

State Vs. Rajbir Singh

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SooperKanoon Citation : sooperkanoon.com/706905

Court : Delhi

Decided On : Feb-03-2000

Reported in : 2000IIAD(Delhi)645; 2000CriLJ2891; 84(2000)DLT156

Judge : Anil Dev Singh and; R.S. Sodhi, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313 and 366; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Murder Reference No. 2 of 1999 and Criminal Appeal No. 499 of 1999 Murder Reference No. 2/99

Appellant : State;rajbir Singh

Respondent : Rajbir Singh;state

Advocate for Pet/Ap. : Mr. H.J.S. Ahluwalia,; Mr. Aman Lekhi,; Mr. Pramod Jalan

Judgement :

Anil Dev Singh, J.

1. By this judgment we propose to dispose of Murder Reference No. 2 of 1999 and Criminal Appeal No. 499/99 of the appellant Rajbir Singh.

2. The facts giving rise to the murder reference and the appeal are as follows: - Deceases Samson Massey along with his wife Mrs. Dolphin Massey (PW-7) and

daughter Ms. Preeti Massey (PW-5) were residing at 122-Q, Sector 4, Pushp Vihar, New Delhi. Samson Massey was a tenant of one room and a kitchen in the said premises under Yad Ram, father of appellant Rajbir Singh. The order room in the house was under the occupation of Yad Ram and his family including Rajbir Singh. The appellant is alleged to have been wanting the deceased to vacate the house as he was suspecting the deceased to be having an affair with his sister. On April 29, 1997 around 9.00 p.m. when the deceased was present in the house along with his family members including Dolphin Massey and Preeti Massey, there was knock at the door. Samson Massey proceeded towards the door followed by Dolphin Massey. The deceased opened the door and found the appellant standing there. His clothes were torn and he was having injury on his left eye. Samson Massey is stated to have inquired from the appellant the reason for his condition. The appellant without saying anything went inside & brought a knife and started giving blows to Samson Massey. At this stage Dolphin Massey raised an alarm as a result whereof Preeti Massey came out of the room. After inflicting the injuries the appellant fled the site. In the meantime, while the incident was in progress Dolphin Massey rushed to the house of a neighbour and called the P.C.R. Thereupon information was conveyed to Shri Surinder Singh, Addl. SHO Malviya Nagar through wireless at about 9.15 p.m. The information was recorded at Police Station Malviya Nagar vide DD No. 29 (Ext. PW-3/4). Both Dolphin Massey and Preeti Massey took the deceased to the All India Institute of Medical Sciences in a P.C.R. van, where Dr. Anupam Sinha (PW-4) declared Samson Massey to have been brought dead. The statement Ext. PW7/4 of Dolphin Massey was recorded by Inspector Surinder Singh (PW-12) at the hospital itself. The Inspector made an endorsement on the statement of Dolphin Massey and sent the rukka Ext. PW12/A around 11.25 p.m. to Police Station Malviya Nagar. At about 11.40 P.M. on the same day, viz. April 29, 1997, FIR No. 418/97 (Ex. PW-1/A) was registered vide DD No. 25A under section 302 I.P.C. at Police Station Malviya Nagar. The appellant was arrested at about 2.30 A.M. on April 30, 1997 from 'T' point Khanpur Patri. On completion of the investigation charge sheet was filed against the appellant on July 28, 1997 before the court of Ms. Renu Bhatnagar, Metropolitan Magistrate, who committed the case to session on July 30, 1997 for July 31, 1997. On October 22, 1997, the Additional Sessions Judge framed the charge against

him under section 302 IPC. The appellant pleaded not guilty to the charge and claimed trial. The prosecution examined as many as twelve witnesses to prove the charge. However, the appellant did not lead any defense evidence. The trial Court on consideration of the evidence on record convicted the appellant under section 302 IPC on August 19, 1999 & by a further order dated August 30, 1999 sentenced, him to death. While the appellant filed an appeal against the orders of the learned Additional Sessions Judge dated August 19, 1999 and August 30, 1999, the learned Additional Sessions Judge made a reference to this Court for confirmation of the death sentence. This is how the matter is before us.

