

Manju Khan Vs. State

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Court : Delhi

Decided On : Oct-10-1988

Reported in : 1989(16)DRJ167

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 126 of 1985

Appellant : Manju Khan

Respondent : State

Advocate for Pet/Ap. : Seema Gulati,; Rupinder Wasu and; R.P. Lao, Advs

Judgement :

M.K. Chawla, J.

(1) Chaudhary Khazan Singh (Public Witness -3) is the owner of a house situated in Arvind Mohalla, Village Gonda, East Delhi. It consists of small rooms on all the four sides and an open space in the centre. There is one main door of entrance. Each room is occupied by tenants. Qayum Khan deceased Along with his nephews Saleem (Public Witness -2) and Tahir (Public Witness -I) and Manju Khan, accused, was in occupation of one of the rooms. On 21st August, 1983, Manju Khan is alleged to have caused the death of Qayum Khan by stabbing him

in the chest with a dagger under the circumstances as stated by Saleem (Public Witness -2) before the Police at the Police Station, Seelampur

(2) According to Saleem, his uncle Qayum Khan had agreed to engage his daughter Nargis aged about 14/15 years with Manju Khan about two months prior to the date of incident. Later on, the relations of Qayum Khan opposed the engagement on account of vast difference in the age of the girl and the accused. Qayum Khan then refused to marry his daughter and informed Manju Khan about it. Manju Khan felt insulted and left the room with his luggage 5-6 days before the incident.

(3) Narrating the actual incident, Saleem informed that on 21-8-83 after seeing a late night movie show at Radhu cinema, Shahdara, he along- with his cousin Tahir and uncle Qayum Khan came to their room at about 1.30 A.M. They saw Manju Khan lying on a cot in front of the room. All the three then took off their clothes in preparation for going to sleep. Qayum Khan lay down on the cot on which Manju Khan was already lying. Manju Khan then started coercing Qayum that he should marry his daughter with him as early as possible. Qayum Khan refused to do so on account of the age difference. On hearing this, Manju Khan went outside but came back within a minute or so, holding a dagger in his right hand. He declared that he would teach Qayum Khan a lesson for not marrying Nargis to him. Immediately thereafter, he stabbed Qayum Khan with the dagger with full force on his chest. Saleem and Tahir tried to catch hold of Manju Khan by chasing him in the street. The accused, however, threatened that in case anyone tried to apprehend him, he would meet the same fate. Both of them then raised hue and cry, on hearing of which the neighbours collected there. On receipt of the dagger blow, Qayum Khan died there and then.

(4) The house of Khazan Singh is situated at a place from where it takes about 25 minutes to reach Police Station Seelampur if one goes on a rickshaw or a cycle. Saleem reached the police station at about 2.15 A.M. and got recorded the First Information Report (Ex. Public Witness -2/A) under Section 3021.P.C.

(5) The investigation was entrusted to Sub-Inspector Rajesh Kumar. The Investigating Officer Along with Saleem reached the place of occurrence at about

3 A.M. The Sub-Inspector prepared the Inquest Report Ex. PW-13/A, and sent the body for post-mortem examination through Public Witness -5 Constable Zile Singh. From the place of occurrence, he took into possession the cot, the bedsheet, blood and blood-stained earth vide memo. Ex. Public Witness -1/A. He prepared the rough site plan and got the scene of occurrence photographed from Public Witness -4 Constable Inder Singh. Later on, he also received two sealed parcels Along with a sample seal from the doctor after post-mortem examination. The Investigating Officer deposited the case property in the Malkhana.

(6) Manju Khan surrendered before the concerned Metropolitan Magistrate on 13th September, 1983. He was formally arrested by the 1.0. on 18th September, 1983. His clothes including the shirt (P-3) and the pant (P-4) were taken into possession vide Memo. Ex. Public Witness -2/B. On the next day, after intensive interrogation, the accused disclosed that he had thrown the chhura in the bushes on the Yamuna Pushta. His disclosure statement Ex. PW-2/C was recorded in the presence of Saleem and another witness. The accused then led the police party to the said place and got recovered the chhura Ex. P-5, from underneath the bushes. After the preparation of its sketch. Ex. Public Witness -2/E, the chhura was converted into a sealed parcel, and taken. into possession vide Memo. Ex. Public Witness -2/D. This weapon of offence Along with other articles already deposited in the Malkhana, were sent to the office of the C.F.S.L. through Constable Khem Chand for analysis and report. After the receipt of C.F.S.L. Reports, the challan was filed in the Court.

