

Gurdeep Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/1136591

Court : Delhi

Decided On : Apr-03-2014

Judge : Sanjiv Khanna

Appellant : Gurdeep Singh

Respondent : State

Advocate for Def. : Mr. Rajat Katyal

Advocate for Pet/Ap. : Ms. Inderjeet Sidhu

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL
No.517/1999 % Reserved on:

24. h January, 2014 Date of Decision:

3. d April, 2014 GURDEEP SINGH Through: Appellant Ms. Inderjeet Sidhu,
Advocate. Versus STATE Through: Respondent Mr. Rajat Katyal, APP for the
State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR.
JUSTICE G.P. MITTAL SANJIV KHANNA, J: Appellant-Gurdeep Singh challenges
his conviction under Section 302 of the Indian Penal Code, 1860 (IPC, for short)
for murder of Baljit Singh and violation of Section 27 of the Arms Act, 1959, vide
judgment dated 15th March, 1999 in Sessions Case No.30/98 arising out of FIR
No.946/1997, Police Station Patel Nagar. By order on the point of sentence dated

16th March, 1999, the appellant has been sentenced to undergo imprisonment for life and fine of Rs.500/- under Section 302 IPC. In default of payment of fine, he has to undergo six months rigorous imprisonment. For the offence under Section 27 of the Arms Act, he has been sentenced to undergo rigorous imprisonment of three years and fine of Rs.200/-, in default of which, he has to undergo rigorous imprisonment of three months. Sentences have been ordered to run concurrently and benefit of Section 428 of the Code of Criminal Procedure, 1973 has been directed to be given.

2. The occurrence in question had taken place on 15th October, 1997 at about 9.45 p.m. near Lal Mandir, Baljit Nagar in West Patel Nagar. The prosecution has relied upon testimony of the eye witness Devinder Singh (PW-12), dying declarations made by the deceased to Parabhjeet Singh (PW-6) and Amrik Singh (PW-10) immediately after the occurrence, recovery of knife pursuant to disclosure statement under Section 27 of the Evidence Act, 1872, abscondence of the appellant immediately after the occurrence and motive.

3. The testimonies of witnesses, namely, Devinder Singh (PW-12), Parabhjeet Singh (PW-6) and Amrik Singh (PW-10), have to be read along with the testimonies of Tejinder Singh (PW-9) and Santok Singh (PW-11), brother and father of the deceased. While examining the said testimonies, we have to keep in mind that the MLC Ex.PW2/A was recorded at 10.40 p.m. on 15th October, 1997, nearly one hour after the occurrence. The hospital in question, i.e. RML Hospital, was situated at some distance from the place of occurrence, which as noted above, was in West Patel Nagar.

4. Devinder Singh (PW-12) has deposed that on 15th October, 1997 at about 9.45 pm while returning from West Patel Nagar after buying ice-cream and upon passing Lal Mandir, Baljit Nagar, he spotted the appellant armed with a knife, chasing deceased Baljit Singh. Baljit Singh solicited PW-12 to save him from the appellant. But when PW-12 tried to intervene, the appellant tried to assault him. Appellant gave 2-3 knife blows to Baljit Singh. PW-12 escaped and ran towards the house of Baljit Singh and informed his father and brother. Thereafter, he went to his own house and returned to the spot along with his father. He was told that

Baljit Singh had been taken to a hospital by Amrik Singh. Thereupon, he along with his father went to the hospital. Father of Baljit Singh had also reached the hospital. Baljit Singh had been taken to Ward No.12, where he was declared dead after sometime. On the basis of statement (Ex.PW1/A) made by PW-12, rukka was prepared and the FIR in question was registered.