3. The main stay of the prosecution story rests on the eye witnesses accounts to the incident rendered by Preeti Massey PW-5 and Dolphin Massey PW-7. According to the statement of Preeti Massey, on April 29, 1997 between 8 p.m. & 9 p.m. when the family was sitting in their room after the meals, somebody pressed the door bell. The deceased, followed by her, went to open the door. The door was opened by the deceased. They found appellant Rajbir standing at the door. He had injury on his left eye and seemed to be in a bad condition. The deceased asked him as to what was the matter, Rajbir without replying to the query, went inside the house and picked up a knife and started hitting the deceased. Upon this Dolphin Massey started shouting, whereupon her mother came out from her room. Her other sisters and brothers started crying. She went into her room and brought a hammer and threw the same on the appellant. He went after her but his father tripped him as a result of which he fell down on him and again started inflicting injuries with the knife. Her mother went to the neighbour's house to ring up the police. Police came on spot but meanwhile appellant had run away. To the same effect is the statement of Dolphin Massey PW-7. She stated that the family including the deceased were sitting in the house at about 8.30. p.m. after the meals, when they heard a knock on the door, her husband went to open the door followed by her daughter. After some time she heard strikes of her daughter and she came out and saw the appellant inflicting injuries on her husband with a knife.

4. On scrutinising the evidence of PW-5 and PW-7, we find that there is nothing inherently improbable or unreliable in their statements. They are natural witnesses

of the incident as the murder had taken place at their place of abode and that too at the time when normally they would be at home. In *State of U.P. v. Noorie* 1996 SCC 945 the Supreme Court held that while assessing and evaluating the evidence of eye witnesses, the Court must adhere to two principles, namely, whether in the circumstances of the case it was possible for the eye witnesses to be present at the scene and whether there is anything inherently improbable or unreliable. Having regard to the above principle, the testimony of PW-5 and PW-7 cannot be discarded as the learned counsel for the appellant want us to do on the basis of conjectures and speculations. Learned counsel for the appellant submitted that no credence can be placed on the statements of PW-5 and PW-7 as actually they had not seen the incident. It was canvassed that the relations between the deceased and the appellant were strained in as much as the latter had asked the former to leave the premises since the appellant was suspecting that the deceased was having an evil eye on his sister. He also submitted that PW-5 & PW-7 were interested witnesses being close relatives of the deceased. Learned counsel relied upon the decision of the Supreme Court in *Rajaram and others Vs . State of M.P. : AIR 1994 SC846* , *State of Punjab Vs . Mukhtiar Singh and another : AIR 1975 SC2001* , *Bir Singh and Others Vs . State of Uttar Pradesh : 1978 CriLJ177a* and *Hardev Singh v. Harbhej Singh and Others* 1997 SCC 5 in support of his submission that the Court should look for corroboration of their testimony, they being close relations of the victim of the offence.

5. We have considered the submissions of the learned counsel for the appellant. In making the aforesaid submissions he has overlooked the fact that the appellant had accepted the presence of PW-5 and PW-7 in the house at 9 p.m. on the fateful day about the time of the incident. In his statement under section 313 Cr. P.C. the appellant while pleading his innocence, stated that he came to his house at about 9 p.m. when he entered the house he found Samson Massey in injured condition. Thereupon he shouted for wife and daughter of Samson Massey who came out of their room where they were watching television. According to him the door of the room was closed. Thus the appellant does not deny the presence of Preeti Massey PW-5 and Dolphin Massey PW-7 at the house. Sub-section (4) of Section 313 of the Code of Criminal Procedure permits the answers given by appellant, when he is examined under section 313, to be taken into consideration

along with other evidence which the prosecution may have produced. It is significant that the statement of the appellant does not rebut the prosecution evidence regarding the presence of Preeti Massey and Dolphin Massey in the house at the time of the incident. The core of the prosecution story that PW-5 & PW-7 were present at the time of the incident therefore, stands fortified. The argument of the learned counsel for the appellant that both PW-5 and PW-7 were not the eye witnesses of the occurrence as they falsely stated that the family including the deceased had dinner before the incident when the post-mortem report did not show presence of food in the stomach of the deceased. Learned counsel relied upon the following extracts from Modi's Medical Jurisprudence & Toxicology, 22nd edition, Medicolegal Postmortems in India by Dr. C.K. Parikh and H.W.V. Cox in Medical Jurisprudence and Toxicology, 6th edition:-

Modi's Medical Jurisprudence & Toxicology

'The rate of emptying of stomach varies in healthy persons. It varies in man from 2, 5-6 hours.'

