

Kulvendra Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-17-1995

Reported in : 1995CriLJ4214

Judge : V.S. Kokje and; P.C. Jain, JJ.

Acts : Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 162 of 1990

Appellant : Kulvendra Singh

Respondent : The State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.

Disposition : Appeal allowed

Judgement :

P.C. Jain, J.

1. This appeal arises out of the judgment of learned Addl. Sessions Judge No. 1, Sriganagar dated 18-4-1990, by which the accused has been convicted under Section 302, IPC and sentenced to undergo life imprisonment and also to pay a

fine of Rs. 500/-, in default of payment whereof to further undergo rigorous imprisonment for one year.

2. The prosecution case, briefly stated, is that on 25-1-1988 Niranjn Singh (PW 1) was sitting in his house along with Balwant Singh, who was 'sadu' of his son Amreek Singh. His brother-in-law Gurdyal Singh and son Inderjeet Singh were also inside the house, Balwant Singh had come there at about 4.00 P. M. At about 7.00 P. M. Balwant Singh went outside the house to ease himself. There was a toilet outside the house of Niranjn Singh, situated at the left corner of the house. About five minutes after the Balwant Singh went out they heard abusive language. Then Niranjn Singh, Inderjeet Singh and Gurdyal Singh came out of the house. They saw the accused attacking Balwant Singh with a sword. The accused inflicted first blow at the back of head of Balwant Singh, as a result of which he fell down. The accused further inflicted three-four blows on the head of Balwant Singh. As a result of above injuries, Balwant Singh died instantaneously. The accused thereafter left the place of occurrence and went into his house, which was just in front of house of Niranjn Singh (PW 1).

3. Niranjn Singh (PW 1) proceeded to the Police Station and reached there at about 8.30 P.M. and lodged the First Information Report (Ex. P. 2). On this report, the Police registered a case under Section 302, IPC and the Investigating Officer Hema Ram (PW 9) immediately reached the place of occurrence. He could not take further steps as it was night. He, therefore, deputed two constables at the place of occurrence. On the next day, after inspection of the site, the Investigating Officer prepared the site-plan memos Exs. P3 and P3A. The inquest report (Ex. P2) was also prepared in the presence of responsible witnesses of the vicinity (Motbirs).

4. As per the inquest report, it was concluded that the deceased died of head injuries. The Investigating Officer also collected the blood-smeared soil as well as control soil, sealed the same and sent for chemical examination.

5. Dr. Ratanlal Agrawal (PW 7) conducted postmortem of deceased Balwant Singh. The Investigating Officer also collected the clothes of deceased Balwant Singh which he was wearing at the time of incident, sealed the same and prepared

the seizure memo Ex. P1. The accused was apprehended on 28-1-1988 at the Railway Station, Raisingh Nagar and arrest memo Ex. P17 was prepared. The clothes of accused were blood stained. The Investigating Officer seized the same and prepared the seizure memo Ex. P18. On 30-1-1988, while in Police custody, the accused furnished an information under Section 27 of the Evidence Act to the effect that he had hidden the sword along with sheath with which he murdered the deceased beneath a wooden box and that he is prepared to get the same recovered. The accused thereafter led the Investigating Officer to the place where the sword and the sheath were hidden and made the same recovered. The seizure memo Ex. P13 was prepared by the Investigating Officer for these two articles. He also prepared site plan of the place from where these two articles were recovered. The clothes of the accused as well as of deceased were sent for chemical examination to the State Forensic Science Laboratory.

6. The FSL sent the report Ex. P20, according to which the clothes of the deceased as well as the articles worn by the accused were found stained with human blood. Further, the blood smeared soil, soil chips, bushirt and baniyan of the deceased were found stained with B group blood. Similarly, the bushirt, paint and pagri of the accused and sword and myan (sheeth) were also found stained with B group blood.

7. Armed with this incriminating evidence, the Police filed a charge-sheet against the accused in the court of Munsif and Judicial Magistrate, First Class, Padampur on 25-3-1985. The learned Magistrate committed the case to the court of Sessions for trial against the accused for offence under Section 302, IPC.

