

Karam Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-02-1994

Reported in : 1994CriLJ3446

Judge : Palok Basu and ;A.S. Tripathi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal No. 854 of 1991

Appellant : Karam Singh

Respondent : State of U.P.

Advocate for Def. : V.B. Singh, A.G.A.

Advocate for Pet/Ap. : Barmeshwar Tewari, Amicus Curiae

Disposition : Appeal allowed

Judgement :

Palok Basu, J.

1. Karam Singh appellant has filed this appeal against his conviction under Section 302/34, IPC, and sentence of imprisonment for life awarded by II Addl. Sessions Judge, Bareilly on 26-9-1986 in Sessions Trial No. 456 of 1984. This appeal has

been forwarded by the appellant from jail.

2. Sri Barmeshwar Tewari has been appointed Amicus Curiae and has argued the appeal on behalf of the appellant with ability. Sri V. B. Singh, learned A.G.A. has been heard on behalf of the State and the entire record has been minutely examined. The charge against the appellant was that on 19-5-1984 at about 2 p.m. in village Faiznagar, Police Station, Bhuta, Bareilly the appellant along with co-accused Amrik Singh, his son, committed murder by intentionally causing the death of Pakhar Singh and thereby committed an offence punishable under Sections 302/34, IPC.

3. The prosecution case is that an F.I.R. stood lodged on 20-5-1984 at 12.45 p.m. at Police Station, Bhuta, Bareilly. This is said to have been lodged by Satnam Singh, son of Pakhar Singh, deceased. It is further said that when this F.I.R. was lodged PW 4, Pradeep Kumar Thawan, Station Officer, Police Station, Bhuta was present. It was an oral report taken down by Head Constable Brijan Singh vide entry in general diary report No'. 17, dated 20-5-1984. Its true copy has been proved as Ext. Ka 5. It is said that soon after this F.I.R. was lodged the informant Satnam Singh had taken the Station Officer, PW 4, Pradeep Kumar to the place where the dead body of his father Pakhar Singh was said to have put under earthen bricks by the appellant and his co-accused Amrik Singh. The dead body of Pakhar Singh was consequently recovered on 20-5-1984 and the dead body was sent to Bareilly for postmortem examination. The said PW4, Pradeep Kumar, Investigating Officer had prepared the inquest report along with photo lash and challan lash. He forwarded the dead body along with two letters. All these documents have been proved as Ext. Ka 6, Ka 7, Ka 8, Ka 9, Ka 10 and Ka 11 respectively. It may be specifically mentioned here that blood-stained hair and blood-stained mud mixed with hair were also taken into possession by the police vide memo Ext. Ka 12. Plain earth was also recovered vide Ext. Ka 13 and the site plan has been proved as Ext. Ka 14. It may be mentioned here that though the Investigating Officer has said that the recovered articles were sent for examination to the Chemical Examiner and Serologist but no report has been produced or proved on the record. It, however, appears that there is one report relating to the hair said to have been recovered and sent to the Chemical Examiner who has said

that on testing and comparing the same with the hair of the deceased it could not be (sic) that both are of the same person though there was physical similarity.

4. After completing the investigation a charge sheet was filed by the Investigating Officer against the appellant and his son-co-accused Amrik Singh. During the trial the only eye-witness of this case, namely, Satnam Singh, PW 1 was examined about the manner of the assault. The only other relevant witness is PW 2, Lekhraj in whose presence it is said that the appellant Karam Singh pointed out a place in a field wherefrom, after shifting the earth by the appellant, Turban, a broken lathi and a Banka were recovered. On 21-5-1984 while it is said that the appellant was arrested by PW4, Pradeep Kumar on the said day (21-5-1984) at about 12 noon from Faiznagar near the bridge of Baigul river, it is said that the shirt (kurta) being worn by the appellant was also taken by the Investigating Officer. It may be mentioned here that though the suggestion is that the kurta had blood marks yet no report from the Chemical Examiner or Serologist is forthcoming to indicate the presence of human blood on the said shirt.

