

Surinder Kumar Vs. State of Punjab

Surinder Kumar Vs. State of Punjab

SooperKanoon Citation : sooperkanoon.com/634455

Court : Punjab and Haryana

Decided On : Jan-10-1997

Reported in : 1997CriLJ2872

Judge : H.S. Brar; and T.H.B. Chalapathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No.152 D.B. of 1994

Appellant : Surinder Kumar

Respondent : State of Punjab

Advocate for Def. : S.S. Dhaliwal, DAG.

Advocate for Pet/Ap. : R.S. Checma, Sr. Adv.; and M.J.S. Waraich, Adv.

Judgement :

Harphul Singh Brar, J.

1. This is an appeal against the

JUDGMENT / ORDER

dated 9-2-1994 of the learned Sessions Judge, Amritsar vide which he has convicted Surinder Kumar Under Section 302, IPC and has sentenced him to

imprisonment for life and to pay a fine of Rs. 2,000/- in default of payment of fine he was ordered to undergo R.I. for six months.

2. Prosecution story unfurled by Avinash Rani in the First Information Report reads that she was resident of Bhikhiwind. One of her sons namely Sukhjiwan Kakkar was a doctor in subsidiary Health Centre, Badowal, District Ludhiana. Her husband, Balram used to run a cloth shop at Bhikhiwind itself. On 23-5-1992, at about 8-30 p.m. her husband was coming back to home after closing the shop; when he reached near the door of the house he saw that Surinder Kumar son of Wazir Chand who was their neighbour had thrown the garbage in front of the door of their house. Her husband told Surinder Kumar that he had asked him several times not to throw garbage there but instead of refraining from doing so he intentionally threw garbage there. Surinder Kumar got enraged and told her husband that he would throw the garbage there only. Soon thereafter Surinder Kumar started grappling with her husband in her presence. So much so that he started beating her husband with the stick after snatching the same from her husband, he usually carried in his hand being of old age. She tried her best to keep him away. In the meantime, Kuldip Kumar son of Bhagwan Dass Khatri and Praveen Kumar son of Om Parkash Khatri, resident of village Bhikhiwind also came to the spot. In their and her presence, Surinder Kumar pushed her husband with both the hands as a result of which he struck against a wall and fell down on the ground. While he was lying fallen Surinder Kumar gave kick blows to her husband on his chest and abdomen. She raised raula saying 'Mar dita mar dita (killed-killed)', as a result of which Surinder Kumar ran away after throwing the stick at the spot. Kuldip Kumar, Praveen Kumar and she lifted her husband from the street and laid him on a cot inside the house. He became unconscious and died there. The cause of grudge was that Surinder Kumar being their neighbour used to throw garbage in front of their house to whom they forbade many times. That day also he was checked from throwing garbage there. In retaliation thereof, Surinder Kumar had inflicted injuries to her husband; as a sequel to which he had died. Thereafter, she rang up her son who was a doctor at Ludhiana. He had come at night. Since she kept on waiting for him and was awe-struck so she did not come out of the house nor did she allow Praveen Kumar and Kuldip Kumarto go out of the house. She had left Praveen Kumar and Kuldip Kumar at the spot to guard the

dead body of her husband: She along with her son Doctor Sukhjiwan Kakkar was going to inform the police when Jagroop Singh, ASI, PW. 8, met them. ASI, Jagroop Singh recorded her statement and she thumbmarked the same in token of its correctness. ASI, Jagroop Singh made his endorsement Ex. PW. 8/A and sent the ruqa for registration of formal FIR Ex. PW. 8/B. In the meantime, ASI, Jagroop Singh had himself proceeded to the house where he found the dead body of Balram lying at the courtyard of his house. From near the spot, the Investigating Officer took into possession walking stick Ex. P. 1 through recovery memo. Ex. PW. 7/A which was attested by Ram Rachhpal and Ramgopal. He also prepared injury statement Ex. PW. 8/B and after the dead body had been identified by Ramgopal, Ram Rachhpal and Roshan Lal he prepared the inquest report Ex. PW. 8/C in which statements of Ram Rachhpal, Roshan Lal, Praveen Kumar and Dinesh Kumar were recorded. He also prepared rough site plan Ex. PW. 8/D with correct marginal notes and sent the dead body to the mortuary through Constables Surindersingh and Gurpreet Singh. On 24-9-93, these witnesses had handed over the clothes of the deceased and the copy of the postmortem report which were taken into possession through recovery memo. Ex. PW. 8/E. After recording the statements of the witnesses, the accused was arrested. After completing the investigation, challan was put in the Court of the Ilqa Magistrate who committed the case for trial before the Court of Session. Consequently, the trial Court convicted and sentenced the appellant as stated above.

