

PETITIONER:
AMBIKA PRASAD AND ANOTHER

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION, DELHI)

DATE OF JUDGMENT: 21/01/2000

BENCH:
G.B.Patnaik, M.B.Shah

JUDGMENT:

Shah, J.

These appeals are filed against the judgment and order dated 21.3.1997 passed by the High Court of Delhi dismissing Criminal Appeals No.45/92, 49/92 and 50/92 filed by the present appellants, which arise out of common judgment and order dated 24.03.1992 passed by the Addl. Sessions Judge, Delhi in Sessions Case No.508/91. In all six persons namely Ambika Prasad (A1), Krishanpal (A2), Ram Adhar (A3), Ram Chander (A4), Shiv Raj Singh (A5) and Rajinder Singh (A6) were tried for the offences punishable under Sections 148 IPC, 341 read with 149 IPC, 307 read with 149 IPC and 302 read with 149 IPC. Additionally, accused Ram Chander (A4) was charged for the offence punishable under Section 27 of the Arms Act. Out of them two were acquitted and appellants Ambika Prasad, Krishanpal Singh, Ram Chander and Rajinder Singh were convicted for the offences under Section 302/34 IPC, 341/34 IPC and 307/34 IPC. For sentence, the trial court observed that murder appeared to be pre-planned. Accused Ram Chander was a famous wrestler and for others no criminal antecedent was brought to the notice of the Court, therefore, it was held that it was not one of the rarest of the rare cases. Hence, for the offence punishable under Section 302/34 IPC, they were sentenced to suffer imprisonment for life and to pay a fine of Rs.100/-. For the offence punishable under Section 307 read with Section 34 IPC, the court imposed a sentence of four years and a fine of Rs.100/- and for the offence punishable under Section 341 read with Section 34 IPC fine of Rs.100/- was imposed. Against that judgment, Ambika Prasad and Krishanpal filed Criminal Appeal No.45 of 1992, Ram Chander filed Criminal Appeal No.49 of 1992 and Rajinder Singh filed Criminal Appeal No.50 of 1992 before the High Court of Delhi. All the appeals were heard together and were disposed by a common judgment and order. That judgment and order is challenged by Ambika Prasad and Krishanpal by filing Criminal Appeal No.1152/97, by Ram Chander by filing Criminal Appeal No.1153/97 and by Rajinder Singh by filing Criminal Appeal No.1154/97. Since these appeals arise out of common judgment and order and from the same sessions trial, they are disposed of by this common judgment and order.

It is the prosecution version that Pratap Singh is the owner of the disputed land in village Libaspur. It is alleged that he sold 2 bighas out of 24 bighas of land to one Mohinder Yadav and over this transaction there was dispute between the vendor and the vendees, for which civil suit was pending. A few days before the incident, Shiv Raj (acquitted accused) told Kishan Dei (PW10) wife of Pratap Singh that he had purchased the plot from Shri Ram Chander and Ram Adhar accused and that he would take possession of the land. She told him that it was a disputed land. PW4 Vikram Singh, PW5 Karan Singh and PW7 Anirudh Singh are the sons of Pratap Singh. Deceased Virender Singh was the son of elder brother of Pratap Singh. For the assault on the complainant party and injury caused to the deceased Virender Singh as well as injured witnesses, FIR was lodged by Vikram Singh (PW4) on 30.06.1982 at 12.40 p.m. It was stated that they were owners of 24 bighas and some biswas of land towards East of G.T. road by the side of village Libaspur. For the said land, there was a transaction with Saroop Nagar Housing Society through Mohinder Yadav. It was decided that on the receipt of entire consideration the possession of the land would be handed over to the vendees. As sale consideration was not paid, they were in possession of the said land. As the Society started constructing houses, they filed suit and obtained stay order which was in operation till date. It was further stated that at about 10 a.m., when Karan Singh, Anirudh, Virender Singh were returning after ploughing the land by their tractor, Ambika Prasad alongwith his companion Rajinder Diarywala, Ram Adhar Pehalwan and his so called adopted brother (subsequently identified as Ram Chander), whose both ears were damaged and who was known to the informant came there by the side of house of Ambika Prasad alongwith 4 to 5 other persons. Rajinder was holding a ballam (Spear), Ambika Prasad was having a lathi, Ram Adhar was equipped with jaili (rake) and his so-called adopted brother was armed with gun whereas other persons were holding lathis. Ram Adhar in a loud voice gave a lalkara that nobody should be spared and their dead bodies should be laid so that there may not be quarrel again. At that stage, he drove back the tractor towards plot of one person named Dhillon but the tractor got entrapped in a ditch. So, all the brothers came down of the tractor and at that time Ram Chander wrestler brother of Pehalwan Ram Adhar fired a shot from his gun, as a result Virender Singh fell down and died on the spot. Rajinder gave a blow of ballam on the face of PW5 Karan Singh, and accused Ram Adhar and Ambika Prasad assaulted Karan Singh by jaili and lathi. Anirudh PW7 was also beaten by lathi. He was not injured because he hid himself behind the tractor. At that time, wrestler fired at him but he escaped and ran away. He raised alarm for help and on hearing the alarm, Prem Singh PW8 and Rattan Singh PW10 alongwith other persons arrived at the spot. He has further stated that with the help of these persons accused Ambika Prasad and Krishanpal were overpowered and during the scuffle they sustained injuries. They were apprehended on the spot while they were trying to run away after committing the crime. It is stated that assault took place at about 10.15 a.m. and the police reached there soon after the occurrence. Two injured witnesses and two accused who were apprehended on the spot, were taken to Hindu Rao Hospital, Delhi by SI Prithipal Singh of Police Control Room between 12.05 p.m. and 12.10 p.m. Thereafter, FIR was recorded at about 12.40 p.m.

