

**Suresh Vs. the State**

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**Court :** Delhi

**Decided On :** Feb-28-1967

**Reported in :** 3(1967)DLT243

**Judge :** I.D. Dua and; T.V.R. Tatachari, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 114

**Appeal No. :** Criminal Appeal No. 81-D of 1965

**Appellant :** Suresh

**Respondent :** The State

**Advocate for Pet/Ap. :** R.L. Tandon and; B. Dayal, Advs

**Judgement :**

**Dua and Tatachari, JJ.**

(1) Suresh appellant, an 7 years old boy, has been convicted by the learned Additional Sessions Judge, Delhi, for the murder of Chander Mohan deceased and sentenced to undergo imprisonment for life. He has appealed to this Court through jail. As he was unrepresented by any counsel we requested - Shri R. L. Tandon, Advocate to assist us as amicus curiae. Shri Tandon very kindly agreed to do so, and it is a matter of satisfaction to find that the learned counsel has taken pains to inspect the entire relevant record. He has very ably and fairly placed before us

various aspects of the case and apparently nothing that could be said in favor of the accused has been left unsaid.

(2) Turning to the prosecution case, on 7th April, 1965, at about 3.30 P.M., Suresh accused and Chander Mohan deceased were seen engaged with each other in a scuffle. The accused was trying to stop the deceased from going to the house of one Smt. Halen because the deceased was a married man and illicit relations with other women would be offensive to his wife, whom the accused described as his sister. During this scuffle, Suresh took out a dagger from the right pocket of his pants and stabbed the deceased on the left side of his chest. This incident was noticed by Shiv Charan P. W. 1, Tilak Raj P. W. 2 and Duli Chand Public Witness .4. Swaran A. S. I., Public Witness .9 along with Foto Constables Rarn Kishan and Kishan Chand happened to be patrolling the area in question in a routine manner and they also reached the spot at the time of the occurrence. Swaran Singh found the dead body of Chander Mohan deceased lying on the ground covered with blood. Suresh accused was present at the spot holding in his hands a bloodstained knife. The accused was over-powered and the knife Exhibit P. 3. was snatched from his hands. Basant Lal along with Duli Chand and Tilak Raj was also present at the spot. Hargobind Singh, who was at the relevant time the Station House Officer, Police Station, Gandhi Nagar, also reached the spot at about 4.30 P.M. and on his arrival there, he took over the investigation of the case from A. S. I Swaran Singh. The prosecution evidence has been unfolded by Shiv Charan P. W. 1, Tilak Raj P. W. 3 and Duli Chand P. W. 4, eye witnesses to the occurrence, and by A. S. 1. Swaran Singh P. W. 9, who also claims to have reached the spot soon after the actual infliction of the stab wound when the accused was present with a bloodstained knife in his hands and Chander Mohan deceased lying on the ground covered with blood. No enmity has been suggested on the record between the three eye witnesses and the accused. Even. the accused has not suggested any motive on the part of the prosecution witnesses to falsely implicate him. Smt Maya Davi, widow of the deceased appearing as P. W. 6, has deposed that the accused used to live with the deceased and the witness and that the accused had started visiting her husband eight years ago. According to this statement, the accused was about 10 years old when he became friendly with the deceased. On being questioned by the Court, P. W. 6 stated that her deceased husband was a pick-

pocket and so was the accused and both of them had a common profession. She, however expressed complete ignorance about the existence of any woman named Halen and she also denied any quarrel in her presence between the accused and the deceased. She has, however, expressly deposed that the accused used to treat her as a sister describing her as 'Dharam Ki Behan'. This witness reached the place of occurrence after being informed by someone from the village, adding that one police officer had also come to her house. On her arrival at the spot, she found the accused in police custody. In cross-examination, she could not state as to who precisely was the man who had informed her, but it was one Sardarji who lived in her neighborhood who had gone to inform her regarding the occurrence. She was, however, particular in stating that no Sikh Police officer had come to her. She was of course unable to state as to who were the eye-witnesses, and indeed she could not tell their names. She expressed ignorance about Shiv Charan.

