

Makhan Singh Vs. State

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Court : Delhi

Decided On : Jan-24-2014

Judge : Sanjiv Khanna

Appellant : Makhan Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.467/1998 Reserved on:

6. h January, 2014 Date of Decision:

24. h January, 2014 % MAKHAN SINGH Appellant Through Mr. Sumeet Verma, Advocate. Versus STATE Respondent Through Ms. Rajdipa Behura, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P.MITTAL SANJIV KHANNA, J.: Appellant-Makhan Singh stands convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for murder of his niece Madhu on 21st January, 1990. By the order on sentence dated 18th May, 1998, the appellant has been sentenced to life imprisonment and a fine of Rs.10,000/-, in default of which he has to undergo rigorous imprisonment for six months.

2. We have heard the counsel for the appellant and the State.

3. There is ample evidence to show and prove that the deceased Madhu was residing with her grandmother Sheela (PW-3) at her house in Shakarpur, Delhi. Madhu had lost her father and her mother Urmila; Sheela's daughter, had remarried. Late Madhu was studying in class VIII in Senior Secondary School, Shakarpur and was aged about 14 years at the time of her death. The appellant-Makhan Singh was married to another daughter of Sheela (PW-3), namely, Sunita (PW-2). Sunita (PW-2) and Makhan Singh, the appellant were earlier residing with Sheela (PW-3) at her residential house in Shakarpur. The appellant-Makhan Singh had developed a strained relationship with Sunita (PW-2) and had moved out of Sheela (PW-3)'s house about one year before the incident. He had started living at a rented accommodation situated at No.44, JK Block, Laxmi Nagar, Delhi. It is obvious that the appellant knew Madhu, who was related to him. Sheela (PW-3) and Sunita (PW-2) have deposed that Madhu went to school on 16th January, 1990 but never returned to her residence. They had searched for her and even lodged a police complaint. They suspected that the appellant might have kidnapped Madhu.

4. Sunita (PW-2) and Sheela (PW-3) have testified that on 21st January, 1990 they were informed that Madhu and Makhan Singh were present at 44, JK Block, Laxmi Nagar, Delhi. PW-2 has deposed that at 3 P.M., on 21st January, 1990 they received information that the appellant was present in his house. She then along with her brother Satish Kumar (PW-6), mother Sheela (PW-3), another boy Nand Kishore (PW-8) and Bhopal (sic) Sham Gopal (PW-16) rushed to the house of the appellant. The information was in Sunita (PW-2)'s name written by the appellant on a cigarette wrapper. The message was received through a tea-vendor's son Mohit (PW-4). PW-2 has stated that while rushing to the house of the appellant the said piece of paper was misplaced or lost. The door of the appellants residence was bolted from inside. There was another door, which was bolted from outside and gave an impression that nobody was inside. PW-2 deposed that earlier they had visited the appellants residence but had found that the shutter was locked from outside and, therefore; they had returned believing that the appellant was not there. A knife was sticking out from the crevices of the wooden door. The appellant was shouting to call for PW-2. Satish (PW-6) and another person Nand Kishore (Pui) (PW-8) asked the appellant to open the door but when the appellant did not

do so, Satish (PW-6) and Nand Kishore (PW-8) pushed the door and broke it. The appellant was inside the room and was trying to hang himself. Nand Kishore (PW-8) raised the appellant from his legs to reduce the pressure on the neck. Satish used the knife to cut the rope and freed the appellant. Madhus dead body was found lying under the bed. The police came and arrested the appellant.

5. PW-3s statement is identical and there are no material contradictions between her testimony and PW-2s testimony. PW-3 has stated that she was illiterate and did not receive any letter from Madhu. This does not make any difference as we have the statement of Mohit (PW-4), son of the tea vendor, Sham Gopal (PW-16), the teavendor and others. PW-4 has deposed that he had seen the appellant calling his father from the room and at about 1 P.M. he was asked to deliver a letter by Makhan Singh to Sunita (PW-2). His father gave a cup of tea, bidi and two slices of bread to Makhan Singh. Mohit had then gone and delivered the letter of Makhan Singh to PW-2 at her residence. Thereupon, Satish (PW-6) and his brother accompanied him to the spot. PW-2 and PW-3 had followed them. He has deposed that the door had to be broken and the appellant-Makhan Singh was hanging by a rope in the room. Madhus dead body was lying under the bed. Sanjay Mohit (PW-4) has Jain (PW-5) who testified on identical had accompanied lines. The slip given by the appellant was taken by them PW-3s house and was given to Satish (PW-6). Thereafter, they came back and Satish (PW-6) and his family members followed them. As the appellant did not open the door, it was knocked down forcibly. Appellant-Makhan Singh was found trying to hang himself with a rope from the kunda of the ceiling fan. Satish prevented him from committing suicide and the appellant was made to lie down on the cot. It was noticed that a girl whose name was later on revealed as Madhu, was lying dead in the same room under the cot. Satish (PW-6), as noted above, has deposed in a similar manner and stated that two boys had handed over a slip to him but he lost the slip due to nervousness. He knocked at the door but the appellant did not open, therefore, it had to be broken. The appellant was trying to hang himself but he, Satish (PW-6) lifted him and the nylon rope was cut with the help of a knife. Police was called. Madhu was lying under the cot. He made the police complaint and they took custody of the dead body. Inquest proceedings were completed. He proved on record, letters written by Madhu, which were marked (Exhibit PW-2/1 to