5. The FIR in question was registered at about 12.50 a.m. on 16th October, 1997 and this fact was recorded in DD No.46A. The said FIR (Ex.PW1/B) was proved by Head Constable Rohtas Singh (PW-1), in which name of the appellant as perpetrator stands recorded. The name of the appellant also finds mention in DD No.40A (Ex. PW13/A), which was recorded earlier at 11.15 pm on 15th October, 1997 as per which the appellant had assaulted Baljit Singh with knife. The DD entry records that as per the information provided by the PCR Van, Gurdeep Singh had stabbed Baljit Singh at Road No.20, Janta Park, Baljit Nagar.

6. We have perused the cross-examination of Devinder Singh (PW- 12), but do not think that there is any ground or reason to disbelieve or not to accept his testimony/version. PW-12s conduct cannot be categorized as unnatural or suspicious. Trial court has rightly observed that it was natural and normal for PW-12 to first go to the residence of the deceased and inform relatives/parents as they would have taken further action by ensuring prompt and immediate medical aid or informing the police. As noted above, DD No.40A (Ex.PW13/A) was registered at 11.15 p.m. on 15th October, 1997, which contained name of the appellant as the wrong doer. The said DD entry was made within half an hour of the occurrence. PW-12 also made the complaint, which became subject matter of the FIR being Ex.PW-1/A, which was recorded shortly after midnight on 16th October, 1997.

7. Statement of Devinder Singh (PW12) has been fully corroborated by the statements of Tejinder Singh (PW9) and Santok Singh (PW11), brother and father of the deceased, Baljeet Singh. They have deposed that their neighbour Devender Singh (PW12) had come to their house and informed that appellant Gurdeep Singh had assaulted Baljeet Singh with a knife near Lal Mandir. Santok Singh (PW11) had then informed the police on telephone No.100 and rushed to the place

of occurrence but were informed that Baljeet Singh had been taken to the hospital by Amrik Singh/sikh boy. There cannot be any doubt about the place of occurrence where the incident had taken place, in view of the testimonies of PW9, PW11, PW12 and as noticed below Amrik Singh (PW10). In addition, we also have the photographs which were taken by Const. Kharodi Lal (PW7), which were marked P1 to P5. Deposition of police officers SHO SK Sharma (PW18) and SI Manjer Khan (PW20) also affirms the said factual position.

8. We shall now refer to the statement of Parabhjeet Singh (PW-6), who has stated that at about 10 p.m. on 15 th October, 1997, he was walking home after completing his duty. When he reached Lal Mandir STD booth, he saw Baljit Singh lying injured on the ground. Upon inquiry, Baljit Singh stated that the appellant had injured him with a knife. Baljit was bleeding profusely. Baljit Singh asked PW-6 to arrange for a vehicle to take him to hospital. He went to West Patel Nagar to arrange for a vehicle and came back with a TSR, but did not find Baljit Singh at the said spot. Persons gathered there informed him that a Sikh boy had taken Baljit Singh to the hospital on a scooter. When PW-6 reached the hospital, he was informed that Baljit Singh had expired. In cross-examination, PW-6 has deposed that it took about 10-15 minutes to arrive with the TSR at the spot. He accepted that the deceased was his cousin and also the fact that he did not inform the police but stated when he had reached the hospital; he was informed about the death of the injured. His house was situated near the place of incident.

9. Learned counsel for the appellant has submitted that the testimony of Parabhjeet Singh (PW6) is suspicious and is unbelievable as in a busy market place, he could have easily requisitioned a TSR or otherwise contacted father and brother of the deceased. The assertion that he took 10-15 minutes to get TSR, it is submitted, creates doubt whether PW6 had spoken to the deceased and, therefore, he is a planted witness, who after the occurrence had reached the hospital along with Tejinder Singh (PW9) and Santok Singh (PW11). The aforesaid submission creates some doubt about the testimony of Parabhjeet Singh (PW6) as to whether he had spoken to the deceased immediately after the occurrence or had gone to the hospital as his house was nearby. In view of the said doubt, we are inclined to disregard the dying declaration made by the deceased Baljeet

Singh to Parabhjeet Singh but the aforesaid reasoning or the grounds would not apply to Amrik Singh (PW10).