Medicolegal Postmortems in India by Dr. C.K. Parikh

'The length of time required to empty the stomach after a meal is very variable, and depends not only on the type of meal ingested but also on stomach tone and pyloric function, and on the psychological state of the individual. Fear slows but anger hastens gastric emptying. The power of digestion may remain suspended for a long time in conditions of shock and coma. Food has been sent in the stomach remaining undigested in persons who received severe head injuries soon after their meal and died within 12-24 hours.

In general, milk leaves the stomach rapidly but the large vegetable and fatty meals consumed in India do not usually leave the stomach under four hours. Chapattis digest to a pulp fairly quickly, within about 2 hours, but do not leave the stomach quickly when other foods are present with them. Dals of all kinds retain their form for about two to three hours and rice grains retain their form up to three to four hours. If meat has been eaten along with the vegetables foods, it is seldom distinguishable as such after three hours, and after four hours, both green

vegetables and roots are also indistinguishable. In general, if at autopsy, one finds that the stomach is full it would suggest that the victim died within two hours of taking the last meal if food was distinguishable and four hours if the food was indistinguishable. The volume and condition of stomach contents can thus provide important data.'

H.W.V. Cox in Medical Jurisprudence and Toxicology

'In a sudden and unexpected death, if a full stomach containing undigested food is found, it is reasonable, if other evidence is not incompatible, to deduce that death occurred within two to four hours of the eating of the last meal. It is dangerous to make any more accurate interpretation than this.'

6. Reading from the statements of Preeti Massey and Dolphin Massey, learned counsel for the appellant canvassed that the deceased, according to the prosecution theory must have taken food between 7.30-7.45 p.m. and if this was true, food would not have left the stomach before two hours and in the condition in which the deceased was found with 20 injuries, the food would have stayed much longer because of the shock which his body must have suffered. Learned counsel submitted that had the deceased taken food along with the so called eye whiteness, his stomach would have contained food as death took place after about one hour of his taking meals. He pointed out that the post-mortem report Ex. PW-2/A shows that stomach was empty.

7. We have given our earnest consideration to the submission of learned counsel for the appellant. We however, do not find any substance in it. First of all it needs to be noticed that there is no fixed length of time required to empty the stomach after a meal. This also appears from the opinion of Dr.C.K. Parikh contained in the book 'Medicolegal Postmortems in India'. It has been pointed out therein that not only ingestion of the meal will depend upon the type of meal consumed but it will also depend upon stomach tone and pyloric functions and on the psychological state of the individual. According to the author large vegetable and fatty meals do not leave the stomach under four hours but chapattis digest to a pulp fairly quickly within about two hours. In case chapattis are taken Along with other items of food, it will take a longer time to leave the stomach. Dals retain their form for 2-3 hours

and rice retains its form for 3-4 hours. So therefore, the ingestion will depend upon the type & quality of food consumed by a person & upon his digestive power. This power varies from person to person. It would depend upon the kind and quantity of food consumed. Period of digestion is different for different types of food. In the instant case it is not known what type of food was consumed by the deceased. Whether it is liquid, semi-liquid or solid etc. The wife and daughter of the deceased were not put any question in cross-examination which could throw light on the type of food served to the deceased or the quantity of food taken by him. Too much stress cannot be laid on the timing of arrival of the deceased from office and the time when they were sitting after meals given by Dolphin Massey and Preeti Massey. The witnesses more often than not are not definite & precise about the timings of events. Moreover neither Dolphin Massey nor Preeti Massey have specified the exact time when the family took dinner. Assuming the family including the deceased took dinner in between the time the deceased arrived at the house and the time before the door bell rang or/and the knock at the door was heard, but that time would again be an estimate based on the approximation of the timings given by Preeti Massey and Dolphin Massey. While Preeti Massey puts the time when the door bell rang as between 8 & 9 p.m. Dolphin Massey stated that the time when there was a knock at the door was about 8.30 p.m. This shows that they are not precise or definite about the timings. Dolphin Massey while mentioning the time when her husband came back to the house from duty gives an approximate time. She put the time of the arrival of the deceased at the house as between 7.30 p.m. and 7.45 p.m. That apart the statements of both Dolphin Massey and Preeti Massey do not categorically say that the deceased had taken his meals at home. The statement of Preeti Massey PW-5 and statement of Dolphin Massey PW-7 recorded in vernacular to the extent are relevant, are reproduced below:-

