

**Rai Singh Vs. the State**

**Rai Singh Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/697107](http://sooperkanoon.com/697107)

**Court :** Delhi

**Decided On :** Mar-06-1996

**Reported in :** 1996(1)ALT(Cri)24; 1996CriLJ2259

**Judge :** P.K. Bahri and; Mohr.Shamim, JJ.

**Acts :** Arms Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 307

**Appeal No. :** Criminal Appeal No. 39 of 1992

**Appellant :** Rai Singh

**Respondent :** The State

**Advocate for Pet/Ap. :** K.B. Andley and; Anil Soni, Advs

**Judgement :**

**Mohd. Shamim, J.**

(1) The convict appellant (hereinafter referred to as me appellant for the sake of brevity) has preferred this appeal against the judgment and order dated February 15, 1992 & February 17, 1992.

(2) Brief facts which led to the filing of the present appeal are as under : that one Charan Singh (Public Witness 3) resident of village Nanak Hen was sleeping in his

house on July 22, 1989 at about 9.001 9.30 p.m. His brother known as Mir Singh (Public Witness 5) approached him and apprised him of the firing at his house by the appellant and in regard to the death of a girl known as Anjani.. On receipt of the said information he immediately rushed to the police station and informed the police. His statement was recorded vide D.D. No. 16A (vide Ex. Public Witness 2/A) by Public Witness 2 Mukhtiar Singh. The said Dd entry was marked to Sho M. S. Yadav (Public Witness 18) for purpose of enquiry. Inspector Yadav Along with Si Gita Ram (PW 17) and other police officers rushed to the place of occurrence. He met over there the mother of the deceased known as Smt. Ved Wati (Public Witness 7). He recorded her statement vide Ex. Public Witness 7{A and sent the same Along with his endorsement (Ex. Public Witness 18 (A) through Constable Kuldip Kumar (Public Witness 14) for registration of a formal F.I.R. whereupon formal F.I.R. was recorded by Hc Mukhtiar Singh (Public Witness 2) vide Ex. Public Witness 2/B.

(3) Smt. Ved Wati (Public Witness 7) stated in her statement (Ex. Public Witness 7/A) that she was a resident of H. No. KG-364, Lig Flats, Vikas Puri. She has been residing at the above said address Along with her husband and children since the time of her marriage. She was married to one Mauji Ram (Public Witness 12) by her father and the brother, appellant herein. Her husband is a physically handicapped person. As such, her father and brother took away from him Rs. 24,0001- for giving her in marriage to him. The appellant had assured that he would return the said money later on. However, the same amount has so far not been returned. She approached her brother (appellant) many a times for the return of the said amount as she was financially weak. However, the appellant put her off on one pretext or the other.

(4) On July 22, 1989 she Along with her daughter Anjani, aged about 13 years, and son Devi Singh who is 5 years of age, arrived at village Nanak Heri by bus as she also wanted to purchase ghee from the village. After having got down from the bus she first of all went to the house of her brother Suraj Bhan who was not available. She thereafter visited one or two places to fetch ghee, but the same was not available. Subsequently, she Along with her children arrived at the' house of the appellant in order to demand money from him,. She found the appellant sitting

on a cot in the courtyard of his house Along with his wife and children. She also sat Along with her children on a cot lying nearby. After a short-while thereafter she asked for the money. The appellant felt offended on her demand and tried to put off the matter. She there upon told her brother that he had very recently sold some land and as such he was now in a position to return the money, On , hearing me same the appellant got into his tantrum and abused her. He took out a rifle from the room and told her that he would return the money today. He further said that he would liquidate her family. Un having said so he bred a shot with the rifle at her. She immediately pounced upon the rifle as a result where of the bullet went upward and she escaped unhurt. While the said scuffle was going on M/r Singh also readied there and shouted as to what the appellant was doing? She lost control of the rifle. The appellant immediately tired another shot which hit her daughter i.e., Anjani deceased, below the neck. The deceased bled prolusely. Sue collapsed on the cot itself. She and the above named Mir Singh tried to apprehend the appellant but could net. He freed himself from them and fled away from the spot Along with the rifle. She raised an alarm which attracted quite a good number of persons who reached the spot on hearing the alarm.

