

Suresh Vs. State

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Court : Delhi

Decided On : Jul-06-1988

Reported in : 1988(3)Crimes20; 35(1988)DLT411

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

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

Appeal No. : Criminal Appeal No. 261 of 1984

Appellant : Suresh

Respondent : State

Advocate for Pet/Ap. : K.K. Sud,; Rajesh Batra and; K.K. Bakshi, Advs

Judgement :

Charanjit Talwar, J.

(1) By this appeal, Suresh, s/o Om Parkash is challenging his conviction for the offence under Section 302 Indian Penal Code. He also challenges the legality of the order of the Addl. Sessions Judge, Delhi imposing imprisonment for life on him. The impugned judgment and the order of sentence were passed on 23rd October, 1984. Mr. Sud, learned counsel for the appellant has taken us through the prosecution evidence and also the statement of the accused recorded under Section 313 of , Code of Criminal Procedure. The appellant did not lead any

evidence.

(2) After hearing counsel we are of the opinion that the allegation of the prosecution that the appellant herein had stabbed Hari Singh on 29th May, 1982 at about 7.30 P.M. in front of his (appellant's) house, has been conclusively proved.

(3) We have no doubt in our mind that Public Witness .I Shri Bhagwan Dass, on whose statement, the F.I.R. was recorded and who had taken Hari Singh in an injured condition to the hospital, where he was declared 'brought dead', is to be believed. Bhagwan Dass was an eye witness to the occurrence. He also resides in the same street of Basti Julahan, Sadar Bazar, Delhi where the deceased as well as the appellant were living. He is a natural witness. After finishing his work on 29th May, 1982, he was returning to his house and when he reached in front of the house of Suresh, i.e., the appellant herein, he saw him (Suresh) grappling with Hari Singh and abusing him. He deposed that Suresh was abusing Hari Singh and accusing him of casting an evil eye on his sister (the appellant's) and that he would teach him a lesson. The appellant then took out 'a double edge blade open knife from the dub of his pant' and gave a blow on the left chest of Hari Singh. He again attacked Hari Singh twice with a knife but the blows fell on his face. According to this witness, the appellant after inflicting injuries ran away. After the incident a number of persons gathered at the place of occurrence. This witness with the help of Bhagat Singh, p.W. 2, the brother of Hari Singh, took the injured in a three-wheeler scooter to the hospital where he was declared 'brought dead'.

(4) Nothing worthwhile was brought out the cross-examination of this witness (P W.1). Mr. Sud, learned counsel for the appellant made strenuous efforts to challenge the findings on merits His alternative plea, however, is that the offence proved does not fall within the ambit of Section 302 of the Indian Penal Code. The plea is that the facts brought out on the record even if admitted to be correct, only prove that an offence under Section 304 Part-11 is made out.

(5) Before analysing the above plea, we may note certain relevant facts which have a bearing on this controversy. Admittedly a daily diary report translation of which has been exhibited as Public Witness . 12/A' regarding a stabbing incident having taken place in House No. 1996, Gali Barh Wali Basti Julahan, Sadar Bazar,

Delhi was got recorded by the aunt of the deceased. We may notice that the house mentioned in the daily diary report is the house of the appellant. In that report Smt. Prem who it is stated had gone running to the Police Station 'in a state of bewilderment' had informed the Duty Officer that a stabbing incident had taken place in the said house. That report was recorded at 7.40 P.M. on 29th May, 1982. The second report in sequence of time was got recorded by the appellant herein at Police Station Sadar Bazar. We may note that this Police Station is situated within five minutes walking distance from the place of occurrence. That daily diary report was recorded at 8 P.M., the translation of which has been exhibited Public Witness . 12/B. It reads as follows :

'REPORT No. 16-A of daily diary dated 29.5.82 maintained at Ps Sadar Bazar, Delhi Receipt of information regarding quarrel given by Suresh son of Om Parkash, R/o H. No. 1996, Basti Julahan Sadar Bazar, Delhi and its departure. Time 8 P.M. The aforesaid person, mentioned in column No. 2 above, having come present at the police station got recorded that Goti and Dalip came at his house and started picking a quarrel with him and Goti inflicted knife on his head and he wanted to get himself medically examined. He heard the statement and admitted the same to be correct. sd/- Suresh (In Hindi) Sig. attested by Hari Singh, ASI/D.O.

