

Resham Singh Vs. State

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Court : Delhi

Decided On : Jan-24-2014

Judge : Sanjiv Khanna

Appellant : Resham Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL3241998 Reserved on:

9. h January, 2014 Date of Decision:

24. h January, 2014 % RESHAM SINGH Appellant Through Mr. Dinesh Mathur, Sr. Advocate with Mr. M.L. Yadav, Advocate. versus STATE . Respondent Through Ms. Rajdipa Behura, APP with SI Sammarpal Singh, P.S Kalkaji. CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G. P. MITTAL SANJIV KHANNA, J.

Appellant Resham Singh by the impugned judgment dated 18 th July, 1998 stands convicted under Sections 302 read with Section 34 and 394 of the Indian Penal Code, 1860 (IPC, for short). By impugned order of sentence dated 20th July, 1998, he has been convicted for imprisonment for life and fine of Rs.15,000/-, in default he has to undergo simple imprisonment for four months for the offence under Section 302/34 IPC and rigorous imprisonment for five years and a fine of

Rs.5,000/- and in default, he has to undergo simple imprisonment CrI. A. 324/1998 for three Section 394 IPC. Rs.15,000/- have been directed to be paid to the widow of the deceased, Banta Singh.

2. Appellant Resham Singh was tried along with Om Prakash, Suresh Pal and Ramesh Chand for the offences under Sections 302/392/ 397/394/398/449/460/34 IPC and Sections 25-26/54/59 of the Arms Act, 1959 (Arms Act, for short). Co-accused Om Prakash has died and the trial proceedings against him stand abated. Suresh Pal absconded during the course of trial, whereas Ramesh Chand was discharged.

3. Learned counsel for the appellant has made the following submissions: (i) Evidence of the two eye-witnesses Kuldeep Kaur (PW2), wife of the deceased and Balvinder Kaur (PW4) daughter of the deceased should be disbelieved as they were not eye-witnesses to the crime. (ii) The appellant should be acquitted as he was not in Delhi at the time of occurrence on 15th October, 1979 in view of the defence evidence which has been wrongly disbelieved. (iii) The appellant has been acquitted from the charges under Section 449 read with Section 34 IPC and under the Arms Act, 1959. Therefore, there is a contradiction in the impugned judgment. Conviction under Section 302/34 and 394 therefore cannot be sustained. (iv) The appellant was not questioned on the alleged firing under Section 313 of the Code of Criminal Procedure, 1973 (Code, for short) and there were discrepancies in the questions put to the appellant, which were contrary to the case set out in the charge-sheet.

4. We are inclined to accept the testimony of the two eye- witnesses Kuldeep Kaur (PW2) and Balvinder Kaur (PW4), wife and daughter of the deceased, who are natural witnesses and have deposed in seriatim as the occurrence in which Banta Singh lost his life on 15 th October, 1979 at his residence A-59 Chittaranjan Park, New Delhi between 9.00 to 9.30 PM. Presence of PW2 and PW4 in the house as deposed to by both of them at the time of the occurrence, cannot really be challenged and has been proved beyond doubt. Kuldeep Kaur (PW2) has stated that on 15th October, 1979, she was present in the house along with her four children, when at 8.45 PM her husband came back and was served with a glass of

