

Satish Kumar Vs. State

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Court : Delhi

Decided On : Aug-09-1995

Reported in : 1995IIIAD(Delhi)588; 1996CriLJ265; 1995(4)Crimes305; 60(1995)DLT74; 1995(34)DRJ404

Judge : P.K. Bahri and; J.B. Goel, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 27

Appeal No. : Criminal Appeal No. 38 of 1992

Appellant : Satish Kumar

Respondent : State

Advocate for Pet/Ap. : K.B. Andley,; Sunil Sethi and; N.K. Handa, Advs

Judgement :

P.K. Bahri, J.

(1) Satish Kumar, S/o Sh.Prem Chand, who was aged about 18 years at the time of the occurrence) has been convicted of an offence punishable under Section 302 of Indian Penal Code having caused the murder of Suresh Kumar, a young boy of 19 years, during the intervening night of 7th and 8th April 1987 at about midnight near Jhuggi No.2, 'G' Block, J.J.Colony, Wazirpur, Delhi vide judgment dated 25th

January 1992 of an Additional Sessions Judge and by subsequent order dated 27th January 1992 has been sentenced to undergo imprisonment for life and to pay a fine of RS.100.00 and in default of payment of fine to undergo simple imprisonment for five days. He has come up in appeal in challenging his conviction and the sentence.

(2) The facts of the case, in brief, are that Public Witness -1, Smt.Krishna, was residing Along with the deceased and other children in her Jhuggi No.2, 'G' Block, JJ.Colony, Wazirpur, Delhi at the relevant time. The appellant was stated to be working at,the shop of Chander located in the neighborhood. On 7th April 1987, it is alleged that Sushil Public Witness -13, brother of the deceased, and the deceased had gone in the neighborhood in the said lane for watching some film on the television and their sister namely Rekha, Public Witness -5, had already gone to sleep in the hut whereas Krishna was stated to be sitting outside the hut on a cot. It is claimed that at about midnight, Suresh had come back and had gone behind the hut for urinating and was soon followed by the appellant and after a few minutes, Krishna heard the shrieks of her son Suresh as he called his mother and also exclaimed that he had been stabbed by knife by appellant, Satish. Krishna, on hearing such shrieks, is stated to have rushed at the back of the hut and is alleged to have seen the appellant having a knife in his hand and saw her son Suresh bleeding from his abdomen and appellant had made an effort to again attack Suresh with the knife but Suresh had fallen down and she raised the alarm which attracted certain neighbours namely Public Witness -2 Ram Chander @ Pappu and Public Witness -3 Vijay Kumar @ Badal @ Bahadur who saw the appellant running away having the knife in his hand and they had followed him but appellant managed to escape. Soon thereafter, Sushil arrived at the spot and they removed Suresh to Hindu Rao Hospital in an injured condition.

(3) DR.P.K.SUNEJA, Public Witness -17, had examined the injured Suresh Kumar and had prepared the M.L.C. Ex.PW17/A. The injured was brought in the hospital by his brother Sushil at 12.45 A.M. It was recorded in the M.L.C. that the injured had been brought with alleged history of being stabbed by somebody. The injured was conscious but disoriented and confused. He noticed the clean incised wound of size of 1' x 1/4' x on 9th intercostal space of chest and he was bleeding from the

injury and was wearing a vest (banian or T-shirt).

(4) Information was given by Duty Constable Pawan Singh from Hindu Rao Hospital regarding admission of Suresh which was recorded at 1.25 A.M, copy of which is Ex.PW7/A. S.I.Sher Singh, Public Witness -12, Along with Constable Devender Singh proceeded to the hospital. The injured was declared unfit for statement and he met Krishna, Public Witness -1 in the hospital and recorded her statement which is EX.PW1/A and made the endorsement Ex.PW12/A and had sent the Rukka at about 2.50 AM. for registration of a case under Section 307 Indian Penal Code and the formal F.I.R. was registered at 3.25 A.M, copy of which is Ex.PW7/B.

(5) Suresh had succumbed to his injuries at about 7.15 A.M. on 8th April 1987 and the case was converted from Section 307 to Section 302 I.P.C. The further investigation of the case was taken over by Public Witness -18, Inspector Ram Prashad who prepared the inquest papers, Ex.PW13/B, Public Witness 18/A and Public Witness 18/B and brief facts in Ex.PW18/C and had sent the dead body for post-mortem. The post-mortem was performed by Dr.L.T.Ramani, Public Witness - 8 and he gave his report Ex.PW8/A. He found that the injury in question was caused by sharp penetrating weapon and was sufficient to cause death in the ordinary course of nature and death had occurred due to haemorrhage and shock consequent upon injury to the abdominal viscera. Time since death was eight hours. He had performed the post-mortem at 4 P.M. on 8th April 1987.