In the present case, injuries to the prosecution witnesses Karan Singh and Anirudh Singh are proved by examining PW1 Dr. Joginder Mittal of Hindu Rao Hospital. PW2 Dr. P.K. Sakondia of the said hospital also examined accused Ambika Prasad and Krishanpal Singh and has proved injuries suffered by them. Injuries to the accused are abrasions and bruises. PW3 Dr. L.T. Ramani conducted postmortem examination of Virender Singh on 30.06.1982 at about 3.00 p.m. and recovered 43 pellets from his body. According to him the injuries were caused by the fire arm except injury No.3 which was an abrasion. According to the doctor, the injuries were sufficient in the ordinary course of nature to cause death. In the present case, motive is the land dispute between the complainant party and the accused. The occurrence at the scene of offence is also established and is not disputed. With regard to the evidence of PW4 Vikram Singh who has lodged exhaustive FIR, the High court observed that on occasions he had gone back from his initial statement under Section 154 Cr.P.C. and in that sense has turned hostile. The Court observed that reading his evidence as a whole it appeared that he was under fear from the accused and that he has stated so in the cross-examination. The High Court further observed that fear prevails in the mind of complainant party which could be for the reason that accused party was stronger in terms of money power and muscle power. After appreciating the evidence of prosecution in detail and relying upon the evidence of injured witnesses, Karan Singh (PW5) and Anirudh Singh (PW7), the High Court dismissed the appeals.

At this stage, we would state that there are concurrent findings given by both the courts below based on appreciation of evidence and unless it is pointed out that the said appreciation is unreasonable or unjustified, there is no scope for interference in these appeals. Keeping that in mind, we would decide the appeals after considering the contentions raised by the parties.

Mr. R.K. Jain, learned senior counsel appearing for Ram Chander submitted that there was no reason for the courts below not to accept the plea of alibi set-up by accused Ram Chander, whose consistent stand was that he was getting training for Asiad Games throughout the day of occurrence in Akhara. He was also not named in the FIR. He submitted that prosecution witness Suraj Bhan (PW20) who was examined by the prosecution to show that appellant was missing from akhara at the time of occurrence was declared hostile and further there was no reason for not relying upon the defence witness HC Mangat Ram (DW5). He also submitted that evidence of PW5 Karan Singh and PW7 Anirudh Singh which is relied upon by the courts below for convicting the appellants suffers from many infirmities and ought not to have been relied upon for convicting the appellants.

Mr. D.D.Thakur, learned senior counsel appearing for Ambika Prasad and Krishanpal submitted that there was no reason for the courts below for believing the prosecution version that the complainant party had gone for cultivating the land which was sold by them and over which there was construction of 50-60 houses. It is submitted that complainant party was aggressor and the accused Ambika Prasad had received as many as eight injuries and some of them were grievous. He submitted that courts erroneously relied upon the prosecution version that Ambika Prasad and Krishanpal received injuries while they were running away

and they were followed by the villagers who caused injuries. The learned counsel appearing on behalf of Rajinder Singh adopted the contentions raised by the learned counsel for the other accused.