(3) Shri Tandon has submitted that the three eye-witnesses mentioned above apparently did not actually witness the occurrence and they were all go-up witnesses utilised by the investigating agency for sustaining the prosecution case. They are all chance witnesses and their statements' read as a whole, according to the learned counsel, do not inspire confidence. The manner in which they all repeat that the accused while quarrelling with the deceased was reprimanding the latter for visiting Smt. Halen, even though he was married to the sister of the accused is, according to the learned counsel, suggestive of this version having been put into the mouth of these witnesses by the Police. Indeed the counsel has argued that this was the tutored statement put into their mouth for the purpose of creating a motive for the accused to give the fatal injury to the deceased. It is very strongly argued that the whole truth has not been placed by the investigating agency before the Court' and that this circumstance should be given due weight in discrediting^ the police version. Shri Tandon has also submitted that in the calendar of witness, one Shri Basant Lal has been mentioned as an eye witness who had also appeared in the Court of the committing magistrate as Public Witness . 5. In that Court, he had stated that he was a resident of Seelampur at the relevant time and was a shopkeeper by profession. On 7th April 1965, he at about 4 P.M. had gone to the shop of Bengali in order to, purchase bill when he saw Suresh accused and Chander Mohan deceased quarrelling over the

ownership of shoes and clothes. Suresh asked for the return of the shoes but Chander Mohan stated that he was going to Halen. To this, Suresh retorted that he would not allow Chander Mohan to go to Halen's house because the latter was married to Suresh's sister. Chander Mohan replied that no one could stop him. Suresh in answer said that he would. This led to a fight between the two and Chander Mohan, who had a knife in his possession, tried to hit Suresh with it. Suresh snatched that knife from the deceased and kept it in his pocket. During the fight Suresh later took it out of his right pocket and inflicted the fatal injury on Chander Mohan on the left lateral side of ribs. Chander Mohan thereupon fell down and Suresh tried to run away from the scene of occurrence. Mean-while Swaran Singh accompanied by two Constables came from the side of Seelampur and snatched the knife from Suresh. This witness was not declared hostile by the prosecution. He was, however, produced in the Court of the learned Additional Sessions Judge at the trial of the accused. It is urged by Sri Tandon that the accused was too poor to engage a counsel of standing, with the result that he was represented by a counsel engaged at State expense. The suggestion apparently is that the accused was not properly defended, with the result that he has been prejudiced by this fact that the attention of the learned Additional Sessions Judge at the trial of the case was not drawn to the omission on the part of the prosecution to place before the Court the version given by Basant Lal, one of the admitted eye-witnesses. It is argued that the prosecuting agency must in the cause of justice place before the Court the entire material with them which is relevant so as to enable the Court to determine where the truth lies. If a witness whom they have produced in the Court of the committing Magistrate is considered by them to have been won over and to have, therefore, turned hostile, it is only fair and proper that they bring this aspect to the notice of the trial Court so that if the Court considers it desirable to examine that witness as a Court witness, it may do so in its attempt to arrive at the truth. A request has accordingly been made to us to examine Basant Lal in this Court and if necessary, to permit the State counsel to cross-examine Basant Lal. This as to permit a matter of fact, is the main pivot round which the argument of the learned counsel centres. While criticising the testimony of the three eye witnesses mentioned above, the learned counsel has also submitted that it is somewhat surprising that in broad day light, the

