

Gulab Singh Vs. the State

Gulab Singh Vs. the State

SooperKanoon Citation : sooperkanoon.com/682582

Court : Delhi

Decided On : Apr-05-1995

Reported in : 1995IIAD(Delhi)129

Judge : P.K. Bahri and; S.D. Pandit, JJ.

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

Appeal No. : Criminal Appeal No. 62 of 1991

Appellant : Gulab Singh

Respondent : The State

Advocate for Def. : P.S. Sharma, Standing Counsel (Criminal) and ; Siddharth Sharma, Adv.

Advocate for Pet/Ap. : Mohd. Nasir and; Mohd. Saleem, Advs

Judgement :

P.K. Bahri, J.

1. Gulab Singh s/o Shri Jiwan Lal, presently aged about 45 years, has been convicted of an offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life for having caused the murder of one Khushal Chand on August 17, 1988, at about 10.30 P.M. vide judgment dated

April 9, 1991, of an Additional Sessions Judge, Delhi. He has filed the present appeal challenging his conviction and the sentence.

2. Facts as alleged by the prosecution, in brief, are that Khushal Chand was residing with his wife Asha Rani and the Children in house No. A-1/95. Sector IV, Rohini, at the relevant period. On August 17, 1988, Khushal Chand had gone to PW4 Bhudev Singh, who was vending fruit juice in Avantika on the footpath at 10.30 P.M. and has procured two glasses of fruit juice from PW4 and thereafter leaving his two wheeler scooter at the said place and walked across 70-80 feet wide road and came to the business place of appellant, who was having fruit shop on the footpath. There took place some dispute between the deceased and Gulab-appellant with regard to the price of the apples which the deceased wanted to buy and it is the case of the prosecution that the appellant in that quarrel picked up the knife and stabbed Khushal Chand repeatedly and five incised injuries were found on the person of Khushal Chand. Khushal Chand thereafter on his two wheeler scooter came to his house and had fallen on the ground just outside the door of his house. PW1 Dharam Chand and PW 10 Nasim Raza, two neighbours, took Khushal Chand to St. Stephan Hospital where they got him admitted at 12.15 A.M. The doctor who prepared the medico legal certificate had given a message to the police station at about 12.20 A.M. which was recorded at Serial No. 3A of the Daily Diary of Police Station Mangol Puri and SI Hari Singh PW16 along with Constable Manohar Lal PW 13 reached the hospital. The Investigating Officer obtained the medico legal certificate of Khushal Chand and the doctor attending on Khushal Chand declared him unfit for giving any statement. The Investigating Officer did not find any eye-witness but as the injuries of Khushal Chand were declared to be dangerous in nature, he had sent the rukka for registration of a case under Section 307 of the Indian Penal Code against unknown assailant. He had not met any of the witnesses at the hospital. Rukka is Ex. PW 14/A which was sent with endorsement Ex. PW/16A and the FIR was recorded at the Police Station at 2.40 A.M. on August 18, 1988, copy of which is Ex. PW 14/B.

3. According to the prosecution, Khushal Chand became fit to give statement on August 20, 1988, and the Investigating Officer recorded his dying declaration Ex. PW/16/C which was got signed from Khushal Chand. Khushal Chand had given

the narration of facts, as noticed above and had named the appellant as his assailant. From the hospital the Investigating Officer had come to the place of occurrence and had recorded the statements of PW 4 Bhudev Singh and PW 10 Nasim Raza and had prepared the sketch of the place of occurrence on the pointing out of the said two witnesses which is Ex. PW 16/B. No blood was found at the place of occurrence as according to the Investigating Officer it had rained in the night on that day. Photographs also were taken which are Exs. PW 16/A to 6 showing the improvised shop of appellant and the counter of Bhudev where they were carrying on their respective businesses.

4. Khushal Chand remained alive till September 2, 1988, and on his succumbing to the injuries the case was converted from under Section 307 to Section 302 of the Indian Penal Code. The appellant had surrendered in court on October 7, 1988, and he had himself moved an application seeking that a test identification parade be got held for getting him identified from the eye-witnesses, if any, in such a Parade. The Metropolitan Magistrate had recorded in his orders that appellant had appeared in muffled face with a counsel and he had fixed October 12, 1988, as the date for holding test identification parade in the jail. On October 12, 1988, the appellant declined to participate in any such parade on the ground that he had been shown to the witnesses by the Investigating Officer earlier.