(5) Inspector M. S. Yadav' prepared the inquest report (vide Ex. Public Witness 1610). The dead body was sent for post-mortem to the mortuary through Constables Suresh Kumar and Kuldip Kumar (PW Hand Public Witness 14 respectively). He moved an application for conducting the post-mortem on the dead body. Dr. L. T. Ramani (PW 16) conducted the post-mortem on the dead body of Ms. Anjani. Her report with regard to the autopsy conducted on the dead body of the deceased is Ex. Public Witness 16 /A. Re seized different articles from the spot such as, a cot (Ex. P5), mattress (gadda) Ex. P6 and a bad sheet (chaddar) Ex. P 7 and converted them into a sealed packet and sealed them with the seal of 'MSY' vide memo Ex. Public Witness 7/F and Ex.. Public Witness 710. The blood was also lifted from the spot with the help of cotton and taken into police custody vide Ex. Public Witness 7 ID. Pieces of cartridge were seized from the spot. The place of occurrence was got photographed. Statements of the prosecution witnesses were recorded. Different articles, which were collected from the spot and con.verted into sealed packets were sent to the CfsI for the Chemical analysis. The report of the CfsI is Ex. Public Witness 18/F. The appellant was

apprehended by Si Gita Ram (Public Witness 17) with the help of Constable Suraj Bhan (PW 13) and Hc Rattan Singh (Public Witness 10) from a canal on the basis of a secret information. After completion of investigation the appellant was challenged by the police.

(6) The learned Magistrate committed the appellant to the Court of Session to stand his trial under Section 302 of the Indian Penal Code as the offence was exclusively triable by the Court of Session.,

(7) The learned Sessions Judge after the appraisal of the evidence came to the conclusion that the prosecution has succeeded in proving its case beyond any shadow of doubt against the appellant under Section 302/307 of the Indian Penal Code and under Section 27 of the Arms Act. He thus convicted him accordingly under the said Sections. The appellant was sentenced to undergo imprisonment for life under Section 302 of the Indian Penal Code. He was further sentenced to undergo Ri for five years under Section 307 of the Indian Penal Code. The appellant was also sentenced to undergo RI for one year under Section 27 of the Arms Act.

(8) Aggrieved and dis-satisfied with the said judgment and order the appellant has approached this Court,

(9) Learned counsel for the appellant Mr. K. B. Andley has vehemently contended that there is absolutely no evidence, whatsoever, to hold the appellant guilty under any of the above Sections of the Indian Penal Code and under the Arms Act. The appellant is absolutely innocent. The deceased is the real niece of the appellant.. Thus it does not appeal to the reason as to why the appellant would have shot her niece. There was absolutely no motive on the part of the appellant to have committed the murder of his own niece. The statements of the prosecution witnesses are full of contradictions and inconsistencies which lead to the one and the only conclusion that the case of the prosecution is the result of fabrication and concoction. The learned lower-court thus fell into a grave error by coming to the conclusion that the appellant was guilty. Learned Public Prosecutor Mr. Anil Soni has urged to the contrary.

(10) Learned counsel for the appellant Mr. Andley has contended with great zeal and fervour that the deceased in the instant case Km. Anjani was the real niece of the appellant. She was an innocent child, 13 years of age. Thus there was absolutely no motive, whatsoever, on the part of the appellant to have killed his own niece. This is all the more so when she happened to be a child of tender years i e.. 13 years of age. The absence of a motive is a relevant fact while committing a crime It is invariably seen that an accused has an axe to grind. The next limb of the argument advanced by the learned counsel is that the prosecution in the instant case has made a futile attempt to put forward a motive for the commission of the alleged crime by the appellant. However, the said attempt on the part of the prosecution has ended in fiasco.

(11) Learned Public Prosecutor, Mr. Soni, on the other hand has contended that Public Witness 7 Ved Wati was married to a physically handicapped person who has lost his leg, below the knee, on account of an accident (vide Ex. Public Witness 12 / A). The appellant and his father took from her husband a sum of Rs. 24,000/- by way of consideration for giving the hand of his sister/daughter in a matrimonial alliance to Mauji Ram (Public Witness 12).. The appellant assured her that the said amount would be returned. However, when she demanded the said amount she incurred the wrath of the appellant who went into his tantrum and wanted to kill her and in fact killed the deceased. Thus according to the learned Public Prosecutor there was sufficient motive behind the alleged crime.

