

Mohan Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Oct-11-1973

Reported in : 1973(6)WLN749

Judge : V.P. Tyagi and; K.D. Sharma, JJ.

Appeal No. : D.B. Criminal Appeal No. 72 of 1970

Appellant : Mohan Singh

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, J.

1. Appellant Mohan Singh has filed this appeal against the judgment of the Sessions Judge, Sri Ganganagar, dated 22nd December, 1969, whereby the appellant was convicted for an offence Under Section 302, IPC and sentenced to life imprisonment.

2. The facts as revealed by Gyanchand (PW 4), the only eye witness in this case, are as follows.

3 Gyaa Chand and his brother Jogender Singh were serving the accused as his Siris and they used to reside in a Kotha situate in the same Ahata where accused Mohan Singh used to live. On 11th of March, 1969, Jogender Singh had gone out to Punjab His wife Mst. Taro and the only child 1 yrs. old were left in the custody of his brother Gyan Chand At about 8 or 9 in the morning Mohan Singh rebuked Mst. Taro for having committed theft of fodder from his field. It is said that Mst. Taro also called bad names to Mohan Singh At that time Mst, Taro was preparing tea in her kitchen situate outside the Kotha. Mohan Singh could not tolerate this insolent behaviour of Mst. Taro and he, therefore, gave a Kulhari blow from the sharp side on the forehead of Mst. Taro and thereafter dealt two more Kulhari blows from the wrong side on the parietal regions of the forehead of the deceased. Gyanchand, who was saddling the camel in the same Ahata of Mohan Singh, witnessed this occurrence. He raised an alarm whereupon accused Mohan Singh ran away from that place. It is said that on hearing the alarm Pargan (PW 1) reached the spot of occurrence and thereafter he was followed by Swaran (PW 3) and then by Shankar (PW 2). Besides these three persons many other persons came but it is said that when Pargans Swaran and Shanker reached the spot of occurrence, Gyan Chand told them that Mohan Singh had inflicted Kulhari blows on the head of Mst. Taro. Shankar was then sent to Padampur to fetch a jeep and when the jeep was brought Mst. Taro, who was lying in an unconscious state was shifted immediately to Padampur where she was admitted in the hospital. Dr. C.S. Bhati (PW 6) examined the injuries of Mst Taro and found that she had sustained the following three injuries on her head:

1. Incised wound 2' x 1/6' x 1/5' oblique on the right parietal region near the mid line of scalp 1/2' away from the mid line.
2. Lacerated wound 2 1/4' x 1/3' x 1/2' on the right parietal region obliquely running downwards and forwards from near the mid line of of the scalp, 1' away from the mid line lies the posterior end of the wound.
3. Lacerated wound 3 1/3' x 1/3' x 1/2' sagittal on the left parietal region 4' above the left ear.

4. The doctor also noticed the pupils of Mst. Taro dilated. He immediately enquired from the attendants of Mst.Taro whether the matter had been reported to the police or not, and when he came to know that information had not been given to the police, he sent a note (Ex, P/3) to the Station House Officer, Police Station, Padampur that Mst. Taro wife of Jogender Singh, aged 20 years was brought to his dispensary in an unconscious state with multiple injuries on the head. The condition of the patient was serious and, therefore, the Station House Officer was requested to do the needful. It is said that the Station House Officer Shri Inder Singh (PW. 7) sent his Head Constable & Constable to the dispensary to find out if Mst. Taro was accompanied by any relation of hers with a direction to bring him to the police station. The Head Constable took along with him Gyanchand (PW 4) to the police station where he was examined at 12 30 p.m and that statement of Gyan Chand recorded by the Station House Officer on that very day was treated as a first information report in this case. At 12.35 p.m. Mst Taro breathed her last. The same doctor Shri C.S. Bhati performed the autopsy of the dead body of Mst. Taro and found on opening the dead body comminuted depressed fractures of the right and left parietal bones under injuries Nos. 2 & 3. He also noticed dura and pia-arachnoid lacerated. He also discovered multiple lacerations and haemorrhage in the left cerebral hemisphere. The right cerebral hemisphere was compressed and lacerated by the depressed fracture of right parietal bone. In the opinion of the doctor, the cause of death of Mst. Taro was shock and haemorrhage as a result of sustaining injuries to the cranium.

