

Subhash Chander Vs. State

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Court : Delhi

Decided On : Mar-15-1990

Reported in : 41(1990)DLT430; 1990(18)DRJ330

Judge : Malik Sharief-ud-Din and; M.K. Chawla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 354; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 157, 159 and 313

Appeal No. : Criminal Appeal No. 57 of 1986

Appellant : Subhash Chander

Respondent : State

Advocate for Pet/Ap. : G.S. Vashisht, Adv

Judgement :

M.K. Chawla, J.

(1) Puran Singh is the owner of house No. P-16, Gali No 17, Brahmpnri, Delhi. It consists of four living rooms, a kitchen. a W.C and a bathroom on the ground floor and another room on the first floor. He Along with his family which consisted of his wife, two daughters and a son aged 3 years were living there. Usha Rani (Public Witness -I) aged 14/15 years is elder of the two daughters. Subhash Chander, the appellant before this Court was a tenant at a monthly rent of 'Rs 80.00 in one of

the front side room on the ground floor. Few days prior to the date of incident, Subhash Chander started cutting indecent jokes with Usha Rani with an evil intention to outrage her modesty. She, however, could not understand his intention and did not pay any heed to such advances.

(2) Narrating the sequence of events leading to the murder of her brother Jitender Kumar @ Rinku, at the hands of the accused Subhash, Usha Rani told the police in her statement Ex. Public Witness -1/A, as also before the court, that on 19-1-1989 at about 3 P.M she and her brother were present in the room on the first floor. At that time, her father had gone on duty in the D.M.C. while her mother and younger sister had gone to the bazar in Seelampur. By about that time, her brother Rinku, came downstairs for going to the bathroom and she followed him. The accused at that time was standing in the courtyard. He lifted Rinku and was about to take him to his room when she protested. The accused then caught hold of her right forearm and started pulling her towards his room. She, however, gave a jerk and released herself from the hold of the accused. Usha Rani again asked Snbhash Chander to leave her brother whereupon the accused insisted that until and unless she accompanied him to the room, he would not leave Rinku. Usha Rani threatened to raise an alarm in case Rinku was not let, off, but the accused took Rinku to his room and bolted the door from inside, by saying that he would teach her a lesson for not coming imides the room Usha Rani peeped through the crevices of the door and found that the accused had laid her brother on the floor and started stabbing him on the head. She immediately raised an alarm for help (bachao bachaa), on hearing of which, Bhushan Lal Jain and Raghbir Singh reached there. Usha Rani told them that her brother has been taken by the accused inside his room and was inflicting knife injuries on his person Bhushan Lal Jain and Raghbir Singh tried to break open the door of the room but did not succeed. They then peeped through the door and noticed the accused inflicting knife injuries on the head of Rinku. By that time, many persons had collected. They asked the accused to open the door but when he refused to do so they broke open the door and found Rinku lying in a pool of blood with a knife struck in his head. The accused was overpowered there and then.

(3) Babu Singh, Public Witness -10, who is living 20 paces away from the house of Puran Singh, on hearing the alarm, reached there and after coming to know of the incident, informed the local police on telephone. This information was received by the Duty Officer A.S.I. Suraj Bhan (Public Witness -6) and recorded in the daily diary. A copy of the said information was handed over to Inspector Bhim Singh (Public Witness -13) for investigation. On reaching there, the accused was produced before him by Bhushan Lal Jain and Raghbir Singh, Public Witness s. He also found the dead body of Rinku, with a knife struck in his skull, lying in the loom. He recorded the statement of Usha Rani and sent a Ruqa to the Police Station for the registration of the case. He then got the scene of occurrence photographed from various angles, lifted the blood, control earth and took into possession the blood stained quilt, a dari, and a pair of chappies lying near the dead body. He also took into possession the blood stained coat and pant of Subhash which he was wearing at that time. He then prepared the rough site plan and started Inquest proceedings. The dead body was sent to the mortuary for post-mortem examination through Constable Vipin Kumar (Public Witness -12). He then arranged to send the said case property to the office of the C.F.S.L and after receiving the reports, completed the investigation and filed the challan.

