

Devendra Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-17-1989

Reported in : 1990CriLJ879

Judge : V.P. Mathur and ;M.M. Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 1691 of 1978

Appellant : Devendra Singh

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : P.N. Misra and ;Kesho Sahai, Advs.

Disposition : Appeal dismissed

Judgement :

M.M. Lal, J.

1. This is an appeal against a judgment and order dt. 7-6-1978 passed by Sri Rati Ram, the then V Addl. Sessions Judge, Etah by which he had convicted Devendra Singh appellant under Section 302, I.P.C. and has sentenced him to undergo imprisonment for life.

2. Munshi Lal deceased and Devendra Singh appellant were residents of the same place, i.e. village Mahua Khera, P. S. Sakit, District Etah. In the said village one Pandit Chandra Shekhar aged about 75 years was also living. He had married for the third time a young girl named Urmila. She was aged about 27 years at the time of the incident.

3. According to the case of the prosecution on 28-4-76 in the afternoon the appellant had misbehaved with aforesaid Smt. Urmila. On the same Munshi Lal deceased and his brother P.W. 2 Kashi Ram informant asked the appellant to desist from doing the same. The appellant felt it ill and went to his house to bring out a gun.

4. It is further the case of the prosecution that on 28-4-1976 at about 3 p.m. when Munshi Lal deceased and Kashi Ram P.W. 2 were present at their houses, the appellant, carrying a gun came there and after telling them that they were considering themselves to be great 'Panchas' fired a shot at Munshi Lal which hit him and he fell dead at the spot. This incident was seen by the witnesses. After committing this crime the appellant went away from the spot.

5. Kashi Ram went to Police Station Sakit, situate at a distance of eight miles, where he lodged the report of the incident on the same day at 10 p.m.

6. In support of its case the prosecution examined nine witnesses. P.W. 2 Kashi Ram informant is the real brother of Munshi Lal deceased. P.W. 3 Smt. Ram Sri is the wife of Kashi Ram P.W. 2. Both of them have given an eye-witness account of the incident. P.W. 1 Natthu and P.W. 4 Smt. Urmila were also eye-witnesses but they turned out to be hostile. Smt. Urmila P.W. 4 was examined to depose about the motive but she did not support the prosecution. P.W. 6 Gulam Navi was the clerk constable at Police Station Sakit. He had recorded the F.I.R. and had registered the case.

7. The investigation of this case was started by P.W. 9 Sundar Pal Singh. He had recorded the statement of Kashi Ram informant at the Police Station itself. On 29-4-76 he had prepared the inquest report of the dead body of Munshi Lal deceased. After sealing the dead body at the spot he had handed over the same to the police

constables to take it away for post-mortem examination. On 29-4-76 the I.O. recorded the statements of Kashi Ram, Natthu, Mishri and Smt. Urmila etc. He had also inspected the place of occurrence and prepared the site plan, thereof. The I.O. had found blood at the spot from where he took samples of blood stained and unstained straw. The investigation of this case was completed by P.W. 8 S.C. Vidyarthi.

8. The post-mortem examination of the dead body of Munshi Lal was made by P.W. 7 Dr. S. P. Prasad, the then Medical Officer District Hospital, Etah on 29-4-76 at 4 p.m. He found the following antemortem injury on the dead body of Munshi Lal deceased :

1. Gun shot wound of entrance 5 cm x 5 cm x chest cavity deep on the left side chest 6 cm away from the left nipple at 5 O'clock position. Scorching and blackening was present.

9. On internal examination the doctor found 18 small metallic shots embedded at the level of lower thoracic vertebrae. He also found ribs Nos. 1, 7 and 8 fractured under the aforesaid injury. Left pleural cavity was found perforated at various places, where five small metallic shots were also found. Digested food was found in small intestines and faecal matter was present in the large intestines. The stomach was empty. In the opinion of the doctor the death of Munshi Lal had taken place due to shock and haemorrhage as a result of aforesaid gun shot injury.

10. The appellant in his statement denied the case of the prosecution. He further stated that Munshi Lal deceased was a person of bad character, that he had teased Smt. Urmila on which Smt. Urmila complained to his (appellant's) father who had remonstrated Munshi Lal deceased, He also stated that on account of the said ill will he had been falsely implicated in this case. The appellant, however, did not produce any evidence in defence.

11. Learned trial Court has, however, believed the case set up and the evidence produced by the prosecution and has accordingly convicted and sentenced the appellant as aforesaid. Aggrieved by the same the appellant has filed this appeal.

