

**Chand SurIn Vs. State of Bihar**

**Chand SurIn Vs. State of Bihar**

**SooperKanoon Citation :** [sooperkanoon.com/132142](http://sooperkanoon.com/132142)

**Court :** Patna

**Decided On :** May-14-1996

**Judge :** B.P. Singh and P.K. Sarkar, JJ.

**Appeal No. :** Criminal Appeal No. 13 of 1992 (R)

**Appellant :** Chand Surin

**Respondent :** State of Bihar

**Disposition :** Appeal Dismissed

**Judgement :**

**B.P. Singh and P.K. Sarkar, JJ.**

1. The sole appellant herein has been found guilty of the offences under Sections 32 and 307 IPC. The Trial Court has sentenced him to undergo rigorous imprisonment for life without specifying for which offence he has/been so sentenced. We will proceed on the basis that since the appellant has been found guilty of the offence under Section 302, IPC, he has been sentenced to life imprisonment under that section and no sentence has been passed separately for the offence under Section 307 IPC. The 2nd Addl. Sessions Judge, Gumla, tried the appellant in Sessions Trial No. 39 of 1990 and by his judgment and order dated 8th January, 1992, convicted and sentenced the appellant as noticed above. We may only notice one other fact that one Paul Surin was also an accused in the

case, but since he absconded, he was not put up for trial with the appellant herein.

2. The occurrence giving rise to the present appeal is said to have taken place on the night of 2nd of June, 1989 in which two persons were killed and P.W. 6 Pritwanti received serious injuries. The informant P.W. 4 Mandhin Surin was the daughter-in-law of deceased Salomi Surin and brother-in-law of deceased Nixon Surin. She is also the sister-in-law of the injured witness Pritwanti, P.W. 6.

3. The persecution case is that an occurrence took place at about 12 in the mid-night and the First Information report was report lodged at the village of occurrence at 4 P.M. on 3.6.1989, after the Investigating Officer came to know of the occurrence and came to the village of occurrence, where he recorded the report of P.W. 4 Mandhin Surin.

4. In the First Information report lodged by her, Mandhin Surin, P.W. 4, stated that on the 2nd of June, 1989, after taking dinner, she along with her mother-in-law, Salomi Surin (deceased), brother-in-law, Nixon Surin, (deceased) and sister-in-law Pritwanti Surin, P.W. 6 slept in the same room at about 8 P.M. She was sleeping in the southern portion of the room and her mother-in-law and brother-in-law were sleeping towards her north. At about 12 in the mid-night, she got up on hearing the cries of her mother-in-law and the sound of assault. She got up but was very scared and ran away from the window which was to the south of the room. She went to the house of Junas Surins, P.W. 3 informed him that assault was taking place in her house, junas Surin, P.W. 3, collected some villagers and went to the room where the informant was sleeping. They found that the aforesaid Salomi Surin and Nixon Surin were lying dead with bleeding injuries on their head and neck. However, Pritwanti Surin P.W. 6 was still breathing. In the morning, she went to Mahadeo Pahan, P.W. 5 and the Muhiya, Sarpanch who came to her house and sent Pritwanti, P.W. 6 for treatment on cot, which was carried by the villagers along with P.W. 3. It is further stated in the report that the father-in-law of the informant had gone to attend a Barat and had returning only in the morning of 3rd June, 1989. The informant further stated in rather clear words that she could not see who had actually assaulted the inmates of the house. She stayed at home and lodged a report only when the Investigating officer came to the village.

5. It would thus appear from the First Information Report lodged by P.W. 4 that though she was present in the room where the assault took place, she with a view to protect herself ran away from the room and did not have sufficient opportunity to identify the assailants.

6. The persecution has mainly relied upon the testimony of the informant Mandhin Surin, P.W. 4 and that of Pritwanti Surin, P.W. 6 an injured witness. Several other witnesses have been examined such as P.Ws. 3, 7, 10 and 14 who are tendered witnesses and P.Ws. 1, 2, 5, 8, 11 and 13 who provided corroborative evidence by stating that they came to the place of occurrence on coming to know about it and most of them were informed by the informant that the offence had been committed by the appellant and one Paul Surin. P.W. 15 Sawan Soren is the father of Paul Surin who stated that his son has confessed before him that he and the appellant had committed the crime. P.W. 16 is a formal witness who proved the signature of the Station House Officer of Kamdara, Police Station. P.W. 9 Dr. A.N. Shahi was the medical Officer at the Kamdara dispensary who had examined the injured witnesses Pritwanti P.W. 6 at 2.30 P.M. on 3rd June, 1989. P.W. 12, Dr. Raj Kumar Back is the order doctor who conducted postmortem examination on the dead bodies of Salomi Surin and Nixon Surin. The Investigating Officer has been examined as P.W. 17.

