

Surrinder Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/683867

Court : Delhi

Decided On : Feb-26-1970

Reported in : ILR1970Delhi258

Judge : H.R. Khanna, C.J. and; P.N. Khanna, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 20 of 1969

Appellant : Surrinder Singh

Respondent : State

Advocate for Pet/Ap. : G.S. Bakshi and; B. Dayal, Advs

Judgement :

H.R. Khanna, C.J.

(1) This is an appeal by Surrinder Singh, aged 35, who has been convicted, by learned Additional Sessions Judge under Section 302, Indian Penal Code, for causing the death, of Joginder Kaur and Jagjit Kaur, and has

(2) herself. place that to go volunteered and Niketan Nari going from Singh Jaswant dissuaded Kaur Jagjit Singh. Surrinder life her danger apprehended she as release of time the at present be requested then Joginder made. was order above when Court in also were Kaur, wife, his liked whomsoever? with free

released ordered Magistrate The 1968. 27, July on before produced bail. 1968, 26, Niketan. sent Procedure. Criminal Code 151 Section read 107, under arrested he peace, breach Singh, Raj Shiv Si officer, duty As accused. prepared not stated wife. enticed had accused p.m. 4.25 about Paharganj police-station went) Witness (Public along 25, On 17, by lodged report A left again thereafter, days Ten persons.. some help him took house 1968 July, beginning In places. three kept days. month a for lived parents. live children wife Nagar Mahabir vacated fact, this know came When house. latter?s visit continued period During month. Singh?s mile half distance Nagar, shifted others. known intimacy quarrel Kaur. illicit days, 15 stayed After stay allowed occurrence. months occupation evicted developed occurrence, prior years About her. four deceased married 29. aged Public near Tilak place. occurrence old eight being youngest Raju whom out six They tune 28 who deceased, is case prosecution

(4) Shrimati Pushpa Devi (Public Witness 5), an employee of Nari Niketan. heard noise that Joginder Kaur. after her release, had been stabbed. She gave telephonic information, about that to the Control Room. Ast Santokh Singh received the telephonic intimation at 7.09 p.m. The Assistant Sub-Inspector then informed police- station Tilak Nagar and also directed a police van to leave for the place of occurrence. Asi Goverdhan Singh, after receipt of telephonic information from the Control Room, left for the place of occurrence at about 7.15 p.m. On arrival at the place of occurrence, which is at a distance of about five furlongs from police-station Tilak Nagar, the Assistant Sub-Inspector found Jagjit Kaur lying dead there. Joginder Kaur was found lying in an injured condition near the quarters of jail employees. Surinder Singh accused too was present there in the custody of Mahan Singh constable Mohan Singh and Puran Singh (Public Witness SS) were also present there. Asi Goverdhan Singh then sent Joginder Kaur in a police van to the Willingdon Hospital, Statement P.A. of Mohan Singh was recorded by the Assistant Sub-Inspector and the same was sent to police-station Tilak Nagar at 8.10 p.m. On the basis of statement P.A. formal first information report was prepared at the police-station at 8.25 p.m. Inspector Gurcharan Singh also in the meantime reached the place of occurrence and took over the investigation of the case.

(5) Joginder Kaur was examined in the Casualty Ward of the Willingdon Hospital by Dr. D. K. Mukerjee (Public Witness 10) at 8.10 p.m. The doctor found two incised wounds on the person of Joginder Kaur in the umbilicus region and right arm. The doctor, however, refrained from holding detailed examination to avoid delay. Joginder Kaur was also examined by Dr. B. S. Dhingra who directed that she be sent to the Surgical Ward. Joginder Kaur died in the hospital at 3 a.m. on July 29, 1968. Post-mortem examinations on the bodies of Jagjit Kaur and Joginder Kaur were performed by Dr. S. S. Kaushal on July 28, 1968 at 8 a.m. and July 30, 1968 at 3.30 p.m. respectively.

