

Sucha Singh Vs. State

Sucha Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/690005

Court : Delhi

Decided On : Aug-11-1989

Reported in : 1990(1)Crimes222; 39(1989)DLT249

Judge : Charanjit Talwar and; V.B. Bansal, JJ.

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

Appeal No. : Criminal Appeal No. 12 of 1986

Appellant : Sucha Singh

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi, Adv

Judgement :

V.B. Bansal, J.

(1) (RULE D.B.) Sucha Singh s/o Sh. Ran Singh was tried for the offences punishable under Ss. 302 and 308 Indian Penal Code with the allegations that on 23rd June. 1984 at about 11.00 A.M. in front of House No. 3A/78-B, Vishnu Garden Extn., Delhi he intentionally or knowingly caused the death of Kulvinder Singli and caused injuries to Waryam Singh with such intention or knowledge that if Waryam Singh had died he would have been guilty of culpable homicide not amounting to murder.

(2) He was found guilty for the offences punishable under , 302 and 303 Indian Penal Code by Shri V. S. Aggarwal, Additional Sessions Judge, Delhi vide judgment dated 31-12-1985. Sucha Singh has been sentenced to imprisonment for life under S. 302 Indian Penal Code and to undergo R.I. for three months with a fine of Rs. 100 for the offence under Sec. 323 Indian Penal Code . It has further been ordered that in case of default of payment of fine he would suffer further R.I. for one month and that the substantive sentences shall run concurrently vide order of even date by the learned Add. Dist. Sessions Judge.

(3) Being dissatisfied Sucha Singh has filed this appeal.

(4) Kulvinder Singh along with his father Public Witness 4 Shri Raghuvir Singh and grandfather Shri Waryam Singh was residing in House No. WZ-283/2, Vishnu Garden, Delhi, Kulvinder Singh was constructing a separate house in Block No. E-A on plot No. WZ-III A/84-85 Vishnu Garden Extn. He was personally supervising the work of construction in which he was being helped by his grandfather Shri Waryam Singh.

(5) On 23rd June, 1984 as usual both Waryam Singh and Kulvinder Singh had gone to plot No. WZ-III A No. 84-85 where the work of construction was going on. One truck loaded with bricks came to the place of construction at about 11.00 A.M. Kulvinder Singh asked the labourers present in the truck to unload the same little ahead of his plot and in front of tile house of Sucha Singh. An objection was, however, raised by house and he wanted the same to be unloaded in front of the plot of Kulvinder Singh himself. Hot words were exchanged between Kulvinder Singh and Sucha Singh and thereafter, Sucha Singh went inside his house and brought an iron pipe He challenged Kulvinder Singh by saying that he would see Who dares to unload the truck in front of his house and while giving abases inflicted an injury on the head of Kulvinder Singh with iron pipe as a result of which he (Kulvinder Singh) fell on the ground. Sucha Singh continued giving a number of pipe blows to Kulvinder Singh. Waryam Singh tried to intervene to whom also injuries were inflicted by Sucha Singh with his pipe as a result of which Waryam Singh fell down and became unconscious.

(6) Smt. Sushma Kumari w/o Kulvinder Singh and her mother Smt. Jasbir Kaur Public Witness 2 came to the spot on getting information from Kulbir Singh. They both witnessed the occurrence Smt. Sushma Kumari thereafter gave information to police control room about the inflicting of injuries to her husband by someone near Gurdwara. This information was recorded by S.I. Ravjinder Nath (Public Witness 15) in the Daily Diary register at S. No. 33 (Copy Ext.PW15IA). He flashed this information to P.S.Tilak Nagar at 11.10 A.M. where Dd No. 15-A (Ext. Public Witness 20/A) was recorded.

(7) Asi Tej Ram of the Flying Squad came to the spot and removed Kulvinder Singh injured to Dr. Ram Manohar Lohia Hospital who on examination was declared by the doctor as brought dead. Waryam Singh injured was also removed to the said hospital where he was examined by Dr. H.K. Yaduvanshi (PW5) at 12.10 P.M. and was admitted.