5. During investigation on the information furnished by Mohan Singh under Section 27 of the Evidence Act, a Kulhari was recovered by the investigating agency from the Chhappar of Mohan Singh, but on examination by the Chemical Examiner it was not found stained with blood and, therefore, this recovery does not in any manner connect the accused with the crime.

6. After investigation, a challan was put up against Mohan Singh Under Section 302 Indian Penal Code in the court of Munsif-Magistrate First Class, Sri Ganganagar who, after enquiry, sent the accused-appellant to the court of Munsif-Magistrate First Class, Sri Ganganagar who, after enquiry, sent the accusedappellant to the court of Sessions to stand the trial for the said offence.

7. The prosecution produced as many as seven witnesses in this case.

8. The accused denied the charge and examined his wife Mst. Har Bhajan Kaur (DW 1) and Tarsaim Singh (DW 2) to prove that Mst. Taro was a lady of loose character and that somebody in the night inflicted injuries to Mst. Taro which were for the first time seen by Mst. Harbhajankaur (DW 1) in the morning at about 7 or 7.30 & then with the help of Tarsaim Singh (DW 2) the injured was taken to the hospital at Padampur where she died at 12 35 p.m. According to these witnesses, Gyanchand was not present in village 2CC where Mst Taro used to live and that Gyanchand was sent for by Tarsaim Singh from 1DD where he was living with his parents and, according to Tarsaim Singh (DW 2), Gyanchand along with his father and another brother came to Padampur at about 2 to 2.30 p.m.

9. The learned Judge did not place any reliance on the defence theory. Believing the story as given out by the eye witness P.W 4 Gyan Chand, he found the accused-appellant guilty of an offence of murder and, therefore, convicted him under Section 302 Indian Penal Code and sentenced him as referred to above. It is in these circumstances that this appeal has been preferred by the appellant to this Court.

10. Mr. Than Chand, appearing on behalf of the appellant, vehemently urged that the trial court has erred in placing reliance on the testimony of P.W.4 Gyanchand who, according to the circumstances as have been brought on the record, was not present on the scene of occurrence when Kul-hari blows were given on the head of Mst Taro. In this connection, he placed reliance on three circumstances, viz: (1) that if Gyanchand had been present at village 2CC then he would have certainly sent a report to the police station, Padampur along with Shankar who was asked to go to Padampur to fetch a jeep for transporting Mst. Taro to the hospital; (2) that Swaran Singh who, according to the prosecution, reached the spot of occurrence immediately after the incident does not in his statement (Ex. D. 3) recorded under Section 164 Criminal Procedure Code anywhere mention that Gyanchand was present at village 2CC on that day when Mst. Taro was beaten; & (3) that Gyanchand's conduct was quite abnormal as he did not intervene when Mohan Singh is alleged to have inflicted Kulhari blows on the head of Mst. Taro. It was

also urged that false witnesses Pargan (P W. 1) and Swaran (P.W. 3) have been introduced by Gyanchand which shakes the foundation of his testimony and, therefore, conviction of the appellant on the testimony of a sole eye witness of this type should not be sustained by this Court.

11. The statements of Pargan (PW 1) and Swaran (PW 3) have not been believed by the trial court for the reasons given by that court and we agree with the reasoning of the learned trial judge for discarding the evidence of Pargan (P.W 1) and Swaran (PW. 3) and therefore we also propose not to rely on the statements of these two witnesses, but it cannot be said with certainty that Pargan (P W. 1) and Swaran (P. W 3) did not at all visit the place of occurrence after the alarm was raised by Gyan Chand and, therefore, in these circumstances it is difficult to accept that the prosecution has deliberately introduced such witnesses whose presence at the place of occurrence was impossible. On that ground, therefore, it is difficult for us to discard, the testimony of Gyanchand. It is true that Pargan's name does not find place in the first information report (Ex. P/I) and that Swaran (P.W. 3) has deposed certain facts which on the very face of them appear to be false, but discarding their testimony on these grounds would not make Gyanchand's testimony doubtful.

