

**Sita Ram Vs. State**

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**Court :** Delhi

**Decided On :** Jul-24-2014

**Judge :** Pradeep Nandrajog

**Appellant :** Sita Ram

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: July 21, 2014 Judgment Delivered on: July 24, 2014 % + CRL.A. 791/2000 SITA RAM Represented by: ..... Appellant Mr.Saurabh Kansal, Advocate versus STATE Represented by: ..... Respondent Mr.Varun Goswami, APP CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Three accused named Dhanvir, Chander Pal and Sita Ram (appellant) were jointly tried for an offence punishable under Section 302/34 IPC as also for the offence punishable under Section 392/397/34 IPC and for an offence punishable under Section 25 of the Arms Act.

2. Vide decision dated February 27, 1998, the three accused were convicted for the offence punishable under Section 302/34 IPC. Pal and Sita Ram were found guilty Chander of the offence punishable under Section 392/34 IPC as also for the offence under Section 25 of the Arms Act. Dhanvir was found guilty of the offence

punishable under Section 392/397/34 IPC as also for the offence punishable under Section 27 of the Arms Act.

3. For the offence punishable under Section 302 IPC all of them were sentenced to undergo imprisonment for life. Sentences imposed upon the three for other offences were directed to run concurrently.

4. Whereas Crl.Appeal No.110/1998 and Crl.Appeal No.302/1998 filed by Chander Pal and Dhanvir respectively were dismissed by a Division Bench of this Court on March 10, 2000, instant appeal continued to languish in the record room of this Court for the reason appellant preferred the same on December 19, 2000 after spending more than 11 years and one month in judicial custody.

5. It is apparent that the instant appeal was filed after the two appeals filed by the co-accused were dismissed by this Court on March 10, 2000.

6. Notwithstanding said fact, we had heard arguments in the instant appeal for the reason role assigned to the appellant was of catching hold of the deceased. We were conscious of the fact that when the appeals filed by the co-accused were disposed of nobody appeared for the appellant. The reason was that instant appeal had yet to be filed. It does happen that a Court sometimes may overlook certain salient facts or circumstances in relation to a co-accused who has not preferred an appeal, for the reason counsel for the other co-accused would highlight such facets of the evidence as would be relevant for their arguments.

7. The case of the prosecution is succinctly brought out in the statement of the wife of the deceased on basis whereof the FIR was registered.

8. In the statement Ex.PW-4/A, Rita (PW-4) the wife of the deceased stated that she was residing with her husband and children at C-127, Bhagirath Vihar, Gokulpuri, Delhi. Her husband was employed as a Chief Cashier in Dena Bank. She stated that on July 08, 1989 at around 4.15 P.M. along with her husband she had gone to the house of her brother Mahender and after taking dinner were returning home at around 8.30 P.M. Since they could not catch a DTC bus plying towards Shahdara, they took a TSR till octroi post at Loni border. Alighting at the

octroi post they proceeded on foot on the metal road towards Ganga Vihar. As they reached the bridge on a culvert, three boys, two of whom were of less height and one was tall accosted them. One boy caught her. Another caught her husband. The third stabbed her husband. The boy who caught her, gagged her mouth to prevent her from shouting. The boy who had caught her snatched her silver chain from her neck. All three ran away. She disclosed that one boy was wearing a check bush-shirt and pant and the other two were wearing black colour clothes. Her husband fell down. She cried for help. People gathered. Somebody called the police. Her husband was taken to the hospital.

9. Insp.Daryao Singh PW-27 accompanied by Ct.Shish Ram (not examined) were patrolling the area. He received a wireless message that one Mr.Mohan (PW-6) had informed that an injured person was lying at a culvert near Ganga Vihar. He reached the spot and found Gopal Ballabh, the husband of Rita, smeared with blood in an injured condition lying on the road with Rita standing nearby. The injured and Rita were taken by him to GTB hospital where as per MLC Ex.PW-23/A the injured was declared brought dead. Ritas statement Ex.PW-4/A was recorded at the hospital at around 11.00 P.M. The dead body was seized and sent for post-mortem. FIR2261989 for the offence of murder and robbery as also under the Arms Act was registered.

10. As we generally find in most cases of blind murder, the case of the prosecution is that a secret informer informed the police as to who the assailants were and where they could be found. Same thing has happened in this case as deposed to by Insp.Daryao Singh PW-27.

11. Be that as it may, the chain which Rita claims was snatched from her neck was recovered from appellant Sita Ram after he was apprehended pursuant to his disclosure statement. The same was identified by Rita at a TIP proceedings, Ex.PW-8/A, conducted before the Metropolitan Magistrate Sh.S.K.Sarvaria. The three accused refused to participate at the TIP proceedings.