(8) On getting copy of Dd No. 20-A Asi Ram Mehar while accompanied by Constable Iswar Singh came to the spot and learnt that the injured persons had also been removed to the hospital. He found Sucha Singh present at the spot and defamed him. In the meantime, S.I. Dharam Singh (Public Witness 20) on getting information from P.S. Tilak Nagar reached the spot. He found iron pipe Ext.P-1 having some hair sticking to it besides blood and a pair of chappals lying at the spot. He did not find any eye witnesses of the incident at the spot and so leaving Asi Ram Mehar to guard the place of occurrence proceeded to Ram Manohar Lohia Hospital.

(9) S. I. Dharam Chand obtained Mlc of Kulvinder Singh who was declared as brought dead. He also collected the Mlc of Waryam Singh injured who was declared by the doctor to be unfit for statement. Sub equently, on the same day Waryam Singh was declared fit for statement by the doctor. Thereafter, his statement was correctly recorded by SI. Dharam Chand Investigating Officer who recorded his endorsement on the statement of Waryam Singh and sent the same to P.S. Tilak Nagar on the basis of which Fir No. 229/84 was recorded at 3.25 P.M. Investigation of the case was entrusted to S.I. Dharam Chand.

(10) The Investigating Officer came to the spot and after getting it photographed seized pair of chappals blood, blood stained earth and the iron pipe after converting them into separate sealed parcels. He took inquest proceedings in respect of the dead body of Kulvinder Singh and the same along with the papers was sent to mortuary for post-mortem examination. Statements of the witnesses were recorded by the Investigating Officer. It was found during investigation that Kulbir Singh s/o Kulvinder Singh had also seen the occurrence who went to the house No. WZ-AH/84. Vishnu Garden Extn. of his maternal grand-mother where after he brought his mother Stat. Sushma Kumari and maternal grand-mother Smt. Jasbir Kaur, to the spot and they also had witnessed the occurrence. Sucha Singh was arrested the same day.

(11) The investigation was thereafter taken up by Inspector Jagdish Chander Shrivastava P.S. Tilak Nagar who arranged to send the sealed parcels to Cfsi and obtained reports. The accused was challaned thereafter.

(12) In support of its case the prosecution examined 20 Witnesses in all. Sucha Singh was examined under S. 313 Cr. P.C. 50 as to enable him to explain the incriminating evidence produced against him by the prosecution. He has denied the allegations and claimed that the deceased wanted to unload bricks from a truck in front of his house to which he objected and Kulvinder Singh climbed over the truck and while standing on bricks he tried to open the back door of the truck upon which it suddenly got opened and Kulvinder Singh fell upon the bricks on account of which injuries were sustained by him. According to him even Waryam Singh received injuries in the same process. He examined Dr. Chander Kant (DW1) in his defense.

(13) After hearing arguments Sucha Singh had been convicted and sentenced as referred to above.

(14) Shri D. R. Sethi appeared for the appellant. Unfortunately, there has not been any appearance on behalf of the State and so we could not have the advantage of hearing counsel for the State.

(15) The learned counsel for the appellant has not disputed the factum of Kulvinder Singh and Waryam Singh receiving injuries in front of his house on 23-6-1984 and. also about the death of Kulvinder Singh. S. I. Dharam Chand (Public Witness 20) is the Investigating Officer who has claimed that inquest proceedings Ext. .PW20/D were correctly prepared by him in respect of the body of Kulvinder Singh @ Pappu. According to Rr. Ramani mortuary through Constable Rami Chand and Fatiyab Khan. Dr. L.T. Ramani (Public Witness 7) has stated that on 24-6-1984 at about 11.30 A.M. the conducted post-mortem examination on the dead body of Kulvinder Singh @ Pappu. According to Dr. Ramani there was bluish echomosis around both eyes and there was bleeding from mouth and nostrils. He found the following injuries on the dead body :-

External Injuries : 1. L shaped laceration 5 inches long X bone deep on the left parietal area with depressed fracture of left parietal bone and contusion around the margins.

2.Laceration 1-3/4 X 1 /bone deep near outer angle of left eye involving lower eyelid. There was diffused sub-conjunctive haemorrhage, zygomatic bone underneath was fractured into multiple fragnance.

