

**Surinder Singh Vs. the State**

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**Court :** Delhi

**Decided On :** Apr-11-1979

**Reported in :** 16(1979)DLT112

**Judge :** Prakash Narain and; Leila Seth, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 299, 302 and 304

**Appeal No. :** Criminal Appeal No. 168 of 1975

**Appellant :** Surinder Singh

**Respondent :** The State

**Judgement :**

**Prakash Narain, J.**

(1) Surinder Singh, the appellant, and Paramjit Singh, be that the time of the incident 19 years of age, were prosecuted under Section 302 read with Section 34 of the Indian Penal Code for having murdered Mahinder Lal.

(2) According to the prosecution on November 2, 1973 Mahinder Lal, deceased accompanied by his brother, Harbans Lal (P. W. 1) and friends, Gopal (P. W. 2), RajinderSingh(P. W. 14) went to see a drama being staged at Lakshmi theatre in Kirti Nagar, New Delhi. They arrived there between 9.00 and 9.30 P. M. Ravi Kumar had parked his three-wheeler scooter No Dlr 8498 outside the theatre and

the five persons mentioned above went inside to witness the drama. At about 11.00 P.M. Ravi Kumar came out to answer a call of nature and found that his scooter was missing. He made enquiries from people at the cycle-stand and then went inside and told Mahinder Lal about his scooter missing. Mahinder Lal and Rajinder Singh came out with Ravi Kumar and they were searching for the scooter for about 10 or 15 minutes when it was seen coming from Moti Nagar side. Two boys alighted from the scooter. These boys were alleged to be Surender Singh and Paramjit Singh. Mahinder Lal is alleged to have enquired from the boys as to why they had taken away the scooter. He received a curt reply from Paramjit Singh and this led to an exchange of hot words and filthy abuses. Paramjit Singh is then alleged to have exhorted Surender Singh to catch hold of Mahinder Lal and beat him. The words alleged to have been uttered were to the effect, 'Pakar Sale Ko Maar'. Another version of the words alleged to have been uttered were 'Maar Bhainchod Ko'. On this exhortation Surender Singh is alleged to have taken out a knife while Paramjit Singh accused held Mahinder Lal in his grip. Surender Singh is then alleged to have stabbed Mahinder Lal on his abdomen on the right side and after stabbing him alleged to have handed over the knife to Paramjit Singh who made good his escape. Meanwhile Harbans Lal and Gopal are also stated to have come out and are alleged to have seen Mahinder Lal in a wounded condition. Surender Singh was caught at the spot thought Paramjit Singh is said to have escaped. Surender Singh was then taken to Police Station Tilak Nagar by Harbans Lal and Gopal while Mahinder Lal was allegedly taken to Rana Nursing Home by Rajinder Singh and Ravi Kumar. An undisclosed person is said to have declared Mahinder Lal dead when he reached the Nursing Home. His dead body was brought to his house by Rajinder Singh and Ravi Kumar. At Police Station Tilak Nagar, Harbans Lal produced Surender Singh and lodged a report that he had stabbed Mahinder Lal. That report is Exhibit P.A. As the occurrence did not fall within the jurisdiction of Police Station Tilak Nagar, Harbans Lal and Gopal along with Surender Singh were sent to Police Station Moti Nagar with constable Nem Singh (P.W.9). A formal Fir is said to have been lodged at Police Station Moti Nagar, which is Exhibit PE. Investigation of the case was entrusted to Sub-Inspector Dalbir Singh, Public Witness . 19, who arrested Surender Singh and interrogated him in the presence of Chaman Lal, Public Witness . 16, and Sub-

Inspector Mahinder Singh, Public Witness . 17. Surender Singh is said to have made a disclosure statement that he could point out the hut where Paramjit Singh was living and then Surender Singh is said to have led the police party to that hut near a 'Ganda Nalah' in Basai Darapur and Paramjit Singh who was said to be sleeping in that hut was arrested. On his personal search a blood-stained knife is said to have been recovered. Thereafter the blood-stained clothes of Surender Singh and Paramjit Singh were taken into possession which are Exhibits P. 10 to P. 14. After making investigation the two young man were charged under Section 302 read with Section 34, Indian Penal Code for having committed the murder of Mahinder Lal. They were committed to session.

(3) The Additional Sessions Judge, Delhi, gave Paramjit Singh the benefit of doubt and acquitted him. He, however, convicted the appellant, Surender Singh, under Section 302 Indian Penal Code and sentenced him to undergo imprisonment for life. Surender Singh now appeals to this court.