(6) Inspector Gurchanin Singh, during the course of investigation, took into possession bloodstained earth and a pair of chapals from the place of occurrence. He also took into possession the blood- stained clothes of the accused and made them into sealed parcels. The accused was found to have an injury on his left wrist and he was got medically examined. On July 28, 1968 the accused was interrogated by Inspector Gurcharan Singh. The accused then disclosed in the presence of Goverdhan Das (Public Witness 6) and Gurcharan Singh (Public Witness 7) that he had thrown clasp knife in a water pit near a telephone pole at a place between Nari Niketan and a D.T.U. bus Depot and that he could get the same recovered. Memo with regard to the statement of the accused was prepared. The accused thereafter got recovered knife P. 11 from a pit containing water. The knife was made into a sealed parcel. Subsequently, the parcels, containing the knife and other articles which were taken into possession, were sent to the Chemical Examiner whose report showed that there was blood on the clothes of the accused and some other articles. No blood was, however, found on the knife presumably because the same had been thrown in the water in the pit.

(7) At the trial the accused, in his statement under Section 342, Criminal Procedure Code, admitted that his wife Joginder Kaur, had been carrying on with Jaswant Singh for about three years and that he had come to know of their intimacy during his stay in the house of Jaswant Singh. The accused also admitted that he had quarrelled with Jaswant Singh on that account and that he had left Jaswant Singh's house after a stay of 15 days. The accused did not deny that he had thereafter shifted to Mahabir Nagar and that he had learnt of his wife's visit to

Jaswant Singh during that period. The accused further admitted that after staying for a month in Mahabir Nagar. he shifted along with his wife and children to the house of his parents at Paharganj. According to the accused, on May 17, 1968 he made a report to the police regarding his apprehension that Jaswant Singh and his companions would entice away his wife in his absence. On June 1, 1968, according to the accused, his wife was enticed away by Jaswant Singh. Joginder Kaur then took with her, her youngest child. The accused served a notice on Jaswant Singh alleging that he was keeping his wife. Other reports were also made by the accused to the police. On July 3, 1968, it is stated the accused met Surjit Kaur, sister of Jaswant Singh. On enquiry Surjit Kaur told the accused that Joginder Kaur was at their house. The accused then went and brought Joginder Kaur along with him to his house. The accused admitted having made a report on July 25, 1968 to the police as a result of which Jaswant Singh was put under arrest and Joginder Kaur was sent to Nari Niketan. According to the accused, on July, 1968 he went to Nari Niketan with a request that his wife, Joginder Kaur, be not allowed to be interviewed by anyone. When he went there he found that Jaswant Singh and his wife and others were already present outside the Nari Niketan. As regards the actual occurrence, the accused stated that Joginder Kaur was released from the Nari Niketan at 6.30 p.m. on July 27, 1968 and was brought by him out of the gate. Joginder Kaur then moved along with the accused when he was attacked by Jaswant Singh's mother and wife and Mohan Singh. The accused further gave the following version :-

'I was attacked by Mohan Singh and Jagjit Kaur who said that they would take Joginder Kaur along with them. Mohan Singh took out Knife. I snatched the same and suffered injury on the hand. Mohan Singh receded while Jagjit Kaur said that she won't allow Joginder Kaur to be taken away and that she would see that Joginder Kaur lives as the wife of Jaswant Singh as Jaswant Singh had spent a lot of money on her. I lost my balance and attacked Jagjit Kaur and inflicted injuries to her. Then I asked Joginder Kaur to accompany me. Joginder Kaur said that she could not break her relations with Jaswant Singh. Thereon I attacked her and caused injuries to her. I inflicted the injuries with the knife which had been snatched by me from Mohan Singh.'

(8) According to the accused, after the occurrence he picked up the child and reported the matter at the Police-station. The accused admitted that his clothes had got stained with blood. The accused also admitted that he had led the police party to the spot and got recovered knife P. 11 from underneath the water.