3.Laceration 3' x 1 '/bone deep on the lower lip and chin with fracture of the mandible and the lower front teeth

4. Bruise redding in colour 5 inches X 1' having pale central area and bright margins on the right iliac area of the abdomen.

5. Three parallel bruise horizontally present on the front of left thigh middle part. Size of the bruises was 4' x 1' each.'

(16) Dr. Ramani has further stated that there was depressed fracture of the frontal bone and left parietal bone and a fissured fracture radiate to the left temporal bone. According to him there was generalised subdural haemorrhage and laceration of brain underneath the depressed fracture. He found neck structures were intact while trachea contained blood.

(17) Dr. Ramani opined that the injuries were antemortem caused by blunt weapon and injuries to the skull were sufficient to cause death in the ordinary course of nature. According to him death was due to cranco cerebral injury and he proved post-mortem report Ext. Public Witness 7/A.

(18) The learned counsel for the appellant has referred to the statement of Dr Chander Kant (DW1) who has opined that death in the instant case was due to asphyxia as a result of inhalation of blood into traches. Dr. Chander Kant, however, is silent as to whether the injuries to the skull were sufficient to cause death in the ordinary course of nature for which there is a positive statement of Dr. L.T. Ramani who has actually conducted the post-mortem examination. We may, however, note that the trachea contained blood which could be only on account of the injuries on the skull of the deceased. In these circumstances, we are clearly of the view that even asphyxia would be on account of the injuries and there is nothing to hold that Dr. Ramani was wrong in giving his opinion about the cause of death.

(19) According to the case of the prosecution Waryam Singh had also received injuries in the incidert. He was examined by Dr. H.K. Yaduvanshi (Public Witness 6) in Ram Manohar Lohia Hospital on 23-6-1984 at 12.10 P.M. when he found the following injuries on his person :-

'1.Abrasion and C.LW. 1' long on right forehead just above the right eye brow.

2.C.L.W. 2-112' long on the seal in the middle of the anterior portion.

3.Right black eye.'

(20) He has proved M.L.C. Ext.PW6/A to be in his hand. There has not been any cross-examination of this witness. Prosecution has also examined Om Parkash (Public Witness 5) Record Clerk of Dr. R.M.L. Hospital, New Delhi who has proved endorsement Ext.PW5;A on Mlc Eact.PW6/A to be in the hand of Dr. Vivek Misra who has already left the hospital and whose present whereabouts were not known. A perusal of this endorsement shows that the injuries were found to be simple. There has not been any Cross-examination of this witness also so as to challenge

his testimony.

(21) The learned counsel for the appellant has submitted that the prosecution has placed reliance on the statement of Waryam Singh (Public Witness 1), Smt. Jasbir Kaur (Public Witness 2) and Smt. Sushma Kumari (Public Witness 3) as eye witnesses of this occurrence but there is sufficient material on record to show that the incident was actually not witnessed by Smt. Jasbir Kaur and Smt. Sushma Kumari. He has, thus, submitted that the prosecution has tried to project three eye witnesses thereby introducing two false witnesses and on this account alone the prosecution case is bound to fail. We are, however, unable to agree with this submission. It is a sound and well established rule of law that quality and not quantity of evidence matters. In case a court finds the testimony of one single witness to be trustworthy it can form the basis of conviction even in the absence of corroboration. from other eye witnesses.

(22) Waryam Singh (Public Witness I) is an injured on whose statement the case was registered. The presence of Waryam Singh at the time of the incident has not been disputed by the appellant, In these circumstances, we are clearly of the view that his testimony has to be examined independently of the statements of the other witnesses of the occurrence.