(4) The accused was charged for the commission of an offence punishable under Section 302 Indian Penal Code for having committed the murder of Jitender Kumar @ Rinku and under Section 354 Indian Penal Code for intending to outrage the modesty of Usha Rani.

(5) During the trial, the accused pleaded innocence and denied his presence at the time and place of the incident. According to him, he was a tenant in the front room of the house of Puran Singh from April to November, 1982. While vacating the room, he had left some of his household goods with Narinder Kumar, who was in occupation of another room in the same house. His further case is that at about 5 P.M. on 19-1-1983 he had come to the room of Narinder Kumar to take away his goods. When he reached there, he found number of persons collected outside the house. At the instance of Puran Singh and Bhushan Lal Jain, he was taken to the Police Station, when he was given severe beating and was then implicated in this case.

(6) Learned Additional Sessions Judge after going through the oral as well as documentary evidence placed and proved on record, believed the evidence of Usha Rani, Bhushan Lal Jain and Raghbir Singh, the eye-witnesses of the occurrence. The Court also relied upon the post-mortem report as a corroborative piece of evidence and coupled with the surrounding circumstances. found the accused guilty of intentionally causing the death of Rinku. He was sentenced to undergo imprisonment for life but was acquitted of the charge under Section 354 IPC.

(7) The present appeal is directed against his conviction and sentence under Section 302 Indian Penal Code, awarded by the learned Sessions Judge, on 5th March 1985.

(8) The appeal was filed through Jail. By order dated 2-4-1986, this Court appointed Shri Nand Kishore Advocate as amicus curiae on State expense. When the appeal was ripe for hearing, the appellant stated that he does not want to have the assistance of an Advocate and would like to argue his appeal in person. Consequently, Shri Nand Kishore Advocate was discharged vide order dated 24-10-1989

(9) We have given the appellant a patient hearing and with his help have gone through the record.

(10) The main contention of the appellant is that on the alleged day, time and place of occurrence, he was not present and has been falsely implicated in this case by Puran Singh, his daughter Usha Rani and Bhushan Lal Jain. In fact, he was not the tenant of Puran Singh and had left the room sometimes in the month of November, 1982. In support of this submission, the appellant has referred to his statement recorded under Section 313 Cr. P.C. where his case is that the room in which the dead body of the child was found, remained in his tenancy only up to November 1982. Except this averment, there is no other evidence to support this plea.

(11) On the question as to whether the appellant was in possession of the front room of the house of Puran Singh as a tenant and was residing there up to the

date of this incident, the prosecution mainly rely upon the evidence of Usha Rani, Public Witness -1, Bhushan Lal Jain, RW-7, Raghubir Singh, Public Witness -8 and Puran Singh, Public Witness -11. Puran Singh, Public Witness -11 has claimed that the appellant was residing as a tenant in one of the rooms for about one year prior to 19-1-1983 According to him, he was, paying Rs.80.00 per month as rent though he never issued any receipt. In cross-examination, he denied the suggestion that he wanted to get the room vacated from the accused on account of hie trying to develop intimacy with his daughter. Bhushan Lal Jain, Public Witness -7, was running a fair price shop in the front portion of- his house and was residing in the backportion. His house is at a distance of about 10 paces and almost in front of the house of Puran Singh, This is in consonance with the site plan Ex. Public Witness -2/A. He was known to the appellant residing in one of the rooms of Puran Singh as tenant. Almost similar is the statement of Raghbir Singh, Public Witness -8. The evidence of none of these witnesses has been questioned by the accused. There is no suggestion to the witnesses that the accused had vacated the room in November, 1982 or that be was not there on 19-1-1983 Thus, there appears to' be no reason as to why the witnesses should depose against him and state a fact, which is not true.