(7) The accused denied the charge and pleaded innocence. The Learned Lower Court mainly relied upon the evidence of Tahir and Saleem, the eye-witnesses of the occurrence. Reliance was also placed on the recovery of the weapon of offence and the motive for committing the murder of Qayum Khan. By the impugned Judgment dated 28th March, 1985, the accused was convicted for the offence punishable under Section 302 1.P.C.. and sentenced to undergo rigorous imprisonment for life. By this appeal Manju Khan has challenged his conviction and the order of sentence.

(8) Mrs. Seema Gulati, learned counsel for the accused has challenged the testimony of Public Witness -1 Tahir and Public Witness -2 Saleem states to be eye-witnesses of the occurrence. According to her, both of them are near relations of the deceased and as such interested in the false implication of the accused. In support of this contention, learned counsel referred to the statement of Public Witness -3 Khazan Singh who had reached the place of occurrence and found the deceased lying in an injured condition while Tahir and Saleem, according to him, were sleeping on the roof of the room. She urges that the alleged recovery of the chhura is a made-up story, in as much as, no independent witness was joined even though available. Lastly her submission is that the motive alleged and relied upon for the commission of the offence is not strong enough a circumstance to involve the accused.

(9) On the first aspect, we have no reservation to hold that merely because Saleem and Tahir are close relations of the deceased, their evidence can be dubbed as 'interested' or 'partisan'. The Supreme Court in a case reported as *Sarwan Singh and Others v. State of Punjab*, : 1976 CriLJ1757 has laid down the guidelines to appreciate the evidence of interested or related witnesses:

'It is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The 'evidence of an interested witness does not suffer from any infirmity as such but the Courts require as a rule of prudence not as a rule of law that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witness has a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness.'

(10) Applying the above said ratio to the facts of the present case we find that both Tahir and Saleem though related to the deceased were living with him in the same room. Their presence at the time and place of occurrence was very natural and cannot be doubted. Moreover, the murder took place at midnight and it was not expected of the people from outside or neighbours to have witnessed the occurrence. Thus, the evidence of the eye-witnesses cannot be brushed aside as interested.

(11) Both Tahir and Saleem have given a consistent version of the circumstances, how Manju Khan stabbed Qaynm in his chest and escaped from there. In fact on this aspect, there is no worthwhile cross-examination of the witnesses. There is no material contradiction in between the statements of the eye-witnesses or the case as laid before the Court by the prosecution. It is difficult for us to ignore the statement of any of these two witnesses which fully involve the accused as the person responsible for causing the death of Qayum Khan by stabbing. The evidence of Public Witness -3 Khazan Singh has no relevance and is to be ignored. We find that after the cross-examination of this witness, the learned lower court allowed the Addl. Public Prosecutor to put the questions to the witnesses in the nature of cross-examination. This could only be allowed if it is found that the witness is deposing contrary to his previous statement recorded under Section 161 Cr. P.C. This was the precise reason when Khazan Singh was confronted with his previous statement and he admitted having not stated before the police that Tahir and Saleem were sleeping on the roof when he reached there. In this view of the matter, learned counsel for the accused cannot take advantage of Khazan Singh's evidence and throw doubt on the convincing and truthful nature of the evidence of Tahir and Saleem.

(12) The oral testimony of the eye-witnesses also find support from the medical evidence. According to Dr. Bharat Singh, who conducted the post-mortem examination on the dead body of Qayum Khan, only one incised stab wound on the front of right side chest was located. This injury had entered the chest cavity through second inter costal space and had cut the ascending aorta on its right side wall and the right lung on its upper lobe through and through, in the opinion of the doctor, injury was ante-mortem caused by a sharp edged weapon and was

sufficient to cause death in the ordinary course of nature.

(13) While probing the injury. Dr. Bharat Singh noted that one angle (outer) of the margins was more pointed as compared to the inner angle. The chhura recovered at the instance of the accused has a total length of 27.5. c.m.s. Its blade is 15 cms. It has a sharp edge on one side and blunt on the other. It could cause the injury as found on the person of the deceased, by the doctor. Thus, the medical evidence lends full assurance to the ocular evidence of Tahir and Saleem with regard to the nature of the injury and the weapon used by Manju Khan.