(23) While Waryam Singh when examined as Public Witness I has stated that he was looking after the construction of a house by his grand-son Kulvinder Singh and on 23-6-84 he was present at the site of the construction and at about 10.30 A.M. Kulvinder Singh @ Pappu brought a truck loaded with bricks and wanted the same to be unloaded on the road infront of the house of Sucha Singh. He went on to state that an objection was raised by Sucha Singh to the unloading of the truck upon which Kulvinder Singh replied that it was Government road and insisted in unloading the truck at the same place. He went on to state that Sucha Singh gave abuses and after picking an iron pipe from near the wall inflicted injury on the temporal region of Pappu who fell on' the ground. He went on to state that Sucha Singh gave more pipe blows to Kulvinder Singh after he had fallen on the ground and he also received injury on his head at the hands of Sucha Singh when he tried to intervene. He has. further stated that he fell on the ground. became

unconscious and on regaining consciousness he found himself in the hospital where his statement Ext.PW1/A was recorded which he signed at point 'A'. During cross-examination he has stated that Kulvinder Singh was a three-wheeler scooter driver who was once involved in a case under S. 304-A Ipc but he did not know if he was involved in any other case also. According to him the dispute started shortly after coming of the bricks loaded truck and claimed that the truck was still present at the spot when he and Kulvinder Singh received injuries. He was definite about the presence of the truck driver at the spot but could not say if the labour was also present with the driver or not. He did not know who removed him to the hospital and claimed that he regained consciousness at about 2.30 P.M. and his statement was recorded 5-7 minutes later. He has also claimed that the truck was parked in front of the house of the accused who objected to the unloading of the truck in front of his house. According to him some bricks might have been unloaded when injuries were caused. According to him Kulvinder Singh received two blows before he fell unconscious. He has denied that Kulvinder Singh was trying to unload the wooden support on the back side of the truck (Dala) in order to unload to bricks. He has also denied that Kulvinder Singh climbed the truck and he unbolted the wooden support from below on account of which Dala got opened and Kulvinder Singh fell along with the bricks receiving injuries. He has further denied that the accused did not inflict injuries or that he. was deposing falsely.

(24) The learned counsel for the appellant has not been able to point out anything material in the cross-examination of this witness so as to hold that he was a liar or that he was suppressing some facts. As already referred to his presence at the spot cannot be challenged he being a stamped witness having received injuries in this incident.

(25) The question for consideration, however, is as to whether Smt. Jasbir Kaur (Public Witness 2) and Smt. Sushma Kumari (PW3) had also seen this incident or not. Smt. Jasbir Kaur (PW2) has claimed that on 23-6-1984 at about 11.00 A.M. she was present in her house W7-AH/84. Vishnu Garden Extn. while her daughter Sushma was taking bath when Kulbir Singh son of her daughter Sushma Kumari came running and informed her that his father and grand-father had been assaulted with an iron pipe by Sucha Singh upon which she went running in front

of the house of the accused followed by her daughter Smt. Sushma Kumari and noticed Sucha Singh hitting her son-in-law on his head with iron pipe Ext. P1. She went on to state that she had seen Waryam Singh lying unconscious at the spot and thereafter her daughter went to police station and brought the police but before that Kulvinder Singh Pappu was removed to the hospital. Smt. Sushma Kumari (Public Witness 3) has also claimed that on 23-6-1984 she was present in the house of her mother and at about 10.30 A.M. her son Kulbir Singh came and informed her mother and her husband and father-in-law were being assaulted with an iron pipe by Sucha Singh and immediately she came out of the bathroom and rushed to the scene of occurrence following her mother. She has also claimed having seen Sucha Singh hitting a pipe on her husband holding it in both of his hands. According to her, her father-in-law Waryam Singh was lying unconscious and that the accused started running after them shouting that he would kill them also upon which she went to a nearby post office and gave information to the police.

(26) Apparently, these two witnesses have claimed themselves to be the eye witnesses of this occurrence. The short question for consideration, however, is as to whether they had actually seen this incident or not. It is well-known that a man may lie but circumstances do not. It is the admitted case of the prosecution that Smt. Sushma Kumari w/o Kulvinder Singh was the first to give information to the police on the basis of which the police machinery came into action. S.I. Ravjinder Nath (P.W.15) has stated that on 23-6-1984 while working in police control room he received information, at 11.09 A.M. about a quarrel in Vishnu Garden near Bhatta Sahib Gurdwara on the basis of which Dd No. 33 was correctly recorded by him and moved its copy Ext. Public Witness 15/A. He has also stated that this information was passed on by him to P.S. Tilak Nagar at 11.10 A.M. where D.D. No. 15-A was recorded. There has not been any cross-examination of this witness and so it is clear that his testimony goes un-challenged A perusal of Ext. PW15/A shows that Smt. Sushma Kumari had given information to the police control room that some one inflicted injuries to her husband near Gurdwara Bhatta Sahib. Ext. Public Witness 20/A is the copy of DD-15A recorded in Police Station, Tilak Nagar on the basis of information conveyed by Public Witness -15. The facts mentioned in Ext. Public Witness 15/A are reproduced in the aforesaid D.D. entry also. A