3. In order to prove its case, the prosecution examined as many as six witnesses. Affidavits of Constable Gurpartap Singh and MHC Kulwant Singh were tendered into evidence and S.I. Suringer Singh was given up as unnecessary.

4. P.W. 1, Dr. Sham Lal Gupta who conducted the post-mortem examination on the dead body of Balram on 24-5-1992 at 1-45 p.m., found the following injuries on the dead body :

1. Reddish abrasion 1 cm x 0.75 cm under surface of chin. It was 5 cm below and right angle of mouth on right side. It was superficial.

2. Reddish brown abrasion 1.25 cm x 7 cm on back of right elbow joint. It was superficial.

3. Reddish brown abrasion 2 cm x 5 cm on right side of chest lower part lateral aspect. It was 7 cm below and lateral to right nipple. On dissection it was superficial.

4. Defused swelling 3 cm x 2 cm on occipital region of scalp. It was 8 cm distance from right ear. On dissection there was subcutaneous haemorrhage underneath skin. There was hair line fracture 2.5 cm in length. On further dissection after removal of the skull bone there was subdural haematoma was present.

5. All other organs were healthy. In his opinion cause of death was due to subdural haematoma on vital organs due to injury No. 4 which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature and caused by blunt weapon. Probable time that elapsed between injuries and death was within one hour and between death and postmortem it was about 12 to 24 hours. He proved Ex. PW. 1/A the correct carbon copy of the post-mortem report as well as Ex. PW. 1/B the pictorial diagram showing the seats of the injuries. Ex. PW. 1/C which was the inquest report was received by him along with the dead body and Ex. PW. 1/D was the request for post-mortem examination.

6. P.W. 2, is Rishi Ram, Draftsman who prepared the scaled site plan Ex. PW. 2/A with correct marginal notes.

7. P.W. 3, Avnash Rani, is the widow of Balram, deceased, and is alleged eye-witness. P.W. 4, Kuldip Kumar is also another eye-witness of the occurrence.

8. P.W. 7, Ram Rachhpal is the witness of recovery memo. Ex. PW. 7/A vide which walking stick Ex. P. 1 was taken into possession.

9. P.W. 8, is the Investigating Officer, ASI Jagroop Singh who took into possession the walking stick Ex. P.1 vide recovery memo. Ex. PW. 7/A which was attested by Roshan Lal and Ram Gopal, PWs.

10. We have heard the learned counsel for the parties and have gone through the record with their assistance.

11. Learned counsel for the appellant submits that there is an unexplained delay in lodging the First Information Report; the presence of alleged eye-witnesses is doubtful at the time of occurrence, and the alleged recoveries are fake. He lastly submits that in any case the offence does not fall under Section 302, IPC, at the most it falls under Section 304, Part-I.

12. On the other hand, learned counsel for the State submits that the delay in lodging the FIR has been explained. The presence of eye-witnesses is natural and is established on the record. Recoveries are proved on the record and a clear-cut case under Section 302, IPC is made out against the accused.

13. The undisputed facts are that altercation had taken place between Surinder Kumar, convict appellant, on the one hand and Balram, deceased, on the other hand with regard to the refuge which was lying in front of the house of Balram. The altercation between the two is proved even from the statements of Naresh Kumar, Jagdish Raj, D.W. 4 and D.W. 6 respectively. These witnesses have deposed in their statements at the trial as defence witnesses that during the altercation while Jagdish Raj, DW. 6 had taken Surinder Kumar, accused away, Balram had been requested by Naresh Kumar to go inside his house. Thereafter, according to the defence, Balram had felt uneasy and he fell down on the ground near the door of the room of his house and he was put on a cot. Even doctor Vijay Kumar, DW. 3, has deposed that he had administered an injection in the chest in order to revive Balram who had died before his arrival at his house. The said doctor also admitted that he did not examine the deceased for any injury and thus he could not say whether Balram had any injury on his person or not.

