

Vijender Kumar @ Vijay Vs State of Delhi

Court: Delhi High Court

Date of Decision: April 9, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 201, 302, 307

Hon'ble Judges: G.S. Sistani, J; B.N. Chaturvedi, J

Bench: Division Bench

Advocate: K.B. Andley, M.L. Yadav and M. Shamik, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision: Dismissed

Judgement

B.N. Chaturvedi, J.

The appellant was tried for offences punishable under Sections 302 & 201 IPC and convicted therefore by the Court

of learned Additional Sessions Judge, Delhi vide judgment dated 19.4.2005 and sentenced to imprisonment for life u/s 302 IPC and rigorous

imprisonment for one year u/s 201 IPC vide order dated 21.4.2005. The sentences so awarded are to run concurrently.

2. Aggrieved by the said conviction and sentence, the appellant has preferred the instant appeal.

3. Material facts of the prosecution case are thus: Yagesh @ Bhima @ Chhotu was employed as a helper in a bus owned by appellant's father. He

was being suspected of misappropriating part of fare collected by him from passengers. On 9th of April, 2002, at Karampura Bus Terminal, Delhi

the appellant felt that there was some shortfall in collection. He questioned the deceased to find out if he had withheld some amount with him. The

deceased answered in the negative. The appellant was, however, not convinced. He, therefore, subjected the deceased to a personal search which

resulted into recovery of an amount of Rs. 100/-from his person. The appellant got furious and started beating the deceased. The deceased

protested whereupon the appellant brought out a knife from the dicky of his two-wheeler scooter parked nearby and stabbed him. Unexpected

course of event left the other members of the bus crew shocked. They advised the appellant to remove the deceased to a hospital. The appellant

thereupon, assisted by one Kanhiya, took the deceased in an injured condition, on his two-wheeler scooter, to a private clinic. The doctor

concerned at the clinic, looking at his condition, advised the appellant to take the injured to some hospital. The appellant, accordingly, took the

injured/deceased to ESI Hospital and got him admitted there. While getting the injured/deceased admitted in the hospital, the appellant informed

the doctor concerned that the injured/deceased was found by him lying unconscious on the road side and had brought him to the hospital from

there. On duty constable at the ESI Hospital informing the police station concerned about admission of Yogesh in injured condition, a DD Entry

No. 17-A dated 19.4.2002 was recorded at Police Station Moti Nagar, New Delhi and a copy of such entry was passed on to SI D.P.Kajla for

necessary action. SI D.P.Kajla, accordingly, proceeded to ESI Hospital. He was accompanied by constable Raj Kumar No. 2052/W. On

reaching the hospital, the doctor on duty certified the injured/deceased unfit to make a statement. SI D.P.Kajla keeping in view the contents of

MLC, which he had collected from the hospital, made his endorsement on the copy of the said DD report and sent the same to Police Station Moti

Nagar, New Delhi through constable Raj Kumar No. 2052/W for registration of a case u/s 307 IPC and an FIR was, accordingly, registered.

4. On the same day at about 10.20 p.m., based on an information by duty constable Karamvir No. 1616/W at ESI Hospital that the injured had

been declared dead by the doctor concerned, another DD Entry No. 66-B dated 9.4.2002 was recorded at Police Station Moti Nagar, Delhi.

The FIR was thereupon converted into the one u/s 302 IPC and further investigation of the case was taken over by Insp.B.S.Jhakar from SI

D.P.Kajla.

5. In the course of investigation, Insp.B.S.Jhakar was able to ascertain the identity of the deceased with the help of a photograph of his dead body.

Insp.B.S.Jhakar made inquiries about the incident from the driver and fellow crew members of the bus on which the deceased was working. They

gave an eyewitness account of the incident inculcating the appellant. The appellant was thereupon arrested. He made a disclosure statement,

pursuant to which a knife wrapped in a piece of cloth was got recovered from the dicky of his scooter parked at his house. Apart from the knife

so recovered and seized by the police, the appellant also led to recovery of his shirt from an almirah in his house. Some faint bloodstains were

found on the appellant's shirt so recovered as he had allegedly washed the same before its recovery. On the knife and cuttings of appellant's shirt

being referred to CFSL, the knife and the shirt cuttings were found to be bearing bloodstains, positive for test and on examination, blood swab

guage(knife) was opined to be having human blood of 'A' Group, which happened to be the blood group of the deceased. Though on shirt

cuttings human blood was detected, the test to ascertain its group was recorded as inconclusive.

