

Onkar Nath Sidhauli Alias Narain And ... vs The State Of U.P. on 10 November, 1971

Equivalent citations: 1972CRILJ1059, (1972)4SCC783

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Bench: A.N. Ray, D.G. Palekar

JUDGMENT

D.G. Palekar, J.

1. These criminal appeals by special leave are by Onkar Nath, Sidhauli alias Sri Narain and Kailash respectively from the. Judgment of the Allahabad High Court by which the order of acquittal passed by the learned City and Sessions Judge, Kanpur is set aside and they have been convicted under Section 302 r/w Section 34, I.P.C. and sentenced to imprisonment for life. Kailash, Onkar Nath and Sidhauli alias Shri Narain were accused Nos. 1 to 3 respectively in the Sessions Court. The charge against them was that they had, in furtherance of their common intention, committed the murder of one Manohar Lal at about 8.10 P.M on April 23, 1964 in front of the shop of a milk vendor, Chhunno, situate in Lathi Mohal P.S. Collectorganj in the City of Kanpur.

2. The deceased Manohar Lal was about 22 years old and was the son of one Kailash Nath. Kailash Nath had two shops-one in the Generalganj Bazar bearing the name of Kailash Nath Raj Kishore. The main business of sale and purchase was carried on in that shop. The other shop was in the Panch Kucha lane and bore the name of Kailash Nath Dalai. This shop was mainly concerned with the maintenance of Bahikhatas and account books. Raja Ram, P.W. 1 was the Munim of Kailash Nath.

3. About 5 or 6 days prior to the incident the accused Sidhauli and Kailash were gambling in the Ahata of Sawai. Manohar Lal, the deceased, who happened to pass by the place reprimanded them for these activities. This was not liked by Sidhauli and Kailash who gave a threat to Manohar Lal. Manohar Lal reported the matter to his father who, thereupon, instructed his employees that one or the other of them should keep Manohar Lal company whenever he was going away from the house or the shop.

4. Accordingly, on the night of April 23, 1964 after closing the shop at 8.00 P.M., which was the time for all shops to close, Raja Ram, P.W. 1 and Manohar Lal started for the latter's house by the aforesaid Generalganj Bazar Street. That street appears to be a one way street and no conveyances, not even Rickshas, were allowed to ply in that street. When the two of them reached near the shop of Chhunno, the milk vendor, they noticed that the three accused were near the aforesaid shop. On seeing them, they came up, Sidhauli addressed Manohar Lal reminding him about the superior airs

about gambling which he displayed a few days ago and told him that he now wanted to settle scores with him. Manohar Lal retorted that he had seen many a person like Sidhauli whereupon Sidhauli asked the other two accused to finish Manohar Lal. Thereupon Kailash and Onkar Nath each whipped out a knife and attacked Manohar Lal in the back. Manohar Lal made an attempt to run but Sidhauli caught hold of him by his hand. Manohar Lal fell on the ground there and became unconscious. The incident attracted a number of persons and as the miscreants were running away, shouts were uttered and they were chased by Raja Ram, P.W. 1, Keshav. Dutt. P.W. 2, Krishna Behari, P.W. 5 and one Ramesh Chand all of whom caught Kailash before he had run five or six paces while the other two accused Onkar and Sidhauli ran away and disappeared. Kailash had still the knife in his hand. He was disarmed by Raja Ram, P.W. 1. A large crowd had gathered on the spot and just when the captors of Kailash were thinking of taking him to the Police Station, Raj Kishore. P.W. 7, the brother of Manohar Lal, came on the scene. He was coming from the shop of one Nankare in the same street after closing the shop at about 8.00 P.M. On the way he had seen a crowd and hastened to the spot. From some distance he first saw that Raja Ram, P.W. 1 and two or three other persons had caught hold of Kailash and after advancing further he saw his brother Manohar Lal lying on the road with injuries. Raja Ram shortly told him that Manohar Lal had been stabbed by two or three persons and that they were taking Kailash to the Police Station. He left it to Raj Kishore to remove Manohar Lal to the hospital. The captors of Kailash then took him to the Police Station of Collectorganj. The Sub-Inspector Basdeo Sahai, P.W. 17 was present in the Police Station along with Head Constable Anwar Ahmed, P.W. 10 who was the Head Moharrir. The later recorded Raja Ram's statement as per Ext. K.I. Kailash was taken into custody. A seizure memo was made of the blood stained knife as per Ext. K. 2. It was found that there were blood stains on the shirt of Kailash and so the shirt was also seized under the Memo Ext. K. 3. The knife and shirt are Exts. 1 and 2 in the case. These were sent to the Chemical Analyser in due course who certified that whereas there was human blood on the shirt, the blood on the knife had disintegrated.