10. Amrik Singh (PW10) was not related to the deceased and was unconnected with the family of the deceased and the appellant. CRL.A. No.517/1999 has deposed that at about 10 PM on 16 th October, 1997, when he was going to his house from his workshop and when he reached the STD Booth, Mandir Marg, he spotted Happy lying on the road in a pool of blood. On enquiry, Happy informed him that Deepu had assaulted him but he did not tell him the weapon with which he was assaulted. Happy requested to be taken to a hospital. As Amrik Singh (PW10) was on a two wheeler, he made him sit on the said scooter to take him to Willingdon (also known as RML) Hospital. However, when they reached Patel Nagar area, the injured expressed his inability to sit on the scooter. He accepted that the family of the deceased i.e. his father, brother etc. had come to the hospital at the same time. At the same time, he has stated that he came to know the next day in the morning that his father and brother were in the hospital. PW10 was cross- examined by the Addl. Public Prosecutor. He reiterated that the injured had not told him that the injury was caused by knife nor did PW10 make any statement to the police that the doctor had informed him about the death of Baljeet Singh.

11. In his cross-examination, Amrik Singh (PW10) accepted that Baljeet Singh was lying near the STD booth which used to remain open for 24 hours, and that he had not used the booth to contact anyone. Baljeet was semi-conscious and third persons had helped him to sit on the scooter. His clothes were smeared with blood but he washed them after the incident and police had not taken his clothes in their possession. Police had not met him in the hospital. Police met him in his house in the night when he came back to his house from the hospital. He did not know the name of the driver of the TSR. We believe and accept that PW10 is a credible and truthful witness. He was a law abiding citizen and had come forward and taken the deceased to the hospital. A factual position, PW-10 had accepted. He had occasion to speak to the deceased who informed him that Deepu, i.e. the appellant, had assaulted him. It is an admitted position that the deceased Baljeet Singh was taken to the hospital. Tejinder Singh (PW9) and Santok Singh (PW11) have categorically stated that they had not taken Baljeet Singh to the hospital.

PW9 had stated that one Amrik Singh (PW-10) had taken his brother to the hospital and they came to know about the fact at the spot of occurrence. PW9 had also stated that he did not meet Amrik Singh in the hospital on 15th October, 1997. PW11 may have stated to the contrary and averred that he had spoken to Amrik Singh in the hospital and had seen Amrik Singh for 45 minutes in the hospital. But this difference in the statement of Santok Singh (PW11) and Tejinder Singh (PW9) and the factum that the meeting was denied by Tejinder Singh (PW9), cannot be a ground or reason to disbelieve that Amrik Singh (PW10) had taken the deceased Baljit Singh to RML Hospital. Santok Singh (PW11) was the father and had stated that he had came to know that one Sikh boy had taken his son to the Willingdon hospital and that emergency wing of the hospital informed them that Baljeet Singh had been admitted in an injured condition. Within few minutes he came to know that Baljeet Singh was declared as brought dead. This minor discrepancy in the court statements does not merit discarding the police version or the statements on material aspects by Amrik Singh (PW10) and affirmed by Santok Singh (PW11) and Tejinder Singh (PW9).

12. It was submitted that the testimony of Amrik Singh (PW10) should be disbelieved as his name was not indicated or mentioned as the person who brought the deceased in the hospital in the MLC (Ex. PW2/A). It is correct that words father and brother have been mentioned under the name of relative or friend but some words sikh singh have been scribbled and it is difficult to decipher the word written in the middle. The MLC does not mention or state that Santok Singh or brother of the deceased had brought the deceased to the hospital. For this reason, we do not think it to be right or correct to discard the deposition of Amrik Singh (PW10) and hold that he had lied in the court on the fact that he had taken the deceased to the hospital and that deceased had told him that Deepu i.e. the appellant had assaulted him. PW10 had acted with virtuosity but his hesitation to come forward and record his name in the MLC is apparent. It would have resulted in questions being raised and PW10 being subjected to interrogation.