(6) From place of occurrence, Investigating Officer had lifted one small bushirt in torn condition having blood stains and a piece of cement slab having some blood stains which were converted into sealed parcel vide memo Ex.PW12/D. These articles were found lying near the wall of the temple behind the said hut of Public Witness -1. The blood stained vest (t-shirt) of the deceased was also converted into sealed parcel by the doctor and was handed over to the police vide memo Ex.PW9/A Along with the sample blood of the deceased.

(7) Satish Kumar, appellant, was arrested on 8th April 1987 itself in presence of Sushil Kumar and is stated to have made a disclosure statement Ex.PW12/E to the effect that he had kept the weapon of the offence, knife, wrapped in his shirt in

the bushes near the wall of cremation ground, J.J.Colony and he could point out and get the same recovered. In pursuance to the said disclosure statement, he had got recovered the knife which stood wrapped in a shirt from the said place vide pointing- cam-recovery memo Ex.PW12/F. The sketch of the knife, Ex.PW12/G, was prepared. The knife as well as the said shirt, which were blood stained, were converted into sealed parcel. These documents were witnessed by Sushil and S.I.Sher Singh.

(8) The case property was then got sent to C.F.S.L. and the reports, EX.PW 18/E and Public Witness 18/F, were received which showed that the blood of the deceased was of 'B' group and human blood of 'B' group was found on the vest, cloth piece and leather chappal, piece of stone whereas human blood was also detected on the shirt and the knife allegedly got recovered on the basis of the disclosure statement of the accused.

(9) The appellant had some injuries on his person and he was also got medically examined. The Medical Certificate in respect of appellant is Ex.PW18/H but his injury was found to be two days old. These injuries have not been related to the time of the occurrence.

(10) In support of the prosecution case, the prosecution had mainly relied on the testimony of Public Witness -1, Krishna, mother of the deceased and support has been sought to her testimony from the statements of Public Witness -2, Ram Chander @ Pappu. Public Witness -3 Vijay Kumar @ Bahadur had turned hostile and did not support the prosecution case. The prosecution also relied upon the statements of Rekha, Public Witness -5, sister of the deceased to prove the dying declaration of the deceased that it was the appellant who had stabbed him and reliance was also placed on the testimony of Sushil Kumar, brother of the deceased, Public Witness -13 who claimed to have also come to the spot and had tried to prove the dying declaration of his brother implicating the appellant.

(11) Other neighbours examined in the case Public Witness -10, Ashok Kumar and Public Witness -11 Brij Mohan did not support the prosecution case and they had turned hostile. They had deposed that they had come to know about the occurrence only on the following morning. Public Witness -10, Ashok Kumar had

deposed that, in fact, deceased was a smack addict.

(12) The appellant had, however, denied that he had any hand in murder of Suresh. According to him, as per his statement under Section 313 of the Criminal Procedure Code, he was in love with Rekha, sister of the deceased, and they have been exchanging love letters and he produced on record three letters, allegedly written by Rekha which Rekha had denied having written to him, and stated that the family of Rekha did not want her to marry him and wanted that Rekha should marry Public Witness -2, Ram Chander and on account of this resentment against him, he has been falsely named by the family of the deceased as the culprit and he stated that in all probability Suresh, who was dealing in smack, had been murdered by some person who was having some resentment against him with regard to smack dealing.

(13) The learned counsel for the appellant has vehemently argued that the statement of Public Witness -1, Krishna, given in Court was totally in conflict with what she had got recorded in the F.I.R. and she had in Court tried to show that in fact she had witnessed the occurrence in the manner that she had seen appellant stabbing Suresh while, in fact, in her first version to the police, she had not at all claimed to be witness to the actual stabbing. He had pointed out that admittedly on the night of the occurrence, there was complete darkness. The moon was .21 days old and there was no other source from which any light could come and thus, there could be no occasion for Krishna to have been able to identify the person who might have stabbed Suresh.

