

Kunwar Sen Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-21-2000

Reported in : 2000CriLJ4719

Judge : J.C. Gupta and ;S.K. Agrawal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

Appeal No. : Criminal Appeal No. 2032 of 1980

Appellant : Kunwar Sen

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : N.P. Midha and ;C.S. Saran, Adv.

Disposition : Appeal allowed

Judgement :

J.C. Gupta, J.

1. Appellant Kunwar Sen has been convicted under Section 302, IPC and sentenced to imprisonment for life vide judgment and order dated 26-8-1980 passed by the then III Addl. Sessions Judge, Mairipuri in S.T. No. 608 of 1979, for committing the murder of Rajvir.

2. Deceased Rajvir was a resident of village Akola, Appellant Kunwar Sen is resident of village Bhagner. These two villages adjoin each other. Kharja Nala separates them.

3. The case of prosecution in brief is that on 24-9 1979 the first informant Lala Ram was giving bath to his bullocks at about 12 noon in the aforesaid Kharja Nala near the culvert. Rajvir deceased also arrived on the culvert from the side of Bhagner. He was followed by appellant Kunwar Sen and his son Man Singh. They were accusing Rajvir of stealing his maize . The deceased felt offended of this accusation which resulted in exchange of abuses and hot words. It is alleged that appellant Kunwar Sen then fired upon Rajvir and the shot hit in the lumber region of his stomach. After receiving the fire arm injury the deceased ran for some distance and ultimately fell down in the 'usar' near the field of Raghuveer. Both the accused persons then fled away towards village Bhagner. This incident was also witnessed by Mahesh Chandra, Hori Lal and Indrapal.

4. Lalaram, the first cousin of the deceased, went near Rajvir and found him alive. Leaving Rajveer there bleeding he went to his house and got F.I.R. Ex. Ka 1 written by Mahesh Chandra and lodged the same at police station Eka on the same evening at 5.30 p.m. On the basis of this report constable Chandra Pal Singh prepared check report Ex. Ka 3 and registered the case under Section 307, IPC in the general diary, extract of which is Ex. Ka 4. S.I.R.S. Agnihotri, PW 6, took up investigation . When he reached the place of occurrence, he found Rajvir dead. The inquest report Ex. Ka 8 and other necessary papers were prepared and the dead body was sent to mortuary for post mortem examination. The Investigating Officer also interrogated the witness, prepared site plan Ex. Ka 13, took sample of blood stained and plain earth and prepared its memo Ex. Ka 7. The case was also converted under Section 302, IPC through GD entry Ex.Ka 6. After completion of investigation Kunwar Sen and his son Man Singh were charge sheeted through Ex. Ka 14.

5. Dr. P.K. Jain PW 4 conducted autopsy on the dead body of Rajveer on 15-9-1979 at 3.45 p.m. and prepared post mortem report Ex. Ka 1 . Following ante mortem injury was found :

Fire arm wound of entry of 2 cm x 3 cm. x cavity deep on the right side of abdomen (lumber region), 18 cm away from umbilicus. Loops of intestines were coming out through the wound. Margins were inverted and lacerated. Blackening present. Direction of the wound was right to left.

In the opinion of the doctor death was caused due to shock and hemorrhage as a result of ante mortem injury.

6. At the trial the prosecution in order to establish its case examined six witnesses namely Lala Ram PW 1 Mahendra Singh, PW 2, Hori Lal PW 3 , Dr. P.K. Jain PW 4 constable Chandra Pal Singh PW 5 and S.I.R.S. Agnihotri PW 6.

7. On an analysis of evidence the learned Sessions Judge discarded the testimony of PW 3 Hori Lal but placing reliance on the evidence of PW 1 Lal Ram and PW 2 Mahendra Singh and other evidence on record, the learned Sessions Judge found appellant Kunwar Sen alone guilty of causing murder of Rajvir. Co-accused Man Singh was however, acquitted with the finding that he had no common intention with his father of committing the crime in question.