5. While Anwar Ahmed was recording the complaint of Raja Ram, a telephone message was received at 20.35 hours i. e. 8.35 P.M from Sub-Inspector Jagdish Dutt, P.W. 8 who was in-charge of the Control Room. The message was that a man was lying injured at the crossing of Lathi Mohal. Anwar Ahmed informed the Control Room that a report in respect of the occurrence had been already lodged and necessary action was being taken. The necessary entries were made with regard to the progress of the investigation in the General Diary of the Police Station and Anwar Ahmed went on duty at 9.00 P.M-his place being taken by Head Constable Sheo Prasad. P.W. 13.

6. The source of P.S.I Jagdish Dutt's information in the Control Room that a man was lying near the gate of Lathi Mohal was Shri Onkar Nath Seth. P.W. 12. Shri Onkar Nath Seth is a local Advocate and has his house only 40 or 50 paces from the shop of Chhunno the milk vendor. On being informed by somebody that a man was lying injured, he went to the place and saw the injured person. Nobody gave him any information as to who he was and what had happened and so he went back to his house and at 8.34 P.M telephoned to the Control Room informing it that a man was lying injured near the gate of Lathi Mohal and a patrol car should be sent. It was this message from Shri Onkar Nath which was picked by P.S.I. Jagdish Dutt in the Control Room. On receiving that message, he sent a wireless message to patrol car No. 2 in-charge of Nazrey Hasan, P.W. 9 and at the same time also sent the message to the Collectorganj Police Station within whose jurisdiction the

man was lying. That is how at 8.35 P.M. Anwar Ahmed, P.W. 10 received the message from the Control Room which was duly recorded by him in the General Diary of the Station.

7. On receiving the message from the Control Room P.S.I. Nazrey Hasan, P.W. 9 proceeded to the locality indicated. He reached the place at about 8.49 P.M. The man who was standing there said that he was the brother of the injured person (obviously referring to Raj Kishore, P.W. 7) and gave the name and address of the injured. He then put the injured Manohar Lal in the car. An Officer of Sirki Mohal Outpost and some Constables had already come there. The Sirki Mohal Outpost is under the Collectorganj Police Station. He, therefore, took Constable Mohammad Khalil of that Outpost along with him in the car and though the brother of the injured Raj Kishore wanted to go in the car to the hospital, he could not be accommodated. He left the scene of offence at about 8.54 P.M. and reached Urshula Hospital with the injured at about 8.59 P.M. Dr. Sumra, P.W. 11 who was in-charge at once examined the injured, person and found that he was, dead. He then informed the Police Station Kot-wali about his death. Message about death was transmitted from the Kotwali Police Station to the Collectorganj Police Station at about 11.30 P.M. and the same was noted by the Head Mohrrir Head Constable Sheo Prasad, P.W. 13.

8. In the meantime P.S.I. Basdeo Sahai, P.W. 17 after finishing part of the investigation of the offence, which had been registered as an offence under Section 307 I.P.C. at the Police Station, had gone to the scene of occurrence for further investigation. He recovered the blood stained earth from the place where Manohar Lal had fallen and recorded also the statements of eye witnesses who had accompanied him from the Police Station. While the investigation was proceeding, the officer received intimation from his Police Station that Manohar Lal. had died. So he ordered S.I. Ram Das, P.W. 16 the Officer incharge of Sirki Outpost, who was there at the place since about 8.30 P.M to proceed to the hospital to prepare the inquest report. He had been instructed to take the duplicate copy of the complaint from the complaint Raja Ram P.W. 1 for the purposes of the inquest. Ram Das went to the hospital at about 12.30 a.m. but there was a delay in obtaining the body in. the hospital. He could actually start his inquest panchnama at about 2. O'clock.