5. Sri Barrneshwar Tewari, learned counsel for the appellant seriously contended that the presence of Satnam Singh at the time and place of the occurrence is wholly doubtful inasmuch as the F.I.R. having been lodged with inordinate delay and the time of actual incident thus remaining obscure, the postmortem report practically negating the prosecution case about the time of the incident, no independent corroboration being available in the shape of Chemical Examiner or Serologist report and further that the alleged oral F.I.R. being ostensibly a created document, the prosecution case must be thrown out. In this connection added emphasis was laid by the learned counsel for the appellant on inherent probabilities in the case particularly beginning with the arrival of the accused and the informant at the house of the informant after the commission of the incident. To appreciate these arguments a look may now be had at the prosecution case as detailed by PW 1, Satnam Singh.

6. The deceased was owning some land which he had contracted to sell to some one which was objected to by the appellant. The informant says that on the day of the occurrence (19-5-1984) around 2 p.m. when the deceased and he were going

and having conversation with the appellant and his son the demand by the appellant that the deceased should not sell the land turned into exchange of hot words and by the time the deceased had reached the neglected Jhala (cottage) belonging to the appellant, both the accused dragged the deceased inside and the appellant gave several blows by the Banka tied to the lathi, which was carried by him always, as a result of which the deceased fell down. The informant was said to have been prevented from raising hue and cry and shouting and was physically held by the co-accused Amrik Singh. Due to the threats the informant kept quiet. Having been satisfied that the deceased has died, the two accused covered the dead body with earthen bricks and then goaded the informant to his house. There, the two accused asked the informant to cook food which, due to fear and terror, the informant prepared and served to the two accused. During dusk time the appellant said that he must make arrangements for the Banka and the lathi and also the Turban of the deceased and consequently left the Jhala (house) of the informant and returned there after about two hours. In the night threats were continued with the result that the informant could not venture to come outside the house and the next morning, i.e., 21-5-1984 around 10 a.m. the informant told the appellant that he had to go to ease himself, permission for which was granted and then getting an opportunity the informant went to the village, contacted two villagers, namely, Harbhajan Singh and Jagir Singh and with the help of those two went to the police station and lodged the F.I.R. on 20-5-1984 at 12.45 p.m. What the Investigating Officer did after lodging of the F.I.R. has already been noted above.

7. It was rightly pointed out in this connection that the informant was aged about 14-15 years when the occurrence took place and similarly the co-accused Amrik Singh was also of 14-15 years. Assuming for the sake of argument that the informant started cooking the food for the two accused and because of threats the informant was not in a position to leave the place, it is impossible to believe that after the appellant himself had voluntarily left the place leaving only the child of about 14-15 years in the company of the informant who was also a child of 14-15 years with admittedly no arms and ammunition being available to the co-accused Amrik Singh the only thing expected of the informant was to either pounced upon the co-accused or to run away from his own house to lodge the F.I.R. or at least

inform the villagers which he allegedly did the next morning.

8. As mentioned here the only weapon of assault which the appellant was armed with, had already given way and was left at the place where the dead body was said to have been recovered subsequently by the Investigating Officer. Under the circumstances Amrik Singh was wholly unarmed and even according to the prosecution case, he had not been attributed any specific role other than that of catching hold of the informant when the co-accused's father, the appellant Karam Singh was indulging in beating the deceased. As noted above, the trial Judge has already acquitted the co-accused Amrik Singh on the finding that no inference about any intention could be drawn against him and the State had acquiesced to the said finding and no appeal has been preferred against acquittal of the said co-accused Amrik Singh. It is, therefore, compelling to hold that the informant could and should not have been present any more in his house after the appellant had relinquished the same for about two hours. Therefore, there is force in the argument that the delay said to have been explained in the F.I.R. has remained a begging and, therefore, the genesis of the F.I.R. is shrouded in mystery.

9. Several criticisms were advanced and rightly so about said cooking of food by the informant at that particular hour. It is time now to mention that admittedly the informant is the maternal nephew of the appellant. Co-accused Amrik Singh was, therefore, the own maternal cousin of the informant. The appellant's own sister was married to the deceased. Even if the crime had been committed by the appellant it is impossible to think that the informant would be ready under any circumstances to cook the food for his Mama and Mamera Bhai (brother) when both of them were wholly unarmed and having already witnessed that they have killed his father. It, therefore, points out unhesitatingly to the fact that the informant was nowhere near the place at the time of the incident when the deceased had been done away with. Incidentally, it was rightly pointed out that the Investigating Officer has not gone to collect any utensils or even cooked food or materials or implements to indicate that in that night some food was really prepared as is said to have been done in the F.I.R. It was bounden duty of the Investigating Officer to investigate these facts if he had thought that the delay has to be explained suitably by the contents of the F.I.R. itself.