8. We have heard learned counsel for the appellant and learned A.G.A. for the State.

9. Learned counsel for the appellant submitted before us that the alleged eye witnesses examined at the trial PW 1 Lala Ram and PW 2 Mahendra Singh were inimical and partisan besides being chance witnesses and were not capable of being relied upon. It was argued that their conduct at the scene of occurrence was most inconsistent with natural human conduct and morally reprehensible, that makes their presence highly doubtful. It was also submitted that their evidence is wholly inconsistent with the medical evidence. Learned counsel also argued that the F.I.R. is a suspicious document and has been ante timed and thus has no corroborative utility. In his opinion it was a blind murder.

10. The factum of Rajvir dying an unnatural death on account of a fatal fire arm injury has neither been disputed nor challenged before us by the learned counsel for the appellant. This fact otherwise is also fully established from the statements

of the prosecution witnesses including Dr. P.K. Jain, PW 4, coupled with post mortem report Ex. Ka 1. Thus undoubtedly it is evident from the evidence on record that Rajvir was murdered. However, it has to be examined whether the murder of Rajvir was committed by the present appellant Kunwar Sen in the manner as alleged by the prosecution.

11. The success of prosecution for proving the guilt of the appellant depends upon the evidence of three witnesses namely Lala Ram PW 1, Mahendra Singh PW 2 and Hori Lal PW 3 who claimed themselves to be present at time of murder of Rajvir.

12. Dead body of Rajvir was found in the 'usar' near the field of Raghuvir. This place is shown by letter 'C' in the site plan Ex. Ka 13. According to the prosecution case the deceased sustained only one fire arm injury on the right side of abdomen (lumbar region and at the time Rajvir suffered that injury he was on the culvert of Kharja Nala which was north-south. Village Akola was situated towards east and village Bhagner * in the west of the culvert. Appellant and his son Man Singh who was also tried along with the appellant were residents of village Akola. This village was removed by about 5-6 furlongs from village Bhagner. The culvert lies in between these two villages. Thus even according to the prosecution case the incident occurred at an isolated place far removed from village abadi.

13. PW 1 Lala Ram is cousin brother of deceased Rajvir. He stated that on the date of incident he was present in Kharja Nala in the south of culvert and was giving bath to his bullock. At about 12 noon Rajvir deceased arrived on the culvert from village Bhagner side. Accused Kunwar Sen and his son Man Singh followed him. They hurled abuses and made accusation against Rajvir of stealing their maize crop. Rajvir denied the charge whereupon exchange of abuses and hot words ensued between Rajveer and accused persons. Kunwar Sen all of a sudden fired upon Rajvir from a country made pistol which hit him in his lumbar region. After being struck by the shot Rajvir ran towards south east and fell down in the usar near the field of Raghvir. Both the accused persons then ran away towards Bhagner village. The incident was also witnessed by Mahendra Singh PW 2, Hori Lal PW 3 and Indrapal. It has also been stated by him that after the accused had

fled away, the witnesses came near Rajvir and found that he was alive. Instead of making any attempt to remove Rajvir for providing medical aid, he went to his village and got F.I.R. Ex.Ka 1 scribed by Mahesh Chandra Sharma and then from there he straight away went to police station and lodged the FIR on the same evening at 5.30 p.m. It may be mentioned here that the police station was about 9 kilometres from his village. When he came . back at the scene of occurrence at about 9 p.m. he found Rajvir dead. In cross examination he stated that there was a field of appellant Kunwar Sen in village Bhagner which had maize crop in the middle while Jwar was sown all around. This field was about two furlongs away from the Kharja Nala and was visible from the Nala. The Nala was about five feet deep .When accused persons arrived at the scene of occurrence Rajvir was talking to his witness while sitting on culvert. When the shot was fired on Rajvir by Kunwar Sen his face was towards east and accused was removed by 5-6 paces from the deceased. At the time of firing Rajvir was on the left side of Kunwar Sen.