8. The learned Sessions Judge framed a charge against the accused under Section 302, IPC. The accused pleaded not guilty and claimed to be tried. The prosecution examined nine witnesses. PW1 --Niranjan Singh and PW3 -- Inderjeet Singh were stated to be eye-witnesses. They have deposed about witnessing the incident. PW7 -- Dr. Ratan Lal Agrawal was examined, who conducted the postmortem of the deceased on 26-1-1988 at the place of occurrence. The accused has not led any defence evidence.

9. Dr. Ratan Lal Agrawal, who conducted the post-mortem of the deceased Balwant Singh, found the following injuries on the body of Balwant Singh:

- 1) Incised wound, with clotted blood-- 15 cm. x 3 cm. x 6 cm. extending from the base of nose, on left side, and reaching up to back of nap of neck, cutting the underlying bones and brain (temporal occipital)
- 2) Incised wound 14cm. x 4cm. x 7 cm., with clotted blood, extending from inner left eye and reaching up to occipital bone, cutting the underlying bones and brain
- 3) Incised wound, 16 cm. x 3 cm. x 6 cm., with clotted blood, extending from the left forehead and reaching up to right temporal region, cutting the underlying part of skull and brain (temporal lobe and frontal lobe and parietal lobe).
- 4) Incised wound with clotted blood, 8 cm. x 2 1/2 cm. x 6 cm., extending from the centre of forehead and reaching up to middle of forehead, cutting the bone and brain lying underneath (parietal and frontal lobe).
- 5) Incised wound, 5 cm. x 3 cm. x bone deep, with clotted blood, on left wrist at radius bone.
- 6) bruise 2 x 2 sq. cm. on left elbow.

The Medical Officer opined that the above injuries were caused by a sharp-edged weapon and were sufficient in the ordinary course of nature to cause death. PW2 Dwarka Prasad was examined with reference to inquest report Ex. P1. PW 5 Diwan Singh was produced to prove the site-plan memos Exs. P3 and P3A, the inquest report (Ex. P1) as also the seizure memo Ex. P8 by which the blood smeared soil was collected and sealed. He was also examined to prove that the Police seized the clothes of the deceased by seizure memo Ex. P11. PW6-- Amreet Singh, who is son of Niranjana Singh (PW 1) was also examined and he stated that on receipt of the information that accused has murdered Balwant Singh, he reached the village. He also proved the information furnished by the accused regarding recovery of the sword and the sheath. PW 7 --Ramkhiladi, who deposited the sealed articles in the office of Forensic Science Laboratory after obtaining the same from Mukhtiyar Singh was also examined. PW 8 -- Asha Singh

was produced to prove the arrest memo Ex. P17, by which the accused was apprehended. He has also proved the seizure memo Ex. P18 by which the clothes of the accused were seized. Hem Ram (PW 9) the Investigating Officer deposed about the various steps he has taken while investigating the case. PW 10 Mukhtiyar Singh has deposed that Hem Ram deposited six sealed packets in the Malkhana of the Police Station. He made entries of the same in the register Ex. P11. The learned trial Judge recorded statement of the accused under Section 313, Cr. P. C. The accused denied all the allegations and alleged that he has been implicated in the case on account of enmity.

10. The learned trial Judge after appreciating the prosecution evidence, particularly the testimony of Niranjana Singh and Inderjeet Singh, came to the conclusion that the prosecution has proved the charge against the accused. He, therefore, held the accused guilty of the offence and passed the above sentence.

11. We have heard the learned counsel for the accused appellant as well as learned Public Prosecutor and gone through the material available on record.

12. The learned counsel for the appellant has assailed the judgment of the learned trial Judge on the ground that he failed to appreciate the evidence in correct perspective and drew a wrong conclusion. He submitted that from the statement of Niranjana Singh as well as Inderjeet Singh (PWs 1 and 3), it is clear that there was no reliable evidence regarding the enmity between the accused and the deceased. It is alleged that the accused teased Soma Devi, daughter of Niranjana Singh some two years before the occurrence. Thereafter nothing happened and Soma Devi as well as the accused got married. Hence the above enmity cannot be a possible motive for the murder. From the sequence of events, it is clear that Niranjana Singh and Inderjeet Singh were not in a position to see the occurrence, inasmuch as they were sitting inside their house at the time of occurrence, some 40-50 feet away. There was a wooden door and Inderjeet Singh has clearly stated that at the time of occurrence it was closed and was opened by Niranjana Singh when they reached the place of occurrence in response to the abuses which they heard. There are also material contradictions regarding this vital fact as to whether Niranjana Singh and Inderjeet Singh ever witnessed the occurrence. In all

probability, when they reached the deceased, he was dead after sustaining the fatal injuries and they never saw the accused inflicting the above injuries. In the First Information Report, Niranjana Singh has not stated the presence of Inderjeet Singh. Similarly, the prosecution has not produced Gurdayal Singh, who was present with Niranjana Singh inside the house at the time of occurrence. The occurrence took place at about 7.00 P.M. and it was dark at that time. There are also contradictions about the fact whether the clothes of the accused were found stained with blood, even after two days of the incident and that too at the public place like Railway Station.