6. Alleged eye-witnesses, namely, Jaspal @ Pinki, PW-1, Kanhaiya, PW-2, Ravinder Singh @ Motu, PW-3, and Devinder, PW-4, trampled

upon prosecution case and did not support it. The learned Additional Sessions Judge in a salvaging act, turned to circumstantial evidence and in the

ultimate analysis adjudged the culpability of the appellant being proved beyond doubt to record the impugned conviction and sentence.

7. Challenge to the impugned conviction and sentence emanates from non-supportive statements of Jaspal @ Pinki, PW-1, Kanhaiya, PW-2,

Ravinder Singh @ Motu, PW-3, and Devinder, PW-4, who had, according to the prosecution version, witnessed the deceased being assaulted by

the appellant and fatally injured by a stab blow. Shri K.B.Andley, Senior Advocate, appearing for the appellant, contended that apart from the fact

that none of the alleged eyewitnesses support the case of the prosecution regarding appellant's involvement in the commission of the offence, there

is no evidence even to establish that the deceased was in the employment of appellant's father on the date of incident. He referred to the

depositions of deceased's father Chander Pal, PW-8, and brothers, Ram Parkash, PW-9 and Manoj Kumar, PW-10, who stated that they were

not aware of the employer with whom the deceased had been serving. It was contended that contrary to the claim of the prosecution that the dead

body of the deceased was got identified at the mortuary of DDU Hospital by Manoj Kumar, PW-10, the affirmation by Manoj Kumar, PW-10,

that he saw the dead body of his deceased brother only when the same was brought to the house from the hospital, renders the identification of the

dead body doubtful. Shri Andley further argued that Dr. Narender Kumar, PW-6, did not, in the course of his statement before the Court, identify

the appellant being the one who had, as per prosecution version, taken the deceased in injured condition to his clinic first before removing him to

ESI Hospital and getting him admitted there on being so advised by the said witness. Sustainability of impugned conviction and sentence was

questioned by Shri Andley on the ground that there being no direct evidence connecting the appellant with commission of the offence, the

circumstantial evidence, as noticed by the trial Judge, was not sufficient to hold the appellant guilty of the offences he was charged with and tried

for. Alleged recovery of bloodstained knife and shirt of the appellant bearing bloodstains, pursuant to his disclosure, argued Shri Andley, could not

suffice to adjudge culpability of the appellant in the commission of the crimes particularly when the knife allegedly recovered at the instance of the

appellant was not shown to the doctor concerned who conducted the post-mortem examination on the dead body of the deceased to elicit his

opinion if the stab injury in question that resulted into death of Yogesh, could have been used as the weapon of the offence and also as the

credibility of claim in regard to recovery of bloodstained knife and shirt is rendered questionable since the same was effected without associating

any person from the public in spite of availability of a number of persons.

8. Ms. Richa Kapoor, Additional PP, representing the State, on the other hand, countered the arguments raised on behalf of the appellant by

contending that even though the prosecution suffered on account of non-supportive stance of the eye-witnesses to the occurrence, the

circumstantial evidence available on record that were taken into account by the learned trial court to convict and sentence the appellant for the

offences he was charged with, clearly establish beyond doubt the culpability of the appellant. She contended that it was the appellant himself who

removed the deceased in injured condition from the scene of crime and eventually got him admitted in ESI Hospital. The same is a clear indicator

of his committing the crime and then trying to escape from legal consequences by making a false disclosure to the doctor concerned at ESI

Hospital that the deceased was brought by him from a place on road side where he found him lying unconscious in an injured condition. Ms. Richa

