

Ghansham Dass

Vs

The State (Delhi administration)

Criminal Appeal No. 400 of 1976

(R. S. Sarkaria, P. S. Kailasam JJ)

05.05.1978

JUDGMENT

KAILASAM, J. -

1. The first accused in Sessions Case 105 of 1974 on the file of the Additional Sessions Judge, Delhi, is the appellant in this appeal. There were 8 accused before the Sessions Judge relating to an offence that was committed on the night between June 30, 1972 and July 1, 1972 at or near the shop No. 9 in Old Market, Tilak Nagar. The appellant was found guilty of an offence under Section 302, IPC, and sentenced to imprisonment for life. It is incisor to refer to the convictions and sentences passed on the other accused. The appeal by the appellant to the High Court also failed and thus the matter is before us.

2. The case of the prosecution may be briefly stated. The shop in or near about which the occurrence took place is shop No. 9 in Old Market, Tilak Nagar. This shop belonged to Viran Wali (PW 32). The front portion of the shop was let out to one Mehar Chand and in the back portion Viran Wali was residing. Between the two portions there was a partition wall. Two years after the letting Mehar Chand transferred possession of the shop to his brother, Sunder Dass, who was one of the accused in this case, but died pending trial. About two years prior to the occurrence Viran Wali asked Sunder Dass to vacate the shop as she needed it for her son, Sham Lal, (PW 22). Sunder Dass was not willing to oblige and trouble started. On September 5, 1970, Sunder Das lodged a report in the police station in Tilak Nagar alleging that Viran Wali with the help of Kashmiri Lal (deceased) had demolished the partition wall and forcibly occupied the shop. The police after inquiries bound down both the parties for keeping peace. Proceedings under Section 145, Criminal Procedure Code, were also initiated and shop sealed. A case against Viran Wali was registered under Section 448, Indian Penal Code, for demolition of the wall. She was found guilty of the office. In the proceedings taken under Section 145, Criminal Procedure Code, the Sub-Divisional Magistrate on June 29, 1972, found that Sunder Dass was in possession of the shop within two months of the making of the preliminary order and accordingly directed that he be delivered possession of the shop. In pursuance of this order on June 30, 1972, at about 5 p.m. Hardeep Singh, Sub-Inspector (PW 18) delivered possession of the shop to Sunder Dass.

3. After obtaining possession Sunder Dass wanted to erect a partition wall in between the portions belonging to him and that occupied by Viran Wali. Sunder Dass collected bricks, sand, cement and other materials for putting up the construction, the same evening. But Viran Wali had not reconciled herself and was determined to prevent Sunder Dass from constructing the wall during the neither at any cost.

4. At about 11-45 p.m. on June 30, 1972, Kishan Lal (PW 21) was sitting on a cot outside his shop which is No. 8 adjacent to that of the shop in dispute. The prosecution case as unfolded by the testimony of Kishan Lal is that while he was sitting just opposite to the scene of occurrence Sunder Dass and Ghansham Dass who is the appellant herein, were sitting in shop No. 9. At that time Kashmiri Lal Gulati, the deceased who resided in a house across the lane on the backside of the shop, came to shop No. 9 and found Viran Wali weeping and complaining about the threat of construction of a partition wall by the accused. The deceased consoled her and went to the shop No. 9 and it is stated that he with folded hands asked Sunder Dass and the appellant not to insist on building the partition wall during the night and that they could do so in the morning. This request, it is stated, infuriated the appellant and Sunder Dass. They came out of the shop and shouted to the other accused who were sitting opposite. The words of vulgar abuse were used by the accused party but again the deceased requested the appellant and Sunder Dass not to construct the wall till the next morning. At that time the appellant and Sunder Dass went inside the shop and the appellant brought out a churra and Sunder Dass a lathi. Karam Chand, one of the acquitted accused, caught hold of the deceased Kashmiri Lal and when Kishan Lal, PW 21, stepped forward to get Kashmiri Lal released, Sunder Dass gave a lathi blow on the back of Kishan Lal, who stepped back. Two of the acquitted accused exhorted appellant to kill Kashmiri Lal. The appellant gave two knife blows to the left side chest of Kashmiri Lal who after receiving the injuries staggered and fell down. Sham Lal (PW 22), the son of Viran Wali advanced to help Kashmiri Lal but Sunder Dass gave a lathi blow to him. The appellant threw away the churra and tried to escape but he was caught by Lajpat Rai (PW 25), another eye-witness, but the appellant managed to escape. Sunder Dass who also attempted to run was caught by Kishan Lal but the former also managed to escape.