9. In the meantime P.S.I. Basdeo Sahai, P.W. 17 continued his investigation at the scene of offence. He started searching for Onkar and Sidhauri. The house of Onkar which was close to the shop of Chhanno, his uncle was searched at about 1.00 or 1.30 a. m. but he was not found. Thereafter he went to Canal road in search of Sidhauri. His house was searched but Sidhauri was not found. The search continued till about 10. O' clock on 24-4-1964 but both Onkar and Sidhauri were found to have absconded. After returning to the Police Station at 10.00 A. M. he recorded the statement of Kailash and sent him to the Jail : Doctor as there were two small injuries on the little finger of the right hand. The search of Onkar and Sidhauri was fruitless and so he reported for proceeding against the accused under Sections 87 and 88 of the Criminal Procedure Code. Thereafter Sidhauri Surrendered before a court in Unnao.on 28th April 64 and since he Claimed. to be identified' in an identiflcation; parade at Unnao, a test identification parade was held in the District. Jail Unnao on 11th. June. 1964.At. this; identification parade, he was correctly picked out by Raja Ram, P.W. X and Keshav Dutt, P.W. 2. Krishna Behari, P.W. 5 did not pick him out. As for Onkar, he surrendered in the court at. Lakhimpur Kheri on 4th May, 1964.

10. On being charged for the murder of Manohar Lal the accused pleaded not guilty. The case of Kailash in his statement under Section 342 Criminal Procedure Code was that on the evening in question at about 7.45 p.m. he was returning home from a shop in Collectorganj and when he reached the turning of Jagannath Lane, he saw two or three unknown persons attacking Manohar Lal with knives. As he knew Manohar Lal, he went for his rescue but the assailants. turned on him and he received injuries; on both his hands. So leaving Manohar Lal at the place, he rushed to the Police. Station Collectorganj to give information. He asked the officers to take, down his information but they said that they would make the investigation first and then record his statement. He further stated that he, had been made to sit there in the Police Station till about midnight and the officers asked him to give evidence against two or three persons whose names he could not recall at the time. He refused to oblige saying that though he did not know the names of the assailants, he could recognise them if shown to him. Because of this obstinacy on his part, he alleged, .he had been falsely implicated by the police. He admitted that article No. 2 - the shirt, which he was wearing at the time, contained blood stains and was seized. He, however, denied that the knife Ext. 1 had been snatched from him by P.W. 1 Raja, Ram. Though Kailash had stated that he received injuries on both the hands, it is now established that he had only two wounds on the inner surface of the right hand little finger only - one being a slight lacerated wound and the other an incised wound above it. In the certificate given by the Doctor, however, an inadvertent mistake crept in to the effect that these two wounds were on the left hand little finger. In fact that should be the right hand little finger. The injuries were one above the other on one finger of one hand, that is the right hand and there was no injury on the left hand. We may mention here only that both the courts agree that these injuries on the little finger sustained by Kailash must have been , caused in the act of inflicting injuries on another person with a knife and not in warding off knife blows by a third person. Kailash had deliberately told a: falsehood that he had received injuries on both hands taking the cue from the error made in the medical certificate with a view to suggest that the injuries on both hands were more likely to be caused when he was warding off an assault on him.

11. The other two accused namely Onkar and Sidhauri denied participation in the incident and alleged that they had been falsely implicated because of enmity with the police.

12. On behalf of Kailash. Laxmi Narain. D.W. 1 was examined as a witness to suggest that the story told by Kailash in court was probable.

13. It is not in dispute that deceased Manohar Lal was attacked with knives at about 8.10 p.m. and he had fallen on the road hardly two or three paces away from the shop of Channo, the milk vendor. There is no dispute also that whosoever be the assailants, it was a clear case of murder. The learned Sessions Judge on a consideration of the evidence recorded the following findings:

(1) The motive alleged by the prosecution was substantially proved;

(2) The three eye-witnesses examined in the case namely Raja Ram, P.W. 1, Keshav Dutt. P.W. 2 and Krishna Behari, P.W. 5 were not reliable witnesses, since it was very probable that they were not at the scene of offence at all to witness the assault.

(3) Raj Kishore, P.W. 7 must not have reached the place of occurrence till after Manohar Lal had been removed to the hospital.

(4) That the story of Kailash may not be entirely trustworthy. However his case that he had by himself gone to the Police Station could not be ruled out. The story of the prosecution that he had been caught by the alleged witnesses and others did not appear to be true.

(5) The F.I.R. must not have been recorded at 8.25 p.m. as alleged by the prosecution. The entries made in the General Diary from 8.25 p.m. till the next morning may not have been made that night only. They might have been made on the next day as suggested by the defence.

(6) That both Onkar and Sidhauili had absconded after the incident.

(7) There was a great possibility that these very accused might have been involved in the affair, but, however strong the suspicion, there could be no conviction.

