

State Vs. Sardara Singh and ors.

State Vs. Sardara Singh and ors.

SooperKanoon Citation : sooperkanoon.com/754588

Court : Rajasthan

Decided On : Mar-01-1968

Reported in : 1970CriLJ558

Judge : L.S. Mehta and; C.M. Lodha, JJ.

Appellant : State

Respondent : Sardara Singh and ors.

Judgement :

L.S. Mehta, J.

1. There is a village Jagteewala, Chak No. 27 H. in Tehsil Karanpur, District Ganganagar. In this village the accused Sardara Singh. Kela Singh, Jaila Singh and Pal Singh possessed certain Marrabas of land. Lal Singh and his son Jagtar Singh deceased also owned certain Murrabas there. All the accused were the real brothers of Lal Singh deceased. Their lands were, however, partitioned a few years back. Some litigation had been going on between Sardara Singh, Kela Singh, Jaila Singh and Pal Singh on the one hand and Lal Singh on the other about water. On June 17, 1964, at 11 a.m., when Mst. Punjab Kaur, wife of deceased Lal Singh, was coming with her son, Mukhtiar Singh, from her fields, Sardara Singh gave her a lathi blow on her leg at a distance of about 8 furlongs from the village Jagteewala, Mst. Punjab Kaur made a report of this happening (Ex. P-19) at the Police Station, Keshrisinghpura, that very day at 7-30 a.m. Next day,

i.e., on June 18, 1964, Lal Singh had to take water from the canal for irrigating his land. He accompanied by his sons, Jagtar Singh, aged 17 years, and Mukhtiar Singh, aged 14 years, went to his field early in the morning i.e., an hour before sun rise. Sardara Singh had already diverted water to his own land 5 minutes prior to the arrival of Lal Singh on his field. Lal Singh objected to it. Thereupon Sardara Singh and Jaila Singh beat him with Kassis. Kela Singh and Pal Singh also inflicted injuries to Jagtar Singh with Kassis. Sardara Singh gave one Kassi blow with its handle to Mukhtiar Singh.

In the meantime Mst. Punjab Kaur reached there. It is said that she brought tea from her house for her husband. She is alleged to have witnessed the occurrence. As soon as Mst. Punjab Kaur reached the place, she raised hue and cry as a result of which Kela Singh and Pal Singh ran away across the railway line and Jaila Singh and Sardara Singh took to their heels towards the village Jagtewala. Injured Lal Singh had already been thrown into a 'Khala' (water channel) by the accused. His body was taken out of the 'Khala' by Mst. Punjab Kaur, Mukhtiar Singh and others. Jagtar Singh was lying outside the 'Khala'. Mukhtiar Singh then went to Dalpatsinghpura to inform the Patwari of the village, but he was not available there. Mukhtiar Singh apprised Mehar Singh, a resident of Dalpatsinghpura, D.W. 1, of the happening. Soon after Mehar Singh rushed up to the spot. Mukhtiar Singh brought a cart from his house. The dead bodies of Lal Singh and Jagtar Singh were loaded on the cart and then they were taken to their house in the village Jagtewala. Mst. Punjab Kaur went to the Police Station, Keshrisinghpura, to lodge a report. Arjun Singh accompanied her up-to the Police Station.

The Station House Officer, Shankerlal, P.W. 5, recorded the first information report Ex. P. 1 on June 18, 1964, at 11-15 a.m. Later on the S.H.O., Shankerlal went to the spot. He prepared the inquest report Ex. P-3, seizure memos of the blood-stained clothes of Lal Singh and Jagtar Singh, Exs. P-5 and P-6 respectively. He collected sand, stained with blood, from the spot under memo Ex. P-7. He also prepared the site plan Ex. P-8. Blood-stained shirt Ex. 1 and Gamcha Ex. 2 were recovered from the possession of Sardara Singh under the memo Ex. P-9, on June 18, 1964. These clothes were duly sealed. They were sent to the Chemical

Examiner, Government of Rajas-than, Jaipur. The Chemical Examiner (vide Ex. P-26) reported that these clothes were positive for blood. Cuttings of the articles were then sent to the Serologist and the Chemical Examiner to the Government of India, Calcutta, who reported that they were stained with human blood: vide Ex. P-27.