(9) In defense two formal witnesses, Rameshwar Dass constable and Ram Narain constable, were examined with regard to the reports made by the accused to the police regarding the intimacy of his wife with Jaswant Singh and his apprehensions on that account.

(10) Learned Additional Sessions Judge accepted the prosecution case and accordingly convicted and sentenced the accused as above.

(11) It is the common case of the parties that the accused caused injuries to Joginder Kaur and Jagjit Kaur as a result of which they died. Dr. Kaushal performed post-mortem examination on the body of Jagjit Kaur who, in the opinion of the doctor, was aged about 35 or 40 years. The doctor found the following injuries on Jagjit Kaur's body :-

'1. Stab wound 2' x ' x 7 on the back of the right scapular lateral border 2' above inferior angle of scapular vertically, '2. Stab wound V x ' x chest on back 1' to the right of the middle line and 4' from inferior angle of the right scapula, directed obliquely. 3. Stab wound i' x " x chest on the left side in the posterior axillary line near 7th and 8th ribs. 4. Stab wound ' x " x spine at level of the dors lumber spine directed vertically. 5. Stab wound 1' x " x spine 1' above No. 4 directed obliquely. 6. Stab wound 1' x " x muscle on the left side of the chest, 4' from inferior angle of the left scapula. 7. Stab wound 1' x " x chest on left side directed vertically 4' from the nipple on the left side. 8. Incised wound 3' x 1' x muscle directed obliquely on under surface of the left forearm below elbow. 9. Incised wound 2' x " x muscle on the right wrist. 10. Incised wound ' x " x muscle on the palm of the right hand.'

(12) Injury No. 1, after cutting through skin and subcutaneous tissues, entered the chest cavity on the right side and cut the lungs in the apical region. Injury No. 2 dented the spines. Injury No. 3 entered the left side of the chest below the costal border and cut the lower lobe of the left lung. Injury No. 7 pierced through the

pericardium and caused laceration on the surface of the heart. Injuries Nos. 1, 2, 3 and 7 were individually sufficient to cause death in ordinary course of nature. Death was due to shock and haemorrhage as a result of the injuries. .

(13) Following injuries were found on the body of Joginder Kaur when Dr. Kaushal performed post-mortem examination :-

'1. Stitched wound 1' on back of the right shoulder directed obliquely 3' from inferior angle of the right scapula. 2. Incised wound 2' x ' x muscle directed horizontally just above the elbow joint, with a tailing at medial end. 3. Stitched wound 8' long in mid-abdominal line. 4. Stitched wound 4" on the left side of the abdomen, directed obliquely.'

(14) Injury No. 3 was a surgical wound. Injury No. 1 had clean cut edges and cut through the 5th rib and the lower lobe of the right lung. Depth of the wound from the skin surface was 4'. Injury No. 4, after cutting through the abdominal wall, cut the loops of the intestines and the stomach. Injuries Nos. 1 and 4 were individually sufficient to cause death in ordinary course of nature. Death was due to shock and haemorrhage as a result of wound on the chest and abdomen.

(15) As stated above, the accused admits that he caused injuries to Joginder Kaur and Jagjit Kaur, but, according to him, it was not, in the circumstances, mentioned by the prosecution. The prosecution, in support of its version, examined Mohan Singh (Public Witness 1) and Puran Singh (Public Witness 2) as eye-witnesses of the occurrence and they fully supported the prosecution case as given above. After having been taken through the evidence of the above witnesses, we find no cogent ground to disbelieve the same. So far as Mohan Singh (Public Witness) is concerned, the accused himself admits his presence at the scene of occurrence. As regards Puran Singh, we find that the witness was working as a carpenter for the construction of some quarters in the locality. The witness has thus explained his presence at the spot. He had also no animus to depose against the accused and nothing particular has been brought to our notice to detract from his testimony. The version of the accused that he was attacked by Mohan Singh with a knife and that he caused injuries first after snatching that knife from Mohan Singh, is not at all convincing. It is difficult to believe that if Mohan Singh has come armed with a