(4) The whole case, in our opinion, really turns on the testimony of Rajinder Singh (P.W. 12) and Ravi Kumar (P.W. 14). There are, no doubt, several facets in the case which suggest padding or embellishments but on close scrutiny of the evidence there can be no doubt that the appellant was rightly convicted by the Additional Sessions Judge.

(5) That the three wheeler scooter belonged to Ravi Kumar is not in dispute. Appearing as Public Witness . 14 he deposed that he along with Mahinder Lal, deceased, Harbans Lal and Rajinder Singh had gone to Lakshmi Theatre in Kirti Nagar at about 9.00 or 9.30 P.M. all of them in his scooter. Gopal met them there. He parked his scooter near the cycle stand and all of them went inside the theatre. At 11.00 P.M. when he came out to answer a call of nature he found his scooter missing. He went inside and told Mahinder Lal about it. He, Harbans Lal, Mahinder Lal and Rajinder Lal came out. Later on he said that Harbans Lal had not come out with them at that point of time. After 10 or 15 minutes the scooter was seen coming from Moti Nagar side from which two boys alighted and those two boys were, Surender Singh and Paramjit Singh. There was an exchange of hot words between Mahinder Lal and the two boys. Paramjit Singh caught hold of Mahinder

Lal while Surender Singh stabbed him on the right side of the abdomen. Paramjit Singh made good his escape but Surender Singh was caught at the spot.

(6) Rajinder Singh appearing as Public Witness . 12 in essential particulars confirmed the above story. According to him Mahinder Lal had gone out 1 1.00 P.M. for answering a call of nature. There is a little contradiction here because Ravi Kumar says that he had gone out while Rajinder Singh says that Mahinder Lal had gone out. In our opinion, this contradiction is not every material ultimately Mahinder Lal, Ravi Kumar and Rajinder Singh came out on learning about the scooter being not parked near the cycle stand. Thereafter what happened is relevant. Rajinder Singh and Ravi Kumar both say the same thing about what transpired when Surender Singh and Paramjit Singh came back with the scooter. The factum of stabbing by Surender Singh is thus established by the testimony of two witnesses.

(7) Harbans Lal, the brother of the deceased, appeared as Public Witness . 1. His testimony is somewhat different from the testimony of Rajinder Singh and Ravi Kumar so far as going to the theatre is concerned. He saw his brother Mahinder Lal at a point of lime when he was already stabbed and Surender Singh and Paramjit Singh were in the process of running away from the site. He, however, apprehended Surender Singh and accompanied by Gopal took him first to Police Station Tilak Nagar and later to Police Station Moti Nagar. The testimony of Harbans Lal, therefore, is not very helpful to find out who actually stabbed Mahinder Lal.

(8) The first criticism regarding Rajinder Singh and Ravi Kumar, P W. 12 and Public Witness . 14 respectively, is that they were really not at the site of the alleged incident and have been procured as eyewitness later on because their names feature in the F.I. R., Exhibit P.A, lodged at Police Station Tilak Nagar. In our opinion, the criticism is without any basis. In normal course of events when four or five friends have gone to a movie together and one of them is unfortunately injured it cannot be said to be an unnatural act that two of the friends take the injured to a hospital or to his house while the culprit apprehended on the spot is taken by the brother of the injured and another friend to the Police Station.

(9) The second criticism that is leveled is that it does not stand to reason that if Lakshmi Theatre fell within the jurisdiction of Police Station Moti Nagar the alleged culprit should be taken to Police Station Tilak Nagar. The suggestion is that Police Station Tilak Nagar has been introduced because officials there would be more amenable to persuasion by Harbans Lal and others. The suggestion is rather far-fetched. Indeed, Harbans Lal after lodging the report, Exhibit Pa, was then sent with Constable Nem Singh to Police Station Moti Nagar, as the alleged offence was committed within the jurisdiction of that Police Station.

The third criticism is that the Nursing Home to which Mahinder Lal, deceased, is alleged to have been taken has not been named in any of the reports. There is nothing special about this. The fact that no body from Nursing Home was produced is also neither here nor there. The fact of the matter is that Mahinder Lal died as a result of the injury received by him.