(12) Since we are concerned with the question as to what is the role of a motive in the commission of an offence and what weight is to be attached to the same while deciding the question of motive, we would like to elucidate the said point with the help of certain authorities. It was observed by their Lordships of the Supreme Court while deciding the question of motive in a crime in the case of Rajinder Kumar and another v. State of Punjab, : 1966 CriLJ960 .... 'The motive behind a crime (in this case one punishable under S. 302, Indian Penal Code) 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. The circumstances which prove the guilt of the accused are, however, not weakened at all by this 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.'

(13) The said view was again reiterated by the Hon'ble Supreme Court in *Molu & Ors. v' State of Harvana.* : 1976 CriLJ1895 . 'It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes however, the motive is shrouded in the mystery and it is very difficult to locate the same. If, however, the evidence of the eye witnesses is creditworthy and is believed by the court which has placed implicit reliance on that. the question whether there is any motive or not becomes wholly irrelevant.'

(14) To the effect are; the observation of the Hon'lbe Supreme Court as reported in *Datar Singh v. State of Punjab,* : 1974 CriLJ908 .

(15) It is fully manifest from above that in case there is direct evidence against an accused which is worthy placing the reliance and as such inspires the confidence, to look for a motive in such a case. would be absolutely irrelevant. However, the presence; and absence of the motive in assessing evidence led by the prosecution has always been held to be quite: material and relevant to arrive at a correct conclusion.

(16) With the above background let's now come to the case in hand. The case of the prosecution as revealed through Ex. Pw 7/A and Ex. Public Witness 18/A (vide statement of Public Witness 7 Ved Wati) is that her father and brother i.e., the appellant gave her hand in marriage to one Mauji Ram (Public Witness 12), a physically handicapped person, and took from him a sum of Rs. 24,000 by way of consideration for the said marriage. The appellant assured her that the said amount would be returned later on, but the same was not returned till the date of the incident. She as such approached her brother i.e. the appellant and demanded the said money. By the said demand she incurred the wrath of her brother who tried to kill her by firing at her and in fact killed her daughter i.e. deceased Km. Anjani. She has further averred in the said report to the police that she impressed upon her brother i.e. the appellant the desirability to return the said sum as he had recently sold his land. Curiously enough while appearing before the court as Public

Witness 7 she had a different tale to tell. She had deposed to the fact that she went to the house of her brother i.e. the appellant to have her share i.e. Rs. 24,000 as her brother had sold some landed property. In the same breath in the next sentence she has further deposed to the fact that the appellant and her father had taken away Rs. 24,000 from her. On being cross-examined she thus contradicted her earlier statement that neither the appellant nor her father took away anything from her husband ' prior to or at the time of the marriage. She has further deposed to the fact that her father and the appellant had taken away from her a sum of Rs. 9,000 to Rs. 10,000 in cash. The remaining amount of Rs. 24,000 was agreed upon to be paid by her father to her as she was married to an invalid person. Then there is the statement of her husband i.e. Public Witness 12 Mauji Ram on this point. According to him, neither the appellant nor his father-in-law took away anything from him by way of consideration for giving the hand of Ved Wati (Public Witness 7) in marriage to him. He further goes on to state that his wife i.e. Public Witness 7 Ved Wati before her departure to the house of her father informed him that as her father sold and disposed of some landed property, she was going to her parents on the said score. On being suggested to him that his wife went to recover from the appellant and her father the sum of Rs' 24,000 which was given to them by him as a consideration for marriage of Public Witness 7 Ved Wati to him, he denied the same.

(17) It is thus abundantly clear from the evidence canvassed above that there is absolutely no evidence to lead us to any conclusion as to in what connection Public Witness 7 Ved Wati approached the appellant at his house. Thus we are of the view that the prosecution has miserably failed to substantiate the alleged motive for the commission of the alleged offence.

