

Surinder Singh Vs. State

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Court : Delhi

Decided On : Aug-10-1979

Reported in : 17(1980)DLT52

Judge : V.D. Misra and; F.S. Gill, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - sections 302 and 452; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 164 and 313

Appeal No. : Criminal Appeal No. 30 of 1975

Appellant : Surinder Singh

Respondent : State

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

Judgement :

V.D. Misra, J.

(1) Surinder Singh alias Billu has been convicted by an Additional Sessions Judge, Delhi, under Section 302, Indian Penal Code, and has been sentenced to imprisonment for life and a fine of Rs 5,000.00 with a direction that in case the fine is realised it shall be paid as compensation to the widow of the deceased. In default of payment of fine he has been directed to suffer further rigorous imprisonment for five years. He has also been convicted under Section 452, Indian

Penal Code, and sentenced to rigorous imprisonment turn five years. The substantive sentences have been directed to run concurrently. He challenges the convictions and sentences by this appeal.

(2) House No. 448 B, Majlis Park, Delhi, is a barrack divided into 6 rooms. In one of the rooms lives Mst. Kesar. In another room lives Kesar's sister. Two rooms intervene between these rooms. Mst. Kesar was married to Amar Singh, whereas her sister is married to Ram Singh. At one time Ram Singh was running a dairy and was keeping milch cattle in the open space behind the barrack. He fell sick and gave up this business. About two months before the incident Billu appellant started the dairy again. He started to tethering his cattle at the back of the barrack.

(3) According to the prosecution version Billu was asking the Amar Singh to vacate his room so that the former could store fodder for the cattle. According to the defense version it was Amar Singh who objected to Billu's running the dairy there.

(4) On October 10, 1974 at about 10 p.m. Amar Singh was lying on a cot in his room. His wife Mst. Kesar and Kesar's mother Prem Devi were also present in the room. Billu along with his two brothers Karam Singh and Jaswant Singh come there. Billu asked Amar Singh why he had not vacated the room. Amar Singh told him that it was right and he would vacate the room when he got another. Amar Singh asked Billu to go back to his house. Billu shouting that he would teach Amar Singh a lesson for not vacating the house, whipped out a dagger and attacked him. A number of injuries were inflicted. Mst. Kesar raised a hue and cry shouting 'Bachao, Bachao', Billu Along with his brothers ran away. Soon thereafter Amar Singh died. Atma Ram, brother of Mst. Kesar, who was living at a distance of 300 to 400 paces, telephoned the police control room informing the police that a quarrel had taken place. This information was received by the Control Room at 10.46 p.m. (Exhibit Public Witness PW/11A) by Sub-Inspector Hari Singh. This Sub-Inspector tried to contact Police-Station Kingsway Camp on the telephone. But as the telephone of the police-station was out of order so he dispatched a police van for giving the information. On receiving the information the police-station conveyed the message to Police-post Azadpur.

(5) SUB-INSPECTOR Ram Sarup Khurana, who was present at the police-post, was handed over a copy of this report. He reached the scene of crime at about 1 1.30 p.m. He recorded Mst. Kesar's statement (Exhibit Public Witness PW/5A) and sent the same to the police-station for registration of a case. Crime team was summoned. It came there at 3 or 3.15 A.M. After getting the scene of crime photographed, the Sub-Inspector collected blood lying inside the room. He also took into possession various blood stained articles. After holding an inquest he sent the dead body to mortuary to await postmortem examination.