water in the drawing room, while he was sitting on the sofa. The appellant Resham Singh came and sat down on the same sofa in the drawing room. A third person also came in and sat down. At that time Banta Singh took out money consisting of two bundles of 100 rupee notes to hand them over to Kuldeep Kaur (PW2), when Resham Singh snatched the bundles from her husband's hands. There was an exchange of words between Banta Singh and Resham Singh. Banta Singh at that time was doing business in the name and style of Gulf Recruiting Agency at Nehru Place. Thereupon, Banta Singh who was carrying a revolver with him, started taking out the same but the revolver was snatched by Resham Singh and his companion, whom PW2 identified as Om Prakash. At that time the third person who was standing on the door and was armed with a revolver, pointed the same towards her husband. Her husband looked on both sides and saw the revolvers being pointed at him. Resham Singh then shouted at the man standing near the door to shoot. A shot was fired by the third person towards the chandelier and one bulb broke and fell down. Thereafter, the person standing at the door took another shot, which struck her husband Banta Singh on his chest. Banta Singh started going down to a sitting posture. Resham Singh fired another shot at Banta Singh and the man standing at the door too fired a shot. These shots struck her husband in the chest and stomach. PW2 recognized the third person as Suresh Pal who was present in the Court but had subsequently absconded. The three accused including Resham Singh fled away from the spot. Resham Singh took the money and revolver of her husband. The revolver with which Suresh fired was also taken away.

5. Balvinder Kaur (PW4) in respect of occurrence has deposed on similar lines and affirmed presence of PW2 in the house. She has stated that her father after coming back was sitting on a sofa and had some water given in a tumbler by her mother. Her father took out money and wanted to give the money her mother for safe custody, when Resham Singh snatched the currency notes. Banta Singh objected and asked why the money was snatched, as Resham Singh already owed a large amount to Banta Singh. Resham Singh was accompanied by another person who was sitting on the sofa and a third person was standing at the entrance of drawing room in the gallery. Third person fired a shot at the chandelier and bulb of the chandelier broke and fell on the floor. Resham Singh

asked the said person to fire at Banta Singh. PW4 has stated that Resham Singh thereupon snatched the revolver from her father and fired three shots with that revolver at Banta Singh. Thereupon three of them left the place and had taken away with them her fathers revolver and currency notes.

6. At this stage, it may be relevant to state that Balvinder Kaur (PW4) was a minor aged about 7 years at the time of occurrence and about 11 years when her statement was recorded in the Court on 6th July, 1983 and 19th August, 1983. The Trial Court had recorded satisfaction as to the ability and competency of PW-4 to answer the questions. There is a minor discrepancy between the testimony of PW4 Balvinder Kaur and PW2 Kuldeep Kaur as to who had fired the shot and which revolver was used. PW4 in her testimony had stated that revolver of her father was used and three shots were fired by the appellant Resham Singh, whereas PW2 Kuldeep Kaur had stated that two shots were fired by the person standing at the door who was identified as Suresh Pal and one shot was fired by Resham Singh from the revolver of the deceased Banta Singh. We do not think that the testimonies of the two witnesses in view of the said discrepancies amounts to two different versions denting their evidence and therefore testimonies of PW-2 and PW-4 should be disbelieved. Kuldeep Kaur was aged about 26 years and the young wife lost her husband and PW4 aged about 7 years at that time had seen her father being shot dead in her own house. This minor difference can be and should be ignored and does not dilute the prosecutions case that three persons including Resham Singh had come and thereupon a revolver was used to shoot down Banta Singh. It is also a fact that three bullets were found in the body of Banta Singh, which corroborate that Banta Singh had suffered three bullet wounds as deposed to and stated by PW2 and PW4. The so called discrepancies pointed out by the appellant in the present case are inconsequential and not relevant as these do not create any doubt as to the presence of Resham Singh at the place of occurrence and his involvement in the firing leading to death of Banta Singh.

7. FIR No.1499/79, P.S. Kalkaji was recorded at 11.00 PM on the statement of PW2 (Rukka) marked as Ex. PW2/A. It is mentioned on the rukka Ex. PW2/A that it was recorded at 10.30 PM. reads as under:

To The Duty Officer, Police Station Kalkaji, New Delhi It is officially submitted that I, the SI received the copy of report bearing No.31 A, dated 15.10.79 regarding the information received on PCR that bullet was fired at A-59 Chittranjan Park, Near Savitri Cinema. I, alongwith Constable Sukhbir Singh No.1273/SD reached the place of occurrence i.e. A-59 Chittranjan Park where SI Naval Singh alongwith other staff and Addl. DCP/SD and ACP/LN were present at the spot. The dead body of deceased Banta Singh (sic) was said to have been carried to AIIMS hospital by the Police. And SI Naval Singh was sent by ACP/LN alongwith the recoveries from the place of occurrence to Palam (sic). Kuldeep Kaur W/o Banta Singh who was present on the spot got her aforesaid statement recorded which was read over her and finding the same to be correct, she appended her signature on the same in English. And I attested the same. From the perusal of the aforesaid statement, prima facie, an offence punishable u/ss Rukka 302/392/34 of the IPC seems to have been committed. Therefore, this writing is being sent to the Police Station through Const. Sukhbir Singh No.1273/SD for the registration of the case. After the registration of the case, I may please be intimated with its number and the photographers and the Crime team may be informed. I, the SI, am busy with the investigation alongwith other staff. The SHO is also present on the spot. Place of occurrence Chittranjan Park Date and time of occurrence P.M : House No.A-59 :

15. 10.79 at 9.00 Date and time of the dispatch of :

15. 10.79 at 10.40 P.M the writing Sd/- illegible (In English) SI, P.S Kalkaji
15.10.79

8. It has also come on record that the deceased had a licenced revolver and the same was missing after the crime. PW2 had also deposed that soon after the occurrence she had received a telephone call and had informed one Tyagi that her husband has been killed and had given her address. She had gone upstairs and asked the lady of the house to call the police as her husband was killed. Her telephone was partially out of order, since she could not make outgoing calls but could only receive incoming calls. Within 15 minutes the police and the said person Tyagi along with another person arrived to their house.

9. The said Tyagi had appeared as PW11 Varinder Kumar. He had deposed that he had dialed telephone of Banta Singh from his office and had spoken to PW2. At that time PW2 was crying and had stated that she has been ruined. Thereafter, the phone got disconnected and he went to the house of Banta Singh, where he met Insp. Santosh Kumar who was present there. Banta Singh was lying in an injured condition bleeding from his nose. He had taken Banta Singh along with two police officers to AIIMS hospital, where he was declared brought dead. Pieces of chandelier and two pieces of lead bullets were taken into possession by the police vide seizure memo PW11/A, which was signed by PW11. One bullet was recovered lying outside the house and had been taken into possession.

10. Relying upon the CFSL report, it was submitted that PW2 had wrongly deposed that one bullet was fired from the revolver of the deceased. Similarly, it was stated that PW4 had wrongly deposed that three bullets which hurt the deceased were fired from the revolver of the deceased. This aspect has been discussed above in Paragraph 6. Forensic report supports statements of PW-2 and PW-4 and the prosecution case. The depositions of PW-2 and PW-4 cannot be disbelieved for the said reason. CFSL report PW30/G dated 21.12.79 states that three .38 jacketed bullets were fired from a single standard weapon. These bullets have been recovered from the body of the deceased. No positive link for the fourth .38 fired jacket bullet could be established. One .32 lead bullet which has been fired from .32 weapon was also recovered from the spot. Two lead pieces belonging to .32 fired bullet were recovered. There were three holes on the shirt and the vest worn by the deceased due to passage of the bullets. Subsequently one .38 Smith & Wesson revolver seized in FIR No.724/725/726 dated 2nd November, 1979 P.S. Gate Meerut was sent for forensic examination and report dated 24 th January, 1980 Ex. PW30/F was received. As per the said report, the three bullets had been fired from the said .38 revolver. However, no positive link of the fourth .38 bullet as mentioned in the earlier report, could be established.

11. PW23 Ram Kishan, Reader to City Magistrate Rohtak, Haryana, proved on record entry dated 18th September, 1978 for one revolver licence issued to Banta Singh. The said revolver was NP8.32 bore, which was duly intimated after

purchase to the office by Banta Singh. The entry was marked PW23/A. As stated above one .32 lead bullet was also recovered from the spot as per forensic report Ex. PW30/G. This corroborates statements made by PW-2 and PW-4 that .32 revolver of deceased Banta Singh was fired.