The dead bodies of Lal Singh and Jagtar Singh were sent for post-mortem examination to the Medical Officer, I/C. Government Dispensary, Gulabewala. Dr. G. S. Grewal, P.W. 2 conducted the postmortem examination of the dead body of Lal Singh. He found the following injuries:

- (1) Incised wound $2\frac{1}{2}' \times \frac{1}{2}'$ x cavity deep tapering at the edge on the left forehead. Its anterior end was at the inner end of the left eye-brow.
- (2) Incised wounds $4' \times \frac{1}{2}'$ x cavity deep on the left side of the scalp parietal region. Its anterior end was reaching the frontal region and posterior end was reaching the middle line.
- (3) Incised wound $3' \times \frac{1}{4}'$ x cavity deep on the top of the skull left side $2\frac{1}{2}'$ from the middle line and parallel to it.
- (4) Incised wound $1' \times \frac{1}{8}'$ on the left cheek bone.
- (5) Incised wound $1\frac{1}{4}' \times \frac{1}{2}'$ x bone deep on the dorsum of the left wrist ulnar side below the medial epicondyle. It was transverse.
- (6) Incised wound $\frac{1}{2}' \times \frac{1}{4}' \times \frac{1}{8}'$ transverse $1'$ in front of the left ear. According to the Doctor, cause of death of Lal Singh was severe injuries inflicted on the vital organ of the brain, which was damaged badly.

He also performed the autopsy of the dead body of Jagtar Singh. He noticed the following injuries on his person:

- (1) Incised wound $1\frac{1}{2}' \times \frac{1}{2}'$ cavity deep on the left side of occipital region.
- (2) Incised wound $2\frac{1}{2}' \times i'$ x cavity deep on the right parietal bone, its inner end was reaching the middle line.

(3) Incised wound 3'x 1/2' x cavity deep on the right parietal bone parallel to the middle line.

(4) Incised wound 1'x 1/2' x cavity deep at right angle to injury No. 3 at its lower end.

(5) Incised wound 3/4' x 1/2' x cavity deep on the right parietal bone just below the parietal eminence.

According to the Doctor cause of death of Jagtar Singh was severe injuries to the brain, which was damaged very badly.

2. After necessary investigation, the Police put up a challan in the court of learned Sub-Divisional Magistrate, Karanpur, District Ganganagar. The said Magistrate made requisite inquiry and committed the case to the Court of learned Sessions Judge, Ganganagar, for trial. All the 4 accused, namely Sardara Singh, Kaila Singh, Jaila Singh and Pal Singh were charged under Section 302, I.F.C., on February 15, 1965, to which they pleaded not guilty. In support of its case the prosecution examined 6 witnesses, namely, Kartar Singh (Motbir) P.W. 1; Mst. Punjab Kaur (eye-witness) P.W. 2; Dr. G. S. Grewal, P.W. 3; Mukhtiar Singh (eye-witness) P.W. 4; S.H.O. Shankerlal P.W. 5; and Patwari Sohanlal, P.W. 6. In his statement recorded under Section 342, Cr. P. C, Sardara Singh said that he had diverted water to his field at 5-30 a.m., on the date of the occurrence. He arrived there 15 minutes before the scheduled time. He had found Jagtar Singh and Lal Singh dead. Thereupon, he went to Mst. Punjab Kaur and Mukhtiar Singh and informed them of the happening. Later he went to the Police Station, Kersarsinghpura, and lodged report Ex. P-19 that very day.

The rest of the accused pleaded alibi. In their defence, the accused examined D.W. 1 Mehar Singh and D.W. 2 Mukha Singh. The trial Court held that the two eyewitnesses, Mst. Punjab Kaur P.W. 2, and her son Mukhtiar Singh, P.W. 4, reached the spot after the occurrence and were not present there at the time of the actual commission of the crime and, therefore, their testimony could not be said to be reliable in so far as complicity of the accused is concerned. The trial Court further held that mere production of Sardara Singh's blood-stained shirt Ex. 1 and

Gamcha Ex. 2 was not sufficient to link him with the crime. There being no other evidence, the court below acquitted all the 4 accused for offence under Section 302. I.P.C.

3. Aggrieved against the above judgment, the State Government has filed the present appeal. Before the case was put up for hearing, Jaila Singh died. It was, therefore, ordered that the appeal against the accused Jaila Singh stood abated. We are now concerned only with the appeal filed against Saradara Singh, Kela Singh and Pal Singh.