12. Gyanchand was a lad of 18 and was living with his brother Jogender Singh. It is admitted by the accused himself in his statement under Section 342 Criminal Procedure Code that Gyan Chand was the Siri of Mohan Singh and, therefore, his presence at 2CC in his own bouse at the time of occurrence was quite natural. Gyanchand has deposed that he was saddling a camel when certain derogatory words were exchanged between Mst. Taro and Mohan Singh. Mohan Singh was undoubtedly the master of Mst. Taro's husband and, therefore, he could not tolerate abuses coming from the wife of his own servant. This enraged him and he dealt the Kulhari blows on the head of Mst. Taro. Gyanchand states that when he saw this incident he left the camel and started going towards the kitchen where Mst. Taro was beaten but before he could reach him Mohan Singh had left the spot. The entire incident occurred in such a hurry that it did not provide any opportunity for witness Gyanchand to intervene.

13. A scathing criticism has been level against the testimony of this witness Gyanchand (P.W. 4) and efforts have been made by Mr. Than Chard to persuade this Court not to place reliance on the statement of the eye witness, but we find that his testimony, finds corroboration not only from medical evidence and the first information report (Ex. P. 1) lodged by him, but it gets support from the statement of Mst. HarbhajanKaur (D.W. 1) when she states that at the time when she saw Mst. Taro lying injured in her kitchen the tea was ready on the oven and the fire was burning in the oven. Gyanchand has also stated in the first information report (Ex. P. 1) that at the time of the incident Mst Taro was preparing tea. He has also stated this fact in his deposition before the trial court.

14. A suggestion has been made by Mr. Thanchand by referring to the post-mortem report that half digested food was found in the stomach of the deceased and therefore Mst. Taro must have been hit somewhere between 12 and 1.00 in the night and it was in the morning at 7 or 7 30 that Mst. Harbbajankaur (DW. 1) saw Mst. Taro lying in that condition. We regret, we cannot accept this suggestion of Mr Than Chand on two grounds: Firstly, Mst. Harbhujankaur herself saw the fire burning in the oven and tea was being prepared by some one on that oven. According to the defence, Gyanchand was not in the village at 2CC on that day and, therefore, the question arises as to who lit that fire in the oven which was then burning when Mst. Har Bhajankaur came there and who prepared the tea which was found on the oven.

15. If this theory of the defence that Mst. Taro was hit at the dead of night is accepted, then it is difficult to explain the presence of the fire in the oven. The fire in the oven and the tea prepared on that fire lends support to the testimony of Gyanchand that Mst. Taro was hit in the kitchen when she was preparing tea and that the incident took place only a few minutes before the arrival of the witnesses who had witnessed the fire burning in the oven and the tea that was prepared on that oven was not even removed therefrom There is no dispute between the prosecution and the defence on this point that the injured Mst. Taro was found lying in the kitchen. This fact undoubtedly establishes that Mst. Taro must have been beaten while she was preparing the tea in the kitchen.

16. The presence of the half-digested food in the stomach as argued by Mr. Thanchand does not necessarily lead to this inference alone that Mst. Taro must have been given beating somewhere at the dead of night when bet evening meals were not wholly digested by her digestive system. In this connection, we may refer to the statement of Dr. C.S. Bhati (PW. 6) who states that 'the deceased should have taken her meals before 12 hours or so before her death'.