7), along with documents written by Makhan Singh (Exhibit PW-2/8 to 15). The said documents were proved by Sunita (PW-2), wife of the appellant.

6. Nand Kishore (PW-8)s statement is also on identical lines. He stated that Sunita (PW-2), his cousin sister was married to the appellant-Makhan Singh. Madhu was missing since 16th January, 1990 and he along with Satish (PW-6) and the others had gone to the rented accommodation of Makhan Singh after the two boys Mohit and Sanjay (PWs 4 and

5) had given the chit. The appellant had shown a knife through the door and stated that he wanted to speak to PW-2. He also tried to hang himself but was prevented. Madhu was seen lying dead under the cot. She had been tied in a cloth.

7. The landlord Nanak Rao (PW-9) stated that at about 12 to 12.30 P.M. a shopkeeper, Nigam who had a shop outside his house told him that Makhan Singh was inside the rented room. He and the shopkeeper called the appellant, who told them from inside that PW-2, should be called. The appellant insisted that he would not talk until PW-2 came there. The room was bolted from inside. Address of PW-2 was given by Makhan Singh, on a chit through the window. After about two hours, PW-2 and another lady came to the house and called the appellant but he did not open the door. Somebody pushed open the door and it was noticed that Makhan Singh was trying to hang himself. He called the police and informed them about the incident. He also saw that a girl named Madhu was lying near the cot. She was lifeless. He, however, denied that the door was broken in his presence or he had seen that Makhan Singh was trying to hang himself with the hook of the ceiling fan. He denied seeing Makhan Singhs relatives catching hold of his legs. Further he denied having witnessed the seizure of various articles. PW-9 was cross-examined by the Additional Public Prosecutor on certain aspects as to breaking open of the door and whether he had seen the appellant hanging by the hook of the ceiling fan etc., but PW-9 remained hostile. This however does not in any way negate or dent the core prosecution version. To a material extent, PW9 corroborates the prosecution version.

8. Sham Gopal (PW-16) has stated that he had seen the appellant on 21st January, 1990 and had given him a cup of tea, bidi and something to eat. At that

time, the appellant was scared and perturbed but the appellant had bolted himself inside and did not come out. The appellant had asked them to call his wife PW-2 but PW-16 had informed him that he did not know her whereabouts. Thereupon, the appellant gave a slip with the address where his wife resided. He had sent his son Mohit (PW-4) and Sanjay (PW-5). PW-16 repeatedly asked the appellant to open the door. As the appellant did not respond, the door was forcibly opened by breaking it down. The appellant was trying to hang himself but was prevented from committing suicide. The appellant had stated that he killed Madhu and she was lying on the floor under the cot. She was semi conscious when the police was called. Police then moved Madhu.

9. It would be important here to refer to the statement of the appellant recorded under Section 313 Cr.P.C. He has accepted that he was married to Sunita (PW-2) and that deceased Madhu was also residing in the said house of his mother-in-law at Shakarpur where he was residing with his wife. He has also accepted as correct that he had subsequently started residing in a rented accommodation at Laxmi Nagar. He also accepted as correct that he had written a slip to the tea vendor to call his wife and that PW-4 Mohit and PW-5 Sanjay had gone to call his wife and mother-in-law (PW-3) and Satish (PW-6). When they came to his rented accommodation, it was bolted from inside. He accepted that there was another door, which was locked from outside and that Madhu was found in a semi-conscious condition lying under the cot in the room. 15 pages of note book were found in the room, which were taken into possession. He did not lead the defence evidence but had claimed that the case was false and the PWs were interested witnesses. He mentioned that Sunitas family members had insisted that the landlord and tea vendor should beat him mercilessly, due to which he received injuries. He did not know how Madhu had come to his room.