(18) Learned counsel for the appellant has then contended that the statements of the prosecution witnesses in the instant case are replete with material contradictions and as such have set at naught the entire case of the prosecution. Admittedly, as per the prosecution version (vide Ex. Public Witness 2/A) it was Public Witness 3 Charan Singh who first of all went to the police station and lodged the report which was recorded at Sl. No. 16A of the Daily Diary dated July 22, 1989. He stated therein that the appellant had shot at his niece in an adjoining

house who had succumbed to the injuries sustained at the hands of the appellant. Astonishingly while appearing before the Court as Public Witness 3 he has deposed to the fact that his brother Mir Singh came to his house and informed him with regard to the death of a girl at the house of the appellant. Thus Public Witness 3 Charan Singh has gone back from his previous statement made before the police. On being cross-examined by the learned App he maintained that he never stated before the police that it was the appellant who had shot Km. Anjani dead at his house. Public Witness 5 Mir Singh has got this to say on this point that on hearing the gun-shots he went to the house of the appellant. He found a girl who was lying dead. The appellant was not present at that time. He further goes on to state that while he was coming out of the house of the appellant Ved Wati (Public Witness 7) and Roop Ram were entering the house of the appellant. Thus, according to Mir Singh (Public Witness 5) neither the appellant nor Public Witness 7 Ved Wati i.e. the mother of the deceased, was present at the time of the occurrence. Thus the statement of Public Witness 5 Mir Singh and Public Witness 3 Charan Singh cut at the very root of the case of the prosecution and fling to the winds the entire prosecution Version. Surprisingly enough even the father of the deceased and husband of Public Witness 7 Ved Wati i.e. Public Witness 12 Mauji Ram has also not supported the case of the prosecution inasmuch as he has very categorically stated that neither Roop Singh, his father-in-law, nor the appellant, his brother-in-law, took away anything from him at the time of his marriage to Ved Wati (PW 7). He further denied the suggestion that his wife went to the house of the appellant in order to recover the sum of Rs. 24,000 which was given by him by way of consideration of his marriage to Ved Wati. Further we find in his statement that when he arrived at the police station he found his wife lying un-conscious and her clothes were bloodstained. Curiously enough if this is so, we are of the view that the said blood-stained clothes must have been seized by the Investigating Officer by way of evidence of her presence at the time of the occurrence. The Investigating Officer, Inspector Yadav (Public Witness 18) for the best reasons known to him did not do so. Hence an adverse inference is liable to be drawn against the prosecution in favor of the appellant that perhaps Ved Wati (Public Witness 7) was not present at the time of the occurrence. This is all the mere. so in view of the statement of Public Witness 5 Mir Singh who has deposed to the fact

in unequivocal terms that while he was coming out of the house of the appellant Ved Wati and Roop Ram were entering the above said house.

(19) It is thus manifest from above that the statements of the prosecution witnesses are full of contradictions and inconsistencies which are very relevant and material and go to the root of the case and cast serious doubts regarding the authenticity of the prosecution version. We are tempted here to cite a few lines from a judgment of the Supreme Court. It was observed by their Lordships of the Supreme Court in Krishna Pillai Sree Kumar and another v. State of Kerala Air 1981 Sc 123 : It is no doubt true: that the prosecution evidence does suffer from inconsistencies here and discrepancies there but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defense may be justified in seeking advantage: of the incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. That is a salutary method of appreciating of evidence in criminal cases which does not appear to have been followed by the learned Sessions Judge; and that is the reason why he landed himself into wrong conclusions, as has been pointed out by the High Court.'

(20) It has been then urged for and on behalf of the appellant that as per the statement of Public Witness 7 Ved Wati (vide Ex. Public Witness 7/A) that she went to the house of the appellant who along with his wife was sitting on a cot in the court-yard. After having wished him she also sat on a cot nearby along with her children, including the deceased Km. Anjani. It implies thereby that when the appellant fired at her the deceased was sitting on the cot near her mother. Thus according to the learned counsel the shot was fired from a very close range. This fact has been further admitted by Public Witness 7 Ved Wati during the course of her cross-examination. According to her, the distance between her daughter when she was shot at and the rifle of the accused was about 2' to 2'6". Thus the learned counsel contends that if it is so there would have been blackening and charring of the skin around the wound. However, Public Witness 10 Dr. L. T. Ramani who conducted the autopsy on the dead body of the deceased did not find any evidence of blackening or charring of the skin around the wound. On being cross-

examined on this point he had admitted with commendable fairness on his part that in case the muzzle end of the weapon would be close to the victim in case of firing then it would result in blackening and charring of the skin around the wound.

