

Kikar Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-12-1990

Reported in : 1990(2)WLN482

Judge : K. Bhatnagar and; Y.R. Meena, JJ.

Appeal No. : D.B. Criminal Appeal No. 185 of 1984

Appellant : Kikar Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

K. Bhatnagar, J.

1. Appellant, Kikar Singh was tried for the charge Under Section 302, IPC by the Additional Sessions Judge, Raisinghnagar. Vide Judgment dated 17.4.84 he was held guilty for the charge and sentenced to imprisonment for life and a fine of Rs.2,000/-, in default of payment of fine to undergo two year's rigorous imprisonment. Kikar Singh, feeling aggrieved by his conviction and sentence, has preferred this appeal in this Court.

2. Succintly narrated, the prosecution case is that on 22.5.83 at 2.15 p.m. Nagaur Singh (PW

1) lodged an oral report at police station Anoopgarh to the effect that agricultural land in 16 BUD, Murraba No. 241/420 was purchased by his father from Budh Singh and was in the cultivating possession of his family. Adjacent to that field there was the field of Kikar Singh. Ten or fifteen days prior to the incident, Kikar Singh threw the earth from the 'Doli' (the strip of land dividing the two fields) in the field of complainant which led to hot altercation between him and Jeet Singh. Jeet Singh told Kikar Singh that in case he had any doubt about the measurement of the land he may get it measured from the Patwari. That annoyed Kikar Singh and he told that he will definitely get it measured on getting, opportunity. On 22.5.83 at about 11 a.m., the informant, his brother Balore Singh, his brother-in-law Balvinder Singh and his father, deceased Jeet Singh were stacking grass in the field, Kikar Singh and his son Pappu (accused tried by the court under the Juvenile Offenders Act and acquitted of the charge), stated throwing earth from the 'Doli' towards the field of Jeet Singh. Jeet Singh went towards them to make them understand Nagaur Singh (PW 1), Balore Singh (PW

2) and Balvinder Singh (PW

3) also followed Jeet Singh. Jeet Singh asked Kikar Singh not to throw earth in his field. Kikar Singh got annoyed and at the instance of his son Pappu inflicted injury with Kassi on the head of Jeet Singh. Jeet Singh fell down. Kikar Singh thereafter inflicted two more blows with Kassi to Jeet Singh. Balore Singh, Nagaur Singh and Balivnder Singh gave a 'Lalkar' and Kikar Singh ran away from there. The three witnesses went near Jeet Singh and saw injuries on his head, neck and back He was lying dead bleeding from the injuries. Nagaur Singh went to Police Station, Anoopgarh and informed Balwant Rai (PW

7) SHO of Police Station, Anoopgarh who reduced the information into writing, which is Ex.P.1. The SHO went to the site and prepared site plan Ex.P.2 and site inspection memo Ex.P.3 and other necessary memos and took in possession the blood soaked earth and the control soil. The post-mortem examination of the dead body of Jeet Singh was conducted by Dr. Satya Prakash Sharma (PW

5) on 22.5.83 at 6 p-m. The doctor noted following injuries on the dead body.

1. Incised wound 11 cm x 2 1/2 cm x 5 cm on the Right Parieto occipital area. Bone fractured'-dura matter was seen from the wound.

Incised wound 15 cm x 6 cm x 5 cm on the right scapular area bone fractured.

Incised wound 1.3 cm x 10 cm x 12 cm on the right side of neck All Vessels of the right side of neck were cut critical vertebrae & along with the spinal cord and cut through and through. Larynx & Right side of mandible cut.

The post-mortem Examination Report is Ex. P. 8. In the opinion of the doctor, the death was due to hemorrhage and shock due to bleeding from vessels of neck. Injury No. 3 was held to be individually sufficient to cause death. On 27.5.83, Kikar Singh was arrested vide Memo Ex.P.17. While under arrest, he furnished information Ex.P.18 for getting recovered Kassi from his house. In pursuance of that information, he opened the lock of the Kotha and got recovered one Kassi from it. The Kassi was taken in possession vide Memo Ex.P.9. Being suspected of having bloodstains on it it was Sealed then and there. Pappu was also arrested on the allegation that he had instigated his father Kikar Singh to give a beating to Jeet Singh. As stated earlier, he being below 16 years of age, was tried by the Children Court. The articles seized and sealed during the course of investigation were sent for chemical examination. The report of chemical examination is Ex.P.20. The clothes, the blood soaked earth taken from the site and the Kassi said to have been recovered at the instance of the accused were found to have stains of human blood. The blood group of Kamiz and towel which Jeet Singh was having at the time of incident and Kassi was of 'B' Group.

3. The learned Munsif and Judicial Magistrate, Anoopgarh on receiving the charge sheet against the appellant, committed the case to the Court of Additional Sessions Judge, Raisinghnagar. The learned Judge, charge sheeted the appellant Under Section 302 IPC and recorded his plea. He denied the charge and claimed to be tried. Prosecution examined 9 witnesses to substantiate its case. In the statement under to Section 313, Cr.P.C, Kikar Singh denied the allegations levelled against him and state that witness Jasbir Singh has stated against him as he was annoyed with him because he had not given him the land on contract and he did not get anything recovered. No defence witness was examined.