5. The learned Additional Sessions Judge has brought home the offence to the appellant on the basis of the dying declarations given by Khushal Chand to his widow Asha Rani PW5 and also to the Investigating Officer and had sought corroboration from the statements of Dharam chand PW1 and Nasim Raza PW10 and on certain facts from the statement of PW4 Bhudev. He had also placed reliance on the statements of PW2 Jagjit Singh, brother-in-law of deceased (wife's brother) and Gulshan PW3, real brother of the deceased, as they also deposed about deceased having made a dying declaration to them when deceased became fit for giving statement.

6. The learned counsel for the appellant has vehemently argued that there are serious discrepancies appearing in the statements of the witnesses which would lead to inference that in fact, no dying declaration has been made by the deceased

at any time naming the appellant as the assailant. He has urged that the so-called eye-witness of the occurrence PW4 has turned hostile and had in court not claimed that he had seen the appellant stabbing the deceased. He has also urged that PW 4 has admitted that there was no electric light available at the time of occurrence and keeping in view the spot as is brought out in the site plan and the sketch it is not possible that PW4 could have, while sitting at his shop, seen the occurrence which allegedly took place near the shop of the appellant because the distance between the two shops is about 70-80 feet and in the darkness there was no possibility of Bhudev seeing the occurrence so as to be in a position to identify the assailant. He has also urged that it is not proved that the injuries inflicted on the person of Khushal Chand were sufficient in the ordinary course of nature of cause death of Khushal Chand as PW8 Dr. D. N. Sharma, who performed the post-mortem on the dead body of Khushal Chand is silent on his aspect of this case.

7. The learned counsel for the State, on the other hand, has urged that there is no reason for not placing any reliance on the dying declaration made by the deceased to his own wife soon after the occurrence naming the appellant as the assailant. He has argued that the fact that deceased had survived for many days after the occurrence leads to the inference that in fact he must have disclosed the name of the assailant repeatedly to Asha Rani as well as to his close relations PW2 and PW3. He has urged that mere fact that Investigating Officer has not taken steps to record the dying declaration of Khushal Chand in accordance with the rules does not mean that he had not recorded the correct dying declaration of Khushal Chand. He has argued that PW4 although has turned hostile still on some material facts he had given due corroboration to the prosecution case and keeping in view the evidence led in the case it was proved beyond shadow of reasonable doubt that appellant had perpetrated the murder of Khushal Chand. He has argued that mere omission of the prosecution to elicit the opinion of the doctor who performed the post mortem with regard to the fact whether the injuries were sufficient to cause death in ordinary course of nature would not mean that appellant had not intended to cause death of Khushal Chand when he inflicted five injuries on the body of Khushal Chand who was unarmed at that time.

8. As far as the version given by PW4 is concerned, his testimony does not help the prosecution to prove that it was the appellant who inflicted the injuries on the person of Khushal Chand. He has turned hostile. It is true that the whole statement of hostile witness is not to be rejected outright. His statement has to be examined in light of the evidence appearing in the case but even if we accept what Bhudev has stated in Court as correct even then the same would not go to prove that appellant had inflicted the injuries on person of Khushal Chand. The only facts which could be culled out from his statement are that appellant was having his fruit-vending shop opposite to the shop of Bhudev across the road and deceased had come at about 10.30 P.M. and had taken two glasses of fruit juice from this witness and thereafter had crossed the road for purchasing some fruits from the shop of the appellant and thereafter the appellant had on his two wheeler scooter gone away from the spot. This witness has categorically deposed that he had not seen the appellant stabbing Khushal Chand and he had also not heard any quarrel taking place at the shop of appellant between appellant and Khushal Chand. At one point of time he did depose that he had noticed a quarrel but he could not hear the conversation. He has not specified as to what sort of quarrel he had noticed. Being at a distance of 80 feet from the place of occurrence and the electric light being not available. In all probability it would not have been possible for him to have seen the assailant so as to be in a position to identify him.

