

Ran Singh Vs. State

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Court : Delhi

Decided On : May-27-1988

Reported in : 35(1988)DLT234

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 204 of 1984

Appellant : Ran Singh

Respondent : State

Advocate for Pet/Ap. : R.K. Naseem and; Rupinder Wasu, Advs

Judgement :

Charanjit Talwar, J.

(1) On 28th of April 1983 at 8.25 A.M. a report was got recorded by Om Prakash resident of village Daryapur in the police post Bawana (within the jurisdiction of police station Narela) that dead body of one Om Wati Wife of Ram Singh was lying in a pool of blood on a cot in the court-yard of her house. This report was entered into the daily diary and its translation in English has been exhibited as Ex. PW16/A. The police post informed the police station about the incident, inspector. Ram Gopal, Station House Officer, had left the Police Station on patrol duty by the

time this report reached there. On being informed about the incident he reached the spot in village Daryapur where A.SI. Gabbu Lal of the police post Bawana was already present. The dead body of Om Wati was found lying in a pool of blood on a cot in the court-yard of her house as reported. The Station House Officer found a number of persons of the village present at the spot. In his report which was dispatched at 10.45 A.M. he wrote that 'I, the Inspector asked the persons standing there whether anyone has seen the occurrence and if so he could make his statement but no-one stated to have seen the occurrence. Neither the weapon of offence was recovered from there nor Ran Singh the husband of the deceased found present at the spot. The dead body of Om Wati was examined and one deep injury caused with sharp-edged weapon which (injury) was stained with blood was found present on the front of the neck and under it there was a cut mark in the neck which was caused with a sharp-edged weapon.....', (italics added).

(2) The date and time of occurrence according to that endorsement was 'night' intervening 27th and 28th of April 1983. On receipt of this report/endorsement the formal Fir Ex, Public Witness 15/B was recorded at the Police Station at 11.20 A.M.

(3) Thus till 10.45 A.M. on 28th of April 1983 no clue was found by the investigating officer about the assassin. The prosecution case, however, is that Sunil Kumar who was a witness to his mother's murder by his own father was present in the house at the time when the S.H O. reached there. Sunil Kumar, Public Witness 3, in his testimony has stated that he was 13/14 years of age at that time. His father was maltreating his mother and therefore, his maternal grandfather had brought her to the parental house situated in village Pitampura where he (the witness) had already been taken for continuing his studies. His mother had left his father's house 2 years prior to the incident. However, on intervention of near relations she came back to her husband's house at village Daryapur but he continued to stay with his grand parents at Pitampura. He further deposed that after completing his 8th class examination in April 1983 which finished about 2 to 4 days prior to the incident he joined his parents in village Daryapur. According to the witness on 27th of April 1983 at about 6.30 P.M. his father Ran Singh had demanded Rs. 400.00 from his mother. He threatened that if the money was not

given to him he would not let the wheat come from the fields to the house nor would he allow the wheat to be sold. His mother gave his father Rs. 200.00 only as she had no more money. He stated that his grand-father (father's father) lived in a separate house in the village. In the house of his parents nobody was there as his younger sister Manju had also gone with his maternal uncle, Jai Parkash, on 26th of April 1983. At about 7.30 or 8 P.M. he (the witness) had gone upstairs to serve food to the accused but he refused to take the same. The accused enquired from him as to who had been harvesting the crop and from whom the wheat was to be threshed. On the witness's pleading ignorance the accused got angry and shouted at him to the effect that he along with his mother should go back to Pitampura otherwise he would kill both of them. The witness came downstairs and told his mother about what his father had said. His mother then assured him that let the accused kill her but no harm would be caused to the witness.