In addition to the aforesaid contentions, counsel for the appellants submitted that in the present case prosecution has not examined the investigating officer who was important witness and this has prejudiced the defence raised by the accused. For the non-examination of the investigating officer, learned counsel for the State submitted that he was not aware of any reason given for non-examination of investigating officer. However, he submitted that one of the accused is a police officer and known wrestler and, therefore, presuming that investigation is intentionally or unintentionally faulty yet that cannot be the ground for disbelieving the injured witnesses. It is his contention that investigating officer might not have stepped in the witness box because Ram Chander belongs to the same department and that is the reason why PW20 Suraj Bhan turned hostile and DW5 Mangat Singh has stepped into the witness box to support the plea of alibi of Ram Chander.

Firstly, we would deal with the contention of the learned counsel for the accused that non-examination of the investigating officer has adversely affected their defence. In our view, non-examination of investigating officer in the present case has no bearing on appreciation of the evidence of injured eye-witnesses. The learned Sessions Judge after analysing the evidence of SI Kulwant Rai (PW31), Inspector Suraj Bhan (PW20) observed that they resiled from their earlier recorded statements and wanted to help accused Ram Chander. The High Court has also observed that reason for non-appearance of investigating officer is not far to seek and obviously he was trying to help the accused. The High Court further stated that prosecution case cannot be allowed to suffer at the hands of the investigating officer or agencies and investigating officer cannot be permitted to hold the prosecution to ransom by his deliberate acts. Dealing with a case of negligence on the part of the investigating officer, this Court in Karnel Singh v. State of MP {(1995) 5 SCC 518} observed that in a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of erring investigating officer. Similarly, in Ram Bihari Yadav v. State of Bihar {(1998) 4 SCC 517 para 13} this Court observed:-

In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.

Further in Paras Yadav and others v. State of Bihar {(1999) 2 SCC 126} this Court held:-

It may be that such lapse is committed designedly or because of negligence. Hence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not

Further, it is to be borne in mind that criminal trial is meant for doing justice to the accused, victim and the society so that law and order is maintained. Hence, as observed by this court in State of UP v. Anil Singh, (AIR 1988 SC 1998) it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. Hence, we would only state that it is unfortunate state of affair that police officers resiled from their own statements and deposed something contrary before the court. Equally, it is unfortunate that investigating officer has not stepped into the witness box without any justifiable ground. But this conduct of the investigating officer or other hostile witnesses cannot be a ground for discarding the evidence of PW5 and PW7 whose presence on the spot is established beyond reasonable doubt. They have suffered injuries and their evidence is corroborated by medical evidence. It is also in-conformity with what has been stated in the FIR. In any case, investigating officer is not at all material witness for the purpose of establishing whether accused or the complainant party was the aggressor. Not only that, accused have examined the defence witnesses for establishing their say. Hence, non-examination of the investigating officer cannot be a ground for holding that injured witnesses should not be believed.

It is also to be pointed out that PW4 Vikram Singh (informant) who had lodged FIR immediately was under constant threat and was compelled not to speak the truth despite the fact that he was the brother of deceased. Other witnesses also turned hostile including PW6 Prem Singh son of Pratap Singh and PW8 Rattan Lal, which indicates, as observed by the High Court, that accused party was stronger in terms of money power and muscle power. At this stage, we would observe that the Sessions Judge ought to have followed the mandate of Section 309 Cr.P.C. of completing the trial by examining the witnesses from day to day and not giving a chance to accused to threaten or win over the witnesses so that they may not support the prosecution. It appears from the record that examination-in-chief of PW4 Vikram Singh was over on 06.2.1984. The counsel representing Ambika Prasad requested the court that because of his uncle's demise, he would not be in a position to cross-examine the witness and, therefore, recording of further cross-examination might be adjourned. Thereafter, the witness was cross-examined in the month of July, 1985. In our view, this is highly improper. Even if the request for adjournment of the learned counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days.