Preeti Massey

'29.4.97 KO SAMAI KARIB RAT KE 8-9 BAJE THE. HUM LOG KHANA KHAKAR APNE KAMRE MEIN BAITHE THEY. KISI NE BAHAR SAY GHANTI BAJAI. US SAMAI BAGAL KE KAMRE ME YADRAM VA USKE PARIVAR KE LOG NAHI THEY. MERE PAPA DARWAJA KHOLNE GAYE. PICHE PICHE MAIN BHI GAI.'

xx xx xx xx 'GHATNA KE ROJ HUM SABNE KHANA KHA LIYA THA. MUJHE PATA NAHI KI MALIK MAKAN KAHAN KAM KARTA THA.'

Dolphin Massey

'GHATNA KE ROJ HUM Q-122 PUSHP VIHAR MEIN REHTE THEY. US DIN 29 APRIL 1997 THA. 8 1/2 KARIB KA VAKT THA. GHAR MEIN MAIN, MERA PATI SAMSON MASSEY VA CHARO BACHE KHANA KHAKAR GHAR PAR BAITHE THEY.'

xx xx xx xx xx '7 1/2 PONE ATH BAJE DUTY SE GHAR AA GAYE THEY.'

8. Both the statements show that the family members were sitting in the house after meals around the time incident took place. The statements may show that the family members were sitting in the house after the meals but it does not reflect that the deceased had taken his food at home. If he had taken food before coming to the house it would still not be wrong to say that he along with his family were sitting in the house after having taken meals. thereforee, we fail to understand as to how it can be argued by the defense that PW-5 and PW-7 were not present when the incident took place because the post-mortem report shows that the stomach of the deceased was empty.

9. The statements of both PW-5 and PW-7 that several blows were inflicted by the appellant on the deceased is supported by the medical evidence. According to the statement of PW-2 and the post-mortem report Ex.PW-2/A as many as 20 injuries were found on the person of the deceased. The medical evidence thereforee, corroborates the statements of two witnesses. Both the witnesses have given a vivid description of the occurrence. Their statements are consistent and describe the manner in which the assault was committed by the appellant. Both the eye witnesses were closely related to the deceased and obviously they would be interested to see that the real culprit is brought to book.

10. Learned counsel for the appellant submitted that the statements of PW-5 and PW-7 are not worthy of credence and gave further following reasons, as contained in his written submissions, why he considers them not to have seen the

occurrence:-

'1. There is nothing on record to show that Dolphin and Preeti Massey were stained in blood although both witnesses have said that they tried to rescue the deceased.

'2. There is not one injury but four prominent injuries on the back of the deceased and at least one of them, according to the doctor conducting the post-mortem was sufficient in the ordinary course of nature to cause death. PW 7 has however said that she did not remember whether her husband sustained injuries on his back.

3. The witnesses contradict each other on whether the accused entered the premises after knocking or ringing the door bell. PW- 5 has deposed that bell rang while PW 7 deposed about sound of knocking.

4. Neither of the witnesses could state (PW-5 & PW-7 what the accused was wearing. This is material because both witnesses have identified a Lungi and Kameez seized from the spot and alleged to belong to the accused. It is inconceivable that the accused, after killing the deceased and while close relatives of the deceased are shouting for help would spend the time changing his clothes in front of two women and then make good his escape from the scene of the crime.

5. Neither of the witnesses knew in which hand the accused was holding the knife (PW -5 & PW-7).

6. The witnesses contradicted the FIR wherein it as stated that Dolphin Massey following her husband while it was stated in Court that Preeti Massey followed her father.'

11. In regard to the aforesaid submissions of the learned counsel for the appellant we would like to observe that when a person witnesses an assault on his close relation, he undergoes a trumatic and harrowing experience. The shock of the situation can affect his faculties and he may not be able to note each and every detail of the incident. thereforee, there is nothing un-usual in case PW-7 does not remember whether or not her husband sustained injuries on his back. Again the

witness being overwhelmed by the shock of the incident may not have noted the dress which the appellant was wearing at the time of incident. Similarly the witnesses may not remember in which hand the appellant was holding the weapon of offence. Whether Preeti Massey followed the deceased when he went to open the door or Dolphin Massey followed him, is not of much consequence. It is also not of any significance that the appellant entered the premises after knocking at the door or ringing the bell. No importance can be attached to minor discrepancies between their statements.

