

Sanjeev Kumar

Vs

State of Punjab

Criminal Appeal No. 194 of 1990

(K. Venkataswami, M. K. Makherjee JJ)

06.05.1997

JUDGMENT

M. K. MUKHERJEE, J. –

Sanjeev Kumar, the appellant before us, his a brother Narinder Kumar and father Om Parkash were tried by the Sessions Judge, Jullundur for an offence punishable under Sections 302/34 IPC on the allegation that on 15-4-1986 they committed the murder of Yudhvir in furtherance of their common intention. While acquitting Om Parkash of the above offence the trial Judge convicted the other two and sentenced each of them to suffer imprisonment for life and pay fine. As the appeal preferred by the two convicts was dismissed by the High Court they filed a petition before this Court seeking special leave to appeal. Such leave was granted to the appellant only and hence this appeal at his instance.

2. Yudhvir (the deceased) along with his brother Jyoti Parkash and father Sukhdev Raj (PW 5) used to reside at Basti Sheikh in the city of Jullundur. Dharam Pal (PW 6), brother of Sukhdev, also resided in the same locality in an adjacent house. Om Parkash is married to the sister of Sukhdev's father and his house is situated at a distance of about 75 yards from the house of Sukhdev.

3. According to the prosecution case about three or four days prior to the incident, with which we are concerned in this appeal, Narinder and Sanjeev had quarrelled with Yudhvir and in course thereof exchanged abuses. The matter was, however, settled at the instance of the respectable people of their locality.

4. It is the further prosecution case that on 15-4-1986 Yudhvir left his house at or about 6.15 a.m. for his usual morning stroll. Shortly thereafter Sukhdev and Jyoti Parkash who were in their house heard shouts 'bachao bachao'. Both of them then rushed towards the direction wherefrom the shouts emanated. Dharam Pal also came out of his house and followed Sukhdev and Jyoti Parkash. Proceeding ahead they found Yudhvir in the grip of Om Parkash and Sanjeev and Narinder standing there with a dagger and a kirch respectively. Om Parkash raised a lalkara exhorting his sons to kill Yudhvir and thereupon they started inflicting blows on Yudhvir with their respective weapons. As a consequence thereof Yudhvir fell down on the ground with bleeding injuries. When Sukhdev, Dharam Pal and Jyoti Parkash raised alarms the three miscreants left the spot along with their weapons. Sukhdev and Dharam Pal immediately removed Yudhvir to Civil Hospital, Jul lundur in an autorickshaw and got him admitted there. Dr. Aneja conducted his medico-legal examination and noticed the following injuries :

"1. Incised wound about 4" x 2" was present on the abdomen on left side, present in

the left umbilical region and extending up to the midline. Fresh profuse bleeding was present. Intestines were protruding out of the wound and amentum (sic) was protruding out of the wound.

2. Incised wound 1 1/4" x 1/2" present on the anterior surface of chest, right side near the mid-line about 2 1/2" below and towards right side of sternal notch. Fresh bleeding was present. X-ray was advised.

3. Incised wound 2 1/2" x 1/2" muscle-deep present on anterior surface of left upper arm in upper part. Fresh bleeding was present.

4. Incised wound 1 1/2" x 1/2" muscle-deep present just above injury 3 and was communicating to injury 3. Fresh bleeding was present.

5. Incised wound 1 1/2" x 1/3" muscle-deep present on the ventral a surface of left forearm in lower part. Fresh bleeding was present."

5. On the same day at 6 p.m. Sukhdev Raj went to the police station and lodged a report, which was recorded by ASI Swaran Singh (PW 7) and a case was registered. Accompanied by Sukhdev Raj, ASI Swaran Singh came to the spot and after inspection prepared a site plan. On 17-4-1986 Yudhvir succumbed to his injuries and consequently the case registered against the accused was converted to one under Sections 302/34 IPC. On completion of investigation police submitted a challan against Narinder Kumar only but after the matter was reinvestigated by Shri Umrao Siugh, SP Crimes, a supplementary challan was put in against Sanjeev Kumar and Om Parkash also.

6. The appellant pleaded not guilty to the charge levelled against him and contended that he had been falsely implicated in the case.

7. In support of its case the prosecution examined ten witnesses of whom Sukhdev Raj (PW 5) and Dharam Pal (PW 6) figured as eyewitnesses. No witness was however examined on behalf of the defence. The trial court found the evidence of the above two witnesses trustworthy so far as it related to the roles played by the two brothers in the murderous assault on the deceased and a motive to commit the crime. As, according to the trial court, their evidence stood corroborated by the medical evidence, it convicted the appellant and his brother. The trial court, however, gave benefit of doubt to Om Parkash and acquitted him by way of abundant caution. The High Court agreed with all the findings of the trial court and accordingly dismissed the appeal.

