

**State Vs. Brij Kishore**

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**Court :** Delhi

**Decided On :** Jul-21-2006

**Reported in :** 2007CriLJ401; 2006(92)DRJ720

**Judge :** R.S. Sodhi and; P.K. Bhasin, JJ.

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

**Appeal No. :** Death Sentence Ref. No. 2 of 2004

**Appellant :** State

**Respondent :** Brij Kishore

**Advocate for Def. :** I.U. Khan, Sr. Counsel, ; Javed Hashmi and ; S.N. Vashisth

**Advocate for Pet/Ap. :** Ravinder Chadha and; Jagdish Prasad, Advs

**Judgement :**

**R.S. Sodhi, J.**

1. The death sentence reference as also the appeal against the judgment of conviction dated 29-8-2004 and order of sentence dated 10-9-2004, passed by the Additional Sessions Judge, Delhi in Sessions Case No. 107/2000, arising out of F.I.R. No. 45/2000 under Section 302, I.P.C. registered at Police Station New Friends Colony, are being decided by this judgment.

2. Facts of the case as have been narrated in the judgment of the Additional Sessions Judge are as follows:

The accused - Brij Kishore alias Bitto has been facing trial before this Court for a case registered at Police Station New Friends Colony vide FIR No. 45/2000 dated 31-1-2000 Under Section 302 of I.P.C. for committing murder of Sh Madan Mohan Lal Verma by stabbing with knife on 31-1-2000 at about 7.30 p.m. On the road opposite Dr. Jain Clinic, Church compound Masih Garh within the jurisdiction of Police Station New Friends Colony, New Delhi.

As per the prosecution case, on 31-1-2000 at 8.15 p.m. DD No. 18A dated 31-1-2000 was recorded on telephonic information from Holy Family Hospital from record clerk that Madan Lal Verma s/o Sardari Lal Verma r/o 31, Sukhdev Vihar has been stabbed with knife and in the injured condition has been admitted in the hospital. The doctor has declared injured brought dead. The copy of DD entry was handed over to SI Ranjay Atrishaya. He along with Constable Bali Ram reached Holy Family Hospital and found Madan Lal Verma admitted at MLC No. 000254, declared dead at 8.15 p.m. Thereafter, he along with Constable Bali Ram went to the place of occurrence Opposite Jain Clinic, Church compound Masigarh New Delhi and found blood lying on the road in front of Dr. Jain clinic. He neither found any eye-witness in the hospital nor at the spot. In view of facts revealed case of Section 302 of I.P.C. was made out. Hence, he prepared tehrir and got registered the FIR through Constable Bali Ram. After registration of the case, the investigation was taken over by Inspector Gurmeet Singh, SHO police station New Friends Colony. During the investigation the photographs of scene of occurrence were got taken. Crime team was called. During investigation Komal Singh s/o Nand Singh met the SHO and got recorded his statement to the effect that he was present at the spot. He came to know that Bitto s/o Beer Singh has caused injury to the deceased. Attempt-was made to catch the culprit but due to darkness he escaped. In further investigation the statements of other witnesses were collected. Postmortem examination was got conducted. Accused was arrested at the instance of the witnesses. The accused got recovered his blood-stained clothes and weapon i.e. blood-stained knife and pair of shoes. The exhibits including knife were sent for FSL report. MLC, postmortem report, FSL report, opinion about the

injury upon the post-mortem report have been collected. When accused was arrested, his disclosure statement was got recorded. He was sent to JC. The charge-sheet was prepared and filed after completion of the investigation.

The formal charge against the accused Under Section 302 of IPC was framed on 29-2-2002 which was read over and explained to the accused. The accused pleaded not guilty and claimed trial.

3. The prosecution in order to bring home its case has examined 31 witnesses. P.W. 1, Swaran Singh, who was cited as an eye-witness, turned hostile and in Court stated that he knows nothing about the case.