12. Learned counsel for the appellant also pointed out certain procedural lapses in the investigation of the case. We do not find them to be of such a nature as would commend us to discard the statements of the eye witnesses.

13. Learned counsel for the appellant also canvassed that the neighbour from whose house Dolphin Massey is alleged to have made a phone call, has not been examined. thereforee, there is nothing to show that she was present at the time of the occurrence & had actually made a call. We do not find any force in the arguments of learned counsel for the appellant for the following reasons:-

1. Dolphin Massey was not cross-examined with respect to her statement that while the assault was in progress, he went to the neighbour's house to inform the police about the same. thereforee that part of the statement of PW-7 was not challenged.

2. Merely because neighbour from whose house she called up the police on telephone was not examined by the prosecution can not be a ground to discredit her testimony as an eye witness.

3. PW-3 has stated that he recorded D.D. entry 29, Ex. PW-3/A, on receipt of a wireless message regarding the stabbing incident at 122-Q Sector 4, Pushp Vihar, From D.D. entry Ex. PW3/A, it is manifest that information with regard to the stabbing incident was recorded on April 29, 1997 at 9.15 p.m. on its receipt through wireless. Obviously Ex.PW-3/A lends support to the claim of PW-7 that it was she who on April 29,1997 at 9.05 p.m. had informed the police of the incident which was in progress at the aforesaid house.

4. The presence of PW-7 at the place of occurrence on April 29, 1997 at 9 p.m. has not been denied by the appellant rather he has admitted her presence in his statement recorded under section 313 of the Code of Criminal Procedure.

14. Learned counsel for the State submitted that the statements of eye witnesses are further corroborated by the fact that when the appellant was apprehended by PW-11 SI K.P. Malik in the morning of April 30, 1997, he was found wearing blood stained pant and shirt. He points out that as per the report Ex. 'PX' of Mr. A.K. Srivastava, Senior Scientific Officer, Forensic Science Laboratory, NCT of Delhi, the clothes of the appellant and the deceased were stained with human blood of Group 'A'. He canvassed that presence of such blood stains on the clothes of the appellant corroborates the testimony of PW-5 and PW-7. We have considered the submission of the learned counsel for the State, but as rightly pointed out by the learned counsel for the appellant the report Ex. 'PX' cannot be taken into consideration as the same was not put to the appellant in his examination under Section 313 of the Code of Criminal Procedure. therefore, the report Ex. 'PX' has to be excluded from consideration. In spite of exclusion of this evidence, the substratum of the prosecution story is not affected.

15. Learned counsel for the appellant contended that the alleged disclosure statement of the appellant leading to the recovery of the so called weapon of offence from the refuse box is of no value. He pointed out that the alleged weapon of offence was visible to the naked eye & this position has been admitted by PW-11 SI K.P. Malik. According to the learned counsel, since the knife was visible to the naked eye and was recovered from an open space, the discovery at the instance of the appellant is meaningless. It is not necessary to examine the contention as there is otherwise overwhelming evidence on record, which as already noticed clearly proves that the appellant stabbed the deceased several times with a knife. As per the statement of Dr. D.N. Bhardwaj the cause of death of Samson Massey was due to haemorrhagic shock as a result of multiple injuries. He also opined that they were caused by a sharp edged weapon. The Doctor was also of the opinion that injuries No. 3,5,10,11,12,13,14,15 and 17 were sufficient to cause death individually and collectively in ordinary course of nature.

16. In the circumstances, therefore, we uphold the conviction of the appellant recorded by the trial Court under section 302 of the Indian Penal Code. However, we are not inclined to confirm the sentence of death imposed on the appellant by the trial Court as it appears to us that the appellant lost his cool due to something which disturbed & infuriated him. The crime seems to have been committed in a fit of rage. Death sentence is to be imposed in rarest of the rare cases. This case does not fall in the category of the rarest of rare case which would warrant awarding of extreme penalty on the appellant.

17. In view of the aforesaid discussion, we reduce the sentence of the appellant Rajbir Singh from one of death sentence to one of life imprisonment. The murder reference is answered accordingly. The appeal of Rajbir Singh succeeds to the extent indicated above and is hereby disposed of.

18. A copy of this judgment be sent to the Superintendent, Central Jail, Tihar New Delhi, expeditiously.