17. Modi in his Medical Jurisprudence and Toxicology has observed: 'It has been ascertained by physiologists that a mixed diet containing more of animal food and less of vegetable food leaves the stomach in four to five hours after it is completely digested, while a vegetable diet containing mostly farinaceous food as usually taken by an Indian does not leave the stomach completely within six to seven hours after its ingestion. But this cannot always be relied upon in determining the time of death, inasmuch as the power for digestibility may remain in abeyance for a long time in states of profound shock and coma. Food has been seen in the stomach remaining undigested in persons who received severe head injuries soon after their meal and died within twelve to twenty four hours after wards. In one case the food consisting chiefly of rice and DAL (pulse) remained in the stomach for about forty hourse without undergoing digestion. It must also be remembered that the process of digestion in normal, healthy persons may continue for a time after death.... Thus, in the case of an individual having been murdered in bed at night, one can state that the individual had lived for some that after going to bed if the bladder was found full of urine, since the people usually empty their bladder before going to bed. Similarely, one can give an opinion that the death occurred some time after he had got up in the morning if the large intestine was found empty of faecal matter.

18. The presence of the semi-digested food in the stomach of Mst. Taro at the time of her post-mortem examination, according to the observations of Modi, does not necessarily lead to an inference that Kulhari blows must have been dealt on her somewhere in the night In this connection, we may refer to the postmortem report (Ex. P 2) wherein in column No. 6 the doctor found the large intestines and their contents pale and empty. He also discovered the bladder empty. These two symptoms show that the faecal matter and the urine was not found present in the

body of the deceased which indicates that she must have passed her stool and urine before this incident had taken place. Normally, an Indian passes stool and urine in the morning and, therefore, the Court can safely accept the argument of learned Counsel appearing for the State that the incident must have taken place in the morning hours when Mst. Taro had attended the call of nature. The theory advanced by the defence on the strength of the presence of undigested food in the stomach of the deceased that Mst. Taro must have been hit somewhere in the night, cannot be accepted by us.

19. As observed above, we have agreed with the trial court for discarding the testimony of Pargan (P.W. 1) and Swaran (P.W. 3) and, therefore, it is difficult for us to hold on the basis of the statement of Swaran recorded by the Magistrate under Section 164 Criminal Procedure Code that Gyanchand was not present at 2CC when the incident had taken place. This statement (Ex D. 3) of P.W. 3 Swaran cannot, therefore, be pressed into service to discard the testimony of Gyanchand.

20. Mst. Harbhajankaur (D.W. 1) and Tarsaim Singh (D.W. 2) have positively deposed that Gyanehand was not a Siri of Mohan Singh but this fact that Gyanehand was his Siri has been admitted by Mohan Singh himself in his statement under Section 342 Criminal Procedure Code. In view of the admission of the accused, we cannot place any reliance on these two defence witnesses who have tried to show that Gyanchand's presence was impossible in village 2CC when this incident had taken place. Apart from this admission of the accused, there are other grounds also to discard the testimony of these two defence witnesses and they are that Tarsaim Singh (DW. 2) states that Gyanchand for the first time came at his call to Padampur at 2 or 2 30 p.m. This is obviously a lie because Gyanchand was examined by the police authorities at 12.30 p.m. as is evident from Ex. P. 1.

21. Mr. Than Chand argued that till the arrival of Gyanchand the police was in search of the relations of the deceased to register a case and when Gyanchand reached Padampur and he accepted to play the role of an eye witness the police authorities prepared the document Ex P. 1 which was treated as the first

information report in this case. This argument appears on the very face of it to be devoid of force. If Tarsaim Singh (DW. 2) is believed, then Gyanchand reached Padampur with his brother and father at 2 30 p m. If really the police authorities were in search of a relation of Mst. Taro to play the role of an eye witness by cooking a story against Mohan Singh at the instance of the police, then Gyanchand in preference to his father and other elder brother would not have been chosen as the first informant as he was a lad of 18 who had hardly attained maturity to consistently play the role of the eye witnessing the occurrence.

22. The story given out by these two defence witnesses does not stand the test of probability because if Mst. Taro was found lying injured in her kitchen by Mst. Harbhajankaur at 7 30 a.m then there was no necessity for her to raise an alarm after one hour, that is, 8 30 a.m which attracted Tarsaim Singh to the scene of occurrence. It is impossible that a lady who could otherwise send for her neighbours to help her to meet the situation could have raised alarm after one hour. The learned trial Judge has rightly discarded the testimony of Mst. Harbhajankaur (D.W. 1) and Tarsaim Singh (DW. 2) who were out to help the defence. Mst. Harbhajankaur is the wife of the accused and, therefore, she has been actuated with a spirit to save her husband by resorting to lies. Tarsaim Singh (D.W 2) who is neighbour of Mohan Singh is trying to shield him as is apparent from his statement which could not stand the scrutiny of cross examination. In these circumstances, we are left in no doubt that Mohan Singh appellant was the assailant of Mst. Taro.