10. This immediately takes us to consider the allied arguments that Jubani Vadi (oral report) is a concocted document. There is no doubt that second page of the F.I.R., to be more precise, the chick report, on the basis of which the case was registered, has been so written that the lines which were broad at the beginning of the page went on being shortened and shortened so as to accommodate just before the thumb impression existed on the said page. To be more exact, a few words are ostensibly written even over the thumb impression existing on the document. It is per se evident. Consequently, may be that the thumb impression on the document was obtained earlier than the contents therein were filled in.

11. Coming to the question as to whether the accused could or should have left the informant alive one is aghast at the way the prosecution could have been silent on this aspect because if the deceased was bent upon selling his property to an outsider even the son would have done the same unless he too was prevented from doing the said mischief. Under the circumstances if the motive is true and correct there is every reason to accept that the accused should have simultaneously killed the informant if he was going with the father as the prosecution case for the present is. This is the additional reason while the presence of the informant is not free from doubt.

12. The most discrepant evidence consists of the so-called recovery of the Banka, the lathi, and the Turban at the pointing out of the appellant. For this only two witnesses are there. The first one is P. W. 2, Lekhraj and the second is the omnipresent Investigating Officer P. W. 4, Pradeep Kumar. A close examination of the statement of the Investigating Officer leaves no manner of doubt that much before P.W. 2, Lekhraj had arrived the appellant was under arrest of P.W. 4, Pradeep Kumar. The recovery is said to have been made on 21-5-1984 sometime in the after noon. The vital contradiction in this connection may be reproduced here. P.W. 2, Lekhraj has been made to say in the examination-in-chief that the appellant was arrested at 12 noon when the appellant confessed that he has killed the deceased Pakhar Singh and that he would get recovered some incriminating articles. The Station Officer, Pradeep Kumar thereafter tied the appellant with a rope and the appellant went to the field of Kharag Sen from the Northern portion of which Banka and the Turban of the deceased were recovered

after it was pointed out by fingers. He further says that the actual arrest of the appellant was executed by the Station Officer in his presence at that time. But, in cross-examination he has said that he had left his house at 11.30 a.m. and he had reached the bridge within 8-10 minutes and he had seen, that the appellant was already under arrest of the Station Officer. He has further said that he did not know as to since how much time before the appellant and the Station Officer and other constables were standing there.

13. P.W. 4, Pradeep Kumar, Station Officer and the Investigating Officer has said that on 21-5-1984 he arrested the appellant at 12 noon. He firstly recovered the Shirt which the appellant was wearing. In cross-examination he has admitted that he had not collected any witness before affecting the arrest of the appellant. He had admitted in the cross-examination that the witnesses were collected during way. It is interesting to mention here that there is no document worth name showing the actual arrest of the appellant in presence of any independent witnesses. The alleged note prepared for showing the recovery/discovery under Section 27 of the Evidence Act has been admitted by this witness to be the only document to show the arrest also of the appellant! Under the circumstances the very theory of the arrest as sought to be proved by Investigating Officer has simply vanished. It was said that from much before the witness P.W. 2, Lekhraj came to the spot, he saw, the appellant being under the control of the Station Officer. It could very well be that the place of recovery was already shown and thus known to him from much before the so called arrest of the appellant. Under the circumstances this recovery will not be coming within the type of discovery-evidence made admissible under Section 27 of the Evidence Act. The result, therefore, is that the so-called evidence of discovery under Section 27 of the Evidence Act sought to be proved by these three documents each relating to the three items of discovery, has to be rejected outright. This apart, it has already been noted above that the Investigating Officer had not sent the recovered articles for Chemical examination and no report of either the Chemical Examiner or Serologist has been proved in the instant case. Consequently, the alleged evidence under Section 27 of the Evidence Act is held as being not available to the prosecution for proving the guilt of the appellant.

