

# Kirpaldass vs The State on 24 May, 1967

**Author: Chief Justice**

**Bench: Chief Justice**

## JUDGMENT

K.S. Hegde, C.J.

(1) Both these appeals arise from the decision of the learned Assistant Sessions Judge, Delhi. The appellants along with cue Manglu were prosecuted for an offence under section 307, read with section 34 of the Indian Penal Code. Manglu was the third accused in the case was acquitted The appellants in these appeals accused Nos. 1 and 2 were convicted under section 307 read with section 34 of the Indian Penal Code and for that offence each one of them was- sentenced to suffer rigorous imprisonment for four years and six months and to pay a fine of Rs. 50.00. In default to suffer rigorous imprisonment for one month. Aggrieved by that decision, they have come up to this court in these appeals. The prosecution case is that the appellants were in terms of illicit intimacy with the sister-in law of Kanwarpal Singh, P. W. 10. P. W. 10 took up the objection to the behaviour of the appellants and in that connection there were quarrels between them and P. W. 10. On April 22, 1961, the two appellants along with another person went to the place where P. W. 10 was working under the guise of compromising the dispute with him and persuaded P. W. 10 to accompany them to witness a cinema show. But that was merely a decoy movement. On the way Gurdial appellant stabbed him and at that time Kirpal appellant and another person caught hold of him. The injured P. W. 10 was admitted to the hospital at about 9 P. M. on that night. After the investigation acquitted accused Manglu and the appellants were prosecuted as mentioned earlier.

(2) There is no doubt that the P. W. 10 was seriously injured in the early part of the night of April 22, 1961. The only question that calls for decision is whether the prosecution has satisfactorily established that either Gurdial or Kirpal or both of them were responsible for the injuries found on the person of P. W. 10. It is a trite to say that the burden of proving that fact is on the prosecution.

(3) As far as the occurrence as such is concerned, we have only the testimony of P. W. 10 and no body's else. His evidence is not corroborated by any other direct evidence. It is also not corroborated by any satisfactory circumstantial evidence.

(4) One curious feature in this case, which has to be noticed is that though the injured person was in a position to lay a complaint in this case when he was taken to the hospital, no complaint was recorded from him. On the other hand, a complaint was recorded from P. W. 9, an A.S.I. P. W. 9 did not witness the occurrence. Whatever information he had, must have been gathered from the injured. P. W. 9 was questioned as to why he did not record a complaint from the injured, the

curious explanation offered by him was that he had instructions not to record complaints. All that I need say is that Public Witness . 9 did not know his job. The non recording of the complaint from the injured at the earliest possible stage has given the prosecution enough elbow-room to adjust its story.

(5) In his statement made under Section 162 of the Code of Criminal Procedure as well as in his chief examination P. W. 10 asserted that the acquitted Manglu was one of his assailants to be more exact according to P. W. 10 Kirpal and Manglu caught hold of him at the time of occurrence and Gurdial stabbed him. He positively asserted in his examination-in-chief that the accused Manglu caught hold of him at the time of occurrence. But in his cross-examination he frankly admitted that he had not seen at the time of occurrence accused Manglu, and in fact the said accused was not a person known to him at all. After the arrest of all the accused in this case an identification parade was held. At that time P. W. 10 did not identify accused Manglu as one of his assailants. From the foregoing it is clear that P. W. 10 has not much regard for truth He has easy conscious. He is prepared to shift his evidence to suit his purpose. From the material gathered during his cross-examination, it is seen that he has no high status in life and the company that he keeps does not inspire confidence.

(6) It is true as Mr Safeer, learned Government Advocate, argued that in an appropriate case conviction can be found on the solitary testimony of a witness. But then in such a case the court must be satisfied that evidence of the witness, which it is asked to accept is wholly true. If, as in this case, the witness is in unreliable one, then no court will hazard founding a conviction on his testimony.

(7) I am told that the evidence of Public Witness . 10 receives considerable corroboration from the testimony of P. W. I I and 12 and therefore, I should not hesitate to accept the evidence of P. W. 10. I shall now proceed to examine whether any reliance can be placed on the testimony of Public Witness . Ii and 12. Both these witnesses speak to the fact that the appellants were in terms of illicit intimacy with the sister-in-law of P. W. (8) Their further evidence is to the effect that on April 22nd 1965, all the. accused before the trial court (all three of them) came to the place where P. W. 10 was working, apologised to him (P.W. 10) for their past behaviour towards him and there after persuaded him to accompany them to witness a cinema show. Accordingly, P. W. 10 went out along with them on the evening of April 22nd 1965. if the evidence of these ^witnesses is believed, undoubtedly, it lends corroboration to the testimony of P. W. 10. Therefore, the question, is whether their evidence can be believed. Admittedly, P. W. Ii and 12 are close associates of P. W. 10. They were working together and moving together. P. W. Ii has been convicted in a gambling case and he had been taken by the police more than once for interrogation in some criminal cases. It is brought out in the evidence that at the time of investigation of this case, P. Ws. 11 and 12 were with the police P. W. 12 admits that on the night of April, 22nd 1965, both he and Public Witness . Ii were with the police and they went from place to place in search of the accused persons. P. W. 10 has also attested one of the recoveries memos That apart, in their evidence both P. Ws. Ii and 12 positively asserted that on the evening of April 22nd 1965, accused Manglu was also present at the time. P. W. 10 was persuaded to accompany accused I and 2. This story is completely falsified by the fact that n the identification parade cat.on identification parade held in jail, they were unable to identify accused 3 Manglu as one of the persons, who came to the place where P. W. 10 was working on the evening of April, 22nd

1965. It is quite clear that neither P. W. 11 nor Public Witness . 12 has any regard for truth.

(9) There is some evidence as regards the recovery of blood stained knife from the place of occurrence. It is said that that weapon was pointed out by accused 2 Kirpal. I attach no value to that evidence.

(10) For the reasons, mentioned above, I do not think that it is safe to convict the appellants before this Court on the testimony of prosecution witnesses in this case. At any rate, the appellants are entitled to the benefit of doubt.

(11) In the result, these appeals are allowed and that appellants acquitted, the fine if paid. will be refunded to them I am informed that the appellants are in jail. They should be released forthwith. Appeal allowed. 448