5. On information received that there was some disturbance going on in the Old Market, Sukhbir Singh, Sub-Inspector (PW 33) reached the spot in a police van and took the injured Kashmiri Lal to Tilak Nagar dispensary, and then to Willingdon Hospital. Dr. R. K. Aggarwal, (PW 4) examined Kashmiri Lal and pronounced him dead at 1.00 a.m. Guru Dutt, Station House Officer, (PW 35) on receipt of information came to Willingdon Hospital, met Kishan Lal (PW 21) and recorded the First Information Report at 2.25 a.m. Kishan Lal (PW 21) and Sham Lal (PW 22) had injuries on their person and the doctor examined them and gave them wound certificates. The appellant, Ghansham Dass, and Sunder Dass, were also in the Willingdon Hospital and were arrested. As both of them had injuries Dr. R. K. Aggarwal (PW 4) examined them. The appellant was examined at 3 a.m. and the doctor found on him one incised wound 1.5 inch x. 5 inch on the lateral surface of left thigh with fresh bleeding. The doctor found the injury to be simple and caused with a sharp-edged weapon. On Sunder Dass the doctor found two contused lacerated wounds on the forehead measuring 1.5 inch x. 5 inch each and one contused lacerated wound on the chin measuring. 5 inch x. 5 inch. Guru Dutt (PW 35) inspected the scene of crime and recovered various articles. Among other things he recovered a blood-stained churra near the stack of bricks. One sheath of churra was found inside the shop. He found blood both inside and outside the shop, the details of which will be referred to in due course. At 11 a.m. the next morning the appellant gave a complaint giving his own version of the occurrence. As this is the earliest statement by the accused putting forward his case it will be referred to in detail a little later.

6. Dr. Bharat Singh who conducted the post-mortem on the dead body of Kashmiri Lal found three injuries (1) one abrasion on the left side forehead 1 inch above the left eye-brow. 5 inch x. 25 inch red in colour; (2) one incised stab wound over the front of left side chest 1.5 inch below the nipple, placed obliquely with its lower end towards the medical side. Size of the wound is 8/10 x 4/10 x ? covered by blood clothes; (3) one incised stab wound over the left side of chest 6 inches below the left arm pit placed horizontally in mid auxiliary line. Size of the wound is 8/10 inch x 4/10 inch x ?

Injury No. 2 had entered the chest cavity through the 4th intercostal space with making a nick on the 5th rib at its costochondral junction. After entering the chest cavity the wound has entered the heart on the left ventricle near the apex in line with the external injury. The cut on the heart is 6/10 inch x 4/10 inch cavity deep. Injury 3 had cut the 8th rib at its upper margin and there piercing the left lung lower lobe through and through in line of external injury. The doctor was of the view that injuries 2 and 3 are necessarily fatal.

7. The case for the prosecution mainly depends upon the testimony of the eye-witnesses PW 21, PW 22 and PW 25. Of these three eye-witnesses PWs 21 and 22 are injured and PW 21 gave the First Information Report within a few hours of the occurrence. PW 25 is a neighbouring shopowner who states that he witnessed the occurrence and unsuccessfully attempted to shop Sunder Dass who escaped. The evidence of these three witnesses was attacked as untrustworthy because they were interested in Viran Wali and inimical towards the accused. The learned Sessions Judge as well as the High Court accepted the testimony of these three eye-witnesses generally. They found that the testimony of these witnesses to the extent they stated that it was the appellant who caused the fatal injuries could be accepted. The appellant gave a lengthy statement before the Sessions Judge setting up a plea of self-defence. His statement will be referred to in detail when we deal with the plea of self-defence. The learned trial judge accepted the prosecution case and rejected the plea of self-defence put forward by the appellant. The High Court in appeal examined two doctors and came to the conclusion that the injury that was found on the appellant was self-inflicted and confirmed the conviction and sentence passed on the appellant.

8. The only point that was strenuously argued by the learned counsel, Mr. A. N. Mulla is that on the facts and circumstances appearing in the case the courts below should have accepted the plea of self-defence.