10. SI Jai Prakash appeared as PW-24 and stated that on 21st January, 1990 he was given a copy of DD No.34B by the duty officer. He then along with ASI Vijay Pal, and Constable Ram Gopal and Ved Pal went to the rented house of the appellant at Laxmi Nagar. The door of the room was broken open and the appellant was lying on the bed. A girl, whose name was later on revealed as Madhu, was found lying under the cot and appeared to be unconscious. The

appellant was also in a semi-conscious condition. PCR van came and the girl Madhu was moved in the PCR van to the hospital. Upon examination, Madhu was declared brought dead. The appellant was admitted to the hospital. Satish Kumar (PW-6) accompanied them to the hospital and his statement (Exhibit PW-6/A) was recorded. They then came back to the spot and the case was registered. A knife (Exhibit PW-9/A) was found and a sketch (Exhibit PW-6/D) was prepared. Site plan Exhibit (PW24/A) was prepared and he recorded statements of the witnesses. He also obtained specimen signatures of the appellant for comparison with the 15 pages written by the appellant in his note book, which was found on the spot. Similarly, the four pages written by the deceased along with her specimen handwriting were sent to FSL for their report and the report (Exhibit PW-24/D) was obtained.

11. Similar testimony has been given by ASI Vijay Pal (PW-19). The door was broken and a girl Madhu was found lying under the cot. She was moved to the hospital in a PCR van by PW-19. Articles to be incriminated were seized.

12. Post-mortem report was proved by Dr. P.C. Dixit and was marked (Exhibit PW-25/A). Dr. G. Paul, who conducted the said postmortem had left the services and had shifted to Malaysia. As per the post-mortem report (Exhibit PW-25/A), the deceased had suffered from the following injuries: i. A ligature mark on the neck of the deceased with abrasions. ii. Two abrasions on the lower outer part of the left side of the forehead just above the outer part of the left eye-brow. iii. Two abrasions on the upper margin of lower-lip and a vertical abrasion on the middle part of the lip. iv. The external examination of genitalia showed old tear of hymen at 2 o'clock, 5 o'clock, 7 o'clock and 10 o'clock positions. No fresh injuries or tears were present and the hymeneal orifice was admitting more than two fingers easily passage was found containing a little whitish discharge. v. The cause of death was opined as strangulation.

13. We are not examining and taking judicial notice of the hand written notes of the appellant as his specimen hand writing was not taken as per law. But we find that there is sufficient evidence to incriminate and conclusively hold that the appellant alone was the perpetrator of the crime i.e. the murder of Madhu. The public

witnesses including Makhan Singh's wife, Sunita (PW-2), mother in law, Sheila (PW-3), tea vendor, Sham Gopal (PW-16), outside the rented accommodation, his son Mohit (PW-4), his friend Sanjay (PW-5), brother in law Satish (PW-6) and Nand Kishore (PW-8) have all supported the prosecution case and the following facts emerge: (a) Madhu, the appellant's niece was missing from 16th January 1990. (b) The appellant had written a slip and given it to Sham Gopal, (PW-16), the tea vendor in the presence of Nanak Rao, (PW-9) the land lord, calling for his wife Sunita (PW-2). (c) The slip was taken by Mohit and Sanjay PW-4 and PW-5 to the house of Sheila (PW-3), mother of Sunita (PW-2). (d) Thereupon (PW-2) Sunita, (PW-3) Sheila and brother in law of the appellant, Satish (PW-6) and Nand Kishore (PW-8) rushed to the rented accommodation. (e) The appellant had locked himself in the room. One door was locked from outside and a knife was protruding from the other door. The witnesses present repeatedly requested the appellant to open the door but he did not. The door was then broken open and Makhan Singh was prevented from committing suicide. Madhu was found underneath the bed. Madhu aged about 14years had died due to strangulation. (f) The appellant has accepted the factual situation but in his Section 313 statement he has mentioned that he did not know how Madhu had died. Her body was lying in his room underneath his bed.

14. The facts stated above indicate that the appellant alone is the perpetrator and had committed the murder of Madhu. Third-party involvement is completely ruled out. The contention that the paper slip which was written by the appellant for calling (PW-2) Sunita, his wife has not been produced does not weaken or destroy the prosecution version. PW-2 and PW-6, Sunita and Satish have deposed that in the confusion while running the slip had been lost or misplaced. The appellant has himself accepted that he had written a slip to call for his wife. The police witnesses, in particular (PW-24), SI Jai Prakash Singh has also affirmed and corroborated the statement of independent public witnesses.

15. In view of the aforesaid discussion, we do not find any merit in the appeal. The conviction of the appellant under Section 302 for the murder of Madhu is upheld. We also do not find any reason to interfere with the order of sentence. Upon suspension of sentence, the appellant has been released on bail. He shall

surrender within a period of one month from today to undergo the remaining sentence. In case, he does not surrender, trial court will take steps to arrest the appellant in accordance with law. The appeal is accordingly dismissed. (SANJIV KHANNA) JUDGE (G.P. MITTAL) JUDGE JANUARY24h, 2014 VKR

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