9. Mere fact that the appellant himself had sought holding of the test identification parade and thereafter had refused to participate in any such parade would not lead to any inference that it was the appellant who had stabbed Khushal Chand at that time and place because in case Bhudev had supported the case of the prosecution and had deposed about the appellant being the assailant then in such a case an adverse inference could be taken against the appellant on his refusal to participate in the test identification parade. The reason given by the appellant that he had been shown to the eye-witness in between the date of his surrender in Court and the date of holding the test identification parade was not borne out from any evidence on the record. But in the present case unfortunately PW4 does not say in Court that he had seen the appellant stabbing Khushal Chand and in all probability he is telling the truth in Court because of electricity light being not available and he being at a distance of 80 feet from the place of occurrence, thus

he could not have been in a position to see and identify the assailant and also the notice if any stabbing took place outside the shop of the appellant. He does not say in Court that he had seen the deceased in injured condition when the deceased took his two wheeler scooter and went away from the spot.

10. Now we are only left with the dying declarations of Khushal Chand. The first question which has to be answered by this Court is whether in fact deceased knew his assailant or not. The deceased was brought to St. Stephen hospital at 11.40 P.M. and medico legal certificate Ex. PW12/A was prepared. The doctor who prepared the medico legal certificate has not been examined but the record clerk of the hospital PW12 proved the writing of the said doctor on his medico legal certificate. It is recorded in the medico legal certificate that Khushal Chand had been got admitted in the hospital by Nasim Raza and history had been given by the neighbours who had brought him as well as by the patient to the effect that Khushal Chand was stabbed in the abdomen by a person (said to be Juice Wala). Admittedly, appellant was not the Juice Vendor. He was a fruit vendor at that time whereas PW4 was the juice vendor. The name of the assailant has not been mentioned in this medico legal certificate. Khushal Chand was conscious at that time but he was smelling of alcohol and was in intoxicated condition. Now in case the deceased knew the name of appellant as the assailant and he had disclosed the name of the assailant either to the persons who brought him to the hospital or to his wife Asha Rani Prior to being brought to the hospital, there is no earthly reason why the name of the appellant as assailant was not disclosed to the doctor who prepared the medico legal certificate. This knocks down the whole case of the prosecution about the deceased having made any dying declaration naming the appellant as the assailant.

11. There have appeared some serious discrepancies as to the fact whether Asha Rani had been told the name of the appellant when Khushal Chand had come to the house soon after the occurrence. Nasim Raza was brought to the house by Asha Rani and she had told Nasim that her husband had told her that he had been stabbed by some fruit seller. He does not say that name of the appellant was disclosed to him by Asha Rani. PW1 Dharam chand, who is the second person who accompanied Nasim while taking Khushal Chand to the hospital, has,

however, deposed that Asha Rani had told him that Khushal Chand had informed her that he had been stabbed by Gulab Singh, fruit vendor. The statement of Dharam Chand was not recorded by the police with any promptness. His statement came to be recorded on December 12, 1988, i.e. after about four months of the occurrence. There is no reason given as to why his statement was not recorded by the Investigating Officer soon after the occurrence and why such a long delay took place in recording his statement. This fact would show that in all probability Dharam Chand had been introduced as a false witness of proving the dying declaration of the deceased involving the appellant. If Nasim was not told about the name of the assailant by Asha Rani it is not understood how Dharam Chand PW1, who was present with Nasim when both of them had taken Khushal Chand to the hospital, would not have come to know about the name of the assailant. Moreover, both the witnesses do not say that on the way to the hospital Khushal Chand had named his assailant. They do not explain as to why the name of the appellant was not disclosed by them to the doctor when doctor recorded the history and had categorically mentioned that the history was given by these two neighbors but also by the patient and how it came out in the history that assailant was said to be a juice vendor. So, no reliance can be placed on the statements of PW1 Dharam Chand and PW5 Asha Rani that appellant was named by Khushal Chand when he came to his house in injured condition.