Kapoor pointed out that the appellant even accompanied the concerned police officer after registration of an FIR u/s 307 IPC to a particular place

from where he claimed to have had removed the deceased in injured condition to the hospital and a site plan of that place was prepared

accordingly at his pointing out. It was further contended that as far as identification of dead body of Yogesh is concerned, the same was, in any

case, identified by Chander Pal, PW-8, father of the deceased, at the mortuary of the hospital before the same was handed over to him. Referring

to a decision of the Supreme Court in Gura Singh Vs. The State of Rajasthan, , Ms. Kapoor contended that as a matter of legal proposition even

though the eye-witnesses of the incident did not support the prosecution case, their entire testimony is not rendered unworthy of consideration and

part thereof could still be taken into consideration for corroboration wherever necessary. On witnesses from public being not joined to witness the

recovery of incriminating knife and shirt at the instance of the appellant, the learned Additional PP, referring to the statements of SI D.P.Kajala,

PW-18, Insp.B.S.Jhakar, PW-20, pointed out that the investigating officer did make efforts to secure presence of some of the witnesses from

public before effecting the said recoveries, though without success due to reluctance on their part to come forward.

9. We have heard the arguments from either side. Apart from being taken though the relevant parts of the evidence on record during the course of

arguments, we have otherwise perused the impugned judgment/order of conviction and sentence, as also the entire evidence on record.

10. The statements of all the eye-witnesses that were recorded during the course of trial are wholly inconsequential in view of each one of them

having expressed complete ignorance in regard to the incident taking place at Karampura Bus Terminal. Absence of effective cross-examination of

such witnesses leaves the prosecution high and dry as no part of their testimony is capable of being taken into consideration to supplement the

circumstantial evidence leading to the finding of the appellant's involvement in the commission of the crimes.

11. From the impugned judgment one gathers that the learned trial court held the appellant guilty of the offences on the basis of following

circumstances:

i) That the appellant had taken the deceased with stab wound on his person and got him admitted in the hospital by wrongly disclosing to the

doctor concerned that the deceased was brought by him from a place on the road side where he was found lying unconscious in an injured

condition, which was, on investigation, found to be incorrect.

ii) That the bloodstained knife, used as weapon of offence, was recovered at the instance of the appellant pursuant to a disclosure by him in that

regard.

iii) That the shirt of the appellant bearing bloodstains was recovered from the house of the appellant at his instance.

12. Alleged admission of the deceased in ESI hospital in an injured condition is of vital import. The claim of the appellant playing the role of a good

Samaritan by picking up the deceased in injured condition from roadside lacks any support from the material on record. Though the appellant has

denied having taken the deceased in injured condition to ESI Hospital to get him admitted there, the statement of Dr. R.K.Sharma, PW-5, coupled

with the testimony of Constable Raj Kumar, PW-12 and SI D.P.Kajala, PW18, clearly establish the identity of the appellant as being the one who

got the deceased admitted in the hospital in an injured condition. The evidence produced by the appellant in his defence to the effect that he was

lying admitted at Primary Health Centre, Mehrauli, New Delhi as indoor patient from 9th April, 2002 to 10th April, 2002 and that he was

discharged from there at 6.00 p.m. on 10th of April, 2002 was not accepted, and rightly so, by the learned trial Judge for the reasons recorded in

the impugned judgment. The only evidence produced by the appellant in support of plea of alibi is an extract of patient register Ex.DW1/ C, a

discharge slip Ex.DW-1/A and a certificate issued by the doctor concerned, namely, Dr. Gopal Bhagat, DW-1. No indoor patient slip which could

have proved that the appellant remained actually admitted there as an indoor patient from 9th of April, 2002 to 10th of April, 2002 has been

placed on record. The admission card on the basis of which the appellant was admitted as indoor patient is also not available on record. The

entries in the patients" register, extract whereof has been proved on record, would appear to have been made on the basis of such admission card

only. From the extract of patients register Ex.DW-1/C, it is gathered that only two patients are shown admitted in the hospital as indoor patients on

