reached the spot and Lachhman Dass was removed to the Irwin Hospital, where he was declared dead at 10.05 p.m.
4. Counsel for the appellant submitted that the First Information Report was made on December 13, 1968, and it did not reach the Magistrate till December 16, 1968, and the delay was against the Punjab Police Rules and the prosecution did not explain the delay. The High Court found that 14 and 15 days of December, 1968 were holidays and the First Information Report therefore could not be sent to the Magistrate before December 16, 1968. No question was put to the Investigating Officer to ascertain the cause for delay as to whether it was occasioned by the Police or by the Magistrate. The signature of the Magistrate bore the date December 16, 1968. The High Court correctly held that in the absence of any definite evidence it was not possible to fix the responsibility for the delay on the Police alone because it might be that the F.I.R. was sent to the residence of the Magistrate but the latter took note of it only after the holidays. It is needless to

stress the obvious that the Police should not cause any delay in sending the F.I.R. to the Magistrate and the Magistrate should also take notice of it as soon as it reaches him.

5. It was next contended that in the F.I.R. the appellant's name was not mentioned and there was a discrepancy in the number of the scooter. In the F.I.R. the number of scooter in which the appellant had escaped was shown as DLR 2643 whereas both before the committing Magistrate and at the trial the registered number of the scooter in which the appellant escaped was given as DLR 6681.

According to the F.I.R. It was Chander Mohan who noted the number of scooter as DLR 2643 and he passed on this information to Raja Ram, the father of the deceased. It was Chander Mohan who stated before the committing Magistrate that the number of the scooter was DLR 6681 and DLR 2643. It is because of that discrepancy in the number that the other two accused Ram Kumar and Ram Samuj were given the benefit of doubt and were acquitted. The number of the scooter loses importance because it is established in evidence that the appellant escaped in a scooter.

6. It was said on behalf of the appellant that the entry in the Roznamcha maintained at Control Room mentioned that the shop-keeper had been stabbed with a knife by a 'badmash' inside Dharam Kanta Gali near Air-lines Hotel and the Police shifted the offence from the place mentioned in the roznamcha to the shop of the deceased. The telephone message was sent by Raja Ram. The roznamcha establishes that fact. The name of the accused or the name of the deceased would not be very important in messages received at the Control Room. The Control Room is not concerned with the actual investigation of offence. The object of information was to call the Police to the scene of occurrence. That is why Dharam Kanta Gali near the Air-lines Hotel is mentioned for facility of location of the place of occurrence.

7. The most important attack on the prosecution case was that it was a congested locality and there was no witness apart from the relatives of the deceased. The witnesses on behalf of the prosecution were Krishan Lal Nirula, Bahadur Chand, Smt. Suhagwati, Smt. Sarla Devi and Bhupinder kumar. Krishan Lal Nirula having tea at the shop of Lachhman Dass at the time and place of occurrence. He said that Raja Ram, the father of the deceased was also sitting near him. He also said that Bahadur Chand and Raja Ram were distantly related to him. Bahadur Chand had his shop adjacent to that of the deceased. Raja Ram was Bahadur Chand's brother. It may be stated here that Raja Ram, the father of the deceased died two months after the incident. Smt. Suhagwati is Bahadur Chand's wife. Sarla Devi is the mother of the deceased. Bhupinder Kumar is the son of Bahadur Chand. It is explicable as to why all the witnesses would be likely to be present there. Their residential tenements were behind the shop. The hour was about 9 p.m. Krishan Lal Nirula was in fact present at the shop. The cry of the deceased attracted the neighbours, some of whom were related. Outsiders or strangers were not found there. That is the fact. It was suggested by counsel for the appellant was known to Krishan Lal Nirula and Bahadur Chand. Krishan Lal Nirula spoke of Om Prakash as Omla. Bahadur Chand also spoke of Omla. The evidence established beyond any doubt that the appellant was also known as Omla.

8. The High Court correctly agreed with the Trial Judge in convicting the appellant.

9. It was submitted that the sentence was severe. We are unable to accept that submission. The same submission was repeated before the High Court. The High Court correctly held that the sentence of death was the appropriate sentence in this case.

10. The appeal fails and is dismissed.

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