perusal of these documents makes it abundantly clear that it is Sushma Kumari w/o Late Shri Kulvinder Singh who gave information to the police about the inflicting of injuries to her husband and she had not named the assailant. If really she was aware of the name of the assailant she would have certainly given it to the police. This is a very strong piece of evidence showing conclusively that she may not have seen the occurrence. According to the prosecution story both Jasbir Kaur and Sushma Kumari came together and so it can be inferred that even Jasbir Kaur had not seen the actual incident. According to Jasbir Kaur and Sushma Kumari they had seen the accused hitting on the head of Kulvinder Singh when Waryam Singh was lying unconscious. They have, however, been contradicted by Waryam Singh who had claimed that first of all the accused inflicted injuries to Kulvinder Singh even after he had fallen on the ground and when moved ahead to intervene he too received injuries on his head at the hands of Sucha Singh and became unconscious.

(27) The learned counsel for the appellant has submitted that the investigation in this case is tainted inasmuch as the Investigating Officer has introduced false eye witnesses and so prayed that accused be given benefit of doubt on this account alone. Asi Ram Mehar (Public Witness 17) has made a categorical statement that he did not find any eye witness of this incident at 'the spot. Similarly, S. I. Dharam Chand (Public Witness 20) has stated that he did not find any eye witness either at the spot or in the hospital. Smt. Jasbir Kaur (Public Witness 2) has, however, claimed that she had gone to the hospital wherefrom she returned to the spot at about 4.30 P.M. and immediately thereafter her statement was recorded. Raghbir Singh (Public Witness 4) has claimed that he remained in the hospital upto 3.00 or 4.00 P.M. where Smt. Sushma was also present and that his statement was recorded by the police. No Explanation is forthcoming from the Investigating Officer as to why he did not record the statement of Smt. Jasbir Kaur in the hospital and why Smt. Sushma Kumari was examined subsequently. The only possible reason could be that the recording of their evidence was intentionally delayed to make them eye witnesses. The short question, however, for consideration is as to whether the prosecution story, is to be thrown out on account of our coming to the conclusion that the possibility of Smt. Jasbir Kaur (Public Witness 2) and Smt. Sushma Kumari (Public Witness 3) having been

introduced as false witnesses and they having not seen the occurrence cannot be ruled out. Reliance was placed by the teamed counsel for the appellant upon case Balwant Singh V. The State 1976 Ch. L.R. Delhi 41.(1) However, the said case, to our mind, is entirely distinguishable. In the aforesaid case there was a definite finding that Fir was recorded much later and ante-timed and false witnesses were introduced and an attempt was made to implicate innocent persons as accused. In the instant case, however, there is only one accused and we have cogent, convincing and reliable evidence about he being involved in this incident in the testimony of Waryam Singh whose presence at the spot has not been challenged. Factum of a quarrel between the deceased and the accused is not disputed. There is no material on record to hold that the recording of the Fir was delayed, or that wrong time of writing the Fir was written. There is no mention of any false witnesses in the FIR. Merely because the Investigating Officer found two persons to be the eye witnesses of this case who have on scrutiny been found to be not eye witnesses can by no stretch of imagination be considered to be a ground to hold that the appellant is entitled to acquittal on this account.