12. Prosecution examined as many as 28 witnesses. Prem Ballabh PW-1 brother of the deceased identified the body of deceased Gopal Ballabh. Inspector Davinder Singh PW-7, draftsman prepared the scale site plan Ex.PW-7/A. Ram

Dawal PW-9 recorded the information given by Mohan PW-6. Bal Kishan PW-11 took photographs of the scene of crime. Baljit Singh PW-13 took dead body of Gopal Ballabh to the mortuary at Subji Mandi and testified that so long the dead body remained under his custody it was not interfered in any manner. Raj Gupta PW-14 proved sale of the silver chain to the deceased for `85/-. Ct.Satpal PW-15 delivered special report to the Metropolitan Magistrate. Ct.Jagpal PW-17 handed over the dead body of Gopal Ballabh to his relations. ASI Iqbal Singh PW-19 received rukka on the basis of which FIR Ex.PW-19/A was recorded. H.C.P.P.Shyamlan PW20 received wireless message and recorded DD No.17A. H.C.Ganpat Singh PW-21 along with I.O. deposited sealed parcels on July 8, 1989 and July 13, 1989 with Moharar Maalkhana. Sl.No.1 to 14 were sent to CFSL and after analysis received report from CFSL. Ct.Kishan Lal PW-22 was on duty at GTB hospital on July 8, 1989 when injured Gopal Bllabh was brought to hospital. He conducted the personal search of the deceased and recovered HMT wrist watch, bank slip and cash etc. R.S.Sharma PW-23 Record Clerk, GTB Hospital proved MLC Ex.PW-23/A, Tej Pal Singh PW-24, Clerk of the GTP Hospital proved post mortem report Ex.PW-24/A and opinion Ex.PW-24/B. Beside the above witnesses, prosecution examined independent witnesses namely Surender Singh PW-5, Mohan PW-6, Sita Ram PW-3, Satpal PW-2. Surinder Singh and Shri Mohan by their testimony establish the presence of Rita PW-4 with her injured husband Gopal Ballabh at the scene of crime. She was crying for help. Deceased Gopal Ballabh was lying in injured condition. On the request of Rita PW-4 Mohan PW-6 lodged the report with the police pursuance to which DD No.17-A was recorded. Sita Ram PW-3 and Satpal PW-2 were declared hostile. Mr.S.K.Sarvaria, Judge Labour Court PW-8 at the relevant time was a Metropolitan Magistrate, Shahdara. In his presence silver chain was identified by Rita PW-4. Mr.Satnam Singh, Additional District Judge PW10 at the relevant time was Metropolitan Magistrate, Shahdara. Before him application was filed by the police for fixing the date of Test Identification Parade of the accused persons. In his presence accused persons refused to join TIP.

13. Ct.Amar Pal PW-12, H.C.Subhash Chand PW-16, Ct.Jagpal PW-17, SI Anil Kumar PW-18, Insp.Murli Dhar PW-25, SI Kali Charan PW-26 as well as Insp.Daryao Singh PW-27 testified the receipt of secret information on the basis of

which investigating officer along with the above said witnesses raided jhuggi No.173, arrested accused Sita Ram and Chander Pal from Jhuggi No.173 and accused Dhamvir from another jhuggi in the same vicinity. They also proved recovery of knife, silver chain and blood stained shirt and pant.

14. Learned counsel for the appellant, realizing that fate of the appellant would hinge upon the testimony of PW-4 and the recovery of a silver chain pursuant to the disclosure statement made by the appellant which was identified by Rita as hers which was snatched from her neck, urged that presence of Rita at the place of crime is doubtful for the reason her blood stained clothes were not taken into possession by the investigating officer. Counsel urged that Rita being the wife of the deceased would have comforted the deceased when he fell on the ground after being stabbed and would have certainly tried to prevent blood gushing out from the injured part of the body. Counsel urged that robbery could not be the motive for the crime because neither the purse nor the wrist watch which the deceased was wearing was robbed.

15. The un-rebutted testimony of independent witnesses namely Surinder Singh PW-5 and Mohan PW-6 leaves no manner of doubt that Rita was present with her husband Gopal Ballabh when he was injured on the culvert. The testimony of Insp.Daryao Singh PW-27 also corroborates Ritas presence at the spot.

16. Surinder Singh PW-5 has deposed that he was residing at F-456, Ganga Vihar and at about 9.30 P.M. when he was in his house he heard cries of a lady. He proceeded to the spot. He saw a lady crying saying that her husband had been killed by three persons. He was not subjected to any cross-examination. No suggestion was given to him that no lady was crying near the place where her husband had been stabbed at the culvert.