occurrence in question should take place in public gaze and no one should try to intervene and disentangle or separate the accused and the deceased. The learned counsel has also referred us to the testimony of Tilak Raj Public Witness . 3 where he has stated that the struggle between the accused and deceased lasted for about 10 minutes which, according to the learned counsel, seems to be highly unlikely. Incidentally, the counsel has also drawn our attention to the cross examination of Tilak Raj, wherein he stated that he had not heard the accused and the deceased talking about clothes and shoes, and the testimony of Shiv Charan who has expressed ignorance about the reason which led to the quarrel between the accused and the deceased. According to Shiv Charan, the accused and the deceased were quarrelling and grappling with each other and were talking about Halan. Shri Tandon has sought to make a further point by reference to, the plan by submitting that near the place of occurrence, there are a number of residential houses and even, according to the prosecution witnesses, some people from adjoining houses were standing in front of their residences including Prabhu Chand Bengali. Not only has none of those witnesses, against whom it may not be urged that they were chance witnesses, been produced in court, but: the counsel adds that it is somewhat surprising that none of them tried even to intervene in the fight between the accused and the deceased. The evidence of Public Witness . 1 and P. W. 3 has been relied upon for the purpose of showing that the shop of Prabhu Chand is very near the place of occurrence. Tilak Raj Public Witness . 3, it may be pointed out, had gone to Prabhu Chand to ask for the return of some money and, according to him, Prabhu Chand's shop was at a distance of 15 paces from the place of occurrence. Basant Lal, it may be recalled, had also stated in the commitment Court that he had gone to the shop of Bengali in order to purchase bill Duli Chand Public Witness . 4 too had gone to purchase biri from the shop of the Bengali and according to this witness, some shopkeepers of the locality were sitting in their shops when the accused and the deceased were quarrelling, though he was unable to say that these shop-keepers had come out of their shops at the time of the occurrence. Shri Tandon has argued that non-production of the witnesses, whose presence would be natural at the spot, and the production only of outsiders, who were only chance witnesses, also throws a certain amount of suspicion on the prosecution version.

(4) Shri Bishambar Dayal, learned counsel for the State, has in reply submitted that according to general experience, permanent respectable inhabitants of a locality are normally reluctant to appear in criminal cases against their neighbours and this is all the more so when the persons against whom they are required to depose are reckless young boys who are professional pick-pockets and have no other respectable means of livelihood. The learned counsel has also submitted that Basant Lal had apparently, turned hostile and had tried to damage the case of the prosecution by falsely introducing the story about the return of shoes and clothes as the cause of quarrel between the accused and the deceased. Merely because the prosecutor did not request the committing Magistrate to declare Basant Lal hostile, according to the counsel, does not mean that the witness had not come back on his statement to the investigating agency and under the law it was open to the prosecutor to withhold this witness from the trial in the Court of Sessions. The learned counsel has added that non-disclosure of the reason for the non-production of Basant Lal at the trial is not only immaterial but is fully justified because this matter is within the sole and absolute discretion of the prosecuting counsel. No rule of law or of practice requires the prosecutor to disclose to the Court reasons for keeping back from the trial a witness who had been produced in the committing Court as an eyewitness to the occurrence, argues Shri Bishambar Dayal. On the merits, the learned counsel has emphasised that the accused has denied even his presence at the place of occurrence and, therefore, if that plea is held to be false, as it must be so held even on the evidence of Smt. Maya Devi P.W. 6, who also seems to have in a subtle and indirect subdued manner tried to help the accused, then the eye-witnesses, against whom it has not been shown that they were inimical towards the accused, must be believed and the conviction and sentence upheld.

(5) In our opinion, the evidence of Basant Lal before the committing Magistrate cannot be treated as evidence at the trial on the facts and circumstances of the present case. It is unfortunate that the prosecuting counsel should not have brought to the notice of the learned Additional Sessions Judge that Basant Lal, who had appeared as a witness in the commitment Court and had given a somewhat different version of the cause of quarrel between the accused and the deceased, was not intended to be produced as a witness for the reason that he

had turned hostile to the prosecution. In our view, the least that must be said is that it would have been more fair and certainly more in accord with the cause of Justice if the public prosecutor had given this information to the trial Court so that if thought fit, the Court could have considered the question of examining Basant Lal as a Court witness. As a matter of fact, the proper course in this case was for the public prosecutor to have secured the attendance of Basant Lal at the trial and to have informed the Court that he was there to be cross-examined by the accused, if he so desired, the charge against the accused, it may be remembered, was of the commission of murder for which he was liable to be sentenced to death. The prosecutor, according to our criminal jurisprudence, I am obliged to emphasise, is not concerned with securing conviction at all costs and by all means, fair or foul, regular or irregular. The duty of the prosecution is as much to see that the guilty does not escape punishment as that no innocent man gets punishment. But - punishment of the guilty is to be secured in accordance with law and not to use the common expression, by hook or by crook. The judicious integrity and impartiality of the prosecutor is necessary for the purity of the administration of justice because the public prosecutor, representing as he does the State and not the police, has to assist the Court in discovering the truth. It has also to be borne in mind that the ultimate judge of the truth is the Court which tries the accused.