13. The learned trial Judge has cited decisions in *Mst. Bhanwari v. State of Raj*, (1978 Raj LW 340), *Balak Singh v. State of Punjab*, : 1975 CriLJ1734 , *Durga Devi v. State of Raj*, (1992 Cr LR (Raj) 782) and *Jharajlal Das v. State of Orissa*, (99 SCC (CR) 527) (sic).

14. Learned Public Prosecutor has supported the judgment of the learned trial Judge. He submitted that even after a close and careful scrutiny of the testimony of Niranjana Singh (PW 1) and Inderjeet Singh (Pw 3), it would be clear that they saw the accused inflicting sword blows on the head of the deceased. The, accused took to his heels when they reached the place of occurrence. The First Information Report was lodged without delay. The medical evidence also corroborated the prosecution version.

15. We have carefully considered the rival contentions. At the very outset, we may state that from the statement of Dr. Ratan Lal Agrawal (PW 7) it is proved that the deceased Balwant Singh died as result of the injuries mentioned in the post-mortem report Ex. P6. These injuries were ante-mortem in nature and were sufficient in the ordinary course of nature to cause death. In fact, learned counsel for the accused has not challenged the fact that Balwant Singh died a homicidal death.

16. Now we may discuss eye-witnesses. In the First Information Report Ex. P2, Niranjana Singh has stated that when he heard cries of abusive altercation, he and Gurdayal Singh rushed to the place of occurrence, and saw Balwant Singh standing beside 'thada'. The accused was also standing near Balwant Singh with a sword.

The accused inflicted 4-5 blows with the sword on the head of Balwant Singh. Balwant Singh, as a result of injuries by these blows fell down. He succumbed to his injuries instantaneously. In his statement, PW1 -- Niranjan Singh has stated that the room was at a distance of about 40 feet from the place of occurrence. He has also stated presence of Inderjeet Singh and Gurdyal Singh. In the cross-examination he stated that when Balwant Singh was being assaulted, he and the other two persons were standing in the court-yard and did not come out of the house till the deceased sustained all the injuries. In other words, Niranjan Singh has stated that the injuries were caused by the accused to Balwant Singh even before he and the other two witnesses came out of the house. Thus, he has contradicted the statement made by him in the First Information Report. This is a very material contradiction. In Ex. P2 Niranjan Singh has not stated that the accused first inflicted a sword blow on the back of the head and thereafter 3-4 more blows when Balwant Singh fell down.

17. The most important fact which must be taken into account for deciding the veracity of testimony of Niranjan Singh and Inderjeet Singh is whether at the time of occurrence, the wooden door of Niranjan Singh's house was closed or open. On this vital point, there is contradiction between the statements of Inderjeet Singh and Niranjan Singh. Inderjeet Singh has made a categorical statement that the door was closed and was opened when he and his father went outside the house. If his version is accepted, it becomes clear that Inderjeet Singh, Niranjan Singh and Gurdyal Singh could not have seen the occurrence from inside the house, for two reasons -- first; it was dark outside the house and second the closed door prevented witnessing of the occurrence. Niranjan Singh, however, has stated that the door was open. It may be appreciated that the whole incident must have taken a few minutes. If Balwant Singh received injuries while Inderjeet Singh, Niranjan Singh and Gurdyal Singh were inside the house, they could not have witnessed the occurrence. The prosecution has withheld Gurdyal Singh from giving his testimony and the presence of Inderjeet Singh has not been shown in the First Information Report. It is correct that the First Information Report is not an encyclopedia and it is not necessary that all the details must be stated but the important events and names of the eye-witnesses must naturally get mention in the report. On account of absence of name of Inderjeet Singh in the First

Information Report, his testimony becomes doubtful. The prosecution has also not furnished any explanation why Gurdyal Singh was not produced.