12. It is also significant to mention that Asha Rani became unavailable for giving any statement to the police on the crucial date i.e. August 18, 1988. Her statement also bristles with contradictions on certain material points. According to her, she had not accompanied her husband to the hospital and she has stated that she had gone over to inform her relations and had slept overnight at the house of her relations and had even not gone to the hospital during the night. She has not gone to the police to inform that her husband had named the appellant as assailant. In cross-examination she has stated that she had not told either Dharam Chand or the neighbour i.e. Nasim that her husband had told her that Gulab Singh, fruit vendor, had stabbed him. Constable Manohal Lal PW13 stated that when he accompanied Investigating Officer PW16 to the hospital at that time the wife of the injured as well as relatives were sitting in the hospital and time was about 12.30 A.M. If Asha Rani was available in the hospital when Investigating Officer had

arrived there and Asha Rani was aware of the name of the assailant, there is no reason why her statement was not recorded promptly at that time. There is no reason given by the Investigating Officer as to why did not record statement of Asha Rani Promptly either on the night or on the following day of the occurrence and why he recorded her statement only on August 19, 1988.

13. Keeping in view these facts it is not possible to come to the finding that in fact any dying declaration had been made naming the assailant by Khushal Chand before being admitted in the hospital. Moreover, it is pertinent to mention that Asha Rani does not say that during 15 or 16 days her husband remained alive her husband had at any time told her that he had been stabbed by Gulab Singh and how that occurrence took place.

14. PW2 and PW3, who were close relations of the deceased, deposed that Khushal Chand had told them about the appellant being the assailant when Khushal Chand became fit to give statement on August 20, 1988. But it is not understood if any such dying declaration had been made to them by Khushal Chand why the statements of these two witnesses were not recorded by the police till after death of Khushal Chand. They also do not say that Khushal Chand had narrated the incident to them. They have not given any details, if any, told to them by Khushal Chand. It is, thus, not possible to place any reliance on their statements that Khushal Chand had told them the name of the appellant as the assailant.

15. Coming to the dying declaration recorded by the Investigating Officer, he had deposed that he had obtained the signatures of Khushal Chand on the dying declaration. It means that the Investigating Officer was very much alive that he was recording a dying declaration of the injured on August 20, 1988. Apart from the fact that there had appeared certain serious discrepancies as to the time when he allegedly recorded the dying declaration, there are other reasons to hold that in fact no such dying declaration had been recorded by him. If he was recording the dying declaration of the deceased he ought to have taken all precautions as required by law before recording such dying declaration. This dying declaration is not attested by any witnesses. Even the doctor who declared Khushal Chand fit to

give statement on August 20, 1988, had not attested the dying declaration. The Investigation Officer claims that thus dying declaration was recorded in presence of the doctor and other staff of the hospital but neither the doctor nor any member of the staff has been examined to support that Khushal Chand had made any such dying declaration. It is not that Khushal Chand had succumbed to his injuries soon after giving the dying declaration. He had survived till September, 2, 1988, yet the Investigating Officer had not made any efforts to get the statement of Khushal Chand recorded from any SDM or Magistrate. Even otherwise the Investigation Officer has deposed in Court that he recorded the dying declaration of Khushal Chand on August 20, 1988, at about 11.30 A.M. The endorsement of the medico legal certificate Ex. PW 12/A at point. Ex. PW 12/C shows that Khushal Chand was declared fit for giving statement at 4.10 P.M. It means that Khushal Chand was not declared fit for giving statement prior to 4.10 P.M. on that day. He was not fit for giving statement on August 18, 1988, or on August 19, 1988. So, the statement of PW 16 that Khushal Chand made a dying declaration Ex. PW16/C at 11.30 A.M. on August 20, 1988, is on the face of it not credible.

16. So, keeping in view all these facts it is not possible to place any reliance on the so-called dying declaration recorded by the Investigating Officer. Dr. D. N. Singh PW8, who performed the post-mortem had not opined that any of the injuries suffered by Khushal Chand was sufficient to cause death in the ordinary course of nature. Be that as it may, we are of the view on consideration of the evidence discussed above, that the prosecution has completely failed to bring home the offence of murder to the appellant beyond reasonable doubt.

17. We allow this appeal and set aside the conviction and the sentence of the appellant and acquit the appellant of the charge framed under Section 302 of the Indian Penal Code and direct that he be released forthwith if not required to be detained in any other case.

18. Appeal allowed.