DR. Bharat Singh, Police Surgeon (Public Witness 6), held an autopsy. He found the following injuries on the dead body : (1) One incised wound over the right side of face. Size 1'x' muscle deep. (2) One incised wound over the left temporal area in front of the ear, vertically placed. Size 1 3/4'x' "x? (3) One incised wound over the left lobe of the ear. Size 'x'x through and through. (4) Two parallel incised stab wounds over the right deltoid area on the front sides placed half inch apart with fail and directed downward and medially. Size of each wound was 1'x' -1 'and 3/4'x' - 1'. (5) One incised wound over the right elbow on the front side. Size "x'x'. (6) One incised stab wound on the front of chest, half inch left to lateral border of mediastinum with its upper and 2" below the left steno-clavicular point. Size 1'x'x'?. (7) One incised stab wound 2 inches below and medial to left nipple placed in verticle position. Size 1'x'x'

(6) On opening the body the doctor found :

'INJURY No. 6 had entered the chest cavity through 3rd intercostal space cutting the 4th rib completely at its constal end. After entering the chest cavity, the wound was continuous over the upper lobe of the lung and it was half inch deep in the lung tissue. Injury No. 7 had entered the chest cavity through 4th intercostal space and had cut the right ventricle of the heart chamber deep. Chest cavities were full of fluid and clotted blood.'

(7) The doctor was of the opinion that injuries Nos. 6 and 7 individually as well as collectively were sufficient to cause death in the ordinary course of nature. According to the doctor, excepting injury No. 4 all other injuries were possible by dagger Exhibit P.1.

(8) SUB-INSPECTOR Khurana started searching for the appellant and succeeded in arresting him between 4.30 P.M. and 5 P.M. from Indira Nagar Chowk on October 11, 1974. The appellant was found wearing a blood stained shirt Exhibit P8 and blood stained pants Exhibit P9. Both the blood stained clothes were duly taken into possession.

(9) The appellant was found to have an injury on his leg with a corresponding cut mark on the pants he was wearing. The appellant was, therefore, sent to the police hospital. Dr. S. Chaudhary (Public Witness 16) medically examined the appellant at 8.05 P.M. The doctor found one incised wound 1'x"- ' over the right thigh upper part lateral side. The injury was stated to be 10 to 12 hours old. The doctor also opined that the possibility of this injury being self-inflicted could not be ruled out.

(10) The appellant was interrogated several times. On October 13, 1974 he was interrogated again at Subzi Mandi Azadpur in the presence of two public witnesses. The appellant made a disclosure statement Exhibit PW/10A showing his willingness to get the knife recovered from under the bushes near the railway line. The appellant then led the police to a bush and got knife Exhibit Pi recovered. The knife was suspected to be blood stained and was, therefore, taken into possession.

(11) The blood stained articles including the clothes of the deceased as well as those of the appellant were sent to the Central Forensic Science Laboratory. The report of the Chemical Examiner (Exhibit PY) shows that the clothes of the deceased had human blood of blood group 'A'. Shirt of the appellant also had human blood of the same group. However, the pants of the appellant was found to have human blood of blood group 'AB' Dagger Exhibit Pi was also found to have human blood but the blood grouping could not be determined.

(12) The defense of the appellant, as disclosed in his statement recorded under Section 313 of the Code of Criminal Procedure, was that Amar Singh deceased used to object to the appellant running the dairy. On the day of the incident the appellant was attending to his cattle at about 10.15 P.M. when Amar Singh came there and started abusing and fighting with him. According to the appellant, Amar

Singh grappled with him and gave the appellant a knief blow at his leg. The appellant's servant Sohan Singh tried to rescue the appellant 'but Amar Singh deceased was furious and he swooped on him with a knief. Sohan Singh, in order to save himself, gave kirpan blows to him. Out of fear I ran away from the spot.'