14. The divergence of opinion, thus, between the version put-forth by the defence and the prosecution was regarding the manner in which the injuries found on the person of Balram were caused. According to the defence version the reasons of death of Balram are other than manhandling at the time of altercation but the two eyewitnesses produced by the prosecution asserted at the trial that in their presence some injuries had been caused to the deceased by Surinder Kumar with the walking stick which belonged to Balram and thereafter he had pushed the deceased, on account of which push the back of the head of the deceased had

struck against the wall and he had fallen down.

15. After perusing the injuries on the body of the deceased and going through the evidence of the doctor Sham Lal Gupta, P. W. 1, we are of the view that injury No. 4 which was the cause of death of the deceased was the result of push which was given by the convict-appellant to the deceased when the altercation ensued between them. It is proved on the file by both the eye-witnesses, PW. 3 and PW. 4 that in their presence the accused pushed the deceased; as a result of which he struck his head against the wall and fell down and this statement of the eye-witnesses has been corroborated by the medical evidence on the file. The doctor has admitted in his cross-examination that possibility of injury No. 4 on the back of the scalp of the deceased being caused by a fall cannot be ruled out. The subcutaneous haemorrhage underlying injury No. 4 was also the result of the same injury. According to the doctor injuries Nos. 1, 2 and 3 were superficial, abrasions on the chin back of right elbow joint and on right side of chest. According to the doctor, injuries Nos. 1 and 3 could also be caused by a similar fall as in case of injury No. 4 and injury No. 2, according to the doctor, could be caused by a result of the striking of the chin of the deceased against the head of the bed post.

16. The sworn testimony of PW-3, Avinash Rani, the widow of the deceased is very much corroborated by Kuldip Kumar another eyewitness so far as this fact is concerned that the accused gave a push to the deceased as a result of which he struck his head against the wall and fell down; and as stated above their evidence finds corroboration from the medical evidence also. Infliction of other injuries with a walking stick and by kicks on the person of the deceased ascribed to the accused by the eye-witness (PW 3) seems to be an exaggeration or due to the fact that admittedly the eyesight of PW. 3 from one eye was very weak and particularly when appreciated in view of the medical evidence on the record, these injuries could be the result of a fall.

17. The delay in lodging the FIR is very much explained. It was night time and the old widow had waited for her son to reach for recording the matter to the police. The delay is, thus, explained. However, even if there is some delay in lodging the

FIR, it will not cause a dent in the prosecution story, particularly, when the eye-witness account of the occurrence is available. Thus, from the evidence on record it is proved that the accused Surinder Kumar during the altercation between himself and the deceased gave a push to Balram, deceased, as a result of which his head struck against the wall and he received injury No. 4 which was the ultimate cause of his death.

18. Now we have to determine as to what offence has been committed by the appellant.

Exception 4 to Section 300 reads as under:

Exception 4: Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

19. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.

20. In the present case, the deceased told Surinder Kumar, accused, that he should not throw refuge in front of his house to which Surinder Kumar, accused,

replied saying that he would throw the refuge and on this, an altercation ensued between them. Surinder Kumar accused gave a push to Balram-deceased as a result of which his head struck against the wall due to which he received an injury which unfortunately proved fatal. It was a sudden fight in the heat of passion upon a sudden quarrel and without premeditation. It is also not borne out from the record that the accused took any undue advantage or acted in a cruel or unusual manner while inflicting the injury. Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. Under these circumstances, we think it proper to convict the accused under Section 304, Part-I, IPC and not under Section 302 of the IPC. We order accordingly.

21. In the result, this appeal partly succeeds. The order of conviction and sentence passed under Section 302, IPC is set aside and the fine, if paid, is directed to be refunded. The appellant is convicted under Section 304, Part-I of the IPC and is directed to suffer rigorous imprisonment for six years.