(12) The presence of the accused in the house and in the room where R.inku was found murdered has been proved from the statement of Usha Rani, Bhushan Lal Jain and Raghbir Siagh, who were the first to see the accused causing repeated knife injuries on the head of Rinku. All the three had witnessed the actual stabbing through the crevices of the door Ex P-I. When this door was produced before the court while the statement of Usha Rani was being recorded, the Court made the following observations :

'At this stage, one door panel consisting of two rafter and the other one with one rafter and another loose rafter is produced. The chain of the door is closed and despite that if the door panels are pushed, there remains the gap of more than half inch and everything inside can be looked clearly.'

Being not satisfied with this visual observation, the Court got the do or panel fitted in the court chamber which had no door panels. Thereafter, the observation of the

court reads as under :

'The door panel with two rafters was fitted in the court chamber which baa no door panels and the hinges if fixed in the door frame would still leave sufficient room in between the rafter and the door frame wherefrom everything inside the room would be visible because the rafter is not straight one but has a curve inwards and that gap is more than half an inch'.

With this position of the door, there was every possibility of the witnesses having seen the accused giving fatal blows on the head of Rinku It was a sunny day of January, 1983. The time was 3 P M. There was sufficient light to observe the happenings inside the room situated on the front side.

(13) The presence of the appellant in the room has otherwise been established not only from the evidence of the witnesses but also from other circumstances. It has come in the evidence of the three eye-witnesses that they first tried to impress upon the appellant to open the door but when no heed was given, they with the help of other persons who by that time had collected there, broke open the door and immediately overpowered and caught hold of the appellant. By that time, Babu Siagh, Public Witness -10, had conveyed the information to the Police on telephone about this incident. A.S.I. Suraj Bhan, Public Witness -6 was the Duty Officer at Police Station Seelampur and he correctly recorded D.D No 12-A about a murder in house No. B-16A. Gali No 17, Brahmपुरi, and a copy of this information was immediately given to Inspector Bhim Singh, Public Witness -13 He reached the spot within no time and found the dead body of Rinku lying in the room. According to him, the assailant, when produced before him by Bhushan Lal Jain and Raghbir Singh was arrested by him. From this evidence, the contention of the appellant that he had reached the place of incident at about 5 P.M. and had been falsely implicated stands falsified.

(14) This aspect can also be looked into from another angle. The incident of stabbing bad taken place at about 3 P.M. The information of ibis incident was conveyed and recorded at the Police Station at 3.30 P.M. vide Ex. Public Witness - 6/A. Inspector Bhim Singh had reached there and started investigation. He recorded the statement of Usha Rani Ex, Public Witness -1/A and sent the Ruqa to

the Police Station at 5 P.M. for registration of the case. This fact finds corroboration from the endorsement of Inspector, Ex Public Witness -6/B in which the time of sending Ruqa to the Police Station is mentioned as 5 P.M. According to A.SI. Suraj Bhan, Public Witness -6. he received the statement of Usha Rani, Ex PW-I/4 with the endorsement of the Inspector through Constable Gulab Singh at about 5.15 P.M., on the basis of which the F.I.R. Ex. Public Witness -5/C was prepared. He further stated that a special report of this F.I.R. was sent by him to Irama Magistrate and other higher Police Officers through Constable Sat Parkash, Public Witness -3, regarding which an entry was made in the Daily Diary at 5,40 P.M. According to Sat Parkash, special reports were given to him at about 6/6.30 P.M. and he delivered one copy to Shri Akshaya Kumar, M.M. at his residence in Gulabi Bagh. The other copy was given to Shri Surjit Singh, Additional Commissioner of Police, and another was delivered to Shri Sewa Singh, D.CP. (East) and Rajesh Kumar, A.C.P. (Shahdara). He came back to the Police Station at about 10 30 P.M and entered the report Ex. Public Witness -6/E. In this manner, the prosecution has complied with the provisions of Section 157 of the Code of Criminal Procedure inasmuch as the copy of the report was sent to the area Metropolitan Magistrate before the investigation started. The object of this section is to enable the M.M. to have early information of every serious crime so that he may be in a position to act, if necessary, under Section 159 of the Code.