(4) The witness further stated that his mother had spread to separate cost in the court-yard; they went to bed but kept the light on during the night out of fear. His mother tried to console him by keeping her hand on him but she soon went to sleep. He, however, could not go to sleep. It is appropriate at this stage to quote from the testimony of the witness : 'All of sudden, I heard the shrieks of my mother and saw her bleeding from her neck. My mother's body was trembling. I saw my father standing by the side of the head of my mother with a spade in his both hands raised over his head. In my presence, he gave a blow with the said spade hitting my mother's forehead. He had given another blow of the spade, but I do not remember, the site, as I had become completely grief struck while lying on my cot. Thereafter, the accd. went up to his room with the said spade I was still apprehensive of the accused and thinking that he might not kill me, I ran towards the fields as it was moonlit night. I kept sitting by the side of harvested crop of wheat collected in a heap of Pulleys. At about 7 or 7.30 A.M. when I was returning to my home, I saw my maternal uncle Dharamvir walking hastily towards our house. Both myself and Dharamvir came into our house in Daryapur. The cot Ex. P.1 is the same on which my mother was lying. The spade Ex. P.2 is the same which was used by my father in killing my mother.' According to this witness after witnessing the occurrence he left the house out of fear and came back at about 7 or 7.30 A.M. along with his maternal uncle, Dharamvir. The prosecution has not

produced Dharamvir stated to be the uncle of Sunil Kumar.

(5) The important fact to be noticed is that according to this witness he was present in his house at about 7 or 7.30 A.M. on the morning of 28th of April 1983. In his cross-examination he asserts that his statement was recorded by the police on 28th of April 1983 at the spot. He was sure that the statement was recorded prior to the time when the photographs of the dead body of his mother were taken. We would deal with the statement of this witness a little later, but at this stage to pinpoint the time when his statement was recorded we may notice that the prosecution has brought on record that the photographs were taken by the police photographer, Vajinder Kumar, Public Witness 13, between 11.45 A.M. to 12.80 P.M. Public Witness 13 was a member of the crime team which was led by Si, Verinder Singh, and had reached the spot at about 11.45 A.M. and had left the scene at about 12.30 P.M. Therefore, on Sunil's own showing his statement had been recorded earlier to 11.45 A.M. on that day. The S.H.O., however, who has appeared as PW16, is categorical that he recorded the statement of Sunil after 1.00 P.M. on 28th of April 1983 by which time he had already completed the inquest proceedings and had sent the dead body along with inquest papers to the mortuary. In reply to the court question he has stated that 'I had recorded the statement of Sunil after 1 P.M. on 28.4.83 when I had already sent the inquest papers and the dead body.'

(6) The dead body of Om Wati was sent to the mortuary for autopsy vide application Ex. PW1/C. The emphatic assertion of the S.H.O. was that he had sent the body by 1 P.M. on the date of occurrence. The time of receiving the body shown on the said application by the doctor who received it is however '5.45 p.m. on 28th of April 1983'. The further averment of the S.H.O. that he had sent the inquest papers along with the body is also not borne out from the endorsement of the doctor as he received the inquest papers at 9.00 A.M. on 29th of April 1983.

(7) The plea on behalf of the appellant is that the S.H.O.'s testimony not only about the sending of the body and the inquest papers at the time alleged but also about recording of statement of Sunil on 28th of April 1983 is demonstrably false. The argument is that Sunil had not seen the occurrence but a theory was propounded

to that effect after the submission of the inquest proceedings at 9 A.M. on 29th of April 1983. It is urged that a false case involving the appellant herein was made up on 30/04/1983, the date of his arrest.

(8) In support of the testimony of the investigating officer that the body of Om Wati had been sent to the mortuary prior to 1 P.M. on 28th of April 1983 the prosecution has produced Public Witness 10, constable Umer Singh and Public Witness 11, constable Satbir Singh who had taken the body from the spot. Constable Umer Singh in his examination-in-chief did not say as to at what time the body was handed over in the dead house but in his cross-examination he stated that they had left the village Daryapur at about 12.30 P.M. and had come straight to the mortuary. He further submitted that they had delivered the dead body and the inquest papers at about 2.30 P.M. to the concerned clerk on 28th of April 1983. He admitted that the S.H.O. had visited the dead house at about 9.30 A.M. or 10.00 A.M. on 29th of April 1983. i.e. the next day, on which date the postmortem was conducted. He denied the suggestion that the body was removed at 4 P.M. on 28th of April 1983 and that they were not handed over the inquest papers by the investigating officer on that day. Constable Satbir Singh supported his colleague constable Umer Singh. In his cross-examination he denied that they had handed over the dead body at about 5 P.M. and that the inquest papers were delivered to the doctor at about 9.30 A.M. on the next day i.e. 29th of April 1983. He re-affirmed that the dead body and the inquest papers were delivered at about 2.30 P.M. on 28th of April 1983 itself.