14. Accordingly, the learned Sessions Judge gave the benefit of doubt to the accused and acquitted them.

15. Aggrieved by the order of acquittal the State went in appeal to the High Court. Being an appeal against acquittal, the High Court approached the findings of the Sessions Judge in the light of the principles laid down by the Privy Council in the case of Shiv Swaroop (2) and by this court in Sanwat Singh v. State of Rajasthan and other cases. Since the High Court was of the opinion that the accused were wrongly acquitted, it recorded from place to place in the judgment how the learned Sessions Judge was palpably wrong in the consideration of the evidence. Finally the High Court observed, "On a consideration of the evidence on record in the light of the aforesaid principles we are satisfied that the grounds on which the learned Sessions Judge acquitted the respondents (accused) were not good and reasonable, and the order of acquittal was against the weight of evidence. The learned Sessions Judge did not approach the case in the correct perspective. Before rejecting the testimony of the eye witnesses the learned Sessions Judge should have considered the question as to whether the prosecution case as to the pursuit given to the miscreants and as to the apprehension of respondent Kailash Nath on the spot and as to his being taken in custody to the Police Station was established or not. The one grave error which he committed was that he first recorded a finding on the question as to whether the eye witnesses could have been present at the scene of occurrence or not. Having once come to a finding that they could not have been present at the scene of occurrence he could not have recorded a finding in favour of the prosecution on the question as to whether respondent Kailash Nath was apprehended on the spot or not. The prosecution evidence should not have been considered by the learned Sessions Judge in isolated parts and a finding on the question as to whether the eye witness account was trustworthy or not should have been recorded after taking into consideration the prosecution evidence as a whole."

16. After hearing counsel on behalf of the accused and the State and on a perusal of the evidence to which our attention was invited,, we have come to the conclusion that the above criticism of the High Court was fully justified. We will only add that the learned Sessions Judge failed to see the wood for the trees.

17. Learned Counsel for the appellants put before us in the fore-front an argument which seems to have impressed the learned Sessions Judge. The argument was that the evidence of the Advocate Mr. Onkar Nath Seth, P.W. 12 was the touch stone for determining. whether the prosecution case was true or not. It was submitted that Mr. Seth was a disinterested witness and if his evidence is accepted it would be clearly established that neither Raj Kishore, P.W. 7 nor Raja Ram, P.W. 1 could have been there before 8.34 P.M and hence the story now told by the prosecution that the first information had been recorded at the instance of Raja Ram, P.W. 1 at 8.25 P.M is demonstrably false. The argument proceeds this way (1) If Raj Kishore, P.W. 7. had arrived at the scene within a minute or two of the stabbing and had seen Raja Ram and the other captors taking Kailash, it would be expected that Raj Kishore would remain near the fallen Manohar Lal, in which case Mr. Onkar Nath Seth would not have failed to learn who the deceased was, who were his assailants and as to whether one of them was caught and taken to the Police Station. And since Mr. Onkar Nath Seth. even after enquiry, did not learn about any of these things, it would be clearly established that Raj Kishore, P.W. 7 must not have come there at all till Manohar Lal was removed from the place; (2) and if Raj Kishore, P.W. 7 was not there at all, the story told by Raja Ram, P.W. 1 that he had met Raj Kishore before leaving the scene of offence was false; (3) That in all probability Raja Ram, P.W. 1 was also not there at the time of the incident because if he had been there and Raj Kishore was not there, he would not have left the place leaving Manohar Lal unattended. He would have been more anxious to take Manohar Lal to the hospital than to take Kailash to the Police Station. There were other captors of Kailash and he could have requested the captors to take Kailash to the Police Station and remained behind to make arrangements for removing Manohar Lal to the hospital. The very fact that he was not there when actually the police van came to take Manohar Lal away would go to show that Raja Ram, P.W. 1 must not have come to the scene of offence at all at any time. Therefore, the case now put forward by the prosecution that he had , gone to the Police Station with Kailash and had filed the first information at 8.25 p.m. is false. 18. The whole argument proceeds on the assumption that if Raj Kishore, P.W. 7 were on the scene of offence. Mr. Onkar Nath Advocate, would not have failed to get all the particulars, since Mr. Onkar Nath had made enquiries with regard to the person whom he had seen fallen on the ground. That assumption, however, cannot be made, in the circumstances of the case. It is an' undisputed fact that the stabbing incident could not have taken place later than 8.10 p.m. The evidence of Raja Ram, P.W. 1 and the other two eye witnesses is that immediately after the stabbing and the falling down of Manohar Lal, the miscreants were chased and accused Kailash. was caught with the knife in his hand. They lost no time in taking him to the Police Station which would mean that within two minutes of the stabbing Raja Ram and the other captors of Kailash marched him to the Police Station. According to Raj Kishore and the eye witnesses, Raj Kishore arrived just when they were taking him away. Raja Ram did not waste time. He merely told Raj Kishore to attend to his brother saying that he was taking Kailash to the Police Station. That is also the evidence of Krishna Behari, P.W. 5 and Keshav Dutt, P.W. 2. The last witness does not say in so many words that the man to whom Raja Ram spoke was Raj Kishore but he says that a person had come at that time and Raja Ram told the person that he should look after