(6) On the basis of statement made by the complainant the report has been entered in the daily diary and the same was read over to him who having heard admitted the same to be correct and put his signature in Hindi which I attest. The blood is oozing out from the head of the said (complainant) and he wants to get himself medically examined. The aforesaid (complainant), after having filled in injury report, has been sent to O.P.L. Hospital for medical examination under the escort of Constable Chhotu Ram No. 521. The copy of the report having been separated has been sent to Sh. Sukhvir Singh the As I, through Constable Ram Kishan No. 1149 who will take necessary action in the matter.'

(7) The appellant was medically examined at 8.50 Pm by Dr. S.K. Bajaj, Medical Officer, Din Dayal Upadhyay Hospital who has appeared as P.W. 14. The Doctor found the following injury :

'(1) A contused lacerated wound on the right parietal region red in colour'.

(8) The Doctor found slight bleeding at the time of the examination. He has recorded that there was a history of unconsciousness of the patient and that there was history of vomiting as well. In cross examination Dr. S.K. Bajaj admitted that it was possible that such a grazing injury was caused by a sharp edged weapon.

(9) The statement of Bhagwan Dass, Public Witness .I which has been made the basis of the F.I.R. was, however, recorded at 10.45 PM. This statement was recorded by Si Kundan Lal at Ram Manohar Lohia Hospital.

(10) The facts in detail have been noticed by the trial Court. No useful purpose would be served by noticing them all over, again as we are holding that the stabbing incident, as alleged by the prosecution, has been proved. The question which arises in the facts and circumstances of the case is whether the injury caused by the appellant Suresh falls within the provision of Section 302, Indian Penal Code. As have noticed above, according to Bhagwan Dass, Public Witness .I, the incident seen by him was in front of the house of the appellant. According to the aunt of the deceased, the stabbing incident had occurred in the appellant's house itself. It is not the prosecution case that the appellant had gone to the house of the deceased. The abuses hurled and the grappling which took place as per Bhagwan Dass and other witnesses, did occur in front of the house of the appellant. It is also admitted by Bhagwan Dass that the appellant herein was abusing the deceased for casting an evil eye on his younger sister. The injury caused to the appellant has not been explained by the prosecution. Admittedly at 8 P.M. when he reported to the Police Station, he had received injury possibly by a sharp edged weapon. At any rate the injury was a contused lacerated wound.

(11) The weapon of offence alleged to have been used has not been recovered. It seems that the Investigating Officer did make an effort to recover the same but it was futile. It is not very clear from the prosecution case as to whether the weapon used was 'churri,' 'dagger' or a 'clashed knife' or a 'button operated knife'. As per the testimony of Bhagwan Dass, the weapon was concealed by the appellant in the left pocket of his pant. This witness stated that the blade of the weapon was almost as lengthy as the size of a man's hand. In the ordinary circumstances such a weapon cannot be concealed in the pocket of the pant or in the waist-band of the

pant. According to Mr. Sud, the deceased had firstly wielded this knife ; a suggestion to this effect has been put to the prosecution witnesses. In his statement under Section 313, Cr. P.C., the appellant has also taken this stand. It is not possible to give a clear cut finding as to whether the knife was actually in possession of the appellant or he had picked it up from his house or that the deceased had come to his house armed with a knife. But it can safely be said that with that weapon a stab injury on the chest was given by the appellant to the deceased. The manner in which it was caused shows that the appellant had not only the intention but also the knowledge that the injury given was likely to cause death. The learned trial Judge has noticed that the appellant as well as the deceased were bad characters of the area with criminal record. In the facts and circumstances it is, therefore, not possible to agree with Mr. Sud that the appellant had no intention that the injury would cause death or to cause such bodily injury as was likely to cause death.

(12) The result of the above discussion is that the offence under Section 302, Indian Penal Code is not made out. The offence proved against the appellant is covered under Part-1 of Section 301, Indian Penal Code.

(13) While partly accepting the appeal, we alter the conviction from that under Section 302, Indian Penal Code to one under Section 304, Part-1 of the Indian Penal Code. We further reduce the sentence of life imprisonment to 7 years rigorous imprisonment under Part-1 of Section 304, IPC. With the above modification, the appeal is partly allowed.