(6) As the learned standing counsel has in all seriousness asserted the absolute and uncontrolled right in law of the prosecuting counsel to withhold Basant Lal from the trial without disclosing to the Court the reason for doing so and without tendering him for cross-examination, I consider it proper to state, what, in my view, is the correct legal position on this aspect. It is undoubtedly true that the prosecutor is not obliged to produce all available eye-witnesses irrespective of considerations of number and of credibility. He is not bound to duplicate the evidence. A prosecuting counsel, it has to be conceded, is not to play the role or discharge the function of a defense counsel, for if he does so, it is bound to lead to confusion. The counsel for the defense may have a duty to endeavor by every legitimate means to secure his client's acquittal. The converse may not be true of the prosecuting counsel and it may not be right to say that a counsel for prosecution must use every legitimate means to secure a conviction. In the administration of justice, a public prosecutor has a very responsible role to play

and he must not secure a wrongful conviction or to secure a conviction in a doubtful case. All that the prosecutor has to do is to call all the witnesses who are essential to the unfolding of the narrative on which the prosecution is based, whether the result of their testimony favors the prosecutor or goes against his case. Subject to this basic rule, the prosecutor has fairly wide discretion in the matter of production of witnesses. It is of course a matter of common knowledge that in the trial of a serious offence, witnesses are not infrequently sought to be won over and even otherwise, material prosecution witnesses may be suspected on account of their interests and impulses to favor the accused. A witness believed to have been won over may not be produced by the prosecution, though in such an event, it would always be open to the accused to examine such a witness and the Court may also in the interest of justice examine such a witness as a Court witness. A public prosecutor is accordingly vested with a discretion which is controlled by contingencies and, particular circumstances of each case and no rigid rule can be laid down to fetter this discretion except the broad principle enunciated above. . But the public prosecutor being a responsible law officer of the State and an officer of the Court, expected to display 'utmost candour and fairness in conducting the prosecutions so as .to aid the Court in arriving at the truth. Where, as in the present case an eye witness has been included in the calendar and has actually been considered desirable to be produced as a prosecution witness in the Committing Court, 'to withhold such a witness from the trial without 'tendering him' for cross-examination by the accused and even without disclosing the full details to the Court, is both unfair and improper. In such a case, in this first instance the witness should be produced in Court and if necessary, declared hostile. In any event, the Court must be informed of the circumstances in which the public prosecutor intends to keep back such a witness from the witness box, for, in that event. it would be open to the Court to allow the accused to cross-examine ' this witness or to summon him as a Court witness. The dictates of justice and fair play-do, in our opinion, demand such a course to be adopted.

(7) The question in the case in hand, however, is whether at this stage this Court should summon Basant Lal for the purpose of recording additional evidence on appeal. After considering all the relevant circumstances of the case, in our opinion, it would not serve any useful purpose, to examine Basant Lal in this Court at this

state. Apart from what he deposed in the committing Court to have heard the accused as saying to the deceased at the time of the quarrel, the witness is also definite that the accused gave the fatal stab to the deceased. It is argued by Shri Tandon that Basant Lal's evidence, if true, would raise two further questions. One of those questions may found a plea of self-defense and the other a plea of grave and sudden provocation. Though broadly stated prima facie this submission does sound somewhat attractive, nevertheless, on a closer examination of what Basant Lal actually stated before the committing Court, do not think, even assuming that evidence to be correct, -Shri Tandon's suggestion can be sustained. According to Basant Lal, when the accused and the deceased were grappling with each other, the deceased tried to injure the accused with the knife in question and the accused snatched the knife from the deceased and put it in his own pocket. A little later the accused took out that very knife and gave the fatal injury which caused the death of the deceased. Now apart from somewhat unimpressive character of this version, this evidence quite clearly does not bring the case of the accused, within the purview of Exception 11 of section 300, Indian Penal Code. There is absolutely no evidence and indeed even Basant Lal has not said that after the accused had snatched the knife from the deceased and hid it into his own pocket, there was any occasion justifying the accused taking out that very knife and giving the fatal injury to the deceased as a measure of self-defense. The knife requires positive action to open because it has a kind of a spring which has to be pressed to open it. Evidence is also wanting which could suggest that the deceased had given any grave or sudden provocation to the accused justifying the fatal stab. It is noteworthy that the knife was thrust with considerable force into a very vulnerable part of the body of the deceased causing the injury 5 inch deep cutting the fifth rib costal cartilage, pericardium, right ventricle and the heart. Indisputably, it resulted in instantaneous death. We are, therefore, disinclined to summon Basant Lal for the purpose of recording additional evidence.