It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of incident as deposed by the prosecution witnesses, not a single independent witness has been examined and, therefore, no reliance should be placed on the evidence of PW5 and PW7. This submission also deserves to be rejected. It is known fact that independent persons are reluctant to be a witness or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and

they dare not depose truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Other reason may be the delay in recording the evidence of independent witnesses and repeated adjournments in the court. In any case, if independent persons are not willing to cooperate with the investigation, prosecution cannot be blamed and it cannot be a ground for rejecting the evidence of injured witnesses. Dealing with similar contention in State of UP v. Anil Singh (Supra) this Court observed:-

In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable.

The learned counsel for the accused further raised the contention that there was delay in recording the statements of injured witnesses, therefore, their evidence should not be accepted, also requires to be rejected. In Dr Krishna Pal & Anr. v. State of U.P. {(1996) 7 SCC 194} this court rejected similar contention of non-explanation by the prosecution as to why eye-witnesses had not been examined shortly after the incident and for inordinate delay in examining them, by holding that it would not be a ground to discard the convincing and reliable evidence adduced in the case. This contention is also considered by both the courts and has rightly not been accepted. The trial court after considering the evidence of PW5 Karan Singh held that delay in recording the statement of this witness by the investigating agency stands explained because Karan Singh was having injuries on his face and in the region of his mouth. His mouth was swollen with injuries all around and he could hardly speak. It is also pointed out that investigation officer was visiting the hospital almost daily, obviously for the purpose of recording his statement. Similarly, PW7 Anirudh Singh has stated that he was under tremendous fear from the accused party. He was not going out of his house and was staying with his in-laws and moving stealthily. It is to be stated that both the injured witnesses were found in the injured condition at the scene of offence. From that place they were removed to Hindu Rao Hospital by SI Prithi Pal Singh, who reached there after the occurrence. Their injuries are also proved by Dr. Joginder Mittal, PW1. They have deposed before the court that Ram Chander was having a gun in his hand, Rajinder was having a ballam and accused Ambika Prasad was having a lathi and other accused were also having lathis. Accused Rajinder inflicted ballam blow and Ram Adhar inflicted jaili blow on Karan Singh. Ram Adhar also inflicted jaili blow on Anirudh Singh. It is also stated by them that Ram Chander fired a shot from his gun which hit Virender Singhs chest and as a result Virender Singh fell on the spot and died. Both specifically denied the defence version that they alongwith their brothers started demolishing the wall of Gurudwara. Both the witnesses have narrated the entire prosecution version. Further PW4 who had resiled from his earlier statement because of the fear adhered to his version that

all the accused were known to him and came there on the spot. He has also stated that Ambika Prasad and Krishanpal were apprehended on the spot. Mr. Jain learned senior counsel for accused Ram Chander has pointed out that evidence of PW5 Karan Singh is inconsistent because he has deposed that he became unconscious immediately after receiving the injuries and yet he told the police that accused persons ran away towards the East after the occurrence. He has also pointed out that the witness has shown his ignorance whether his mother (Kishan Dei) was examined as PW10. In our view, the aforesaid insignificant embellishments would not in any way affect his evidence and both the courts, therefore, rightly relied upon the evidence of the injured witnesses.

Now, we would deal with the next contention of learned senior counsel, Mr. Jain appearing for accused Ram Chander who allegedly used fire arm and caused the death of Virender Singh, that he is not named in the FIR and, therefore, the evidence of eye-witnesses should not be relied upon. This contention requires to be rejected because the eye-witnesses were knowing him (Ram Chander) and was a known wrestler, working in the police department. His identity was mentioned in the FIR as moohbola brother of Ram Adhar Pehalwan and whose ears have been damaged. All the witnesses namely PW4, PW5, PW7 have identified him, and there was no reason for them to falsely implicate him. Both the courts have rightly considered this aspect and rejected the same. Further, in his statement under Section 313 Cr.P.C. he pleaded his alibi and has stated that he was in police department and was a wrestler of national/international team. As he was selected for Asiad 1982, he used to remain in Akhara for practice and that Akhara is 8 to 9 km. from the place of occurrence. On the day of occurrence, HC Mangat Ram and Constable Ghanshyam were having wrestling training with him in Akhara. When he came to know that he has been involved in this case, he surrendered himself. He stated that DBB1 .12 bore gun belongs to him and it was never used at the time of incident. His plea is supported by the defence witness DW5 HC Mangat Ram. Further, the prosecution witnesses PW20 Suraj Bhan and PW31 SI Kulwant Rai have resiled from their earlier statements and have not supported the prosecution. This plea is also rightly rejected by both the courts. The trial court appreciated the evidence of DW5 HC Mangat Ram. In his cross-examination he admitted that he had not told about the presence of accused Ram Chander in Akhara at the relevant time to SHO or the investigating officer. He has also admitted that practice hours were from 5.00 a.m. to 8.00 a.m. The trial court, therefore, held that as duty hours were from 5.00 a.m. to 8.00 a.m. and as the incident had taken place at about 10.15 a.m. there was sufficient time for accused to be present at the place of incident. Hence, there was no reason to disbelieve the evidence of injured two eye-witnesses and PW4 Vikram Singh with regard to presence of the accused at the scene of offence.