12. A .38 revolver was seized on 2nd November, 1979 in the FIR61179 registered at P.S. Delhi Gate, Meerut from Om Prakash. As per statement of SI L.S. Yadav, Meerut, U.P. (PW25), the said case was under Section 307 and 25 of the Arms Act and was pending. Recovery of the said .38 revolver was pursuant to the leads given during interrogation of Resham Singh, resulting in formal arrest of Om Prakash who was already confined in District Jail, Meerut, UP and from whose custody .38 revolver was seized by the UP Police. Subsequent forensic examination as per forensic reports Ex.PW30/G and Ex.PW30/F, the .38 revolver which was seized from Om Prakash was used for firing three .38 fired bullet jackets at the spot.

13. SI Mittar Sain (PW30) has deposed that he was posted as SI Police Station Kalkaji when FIR in question was registered and had inspected the spot and taken into custody/seized the bullets and other evidence including glass pieces of the chandelier etc. Appellant Resham Singh was arrested by Insp. Santosh Kumar on 13 th November, 1979 and was interrogated by Insp. Santosh Kumar in his presence when he made disclosure statement accepting that recovery of cash could be made from his house at Jalota Gali, Phagwara pursuant to which recovery of Rs.7000/- in cash in currency of Rs.100 each was made and seized and subsequently produced in the court and marked Ex. P10/1 to 70. Subsequently they received information regarding arrest of Om Prakash and on 14th November, 1979 he accompanied by Insp. Santosh Kumar had gone to Meerut and the revolver had been recovered. He had applied for transfer and judicial custody of Om Prakash. Subsequently, on 9th January, 1980, a sealed parcel i.e. the revolver, was received from Malkhana of P.S. Meerut and deposited in Malkhana of P.S. Kalkaji and CFSL reports Ex.PW30/G and F were obtained.

14. Insp. Santosh Kumar had appeared as PW31 and has deposed on identical lines and had stated that they had gone to Meerut, Modi Nagar in search of Om

Prakash and in fact the appellant and Om Prakash had examined Dr. Sarohi of Modi Nagar after the incident of 15th October, 1979. Further, Om Prakash had been confined in District Jail, Meerut in another case. He had moved an application for transfer of revolver suspecting that the same might have been used in this case and for production of Om Prakash in this case. On receipt of the revolver, the same was sent for CFSL examination and reports were received. The applications etc. moved before the Magistrate, Meerut have been proved on record.

15. PW2 and PW4 knew Resham Singh but, did not know the other perpetrators before the date of occurrence. Om Prakash was implicated and identified only on the basis of interrogation and leads given by Resham Singh. Police investigation pursuant to arrest of Resham Singh, lead to Om Prakash and recovery of .38 bore revolver which was used to fire the bullets which took the life of deceased Banta Singh. The said revolver was seized from Om Prakash by Meerut police when he was arrested in connection with other case. This corroborates and affirms the statements of PW2 and PW4. CFSL reports Ex. PW30/G and PW30/F have been proved beyond doubt that the said revolver was used to fire 3 bullets which took life of Banta Singh. It is also proved on record that one bullet was fired from .32 revolver, which went missing after the occurrence. As per PW2 and PW4 the said revolver was taken away by Resham Singh and others. Thus, forensic evidence proves that two revolvers were fired or used. Thus confirming the deposition of the two eyewitnesses.