18. The another important aspect for appreciating the testimony of above witnesses is why the neighbors did not come to the place of occurrence. From the perusal of the site plan, it is clear that Niranjana Singh has let out his 'baithak' and its adjoining room to two students. Similarly, Mohan Lal Brahmin had also let out his house, which is just opposite the house of Niranjana Singh. There are houses of Karnil Singh, Mohanlal Brahmin, Santokh Singh Arora, Ransingh etc. in the vicinity. It is impossible and unnatural that even after the occurrence of such a serious nature not a single person of the locality came. Diwan Singh (PW 5) has stated that when he was summoned by the Investigating Officer the next day, there were about 50-60 persons present at the place of occurrence. From the above, it is clear that there were many persons residing in the locality and they ought to have come to the place of occurrence as a natural consequence of such a serious happening but Niranjana Singh and Inderjeet Singh have stated that none came. This absence of people of the locality creates serious doubt about the manner in which the incident happened.

19. One very important circumstance, which must be taken note of in this context is that the S.H.O. reached the place of occurrence immediately after receipt of the First Information Report. It is very surprising that he did not try to apprehend the accused who was residing in a house situated in front of the house of Niranjana Singh. Further, the accused was apprehended at the Railway Station, Raisingh Nagar on 28-1-1988, three days after the incident. The S. H. O. has not cared to explain as to why he failed to apprehend the accused during three days. It gives rise to the possibility that when the SHO reached the place of occurrence on 25-1-1988 in the night, the identity of the accused was not known, otherwise there was no reason why he should not have apprehended the accused then and there. The First Information Report was also despatched to the concerned Magistrate on the next day at about 11.30 A. M. The delay in sending the First Information Report to the Magistrate concerned creates doubts about the prosecution case. It is true that the delay in despatch of the First Information Report to the Magistrate concerned cannot be a reason for rejecting the prosecution case in its entirety but it is a factor

to be taken into consideration to appreciate whether the investigation was fair or not?

20. In the instant case, the SHO has not given any explanation why inordinate delay was caused in despatch of the First Information Report to the Magistrate concerned. Coupled with the above facts, this lapse on the part of the Investigating Officer creates serious doubt about the genuineness of the identity of the accused.

21. The evidence regarding apprehension of the accused is also not convincing. As stated above, the Investigating Officer has not stated what steps he had taken to apprehend the accused who was residing in the same locality where the incident occurred, just opposite the house of the complainant. The SHO has stated that he arrested the accused at the Railway Station, Raisingh Nagar on 28-1-1988 and further that his clothes were stained with blood. It is very difficult to believe that a person, after committing an offence like murder would dare to roam about wearing the blood-stained clothes. The accused would have definitely tried to get rid of the clothes stained with blood in order to destroy the evidence of his crime. In this connection the statement of Asha Singh (PW 8) must be taken note of who has stated that at the time of arrest, the accused was having a 'thela' (bag) with him in which he had kept his spare clothes. Hema Ram (PW 9) the SHO, on the other hand, has stated that after arresting the accused he went to the house of the accused to fetch extra clothes. Hence, in our opinion, the evidence that the accused was found wearing bloodstained clothes at the time of arrest is not convincing and for these reasons, the recovery of his blood stained clothes becomes doubtful.

22. Yet another important fact to be considered is whether at the time of occurrence there was sufficient light, by a lamp-post or otherwise? The Investigating Officer has not mentioned anything about this important fact nor this fact found place in the site-memo. The witnesses stated that it was a moon-lit night but this fact cannot be correct inasmuch as on 25th January, 1988, the moon was not visible at the time of occurrence.

23. The only evidence that remains against the accused is that he got recovered the sword and sheath from his house but there are contradictions about the fact as

to whether the above articles were recovered from under a wooden box or from the box. Further, the recovery was made from a room which was in use of several persons.

24. For the above reasons, we hold that the prosecution failed to prove the above charge against the accused beyond reasonable doubt.

25. We, accordingly, allow this appeal, set aside the judgment of learned trial Judge dated 18-4-1990 passed in Sessions Case No. 17/88 and order acquittal of the accused from the charge of offence under Section 302, IPC the appellant be released at once, if his detention is not required in any other case.

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