

Rakesh Kumar Alias Babli

Vs

State of Haryana

Criminal Appeal No. 39 of 1984

(M. M. Dutt, G. L. Oza JJ)

28.01.1987

JUDGMENT

M. M. DUTT, J. -

1. This appeal by special leave is directed against the judgment of the High Court affirming the order of the learned Sessions Judge, Jind, whereby the appellant, Rakesh Kumar, and three other persons were convicted under Section 302 read with Section 34 IPC on the charge of murdering one Ved Prakash.

2. The deceased Ved Prakash was the younger brother of PW 3, Bhagat Singh, a Registered Medical Practitioner. Ved Prakash used to work in the clinic of his elder brother, PW 3. In the evening of August 26, 1981 both PW 3 and the deceased were present in the clinic. The appellant and the other two accused, who were under the influence of liquor came to the clinic. They were all drunk. They told the deceased that he should serve them with liquor, and that if he did not do so, it would be difficult for him to live at Jind. On hearing this, the deceased gave a slap on the face of the accused Dharam Vir and, thereafter, all the three accused went away saying that the deceased would have to bear the consequence.

3. The further case of the prosecution was that on August 27, 1981, PW 3 Bhagat Singh, went to see a movie in Kundan cinema hall in the night show. His cousin brother, Sube Singh (PW 4), also met him at the said cinema hall. After witnessing the cinema show, both Bhagat Singh and Sube Singh left for their house at about 12.15 a.m. On their way home, when they reached near Gurdwara Teg Bahadur, they heard the shrieks of Ved Prakash "Bachao Bachao". On hearing the shrieks, both of them ran towards the direction of the shrieks and when they reached the spot they found that the accused Jogi Ram and Dharam Vir had caught hold of the deceased and Rakesh, the appellant, was giving 'knife blows' to him. On receipt of the 'knife blows', the deceased fell down on the ground and the two other accused ran away from the place of occurrence with their respective knives. Ved Prakash died on the spot. The two witnesses gave them a chase, but they could not catch hold of them. PW 4, Sube Singh, was left behind to guard the dead body of Ved Prakash. PW 3, Bhagat Singh, himself went to the police station where he made a statement before PW 8, Mange Ram, the Sub-Inspector of Police, at 2.00 a.m. The formal FIR on the basis of this statement was lodged at 2.30 a.m. After the completion of investigation, the appellant and the two other accused were sent up for trial.

4. The learned Sessions Judge, after considering the evidence adduced by the parties came to the conclusion that the prosecution had proved the guilt of the appellant and the two other accused beyond any reasonable doubt. Accordingly, the learned Sessions Judge convicted the appellant and

the two other accused under Section 302/34 IPC and sentenced each of them to undergo rigorous imprisonment for life.

5. The appellant and the other two accused preferred separate appeals to the High Court of Punjab and Haryana against their convictions and sentences. The High Court, however, affirmed the findings of the learned Sessions Judge and dismissed all the appeals. The appellant, Rakesh Kumar, has only preferred this appeal by special leave against his conviction and sentence.

6. In this case, the two eyewitnesses were PW 3, Bhagat Singh, the elder brother of the deceased, and his cousin, Sube Singh, PW 4. The only point that has been urged by the learned counsel appearing on behalf of the appellant is that as the place of occurrence was dark and the electric tubes, which were fitted on the two electric poles near the spot, were lying fused, it was not possible for PWs 3 and 4 to identify the assailants of the deceased. It appears that at the trial much endeavour has been made by the appellant and the other two accused to prove that on the day of occurrence there was no electric light, as the electric tubes were lying fused at the time of occurrence. The accused had examined a defence witness, Mange Ram (DW 1), an electrician of the Municipal Committee, Jind. His evidence is that on August 14, 1981, a letter was received from the Manager, Gurdwara Teg Bahadur, Jind, addressed to the Administrator, Jind, intimating him that the street lights of the road leading to the said gurdwara were not in working order for the last four or five days prior to August 14, 1981, and requested that the light should be set in order. Further, his evidence is that there is no record to show that the said tubelights on the road were replaced by him on September 24, 1981 and that on that day, as per entries in the register, he had replaced 21 electric tubes on the street.

7. The said letter alleged to have been written by the Manager, Gurdwara Teg Bahadur, Jind, has not been proved. It is not the evidence of DW 1 that he had replaced the tubelights in question. But, he has made a vague statement that, as per entries in the register, he had replaced 21 electric tubes on the street on September 24, 1981. The learned Sessions Judge has elaborately dealt with the evidence of DW 1 and has totally disbelieved the same. In our opinion also, the evidence of DW 1 is useless and does not at all help the appellant and the other two accused in proving that the two electric tubes were lying fused and, as such, the place of occurrence at the relevant time was dark.

8. PW 3, Bhagat Singh, stated in his examination-in-chief that he had identified the accused at the time of occurrence. But curiously enough, he was not cross-examined as to how and in what manner he could identify the accused, as pointed out by the learned Session Judge. No suggestion was also given to him that the place was dark and that it was not possible to identify the assailants of the deceased.

9. In his cross-examination, PW 4, Sube Singh, stated that the accused Dharam Vir, was wearing a shirt of white colour. It was suggested to him on behalf of the accused that Dharam Vir was wearing a shirt of cream colour. In answer to that suggestion, PW 4 said : "It is not correct that Dharam Vir accused was wearing a shirt of cream colour and not a white colour at that time." The learned Sessions Judge has rightly observed that the above suggestion at least proves the presence of accused Dharam Vir, on the spot at the time of occurrence.

10. The learned counsel for the appellant has drawn our attention to the evidence of the IO(PW 8). His evidence was that as there was not sufficient light, so he could not complete the inquest proceedings. It also transpires from his evidence that except filling up columns 7 and 8 of the inquest form, he recorded the supplementary statements of Bhagat Singh (PW 3) and the statement

of Sube Singh (PW 4). We fail to understand how this statement of PW 8 helps the contention of the appellant that the place was dark at the time of occurrence and, accordingly, it was not possible to identify the assailants of the deceased. All that PW 8 has said is that the light was insufficient. But he had recorded the statement of PWs 3 and 4. Further, during his cross-examination, PW 8 denied that the electric light existing on the spot was out of order at the time of occurrence. It is, therefore, manifestly clear from the evidence of PW 8 that the place was not at all dark although the light was not sufficient for filling up the inquest form. But, it cannot be said that there was no light and the place was dark.

11. The learned Sessions Judge was, therefore, justified in not finding any infirmity in the prosecution version that there was electric tubelight burning near the place of occurrence at the relevant time in the night in question. The High Court has also come to the same conclusion. No other point has been urged in this appeal.

12. For the reasons aforesaid, we do not find any substance in this appeal. It is, accordingly, dismissed.

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