7. P.W. 4 Mandhin Surin, the informant, deposed at the trial that she along with her brother-in-law, mother-in-law and sister-in-law was sleeping in the same room on the date of occurrence when she was awakened by the cries of her mother-in-law. When she got up, she was that the appellant Chand Surin was assaulting Nixon Surin. She ran away from the window to the south of the room and came back with several villagers and found that her mother-in-law and brother-in-law had been killed and her sister-in-law P.W. 6 was injured and was lying unconscious. According to her she came back to the room where the murders took place after about two hours. She also claimed that the other accused Paul Surin had a torch with him. She further denied the suggestion that she had stated in her report to the police that she could not say who had assaulted the deceased and the injured witness.

It will thus from the evidence of P.W. 4 at the trial that she claims not only to be an eye witness but also that she had identified the assailants and that appellant Chand Surin was the actual assistant while his-accomplice Paul Surin carried a touch. We have carefully perused the testimony of this witness and we have also carefully read the report lodged by her on the basis of which the formal First Information report was drawn up. We also find from the First Information report that the same has been witnessed by two persons and had been recorded in the presence of P.W. 8. In the First Information report, P.W. 4 had clearly stated that she could not see who actually had assaulted her mother-in-law, brother and sister-in-law. In the last part of the report, it is stated that action may be against unknown persons who had committed the offence. We have; therefore, no doubt that this witness had not actually identified the assailants. No doubt, she woke up on hearing the cries raised by her mother-in-law, but the instinct of self-preservation forced her to run away from the place of occurrence rather than to wait and identify the assailants we cannot say that she did not act wisely because if she had not run away from the room where she was sleeping along with others, perhaps she may have also murdered or at least injured by the assailants. However, having regard to the clear statement in the First Information report that she had not seen the assailants, or had no opportunity to identify them, we are not prepared to accept her statement in court that she had actually seen the appellant assaulting her brother-in-law. In our opinion, it would not be safe to rely upon this part of her deposition. However, her deposition fixes the place and time of occurrence.

8. 6 Pritwanti also claimed to be sleeping in the same room on the date of occurrence. She claims to have seen the appellant Chand Surin and his accomplice Paul Surin entering the house. The appellant had a Tangi in his hand and Paul Surin had torch with him. The appellant hit her brother Nixon Surin with the tangi on his neck cutting the neck of her brother, and thereafter he assaulted her mother with the tangi. He also assaulted her with Tangi as a result of which, she fell down and became unconscious. This witness stated that appellant Chand was her cousin, but he had been suspecting her and her family members to be Dayans (witness) and that was the reason for the occurrence. She stated exact order in which the assault took place. This witness has perhaps no idea about time

because she stated that she remained unconscious for about a month and that her statement was recorded by the police one month after she regained consciousness. We do not attach much importance to these facts because she is a tribal lady who perhaps has no idea about time and months and she appears to have merely stated so on guess. It has come in the evidence of the Investigating Officer, P.W. 17 that he had recorded the statement of Pritwanti Surin 6, on 14.6.1989 at the referral hospital at Basia where she was under treatment. The evidence on record is also clear on the point that this witness became unconscious as a result of assault on her and we are further assured of this fact having regard to the nature of injuries which she had suffered and which we shall discuss later. She herself stated that she had become unconscious after the assault and most of the witnesses who came to the place of occurrence soon thereafter have also stated that they found Pritwanti. P.W. 6 unconscious. There is also evidence on record to show that she was carried on a cot to Kamdara for medical treatment where she was actually examined by the doctor. 9 at 2.30 P.M. on 3.6.1989. The delay in recording of her statement by the Investigation Officer is, therefore, amply explained by the fact that the witness was unconscious and was under-going treatment for serious head injury suffered by her. Nothing has been elected in the cross-examination of this witness to discredit her testimony. Apart from being an injured witness, her presence is natural as she happens to reside in the house where the occurrence took place along with her parents and other members of the family. She had received serious injuries which may have been caused by a tangi, which according to the prosecution was being carried by the appellant.

9. The medical evidence on record also amply corroborates the prosecution case. P.W. 9, Dr. A.N. Shahi found the following injuries on the person of Pritwanti. P.W.6.

(i) A sharp cut injury ( $1' \frac{3}{4}' \frac{1}{4}'$ ) on the right hand  $2\frac{1}{2}'$  just above the right cubital portion.

(ii) A sharp cut injury ( $2\frac{1}{2}' \frac{3}{4}' \frac{11}{4}'$ ) over the upper arm  $1\frac{1}{2}'$  above the right elbow joint which is obliquely placed.

(iii) A sharp cut injury (5' 11/4' 11/4') over the head, 1' above the right ear breaking the skull bone from which the brain matter was coming out. The bone piece which came out, was 1' 1/2.