4. P.W. 5, Surender Mohan Chhabra, deposes that on 31-1-2000, around 7.30 p.m., he went to Jain Clinic at Sukhdev Vihar to get some medicine. At that time the Doctor was not in his clinic. The Doctor came subsequently and went straight into the chamber. Soon thereafter, this witness heard a commotion outside and the cries of 'Bachao Bachao.' The witness rushed and found that close to the Jain Clinic in the gali, Madan Mohan Lal Verma was lying on the ground. It was dark at that place. He inquired from the injured as to what had happened, on which Mr. Verma, replied 'Bir Singh ke londe Bitto ne churra mara hai.' Meantime, the daughter-in-law of Mr. Verma, Suman Verma, P.W. 9, along with Himanshu Jain, P.W. 12, and others came to the spot. Himanshu Jain brought a van in which Mr. Verma, the injured, was taken to Holy Family Hospital by Suman. This witness went to the hospital separately. On reaching there he was told that the injured had died and he saw Suman weeping. Several members of the family of Mr. Verma had gathered in the hospital. This witness brought back Suman to her house. On the following morning the police met him at the house of the deceased where on inquiries he narrated what was within his knowledge in connection with the case. This witness was subjected to a lengthy cross-examination. He deposes that his house is at a distance of ten yards from the Jain Clinic and that he had come to the clinic to get medicine for viral fever and its after-effects. He also deposes of the good relations with the deceased and that he was on visiting terms with Himanshu Jain. This witness stated that he had not informed the police, in the hospital of the incident. The testimony of this witness could not be impeached by

the defense counsel in cross-examination.

5. P.W. 8, Dr. Shashank Jain, deposes to the effect that on 31-1-2000 at around 7.30 p.m. while parking his car outside his clinic, he met an old patient, Madan Mohan Lal Verma, who complained of tooth-ache. The Doctor advised him to continue the medicine prescribed for a further period of two days. Thereafter this witness went to his clinic and entered his chamber. He had barely settled down, when he heard the cry from outside. 'Bachao Bachao.' He rushed out of the clinic and found Madan Mohan Lal Verma lying in gali in front of his clinic. His clothes were soaked in blood. He was alive at the time and was gasping. The Doctor saw that a number of people had gathered around him including Surender Mohan, P.W. 5. Within seconds Himanshu Jain got his van and took him to Holy Family Hospital. This witness also reached the hospital where he was told that the patient has already been declared dead. In cross-examination he denied having prepared any prescription on the earlier occasion for the deceased. The witness reiterated that he gave medicine for tooth-ache, antibiotics, painkiller, oral rinse. He further affirms in cross-examination that Madan Mohan Lal Verma was lying ten paces away from the chamber of his clinic. He denied that he was the first person to reach the injured. He further deposes that on the following day while he was in front of the house of the deceased, the police met him and recorded his statement.

6. Suman Verma, P.W. 9, deposes that on 31 1-2000 around 7.30 p.m. she was in her house when she heard that someone had hit her father-in-law in front of the Jain Clinic, she rushed towards the clinic and found her father-in-law in a pool of blood. Surender Mohan, P.W. 5, was already there. She with the help of Surender Mohan and Himanshu Jain, rushed the injured to Holy Family Hospital where he was admitted and after some time declared dead. Her relatives reached the hospital on which Surender Mohan Chhabra brought her home. The police made inquiries regarding the incident on 1-2-2000 and recorded her statement. In cross-examination she states that Shashank Jain is the brother of her jethani and Himanshu Jain is their neighbour. Surender Mohan Chhabra is not related to them and is only a family friend. The distance from her house to Jain Clinic can be covered within few seconds. She also de poses that the police met her on the next day at 8.30 a.m. and recorded her statement.

7. Anil Kumar Verma, P.W. 10, identified the body of Madan Mohan Lal Verma, Himanshu Jain, P.W. 12, states that on 31-1-2000 he came from his office and was just parking his car when he heard that Madan Mohan Lal Verma had been stabbed. He rushed immediately and saw Madan Mohan Lal Verma in a pool of blood with several people around, including Suman Verma. He immediately brought his van, put the injured in it and along with Suman went to Holy Family Hospital to the emergency. He deposes that injured was declared 'brought dead.' In cross-examination, this witness states that he knew Suman, as also the deceased for over twelve years being neighbours. He admitted that he took the deceased in his van to the hospital and that there were blood-stains on the rear seat. He also said that the following day the statement was recorded by the police but since the police did not ask him over the bloodstains he did not tell them. This witness further deposes that there was sufficient light at the place where the deceased was lying and that it took ten minutes to reach the hospital.

8. Vijay Verma, P.W. 13, deposes to the effect that his father was Secretary, Sukhdev Vihar House Building Co-operative society as also Sukhdev Vihar Welfare Association and that one Bir Singh had made unauthorised construction in Sukhdev Vihar park. When a Public Interest Litigation was filed in the Delhi High Court his father made correspondence with various departments in this regard and the High Court passed an order for removal of unauthorised construction in Sukhdev Vihar park, consequent to which the construction of Bir Singh was removed on 20-9-1998. This witness has proved various documents and letters. In cross-examination he admitted that he did not seek permission of the police to open the almirah of his father and take out the documents which were earlier exhibited. He stated that on 2-4-2004 he identified the trousers, belt, shirt, banyan, socks, spectacles, sweater and handkerchief of his father and he used to meet his father four to five times a day. He also deposes to the dress of the deceased on 29-1-2000.

