

Bijinder Singh Vs. State

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Court : Delhi

Decided On : Apr-27-1979

Reported in : 1979CriLJ1290; ILR1979Delhi110

Judge : Prithvi Raj and; O.N. Vohra, JJ.

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

Appeal No. : Criminal Appeal No. 328 of 1976

Appellant : Bijinder Singh

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; N.K. Parmar,; K.K. Sud and B.D. Batra, Ad

Judgement :

O.N. Vohra, J.

(1) This is an appeal by Bijinder Singh (19), son of Prahlad Singh, agriculturist, resident of village Bigheypur, District Meerut, Uttar Pradesh, who was convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life for having murdered Surajpal Singh by judgment dated August 21, 1976 of the Additional Sessions Judge, New Delhi.

(2) Briefly, the facts are these. Surajpal Singh, a young boy of 18, belonging to village Meerpur, District Aligarh, Uttar Pradesh, was carrying on dairy business in servant quarters of bungalow No. 12, Mandir Marg, Delhi Cantt. allotted to Capt. Bhag Singh (Public Witness 18). Mahender Singh (Public Witness 19), younger brother of Surajpal Singh, who was studying in those days, came to Delhi to spend his summer vacation. He left for his village on July 24, 1975 but again came on August 4, 1975 and found appellant instead. On being asked about Surajpal Singh, the appellant informed that Surajpal Singh had gone to the village with Rs. 3100 for purchasing buffaloes. On August 7, 1975, Capt. Bhag Singh perceived some foul smell and asked Rupa (Public Witness 17), sweeper, to take a round and attend. Rupa discovered that foul smell was emanating from Bajra field in bungalow No. 12 where there was a skeleton of a human body. He informed Capt. Bhag Singh who gave information to Police Station Delhi Cantt. on telephone at 6.40 p.m. Sub-Inspector R. S. Rana (Public Witness 23) arrived at the spot at 7.15 p.m. On account of darkness he could not have a fair look at the place from where the foul smell was coming. Accordingly, he deputed two Constables to guard the spot and left. On the following day, he again arrived to the spot and found a human skull and different parts of a human body in the form of skeleton lying in the field. A torn baniyan and a remnant of an underwear were found sticking to the skeleton and a shirt having a green button was found lying close by. Mahender Singh came to the spot at about 2.30 p.m. and saw the baniyan, underwear and the green button of the shirt and identified them to be the clothes of Surajpal Singh. Accordingly, he inferred that the skeleton, which was otherwise unidentifiable, was what remained of Surajpal Singh who had been murdered during his absence. Suspecting Bijender Singh to be the murderer, he made statement Ex. Public Witness . 8/A before Sub Inspector R. S. Rana, who forwarded it to the Police Station with endorsement Ex. Public Witness 23/A that an offence punishable under Section 302 of the Indian Penal Code appeared to have been committed at 3.50 p.m. On the basis of the rukka. First Information Report (copy Ex. Public Witness 8/B) was recorded and case was registered.

(3) Sub Inspector R. S. Rana seized kassi lying in the corner of the field and prepared memo Ex. Public Witness 18/A. Chander Mohini (Public Witness 2), aunt of the deceased, produced a green button which was seized vide memo Ex. Public

Witness 18/B.

(4) The remains of the dead body were forwarded to the mortuary under the care of Constable Apal Singh (Public Witness 5) and Constable Rattan B Chand (Public Witness II). Dr. Bharat Singh (Public Witness 12), who conducted post mortem examination on August 9, 1975 at 2 p.m., observed that the skeleton which was not identified carried a piece of underwear and a shirt which was torn and both were soaked with decomposition fluid. He also found that it was more or less a complete skeleton although a few small bones of hands had fallen from the joint due to decomposition and the skull was separated from the body. His further observations are as under:

'.....There is no soft tissue attached to the bones except at the joints. Skin, muscles and other soft tissues are present over right leg and foot where no cut or any injury is present. Skull bones belong to male. Sutures clearly decomposed. No injury to bone. Right temporal bone is missing from the joint due to decomposition. Brain is liquified and missing. Mandible is separated from the joint having 16 teeth which are healthy. Some of the teeth are loose and falling due to decomposition. Total teeth markings are 32 (both jaws). No injury to jaws. Mental foramina is just below the central part of the mandible. There is no cut on the cervical vertebra. Some of the ribs are separated from a joint. No fracture or cut seen. Sternum normal. No chest organs present. Thoracic vertebra normal. No soft organs of abdomen present. Scapulae normal. Bones of upper and lower limbs normal. Pelvic bones are resembling male pelvic. Femur bones are resembling male bones. Character of skull bones resembles male. There is no fracture or cut on the bones of the limbs.'