the boy and that he was going to the Police. Station. So if this evidence is believed, then it is clear that Raj Kishore, P.W. 7, had come on the scene of offence within a couple of minutes of the stabbing. That was also not unlikely because Raj Kishore's evidence shows that after closing the shop at 8.00 p.m. he was coming that way to go to his house and the, scene of offence was on the way not far from the shop. When he saw a crowd . and heard about stabbing, he hastened to the spot and met Raja Ram just when he was preparing to go to the Police Station. The evidence of the prosecution, therefore, goes to show that Raj Kishore was there almost immediately after the stabbing and the captors including Raja Ram departed thereafter. Mr. Onkar Nath's visit to the scene was much later. Mr. Onkar Nath says that at about 8.15 p.m. some body told him when he was in his house that some body had fallen on the road with injuries. He therefore, went there and found that a boy was lying in the middle of the road in front of the shop of Chhanno, the milk vendor. It is, therefore, clear from his evidence that Mr. Onkar Nath had come to the place after Raja Ram had gone away from the place and, therefore, he could not have seen the apprehension of Kailash and his being marched to the Police Station. There is further indication in his evidence that at least 10 to 15 minutes must have passed between the stabbing and the actual arrival of Mr. Onkar Nath on the scene. The time, can be fairly fixed from his own evidence. After returning to his house, Mr. Onkar Nath had telephoned to the Control Room and that was at 8.34 p.m. There is record about this at the Control Room. The house of Mr. Onkar Nath is hardly about 40 to 50 paces from the scene of offence. He further says that he was at the scene of offence for about five or six minutes. Calculating back, therefore, it is clear that Mr. Onkar Nath must have come to the scene of offence not much earlier than 8.25 p.m. In other words, between the stabbing and the coming of the Advocate, there was a gap of nearly 10 to 15 minutes. In the meantime a big crowd had gathered. According to the prosecution witnesses it was a crowd of about 50 or 100 people. Mr. Onkar Nath says that there was a crowd when he went there but he says that it was a crowd of about 10 to 15 people. It is not disputed that this is a busy street and that was the time when shopkeepers were closing their shops and going away. It may be, therefore, taken that there must have been a fairly big crowd when Mr. Onkar Nath arrived at the scene. It is not the case that Mr. Onkar Nath had come there in his court robes or that he was in any way distinguishable from any other member of the crowd. Nor can it be said that Mr. Onkar Nath had taken the trouble to make any serious enquiry, because if he were serious about it he could have made enquiries with the milk vendor Chhanno who was admittedly in his shop and the man had fallen only two or three paces away in front of Chhanno's shop. Chhanno was a man known to Mr. Onkar Nath. But Mr. Onkar Nath had not taken the trouble to question Chhanno. It would, therefore, appear that Mr. Onkar Nath must have casually asked the first man he met in the crowd as to who the boy was and he must not have received any answer. In fact he admits that when he put the first question, he did not receive any answer and so he did not make any further enquiry. One does not know with whom he made the enquiry. He might be just a passerby who, like the other members of the crowd, might have had only a casual interest. It is not also the case that Mr. Onkar Nath knew Raj Kishore or Raj Kishore knew Mr. Onkar Nath. For aught we know, Raj Kishore may have been there somewhere in the crowd not necessarily close to his brother. It would be difficult to conceive that Raj Kishore who was unaccompanied by friends at the time and who was anxious about removing his brother to the hospital would be fixed to the side of Manohar Lal all the time. Even to get help he might have to leave the side of his brother. Assuming further that he was near enough to hear the question of Mr. Onkar Nath, he might not have cared to answer him because to him he was just another passerby whose idle curiosity he may have ignored to satisfy