(14) He has also pointed out that the place of occurrence was at a distance of about 45 to 50 ft. away from the hut of Krishna and according to Krishna, the said place of occurrence was not visible from the place where she was allegedly sitting and only on hearing the shrieks of the deceased, she claimed to have rushed towards the place from where the shrieks were coming and as the facts show that there was only one stab injury the person of the deceased, it was not possible that Krishna could have come to the spot and could have seen the appellant giving any stab blow to the deceased.

(15) He has urged that this witness had not referred to any dying declaration being given by Suresh at the time he uttered the shrieks or even after he was given help by his brother Sushil or on the way to the hospital and thus, Rekha and Sushil, who refer to any such dying declaration being given by Suresh soon after the occurrence, are not reliable witnesses because in case any such dying declaration had been given by Suresh, Public Witness -1 would not have remained unaware of such a material fact. He has alleged that in case Public Witness -1 had heard any such dying declaration being given by Suresh in presence of Rekha and Sushil, she would have referred to such dying declaration in her first statement to the police which is the basis of the F.I.R. He has also pointed out that even in Court, Public Witness -1 has not deposed that Suresh had given any dying declaration either to Rekha when Rekha came to the spot or to Sushil when Suresh was being taken to the hospital inasmuch as Public Witness -1 claims that she was all along present from the moment Suresh was injured and was taken to the hospital.

(16) He has argued that the appellant had been implicated in this case only on account of suspicion as the appellant was stated to have teased Rekha on some occasions. He has also urged that police had not investigated the matter in any fair manner inasmuch as no effort was made by the Investigating Officer for joining any independent witnesses at the time of interrogating the appellant and recording his disclosure statement and then effecting the recovery of any incriminating articles at the instance of the appellant. He has also pointed out that even the said knife and the shirt allegedly recovered on the disclosure statement 'of the appellant are not linked with the murder of Suresh inasmuch as the blood which was found on the said articles was not shown to be blood of the deceased.

(17) On the other hand, learned counsel for the State has contended that none of the witnesses examined in this case had any motive to falsely implicate the appellant for the murder of Suresh inasmuch as the close relations of Suresh, like his mother, brother and sister, would not have falsely implicated the- appellant and allowed the real culprit to go scot-free. He has contended that these witnesses have come from very low strata of life and are illiterate persons, so certain discrepancies have appeared in their statements which could not be given any importance as their statements, on the core of the prosecution case, are

consistent and the learned Additional Sessions Judge was right in relying on such statements for bringing home the offence to the appellant. He has urged that the statements of these witnesses find due corroboration from the recovery of the blood stained knife and the blood stained shirt of the appellant on his making disclosure statement. He has argued that mere lapse of the Investigating Officer in not making efforts to join independent public witnesses while interrogating the appellant and making the said recoveries should not be considered fatal to the prosecution case as Susbil, the brother of the deceased, had supported the prosecution case on these points'

(18) We have to closely scrutinise the testimony of Public Witness -I Krishna, mother of the deceased, in order to decide whether she is wholly trustworthy witness or not, She being the close relation of the deceased, no doubt, would not unnecessarily falsely implicate any person and allow the real culprit to go scot-free. However, we must keep in view the odd hour and non-availability of any kind of light at the spot in order to see whether. Krishna could have been in any position to identify the assailant.

(19) In Court, she had deposed the facts which are quite at variance with the facts mentioned by her in the First Information Report. She has stated that on the said unfortunate night, she was present in her house when she heard the noise coming from. behind the hut from temple side uttering words 'MUMMY Bachaao - Mummy BACHAAO'. She has stated that earlier her two sons Susbil and Suresh had gone to witness the picture 'Samadhi' on television in the house of a neighbour. On hearing the said shriek, she is stated to have come out of her house and saw the appellant giving knife blow to her son and she deposed that even prior to her reaching the spot, the appellant appeared to have given knife blows and on receiving one knife blow from the appellant on the side of his chest, Suresh fell down and became unconscious and the appellant had run away and could not be apprehended in spite of chase by other boys.

(20) She had deposed that in fact she had recognised the voice of his son Suresh when he had uttered the aforesaid shriek. It is to be emphasised again that in the F.I.R. she had deposed that while she was sitting outside her hut on a cot that her

son had come back after witnessing the movie and had gone behind the hut for urinating purposes and soon after the appellant had followed him. But these facts have not been stated by her in her testimony in Court and obviously these facts coming in the F.I.R. cannot be treated as substantive piece of evidence. Presumably, this witness was alive to the fact that the occurrence had not taken place just behind her hut but had taken place at quite a distance from her hut. So, the story that Suresh had come and gone behind the hut for urinating purposes might not have sounded plausible, so she had deliberately, in our opinion, omitted those facts from her testimony in Court. The prosecution, obviously, was not happy with her statement coming in Court which was at variance with the statement given by her which was the basis of the First Information Report. Thus, the prosecutor, in his wisdom, with the permission of the Court, put leading questions to her. Obviously, the prosecution itself did not find her wholly reliable or credit-worthy witness, that is why the permission was sought to cross-examine her by the prosecution.

