

**Jaspal Singh Vs. State**

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**Court :** Delhi

**Decided On :** May-23-1986

**Reported in :** 1986(3)Crimes29; 1986(11)DRJ219; 1986RLR420

**Judge :** G.C. Jain and; R.N. Aggarwal, JJ.

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

**Appeal No. :** Criminal Appeal No. 66 of 1986

**Appellant :** Jaspal Singh

**Respondent :** State

**Advocate for Pet/Ap. :** B.S.C. Singh and; P.S. Sharma, Advs

**Judgement :**

**G.C. Jain, J.**

(1) The appellant, Jaipal Singh, was charged for offence under Section 302 of the Indian Penal Code, for committing the murder of Ishwar Singh on June 25, 1983 at about 10.45 A. M. at or around Hotel of Jagdish Parshad at Kapashera Border within the jurisdiction of Police Station Najafgarh, Delhi. He was convicted under Section 302 read with Section 34, Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs 30.000.00 and in default of payment of fine to undergo Ri for four years. It was directed that out of the amount of fine, if

realised a sum of Rs. 25,000.00 shall be paid to the heirs of the deceased. Feeling aggrieved Jaipal Singh has filed this appeal.

(2) Jaipal Singh (appellant), Ishwar Singh (deceased) & Raj Pal (PW-1) were employees of the Municipal Corporation of Delhi. Appellant was posted as L.D.C. in the office of the Delhi Terminal Tax Agency, Ishwar Singh and Raj Pal were posted at Terminal Tax Agency at Kapashera Border a(r) peon and gun man respectively. The prosecution case was that on June 15, 1983 they consumed liquor. While doing so Jaipal Singh told Ishwar Singh that he was a peon a fourth class employee and could not take liquor sitting with him. Because of this remark there was an altercation and Ishwar Singh gave beatings to Jaipal Singh. On June 17, 1983 Ishwar Singh went to Jaipal Singh to beg pardon. The latter however refused to pardon him and instead thr

(3) On June 25, 1983 at about 10.15 A.M. Ishwar Singh, Jorawar Singh, Charanjit Singh, some other employees of the Terminal Tax Post, and Ashok Kumar Malhotra, representative of Jaipur Golden Transport were present at the hotel of Jagdish Parshad and were talking. The appellant came there along with 8/9 companions. He and one of his companion were armed with daggers. The rest were armed with hockey sticks. Jaipal Singh stating that he was taking his revenge gave a dagger blow on the left side of the chest of Ishwar Singh and asked others to kill Ishwar Singh. His companion, who was armed with dagger, gave a blow on the left thigh. Others gave him beatings with hockey sticks. Thereafter they ran away in two cars towards Delhi.

(4) Ishwar Singh was removed to Govt. Hospital, Gurgaon where he was declared dead. An intimation was sent to Police Station Najafgarh. Sub-Inspector Gurmail Singh reached the place of occurrence and recorded the statement of Rajpal and got a case registered under Sections 302/147/148/149, Indian Penal Code on the basis of the laid statement. Sub-Inspector Radhey Sham reached the hospital at Gurgaon and prepared inquest report. He sent the dead body for post mortem examination. Autopsy was conducted by Dr. L.T, Ramani.

(5) The appellant surrendered before the Metropolitan Magistrate and was arrested by Sub-Inspector Sunil Kumar on July 8, 1983. The appellant is stated to

have made a disclosure statement but nothing was recovered pursuant thereto. His co-accused Mahabir Singh, Davinder Singh, Ajit Singh and Ishwar Singh were arrested on July 13, 1983. After completing the investigation the appellant and the said co-accused were sent for trial.

(6) Mahabir Singh, Davinder Singh, Ajit Singh and Ishwar Singh were discharged by the learned Additional Sessions Judge on August 29, 1984, The appellant was however charged for offence under Section 302, convicted and sentenced as mentioned above.

(7) According to the prosecution the occurrence was witnessed by Rajpal, Jorawar Singh, Aihok Kumar Malhotra, Jagdish Parshad, Singh Ram, Ho Ram and Bhim Singh. However none of these witnesses supported the prosecution version. They were all allowed to be cross-examined by the prosecution. Thus there was no ocular evidence to prove the guilt. It was so held by the learned Additional Sessions Judge.

(8) Learned Additional Sessions Judge, however, held that the following circumstances had been reasonably established :

'(i) There was motive for the accused to take revenge of his insult against the deceased on account of happening of 15-6-83. (ii) The accused was present at the time and place of occurrence on 25-6-83 for unexplained reasons. (iii) He ran away and disappeared from the place of occurrence soon after the occurrence for unexplained reasons. (iv) He was unauthorisedly absent from his official duty on the day and time of occurrence and remained absconded till 8-7-83 when he was arrested, for unexplained reasons. (v) The crime was committed at the hotel of Jagdish Parshad at the campus of Terminal Tax Post Kapashera Border situated at a Highway in the presence of view of number of persons. (vi) Natural or possible witnesses of occurrence have turned hostile and have not come out with truth. (vii) The crime was pre-planned. (viii) There is no manifest defect in the investigation made by the police which appears to be honest and careful.'

(9) He further held 'These circumstances point to the guilt of the accused with reasonable definiteness and leave no reasonable ground for conclusion

consistent with the innocence of the accused'.