(8) In his statement, the accused has denied his presence at the spot at the time of the occurrence, though he has admitted his friendship with the deceased and also that he used to live with the deceased in his house. He has, however, denied that he ever tried to prevent the deceased from visiting Halen. According to this statement, he was arrested by the police at the house of the deceased where he

and Smt. Maya Devi wife of the deceased, were present on the date of the occurrence. He has of course not given the time of his arrest. Smt. Maya Devi has, however, contradicted this part of his statement. It is true that Smt. Maya Devi also expressed ignorance about the existence of Helen which would perhaps seem to be unlikely if her husband had really been having a liaison with that lady and the accused, professing to be like a brother to Smt. Maya Devi, was objecting to the said illicit relationship between the deceased and Helen. But be that as it may, this is far too thin an argument to discredit the ocular testimony consisting of P. W. 1, P. W. 3, P. W. 4 and P. W. 9 who are not shown to be inimical to the accused. The motive for the murder as disclosed on the present record, does seem to be somewhat inadequate when considered from the stand point of normal human beings. But nothing convincing has been said to cast any reasonable doubt on the veracity or credibility of the ocular testimony which we have no hesitation in accepting as true, apparent inadequacy of motive notwithstanding.

(9) I may at this stage mention another argument of Shri Tandon. According to him, the manner in which P. W. 9 A. S. I. Swaran Singh is stated to have reached the spot while professedly having the usual routine patrol is somewhat incredible. According to him, this part of the story of the providential arrival of the police party has been concocted because ordinarily the police do not go about patrolling these localities in the manner suggested. Shri Bishambar Dayal has on the other hand submitted that these days the police in Delhi has become far more active because of the rising tide in the commission of violent crimes, particularly by young boys in their teens. After considering the argument pro and con, we are unable on the present record to discover any improbability or suspicion in the manner in which P. W. 9 deposes to have arrived at the spot.

(10) On a consideration of the evidence and the attending circumstances of the case, we are fully satisfied that the guilt has been brought home to the accused beyond the possibility of any reasonable doubt. What has really given us anxious thought is the question of sentence. Under section 302, Indian Penal Code, the sentence of imprisonment for life is the minimum that can be awarded for the offence of murder, but in the present case, we do not find any premeditation or plan or design worked out in advance to kill the deceased. There is also no

evidence of enmity between the accused and the deceased. The suggested motive is also neither malicious nor criminal. As a matter of fact, the motive which, according to the prosecution story, seems to have worked up the feelings of the accused to the pitch of what may be described as mental imbalance which prompted him to give the fatal stab to the deceased was the illicit liaison between the deceased and Halen. The accused, according to the prosecution case, had a brotherly affection for Smt. Maya Devi, wife of the deceased, and it was his concern for her which apparently drove him to this drastic unfortunate act. The accused is stated to be 18 years old, though he appears to be a couple of years older. Nevertheless, we do apprehend that this young boy may come out of the jail after serving out his sentence perhaps as a hardened criminal. It has been stated at the bar before us by Shri Tandon that on enquiry from the accused he has learnt that the accused had worked for some time as a mechanic in a motor workshop and that perhaps he was trying to give up the life of crime as a pick-pocket and adopt a more respectable career. Whether or not it is true, the fact remains that the accused can be saved to the society and can be reformed if proper attention is paid to this aspect and suitable steps taken in this direction. It is hoped that in the jail, an attempt would be made to give him training in some useful art or craft so that he may adopt a lawful avocation in life. On the question of sentence, this Court is undoubtedly helpless but it is open to the Government, whether on application by the accused or otherwise, to consider the question of giving him the requisite relief by reducing the sentence either now or later when the accused has shown signs of reformation and it is considered that he is likely to come out and service down to a more respectable and honest and less anti-social mode of career.

(11) In the final result, Ms appeal fails and is dismissed.