(9) As we have noticed the endorsement on Ex. PW15/C clearly shows that the body was delivered in the mortuary at 5.45 P.M. on 28th of April 1983. The testimony of the constables, and also the S.H.O. that by 1 P.M. on 28th of April 1983 the body had been dispatched to the mortuary is thus to be carefully scrutinised.

(10) Doctor, L.T. Ramani, who conducted the postmortem has appeared as Public Witness 18. He testified that the dead body was delivered at 5.45 P.M. on 28th of April 1983 and the inquest papers were received at 9 A.M. on the next day, i.e., 29th of April 1983. This version is completely at variance with that of the police officials. In his examination-in-chief on this aspect the doctor submitted that

'application for postmortem Ex. PW15/C along with my signatures shows time of the arrival of the body in the mortuary and time of the receipt of papers. In this case, the body was received on 29th of April 1983 at 5,45 P.M. and the papers were received on the following day, i.e., 29th of April 1983 at 9 A.M. The duty timings are from 9 A.M. to 4 P.M. and after 4 P.M. if the body and the inquest papers are brought, then only body is received and kept in the cold-storage and the papers remained with the constable and are taken by the mortuary staff on the next day at 9 A.M. The application was received along with the inquest papers totalling. They all bear my initials and are numbered'.

(11) From the above statement at least one fact is very clear that the body of Om Wati was not delivered as claimed by the prosecution at 2.30 P.M. on 28th of April 1983. The S.H.O's assertion that it was sent to the mortuary before 1 P.M. is also not correct as it was received only at 5.45 P.M. On this aspect another fact which has a bearing may be noticed. According to the prosecution's own showing the body was not removed from the house of the deceased prior to 1 P.M. on that day as alleged as her father Lal Chand who has appeared as Public Witness 2 admitted categorically that 'the dead body was removed from the house at 4 A.M.'.

(12) The timings of the delivery of the dead body on the date of incident by itself is not very important. What has to be seen is whether the case of the prosecution that the inquest proceedings were conducted by the S.H.O. before 1 P.M. on 28th of April 1983 and further whether the inquest papers were sent to the doctor along with the application for conducting the post mortem is to be believed. Dr. Ramani while describing the procedure for deposit of the body and the inquest papers has stated that the inquest papers were received by him on 9 A.M. on 29th of April 1983, i.e., the date on which the post mortem had to be conducted. According to the appellant the investigating officer had purposely not sent those papers on 28th of April 1983 as by then the prosecution had no clue as to who had committed the offence. The S.H.O. it is urged, after leaving the spot, prepared the inquest proceedings in police station as in all the eight papers which were deposited on 29th of April 1983 in the mortuary there is a stamp of the police station on them which stamp would not have been used if these proceedings had been conducted at the spot as alleged. Our attention has been drawn to the statement of Public

Witness 15, head constable, Prem Pal Singh, the duty officer of the day, who stated that the seal of the police station is never removed from the police station and it is always kept by the duty officer. It has further been pointed out that the S.H.O.'s attempt in his statement was to suppress his visit to the mortuary in the morning of 29th of April 1983. The argument is that as the post-mortem could not proceed without the inquest papers he (the S.H.O.) prepared the inquest proceedings in the police station and personally went to the mortuary to hand over the papers, this is borne out by the endorsement on Ex. Public Witness 15/C to the effect that those were received at 9 A.M. on that day.

(13) As has been noticed above, the two constables are definite that the papers were handed over at 2.30 P.M. on 28th of April 1983. Public Witness 10, Umer Singh stated that 'we had delivered the dead body and the papers at about 3.30 p.m. to the concerned clerk' and Public Witness 11, Satbir Singh stated that 'in fact we had delivered the dead body and the papers at about 2.30 P.M. on 28.4.83 itself'.

(14) After giving our careful consideration to this aspect of the case we are of the view that the endorsement on Ex. Public Witness 15/C that the dead body was received at 5.45 P.M. on 28th of April 1983 and the papers regarding inquest proceedings were received at 9 A.M. on 29th of April 1983 has to be accepted in toto. Public Witness 2, Lal Chand's statement that the body was removed from the house at about 4 P.M. seems to be true. The constables who are stating to the contrary have to be disbelieved. The answer of the S.H.O. to the Court question which we have quoted above is also to be held to be false. The inquest papers, it is apparent were not sent along with the body but were delivered at 9 A.M. on the next day as those were not prepared on 28th of April 1983 as alleged.