4. Contention of learned Deputy Government Advocate is that the trial Court went wrong in not relying upon the eyewitness account, furnished by Mst. Punjab Kaur, P.W. 2, and Mukhtiar Singh, P.W. 4. Learned Counsel for the State has further argued that the recovery of bloodstained shirt Ex. 1 and Gamcha Ex. 2 from the possession of Sardara Singh established an important link, connecting him with the alleged crime. Learned Deputy Government Advocate also urged that the statements of the eyewitnesses Mst. Punjab Kaur, P.W.2, and Mukhtiar Singh, P.W. 4, get support from the postmortem report of Lal Singh, Ex. P-17, and that of Jagtar Singh, Ex. P-18, proved by Dr. G. S. Grewal, P.W. 3, as also from the first information report Ex. P-1 lodged by P.W. 2 soon after the occurrence and that evidence ought to have been held enough for the conviction of the accused.

(Their Lordships after discussing evidence in Paras 5 and 6 proceeded.)

7. Here we may also point out that contradictory statements at various stages of the case not only affect reliability, but also create serious difficulties for the court to arrive at the truth. If the contradictory statements are not explained in a reasonable manner and have been made deliberately and motivated by improper and ulterior consideration, they run the risk of being completely ignored. In the instant case we do not find any reasonable explanation for the varying and inconsistent versions given by the two eyewitnesses as mentioned above. Their mere denial that they did not make such statements is not enough. Thus, considering the contradictory statements of the two eyewitnesses, we do not feel safe in arriving at the conclusion that the two witnesses did actually see the happening. In our opinion, the trial Court was perfectly justified in brushing aside the testimony of the two

witnesses, who apparently were not truthful, besides being inimically disposed towards the accused. It is, no doubt, a matter of regret that foul cold-blooded and cruel murders of two persons have taken place. There may be an element of truth in the prosecution story against the accused persons. But considering as a whole, the -prosecution story may be true, but unless there is a definite, positive, legal, unimpeachable and reliable evidence, the accused, in a serious case like this, cannot be convicted. In a criminal case, mere suspicion, however strong, cannot take the place of proof.

8. There is another very strong reason why the statements of the aforesaid two witnesses should not be considered as unimpeachable. Both the eyewitnesses have admitted that their statements were recorded not only by the Investigating Officer but by a senior police officer. Deputy Superintendent of Police. In the course of cross-examination learned Counsel for the accused prayed that copies of such statements be supplied to him, but that was not done. The provisions relating to recording of statement of witnesses and supplying of the copies provide a 1970 Cri.L.J. 36. valuable safeguard to the accused, so that they may be utilised at the trial for preparing effective defence. Such a request cannot be normally whittled down. Where the circumstances are such that the court may reasonably infer that prejudice has resulted to the accused from the failure of supplying of the copies of the statements recorded under Section 161, Cr, P.C., the court is justified in directing that the conviction should be set aside. In this connection a reference is made to Noor Khan v. State of Rajasthan : 1964 CriLJ167 . The object of as. 162, 173(4) and 207-A (3), Cr. P. C, is to enable the accused to obtain a clear picture of the case against him. The sections impose an obligation upon the prosecution agency to supply copies of the statements of witnesses who are intended to be examined at the trial to enable the accused to utilise them in the course of cross-examination to establish such defence as may be desired to put up and also to shake the testimony of the witnesses. The object, in other words, is to give to the accused fullest information in possession of the prosecution on which its case is based. In the instant case, keeping in view the nature of the testimony of the two material witnesses, we feel that refusal to supply copies of their statements, recorded by the Deputy Superintendent of Police, has naturally caused prejudice to the accused.

9. Two blood-stained clothes, shirt Ex. 1 and Gamcha Ex. 2, were recovered from the possession of the accused Sardara Singh under the memo Ex. P-9. According to the Chemical Examiner's report they were positive for blood: vide Ex. P-26. The Serologist and Chemical Examiner to the Government of India has also reported (Ex. P-27) that these clothes were stained with human blood. The clothes were seized by the Police on June 18, 1964. The articles were received by the Chemical Examiner through Meghram, Constable No. 997, Police Station, Kesharisinghpura, with letter No. 7431 dated August 18, 1964, on October 12, 1964, that is about 4 months after the occurrence. No reasonable explanation is forthcoming why such an inordinate delay was caused in despatching the articles to the Chemical Examiner. It has also not been explained that when the forwarding letter for sending the articles had been prepared on August 18, 1964, why it was not actually sent upto October 11, 1964. We have already examined the material evidence produced by the prosecution and have come to the same conclusion as the trial Court as regards the credibility of the eye-witnesses.