through sheer tiresomeness. Further Raj Kishore had no inducement to make himself conspicuous before the arrival of the police by declaring that he was the brother of the deceased, because he was now in an area where his brother had been stabbed and some of the miscreants were still at large. In this state of things the assumption made in the argument that if Raj Kishore was there Mr. Onkar Nath would not have failed to know better particulars about the boy, is not a sound assumption. As against this, we have a large volume of evidence to show that Raj Kishore. P.W. 7 was at the spot. We have already referred to the evidence of Raja Ram, P.W. 1, Keshav Dutt, P.W. 2 and Krishna Behari, P.W. 5. Their evidence as also the evidence of Raj Kishore clearly shows that he was at the scene of occurrence within a couple of minutes of the stabbing. Reference was made to the fact that Raj Kishore's name was not referred to in the First Information Report where Raja Ram, P.W. 1 merely stated "people are sending him to the hospital". It was contended that if Raj Kishore was there, Raja Ram P.W. 1 would have said that Raj Kishore was arranging to send him to the hospital and not that "people are sending him to the hospital". We do not think that by his particular statement Raja Ram wanted to exclude Raj Kishore. It is not the case of Raja Ram that some un-known man in the crowd was making arrangements to take Manohar Lal to the hospital. And since he made a definite assertion at the Police Station that people were sending him to the hospital, it only shows that Raja Ram was perfectly confident that arrangements were being made to send Manohar Lal to the hospital. He could get this confidence only because 'there was Raj Kishore present at the scene of offence. Moreover, the Investigating Officer had recorded more detailed statements of Raj Ram, P.W. 1, Keshav Dutt, P.W. 2 and Krishna Behari, P.W. 5 that same night at about 10.00 P.M. and it is not elicited from their cross-examination by reference to the police statements that they had failed to mention the presence of Raj Kishore at the time of the departure from the scene of offence at 8.10 P.M. Then again there is the evidence of Sub Inspector Ram Das, P.W. 16 who says that when he came to the scene at about 8.30 P.M he had met Raj Kishore at the place. Later, the Officer in-charge of the Mobile Patrol Car No. 2 reached the place at 8.49 P.M. and he met Raj Kishore there and it was Raj Kishore who furnished him the name and address of Manohar Lal. Against all this evidence which establishes Raj Kishore's. presence, at the; scene of occurrence soon after the stabbing, it will be extremely improper to hold that he must not have been present there merely because Mr. Onkar Nath, Advocate, did not receive any answer to the casual question asked by him to ascertain who that boy was.

19. And if Raj Kishore was there as alleged by the prosecution, there was no difficulty in Raja Ram proceeding to the Police Station with Kailash leaving Raj Kishore at the scene to make arrangements for removing Manohar Lal to the hospital. Then again if Raja Ram, P.W. 1 and the other captors of Kailash proceeded to the Police Station from the scene of occurrence soon after 8.10 P.M., there is no dispute that they would be in the Police Station at about 8.25 P.M. for recording the complaint.

20. The. defence suggestion before the learned Sessions Judge was that till the inquest papers were prepared between 2.30.& 3.30 A.M., on the same night, the Police Station had no idea of this offence at all and that the wheels of investigation started moving only thereafter. The allegation is that after the Investigating Officer found that an offence had been committed in a particular locality, he decided to falsely im plicate the accused because of some grudge against Sidhauili. It is not the case that Raja Ram. P.W. 1 or the other two eye witnesses, who were perfect strangers, had any interest in implicating falsely any of the accused in this case. But the suggestion is that the Investigating Officer