(28) The learned counsel for the appellant has submitted that Kulbir Singh was an important witness cited by the prosecution who has been withheld for no valid reason. He has also submitted that independent witnesses were available to the Investigating Officer who did not examine them and no independent witness has been produced which makes the prosecution story doubtful. We are afraid we cannot accept this submission. The non-examination of some persons who had collected at the spot would not destroy the evidence of the witnesses examined if their evidence is believed and inspires confidence. We find support for this view from the case Ramesh & Vijay v. State 1980 RLR 203,(2) Prosecution is, in fact, required to examine witness who is to unfold the prosecution story. It is not necessary that all the eye witnesses should be examined even if their statements are by way of corroboration. As already discussed Waryam Singh has made a categorical statement and Kulbir Singh was only to corroborate him and was not to unfold the prosecution story. Kulbir Singh was a student of IIIrd Standard in Kha1sa School, Fateh Nagar as claimed by his mother Smt. Sushma Kumari (TW3). He was thus, a child witness. The Court is not to see as to how many witnesses have not been examined. Rather the question for consideration is as to

whether the witness examined is reliable or not. If the testimony of the eye witness examined is found to be convincing and reliable prosecution case cannot be thrown on account of the absence of the statement of other eye witnesses. therefore, we reject this submission of the learned counsel for the appellant.

(29) The learned counsel for the appellant has submitted that PW1 Waryam Singh has claimed that Pipe Ext. P1 was the same used by Sucha Singh for inflicting injuries to him and Kulvinder Singh but he stands contradicted by Smt. Sushma Kumari (Public Witness 3) who has stated that it was not the same pipe. This contradiction, in our view, cannot be of any help of the appellant as we have already come to the conclusion that Smt. Sushma Kumari and Smt. Jasbir Kaur may not have witnessed this occurrence.

(30) The learned counsel for the appellant has submitted that there has been an intentional delay on the part of the Investigating Officer in getting the case registered from which the only possible conclusion could be that the story was yet to be cooked up and this fact itself would cast doubt on the case of the prosecution. We would now discuss the evidence about the registration of the case. As already referred to D.D. No. 15-A (Exhibit Public Witness 20/A) was recorded in Police Station, Tilak Nagar at about 11.10 A.M. and its copy was given to A.S.I. Ram Mehar who went to the spot. S.I. Dharam Chand (PW20) also left the police station and reached the spot where he met A.S.I. Ram Mehar. He could not find any eye witness at the spot and so reached Ram Manohar Lohia Hospital and collected M.L.C. Exhibit Public Witness 6/A of Waryam Singh. The case of the prosecution had been that S.I. Dharam Chand obtained opinion of doctor who declared Waryam Singh unfit for statement but then declared him fit for statement at 2.05 P.M. and thereafter the statement Exhibit Public Witness 1/A of Waryam Singh was recorded. S.I. Dharam Chand has also claimed that he recorded his correct endorsement Ext. Public Witness 20/B and rukka was sent by him to police station at 2.30 P.M. on the basis of which Fir Ext. Public Witness 10/A has been recorded and proved by Asi Ram Singh (Public Witness 10). There is no doubt that the prosecution has failed, to examine the doctor who declared Waryam Singh to be unfit for statement and thereafter fit for statement on 23-6-1984 and thus endorsements in this regard appearing on MLC Ext. Public Witness 6/A have not

been proved There is however, a clear statement of Dharam Chand in this regard and we find no cogent reason to disbelieve him in his claim.

(31) It has been submitted by the learned counsel for the appellant that there has been inordinate delay in sending a copy of Fir to Chief Metropolitan Magistrate from which the only possible conclusion could be that in fact the Fir had not been recorded at the time at which it is claimed to have been registered. He has further submitted that there is no evidence on record to show that entry was made in the daily diary register about the registration of this case mentioning therein the name of the assailant and the name of the witnesses. The prosecution has relied upon Fir Ext. Public Witness 10/A showing that it was recorded at 325 P.M. on 23-6-1984. There is an endorsement on this Fir by Shri K. B. Andley, Addl. Sessions Judge, Delhi to the effect that the Fir was delivered on that day at his residence at 6.00 P.M. by Constable Rehman on the plea that neither the Cmm nor the concerned Acmm was available. The learned counsel for the appellant has submitted at the Bar that he does not challenge the endorsement by Shri K. B. Andley referred to above. He has, however, submitted that there is no evidence on record to show that the Chief Metropolitan Magistrate or Additional Chief Metropolitan Magistrate concerned were not available in Delhi