9. PW-6, Dr. Thomas Davis, CMO Holy Family Hospital handed over sealed parcel containing clothes of the deceased. PW-7, Dr. Malal Sainin of Holy Family Hospital deposes to the examination conducted by her on 31-1-2000, of Madan Mohan Lal Verma and gave the description of twenty-one injuries found on his person. PW-2,

Dr. Arun Kumar Agnihotri one of the Board Members who conducted the post-mortem exercise on the dead body of the deceased deposed to the examination conducted by him. PWs. 2 to 7 have proved the unnatural death of Madan Mohan Lal Verma, as also proved the cause of death being the stab wounds inflicted also the injuries being the possibilities of being caused by knife, Exhibit PW-1.

10. PW-18, Constable Kiran Pal has de posed that on 31-1-2000 while he was posted at police post Sukhdev Vihar and was patrolling at around 7.30 p.m. at the DDA Market, he saw Brij Kishore coming from Church compound side having a knife in his hand. This witness tried to stop him, but due to darkness, Brij Kishore escaped from a narrow lane. He identified the accused in Court. This witness was cross-examined where he stated that he was on Beat Duty in the area and made entries in the roznamcha. He could not tell about the departure entry of 31-1-2000. He did not meet SHO personally on 31-1-2000, except at night at the police station, around 9.00 p.m. His statement was recorded in the police station. This witness states that he visited the house of the deceased as the deceased was Secretary of the Association and that the witness was on duty from 8.00 a.m. to 8.00 p.m. on 31-1-2000. He also deposes that the entries in the daily diary were made by the Munshi. He states that he could not take the help of the public to apprehend Brij Kishore as it was the winter season and people were not on streets.

11. PW 15, Ajay Kumar, deposes to the effect that on 31-1-2000 he was informed by the Control Room of South District of the murder in Sukhdev Vihar. He reached the site at 10.45 p.m. and was met by S.I. Ranjan. He took photographs of the place of the incident and proved the negatives. In cross-examination he states that in order to avoid any risk he took two snaps of each spot. PW-19, Madan Lal is the draftsman. PW-11, SI Sanjay Kumar deposes that on 31-1-2000 he was working as Duty Officer at police station, New Friends Colony from 4.00 p.m. to 12.00 midnight. He received rukka through Constable Bali Ram sent by SI Ranjan. He recorded the FIR No. 45/2000. He returned the rukka and original to Constable Bali Ram. He proved the FIR 45/2000, Exhibit 11/A.

12. PW-21, S.I. Anil Malik, stated that on 8-2-2000, he was posted at New Friends Colony and was directed by the SHO to keep a watch on Brij Kishore, who at about 5.30 p.m. came out of the house and went towards Kashmiri Gate. This witness followed Brij Kishore to ISBT and informed the SHO. Brij Kishore came to ISBT and met his bua's son, at which time Brij Kishore was arrested.

13. PW-22, is S.I. Ranjan. He deposes to the effect that on 31-1-2000, he was posted at police post, Sukhdev Vihar and received daily diary No. 18-A, upon which he went to Holy Family Hospital, where he found that Madan Mohan Lal Verma had expired due to stab injuries. Inspector Gurmeet Singh, SHO, police station, New Friends Colony, had also reached the hospital. This witness along with SHO reached Jain Clinic and found blood on the spot. He searched for eye-witness but none was found at the spot. He made an endorsement in the daily diary, Ex. PW-22/A, sent the same through Bali Ram for registration of the case. The investigation was handed over to Inspector Gurmeet Singh. This witness states that the crime scene was photographed and in the meantime, one Swaran Singh came to the spot and claimed to be eye-witness. His statement was recorded, site plan prepared, blood stained earth taken into possession and thereafter, again along with Gurmeet Singh he went to Holy Family Hospital and arranged for post-mortem. In cross-examination various procedural flaws were sought to be highlighted but nothing substantial was elicited.

14. PW-24, Head Constable, Krishan Lal, Mohharra Malkhana, deposes to the deposit of recoveries in the Malkhana and states that so long as the articles remained in the Malkhana, they were not tampered with. He proved Malkhana Register, Exhibit PW-24/ A.