had a grudge against Sidhauri and he, therefore, pressurised Raja Ram. and the other two witnesses to give false evidence and it was only after he was successful in doing so that he obtained the F.I.R. from P.W. 1 Raja Ram on the morning of 24-4-1964. This suggestion on behalf of the defence seems to have very much impressed the learned Sessions Judge. There were serious difficulties, however, in accepting such a defence. The First Information Report was stated to have been recorded at 8.25 P.M. The seizure memo of the knife and the shirt had been made soon after and regular entries had been posted with regard to the same in the General Diary maintained at the Police Station in accordance with the regulations. Apart from entries with regard to the investigation of the offence that same night there are also other entries made in the General Diary in serial order which had nothing to do with this offence. These entries in the General Diary were fatal to the defence suggestion. The learned Sessions Judge however, brushed aside the difficulty with the facile observation that all those entries which are shown to have been made in the night in the General Diary must not have been made at all at the time and , that; after keeping some space blank in the General Diary, those entries must have, been made on the next day. after the investigating Officer had fixed up . everything. In our opinion the learned Sessions Judge was not justified in making this criticism. He has practically charged the Police Station with fabricating an official Register. The General Diary at the Police Station is maintained under U.P. Police Regulations. Regulation No. 294 prescribes that the General Diary . shall be written in duplicate under the superintendence of the officer-in-charge of the Station who is responsible for the entries made in it. The regulation further says that the original is to be sent to the Superintendent or Assistant or Deputy Superintendent-in-charge of the sub-division. The diary should be a complete but brief record of the proceedings of the police and of occurrences reported to them or of which they have obtained information.¹ In other words, the General Diary, is to be kept from minute to minute and from hour to hour and a charge of this nature that the Officer-in-charge of the Station had not written up the General Diary in accordance with the regulation would be indeed a very serious charge which may not be countenanced unless established by strong evidence. As a matter of fact though the Officer-in-charge of the Police Station Basdeo Sahai. P.W. 17 and the two Head Moharrirs who were incharge of the General Diary on that night namely Anwar Ahmed and Shedeo Prasad had been examined in the case, there is no cross-examination of these witnesses on the charge now made. The entries till 9.00 P.M. relative to the present offence had been made by Head Constable Anwar Ahmed, P.W. 10. He was off duty at 9.00 P.M. and his place was taken by Head Constable Sheodeo Prasad P.W. 13. It will be wrong to assume that these two Head Constables who were in-charge of the General Diary would keep for no known reason blank spaces in the Diary for being filled up at some future time. It was not also explained why at all these Officers would decide to leave blank spaces in the General Diary at 8.25 P.M. The defence that the Police Station did not know about this offence till 3.30 A.M. would postulate that no body interested in filing a complaint with regard to this offence had approached the Police Station during the night. The only intimation which the Police Station had received in connection with this offence was-one received from the Control Room at 8.35 P.M. That intimation conveyed the Police Station nothing more than that, a per son was injured and lying at a certain place. No names or particulars had been mentioned. It would be recalled that this intimation had been given from the Control Room by Sub Inspector Jagdish Dutt, P.W. 8 as soon as he received the telephone message from Mr. Onkar Nath Seth. the Advocate. In the ordinary course this would be the first entry in the General Diary in connection with this offence. But what we find is that even before this intimation was received, several entries have been made in

connection with this offence-the first of them being at 8.25 P.M. relating to the First Information lodged by Raja Ram, P.W. 1. In fact Head Constable Anwar Ahmed, P.W. 10 says that when he was recording the statement of Raja Ram, P.W. 1 this particular message was received from the Control Room at 8.35 P.M. and at that very time he told the Control Room on the phone that a report in respect of that offence had already been lodged at the Police Station and necessary action was being taken. This is confirmed by Jagdish Dutt, P.W. 8 when he was specifically asked about it, in his cross-examination. It is not suggested that Jagdish Dutt who was in-charge of the Control Room had anything to do with any mischief contemplated by the officers of this Police Station and it would only show that Anwar Ahmed, P.W. 10 was telling the truth when he said that when the message was received from the Control Room the investigation, of this offence was in progress. The General Diary shows that this particular message from the Control Room has been duly entered at 8.35 P.M. The suggestion is that even this message must not have been entered at the time but noted on a separate piece of paper to be posted in the General Diary sometimes afterwards. It is not easy to see why at this particular point of time Anwar Ahmed should not have made the record in the General Diary in due course of official business. The message itself was innocuous and did not suggest that an offence had been committed or who the offender was or who were the assailants. Therefore, there is no reason whatsoever why the entry should not have been made at the time when the message was received. And since this entry about the message follows the entry with regard to the first information report, the normal inference would be that the several entries had been made in due course of official business. If the defence suggestion were true, we must assume that something must have occurred at 8.25 P.M. which inspired the Police Station not to enter the entries in due course. If none of the persons interested in complaining about the offence had reached the Police Station at that time and there was no known source of information at the Police Station with regard to the offence, there could not have been any good reason at all why the entries should not be made in the usual course. The importance of this aspect of the question was not lost on the learned Sessions Judge. He got over, this difficulty also by saying that Kailash must have come at about 8.25 P.M. and must have given some information. According to the learned Judge Kailash must have given information about his companions Onkar and Sidhauri and that was the reason why the officers attached to the Police Station stayed their hands and refrained from making any entry about the information given by Kailash. Now the case of Kailash, as disclosed in his statement under Section 342, Criminal Procedure Code, is that he had merely seen two or three persons assaulting Manohar Lal the deceased with knives and since he knew Manohar Lal he went to his rescue. The assailants of Manohar Lal, however, turned on him and he got injuries on both his hands. He, therefore, left the place and went to the Police Station to make a report. He does not say that he implicated Onkar and Sidhauri as being the assailants. Therefore, there is no basis for the conjecture of the learned Sessions Judge that the names of Onkar and Sidhauri might have been mentioned by Kailash as the assailants. Secondly if what Kailash actually says is true there could be no possible reason for the Station Officer not to record his statement in the usual course because he was reporting the commission of a cognizable offence without naming the assailants and was wanting the officers to take immediate action to save Manohar Lal. It is impossible to believe that if such a statement of a cognizable offence being committed was reported to the Police Station, the Officers would have remained absolutely indifferent and inactive. As already stated no other influence was working at the Police Station at that time and, therefore, there could have been no reason at all why the information given by Kailash should not have been recorded. To suggest that the Officer delayed

