

Sher Singh Vs. State

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Court : Delhi

Decided On : Jan-11-1995

Reported in : 1995CriLJ2187

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Appeal No. : Criminal Appeal No. 33/90

Appellant : Sher Singh

Respondent : State

Advocate for Def. : B.T. Singh, Adv.

Advocate for Pet/Ap. : Sunil Sethi, amices Curia

Judgement :

S.D. Pandit, J.

1. Sher Singh s/o Teja Singh r/o house No. 2. Village Tikri, Delhi stands convicted by the Additional Sessions Judge in Sessions case No. 112/87 on 12th November, 1987 and is sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/- and in default to suffer rigorous imprisonment for three months.

2. Deceased Jagtar Singh had three brothers Sahib Singh, Gumand Singh and Kishan Singh. His brother Sahib Singh and Gumand Singh are dead. Sahib Singh

has three sons, Mahinder Singh, Darshan Singh and Makhan Singh. Present appellant Sher Singh is son-in-law of said Sahib Singh and brother-in-law of Darshan Singh and Makhan Singh. The present appellant and Surinder Singh were tried for an offence of murder of one Sant Singh and were sentenced to imprisonment for life and appellant Sher Singh had undergone the said sentence and was released some days prior to the day of incident. It seems that in those proceedings son of Gumand Singh as well as deceased's son Puran Singh had given evidence against the present appellant and Surinder Singh. There used to be quarrels and disputes over the joint property land between sons of Sahib Singh sons of Gumand Singh as well as deceased and his son.

3. It is the case of the prosecution that on 21st November, 1986 P.W. 2 Puran Singh had gone Along with P.W. 5 Nand Lal to the house of the present appellant in order to invite the appellant and his brothers in a marriage in the house of P.W. 5 Nand Lal. After giving the said invitation card when they were returning home the brothers-in-law, of present appellant Makhan Singh and Darshan Singh had a quarrel with P.W. 2 Puran Singh and they had also assaulted him and a complaint regarding the said incident was lodged by P.W. 2 with the police.

4. The incident in question is alleged to have taken place on 22nd November, 1986 at about 8.30 P.M. On that day P.W. 2 Puran Singh was in his house Along with his wife as well as parents and brother P.W. 3 Amrik Singh. They had finished their meals. P.W. 2 Puran Singh and his wife were seeing TV programmes whereas his parents were making preparation for going to sleep. P.W. 2 Puran Singh's father and victim in this case Jagtar Singh was a deaf and dumb person. At about 8.30 P.M. there was a knock on the door of the said house of P.W. 2 Puran Singh. On hearing the same he inquired as to who was there. Thereupon appellant disclosed his identity and Hence P.W. 2 Puran Singh opened the door and took appellant Sher Singh in his house. After entering the house appellant Sher Singh took out a bottle of liquor from his pocket and picked up a metal glass lying there and poured some liquor from the said bottle in the said glass and offered the same to P.W. 2 Puran Singh. Puran Singh told him that he had already finished his meals and he would not take the same. He suggested him to put back the same in the bottle and that they would enjoy the same in the next evening.

When this was going on deceased Jagtar Singh came there and on seeing him appellant Sher Singh gave the said glass to Jagtar Singh and signalled him to consume the same. Deceased Jagtar Singh consumed the same and Sher Singh advised him to go to bed by making signs. Accordingly Jagtar Singh went inside. Then appellant Sher Singh left their house and went away.