(21) In her cross-examination by the prosecution, she had affirmed the fact, as suggested to her, that she had told the police that her son Suresh had returned at 12 midnight and had gone behind the hut for urination and she had also stated to the police that the appellant, Satish Kumar, had followed Suresh. She had also stated to the police that she heard the noise of her son saying 'HAI Ma Mujhe Bachhao, Suresh Ne Mujhe Chaku Mar Diya HAI'. These statements made by the witness in cross-examination appear to be wholly inadmissible in evidence because it need not be emphasised that any statement to the police made by any witness is not admissible in evidence and such a statement could be used only for the purpose of contradicting the witness in view of provisions of Section 162 of Criminal Procedure Code read with Section 145 of Indian Evidence Act.

(22) We are surprised that the Additional Sessions Judge, who recorded the evidence, had lost sight of such elementary legal principles of taking evidence in a case. The prosecutor who put the questions in this form to elicit the answers was also perhaps completely ignorant of the legal procedure for cross-examining the witness produced by the prosecution itself. The questions which ought to have been put to the witness while cross-examination by the prosecutor, should have

elicited facts and not statements made to the police. So, this part of the testimony of the witness has to be completely ignored from consideration as to what she had stated to the police.

(23) She had then proceeded to depose, while being cross-examined by the prosecutor, that she was sitting outside her hut and Bahadur and Pappu were attracted to the spot on hearing the alarm raised by her and in their presence the appellant wanted to give another knife blow to Suresh who fell down and thereafter the appellant had run away and thereafter some person had gone to call Sushil from the house wherein he was witnessing a movie and then he had come to the spot. She had stated in cross-examination by the prosecutor that Suresh had told at the spot and also in the hospital that appellant Satish had given him knife injuries and the doctor in the hospital had not made any enquiry from her about the occurrence.

(24) In cross-examination by the defense, she admitted that she had not disclosed to the police that her sons had gone to see movie named 'Samadhi' on television in the house of a neighbour. She was duly confronted with her statement made to the police, Ex.PW1A where she had not mentioned that she had seen Satish Kumar giving any knife blow to her son. She affirmed the fact that Pappu and Bahadur had come to the spot after the occurrence had taken place in front of D.D.A. Market located 50 yards behind her hut and there was no light and it was dark. She had mentioned that the occurrence took place in front of Shop No.84, D.D.A. Market. In the sketch prepared by the Investigating Officer and the detailed map prepared by the draftsman, this Shop No.84, D.D.A. Market has not been indicated. The blood stained articles were found lying near the wall of the temple.

(25) At one stage, in cross-examination, this witness deposed that she had reached the place of occurrence after about five minutes and she further gave way to flight of her imagination that in fact the appellant was over-powered at the spot by the neighbours namely Pappu, Bahadur and her son Sushil and then he was handed over to the police before Suresh was taken to the hospital. This is not the prosecution case. According to prosecution, the appellant was arrested on the next day from a public place and was not at all brought to the police station on the

night of the occurrence by anyone. She deposed in cross-examination that her son Suresh was addicted to smoking but was not dealing in any smack business. She deposed that in fact Pappli and Bahadur had given support to her deceased son and he had walked up to her hut from the place of occurrence.

(26) It is, hence, evident that the occurrence has taken place at some distance from the hut of this witness and there was no light available at the place of occurrence and thus, it is really not possible to believe the witness that she was in a position to see the appellant and notice his features c to identical him. It may be that she had some suspicion about the appellant as the appellant had, according to her, teased her daughter earlier and was rebuked by her sons. So, she named appellant as the assailant out of sheer suspicion.

(27) Public Witness -2, Ram Chander @ Pappu is residing in the neighborhood. According to him, he had come out of his house for urinating at about 12 midnight and when he and Badal reached near the hut of the deceased, they heard the cries of Suresh to the effect that Satish had stabbed him and when they reached near the place of occurrence. they saw the appellant giving one knife blow on the left side of Suresh's abdomen and appellant had tried to give another knife blow when Suresh fell down and thereafter the appellant had run away towards New Subzi Mandi and despite efforts they could not apprehend the appellant.