(21) Modi in his book 'Authority on Medical Jurisprudence and Toxicology' (21st Edn. page 271) (5) has got this to say : 'Close range wounds of entry without washing should be excised with the surrounding skin and deeper tissues and immersed in a fixative solution, e.g., formaline. The microscopic examination of close range wounds of entry may show the scorching effects of the gases and traces of Co and metals etc,' :

(22) The learned counsel has been urged that the investigation in the instant case is tainted. According to the learned counsel there are interpolations and fabrications in the Daily Diary. Admittedly, according to the learned counsel the information given by Charan Singh (Public Witness 3 ) with regard to the present incident was recorded at Sl. No. 16 of the Daily Diary at 10.35 p.m. Astonishingly the subsequent information with regard to the Government vehicle No. Ddw 6140 was recorded at Sl. No.. 17 at 10.15 p.m. The learned counsel thus argues how is it possible that a subsequent information i.e. the information recorded vide No. 17 was recorded at 10.15 p.m. whereas the earlier information which was recorded at Si No. 16 was reduced to writing at 10.35 p.m. This leads to the inevitable conclusion that there were interpolations, additions and alterations. If this is so, it again casts serious doubts with regard to the authenticity of the case of the prosecution.

(23) Their Lordships of the Supreme Court while dealing with a case of tainted investigations observed in *Kishore Chand v. The State of Himachal Pradesh*. : 1990 CriLJ2289 . 'Weaker the person accused of an offence, greater the caution and higher the responsibility of the law enforcement agencies. Before accusing an innocent person of the commission of a grave crime like the one punishable under section 302, Indian Penal Code ., and honest, sincere and dispassionate investigation has to be made and to feel sure that the person suspected of the crime alone was responsible to commit the offence. Indulging in free fabrication of the record is a deplorable conduct on the part of an investigating officer which

under-mines the public confidence reposed in the investigating agency. therefore, greater care and circumspection are needed by the investigating agency in this regard.'

(24) It was urged on behalf of the State that admittedly Public Witness 7 Ved Wati is the real sister of the appellant. There is no reason whatsoever as to why she would have deposed against the appellant who is her own real brother. No sister would ever depose against her own brother. It is against the ethos of the Indian society. Learned Pp thus wants this Court to conclude there from that the appellant is guilty.

(25) We are sorry, we are unable to agree with the learned PP. No doubt, it is one of the circumstances against the appellant which raises an accusing finger against him. However, it is a well-established principle of Criminal Jurisprudence that suspicion howsoever grave cannot be clothed with the garment of proof.

(26) The above view was given vent to by their Lordships of the Supreme Court in Datar Singh's case (supra) wherein it was observed. . 'It is often difficult for courts of law to arrive at the real truth in criminal cases. The judicial process can only operate on the firm foundations of actual and credible evidence on record. Mere suspicion or suspicious circumstances cannot relieve the prosecution of its primary duty of proving its case against an accused person beyond reasonable doubt. Courts of justice cannot be awarded by sentiment of prejudice against a person accused of the very reprehensible crime of patricide. They cannot even act on some conviction that an accused person has committed a crime unless his offence is proved by satisfactory evidence of it on record. If the process of evidence on which the prosecution chooses to rest its case are so brittle that they crumble when subjected to close and critical examination so that the whole superstructure built on such insecure foundations collapses, proof of some incriminating circumstances, which might have given support to merely defective evidence cannot avert a failure of the prosecution case.'

(27) In the above-stated circumstances we are of the view that the prosecution has failed to bring home the guilt to the appellant beyond any shadow of doubt. The appellant is thus entitled to the benefit of doubt. Accordingly the appeal is allowed.

The impugned judgment and order dated February 15, 1992 and February 17, 1992 passed by the learned lower court are hereby set aside. The appellant be set at liberty if not otherwise required to be detained in any other ease. March, 1996.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**