(10) The conviction can, no doubt, be based on circumstantial evidence. However in a case in which the evidence is of a circumstantial nature,' the facts and circumstances from which conclusion of guilt is sought to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they must be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence. (See State of U. P. v. Sukhbasi an others) 1985 (supp) S.C.C. 79.

(11) The circumstances mentioned at No. 5, 6, 7 and 8 namely, that the occurrence took place at the hotel of Jagdish Parshad at the campus of Terminal Tax Post ; natural witnesses had turned hostile ; the crime was pre-planned and there was no defect in the investigation, independently or jointly, do not provide any evidence connecting the appellant with the offence. So far as circumstances No. 2 and 3 are concerned, there was no evidence, except the statement contained in the First Information Report, that the appellant was present at the time and place of occurrence and had disappeared from that place, The statement in the Fir, as held by the learned Additional Sessions Judge, and rightly, was not substantive evidence. Thus there was no evidence that the appellant was present at the time and place of occurrence and soon after disappeared from that place.

(12) From the evidence of Rajpal it has been proved that on June 15, 1983 there was some altercation between the appellant and the deceased. However this witness had further stated that Ishwar Singh went to Jaipal Singh for begging pardon and had informed him (the witness) that Jaipal Singh had pardoned him. Motive is, no doubt, relevant. It, however, by itself is not sufficient evidence of the commission of a crime,

(13) The appellant was admittedly absent from the duty on the day of occurrence and remained absent till July 8, 1983. This circumstance also cannot be considered sufficient evidence of the commission of the crime by the appellant. The circumstances found by the learned Addl Sessions Judge, individually or cumulatively, do not unerringly point towards the guilt of the accused. There

circumstances do not form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else.

(14) Learned Additional Sessions Judge, it appears, was impressed by the statement contained in the First Information Report. The said statement, apparently, raised a strong suspicion in his mind. A conviction in a criminal case, however, can be based on legal evidence sufficient to bring home the guilt to the accused without any reasonable doubt. Conviction cannot be based on suspicion or conjecture. Learned Addl Sessions Judge, was entirely wrong in convicting the appellant. The conviction was liable to be set aside.

(15) I consequently accept the appeal, set aside the conviction and sentence and instead acquit the appellant. The appellant would be released forthwith unless required in any other case. R.N. Aggarwal, J.-1 have read the judgment prepared by my brother G C. Jain, J. and I agree with his reasoning and conclusion. I, however, feel the need to express myself. This appeal has a number of painful aspects.

(16) A cold blooded murder was committed during broad day light near a hotel and it was witnessed by a number of witnesses The First Information Report is by Raj Pal Public Witness 1. The appellant is named in the First Information Report as one of the principal assailants Strangely all the eye witnesses including Public Witness 1 Raj Pal have gone hostile at the trial. There is. absolutely no doubt that the witnesses have been won over.

(17) We find from the record that the appellant who is the principal accused was admitted to bail by the High Court. He was granted bail even before the commencement of the prosecution evidence. This apparently helped the appellant in winning over almost all the main witnesses. It is surprising that even after the principal witness i.e Raj Pal turned hostile, no application was made by the prosecution for the cancellation of the bail. This case, in my view, is a glaring instance which confirms earlier judicial thinking that in a serious crime like murder bail should not be allowed unless there are very strong reasons for doing so. In any case the bail should not be allowed unless there are compelling reasons to do

so before the eye witnesses are examined.

(18) I next find that the learned Additional Sessions Judge has shown ignorance of basic and fundamental principles of criminal law. A reading of the judgment shows that the Additional Sessions Judge is conscious that the First Information Report is not a substantive evidence, yet he refers to it extensively and relies on it. (Paras 23 and 35 to 36 of the judgment). The judgment further shows that the learned Additional Sessions Judge has allowed himself to land into the realm of surmises and conjectures. (Paras 39 to 44 of the judgment). Paras 42 & 43 of the judgment read as follows:-

'WHERE neither prosecution witnesses nor defense comes out with the whole and unvarnished truth, courts can only draw reasonable inferences from the facts and circumstances available to it. This discussion gives rise at least to the reasonable conclusions that Raj Pal Public Witness 1 was present at or about the place of occurrence and the accused was also present at the time and place of occurrence and he (accused) ran away from there soon after the offence was committed.'

(19) The inferences can only be drawn from the proved facts and circumstances. I find no legal evidence for the inferences and the conclusions drawn by the learned Additional Sessions Judge in paras 43 & 44 of the judgment.

(20) On going through the record, I find that there is no legal evidence on the record connecting the appellant with the crime and yet the Additional Sessions Judge finds him guilty of a serious crime like murder and sentence him to imprisonment for life.

(21) The learned Additional Sessions Judge in para 45 has reproduced the circumstances which according to him stand established against the accused and he finds that on the circumstances mentioned in para 45 the guilt of the appellant is proved beyond any doubt. I find that even if all the circumstances referred to by the Additional Sessions Judge in para 45 are held to be established even then the chain of evidence is not complete and falls short of the proof required for basing a conviction in a criminal case.

(22) It seems the Sessions Judge felt morally convinced of the guilt of the appellant and, therefore, chose to convict him on a reasoning whether legally tenable or not. This, I am afraid, is legally not permissible.

(23) I agree in the conclusion of my learned brother Jain, J. The appeal is allowed and the conviction and sentence are set aside and the appellant is directed to be released forthwith unless wanted in some other case.

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