5. About 10-15 minutes thereafter Jagtar Singh's wife came out running from their bedroom and informed P.W. 2 Puran Singh that his father had become uneasy and that something serious had happened to him. Thereupon Puran Singh and his wife rushed towards Jagtar Singh. Puran Singh made him to lie on the Charpai but found that his father was most probably dead and then he went out and searched for the present appellant but he was not seen in the vicinity. He then went to P.W. 6 Dr. Jagdish Gill who was their family doctor and brought him P.W. 6 Dr. Gill came to their house. He examined Jagtar Singh and declared him dead. Thereafter P.W. 2 went to the police station and there he gave the report which was entered as daily diary No. 16-A in the Ambedkar Nagar police Station and then the police came to the house of Puran Singh and there on verifying about the death of Jagtar Singh recorded the first information report which was registered at FIR No. 274/86. Then he recorded statements of Jagtar Singh's wife, P.W. 3 Amrik Singh and a neighbour P.W. 5 Nand Lal. He prepared the inquest memorandum and arranged to forward the dead body to All India Institute of Medical Sciences for the purpose of post mortem. Accordingly, the post mortem of the said dead body was carried out. The doctor had reserved his opinion regarding the cause of death and had forwarded the viscera to the Chemical analyser. The Chemical analyser had found on the analysis of viscera the presence of cyanide as well as morphine. On getting that report of Chemical analyser doctor had opined that the death was due to poisoning. Thereafter the appellant was challenged as the investigation was completed.

6. A charge was framed against the present appellant on 2nd November, 1987. The appellant pleaded not guilty to the charge. His defense is of total denial and false implication.

7. In order to prove its case against the present appellant the prosecution has examined in all 17 witnesses. The learned Additional Sessions Judge believed the evidence led by the prosecution and came to the conclusion that the prosecution has proved that the deceased Jagtar Singh had met with homicidal death due to poisoning and the appellant was responsible for the said poisoning and accordingly he held him guilty for the offence punishable under Section 302 and sentenced him as stated earlier.

8. Being felt aggrieved by the said decision Sher Singh has come in appeal before us. Shri Sethi, the learned counsel for the appellant has urged before us that the evidence on record does not support the prosecution case that deceased Jagtar Singh was administered poison through liquor. He further contended that in view of the evidence on record it is not also possible to hold beyond reasonable doubt that the death of deceased Jagtar Singh was only due to poisoning. He contended that conduct of the eye witness P.W. 2 Puran Singh as has been brought out in his cross examination makes it doubtful to accept the version given by him and his wife regarding the happening of the incident on that day. He further contended that the prosecution has not proved beyond reasonable doubt that the appellant could have procured the poison that he had administered and that he had any motive to cause his death. therefore, in view of these contentions he wants us to give benefit of doubt to the appellant and to acquit him. As against this the learned counsel for the State has tried to support the findings of the trial Court.

9. The case of the prosecution is that on the fateful day of November 22, 1986 the present appellant Sher Singh had gone to the house of Jagtar Singh at about 8.30 p.m. with a bottle of liquor in his pocket and there he took out the bottle of liquor and poured the contents of the same in a metal glass and offered the said liquor at first to P.W. 2 Puran Singh. But as Puran Singh had taken his meals he refused to consume the said liquor and by that time deceased Jagtar Singh who was inside the house came there. Jagtar Singh was deaf and dumb. He was asked by Sher Singh by signs to consume the liquor and accordingly Jagtar Singh consumed the liquor. He was then asked to go to bed by making signs and accordingly he went to the bed and then appellant Sher Singh went away. It is further claim of both P.W. 1 Sheela Devi and P.W. 2 Puran Singh that within a few minutes Jagtar

Singh's wife came out saying that Jagtar Singh had become uneasy and then they went inside and he found that his father was uneasy. therefore, he made him to lie on a charpai and when he laid him on the charpai he found that he was dead. He then went out in search of the present appellant but he was not found and then he went to his family doctor P.W. 6 Dr. Gill and brought him and the doctor found him dead. Then he went to the police.

10. Now if the above version of this P.W. 2 Puran Singh is to be considered in the light of other evidence on record then it becomes very doubtful that the version which he and his wife are giving is true and correct version. Prosecution has examined two independent witnesses P.W. 5 Nand Lal and P.W. 6 Dr. Jagdish Gill. This P.W. 5 Nand Lal is a friend of Puran Singh and as per the case of Puran Singh as well as his wife Sheela Devi on the previous day when Puran Singh had accompanied Nand Lal he was assaulted by brothers in law of the present appellant. If the evidence of this P.W. 5 Nand Lal is considered then it would be quite clear that Puran Singh had gone to him and had told that his father was not well. It is very surprising that he did not disclose to P.W. 5 Nand Lal the story regarding the appellant visiting his house and giving liquor to his father and father becoming sick after consumption of the said liquor. No doubt this P.W. 5 Nand Lal has been treated as the hostile witness by the prosecution and he has been cross-examined by the learned Public Prosecutor but if the cross examination of the said witness by the public prosecutor is seen then it would be quite clear that there is no suggestion given in his cross examination that P.W. 2 Puran Singh had narrated him the story about appellant visiting his house and the appellant giving him the liquor and his father dying due to the consumption of the said liquor. therefore, it is quite obvious that the P.W. 2 Puran Singh had not disclosed to P.W. 5 Nand Lal the version which he is now giving before us regarding the administering liquor by the present appellant.