15. PW-27, S.I. Anuj Nautiyal, states that on 9-2-2000, he along with SHO Gurmeet Singh interrogated accused-Brij Kishore who made a disclosure statement, Ex. PW-27/A and pointed out to the place of incident vide Memo Ex. PW-27/B and also disclosed that he could get the knife by which he had caused the injuries and his blood stained clothes etc. recovered. The accused led the police party to Sarai Kale Khan bus adda, near a pipe-line from where he got recovered two polythene bags. On opening, one jeans, one shirt, a knife and a pair

of shoes were found. The trouser and shirt were sealed. The trouser, shirt, shoes and knife were taken into possession vide memo Ex. 27/D. This witness identifies the case property. In cross-examination he denies that the blood sample was already lying in the police station and the Investigating Officer also denies that the clothes and shoes recovered did not belong to the accused and are not of the size of the accused. He admitted that at the time of pointing out the place of occurrence no public witness was joined.

16. PW-29, S.I. Sunil deposes to the deposit of the case property at FSL, Malviya Nagar. PW-30, Inspector Gurmeet Singh, SHO and Investigating Officer of this case, stated as to the steps taken by him and the recoveries as effected. He also identifies the case property.

17. In defense, DW-1, Gurdas, has been examined who states that the accused is son of his maternal uncle and on 1-2-2000, he was present at his house and received a phone call from his maternal uncle, Bir Singh that Brij Kishore and family members of his maternal uncle have been taken by the police regarding murder in the neighborhood. He went to the house of his uncle and thereafter to the police station, New Friends Colony. He was informed by the officials that they have been brought in regard to murder of Mr. Verma. This witness has been cited in support of defense of alibi taken by the accused. He states that he had informed the SHO that on 31-1-2000 between 5.00 to 11.00 p.m. Brij Kishore was with him at the house of sister of Brij Kishore, Smt. Sangita, celebrating her wedding anniversary. In cross-examination he says he did not make any written complaint to the DCP or Commissioner of Police or sent any telegram to the higher authority about the false implication of the accused but that his maternal uncle sent a telegram on 2-2-2000. The aforesaid telegram was, however, never produced. This witness states that he did not complain to any authorities regarding his signatures being obtained on the arrest memo. This witness also did not make a statement in writing to the effect that Brij Kishore was present with him celebrating the wedding anniversary of Sangita between 5.00 to 11.00 p.m. on the day of the incident.

18. We have carefully examined the depositions and the material placed before us. From the depositions above, it is evident that soon after the deceased was stabbed, PW-5, Surender Mohan Chhabra, reached the spot and inquired of the deceased as to what had happened. The deceased identified the assailant. The same assailant was subsequently seen carrying a knife by Constable Kiran Pal, PW-18. Recoveries of knife, blood stained clothes and shoes were effected at the instance of the accused. Human Blood was detected of group AB, which blood is the blood group of the deceased. The accused was arrested at the bus stop, ISBT. This leaves no manner of doubt that the appellant is guilty of the offences charged. The prosecution has been able to bring home the guilt of the accused. We also find that the reasoning of the learned Additional Sessions Judge while evaluating the depositions and the material on record cannot be faulted with. We affirm the same.

19. Coming to the question of sentence, the learned Additional Sessions Judge has sentenced the appellant to death for an offence under Section 302, I.P.C. The learned Additional Sessions Judge has relied upon judgments of the Supreme Court in Surajdeo Ojha and Ors. v. State of Bihar : 1979 CriLJ1122 ; Surinder Nath Mehto v. State of Bihar : 1979 CriLJ1129 ; Helluri Subha Rao and Anr. v. State of A.P. : 1979 CriLJ1130 ; State of Haryana v. Harpal Singh; Jaya Raj v. State of Tamil Nadu : 1976 CriLJ1186 .

20. We have given our careful consideration to this aspect of the matter. We find that merely because a large number of wounds were inflicted on the deceased itself is not a case which came within the ambit of rarest of the rare. No doubt, every murder is gruesome in nature and wounds inflicted indicate the nature of intent, however, to bring it within the purview of rarest of the rare something more than mere infliction of wounds is necessary. An angry young man of 21 years, having lost his house on a complaint made by the deceased, vented his anger in an irrational manner not accepted by law. The sentence of death to our mind would be far too harsh, not falling within the framework of 'rarest of rares'. We feel the sentence of life imprisonment would suffice the ends of justice. Consequently, while maintaining the conviction of the appellant we modify the order of sentence from death to life imprisonment.

21. With this modification the Death Sentence Reference No. 2/2004 as also the appeal are disposed of.

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