(5) The doctor could not discover the cause of death and opined that the age of the deceased was between 28 and 32 and that death might have occurred 8 to 10 days prior to the post mortem examination. He prepared report Ex. Public Witness 12/A which ended with the observation that no further opinion was possible.

(6) The appellant, who was around, when efforts were being made to identify the remains of the dead body, slipped away as green button was identified by Mahender Singh and Chander Mohini. He was, however, apprehended on the

following day at about 9.35 p.m. from Dhaula Kuan. On being interrogated, he disclosed that he had buried the shoes and bloodstained tehmad in front of bungalow No. 14 and kept the lathi and shirt in the servant quarters of bungalow No. 12 and that he could point out and get the same recovered. Disclosure statement Ex. Pw 18/C was recorded and pursuant thereto recoveries were effected ' on the following day. In regard to lathi and white terycot open shirt, orange coloured underwear, white embroidered leather shoes were recovered from servant quarter of bungalow No. 12 and recovery memo Ex. Public Witness 18/D was prepared. White shoes (Ex. P3 and Ex. P4) and tehmad (Ex. P9) were recovered from a pit near bungalow No. 14 and memo Ex. Public Witness 18/E was prepared. Tehmad and white shoes were identified by Mahender Singh, Chander Mohini and others to be the pro- perty of Surajpal Singh.

(7) References were made to Central Forensic Science Laboratory to give opinion in regard to recovered articles and reports Ex. Public Witness 23/C and Ex. Public Witness 23/D were received. According to the first report, blood on kassi was too small for serological analysis while cut and torn shirt and cut and torn piece of cloth described as underwear carried stains of blood. In regard to other recoveries made from servant quarters of bungalow No. 12, the report was that the shirt and underwear carried blood but not the pair of shoes. According to the other report, the serologist found human blood in respect of shirt but in the case of other items he noted that blood was disintegrated.

(8) The investigation revealed that Surajpal Singh was seen alone with the appellant during the night between 2nd and 3rd August, 1975 and it was represented by Bijender Singh that he had gone to the village for purchasing buffaloes.

(9) During the trial, the appellant's defense was of total denial of all the circumstances regarding which witnesses had deposed against him.

(10) The learned Additional Sessions Judge found that despite the opinion of the doctor regarding age i.e. between 28 and 32 years there was satisfactory evidence that the skeleton recovered from the field of bungalow No. 12 was of Surajpal Singh. He further found that shoes (Ex. P3 and Ex. P4) and tehmad (Ex. P3)

belonged to Surajpal Singh and the evidence in regard to the discovery and recovery of these articles was a very strong circumstance. He further found that another weighty circumstance was that the appellant had been seen along with Surajpal Singh during the night intervening 2nd and 3rd August, 1975. Lastly, he found that motive for the crime appeared to be the impulse to grab buffaloes belonging to Surajpal Singh. By relying upon these circumstances, the learned Additional Sessions Judge convicted and sentenced the appellant as already mentioned.

(11) All that needs examination is whether the circumstances noted above stand fully established individually and whether these circumstances when considered together constitute a complete chain from which inference in regard to guilt of the appellant can be drawn and that these circumstances are inconsistent with the hypothesis of innocence of the appellant. This is the law which governs cases wherein prosecution relies upon circumstantial evidence only. The earliest authority is *Hanumant v. The State of Madhya Pradesh*, : 1953 CriLJ129 . Mahajan J. (as his Lordship there was) who spoke for the Court observed :

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

These observations have since been relied upon in a series of cases decided by the Supreme Court as well as different High Courts.

(12) In *Hanumant's* case warning addressed by Baron Alderson to the Jury in *Reg v, Hodge* (1838) 2 Lew 227 in the matter of assessment of circumstantial evidence was approved by their Lordships. For its sheer beauty of expression it bears

reproduction. The placitum says :

'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

(13) In the light of what has been reproduced above we would now consider the evidence in this case. The evidence in regard to identification of the skeleton to be the remains of Surajpal Singh rests solely on the identification of green button found on the shirt which was discovered not on August 7, 1975 but on the following day as lying near the scattered remains in the Bajra field. Manifestly, this evidence vis-a-vis the formidable conclusion is very flimsy and it is difficult to say that the circumstance that the shirt carrying a green button the like of which had been stitched by Chander Mohini on the shirt of Surajpal Singh found near the skeleton is of conclusive character and tendency in the sense that a firm conclusion can be drawn from the same- This difficulty apart, there is complete absence of evidence that the person whose skeleton was discovered suffered a violent death at the hands of anybody. Dr. Bharat Singh, who performed the autopsy, has not given the cause of death and his report is eloquent enough to indicate that there was no injury to any bone although the skeleton was almost complete. This aspect was absolutely ignored by the learned Additional Sessions Judge who appears to have rushed to the conclusion that the person whose skeleton was 'discovered was killed by another person. Death of a human-being can occur in various ways it can be natural, suicidal or accidental as well. In case of culpable homicide it is of utmost importance that the person who is alleged to have been killed by the person charged, met with unnatural death caused with intention or knowledge as mentioned in Section 299 of the Indian Penal Code. Once this basic circumstance is established, there would be still other circumstances which would require to be proved to bring home the charge. These would include evidence showing the complicity of the person charged. In *Palvinder Kaur vs. The State of Punjab*, : 1953 CriLJ154 , the prosecution case was that