(15) The purpose of the S.H.O.'s attempt to prove that the body and the inquest papers had been dispatched by 1 P.M., it is urged, was to show that the statement of Sunil was recorded on 28th of April 1983 after 1 P.M. as his name did not figure in the inquest proceedings. Actually the papers were not deposited on that date but on 29th of April 1983 meaning thereby till then it was a blind murder. It is further submitted that having made the endorsement at 10.45 A.M. on the day of

incident to the effect that he did not find anyone at the scene of occurrence who could throw any light about the murder he (the S.H.O) had to admit that Sunil's statement who claims to be there at the spot, was recorded after the sending of the body and the papers. The S.H O's movement on that day till after sending of the said endorsement have been proved on record and we believe the fact that he did reach the spot and did make the endorsement as 10.45 A.M, on 28th of April 1983. There is no reason for disbelieving the S.H.O. on this aspect of his visit. Sunil, if he had been present at the spot must have and was expected to have disclosed the facts to the S.H.O. at that time. As we have noticed above according to Sunil he had made his statement before the photographs of the dead were taken and that time has been pin-pointed by PW13 who had left the scene by 12.30 P.M. In case the statement was recorded prior to taking of the photographs the inquest report would not have been silent about the occurrence having been witnessed by Sunil.

(16) The assertion of Sunil that he had made the statement before the body of his mother was removed has thus to be held to be false. The non-production of Dharamvir said to be uncle of Sunil who had accompanied Sunil from the fields to the house at about 7 or 7.30 A M. also throws a doubt about Sunil's being present in the house at that time with Dharamvir. The only legitimate conclusion which can be arrived at under the facts and circumstances of this case is that Sunil was not present in the house at the time alleged and that his statement had not been recorded till after 1 P.M. as was claimed by the investigating officer. therefore, the defense version that Sunil was in fact not an eye-witness assumes great importance.

(17) It is urged that it was only on 30th of April 1983 that a final theory to involve the appellant herein was propounded in which Sunil had to be shown as an eye witness to the occurrence. For that reason it is submitted that a false recovery, on 30th of April 1983, of a spade alleged to have been used in the crime was shown from the shrubs near the canal of the village on the so called disclosure statement the accused. The prosecution case on this aspect is that at 4.30 P.M. on 30th of April 1983 Sunil accompanied by his maternal uncles Hari Singh and Chand Rup had gone to the Police Station to find out about the progress of the case where

they were asked to join in a party which was to go and arrest the appellant who, it was informed; was sitting on a culvert of a canal near the village of Daryapur. On reaching the spot the police party over-powered the accused who had tried to run away and arrested him. On interrogation he made disclosure statement that he could get recovered the spade (the weapon of offence) which he had concealed near the small bushes at the corner of the canal. His statement Ex. Public Witness 3/B was recorded. On his pointing out the spade was recovered and it was taken into possession vide memo Ex. PW3/D. He was brought to the Police Station where the blood stained kurta and pyjama Ex. P. 3 and P. 4 which he was wearing were got removed. The seizure memo is Ex. Public Witness 3/A.

(18) The argument is that to show the presence of Sunil at the time of occurrence he was made to sign all the seizure memos, disclosure statement and the pointing out statement of the 30th of April 1983. The disclosure statement is Ex. Public Witness 3/B, the memo regarding taking the clothes of the accused is Ex. , 3/A, the memo of personal search of the accused is Ex. Public Witness 3/C and the memo regarding pointing out of the spade is Ex. Public Witness 3/D. All of them have been signed by Sunil Kumar. The submission is that a young boy of 13/14 years of age was made a witness to all these memoranda but not his other uncle who was supposed to have accompanied him. However, it is urged, that Sunil was not made an attesting witness to the memos regarding the possession of the articles like the blood stained cot, a pair of ladies shoes and the blood stained gadda at the house of the deceased on 28th of April 1983, where he was allegedly present. Public Witness 8, Hari Singh who had accompanied Sunil to the Police Station on 30th of April 1983 submitted that when the accused was apprehended he had also a blood stained khes in his possession. That khes was taken into custody but has not been produced. The other uncle Chand Rup who, it is alleged, accompanied Sunil to the Police Station has been produced as Public Witness 4. However, in his testimony he does not refer to the incident of 30th of April 1983 at all. He has not attested any of the seizure memos or the disclosure statement although he is a witness to the seizure memos of 28th of April 1983.