13. On the question of motive, there is evidence in form of Kalandra under Section 107/151 Cr.P.C. (Ex. PW16/A) to show and establish earlier disputes between the deceased and the appellant. This factum was deposed to and affirmed by Tejinder

Singh (PW9) and Santok Singh (PW11). They have also stated that the appellant had demanded money from the deceased and when denied, earlier also the appellant had attacked the deceased. Thus, there was a past history of enmity. Infact, PW11 had deposed that the appellant was a distant relative of the deceased.

14. HC Rajpal (PW16) had stated in the court that SDM had directed the appellant on 30th October, 1997 to furnish bond, in the amount of Rs.3000/- with one surety, for one year. Appellant had been challaned under Section 107/151 Cr.P.C. vide DD No.13A dated 8th March, 1996.

15. The appellant initially was not traceable and subsequently surrendered on 5th January, 1997. On 16th November, 1997, he made a disclosure statement (Ex. PW17/A) as deposed to by HC Anand Kumar (PW17) and Insp. S.K. Sharma (PW18). Pursuant thereto one knife (chhuri) was recovered behind the bushes of the hanging garden of Shakti Mandir, West Patel Nagar. The knife was 31 cm in length. Blade was 22 cm and dasta was 9 cm in length. The same was seized vide Ex. PW17/B and identified by PW17 as P-1. Similar statement has been made by Insp. S.K. Sharma (PW18). As per FSL report (Ex. PW18/J and K) human blood was detected on the metallic dagger. The blood group could not be ascertained as there was no reaction. Similarly human blood was detected on the clothes of the deceased but the blood group could not be ascertained as there was no reaction and to this extent the result remained inconclusive. The sketch of the dagger has been marked PW5/B and Dr. K. Goel (PW5) has deposed that on 24th November, 1997, a sealed parcel was produced by the police regarding opinion on the weapon of offence and on examination, he had opined that a weapon of similar type could cause injuries No.1 to 3 mentioned in his report. The opinion regarding the weapon was marked Ex. PW5/B.

16. The Trial Court has rightly observed that in view of the categorical statements made by the witnesses Devinder Singh (PW12) and Amrik Singh (PW10), failure of the Investigating Officer to ascertain and convince other public witnesses who may have seen the occurrence to depose, is inconsequential and immaterial. It is possible that other persons may have seen the occurrence but the Court cannot

be oblivious to the unwillingness and reluctance of the public to depose, after seeing the brutal and violent attack, for fear and personal safety. Moreover, it is not the number or quantum of witnesses, which determines whether the case is proved or established but the quality of the depositions and credibility and trustworthiness attached, which is the determinative factor. Depositions of the material witnesses have to be scrutinized to ascertain whether they are reliable and have stated the truth. Statements of relatives cannot be discarded on the ground that they are interested witnesses. Their statements have to be tested and scrutinized with care and caution to rule out possibility of false implication specially where multiple accused are described as perpetrators. In the present case there is only one accused i.e. the appellant and having examined the statements of Devinder Singh (PW12) and Amrik Singh (PW10) (Amrik Singh is not a relative but a third person), we are satisfied that their depositions should be accepted. We are also satisfied that deposition of Tejinder Singh (PW9) and Santok Singh (PW11) on all material aspects, supports the prosecution version.