12. We have heard learned counsel for the appellant and State and have perused the record carefully.

13. Learned counsel for the appellant has urged before us that the F.I.R. in this case was lodged with considerable delay and that on account of the same the case of the prosecution should not be believed. We find no merit in the said argument.

14. It is a matter of common knowledge that clocks time pieces are provided in the Police Stations and, therefore, when an FIR is recorded, the time of lodging the F.I.R. is recorded after seeing the said clock/time piece. Therefore, the time which is recorded in the chick report is the exact time. However, the same cannot be true regarding the incident. P.W. 2 Kashi Ram informant and his wife P.W. 3 Smt. Ram Sri, who have given the time of incident as 3 p.m., are illiterate villagers. Therefore, they would have obviously given the time of the incident by guess only. Any way, P.W. 2 Kashi Ram, informant, made it clear in the cross-examination that after the murder of his brother, i.e. Munshi Lal, he did not embrace the dead body but had run away for 1/2 furlong in order to save himself from the possible firing of the appellant. After getting the said information the defence did not enquire from P.W. 2 Kashi Ram regarding the interval after which he returned to his house. In our view, when Kashi Ram informant was scared and had run away, he would have taken some time to return to his house. Then P.W. 2 Kashi-Ram stated that although he had a cycle but the same was out of order. Therefore, he had-gone to the Police Station, situate at a; distance of 8 miles, on foot. Kashi Ram P.W. 2 was not so young. He was 45 years of age. His brother had been murdered. It would have naturally taken him long time to reach the Police Station. In this context we are of the opinion that there was no inordinate delay in lodging the F.I.R. in this case.

15. It is not a case where the incident may be stated to have taken place in the darkness. In our view when after covering of the distance of 8 miles on foot the informant was able to get the F.I.R. recorded at 10 p.m., it would not be said that the incident would have taken place in the darkness. Even the evidence given by the hostile witnesses tends to show that the incident had occurred during the day

time. P.W. 1 Natthu started with the time of 2-2.20 p.m. P.W. 3 Mishri stated in his evidence that when on the date of the incident he returned to his village after doing the day's work he learnt at about sunset that Munshi Lal had been murdered. This shows that the murder of Munshi Lal took place before and not after sunset. We are thus convinced that the murder of Munshi Lal took place during the day time and that there was no inordinate delay in lodging the F.I.R.

16. Learned counsel for the appellant has referred to us the F.I.R. in which it is stated that the incident took place at 3 O'clock in the evening and has urged that in the month of April it could not be evening at 3 p.m. and that the reference of evening shows that the incident had not taken place at 3 O'clock. We have failed to appreciate the said submission. The reference to the words '3 O'clock in the evening' do not indicate that the incident had taken place in the darkness. The said words clearly show that the incident occurred at 3 p.m.

17. Learned counsel for the appellant has taken us through the evidence of P.W. 4 Smt. Urmila and has tried to urge that when she had not supported the prosecution, the motive alleged by the prosecution could not be said to have been made out. It is true that P.W. 4 Urmila has not supported the case of the prosecution but she has disclosed some facts which indicate that there was ill will between the parties. Whereas Smt. Urmila P.W. 4 had denied that the appellant had misbehaved with her, she had stated that Munshi Lal deceased had teased her 5-6 times for which she had made complaints to the father of the appellant, who had remonstrated Munshi Lal deceased. It may be observed that Smt. Urmila was aged about 28 years whereas her husband was an old man of 75 years. The evidence of P.W. 4 Smt. Urmila further shows that on account of her there was some type of altercation between the parties. Therefore, we are inclined to believe P.W. 2 Kashi Ram that at about 1 p.m. on the date of the incident both he and his brother Munshi Lal deceased had asked the appellant not to quarrel with Smt. Urmila, on which, the appellant went to his house to bring a gun etc. Although motive is not very important where direct evidence is available, yet in this case we are satisfied that the prosecution was able to make out the motive alleged by it.