16. Presence of PW4 Balvinder Kaur was deposed to by PW2 Kuldeep Kaur. No doubt Balvinder Kaur and her sister Harvinder Kaur were studying in village Jawal Bachuuvan District, Punjab but PW2 has deposed that they were in Delhi at the time of occurrence. PW2 was repeatedly questioned and cross-examined on the said aspect but there is no reason to disbelieve and not accept PW2s version. PW4 has also stated to the same effect. The defence witness DW2 Budhu Ram, JVT Teacher, Govt. Primary School had produce school attendance record of PW4. In his cross-examination he has admitted that Balvinder Kaur was on leave from 10th October to 19th October, 1979. As noticed above, the date of occurrence is 15th October, 1979; hence presence of PW-4 in Delhi cannot be

doubted and disputed.

17. Defence witness DW1, who also appeared as DW3 Prem Kumar and DW4 Const. Jai Prakash Sharma do not establish and prove alibi of Resham Singh that he was in Phagwara, Punjab at about 9.00 PM on 15th October, 1979 i.e. time of occurrence. DW1 Prem Kumar, Manager of Bank of Baroda, Phagwara Branch had proved on record, debit voucher bearing signature of one Resham Singh and marked DW1/A. The account of Resham Singh was debited by Rs.15,000/- on 15th October, 1979 and also bears signatures of the account holder as per Ex. DW3/A. The statement does not show that Resham Singh did not travel and come to Delhi on 15th October, 1979 after operating the bank account or after signing the debit voucher. CrI. A. 324/1998 As already noticed above, the occurrence had Page 14 of 17 happened at about 9.00 PM on 15th October, 1979. The Court can take judicial notice that distance between Phagwara and Delhi is about 350 kms and one can travel from Phagwara to Delhi in about 6/7 hours.

18. The contention of the appellant that his questioning under Section 313 Cr.P.C. is defective and the relevant questions were not put to him or the case of the prosecution in the charge-sheet and the final judgment is drastically altered, has to be rejected. We have gone through the questions 4, 7, 8, 9 and 10 but do not find any ground or reason to upset the judgment of the conviction on the said reason. PW2 and PW4 had seen their husband/father being shot dead in front of their eyes. Two revolvers were used and four shots were fired. In such circumstances, a child witness such as PW4 and young wife in her 20s may not have been able to fully recollect and recapitulate, the revolver actually used in the firing and who had revolver in their hands at the time of firing. Their evidence has to be read as a whole to understand and decide whether or not to accept their version. Some variation and differences are bound to arise and do not reflect or adversely impact their testimonies but rather disclose an honest deposition and statement. The appellant was represented by leading criminal counsels and the cross-examination of PW2 and PW4 and other witnesses show that they were grilled and thoroughly questioned. No prejudice has been caused or even highlighted during the arguments.

19. Similarly, the contention that the appellant has been acquitted for the offence under Section 449 IPC, does not justify an order of acquittal for offences under Section 302/34 and 394 IPC. There is ample evidence to show that the appellant knew the deceased and that they were associated in business. PW2 had stated that both of them were partners. PW29 S.P. Singh had stated that he knew the appellant Resham Singh who used to work in Abu Dhabi and also had an office in Delhi and used to send manpower to Abu Dhabi. He also knew deceased Banta Singh who was supplying manpower to Abu Dhabi but he did not accept that he was aware of the relationship or link between Resham Singh and Banta Singh. However, the statement of PW29 shows that Resham Singh and Banta Singh were involved in similar business/trade. Charge under the Arms Act was not framed by the trial court as .32 bore revolver, which was snatched and taken away was not seized or could not be recovered. Discharge was, therefore, for technical reasons and this cannot be a ground to acquit the appellant.

20. In view of the above, we do not find any merit in the appeal against conviction and the same is dismissed. Order of sentence is also maintained. As the appellant is on bail on suspension of sentence, he will surrender within one month. Copy of this judgment will be sent to trial court and in case the appellant does not surrender within the said time, the trial court will take appropriate steps to arrest him and to undergo the remaining sentence. (SANJIV KHANNA) JUDGE (G. P. MITTAL) JUDGE JANUARY24h, 2014 kkb

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