9. In support of the plea of self-defence two circumstances were strongly relied on; (1) injuries found on the person of the appellant Ghansham Dass and Sunder Dass were not explained by the prosecution, and (2) the presence of blood inside shop No. 9. In order to appreciate the plea of self-defence it is necessary to recapitulate certain facts. The occurrence was at about 11-30 p.m. and before 3 a.m. The appellant and Sunder Dass were arrested and wound certificate given to both of them. Dr. R. K. Aggarwal, PW 4 had examined the appellant and stated in the certificate that the patient gave history of stabbing by somebody. On examination he found on the appellant an incised wound on the left thigh, lateral surface, freshly bleeding. The size of the wound is about 1.5 inch x 5 inch and 5 inch deep. The nature of the weapon used according to the doctor would be sharp-edged. The injury was simple in nature. Sunder Dass who was examined a little earlier at about 2.30 p.m. stated that he was beaten by somebody and got two contused lacerated wounds on the forehead measuring about 1.5 inch x 5 inch each and a third contused lacerated wound on the chin measuring 5 inch x 5 inch. According to the doctor the weapon used would have been a blunt one. The appellant gave his version of the incident at 11.20 a.m. on 1st July. The relevant part of his statement runs as follows :-

When I returned to Delhi on June 30, 1972 my sister Lakshmi Bai told me that the case in regard to the shop No. 9 Old Market, Tilak Nagar had been decided and the possession of the shop had been obtained. MY sister told me that my brother-in-law was at the shop and was getting constructed the wall of shop No. 9, Old Market, Tilak Nagar, and that I should take and handover the chapatis to him at the shop. Thereupon I took the food of my brother-in-law at shop No. 9 in Tilak Nagar Market at about 11.00 p.m. At that time a quarrel was going on at the shop. Some persons

out of which one was Kashmiri Lal Gulati who runs a flour grinding machine at shop No. 7, Old Market, and whom I know from before, were quarreling with my brother-in-law Sunder Dass. I tried to extricate but somebody hit a brick against my head, as a result of which blood started oozing out and thereafter some sharp edged weapon was hit on my left-hip. I am of the opinion that it was hit by Kashmiri Lal Gulati and blood started oozing out from my lip. I became unconscious on the spot. Somebody lifted me from the spot and took me to Dr. Hari Raj who resides at Patel Nagar. The doctor sent for my sister Bhagwanti who resides at Ashok Nagar, and made me to take some Glucose. Thereafter he directed her to take me to big hospital. My sister made me to board a Taxi and took me to Willingdon Hospital. The doctor said that since it was a police case, she should come along with the police case, she should come along with the police. When my sister took me to hospital there also the doctor told her that she should come with the police. Then my sister took me to Tilak Nagar and from Tilak Nagar one Thanedar brought me to Willingdon Hospital I was brought to the police station by the Police. I have heard the statement and it is correct.

10. The earliest version of the accused thus is that the deceased and others were quarreling in the shop with his brother Sunder Dass and when he tried to extract his brother somebody hit a brick on his head and as a result blood started oozing out and thereafter some sharp-edged weapon was hit on his left hip which he was of the opinion was hit by Kashmiri Lal Gulati, the deceased. In the Sessions Court the accused made an elaborate statement which it is necessary to reproduce :