We have already held that the contradictions and discrepancies in the statements of the two witnesses are so glaring and so significant that it is almost impossible to believe that the two witnesses saw anything of importance. The only point that remains to be considered is as to whether the evidence of recovery of the blood stained articles is enough by itself to justify the conviction of the accused. We do not think it is. The recovery of the blood stained articles can be used to corroborate other evidence. It cannot by itself prove the case of the prosecution. It is possible to imagine on many an occasion whether the mere discovery of a blood stained article is due to something other than murder, for instance, concealing the dead body or receiving from the real murderer a blood stained article and so on. It is, therefore, impossible to say that mere discovery of a blood stained article is enough by itself to justify a conviction for murder.

10. Learned Counsel for the accused pointed out that the reports of the Chemical Examiner and the Serologist were not read to the accused Sardara Singh in the course of his examination under Section 342, Cr. P. C, and that has caused a serious prejudice to him. In this connection, it may be stated that a specific question was put to the accused Sardara Singh in regard to the clothes Exs. 1 and

2, to which his answer was that the clothes, no doubt, belonged to him, but he had nothing to say in regard to the blood stains on them. Where the accused is represented by a counsel at the trial and in an appeal it is upto the accused or his counsel in such cases to satisfy the court that such inadequate examination has resulted in the miscarriage of justice. If the counsel is unable to say how his client had been prejudiced and if all that he could urge is that there was a possibility of prejudice having been caused to his client, that alone is not enough. It cannot be said as a matter of law that the non-examination or inadequate examination under Section 342, Cr .P. C, must be presumed to have caused prejudice. The question of prejudice is a matter of inference based on facts and the surrounding circumstances in each case. Learned Counsel before us, could not make out a clear prejudice.

In this case Sardara Singh knew what the accusation against him was. He also knew that blood stained clothes were produced by the prosecution in the trial Court. He offered an explanation in regard to the blood stain marks. There is, therefore, no justification for supposing that there had been any prejudice caused to Sardara Singh on account of improper or insufficinet re-cording of his statement by the Sessions Judge under Section 342, Cr. P. C. The examination of the accused person under Section 342, Cr. P. C. is intended to give him opportunity to explain any circumstance appearing in the evidence against him. The ultimate test in determining whether or not the accused has been fairly examined under Section 342, Cr. P. C, is to inter whether, having regard to all the questions put to him, he had had an opportunity to say what he wanted to say in respect of the prosecution case against him. Here the accused was given an opportunity to explain how blood stain marks appeared on his clothes and, therefore, omission of the specific question in the examination of the accused under Section 342, Cr. P. C, in regard to Chemical Examiner's report and the Sero-logist's test, to our minds, has not resulted in causing any prejudice to the accused. A reference in this connection may be made to Moseb Kaka Chowdhry v. State of West Bengal : 1956 CriLJ940 .

11. The statements of the two eyewitnesses Mst. Punjab Kaur P.W. 2 and Mukhtiar Singh, P.W. 4, elicit that Arjun Singh arrived at the scene of the occurrence at the time of or soon after the crime. So was the case with Sohan

Singh and Sukha. Mst. Punjab Kaur has also deposed that she mentioned the names of the accused to Mukha Singh soon after the occurrence. None of these witnesses has been produced by the prosecution. In murder case, the prosecutor is expected to act fairly and honestly and must not withhold material witnesses simply for the reason that their evidence is likely to go against him. It is no doubt open to the prosecutor not to examine witnesses who, in his opinion, have not witnessed the incident, but normally he has to examine all the eyewitnesses in support of his case. Where, as here, it is disclosed that material witnesses have been deliberately withheld, the court is justified in drawing an inference against the prosecution and may hold that omission to examine such witnesses constitutes a serious infirmity vide *Darya Singh v. State of Punjab* AIR 1965 SC 323.

12. In an appeal by the State Government under Section 417, Cr. P. C, against the acquittal, it is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the finding of the trial Court was not sound. If it is found that the trial Court adopted a reasonable course and took plausible view of the matter, interference under Section 417, Cr. P. C, is not justifiable. The reason is manifest. There are two important factors in every criminal case which have to be kept in view in favour of an accused person; one is that the accused can always claim benefit of reasonable doubt and the other is that when an accused person offers a reasonable explanation of his conduct, then, even though his defence is not satisfactorily proved, it ought normally be accepted unless circumstances warrant that it is false. On a careful examination of the evidence and the circumstances of this case we are not satisfied that there exist strong and compelling reasons to set aside the finding of acquittal.

13. In the result, this appeal, having no force, stands dismissed. The accused are on bail. They need not surrender to their bail bonds.