14. It was then rightly contended that the post-mortem examination report completely rules out the date and the time of the incident being 19-5-1984 at 2 p.m. P.W. 3, Dr. A. K. Bajpai conducted the post-mortem examination on 21-5-1984 at 3 p.m. He has found that the probable time since the death was about two days but in his statement in court he has agreed that the duration may be 2 1/2 to 3 days. The condition of the body has been noted by him which may be reproduced here :

Rigor mortis had passed off and the dead body was in the state of decomposition. The duration of death was about two days. Following ante mortem injuries were detected on the dead body :-

1. Lacerated wound 5 cm. x 2 cm. Scalp deep right side of the head over the parietal eminence, 6 cm. above right ear.
2. Incised wound 5 cm. x 1 cm. x muscle deep on the right side of nape (back of neck) 2 cm. behind the ear.
3. Incised wound 7 cm. x 2 cm. x bone deep just below injury No. 2.
4. Incised wound 11 cm. x 2 cm. on the back of head occipital region.
5. Contusion 11 cm. x 5 1/2 cm. on the anterior lateral aspect of right upper arm.
6. Contusion 9 cm. x 4 cm. on the dorsolateral aspect of right forearm lower part and wrist.
7. Contusion 20 cm. x 11 cm. on the upper part of right side chest.
8. Contusion 14 cm. x 11 cm. on the middle of poster lateral aspect of right thigh.
9. Contusion 7 cm. x 4 cm. on the front of left knee.
10. Contusion 9 cm. x 7 cm. on the left upper arm and shoulder.

Skin peeled off in injuries Nos. 5 to 10.

On internal examination bone was cut under the injury No. 4, membranes ruptured under injury No. 4. About 100 CC of semi-clotted blood was found in skull cavity. 4th and 5th ribs of right side chest were fractured. Pleura of right side was ruptured and right lung was lacerated. About 300 CC of liquified blood was present in right side of chest cavity. Semidigested food material weighing about 200 grams was found in stomach. The cause of death was due to shock and haemorrhage as a result of the injuries sustained.

It may be mentioned here specifically that the doctor has noted in the post-mortem report that 'rigor mortis passed off from the four limbs. Body is in advanced stage of decomposition distended body. Blisters present. Skin is peeling off at places.... Tongue blotted. Hair loosened.... 'The aforesaid condition of the body may well indicate the death to have been caused prior to three days and, therefore, the time and date of the incident as suggested is not supportable from the medical evidence on record.

15. It is not understandable as to why the two villagers who were allegedly contacted by P.W. 1, Satnam Singh immediately after the incident, namely, Harbhajan Singh and Jagir Singh have not been examined by the prosecution. It was rightly pointed out that this very Harbhajan Singh happens to be marginal witness in the said agreement which the deceased had executed in favour of a villager for selling his land to which the appellant allegedly objected. Under the circumstances, withholding and non-examination of these two witnesses appears with ulterior motive and strengthens the doubt about the genesis of the whole incident.

16. In this connection the prosecution evidence furnished through the statement of P.W. 5, B. M. Lal the Magistrate who conducted identification proceedings of the Turban through Satnam Singh is of no use and consequence and similarly, the statement of P.W. 6, L. S. Verma, Photographer, who had photographed the site is also of no assistance to the prosecution case because accepting the evidence of these eye-witnesses as they are, the appellant's connection with the crime is not sought to be proved by this evidence. In view of the aforesaid discussion it appears probable that the dead body of the victim was located at an unknown hour

in an unknown manner and then the entire case has been set up with the help of the son Satnam Singh who had obviously no choice but to follow the lines suggested to him by the Investigating Officer. Once again a criticism has to be levelled that if the Investigating Officer himself happens to be the Officer discovering articles this itself goes to discredit the investigation. It has been stressed at times out of number that in case where the recovery or discovery is said to have been made at the instance of the accused, the investigation of the case should not be done by the said arresting officer. It is suggested that suitable steps will be taken by the authorities concerned to see that this infirmity is not continued any longer in future.

17. In view of the aforesaid discussion the prosecution case has not been proved beyond reasonable doubt against the appellant and he has to be acquitted of the charges framed. The appeal consequently succeeds and is allowed. The conviction and sentence of the appellant Karam Singh are set aside. He is in jail. He will be released forthwith unless wanted in any other case.

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