18. Learned counsel for the appellant has further urged before us that the ocular evidence produced by the prosecution was belied by the medical evidence. Learned counsel for the appellant has urged that whereas according to the witnesses this incident took place shortly after Munshi Lal had taken his lunch, the post-mortem examination of the dead body reveals that the stomach of Munshi Lal deceased was empty. We have gone through the evidence produced in this case. P.W. 2 Kashi Ram has stated in his evidence that both he and his brother Munshi Lal deceased had taken the meals at about sunrise on the date of the incident and thereafter did not take any food. If this version is accepted then there is no contradiction with the medical evidence. Learned counsel for the appellant has, however, referred to us the evidence given by P.W. 3 Smt. Ram Sri, who deposed that she had come out of the house after taking meals and that Munshi Lal deceased and her husband P.W. 2 Kashi Ram had left the house after taking the meals 1 1/2 hours prior to her. From these words learned counsel for the appellant wants to draw an inference that Munshi Lal deceased had taken the lunch shortly before the incident. We find no force in the said submission. If the evidence given by P.W. 3 Ram Sri is read with care, the same simply shows that on the date of the incident she had come out of the house after taking the meals and Munshi Lal deceased and her husband had left the house prior to her and that they had also taken the meals. She was neither inquired of nor she herself deposed at any place the time at which either she or Munshi Lal took the meals. Therefore, it cannot be said that ocular evidence was contradicted by | the medical evidence.

19. Learned counsel for the appellant has also urged before us that the nature of the fire arm injury sustained by Munshi Lal deceased was such as could be caused not by a gun by (but?) by the pistol. We find no merit in the said argument. Not a word about it was put to the doctor, who conducted the post-mortem examination. Any way the facts that the doctor had recovered as many as 23 metallic shots from the dead body, that only one shot had been fired, that there was both scorching and blackening and that the wound of entrance was 5 cm x 5 cm x chest cavity do not go to show that the said shot was not possibly fired from a gun.

20. Learned counsel for the appellant has further urged before us that when the eyewitnesses, namely P.W. 1 Natthu and P.W. 5 Mishri, had not supported the case of the prosecution but had turned hostile it would not be safe to rely upon the interested witnesses like P.W. 2 Kashi Ram and P.W. 3 Smt. Ram Sri. We find no substance in the said submission. This incident had taken place in broad day light in front of the house of P.W. 2 Kashi Ram and P.W. 3 Ram Sri. They were natural witnesses. Even the hostile witness P.W. 1 Natthu had to admit that these witnesses were present at their houses. There could have been no difficulty for these two witnesses to identify the assailant. They would have been the last persons not to name the real assailant but to falsely implicate an innocent man in this case. Besides, we have gone through their evidence. Their evidence with regard to the incident is consistent. There is no contradiction in their evidence with regard to any material detail of the incident. Therefore, we are of the view that the learned Sessions Judge has rightly relied upon these two witnesses.

21. Learned counsel for the appellant has referred to us the evidence of P.W. 2 Kashi Ram and has tried to urge that there was some discrepancy and variation regarding the particular place where he was standing at the time of the incident. It is true that this witness had at one place stated that at the time of the incident he was standing in front of the door of his house and at another place he had stated that he was sitting at the door of his house and that some time he used to place the cut crop at the threshing floor and that when he used to get tired he used to sit down. It may be noted that the 'Khalian' was placed in the front of the house of the informant and, therefore, if it is stated that he was sitting or standing either at the door or in front of the door of his house at any particular time, the same did not belie this witness. This simply means that P.W. 2 Kashi Ram was present nearabout his 'Khalian' in front of the door of his house when this incident occurred.

22. Learned counsel for the appellant has taken us through the evidence of P.W. 2 Kashi Ram and P.W. 3 Smt. Ram Sri as also the evidence given by Sri S. C. Vidyarthi P.W. 8 I.O. and has pointed out a contradiction regarding the fact as to whether the I.O. had reached the place of occurrence on the same day or on the next day. It may be noted that the I.O. had stated that he had gone to the place of

occurrence on the same night but because there was no arrangement for light hence he could not do anything on the same day but prepared the chick report and conducted the enquiry in remaining respect on the next day.

23. As against the same the two eyewitnesses examined in this case, i.e. P.W. 2 Kashi Ram and P.W. 3 Smt. Ram Sri, have stated that the Investigating Officer had not come to the place of occurrence on the same night but had come on the next day. In our opinion the said discrepancy in the evidence recorded after a lapse of more than one year was not material specially when the Investi-gating Officer had not done anything at the place of occurrence on the same night. Anyway, we are of the opinion that when the evidence given by P.W. 2 Kashi Ram and P.W. 3 Ram Sri is true in the main they could be safely relied upon.

24. In view of the discussions made above, and for the reasons stated, we are of the opinion that the appellant has been rightly found guilty and there is no force in this appeal and the same is liable to be dismissed.

25. Accordingly this appeal is dismissed. The conviction and sentence of Devendra Singh appellant under Section 302, I.P.C. is upheld. He is on bail. He shall be taken into custody forthwith so that he may serve out the sentence of life imprisonment imposed on him under Section 302, I.P.C.