14. PW 2 Mahendra Singh stated that he was going from his village Akola to village Bhagner. He repeated the facts as stated by PW 1 Lala Ram. It has also come in his evidence that Rajvir died in his presence at about 3.30 p.m. In cross examination he stated that he was going to Ramvanshi tailor to collect clothes which he had given for stitching about four days ago. However, he admitted that he did not go to collect clothes after the incident. According to him also Kunwar Sen fired from a distance of 5-6 paces. He however, contradicted PW 1 Lala Ram by stating that Kunwar Sen was in front of the deceased and not on the right side or left side of the deceased. He further stated that at the time of firing Rajvir was on the culvert whose floor was of 'pucca' bricks. He further stated that no pellets, ticklis or blood fell on the floor. After receiving fire arm injury Rajvir ran from the culvert and fell down near the field of Raghvir after covering a distance of about 50 paces (75 feet) but no blood dropped in between the culvert and the place where Rajvir fell down. It is further stated by him that he had shown the place to the Investigating officer from where he witnessed the incident. However no such place has been shown by the I.O. in the site plan Ex. Ka 13 and the I.O. stated that the witness never showed him that place.

15. P.W. 3 Hori Lal stated that he was going towards Kharja Nala in search of his cattle. After the incident he however did not go for that purpose and left for his village. He did not stay on the spot either and further stated that he did not know at what time Rajvir breathed his last. He admitted that no one made any attempt to take injured Rajvir to his village. He further admitted that he was interrogated by the Investigating officer after 10-15 days of the incident. As per I.O. his statement was recorded by him on 10-10-1979. He further admitted that before he was interrogated by the Investigating Officer, he did not disclose to any person the fact of his having witnessed the incident.

16. As per the testimony of the aforesaid witnesses Rajvir was shot at the culvert and only a single shot was fired on him and after receiving the fire arm injury Rajvir ran to a distance of about 50 paces before he fell down in the 'USAR' near the field of Raghuvir. Dr. P.K. Jain PW 4 who conducted post mortem examination stated that in all possibility the deceased after receiving the ante mortem fire arm injury could not have run for more than 10-20 paces. It is also noteworthy that not even a single drop of blood was found on the 'pacca' floor of the culvert where the deceased sustained fire arm injury or at any point right from the culvert up to the place where Rajvir fell down. The witnesses in clear words have admitted that no blood dropped in the way. The ante mortem fire arm injury was cavity deep and loops of intestines were coming out through the wound. Peritoneum was grossly lacerated below the injury and cavity contained about 30 ounces of fresh and clotted blood. Mesentry was grossly lacerated at pieces. Ascending and transverse colon were also grossly lacerated. Cause of death was haemorrhage. Having regard to the nature of injury and the opinion expressed by Dr. Jain it becomes highly doubtful that Rajvir could have run for a distance of about 50 paces after receiving the fire arm injury and not even a single drop of blood would have fallen down on the ground from the wound. Thus not only the presence of the witnesses is rendered doubtful but it is also difficult to accept the prosecution story that Rajvir sustained fire arm injury when he was on the culvert of the Nala. Perhaps the place was changed for the reason that the place where dead body of Rajvir was found, was surrounded by Jhars (shrubs) of Babool and was not visible to passers-by.