(iv) A sharp cut wound 2 1/2' 11/4' 1' over the left cheek which has a opening in the buccal cavity.

(v) A (fracture) lower jaw bone on the left side.

(vi) An echymosis (Black-bluish mark) over the right deltoid area.

(vii) A scratch mark 2 1/2' 1/2' on the abdomen 6' below the right axillary portion.

According to him, injuries 3, 4, and 5 were grievous in nature and the rest were simple. Injuries 1 to 4 had been caused (by sharp cutting weapon such as Tangi and rest were caused by hard and blunt substance. He also found injuries 1 and 2 to be dangerous to life. He further stated that he had referred her to the Basis referral hospital for further treatment. Having regard to the injuries found on the person of P.W. 6 particularly injury No. 3, we have no doubt that she must have become unconscious and her treatment would have taken considerable time.

10. P.W. 12 Raj Kumar Beck who performed the postmortem examination on the dead bodies of Salomi Surin and Nixon found the following ante mortem injuries on the dead body of Salomi Surin.

(i) Incised wound 3' 11/2' 11/2' on forehead with fracture of undelined bone.

(ii) Incised wound 2' 1' 1/2' on left upper arm.

(iii) Incised wound 2' 1/2' 1/2' on lower lip.

In his opinion, all the injuries were antemortem in nature and were caused by sharp cutting weapon. Injury No. 1 was grievous in nature and was also sufficient to cause death in ordinary course of nature. The cause of death was shock and hemorrhage. On the body of Nixon Surin, he found the following injuries.

(i) Incised wound size 3 1/2' 1 1/2' 1 1/2' on left side of the neck obliquely cutting the carotid vessels and trachea.

(ii) Incised wound size 2 1/2' 3/4' 1/2' on left side of the back of the chest.

(iii) Incised wound size 1 1/2' 1/4' 1/2' on the left upper arm.

All the injuries were caused by sharp cutting weapon and injury No. 1 was found to be grievous in nature and sufficient to cause death in ordinary course. The cause of death was shock and hemorrhage. He proved the postmortem reports Exts. 3 and 3/A. The medical evidence on record, therefore, leave no room for doubt that Salomi Surin and Nixon Surin met a homicidal death.

11. It was submitted before us that P.W. 4 was not an eye witness who had identified the assailants and therefore, the prosecution case rests solely on the testimony of Pritwanti, P.W. 6. It was, therefore, submitted that in the absence of corroboration of the evidence of Pritwanti, the prosecution case should not be accepted. It was urged that as a matter of law, when there is only a single witness to give evidence of the occurrence, the evidence of such a witness should not be accepted in the absence of corroboration in material particulars. We do not subscribe to the proposition of law so generally propounded by the counsel for the appellant. No doubt, where the prosecution case rests on the testimony of a single witness, the Court is required to be cautious so as to rule out possibility of false implication by such a witness. The Court must also satisfy itself that the witness is credible and her testimony is free any blemish which may raise a suspicion about her credibility. However, if the Court after applying its mind comes to the conclusion that the presence of the witness cannot be doubted and that he is speaking the truth, on the uncorroborated testimony of such as eye witness, a conviction can be based. In the instant case, there is however the medical evidence on record which corroborates the testimony of Pritwanti, P.W. 6. She was injured by the assailants at the same time when the other two members of the family were killed by them. Her presence was natural and the injuries suffered by her provide the assurance that she was present when the occurrence took place. Nothing has been elicited in her cross-examination which may lead us to suspect her testimony. We find that her evidence is trustworthy and reliable and we are

prepared to place implicit reliance upon her testimony. Since the occurrence took place inside the house of P.W. 4 and 6 at the dead of night, it is not expected that the same will be witnessed by other villagers. We have, therefore, no doubt in coming to the conclusion that P.W. 6 is a truthful eye witness of the incident and her testimony is reliable. This, on her testimony the conviction of the appellant can be sustained. We, however, do not, find that P.W. 4 Mandhin Surin had really identified the assailants though she had witnessed only a part of the occurrence and had immediately run away from the place of occurrence to save herself. It is, therefore, not necessary for us to seek corroboration from the testimony of the other witnesses who are said to have reached the place of occurrence soon after the incident. The prosecution has also examined Sawan Sorin who stated that he was the father of Paul Surin. On the date of occurrence, Chand Surin, appellant and Paul Surin came to him and told him that they had committed the murders of the wife, son and daughter of Gabriel Soren. This witness is the father of Paul Soren and stated that the confession was made before him by his son Paul Surin. Since Paul Surin has not been tried along with the appellant we do not wish to rely upon extra judicial confession said to have been made before P.W. 15 because, we find that the evidence of P.W. 6 Pritwanti is sufficient to uphold the conviction.

In these circumstances, this appeal is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**