9th of April, 2002, the appellant being one of them. The name of the appellant at S. No. 13 appears at the end of the page and before him only

one patient was admitted as indoor patient. Contrary to discharge slip Ex.DW-1/A where the appellant is shown to have been admitted as patient

of gastro enteritis, there is no mention of the ailment he was suffering from against the relevant entry in the patients" register vide Ex.DW1/ C. None

of the entries, including the one relating to the appellant appear to have been signed by Dr. Gopal Bhagat, DW-1. In the circumstances, the

possibility of the appellant getting the entry in question in his name manipulated in the register at a subsequent point of time, in connivance with the

official concerned maintaining the patients" register cannot be ruled out. The certificate Ex.DW-1/B was got issued only on 11th of September,

2002, much after the claimed date of discharge of the appellant. It is notable that the appellant is shown as resident of TS-782, Baljeet Nagar,

Patel Nagar, Delhi, which is far away from Primary Health Centre, Mehrauli, New Delhi. In his examination u/s 313 Cr.P.C., in order to explain

his admission in a hospital at such a far off place, the appellant stated that on 9th of April, 2002, he had gone to see Qutub Minar where he fell ill

all of a sudden and was got admitted at the Primary Health Centre, Mehrauli, New Delhi by 2/3 persons belonging to the MCD. Taking into

account the plausibility of the defence version and evidence produced in support thereof, the learned trial court committed no error in rejecting the

plea of alibi.

13. The MLC vide Ex.PW-5/A clearly mentions the name of the appellant, his parentage as well as residential address being the one who got the

deceased admitted in the hospital with stab wound on his person. At the time of admission, he had disclosed to Dr. R.K.Sharma, PW-5, that he

had brought the injured(deceased) from the Nazafgarh Road near Moti Nagar Police Station where he was lying unconscious. Though the

appellant had, according to SI D.P.Kajala, pointed out the place on Nazafgarh Road from where he claimed to have had picked up the deceased

in injured condition to take him to ESI Hospital and a site plan vide Ex.PW-18/C was prepared at the instance of the appellant, in the course of

investigation, no evidence could be found to support the correctness of the information furnished by the appellant as noted by Dr. R.K.Sharma,

PW-5, in the MLC, Ex.PW-5/A. On the contrary, the investigation into the matter led to a different place, as indicated in the site plan, Ex.PW-

20/A and PW-15/A, being identified as the actual place of occurrence. To begin with, the police officers concerned were unable to fix the identity

of the deceased and, therefore, the investigation could make little headway. It was only on 11th of April, 2002 that the investigating officer

Insp.B.S.Jhakar, PW-20, could succeed in getting the dead body identified with the help of photograph of the dead body. According to SI

D.P.Kajala, PW-18, and Const. Raj Kumar, PW-12, they were, with a view to fix the identity of the deceased, showing the photograph of the

dead body to various persons at Karampura Bus Terminal where they per chance came across with Manoj Kumar, PW-10, brother of the

deceased, who identified the dead body to be of his brother Yogesh @ Bhim @ Chhotu. No doubt Manoj Kumar, PW-10 did not support that

he ever came across with police officials at Karampura Bus Terminal or that he, on seeing the photograph of the dead body, had identified the

same to be of his brother Yogesh or that he accompanied the police officials to identify the dead body of his brother Yogesh at DDU Hospital, the

testimony of SI D.P.Kajala, PW-18 and Constable Raj Kumar, PW-12 clearly establish that Manoj Kumar, PW-10 helped the police in fixing the

identity of the deceased. Manoj Kumar, PW-10, who otherwise deposed contrary to the prosecution case, affirmed that he came to know about

the death of his brother Yogesh in the hospital from his brother Ram Parkash, PW-9. Chander Pal, PW-8, father of Manoj Kumar, PW-10,

however, who also like his son Manoj Kumar, PW-10, turned hostile, stated that he came to know about the death of his son Yogesh in an

accident from some person on 11th April, 2002 and identified the dead body of his son at DDU Hospital. If Ram Parkash, PW-9, another son of