The learned senior counsel Mr. Thakur appearing for accused Ambika Prasad and Krishanpal submitted that there was no reason to disbelieve the plea of accused Ambika Prasad. Ambika Prasad has stated in his statement under Section 313 Cr.P.C. that he had purchased a plot in the name of his brother from one Bhagwan Dass; he had built a room on the same and that he was elected Secretary of Saroop Nagar Welfare Association; prior to the date of incident,

Vikram Singh, Karan Singh and Virender Singh had demolished the boundary walls of many houses with a tractor but had not demolished each house; on 30.6.1982 at about 10.00 a.m all these persons armed with lathis and other weapons came with a tractor and started demolishing walls of the plots; there was a Gurudwara consisting of one room managed by Santa Singh which had also a boundary wall; the complainant party with their tractor demolished one boundary wall of the said Gurudwara, so various people protested and started throwing stones. Complainant party also started beating him and at that stage someone from the crowd fired, which hit Virender. He fell down on the spot. After riots in the year 1982, said Gurudwara was razed to ground. From the aforesaid plea of the accused, the learned counsel submitted that the complainant party went for cultivating the fields is absolute false because there was no land which could be cultivated. In our view, this additional submission taken by the counsel is without any basis. Further in any set of circumstance Pratap Singh was the owner of more than 24 bighas of agricultural land, out of which agreement was only for sale of 2 bighas of land. Therefore, remaining land could be presumed to be cultivable one. As such, it has not been pointed out at any stage by the defence that there was no other land which was cultivable. The learned counsel Mr. Thakur further submitted that as complainant party was demolishing the wall of Gurudwara, various people protested and started throwing stones and at that stage someone from the crowd fired, which hit Virender. In our view, this defence version is totally baseless. On this aspect, the trial court rightly observed that no person whose boundary wall was demolished has been examined and that no evidence was forthcoming from any person from Gurudwara that boundary wall of Gurudwara was demolished. Further, there is no reason to believe the defence version that somebody from the crowd fired which hit Virender Singh. Hence, it is difficult to believe the plea of Ambika Prasad that complainant party was aggressor and they came on the spot to demolish the construction made by the accused and other persons. There is nothing on record to indicate that complainant party was armed with any weapons. As against this, accused were armed with deadly weapons namely fire arm, jaili, ballam (spear) and lathis. Injuries caused to the complainant party were more serious while minor injuries were caused to accused Ambika Prasad and Krishanpal as deposed by PW2 Dr. P.K. Sakondia. The learned counsel, Mr. Thakur also submitted that there was no reason or rhyme for non-examination of the Patwari, who was cited as a witness and was given up by the prosecution. In our view, with regard to the incident examination of patwari is not material. What was agreed to be sold as deposed by the witnesses was only 2 bighas out of 24 bighas of agricultural land. Hence, the contention of the learned counsel for the appellant that complainant party came there on the spot to demolish the construction and they were aggressors is without any foundation and substance.

In the result, no interference is called for in the aforementioned appeals. Accordingly, Criminal Appeal No.1152 of 1997 filed by Ambika Prasad and Krishan Pal Singh is dismissed, their bail-bonds are cancelled and they are directed to surrender forthwith to undergo their remaining sentences; Criminal Appeal No.1153 of 1997 filed by Ram Chander and Criminal Appeal No.1154 of 1997 filed by Rajinder Singh are also dismissed.

JUDIS