(28) It is significant to mention that in the F.I.R, these witnesses are not shown to be eye witnesses. They appear to have come to the place of occurrence only after Public Witness I had raised the alarm. So, this version given by the witness that he had also heard the cries of Suresh and had also seen Satish stabbing Suresh cannot be given any credence This witness also admitted that there was darkness at the place of occurrence as there was no street light available. If that is so, it is not explained how this witness could have even identified the assailant and how he could note the colour of the clothes worn by the appellant.

(29) Vijay Kumar @ Badal, who had turned hostile, had, on the other hand, disclosed that the deceased and he were working in the same factory and deceased was addicted to 'smack' and 'ganja' and used to bring 'ganja' to the factory and on that account, his services were terminated by the employer.

(30) Next we have the statement of Public Witness -5, Rekha, the sister of the deceased. She had deposed that when she came out of the house on hearing the noise, she found her brother bleeding from the injury in his abdomen and on query, her brother Suresh told that Satish had stabbed him and thereafter Sushil also came and Suresh was taken to the hospital by Sushil and her mother. She also narrated that appellant had been testing her and appellant was scolded by her mother and brother on one occasion. She denied that she had written any such love letters to the appellant at any time.

(31) Next important witness was Public Witness -13, Sushil, brother of the deceased. He deposed in Court that when he was watching a movie on television in the house of his neighbour, someone came and informed about the stabbing of his brother by Satish and he came to the spot and found his brother having stab injury and he was lying on the spot on the main road in front of, his hut and Suresh, on his query, told him that Satish Kumar had stabbed him and thereafter he was taken to the hospital. It is pertinent to mention that in the M.L.C. prepared by the doctor or in the report given by the Duty Constable to the police station, this fact has not been mentioned that anyone had informed about the name of the assailant at that time.

(32) The question which arises for consideration is whether this Court can place any reliance on the statements of mother, sister and brother of the deceased that Suresh, after being injured, had named the appellant as his assailant. Public Witness -1, mother, had, in her examination-in-chief, categorically stated that as she reached the spot, she found her injured son becoming unconscious. When injured was brought to the hospital, he was found unfit to give the statement, i.e. only after 45 minutes of the occurrence. He was confused and disoriented. There is no mention in the first statement made by Krishna which is the basis of the F.I.R. that any such dying declaration had been made by the deceased after the occurrence in presence of Sushil Kumar and Rekha or in her presence at the spot or on the way to the hospital or in the hospital. In view of these facts, it becomes reasonably doubtful to give any credence to this part of the prosecution case that the appellant was named as assailant by the deceased in presence of these close relations.

(33) Now, we are left only with the evidence with regard to the disclosure statement allegedly made by the appellant and the recovery of blood stained knife and blood stained shirt at the instance of the appellant. At the outset, we may mention that the group of the blood appearing on the said articles could not be deciphered by the experts. Only human blood was found on the said articles. So, strictly speaking, the said articles cannot be linked with the crime in question. Be as it may, both the S.H.O. and S.I. Sher Singh and Sushil Kumar admitted that no efforts were made by the police to join any independent witnesses before recording the disclosure statement of Satish and before effecting the recoveries. It is not understood how this basic principle of investigation has been lost sight of by the Investigating Officer that at the time of interrogating the accused and for making the recoveries, which are admissible under Section 27 of the Evidence Act, a sincere effort must be made by the Investigating Officer to join independent public witnesses. It is not the case that no such public witnesses were available or any sincere effort was made in joining the public witnesses but without success. Merely having the brother of the deceased with them for this purpose does not remove the suspicion about the genuineness of disclosure statement and the recoveries allegedly effected on the basis of such disclosure statement.

(34) At any rate, such recoveries, in our view, are not sufficient to bring home the offence to the appellant, in view of the fact that there is every doubt that appellant could not have been identified as an assailant in that dark night when the occurrence took place. We have also every reason to doubt the statements of the witnesses that any dying declaration had been made by the deceased naming the appellant as his assailant.

(35) In view of the above discussion, we find that the conviction of the appellant is not well based in this case. We allow the appeal and set aside the conviction and sentences of the appellant and giving him benefit of doubt we acquit him of the charge. The appellant be released, if not required to be detained in any other case. The order be communicated to the appellant through Superintendent Jail.