Chander Pal, PW-8, was in the know of death of Yogesh in the hospital as testified by Manoj Kumar, PW-10, there was no question of someone

else other than Ram Parkash, PW-9, informing Chander Pal, PW-8, about the death of his son Yogesh in an accident. Obviously, the

father(Chander Pal, PW-8) and his two sons, namely, Ram Parkash, PW-9, and Manoj Kumar, PW-10, deliberately omitted to tell the truth for

reasons best known to them and even went to the extent of expressing complete ignorance about the place of employment and the name of the

employer of the deceased, Yogesh. The fact that the police was able to achieve a breakthrough in fixing the identity of the deceased with the help

of a photograph of the dead body of Yogesh at Karampura Bus Terminal, the presence of Manoj Kumar, PW-10, at that bus terminal where he

appeared to have had gone to find the whereabouts of his deceased brother for his not having returned to his house for the last two days, provides

a clear indication that he expected to gather some information relating to his brother, Yogesh, from persons at that place. The appellant in his

statement u/s 313 Cr.P.C. admitted that bus No. DL 1 PD 1490 plying on route No. 234 was owned by his mother. According to

Insp.B.S.Jhakar, PW-20, he prepared the site plan Ex.PW-20/A at the instance of the witnesses of occurrence. Of course, the eyewitnesses did

not corroborate the statement of Insp.B.S.Jhakar, PW-20, in this regard and as a matter of fact, while deposing before the court they expressed

complete ignorance about the whole incident, there is no reason to disbelieve Insp.B.S.Jhakar, PW-20 in this respect. It is, thus, evident that the

place of incident was Karampura Bus Terminal only. In spite of the fact that the father and two brothers of the deceased, as also the eyewitnesses

of the incident, omitted to state that the deceased was working in the bus owned by the mother of the appellant plying on route No. 234 from

Karampura Bus Terminal, the presence of the deceased at Karampura Bus Terminal where the incident of stabbing took place is a clear indicator

of his association with that place in some way or the other. Taking this circumstance together with admission of the deceased in injured condition at

ESI Hospital by the appellant, in turn, unmistakably lead to find that the deceased was one who was very much known to the appellant on the date

of incident. The recovery of bloodstained knife at the instance of the appellant from the dicky of his scooter parked at his house pursuant to a

disclosure, Ex.PW-12/F by him, is an additional circumstance which clearly connects him with the commission of murder of Yogesh. The CFSL

report, Ex.PX, proves that the knife recovered at the instance of the appellant bore bloodstains matching the blood group 'A' of the deceased.

The recovery of knife was questioned by the learned senior counsel for the appellant on the ground that no person from public was associated in

spite of their availability. Insp.B.S.Jhakar, PW-20 and SI D.P.Kajala, PW-18, testified that in spite of being requested, nobody from public came

forward to be a witness to recovery of bloodstained knife from the dicky of appellant's scooter. Of course, the statements of other two police

witnesses of recovery contradict the factum of any effort to associate witnesses from public being made, the same cannot be taken to account for

statements of the said two police officers being discarded.

14. Another argument raised on behalf of the appellant was that the knife in question was not shown to the doctor, namely L.K.Barua, PW-7, at

the time of post-mortem examination on the dead body of Yogesh to elicit his opinion if the same could have been used to cause the stab injury on

the person of Yogesh that eventually resulted into his death. The omission on the part of investigating officer to seek the opinion of the doctor

concerned at the time of postmortem examination was no doubt there but in view of the fact that Dr. L.K.Barua, PW-7, had the occasion of seeing

the same in the course of his statement before the court and opined that the stab injuries on the person of Yogesh could have been caused by a

knife like Ex.P-1, the lapse of not showing the knife to Dr. Barua at the time of post-mortem examination cannot be held fatal to the prosecution

case.

15. In view of circumstances emanating from the evidence on record, we find no reason to hold a view different from the one recorded by the

learned trial court to convict the appellant for the commission of murder of Yogesh as also for trying to screen himself from legal punishment by

giving false information to Dr. R.K.Sharma, PW-5 and the police. Accordingly, we uphold the impugned judgment of conviction and order of

sentence and dismiss the appeal.