(14) The accused in his statement under Section 313, Cr. P.C. has admitted that he surrendered before the Magistrate on 13-9-1983 and was formally arrested by the Police on 18-3-1983. He, however, denied the allegation of his having made any disclosure statement on 19-9-1983 or in pursuance thereof got recovered the chhura. Sub-Inspector Rajesh Kumar had formally arrested the accused on 18-9-1983. On that very day, he had taken into possession the shirt and the pant of the accused which had blood-stains. The accused was interrogated but he made no disclosure statement. On the next day, at about 2.30 P.M., the Sub-Inspector again started interrogation in the presence of Sub-Inspector Kirori Lal and Saleem who had come to the Police Station to enquire about the latest development. On intensive interrogation, the accused in the presence of the above said two persons disclosed that on the night of 21st August, 1983, while running towards the Yamuna Pushta he had thrown the dagger in the bushes near the road leading to village Gavedi. His disclosure statement Ex. Public Witness -2/C was recorded which was attested by Saleem and Kirori Lal, Sub-Inspector. Thereafter, the accused voluntarily led the Police party to Gavedi Road, 5th Dalan, turning on Yamuna Pushta and pointed out the bushes near the electric pole no. 97 and produced the dagger after taking out from there. The pointing out memo. Ex. Public Witness -2/D was prepared. The dagger which had traces of blood on it, was converted into a sealed parcel after its sketch (Public Witness -2/E) was drawn up. It was taken into possession vide Memo. Ex. Public Witness -2/D. This memo also bears the signature of Saleem and Kirori Lal.

(15) The evidence of Saleem, Public Witness -2, has not at all been challenged in cross-examination on this aspect. Similarly, the Investigating Officer was not cross-examined. Very few questions were put to Sub-Inspector Kirori Lal, Public Witness -9, but he stood the test of cross-examination well. One of the suggestions was that two of the rickshaw-pullers were present at the time of the recovery of chhura but they were not cited as witnesses. From this reply, the argument is that the recovery proceedings are false inasmuch as the independent persons who admittedly were present were not jointed as witnesses. That may be so, but we cannot discard the evidence of Saleem and the Investigating Officer who have not at all been cross-examined with regard to the recovery of chhura and the preparation of the memos at the spot. Generally, the rickshaw pullers have no permanent place to live and are hardly available when required. Today they may be plying rickshaw and tomorrow they may be working as labourers in a field, factory or at a place of building activity. The Sub-Inspector, in our opinion, was right in ignoring the rickshaw puller and relying on Saleem and a police officer of some standing. In this view of practically unrebutted testimony of prosecution witnesses, we hold that the recovery of the chhura at the instance of the accused is valid and can be relied upon.

(16) It is well settled that if the eye-witnesses in a case are relied upon the mere absence of a strong motive for committing the murder is of no assistance to the accused. The question of motive then becomes more or less academic. The motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence. However, the circumstances which have been relied upon as proving the guilt of the accused are not weakened at all by the fact that the motive has not been established. It often happens that only the culprit himself knows what moved him to a certain course of action. The present case appears to be one like that. It has come in the course of prosecution evidence that Qayum Khan, even though initially had agreed to engage his daughter Nargis to the accused, but on second thought considering the age difference between the two, decided not to do so, Manju Khan however, continued pressing for marrying Nargis while Qayum Khan all along resisted the pressure. On the fateful night, the accused again asked for the hand of Nargis to which Qayum did not agree. It is thereafter that Manju Khan

went outside and came armed with the chhura and without waiting for a convincing reply, plunged the chhura in the chest of the deceased while he was still lying on the cot. The murderous attack on Qayum was due to the frustration of not getting the hand of Nargis and this appears to be a strong motive for the accused to commit this heinous crime

(17) The conduct of the accused after the occurrence is also suggestive of the guilt rather than innocence. It is the admitted case that up till five or six days prior to the date of occurrence, the accused Along with Qayum Khan Tahir and Saleem was living in one room of the house of Khazan Singh Immediately, after the occurrence, the accused was not to be found anywhere He remained absconding for about a month or so, and then surrendered before the concerned Metropolitan Magistrate. If the accused was innocent there was no occasion for him to have left the company of his colleagues. Even in his statement under Section 313 Cr. P.O., the accused has not explained the reasons for his absence during the intervening period from the date of the incident till his surrender. This circumstance is also a pointer to prove the guilt of the accused. Id fact he has not put up any defense nor has led any evidence in support of his innocence.

(18) In the result, we do not find any substance in the appeal and the same is hereby dismissed.