recording of Kailash's statement in order to implicate Onkar and Sidhauili would be absurd because Kailash had not mentioned the names of Onkar and Sidhauili. It would be extravagant to suggest that on hearing of a stabbing case within his area, the Officer would at once think of Onkar and Sidhauili with a view to implicate them falsely, without ascertaining, in the first place, the circumstances of the stabbing, the availability of Onkar and Sidhauili on that day at the particular place and time, the probability of eye witnesses mentioning the names of other assailants and the inclination of the relations of Manohar Lal to help the officer in his mischievous plans. It was not even considered by the learned Sessions Judge whether Kailash, in the circumstances, would have voluntarily gone to the Police Station to give information. It was possible for him to phone the Police Station to get immediate help to rescue Manohar Lal. Instead of that it is supposed that he went to the Police Station which was about three to four furlongs away. Secondly Kailash would be the last person to go to the Police Station by himself when there were circumstances which would impel him to keep himself as far away from the Police Station as possible. He could not have forgotten that only four or five days previously, he and Sidhauili had given a threat to Manohar Lal - a fact of which due notice has been taken by the learned Sessions Judge. He had blood on his shirt and injuries on the right little finger which would draw the suspicion of any experienced Police Officer at the Police Station. It is, therefore, impossible to believe the story of Kailash that he had gone to the Police Station by himself to report about the assault on Manohar Lal and that though he made his report the Officer decided not to record it.

21. It necessarily follows from the above discussion that Kailash must have been brought to the Police Station with the blood stained knife by somebody at 8.25 P.M. and in that behalf we have a large body of evidence both of the eye witnesses Raja Ram, P.W. 1 etc. and the Police Officers who were in-charge of the Police Station. Immediately after the arrival of Raja Ram with Kailash, the investigation proceeded in the usual manner. Raja Ram's F.I.R. was recorded, the necessary seizure memos were prepared, the General Diary entries were posted and thereafter we know from Anwar Ahmed's evidence that he went off duty at 9.00 P.M. The Investigating Officer Basdeo Sahai, P.W. 17, however, took some more time at the Police Station to complete the proceedings before he went to the scene of offence. There was no particular hurry because he had already come to know that the Control Room had been contacted and there were people attending to Manohar Lal at the scene of offence. The offence which had been recorded at the time was only under Section 307, I.P.C. and not under Section 302, I.P.C. It was only much later when the Investigating Officer was at the scene of offence and recording the statements of the eye witnesses that the report about the death of Manohar Lal was received by him. In our opinion, there was no sufficient basis for the learned Sessions Judge to think, that the information about this offence had not been received till early next morning and that the General Diary had not been posted with the entries in due course of official business.

22. Once it is established that the First Information Report was given by Raja Ram, P.W. 1 at 8.25 P.M. the defence which had impressed the learned Sessions Judge completely collapses. Kailash had been brought to the Police Station with a blood stained knife and the eye witnesses were available who, had also taken part in chasing and capturing Kailash. As mentioned earlier, none of the three eye witnesses had any personal interest in implicating the three accused. In fact nothing was suggested to them in their cross-examination. One more remarkable thing which must be noted

is that even Raja Ram, P.W. 1 had not known the other two captors Keshav Dutt, P.W. 2 and Krishna Behari, P.W. 5 and the captors also did not know each other. Their evidence, however, shows that all these three witnesses had known the three accused since before the incident. The High Court has accepted their evidence as substantially true and we do not think that we have any good grounds to differ from the High Court's assessment of the evidence. The learned Sessions Judge having once formed the erroneous opinion that the F.I.R. must not have been recorded at 8.25 P.M. had no other alternative but to discard the evidence of eye witnesses; and. this the learned Sessions Judge has done by attaching undue importance to minor details in the evidence of these witnesses as pointed out by the High Court. The High Court was, therefore, justified in its criticism of the judgment of the learned Sessions Judge as unreasonable and palpably wrong and coming to its own conclusion as to the guilt of the accused.

23. In the result these appeals fail and are dismissed.