(32) Once we accept the giving of copy of the Fir to Shri K. B. Andley, Additional Sessions Judge, Delhi at 6.00 P.M. it can safely be concluded that the Fir had been recorded much earlier and the constable made efforts to deliver the same both to Cmm and the concerned ACMM. We may note that in Ext. Public Witness 1/A there is no mention of any eye witness by Waryam Singh. If really the effort of the Investigating Officer was to delay the recording of the Fir so as to introduce false story introducing therein false witnesses, there would have certainly appeared the names of the other eye witnesses. The absence of the name of any other witness in the Fir is clearly indicative of the fact that no effort was at all made by the Investigating Officer to introduce false witnesses and, thus, it cannot be said that there was any intentional delay in getting the case registered. The prosecution has not brought on record the copy of Dd No. 20A recorded in police station about the registration of the case. This would, however, make no difference since names of the witnesses could possibly be not recorded in it as there was no

mention of any eye witness in, the Fir itself. We are conscious of the fact that Fir is a very important piece of evidence which has to be recorded at the earliest so as to avoid any criticism of false introduction of witnesses or concoction of a false story on account of delay. However, the facts of this case clearly show that there was no delay and in any case no effort was made to introduce false witness in the FIR.

(33) The submission of the learned counsel for the appellant has been that the story put forward by Waryam Singh (PW1) is unworthy of credence and that the incident did not happen in the manner in which it is claimed to have taken place by Waryam Singh. He has submitted that no injury in fact was inflicted to Kulvinder Singh and Waryam Singh by the appellant, and that they received injuries on account of fall along with the bricks from the truck. According to the submission of the learned counsel for the appellant Kulvinder Singh wanted to unload the truck of bricks in front of the house of the appellant to which an objection was raised by him and that Kulvinder Singh climbed the truck in order to open the Dala for unloading the bricks when he was helped by Waryam Singh. According to him the Dala got opened suddenly on account of which Kulvinder Singh fell down along with the bricks and sustained injuries. He has referred to the statement of Dr. Chander Kant (DW1) in support of this submission. We have given our thoughtful consideration to this submission and have carefully examined the testimony of Waryam Singh (Public Witness 1), Dr. L. T. Ramani (Public Witness 7) and Dr. Chander Kant (DW1). We are unable to agree with the submission of the learned counsel for the appellant. Dr. L. T. Ramani has made a categorical statement that the injuries as found on the body of Kulvinder Singh could not be caused by fall from a truck along with the bricks. According to him in that case the injuries were to be scattered all over the body and their impact would not be so severe as we found in the instant case. Dr. Chander Kant (DW1) has however, claimed that such types of injuries could be caused when a person falls from a house and his head strikes against a broader surface and blunt object like stone, bricks on the 'round. A perusal of the postmortem examination report shows that there was depressed fracture of the frontal bone and left parietal bone and a fissured fracture radiating to the left temporal bone. Such injuries could have been caused by force and not by merely a fall. We, therefore, have no hesitation in not accepting the

testimony of Dr. Chander Kant and in accepting the statement of Dr. L. T. Ramani which corroborates the testimony of Waryam Singh injured.

(34) The learned counsel for the appellant has further submitted that according to the prosecution story iron pipe Ex P1 was used by Sucha Singh for inflicting the injuries to Kulvinder Singh but Dr. L. T. Ramani has found 'L' shaped laceration on the parietal region which could not possibly be inflicted by a pipe. We do not agree with this submission. The external appearance of the impact will depend on the instrument used, the point of impact and whether the point of impact was protected by head-gear or hair. Sometimes, there may apparently be no injury or a smaller injury as compared to the inner injury. In the presence of the positive evidence of Waryam Singh we are clearly of the view that it cannot be said that the injury of Kulvinder Singh could not be caused by the pipe. We are conscious of the fact that there has been a lapse on the part of the Investigating Officer in not getting opinion of the doctor with reference to the weapon of offence. We may also note that the weapon of offence, i.e. iron pipe Exhibit P1 was not shown to Dr. L. T. Ramani (Public Witness 6) or to Dr. Chander Kant (TW1) even in Court. This, however, would not be a sufficient ground to discard the prosecution story. There is a clear statement by Waryam Singh about the inflicting of injuries to him and Kulvinder Singh by the appellant with iron pipe Ext. P1 and the injuries of Kulvinder Singh have been found to be caused by blunt object by Dr. L. T. Ramani and Mlc Ext. Pw 6/A of Waryam Singh proved by Dr. H. K. Yaduvanshi (PW6) also shows that his injuries were by blunt object.