Sunder Dass accused is my Jeeja (brother-in-law). On June 30, 1972 he had taken possession of shop No. 9, Old Market, Tilak Nagar, through police on the orders of the court in the evening. He feared that Viran Bai would forcibly take possession of that shop. On June 30, 1972 at about 11 p.m. I went to the shop of Sunder Dass to give food to him and when I reached there I found that Kashmiri Lal deceased along with 4 or 5 goondas who were drunk were present there and they were beating Sunder Dass. When I tried to save Sunder Dass they also gave me a beating And my shirt was torn. Kashmiri Lal Gulati gave a churra blow which hit at my left leg. I and Sunder Dass went inside the shop to save our lives but Kashmiri Lal and his companions entered and they gave lathi blows to Sunder Dass. Kashmiri Lal also tried to give me a blow with churra. Ext. P-1, but I caught hold of his hand and by twisting the same I snatched the churra from him. Kashmiri Lal and his companions had surrounded us and they were bent upon beating and killing us. In order to save myself and to save Sunder Dass, I gave a churra blow to Kashmiri Lal in self-defence. He, however, caught hold of me and grappled with me and in order to save myself I gave a churra blow which hit him per chance at his chest. Receiving the churra blow, Kashmiri Lal dropped the sheath from his hand inside the shop and went outside where he fell. I also went out of the shop, threw the churra there and ran away to save myself. I was bleeding on account of injuries sustained and when I went to the shop of Hem Raj he gave me glucose to drink and called my sister and told us to go to the hospital. My sister took me to Willingdon Hospital where the doctor refused to treat me unless the police came with me. I went to Safdarjung Hospital where also the doctor repeated the same thing. My sister then took me to Tilak Nagar Police Station. The police did not write any report and one Thanedar took me to Willingdon Hospital and got me medically examined. When I was discharged from the Hospital, Police took me to the Police Station.

11. According to the plea raised before the Sessions Judge in his statement Ghansham Dass went to the shop at 11 p.m. to give Sunder Dass food and when he reached there he found Kashmiri Lal, deceased, along with 4 or 5 goondas who were drunk and were beating Sunder Dass. When he tried to save Sunder Dass they also gave him a beating and his shirt was torn. Regarding the injury found on his person the case of the appellant was that the deceased gave him a churra blow which hit at his left leg and that he and Sunder Dass went inside the shop (which would mean that the earlier quarrel was outside the shop) to save their lives. But Kashmiri Lal and his companions entered the shop and gave lathi blows to Sunder Dass and Kashmiri Lal tried to give the appellant a blow with churra but the latter caught hold of his hand and snatched the churra and when Kashmiri Lal and his companions surrounded him and Sunder Dass and were bent upon beating and killing them, in order to save themselves, the appellant gave a churra blow to Kashmiri Lal in self-defence. When again Kashmiri Lal caught hold of the appellant and grappled with him he gave a churra blow which hit Kashmiri Lal per chance at his chest and receiving the churra blow, Kashmiri Lal dropped the sheath inside the shop and went outside where he fell. Apart from the fact that this version given by the accused before the Sessions Judge is very different from his version given immediately after the occurrence, the plea of self-defence is mainly on the ground that he snatched the churra which the deceased had and inflicted the injuries while he was under an apprehension that grievous hurt or death would be caused to him and Sunder Dass. This version, on closer scrutiny, will be found to be totally unacceptable. The injury which he had sustained and which is made much of is, as already noted, 1.5 inch X 5 inch on the lateral surface of left thigh. According to the earliest statement of the accused this injury was caused to him and he suspected that it must have been the deceased. The learned Sessions Judge has found that the injury on the left thigh could not have been caused by the weapon Ext. P-1. The dagger, Ext. P-1, was examined by the learned trial Judge. He found that it had a pointed metallic blade 17.5 cms. in length, the total length of the churra being 29.5 cms. The learned Judge after examining the evidence of the doctors relating to the injury on the accused came to the conclusion that the injury could not have been caused with the weapon Ext. P-1. The injury was of the size 1.5 inch x. 5 x. 5 inch and it is most unlikely to have been caused by a weapon with a metallic blade 17.5 cms. in length unless the weapon was dragged which is unlikely because of the size of the injury. Equally unacceptable is the version of the accused that Kashmiri Lal was armed with churra Ext. P-1 and that the accused snatched it from him and that when Kashmiri Lal and others surrounded him and were bent upon beating and killing him, he gave a churra blow and when again Kashmiri Lal caught hold of him he gave a churra blow which hit Kashmiri Lal per chance at the chest. We are inclined to accept the case for the prosecution that the churra was in the shop and the accused took it and used it. We reject as totally unacceptable the plea that the accused snatched away the weapon and used it in the exercise of the right of self-defence. It is worthwhile to note that the plea of snatching the weapon is not even mentioned in the earlier report given by the accused. In the earliest report the case was that Kashmiri Lal was quarreling with his brother-in-law, Sunder Dass, and that when he tried to extricate him somebody hit him (Ghansham Dass) with brick against his head and thereafter some sharp-edged weapon was hit on his hip. There is no explanation whatever about the injuries found on the deceased. We are conscious of the fact that the accused are usually reluctant to own their part in the occurrence but we find that the story put up by the accused at the Sessions court is very much divorced from the truth and was a desperate attempt to evade the clutches of law. The High Court examined the two doctors in appeal and on an examination of their evidence came to the conclusion that the injury on the appellant was self-inflicted. We are not persuaded to share this view, for we feel there was hardly any time for the appellant to deliberate and get an injury inflicted on himself for putting up a defence. The accused was arrested earlier than 3 a.m. and he was examined at 3 a.m. The only circumstance in favour of the view that the injury was self-inflicted was that the injury was found to be freshly bleeding. But we do not feel that from