(13) MST. Kesar (Public Witness 12), widow of the deceased, has deposed in detail about the incident. Her testimony is assailed on the ground that she was not present at the time of incident and had named the appellant on suspicion, it is also contended that she is not corroborated by any other evidence and so she should not be relied upon. The appellant is very closely related to this witness being her sister's son. There was no reason for her to falsely involve such a near and dear relation on mere suspicion. The time of incident is about 10.15 P.M. in the month of October. At such an hour the lady of the house is most likely to be at home unless there is some special reason to go to some other place. The deceased had only one room which could accommodate three cots. It was Mst. Kesar who was looking after the house hold chores. We have no reason to hold that she was not present at the house at the time of incident. Certain contradictions have been pointed out in her statement. For example, details of grappling are not mentioned in the first informaton report though she deposes about them in the court. Again, whereas in the court she mentions about appellant coming to her house about 3 or 4 days earlier to the incident and asking the deceased to vacate the house, she made no mention of it in the first information report. In our view these are very minor contradictions. We cannot lose sight of the fact that the witness, who is aged 35 years, saw her husband being suddenly killed. She must have been in a great shock as she tells us, when the police arrived on the scene. In that state of affairs if she forgot to tell the police about these facts, the defense cannot draw any advantage. She has been fully believed by the Trial Court and we see no reason to take a different view.

(14) Though Mst. Kesar does not need any corroboration, yet we find that she has been corroborated by her mother Mst. Prem Devi and her brother Atma Ram. Now both these witnesses were got declared hostile by the Public Prosecutor and were cross-examined. But when it does not follow that their evidence cannot be looked into. Mst. Prem Devi (Public Witness 13), mother of Mst. Kesar, corroborates the

latter when she deposes that the appellant came to the house of the deceased that night, shouted that he would give the deceased taste for not vacating the house and took out a dagger. Thereafter, this witness ran to the house of her daughter, the mother of appellant, living nearby to ask her to intervene. By the time she returned with the father of the appellant, the incident was over and Amar Singh was lying dead in a pool of blood. She was cross-examined because she completely exonerated the two brothers of the appellant who were appellant's co-accused. We find that the statement of this witness was got recorded under Section 164 of the Code of Criminal Procedure also. We can very well imagine the predicament of a mother who finds that the sons of one daughter had killed the husband of her other daughter. It was, perhaps because of these circumstances that the investigating officer decided to get the statement of this witness recorded under section 164 of the Code of Criminal Procedure. However, when she was cross-examined by the appellant, she stated thus : 'It is correct that Amar Singh was sitting on the charpoy when Billu came and shouted to him to vacate the house. It is correct that Amar Singh got up from the charpoy and then came at the door. I did not see Amar Singh giving a kick to Billu, nor did I see Billu falling down on the ground after receiving the kick. It is correct that Amar Singh and Billu had both grappled amongst themselves.' Explaining the part played by the co-accused of the appellant she stated 'It is correct that they were also trying to separate Amar Singh and Billu accused. I did not see any blood lying at the spot where Billu used to tether his buffaloes.' This witness thus clearly supports the prosecution version to the extent that the appellant came to the house of the deceased and threatened him. She also knocks out the defense version that it was Amar Singh deceased who had given any kick or caused any injury to the appellant. She is categorical about the place of incident and denied the suggestion that any blood was spilled at the place where the cattle are tethered.

(15) Atma Ram (Public Witness 14) is the brother of Mst. Kesar. Like Mst. Prem Devi he is also equally related to the family of the deceased and the family of the appellant. However, he is not an eye witness to the incident. He was living in another house which was considerably away from the house of Mst. Kesar. On coming to know of the quarrel, he informed the Police Control Room. He was got declared hostile and cross-examined. However, he categorically states that when

he came back after informing the police he was told by his sister Mst. Kesar that the appellant had stabbed the deceased. The statement of this witness does not in any way help the appellant