8. Mr. Jethmalani, the learned counsel appearing for the appellant, firstly drew our attention to the following statement made by ASI Swaran Singh (PW 7) in his cross-examination :

"I reached Civil Hospital, Jullundur on 15-4-1986 at about 1 p.m. Sukhdev Raj and Dharam Pal, PWs, were also present in Civil Hospital, Jullundur at that time, I had asked them to make their statements but they did not make any statement before me concerning the occurrence at that time. I made an entry in this regard in the daily register on my arrival at the police station."

and the daily diary entry of Jullundur Police Station, Division No. 5 dated 15-4-1986 made by him at 3.40 p.m. (Exhibit DF), to the same effect and contended that refusal on the part of the two eyewitnesses to make any statement regarding the incident even after four hours clearly indicated that they were still contemplating as to how a story of assault was to be yarned. From the

testimonies of the two eyewitnesses we find that when they were cross-examined on this aspect of the matter they asserted that PW 7 did not meet them in the hospital nor did he enquire as to how the assault took place. PW 5 also stated that he remained busy for arranging blood in order to save the life of his son. In accepting the statements of the eyewitnesses in preference to that of the Investigating Officer in this regard and rejecting a similar contention raised before it, the High Court pointed out that several complaints were made by Sukhdev against the conduct of investigation of PW 7 and he also admitted certain lapses in the investigation. The High Court accordingly concluded that it could not be said that the eyewitnesses did not have a version of the incident till the lodging of the FIR at 6 p.m. Having given our anxious consideration to the contention raised by Mr. Jethmalani in this behalf we find no reason to differ from the views expressed by the High Court.

9. Mr. Jethmalani next contended that there was an inordinate and unexplained delay in lodging the FIR, in that, though according to the prosecution the incident took place at 6.30 a.m. it was lodged at the police station at 6.15 p.m. which, admittedly, was at a distance of two furlongs from the spot. In repelling this contention when raised before it, the High Court observed as under :

"Om Parkash, accused, is closely related to Sukhdev Raj. He is married to the latter's father's sister. Dr. Naja and Dr. Parmar have graphically described the condition of injured Yudhvir. General condition of the patient was critical. He was in peripheral circulatory failure. He was being transfused blood. Kidney function was very poor. Seriousness of the condition was explained to his relatives. The operation upon the patient was started at 9.00 a.m. Because of the stab wound in the chest there was a root in the pleura through which air and blood were coming out. After the operation the patient was kept in the recovery room of the operation theatre and was shifted to the ward. General condition of the patient was serious in the ward also. Patient was having respiratory distress. The intercostal tube in the sixth intercostal space was blocked and it was changed. Three incisions were given over the chest wall to relieve the respiratory distress. During the post-operative period the condition of the patient remained stormy.

Two eyewitnesses have explained that they remained busy in attending to the injured and arranging for blood and medicines. It is a well-known fact that the blood is not easily available in the Muffasil towns and it can be obtained after making serious efforts. The operation on the injured lasted about five hours. It can be safely inferred that fairly large amount of blood must have been needed during and after the operation. So the explanation of the witnesses regarding their not lodging the report is acceptable especially as, when the accused to be named were closely related. Sukhdev Raj was already under stress because of the precarious condition of his son. He did not also weigh in his mind the pros and cons of getting a case registered against his near relations. This is more as when there was no previous enmity between the two families. For all these reasons the report was not lodged till 6.15 p.m. The close relationship of the complainant with the accused is a sufficient safeguard against the false implication of any of the accused. If Sanjeev Kumar had not actually caused injuries to Yudhvir, Sukhdev Raj would have been the last person to falsely name him." As the above-quoted observations are unexceptionable, we do not find any merit in the second contention of Mr. Jethmalani.

10. Mr. Jethmalani lastly argued that having regard to the categorical admission of Sukhdev Raj

(PW 5) that the spot where his son received injuries at the hands of Sanjeev Kumar and Narinder Kumar was not visible from his house, the courts below ought not to have placed any reliance upon the evidence of PWS and PW 6 to convict the appellant. We do not find any substance in this contention also. The two eyewitnesses did not claim that they had seen the assault while standing near their respective houses. On the contrary, they averred that when they heard the shouts "bachao bachao" they came out of their houses and rushed towards the place of occurrence; and it is only after reaching there that they saw the incident. They further stated that they saw Yudhvir had been caught by Om Parkash at the corner of two streets and he was pushed to some distance and then given blows. It cannot, therefore, be said that the claim of the above two witnesses that they saw the incident is untenable.

11. Having carefully gone through the entire evidence we find no reason to interfere with the concurring findings of the courts below that PWs 5 and 6 had no enmity with the family of Om Parkash to falsely implicate them and, on the contrary they were related to each other; that despite a searching and detailed cross-examination they could not be discredited and that their evidence stood fully corroborated by the medical evidence. We, therefore, dismiss the appeal. The appellant, who is on bail, shall now surrender to his bail bonds to serve out the sentence.