(10) There is some criticism about the testimony of Harbans Lal when he stated that he went to the hospital from Police Station, Moti Nagar, which fact is not supported by Gopal Dass Public Witness 2. Gopal Dass also does not support Harbans Lal apprehending or Surrender Singh. These contradictions are of no particular importance because the fact of Surrender Singh being apprehended and produced in the Police Station by Harbans Lal cannot be disputed. Furthermore, Harbans Lal is not an eye-witness to the actual stabbing.

(11) The fact that the site plan, Exhibit, P. C. was prepared at the instance of Harbans Lal who was not an eye-witness to the stabbing is also of no consequence. Harbans Lal is proved to have reached the site of the incident soon after the stabbing. He could, therefore, very well state who was standing where. In any case, the site plan or its veracity loses some of its significance if we accept the testimony of Rajinder Singh and Ravi Kumar.

The arrest of Paramjit Singh or the alleged recovery of blood-stained knife from him or his having been arrested when he was sleeping in blood-stained clothes are what may be called embellishments but these embellishments do not detract against the case against the present appellant. Surrender Singh had no opportunity to change his clothes as he was apprehended on the spot and was throughout in

custody till his clothes were taken into possession. therefore, recovery of his clothes having blood-stains is a relevant factor. Exhibit P. 10 is the shirt. Exhibit P. 11 is the trouser and Exhibit P 12 is the vest that was on the person of Surender Singh. That these were taken into possession is deposed to by Sub-Inspector Mahinder Singh, Public Witness . 17. According to the Serologist Report the blood-stains on these clothes are of Group 'A' which tallies with the blood group of the deceased. The Serologist's Report is Exhibit P T.

(12) It is urged that the injury report regarding Surender Singh has not been placed on record nor his blood grouping has been done. The suggestion is that the blood-stains on his clothes may well be his own blood-stains. No such case was put forward during the trial. In any case, the blood stains on the clothes have only corroborative value which corroboration is not necessary in view of our accepting the testimony of eyewitnesses, Public Witness . 12 and Public Witness . 14. The challenge to the recovery of the clothes, therefore, is not material. We are, therefore, in agreement with the finding of the Additional Sessions Judge that on the basis of the testimony of Ravi Kumar and Rajinder Singh Stabbing of Mahinder Lal by Surender Singh Stands proved.

(13) The post-mortem on the body of Mahinder Lal was done by Dr. Bharat Singh. Public Witness . 15. He deposed that he found the following injuries on the body of the deceased and the resultant biological situation: -

'1. I' incised stab wound over the right side lower part of abdomen 4' above the mid inguinal point and 3' downwards and lateral to umbilicus place obliquely with lower end on the medical side. Size of the wound was 1' X X ?. Wound was covered by blood, angles were tapering, margins were regular and smooth. 2. Two small abrasions on the left knee size of each abrasion was ' in diameter on opening the abdomen it was seen that injury No. 1 had entered the abdomen. Abdominal cavity was full of Fluid and clotted blood. On removing the blood it was seen that wound had cut the loop of small intestine and had finally cut the right iliac artery completely just near the origin from aorta. Whole of the pelvic cavity and posterior abdominal wall showed haematoma. Total depth of the injury was 4'.

(14) According to Dr. Bharat Singh the injuries were ante-mortem and injury No. 1 caused by a sharp edged weapon was such which was sufficient to cause death in the ordinary course of nature. The cause of the death as opined by him was haemorrhage and shock due to injury No. 1. In cross-examination the Doctor was only asked a few questions about the knife, that Exhibit P. 9 was an ordinary knife which could be used for domestic purpose also. He also said that injury No. 1 was possible with one blow of the knife. We have already said that recovery of knife or Exhibit P. 9 being the weapon of offence is not relevant for the purpose of bringing home the guilt.

(15) In view of the opinion of the doctor and the evidence noticed by us above, we are in full agreement with the Additional Sessions Judge as to his conclusions with regard to the appellant, Surender Singh, having stabbed Mahinder Lal and Mahinder Lal dying as a result of that injury. We, therefore, uphold the conviction of the appellant.

(16) Learned counsel for the appellant argued in the alternative that the offence could be one under Section 299 or Section 304 Part 2, Indian Penal Code In our opinion, no case is made out by the appellant to urge that and we are in full agreement with the Additional Sessions Judge that an offence under Section 302, I.P C. is made out. therefore, we also uphold the sentence imposed on the appellant. That he is a young man who has already been in jail for five years is no ground in the circumstances of this case to plead mitigation of the gravity of the offence.