(35) Considering all these facts we are clearly of the view that prosecution has proved the inflicting of injuries to Kulvinder Singh and Waryam Singh by the appellant.

(36) The next question for consideration, is as to what offence is proved to have been committed by the appellant. The learned counsel for the appellant has submitted that as per the prosecution story itself there has not been any enmity between the appellant and the deceased. He has also submitted that the incident took place suddenly on account of Kulvinder Singh insisting in unloading the truck of bricks in front of his house for which the appellant was not agreeable. He has,

thus, submitted that there was no intention on the part of the appellant to commit murder of Kulvinder Singh. According to him at best the intention of the appellant could be to cause such bodily injury as was likely to cause death. We find force in this submission. It is the admitted case of the prosecution that the incident took place suddenly and it cannot be said that the appellant had taken undue advantage or that he acted in a cruel or unusual manner, It has clearly been stated by Waryam Singh (Public Witness 1) that when Kulvinder Singh insisted in unloading the truck just in front of the house of the appellant, he (Sucha Singh) lifted iron pipe Ext. Pi from nearby and used the same for inflicting injuries. It is, thus, clear that Sucha Singh had not even made any effort to procure weapon of offence from any other place. therefore, number of wounds caused during the occurrence would not be a decisive factor. There is nothing on the record to show that the appellant intended to inflict injuries on the head of Kulvinder Singh. In these circumstances, we are clearly of the view that the case would fall under Sec. 304 Part I. We find support for this view from the case Gurdip Singh and another v. State of Punjab : 1987 CriLJ987 .(3) The mere fact that a number of injuries were caused to the deceased during the scuffle cannot be sufficient to hold that the appellant acted in a cruel and unusual manner. Reliance in this regard can be placed on the case Surinder Kumar v. Union Territory Chandigarh 1989 Sc 1094(4). The learned counsel for the appellant has not urged anything with regard to the conviction of the appellant for the offence under S. 323 Indian Penal Code for the injuries inflicted to Waryam Singh.

(37) The next question for consideration is as to what should be the sentence for the offence under S. 304 Part-1 Indian Penal Code . The learned counsel for the appellant has cited before us some cases where the sentence awarded was two years. He had even referred to case Puran Singh v. State of U.P. : 1981 CriLJ1284 where the sentence awarded to the appellant was reduced to the period already undergone (which was 18 months in that case). It was observed in the aforesaid case that the appellant was about 19 years of age at the time of the incident and considering all the facts and circumstances his sentence was reduced as aforesaid. However, in case of Gurdip Singh and another v. State of Punjab (Supra) and Surinder Kumar v. Union Territory of Chandigarh (supra) the appellants were awarded R. I. for 7 years for the offence under S. 304 Part I Indian

Penal Code Considering all the facts and circumstances we are clearly of the view that the appropriate sentence for the offence under S. 304 Part I would be R. I. for 7 years. The sentence awarded to the appellant for the offence under S. 323 Indian Penal Code by the learned trial court is, however, reasonable which calls for no interference.

(38) As a result of the aforesaid discussion, the conviction and sentence of the appellant under S. 302 Indian Penal Code are set aside. The appellant is instead convicted under S. 304 Part I Indian Penal Code and sentenced to R. I. for 7 years. His conviction and sentence under S. 323 Indian Penal Code by the learned trial court are maintained. Both the substantive sentence shall, however, run concurrently. The appellant is on bail and shall surrender before the trial court, to undergo the remaining period of his sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com