23. Mr. Thanchand at the end argued that even if Mohansingh is found to be the assailant of Mst. Taro, he cannot be punished for an offence under Section 302, Indian Penal Code because the prosecution has not established any enmity between the deceased and the assailant and that there could not possibly be any intention on the part of the accused to inflict such an injury which could cause in the ordinary course of circumstances death of the injured. He also urged that the intention of the accused can be derived from the fact that he used the axe from the sharp side only once and that too using such force that it caused only simple injury and thereafter he used the wrong side of the axe which clearly indicates that he never intended to kill Mst. Taro.

24. It is true that there is no history of previous enmity between Mst. Taro or her husband and the accused. It is on a spur of the moment that the accused lost his balance of mind and inflicted Kulhari blows on the head of the deceased causing three injuries as mentioned above. In order to bring the case under clause thirdly of Section 300 of the Indian Penal Code it is not necessary to establish the intention of the assailant to cause death of the victim. If it is proved that the injuries caused by the assailant are of such nature and have been deliberately inflicted on such part of the body which are likely to cause death, then Section 302 Indian Penal Code is immediately attracted. In this connection, we may cite the decision of the Supreme Court in *Virsa Singh v. State of Punjab* : 1958 CriLJ 818 wherein the learned Judges have laid down that in order to bring a case within the ambit of Section 300, thirdly, the prosecution must prove the following facts:

First, it must establish, quite objectively, that a bodily injury is present. Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type, just described made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

25. In the present case, it has been established by the medical evidence that the injuries sustained by Mst. Taro on the vital part of her body, i.e., head were sufficient to cause death in the ordinary course of nature. The only thing which can take out the action of the accused-appellant from the purview of Section 300, thirdly, is whether the injuries inflicted on the head of Mst. Taro were accidental or unintentional or the accused intended to cause some other kind of injury but accidentally the fatal injuries were sustained by the deceased.

26. It is proved beyond doubt that Mohan Singh used an axe to inflict injury on the head of Mst. Taro though the prosecution could not establish that the axe

recovered was the weapon of offence in this case. However, we cannot forget that the axe even though used from the back side caused serious injuries if the blows were inflicted with considerable force. The back side of the axe is generally heavy and if it is used with a force, then it can ordinarily cause fatal injuries if it fell on vital part of the body of the injured person. The nature of the two injuries which caused fracture of the two parietal bones suggests that a considerable force was used by Mohan Singh while inflicting injuries on the head of Mst Taro. In the absence of any previous enmity it cannot be said that Mohan Singh did not intend to cause these two fatal injuries. Whatever may be the cause of inflicting such injuries on the vital part of the body of a man, we cannot say in the circumstances of this case that these two injuries were unintentional or that Mohan Singh intended to cause some other type of injuries but accidentally these serious injuries were caused. We are left with no alternative but to infer from the circumstances that Mohan Singh intended to cause the injuries which were ultimately suffered by Mst. Taro. In *Narayanan Nair Raghavan Nair v. The State of Travancore-Cochin* : 1956 CriLJ278 the injury was caused with a penknife which eventually resulted in the death of the injured as it was found sufficient in the ordinary course of nature to cause death and, therefore, the learned Judges held that the case squarely fell under Section 300, thirdly, Indian Penal Code.

27. Looking to the nature of the injuries and the circumstances in which these injuries were caused, we have no option but to hold that accused Mohan Singh intended to cause the injuries on the vital part of the body of Mst. Taro which in the ordinary course of nature were found sufficient to cause death and eventually they caused death. In these circumstances, we uphold the conviction of the appellant for an offence under Section 302 Indian Penal Code. The appeal is, therefore, dismissed.