

PETITIONER:
SANJEEV KUMAR

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 06/05/1997

BENCH:
M.K. MUKHERJEE, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
THE 6TH DAY OF MAY, 1997

Present:

Hon'ble Mr. Justice M.K. Mukherjee
Hon'ble Mr. Justice K. Venkataswami
Ram Jethmalani, U.R. Lalit, Sr.Advs., P.K.Dey, Sanjay M.
Tripathi, Adv. for (Ms. Rani Jethmalani) Adv. with them of
the appellants.
R.C. Kohli, Adv. for R.S. Sodhi, Adv. for the
Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

M.K. Mukherjee, J.

Sanjeev Kumar, the appellant before us, his brother Narinder Kumar and father Om Prakash were tried by the Session Judge, Jullunder for an offence punishable under Section 302/34 I.P.C. on the allegation that on April 15, 1986 they committed the murder of Yudhvair 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.

Yudhvair (the deceased) along with his brother Jyoti Parkash and father Sukhdev Raj (P.W.5) used to reside at Basti Sheikh in the city of Jullunder, Dharam Pal (P.W.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.

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 Yudhvair and in course thereof exchanged abuses. The matter was, however, settled at the instance of the respectable people of their locality.

It is the further prosecution case that on April 15,

1986 Yudhvair 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. Dharm Pal also came out of his house and followed Sukhdev and Jyoti Parkash. Proceeding ahead they found Yudhvair 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 Yudhvair and thereupon they started inflicting blows on Yudhvair with their respective weapons. As a consequence thereof Yudhvair 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 Yudhvair to Civil Hospital, Jullunder 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 upto the mid line. Fresh profuse bleeding was present. Intestines were protruding out of the wound and amentum was protruding out of the wound.

2. Incised wound 1 1/4" x 1/2" present on 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" into muscle deep present just above injury No.3 and was communicating to injury No.3. Fresh bleeding was present.

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

On the same day at 6 P.M. Sukhdev Raj went to the police station and lodged a report, which was recorded by A.S.I. Swaran Singh (P.W.7) and a case was registered. Accompanied by Sukhdev Raj, A.S.I. Swaran Singh came to the spot and after inspection prepared a site plan. On April 17, 1986 Yudhvair succumbed to his injuries and consequently the case registered against the accused was converted to one under Section 302/34 I.P.C. On completion of investigation police submitted challan against Narinder Kumar only but after the matter was reinvestigated by Shri Umrao Singh, S.P. Crime a supplementary challan was put in against Sanjeev Kumar and Om Parkash also.

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

In support of its case the prosecution examined ten witnesses of whom Sukhdev Raj (P.W.5) and Dharam Pal (P.W.6) figured as eye-witnesses. 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 role played by 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 Prakash 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.

Mr. Jethmalani, the learned counsel appearing for the appellant, firstly drew our attention to the following statement made by A.S.I, Swaran Singh (P.W.7) in his cross examination :

"I reached Civil Hospital Jullunder on 15.4.1986 at about 1 P.M. Sukhdev Raj and Dharam Pal PWs were also present in Civil Hospital, Jullunder 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 entry of Jullunder 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 eye witnesses 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 eye witnesses we find that when they were cross examined on this aspect of the matter they asserted that P.W.7 did not meet them in the hospital nor did he enquire as to how the assault took place, P.W.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 eye witnesses in preference to that of the Investigating Officer in this regard and rejected a similar contention raised before it, the High Court pointed out that several complaints were made by Sukhdev against the conduct of investigation of P.W.7 and he also admitted certain lapse in the investigation. The High Court accordingly concluded that it could not be said that the eye witnesses did not have a version of the incident till 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.

Mr. Jethmalani next contended that there was an inordinate and unexplained delay in lodging the F.I.R. in that, thought 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 furlong from the spot. In repelling this contention when raised before it, the High Court observed as under:-

"Om Prakash 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 the

peripheral circulatory failure. He was being transfused poor. Seriousness of the condition was explained to his relative. The operation upon the patient was started at 9.00 a.m. Because of 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 over 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 eye witnesses have explained that they remained busy in attending to the injured and arranging for blood and medicines. It is a well know fact that the block is not easily available in the Muffasil town 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 has not actually caused injuries to Yudhvir, Sukhdev Raj would have been the last person to falsely name him."

As the above quoted observation are unexceptionable, we do not find any merit in the second contention of Mr. Jethmalani.

Mr. Jethmalani lastly argued that having regard to the

categorical admission of Sukhdev Raj (P.W.5) that the spot where his son received injuries at the hands of Sanjeev Kumar and Narinder Kumar was not visible for his house, the court below ought not to have placed any reliance upon the evidence of P.W.5 and P.W.6 to convict the appellant. We do not find any substance in this contention also. The two eye-witnesses 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 Prakash 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 above two witnesses that they saw the incident is untenable.

Having carefully gone through the entire evidence we find no reason to interfere with the concurring findings of the courts below that P.Ws. 5 and 6 has no enmity with the family of Om Prakash to falsely implicate them and, on the contrary, they 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.