17. Mohan PW-6 has likewise deposed that at around 9.30 P.M. he heard cries of a lady Bachao Bachao and as he reached the spot he saw a person lying in an injured condition. The lady asked him to inform the police. He informed the police at the check post at Loni Border. On his information DD No.17-A was recorded. Mohans name bears in DD No.17-A. The only question put to him in cross-examination was : at what distance was the lady from the injured. Inspector

Daryao Singhs (PW-27) testimony that he removed the injured along with his wife Rita in the official vehicle to GTB hospital has not been challenged in the cross-examination.

18. Insp.Daryao Singh PW-27 has categorically deposed that he did not notice any blood on the clothes of Rita. There is no presumption that Ritas clothes would be stained with blood. Further, there is no uniform reaction of persons who witness brutal crimes concerning their near ones. Some get stupefied, overwhelmed by unexpected events. Others may go hysterical. Yet others may challenge the assailant. A few may rush for help. Some may render comfort and assistance to the victim. Some may simply cry for help.

19. Referring to Ritas statement that she could see the accused because the area was lit with street light, which was at a distance of 250 yards, learned counsel had urged that so feeble was the light that it was not possible for Rita to see the face of the assailants.

20. From the testimony of Rita it is clear that she was face to face with the assailants and had ample opportunity to see them. It was not a fleeting glance which she had of them. One even tried to gag her mouth. This shows that the assailants were in striking distance of her. She has not said that it was total darkness. In her statement Ex.PW-4/A she had disclosed the colour of the clothes worn by the assailants. In her testimony in Court she pointed out towards co-accused Dhanvir as the one who inflicted the knife blows on her husbands person, appellant Sita Ram as the one who caught hold of her husband and co-accused Chander Pal who caught hold of her and gagged her mouth. The appellant and the co-accused had refused to participate in the TIP proceedings alleging that they were shown to Rita. We find that in the TIP proceedings the learned Metropolitan Magistrate has made an endorsement that the accused were produced with their face muffled. It shows that the prosecution took all precautionary steps required by law to protect the identity of the accused persons when TIP proceedings were held.

21. Concerning the TIP proceedings relating to the silver chain which was plucked from the neck of Rita, it was urged that if the chain was snatched from Ritas neck

it would be broken, a fact deposed to by Rita; but the chains which were mixed up during TIP proceedings were not broken. The testimony of the learned Metropolitan Magistrate Sh.S.K.Sarvaria PW-8 proves that similar silver chains were mixed up with the chain in question. The learned Metropolitan Magistrate ensured that the sanctity of the TIP was maintained.

22. Ritas statement that as the silver chain was snatched from her neck it broke, does not mean that the chain was broken into pieces. It is natural for a lady to speak so when a chain is plucked from her neck : that the chain was broken; to distinguish the chain being removed from her neck.

23. That no attempt was made to remove the purse and the wrist watch from the deceased does not mean that motive for the crime has not been proved. The motive was robbery. That the accused could not gag the mouth of Rita and she was able to cry Bachao Bachao became the compulsion of the accused to run away, but before that, the deceased was stabbed six times. The post-mortem report Ex.PW-23/B records the following six injuries:

1. Incised wound (i.w) 4 cm x 2 cm over the left mastoid region placed vertically extending from upper part of mastoid region.
2. Incised wound over left side of chest well placed transversely size is 2.5 cm x 1 cm depth. Lateral end is 1.5 cm below the nipple. Medial end is ante and 7 cm left to midline in front.
3. Incised wound 2.5 cm x 1 cm x depth over left side wall of the chest placed transversely. It is 12 cm below the arm pit medial end is trailing and acute.
4. Incised wound 2.5 cm x 1 cm over left side of chest wall obliquely and transversely in the posterior axillary line and 15 cm below the axillary fold. Lateral end i.e. towards post axillary line it is trailing depth 5. Incised wound 2.5 cm x 1 cm over posterior aspect of left elbow joint placed obliquely and vertically.
6. i.w. 2 cm x 0.8 cm over lateral aspect of olecranon process of left elbow joint placed almost transversely: injury No.5 is entry wound and injury No.6 is exist wound as it communicates each other.

24. The facts bring out that co-accused Dhanvir was carrying a knife. The other co-accused Chander Pal and the appellant were accompanying him. All three were looking for a prey to rob. They found one - the deceased who was in the company of his wife. Whereas appellant caught hold of Gopal Ballabh, co-accused Dhanvir inflicted knife blows. The third co-accused Chander Pal caught hold of Rita and tried to gag her. That the appellant continued to hold on to Gopal Ballabh thereby facilitating six blows being inflicted by Dhanvir is suggestive of the common intention : to overcome resistance during robbery and if need be, to kill the person offering resistance.

25. We find no merit in the appeal which is dismissed.

26. The bail bond and surety furnished by the appellant are cancelled. The appellant shall surrender and undergo the remaining sentence. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE JULY24 2014/skb

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