11. The prosecution has examined P.W. 6 Dr. Jagdish Gill. This P.W. 6 Dr. Jagdish Gill is a family doctor of P.W. 2 Puran Singh. If the evidence of P.W. 6 is seen then it would be quite clear that this Puran Singh had not disclosed to him that his father had consumed the liquor given by this appellant Sher Singh and after consumption of the said liquor his father had become uneasy and therefore

he wanted Dr. Gill to examine his father. If the version given by this P.W. 2 Puran Singh before us was true and correct version then in the natural course of human conduct he would have disclosed the incident in question to his family doctor because after all he was their family doctor as his father had become serious due to consumption of liquor offered by appellant and he would have definitely disclosed the immediate act of his father before he became unconscious. thereforee the conduct of Puran Singh in not disclosing to his family doctor the facts of the appellant visiting his house and offering liquor to his father and father after consuming the said liquor becoming unconscious, makes his claim before us doubtful and the same could not be accepted without any hesitation of mind. It is very pertinent to note that this Puran Singh had told his family Doctor Jadish Gill that his father had an attack of fits. It the post mortem notes on record are considered then it would be quite clear that at the time of post mortem doctor had found the fracture of the nasal bones on both the sides of Jagtar Singh. There is absolutely no Explanationn given by P.W. 2 Puran Singh as well as his wife as to how that fracture could be there on the nose of Jagtar Singh. The failure of Puran Singh and Sheela Devi to explain this injury of Jagtar Singh also makes their claim doubtful.

12. Now before considering the question as to whether from the material on record Jagtar Singh had met with death due to poisoning and whether the appellant could be held responsible for the said poisoning of deceased Jagtar Singh, it is necessary to bear in mind the principles laid down by the Apex Court regarding the evidence required for the proof of case of murder by administration of poison. In the case of Ramgopal v. State of Maharashtra. : 1972 CriLJ473 the following principles have been laid down :

'Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question (secondly), had the accused the poison in question in his possession and (thirdly), had the accused an opportunity to administer the poison in question to the deceased It is only when the motive is there and these facts are all proved that the Court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.'

The said case, other cases of the Supreme Court as well as other High Courts were considered by Their Lordships of the Supreme Court, in the case of Sharad Birdhichand Sarda v. State of Maharashtra : 1984 CriLJ1738 and after considering those cases the following principles are laid down in para No. 165 on Page 559 as under :-

'So far as this matter is concerned, in such cases the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction :

(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession.

(4) that he had an opportunity to administer the poison to the deceased.'

13. therefore, bearing these principles in mind we proceed to consider the evidence on record.

14. Appellant Sher Singh is admittedly the son in law of deceased Jagtar Singh's brother. No doubt it has come in the evidence of P.W. 1 Sheela Devi as well as P.W. 2 Puran Singh that there were some disputes over the lands as well as one drainage pipe between Puran Singh and accused's brother in law Khazan Singh and Makhan Singh. therefore, it has been tried to suggest that these disputes furnished a motive to the appellant to cause death of one or the other family member of Jagtar Singh. It must be further mentioned here that if the evidence of P.W. 2 Puran Singh is considered then it is very difficult to hold that the appellant could have had such motive to cause the death of either Jagtar Singh or any member of his family. As per the version of Puran Singh appellant had knocked the door at about 8.30 p.m. and on hearing the said knocking had asked who was knocking and the accused had replied that he was there and then he opened the door and took him in the house. It has further come in the evidence that after the appellant came there, he took out a liquor bottle and poured the contents therein in a glass and offered the same to Puran Singh. But Puran Singh declined to take the