17. It would be appropriate to record that homicidal death of Baljit Singh due to knife blows has been proved beyond reasonable doubt. Dr. P.K. Dass, (PW-2) CMO, RML Hospital has deposed that on 15th October, 1997 at about 10.40 p.m. deceased Baljit Singh was admitted to the hospital with history of alleged assault. The patient was unconscious, unresponsive to painful stimuli, pulse was feeble, blood pressure was not recordable etc. He had a lacerated wound on the right arm anteriorly, 7cmX3cm spindle spread. A clean incised wound 3cmX2cm spindles stake, right renal region and a 3cmX1cm spindle shape on the right side of the chest. PW-2 proved his report as Ex.PW2/A and opined that injuries were caused by a sharp weapon. On court question, he accepted that there could be two types of weapons. He further opined that due to injuries in question instant death was possible. Injury No.1 was caused by a blunt weapon, whereas injury Nos.2 and 3 were due to sharp edged weapon.

18. The post mortem report was proved by Dr. K. Goel (PW-5). He had conducted post mortem on the body of Baljit Singh on 16th October, 1997 and had noticed the following external injuries:

1. Incised penetrating wound 3 cm 1 cm transversally placed just below right nipple. Spindle shape with upper margin was shelved on the cost of other. There is bruising in area 5 cm 2.5 cm from the lower margin of the wound.

2. Incised penetrating wound 3.5 cm 1.5 cm vertically placed over right side abdomen, just below the lower costal margin at posterior auxiliary line, spindle shape.

3. Incised wound of size 9 cm 4 cm on middle of right arm.

4. Few small abrasions over right side of forehead and more right lateral canthus in area 5 cm. 4 cm.

5. Abrasion:

4. cm 2 cm. over right lateral aspects of abdomen about 3 cm. below injury no.2.

19. Dr. K. Goel (PW-5) had opined that all injuries were ante mortem in nature. Injuries No.1 to 3 were caused by a sharp pointed cutting flat weapon, but injuries No.4 and 5 were caused by blunt force and were possible due to scuffle by friction against hard surface. Injury No.2 was sufficient to cause death in ordinary course of nature and the cause of death was haemorrhagic shock consequent to the injury to liver. PW-5 had also examined the alleged weapon of offence and opined that injuries No.1, 2 and 3 could have been caused by the said weapon. He has proved the post mortem report marked Ex.PW5/A and his opinion on the weapon was marked Ex.PW5/B. He came to the conclusion that the injuries were fresh/recent.

20. We have examined the statement of the appellant under Section 313 Cr.P.C., wherein the appellant has stated that he was falsely implicated because of enmity between the family of the deceased and his family. His statement under Section 313 Cr.P.C. was recorded for the second time on the same day i.e. 23 rd December, 1998 and in response to last question, the appellant had stated that the witnesses Devinder Singh (PW12), Amrik Singh (PW10) and Parabhjeet Singh (PW6) were interested witnesses and had deposed falsely at the instance of father and brother of the CRL.A. No.517/1999 deceased Baljeet Singh. Page 14 of 16

Appellant had also produced one defence witness Kulbir Singh (DW1) who had stated that Parabhjeet Singh was nephew of Santok Singh and claimed that Parabhjeet Singh was a man of criminal nature but he did not know any person by the name of Davender @ Pappu. He knew one Sardar Ram Singh Bhatti as he was also a man of criminal nature. Relations between Santok Singh and Ram Singh were cordial as they were member of Gurudwara Prabandhak Committee. He claimed that the appellant was not a man of criminal nature and was not involved in snatching and extortion of money. He was earlier with DTC and mostly remained at home. Evidence of DW1 does not in any way help the appellant or create doubt about the prosecution version. DW1 was not aware whether the appellant has been challaned under Section 107/151 Cr.P.C. etc. and he had stated that he was out of station on the date of offence.

21. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed. We affirm the findings of the Trial Court. We also confirm the order on sentence. Appellant was released on bail in view of the suspension of sentence vide order dated 6th November, 2013. The appellant will surrender within a period of one month to undergo the remaining sentence. In case he does not surrender within the said period, Trial Court will take steps to detain and arrest the appellant for undergoing the remaining sentence. The appeal is disposed of. (SANJIV KHANNA) JUDGE (G.P. MITTAL) JUDGE APRIL03 2014
NA/VKR/kkb

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