Palvinder Kaur had caused the death of her husband, Jaspal Singh, by administering potassium cyanide and had done away with the dead body by putting the same in a trunk and thereafter throwing the same into a well on a mound at some distance in the vicinity of a village. The medical evidence did not disclose that it was a case where death had been caused by administering potassium cyanide. Palvinder Kaur was acquitted of the charge of murder by the Punjab High Court but was convicted for the offence under Section 201 of the Indian Penal Code on the basis of evidence relating to her conduct in the doing away with the dead body of her husband with the help of her paramour. The Supreme Court acquitted her of the charge under Section 201 of the Indian Penal Code on the view that prosecution had failed to establish that death of Jaspal Singh was caused by administering potassium cyanide by some person and that Palvinder Kaur had reason to believe that it was so caused and with that knowledge she took part in the concealment and disposal of the dead body. It was observed :

'It was essential in these circumstances for the prosecution to establish affirmatively that the death of Jaspal was caused by the administration of potassium cyanide by some person (the appellant having been acquitted of this charge) and that she had reason to believe that it was so caused and with that knowledge she took part in the concealment and disposal of the dead body. There is no evidence whatsoever on this point. The following facts, that Jaspal died, that his body was found in a trunk and was discovered from a well and that the appellant took part in the disposal of the body do not establish the cause of his death or the manner and circumstances in which it came about. As already stated there is no direct evidence to prove that potassium cyanide was administered to him by any person. The best evidence on this question would have been that of the doctor who performed the post-mortem examination. That evidence does not prove that Jaspal died as a result of administration of potassium cyanide.'

(14) There is evidence to show that the appellant was living with Surajpal Singh and that during the night between 2nd and 3rd August, 1975 they were seen taking out the buffaloes for the purpose of grazing at about the mid night. Some of the witnesses who have spoken on the point have stated that this incident

happened a few days before the discovery of skeleton while others have stated that it was during the night between 2nd and 3rd August, 1975. When it is borne in mind that it was the norm that buffaloes were being taken out during night for the purposes of grazing such significance would not attach to this circumstances and even if it be taken to be a significant circumstance it would have to be considered in conjunction with the other circumstances for the purpose of coming to the conclusion that the chain formed by the circumstances is as far as possible so complete that the only inference that can be drawn is in regard to guilt of the appellant and not of his innocence. The only other circumstance is in regard to the recovery of tehnuul and shoes made from a pit outside bungalow No. 14 at the instance of the appellant. This evidence fails to inspire confidence in the mind inasmuch as it is nobody's case that these articles were lying concealed in such a manner that these could not be easily seen by other persons. The skeleton was detected on 7th August, 1975 and the investigating officer and others were active on the scene on 8th and 9th August, 1975. The situation of bungalow No. 14, as would appear from the site plan Ex. Public Witness 3/A, is such that it adjoins bungalow No. 12. In these circumstances, it is not free from doubt that the tehmad and shoes stated to have been recovered pursuant to the disclosure made by the appellant were not discovered prior to the recovery stated to have been made at the instance of the appellant.

(15) As regards the conduct of the appellant, no adverse inference ' can possibly be drawn as he continued working in the dairy even after the return of Mahender Smgh and represented to one and all that Surajpal Singh had gone away to the village to purchase buffaloes and had carried Rs. 3100.00 with him.

(16) On appraisal of all the facts and circumstances of this case. there is no escape from the conclusion that not only there is complete absence of direct evidence that the appellant was responsible for the death of Surajpal Singh, the circumstances which can be said to have been proved are such that what to talk of formation of a complete chain from which inference in regard to the commission of the crime as well as the complicity of the appellant can be drawn beyond reasonable doubt, there is nothing but lurking suspicion against the appellant. Mere suspicion, however, strong, can be of no avail and life and liberty of persons

cannot be put into jeopardy on mere suspicion. Cases are not unknown where death is accidental and the accused has acted in a peculiar manner regarding the disposal of the dead body for reasons best known to him. One of them might well be that he was afraid of a false case being started against him. It can be more true in the case of an accused person who is of a young age as in this case.

(17) For the foregoing reasons, the conviction of the appellant cannot be sustained. Accordingly, we allow the appeal and set aside the conviction and the sentence and acquit him of the charge and direct that he may be released forthwith, if not required in any other case.

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