(16) Coming to the question of the scene of incident we find that not only Mst. Kesar and her mother Prem Devi categorically stated about the deceased being stabbed in the house, other evidence also points out to that direction only. It is only Atma Ram who, during the cross-examination by the appellant, deposed that he had seen the blood also at the place where the cattle used to be tethered. He goes on to say that not only blood was shown to the police, the police collected the blood from that place also. Now the investigating officer, Sub-Inspector Khurana, deposes that he lifted the blood from the room. The photographs of the scene of crime show the blood and the deceased in the room. In cross-examination the investigating officer was asked about the time of lifting the blood but it was never even suggested to him that he lifted any blood from any other place including the place where the cattle were tethered. He was not suggested about Atma Ram or any one also pointing out blood at the place where the cattle were tethered. We have no reason to doubt the scene of crime being the room. When Atma Ram informed the police that the quarrel was taking place at the dairy of Ram Singh, he was evidently out to mention an identifiable place to enable the police to reach there quickly. Moreover, the injured could not have walked the distance between the cattle shed and his house, as is suggested by the learned counsel for the appellant, after having his right ventricle of the heart chamber cut (injury No. 7). Dr. Bharat Singh was not asked if it would be possible for any person to walk after receiving such an injury. In our opinion there is no substance in the plea that the incident took place near the cattle-shed.

(17) The defense version given by the appellant in his statement has no basis. It is true that when the appellant was apprehended he had an incised wound on his leg and there was a corresponding cut mark in his pants. But that does not mean that he had received this injury during the incident. As the appellant was not apprehended at the scene of crime or soon thereafter, the prosecution has no duty to explain this injury. This injury could be self-inflicted. It might be due to any other incident. According to the doctor, the duration of the injury was between 10 to 12

hours. We have already rejected the contention that the scene of crime was outside the room of the deceased. In these circumstances, we have no hesitation in rejecting the defense version.

(18) When the appellant was apprehended, he was found to be wearing the bloodstained shirt Exhibit P8 and blood stained pants Exhibit P9. The appellant in his statement under section 313 Code of Criminal Procedure admits that his pants was bloodstained but, according to him, his shirt was not bloodstained. However, he does not deny that his shirt was taken into possession. The occasion for taking the shirt into possession could only be if it was suspected to be bloodstained since there was no other purpose to take possession of the shirt. It may be recalled that whereas pants has been found to have blood group 'A B', the shirt was found to have been found to have blood of group 'A'. In these circumstance it is reasonable to conclude that the blood on the appellant's shirt was not that of the appellant and it was probably that of the deceased.

(19) The recovery of dagger Exhibit Pi at the instance of the appellant is assailed on the ground that it had been taken out from under the bushes. The place of recovery was near the railway line. This place is stated to have good many bushes and is not frequented by the public. Though the dagger was not buried, yet it could not be seen by any one passing that place. Thus the recovery of the dagger Exhibit Pi would show that the appellant had the exclusive knowledge.

(20) No doubt there has been a delay in recording the first information report. The recapitulate, the incident had taken place at about 10.15 P.M., the Investigating Officer reached the scene of crime at 11.30 P.M. and the recording of the statement of Mst. Kesar, widow of the deceased, was over by 1.15 A..M.. It is suggested that this inordinate delay of about two hours shows that the first information report was the result of mature deliberation. We cannot agree. Mst. Kesar, who had been shocked and dazed at the sudden murder of her husband must have taken some time to compose herself and give a coherent statement to the police. In these circumstances, it cannot be said that there was any inordinate delay.

(21) It is submitted that two weapons have been used in the incident but the prosecution has shown the use of only one weapon. It is, therefore, contended that the prosecution has not come out with true facts. The submission is based on the opinion of Dr. Bharat Singh that except injury No. 4 other injuries were possible by dagger Exhibit P1. The prosecution version is that the appellant had not come alone. He was accompanied by his two brothers. The purpose of coming at that time of the night was to teach a lesson to Amar Singh deceased for not vacating the house. It was for that reason that the appellant carried a dagger. The attack on the deceased was sudden. Other two co-accused also took part. The co-accused were acquitted because Prem Devi stated that they were trying to intervene. According to Mst. Kesar the two co-accused were holding the deceased when the appellant stabbed. As many as 7 incised wounds has been found on the body of the deceased. In that case if someone caused an injury on the shoulder of the deceased by another weapon, it does not follow that 6 stab wounds were not the result of the appellant's stabbing. The result is that we would uphold the conviction and the sentences of the appellant, and dismiss the appeal.