knife, he would allow the knife to be so easily snatched from him. It is also unlikely that the accused in such an event would allow Mohan Singh to escape without a scratch and would direct his attention to Joginder Kaur and Jagjit Kaur. Mr. Gurcharan Singh on behalf of the appellant has argued that Joginder Kaur was willing to go with the accused and she came out of Nari Niketan and that it was only when she saw Jagjit Kaur and Mohan Singh that Joginder Kaur changed her mind. It is further submitted that the version of the accused that he first caused injuries to Jagjit Kaur and thereafter to Joginder Kaur represents the truth. We are not impressed by this argument because we fail to understand as to why Joginder Kaur should change her mind to go with the accused after Jagjit Kaur was murdered if Joginder Kaur was first willing to go with the accused. The sequence of events, as given by the prosecution, is in accord with probabilities and we do not see any convincing reason to disbelieve the prosecution story in this regard.

(16) Mr. Gurcharan Singh has argued with some force that the accused caused injuries to Joginder Kaur and Jagjit Kaur while being deprived of the power of self-control by grave and sudden provocation, and as such his case is covered by Exception I to Section 300, Indian Penal Code. We have given the matter our consideration and are of the view that this contention is not well- founded.

(17) The question, whether death is caused under grave and sudden provocation, is one of fact depending upon the circumstances of the case. Before a person can claim the benefit of Exception I to Section 300 of the Indian Penal Code, he has to show that he was deprived of the power of self-control and this loss of self- control was due to grave and sudden provocation. Both the elements of gravity and suddenness have to be present and coexist before the provocation can attract the above-mentioned Exception. The test to be applied is not whether the provocation was such as would upset a hot tempered, easily excitable or hypersensitive person but whether it would cause a normal reasonable person to lose control of himself. It is essentially a psychological question and has to be judged in the context of all the surrounding circumstances. A sudden revelation of the infidelity of the wife normally constitutes such a provocation but if the husband thereafter gets time to cool down the provocation in the absence of any fresh incident would cease to be sudden, In the present case the accused knew of the infidelity of his

wife Joginder Kaur for months before the present occurrence. Joginder Kaur had apparently some infatuation for Jaswant Singh because she persisted in carrying on with Jaswant Singh in spite of the fact that the accused shifted his residence from one place to the other. When Joginder Kaur was produced in Court early on the day of occurrence, the Magistrate passed an order that she be released from Nari Niketan and that she was free to go with whomsoever she liked. The accused then went armed with a knife to Nari Kike-tan and tried to take her to his house. Joginder Kaur, however, refused to go with the accused and when he persisted she placed her son by the side of the road and told the accused that she would not go to his house. The accused then gave knife blows to Joginder Kaur. When Jagjit Kaur asked the accused to desist, the accused also jumped towards her, and although she started running away in her bid to leave the scene of occurrence, the accused went after her and gave her a number of fatal blows. The above facts, in our opinion, do not spell out a case of sudden provocation for the accused to cause injuries to Joginder Kaur and Jagjit Kaur. Joginder Kaur's refusal to go with the accused was nothing new. It was merely a reiteration of what she had told at the police-station only two days earlier when she was sent to Nari Niketan. This is clear from report dated July 25, 1968 in the daily diary of the police-station, copy of which is P. DD. Even if there may be said to be some fresh provocation offered by Joginder Kaur when she placed the child on the pavement, there was no justification whatsoever for the accused to go after Jagjit Kaur and cause injuries to her. His attack on Jagjit Kaur can by no means be stated to have been the result of grave and sudden provocation. We, therefore, are of the view that the case is not covered by exception I to Section 300 of the Indian Penal Code.

(18) As a result of the above, we maintain the conviction of the accused and dismiss his appeal.