(19) As Chand Rup has not stated anything about the incident of 30th of April 1983 and neither is he an attesting witness to any of the memos made on that day it can

safely be held that he had not accompanied the police party or had gone to the Police Station. While questioning the accused in his statement under Section 313 of the Code of Criminal Procedure the learned trial court has taken it for granted that Chand Rup, one of the uncles of Sunil, had accompanied him to the Police Station on 30th of April 1983. The fact is not proved as Chand Rup does not even allege it.

(22) After carefully scrutinising the testimony regarding the apprehension of the accused on 30th of April 1983 and the statements leading to the recovery of the spade we find that there are so many discrepancies therein. The argument that Chand Rup was not a witness of the version as far as the event of 30th of April 1983 is concerned, is to be upheld. The other witness Hari Singh, Public Witness 8, has made up a fact which is not established. According to him the accused when arrested was having a bloodstained khes. That khes has not been produced. Actually a khes was taken into possession on 28th of April 1983 from the house of the deceased. Thus, Sunil's testimony to the effect that 'on 30.4.83 at about 4.30 p.m. I, my maternal uncles Hari Singh and Chand Roop had gone to police station and had enquired about the arrest of my father' cannot be accepted because of our finding that Chand Rup had not accompanied him. Further Hari Singh's testimony regarding the recovery of khes and about the manner in which the accused was over-powered also does not inspire confidence. The plea of the accused that he was a casual labourer at Subzi Mandi, Delhi, and was away from his house on 27th of April 1983 and had surrendered in the Police Station on his own cannot be brushed aside. The argument is that he came to know that his brothers and his father had been illegally taken into custody for the murder of his wife and therefore he went to the police station to surrender.

(23) We are of the view that Sunil has been tutored to make a false statement. He was not an eye-witness to the occurrence. He was even not present on 27th and 28th of April 1983 at the house of his parents at village Daryapur. We are further of the view that till the inquest papers were delivered in the mortuary on 29th of April 1983 the prosecution had yet to find out a convenient eye-witness. The theory that the accused had committed the crime and the occurrence had been seen by Sunil was propounded much later. The investigation, it appears to us, is

absolutely tainted. The recovery of the spade at the instance of the accused or his arrest as alleged on 30th of April 1983 is very doubtful.

(24) The only piece of evidence which can be read against the accused is that when arrested on 30th of April 1983 he was found wearing blood stained clothes (kurta Ex. P. 3 and pyjama Ex. P. 4). On analysis of the blood found on the clothes it matched with the blood group 'B' of the deceased. There is no doubt that this fact by itself raises a strong suspicion against him. However, it cannot be made the basis of conviction as the prosecution has failed to prove that the blood group of the accused is not 'B' as well. The probability of two human beings having the same blood group cannot be ruled out, especially, as his blood sample was not got analysed. The possibility that a labourer or an agriculturist like the accused having his own blood stains on his clothes cannot be ruled out. We have examined the clothes Ex. P. 3 and Ex. P. 4. Those are not blood splattered. It seems from the cut marks that kurta had two or three stains and pyjama about four. We are of the view that the onus to disprove the charge framed against him did not shift only because of the presence of a few blood stains on his clothes.

(25) In the present case a false witness, the only eye-witness, has been introduced by the prosecuting agency. We have discarded his testimony from consideration. The second circumstance, i.e., the circumstance of recovery of the spade at the instance of the appellant has also been held to be doubtful for the reasons discussed above. The strong suspicion on account of matching of the blood group by itself cannot be considered in the facts of this case to establish the charge.

(26) The result is that we give benefit of doubt to the appellant and allow the appeal. The impugned judgment of conviction and the order sentencing the appellant to life imprisonment are set aside. The appellant be set at liberty forthwith, if not required in any other case.