(15) In view of the aforesaid discussion, it is clear that the prosecution has proved from the documentary evidence that from the time the information about the murder was received at the Police Station, immediate steps were taken to complete all the formalities. We may note that in all these documents, the name of the appellant as the assailant found mention. There was hardly any occasion for the Police to falsely implicate the appellant on the asking of Puran Singh, his daughter or the eye-witnesses of the occurrence. Further-more, the appellant has not been able to point out anything on record to show that Bhushan Lal Jain and Raghbir Singh, the independent witnesses were in any way inimical towards him or they had any motive to falsely implicate him. The plea of the appellant that Puran Singh wanted to get his room vacated and on that account, he has been falsely implicated is neither here nor there and is to be rejected, on the short ground that there is a natural instinct of human being that real culprit should not

escape and no attempt is made to falsely implicate an innocent person. Even otherwise, it is beyond imagination that any prudent man will think of losing his son just to get his tenant dispossessed.

(16) The appellant then contended that he has not been identified as the person, present in the room inasmuch as Usha Rani, Public Witness -1 failed to identify the clothes which he was wearing at that time. He specifically refer to her statement in Court, reading as under :

'The clothes worn by the accused were also seized by the Police. He was putting on a kurta and pyjama. I can identify the same if shown to me'.

We are afraid, this is not the only evidence on record. In the next breath, Usha Rani clarified that the accused had changed the clothes after he was arrested. She then identified the blood stained pant. Ex. P-8 and the coat Ex. P-9 which he was wearing at the time of the incident. Further more, in her cross-examination, she again confirmed this part of the case of the prosecution by answering that on the day, time and place of occurrence, Subhash Chander was wearing pant and coat. He was made to wear a shirt and pyjama after he was asked to take off his pant and coat. Not only that even the Investigating Officer had taken these very clothes into possession vide seizure memo Ex. Public Witness -7/B. According to the 10 the pant and the coat were stained with human blood. This blood has been found to be of 'B' group by the C.F.S.L. as per the report Ex. Public Witness -13/E and F. and it matched with the blood group of Rinku. This is also a corroborative piece of evidence to the ocular evidence that the appellant had inflicted knife injuries on Rinku and in that process, his clothes got blood stains.

(17) This takes up to the report of Dr. Bharat Singh, who conducted the post-mortem examination of the dead body of Rinku. On examination, he found as many as 8 injuries out of which 7 were incised wounds. All these injuries were within the area above the neck. In his opinion, injury No. 3 was sufficient 'to cause the death in the ordinary course of nature: The death was due to coma, resulting from head injuries. On international examination of injury No. 3, Dr. Bharat Singh opined that this injury had cut the right temporal' bone and had entered the skull and had cut the temporal lobe of the brain and then the base of skull and finally

entered the neck tissues and had cut the thyroid cartilage. The total depth of the wound was 4 inches. The seat of the injury shows that it was caused with the chhuri found embedded in the skull. From the perusal of the nature of suggestions put to the various witnesses, we find that the appellant tried to explain this injury by alleging that Rinku in fact had slipped from the stairs and had fallen on a sharp object near the handpump. The doctor ruled out this possibility saying it is wrong to suggest 'that injuries except injury No. 3 as found on the body of Jitender Kumar @ Rinku could be caused by a fall. It is wrong to suggest that injury No. 3 as found on the body of Jitender @ Rinku could be caused by falling on a sharp object like chhuri, since the direction of the wound was from above downwards. In case a person falls with head downwards, there should be multiple fracture of the skull bone'.

(18) The medical evidence also fully supports the case of the prosecution as laid before the Court.

(19) The cumulative effect of the evidence discussed above leaves no doubt in our mind that the appellant had caused the death of the child in a cruel manner by using brutal force. A tender life of a young boy has been cut short for no fault of his. We do not find any mitigating circumstance to take a lenient view. There is no force in the appeal and the same is hereby dismissed. The sentence of life imprisonment awarded by the learned Additional Sessions Judge dated 5th March 1985 is confirmed.

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