this alone we can agree with the High Court that the injury was self-inflicted.

12. Taking all the circumstances into account we have no hesitation in rejecting the plea of self-defence as put forward by the appellant in Sessions Court. There are certain circumstances which require a closer examination to determine whether the prosecution case as spoken to by PWs 21, 22 and 25 could be accepted in full. It is admitted that PW 21 is a supporter of Viran Wali in the litigation, so also the deceased Kashmiri Lal. Sham Lal, PW 22, is the son of Viran Wali. In the circumstances though we have no hesitation in accepting their testimony in general we feel it is necessary to examine the several facts in the case in order to determine in what manner the occurrence took place. Apart from the fact that the injuries on the appellant and Sunder Dass had not been satisfactorily established the discovery of the blood stains inside the shop makes the closer scrutiny necessary. Shri Guru Dutt, PW 35, Inspector C.I.D., Crime Branch who conducted the investigation has stated that he found blood in the sand lying in front of shop No. 9. He lifted blood from near the sand and from above the gunny bag and from the floor. In the Seizure Memo Ext. PW 2/B it is seen that blood was lifted from a gunny bag lying near the right wooden frame of shop No. 9. He also found pieces and blood stains in a gunny bag. Sample of blood was also lifted from the flour near a heap of sand at the place which according to the prosecution is the scene of stabbing. There was blood also on the cement floor from a place outside shop No. 9. The plan that is prepared by the police officer shows that blood stains were found at the entrance and at two spots inside the shop and also on the sheath of the dagger which was blood-stained and found inside the shop. The case for the prosecution is that the stabbing took place at the place where the bricks and sand are found stored which is outside the shop. According to the prosecution Kashmiri Lal was stabbed near the place where the blood stains were found on the sand and the victim moved a few paces and fell down at the entrance of the shop where some more blood stains were found. The prosecution case is very clear that the deceased never entered into the shop. From the evidence of PW 21 it is seen that Kashmiri Lal entered into the shop and was requesting the accused and Sunder Dass not to raise a wall during the night. The prosecution would state that Kashmiri Lal approached the appellant and Sunder Dass with folded hands. Taking into account the past history and the fact that Kashmiri Lal was a staunch supporter of Viran Wali and the fact that he assured Viran Wali that the wall will not go up that night, we are not satisfied that he was entirely on a peaceful mission. We feel it is highly probable that Kashmiri Lal entered into the shop to persuade the appellant and Sunder Dass from proceeding with their plan of starting the wall. We see no justification for coming to the conclusion that Kashmiri Lal was armed. At about mid-night When tension was running high, the accused bent upon erecting the wall the Viran Wali and Kashmiri Lal equally determined not to allow the wall to be raised, it is not possible to say that when Kashmiri Lal entered the shop he was not committing criminal trespass. In the circumstances the accused would be entitled to throw Kashmiri Lal of the shop. But as we have found that Kashmiri Lal was not armed and that he had no intention of causing any injury to the appellant or Sunder Dass, the appellant far exceeded his right by using the dangerous weapon, churra, with deadly effect and causing two injuries which cut the heart and the lung. On a consideration of all the circumstances, we feel it is very likely that the appellant caused the injuries when the deceased Kashmiri Lal trespassed into the shop. But there could have been no apprehension that death or grievous hurt was likely to be caused to the accused. The conclusion is therefore irresistible that the appellant exceeded his right of private defence of property. In the circumstances, we feel that the conviction under Section 302 and the sentence for imprisonment for life cannot be sustained. We find the appellant guilty of an offence under Section 304 (1) and sentence him to imprisonment for five years. To this extent the appeal is allowed.

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