same by saying that he already taken his meals and he had suggested him to put back that content in the bottle and that they would consume the same on the next evening. If this version given by Puran Singh is taken into consideration then it becomes very difficult to hold that the relation between appellant and Jagar Singh's family were so strained so as to infer or hold that he was motivated to commit the offence in question. It at all the relations between the appellant and Jagtar Singh's family were strained then he would not have taken appellant Sher Singh in the house on that night. He would not have been asked by witness P.W. 2 Puran Singh to put back the contents of the glass in the bottle and that they would enjoy the same on the next evening. On the other hand as the appellant was previously convicted and as the appellant's brother in laws were troubling this Puran Singh the possibility of Puran Singh falsely implicating him by taking advantage of his father's sudden death is more probable.

15. It is a case of the prosecution that accused had given liquor through a metal tumbler to Jagtar Singh and Jagtar Singh had consumed the same and he met with death and the death was due to poisoning. As per the evidence on record the viscera of Jagtar Singh was preserved and the said viscera was sent to the Chemical analyser and the report of the Chemical analyser shows that on viscera examination he had detected cyanide and morphine poison in the viscera. In the 6th Edition of COX Medical Jurisprudence and Toxicology on Page 716 it has been mentioned that at the time of post mortem on account of death by poisoning the characteristic findings are as under :

(1) Post-mortem stains due to injuries, if any, are bright red, the venous blood is bright red and fluid.

(2) Skin is violet coloured and nails are blue.

(3) Eyes are bright, glistening and pupils are dilated.

(4) Jaws are firmly closed and fingers are clenched.

(5) Smell of cyanide is notable as soon as the body, specially the lungs, are opened.

(6) Rigor mortis sets in early and lasts longer.

16. Now bearing those observations of COX we have to consider the post mortem notes on record. If the said post mortem notes are seen then it would be quite clear that none of the characteristics mentioned by COX are found by the doctor who had carried out the post mortem in this case. He had not found any smell of cyanide on opening the lungs. He had not found that the eyes were glistening and that the pupils were bilated. He had not also found the symptoms of blood as noted by Dr. COX. If the said post mortem notes Ex. 9/A are considered then it would be quite clear that doctor had reserved his opinion regarding cause of death till the receipt of the Chemical analyser's report. After he received the report, at first the doctor had not immediately come to the conclusion that death was due to poisoning. He wanted the Chemical analyser further to clarify as to what was the quantitative estimation of those two poisons detected by him. The Chemical analyser it seems had replied to his quarry without giving the quantity of both the poisons and thereafter what the doctor has observed is as under :

'Cause of death to the best of my knowledge is due to cyanide poisoning.'

17. This opinion has been given by the doctor observing with lot of hesitation. Unfortunately, the prosecution had not cared to examine the said doctor in Court so that he could be cross-examined with regard to his somewhat hesitatingly given opinion with regard to cause of death. In such serious and heinous cases of murder not only the prosecution should take care that doctor who had performed the post mortem, is invariably examined as a witness but the trial Court also should insist on this. After all in case a particular doctor has left the hospital it is not difficult for the prosecution to trace out the present address of such a doctor with a little effort.

18. No doubt the Chemical analyser had found cyanide in the viscera but in this case there is one astonishing circumstance which has come on record. It has come in the cross examination of P.W. 2 that the containers in which the viscera was put and forwarded to Chemical analyser were brought by him and handed over to some official of the hospital in order to put viscera etc. in the same for forwarding the same to the Chemical analyser. The prosecution has not examined

the person who received those containers from P.W. 2 Puran Singh and there is no evidence on record to show that the containers brought by Puran Singh were clean empty containers before the viscera was put in the same. It has been tried to suggest in the cross examination of Puran Singh that the cyanide was available to him through his cousin who is a science student. There is no Explanation on record as to why P.W. 2 Puran Singh was asked to bring the containers in which the viscera was preserved. The prosecution has not led any evidence on record to show that the containers which P.W. 2 Puran Singh had handed over to any official of the hospital were clean and empty. therefore, the possibility of cyanide being put in such containers by Puran Singh could not be completely ruled out in this case. So detection of cyanide in the viscera of deceased would not lead to any conclusion that death of Jagtar Singh was due to poisoning.