17. All the three witnesses in a parrot like manner have stated that when Kunwar Sen fired on Rajvir he was removed by 5-6 paces (12-15 ft) from him. Dr. P.K. Jain has been very specific in opinion that the shot must have been fired from a distance of less than four feet. He has further 'opined that the fire must have been made from right side of the deceased as direction of that shot was inward and from right to left. However, according to PW 2 Mahendra Singh, Kunwar Sen was in front of the deceased and not in his right or left side. If the shot was fired from the front side, direction of the wound would not have been from right to left. As already pointed out above the place from where the witnesses had seen the occurrence has not been shown by the I.O. in the site plan because as per his statement he was not told of this fact by the witnesses. All the three witnesses were chance witnesses and no plausible explanation has come in the evidence which could convince us of their presence at the scene of occurrence. The medical discrepancy which we have pointed out above further makes their presence doubtful. In addition to these infirmities there is a glaring circumstance which creates a heavy doubt if these witnesses were actually present at the time of occurrence. PW 1 Lala Ram was a close relation of the deceased. He stated that when he along with PW 2 Mahendra Singh and PW 3 Hori Lal came near Rajvir after he had fallen down, they found him alive. By that time accused persons had already run away. Therefore, there was no question of their having any danger at the hands of accused persons. P.W. 1 Lala Ram himself admitted that he left Rajvir bleeding at that very place and went to his village where he first got the F.I.R. scribed and then went to lodge the same at the police station which was removed by 9 kilometers. This conduct of P.W. 1 in leaving his brother on the spot profusely bleeding without making any effort for providing him immediate medical aid in order to save his life was most unnatural and preposterous. If the incident had occurred in his view and Rajvir was still found alive, in normal course his first anxiety would have been to save life of Rajvir particularly when this witness was not a stranger but was a close relation of the deceased. It is also in his statement that he remained at the police station up to 7 P.M. and came back at the place of incident at about 9 P.M. Thus almost for nine hours, he could not be expected to have remained indolent without even caring to know if any medical aid had been provided to Rajvir. His conduct in leaving Rajvir on the spot to bleed to death is so

abominable and incongruous that we are unable to swallow the same and yet accept his claim of having witnessed the incident which was a hit and run affair at an isolated place. Mahendra Singh P.W. 2 is said to have stayed on the spot with injured Rajvir. He stated that Rajvir died in his presence at about 3.30 P.M. That means Rajvir remained alive for more than three hours after he was fired at. It is ridiculous to accept that this witness would allow Rajvir to die in his presence without being medically attended to for more than three hours. P.W. 3 Hori Lal also admitted that they did not make any attempt to shift Rajvir to his village. To us it looks most ridiculous that though the incident was witnessed by four persons of the own village of the deceased including his own cousin yet none tried to take him to his village or to any other place for medical aid though they had found Rajvir alive and he remained so for more than three hours. This unnatural, indolent and loathsome conduct of the witnesses leads us to a reasonable inference that in all probability these witnesses had not witnessed the incident. The defence argument does seem to carry weight that when the dead body of Rajvir was found at an isolated place late in the evening, the First Information Report was lodged after manipulation and consultation and the same was ante-timed. In the F.I.R. it was stated by the First Informant that he has come to police station to lodge the report leaving Rajvir alive on the spot. According to Lalaram P.W. 1 he got the report scribed in his village, if it was so the above averment that he has come to police station to lodge the report leaving Rajvir alive on the spot could not have found place in the report. The report appears to have been prepared after reaching police station. It has also been pointed out by the learned counsel for the appellant that in inquest report a mention is to be made regarding registration of case at the police station. It is stated in the inquest report that case crime No. 151 under Section 302 I.P.C. has been registered on 24-9-1979. Inquest report was undisputedly prepared on 25-9-1979 at 6.55 A.M. and completed at 8 A.M. on the same day. The F.I.R. as per police papers was registered on 24-9-1979 under Section 307 I.P.C. If copy of F.I.R. was with the Investigating officer when he prepared inquest, inquest report could not have contained the recital that case crime No. 151 has been registered at police station under Section 302 I.P.C. on 24-9-1979 because case under Section 302 I.P.C. was converted only on 25-9-1979 after the return of the Investigating officer to the police station. This

discrepancy creates a reasonable doubt if F.I.R. had come into existence before the preparation of inquest report.

18. On a careful analysis of the evidence on record, we find that the presence of three eye witnesses at the scene of occurrence, who claimed their presence by a sheer chance, is highly doubtful for various reasons which we have already assigned above. The First Information Report is also a suspicious document and has no corroborative value. The resultant effect of all the discussion made above is that the prosecution has not been able to establish its case beyond reasonable doubt and the appellant is entitled to get benefit of such doubt.

19. Appeal is allowed. The order of conviction and sentence dated 26-8-1980 passed by the then III Additional Sessions Judge. Mainpuri in Sessions Trial No. 608 of 1979 is set aside. The appellant is acquitted of the offences charged for. He is on bail, he need not surrender, his bail bonds are cancelled and sureties discharged.

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