19. It must be further mentioned here that as per the case of the prosecution the Poison in question was given through liquor. If the Chemical analyser's report as well as the post mortem notes on record are seen then it would be quite clear that there is no evidence on record to show that any alcohol was found at the time of the post mortem in the stomach contents of the deceased or in the blood of the deceased. The C.F.S. reports also do not show presence of any liquor in viscera and sample blood of deceased. At this juncture it must also be mentioned here that P.W. 6 Dr. Gill had come and examined deceased Jagtar Singh. If deceased Jagtar Singh had at all consumed alcohol then Dr. Gill would have definitely found the smelling of alcohol when he examined Jagtar Singh. But Dr. Gill does not say so. therefore, the absence of alcohol in the body of the deceased at the time of the post mortem as well as in his sample blood as per C.F.S.L. reports also makes it doubtful regarding the version given by the prosecution. As per the case of the prosecution the deceased had taken his meals which were containing proteins and deceased had met with death within 15-20 minutes after consumption of liquor. therefore, in the circumstances, there was no possibility of total alcohol being absorbed by the body and the blood as Jagtar Singh has died within 10-15 minutes of taking the alcohol.

20. The prosecution has produced no evidence before this Court to show that the cyanide was available to the appellant. No investigation is carried out by the

Investigating Officer in that line. He has not stated anywhere that he made any attempt to find out as to whether cyanide as well as Morphine was available to the present appellant. Similarly he has not made any Investigation as from where he had purchased the liquor and what was added by him in the said liquor because as per the Chemical analyser's report besides cyanide, morphine was also found at the time of the Chemical analysis.

21. thereforee, in view of the above discussion it is not possible to hold beyond doubt (1) that the death of deceased was due to poisoning, (ii) that the appellant had the motive to cause the death of the deceased, (iii) that the appellant had the opportunity to get the poison in question. Thus the version of the two witnesses P.W. 1 Sheela Devi and P.W. 2 Puran Singh that appellant administered poisonous liquor to Jagtar Singh is not credible.

22. thereforee, we hold that the prosecution has failed to prove its case beyond reasonable doubt. The above discussed circumstance clearly show there is a reasonable doubt regarding guilt of the appellant. The appellant is entitled to get the benefit of the said doubt and we are in least hesitation to give him the same. Thus the present appeal deserves to be allowed.

23. We have come across in this matter as well as in some other matters that the medico legal case papers and post mortem notes are got proved and brought on record by examining person other than one who prepared them by saying that the person who prepared them is not available. Such a proof of document is no doubt legal and valid. But we want to express that trial Courts Judges should make a thorough enquiry by asking the Investigating Officer to go personally to the concerned Hospital and make personal enquiry of tracing the address of the doctor who has left that service and whether infact the said doctor is not really available. Only after such attempt the MLCs and post mortem notes be brought on record by examining other person. But here also we want to observe that it is not at all proper to examine a clerk or record keeper from the hospital to prove the handwriting and signature of the concerned doctor. In such a case another doctor working in the hospital and who is acquainted with the hand writing and signature of the doctor who prepared that document should be examined. In such a case the

said doctor could be asked to clarify the position on the strength of the notes made by the concerned doctor. Such a doctor witness will be of great assistance to the cause of justice,

24. Before passing the final order in this case we would like to appreciate the hard work put by Mr. Sunil Sethi who has been appointed as amicus curiae for the appellant and the learned counsel for the State, Shri B. T. Singh. Both of them had taken lot of pain in going through various medical books and made our task easy by their hard work.

25. Thus we allow the appeal. The order of conviction and sentence under Section 302, of Indian Penal Code passed against the appellant Sher Singh is set aside and he is directed to be set at liberty forthwith if not otherwise acquitted. The appellant be informed about this decision through the jail authorities.

26. Appeal allowed.

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