4. We heard Mr.M.K.Garg, learned Counsel for the appellant and Mr. K.L. Jasmatiya, learned Public Prosecutor for the State.
5. The learned Counsel for the appellant strenuously contended that the three alleged eyewitnesses were all relatives of Jeet Singh and are therefore partisan witnesses. Mr. Garg raised a number of points to substantiate his contention that the three witnesses were not at the site and had not actually seen the occurrence. They had rather reached later on and have falsely implicated the appellant Mr. Garg submitted that if the three witnesses would have been in the field, they would have immediately rushed to the rescues of Jeet Singh. It has been emphatically argued by the learned Counsel that the fact of there being no blood on the clothes of the three eye witnesses discredits their testimony about their reaching near Jeet Singh immediately after the occurrence because in that case they would have touched Jeet Singh and in that process their clothes must have been stained with blood. The conduct of the three witnesses according to Mr.Garg was quite unnatural i.e. three persons seeing Jeet Singh not raising any alarm to attract the inhabitants of the neighboring fields, is sufficient to raise suspicion about their actually seeing the occurrence.
6. True it is that the three eye witnesses were relatives of Jeet Singh. Nagaur Singh and Balore Singh being his sons and Baivindeer Singh Being brother-in-law of Nagaur Singh. Presence of Nagaur Singh and Balore Singh in their field along with heir father was quite natural. There is sufficient evidence to establish that Balvinder Singh brother-in-law of Nagaur Singh was living with them. The three witnesses have categorically stated that Jeet Singh, on seeing Kikar Singh and his son Pappu throwing the earth towards their field went towards them in order to restrain them from doing so. The argument of the learned Counsel that if the witnesses would have been there, they would have accompanied Jeet Singh instead of seeing him going alone. The argument has no force. The witnesses would have suspected that Kikar Singh would inflict Kassi blow to Jeet Singh, an unarmed person. Regarding the three witnesses not rescuing Jeet Singh by catching hold of Kikar Singh suffice it to say that the distance between Kikar Singh and Jeet Singh and the witnesses at the time of actual occurrence is said to be one kila, which is equal to 55 yards. By the time the witnesses raised the alarm

and rushed near Jeet Singh. Kikar Singh had already inflicted three Kassi blows to Jeet Singh and ran away from the site. The learned Counsel for the appellant argued that it could not have been possible for the witnesses to see the occurrence from such a distance. The cottonseeds have been sown and were only at the rowing stage. There being no obstruction in between the place of occurrence, they could have easily seen the incident.

7. Mr. Garg stressed that the witnesses remaining quite on seeing the occurrence and Kikar Singh giving them threatening also appears to be unnatural and makes the witnesses unbelievable.

8. True it is that in examination-in-chief Nagaur Singh has not stated about he and the other two witnesses raising a cry but has only stated about Kikar Singh giving 'Lalkar' to them with a threatening that in case they would go near they would also be killed. But in cross examination he has stated that on seeing his father being injured, he and the two witnesses raised a cry from a distance of one 'Kila', He has further stated that on hearing their 'Lalkar' no one came from their houses. The 'Dhani' of the witnesses is said to be four big has away from the place of occurrence. Balore Singh has specifically stated that on seeing Kikar Singh inflicting Kassi blow on, the head of his father he and the other witnesses raised a 'Lalkar' to the accused and the accused warned them that in case they will go near they would also be taken to action. Balvinder Singh has also stated about their giving a 'Lalkar' to the accused on seeing him injuring Jeet Singh. He has stated that a cry from the site would not be heard at the 'Dhani'. The argument of the learned Counsel about nobody coming from the 'Dhanis' of the complainant gets an answer in this version of Balvinder Singh. It has not been suggested to any witnesses as to whose 'Dhanis' were near the site of occurrence and whether the occupants of those 'Dhanis' were there at that time or not.

9. So far as the absence of blood on clothes of three witnesses is concerned, their evidence on the point is quite clear. The witnesses admitted not to have touched the dead body. Nagaur Singh has stated that he had not touched the body of his father because it was quite evident that he had expired. He has stated that he, Balore Singh and Balvinder Singh had seen the injuries of Jeet Singh by going

near him but their clothes Were not stained with his blood.

10. The learned Counsel for the appellant has challenged the presence of the witnesses at the site by drawing our attention to the site plan and the site inspection memo where it is mentioned that the cotton crop Was at the stage growing. The learned Counsel stressed that if it was so then where was the question of the accused throwing mud earth towards the field of Jeet Singh. The reason for Kikar Singh doing so, according to Nagaur Singh was that even 15 or 20 days prior to the incident he was doing so and there was hot altercation between Jeet Singh and Kikar Singh regarding the measurement of the land.

11. The learned Public Prosecutor argued that is so appears that Kikar Singh had a doubt about some of his land being in the 'Doli' in between the two fields and for that reason Jeet Singh asked him to get the land measured and Kikar Singh asserted that he would do so on getting opportunity.

12. Yet another argument by Mr. Garg to raise suspicion on the presence of the three witnesses at the site is that the place of the presence of the witnesses at the time of occurrence is not shown in the site plan. The learned Counsel submitted that this would be sufficient to discredit the testimony of these three alleged eyewitnesses. To strengthen his argument Mr. Garg referred to the case of *Hakumat Rai v. State of Rajasthan* quoted in 1987 Criminal Law Reporter, Rajasthan Page 718 where in not mentioning the place of witnesses in the site plan was taken to create doubt about the presence of prosecution witnesses and in the prosecution story. That was a case of gunfire, which caused of two persons. The accused was said to have fited the gun from the stair case of his house towards the chowk of the victim. When the police reached the site, one deceased was lying in the chowk and the other on the roof of the house. The case of the prosecution was that one of the injured was taken to the roof for fresh air. This was inconsistent with the record that that injured had died immediately on receiving the gun shot injury. The learned Judge has also taken into consideration the fact that if the assailant was on the stair case of his house, how one of the injured was taken to roof for fresh air, there still being apprehension of the assailant firing the shot. It was in those circumstances that failure of the investigating officer to show in the

site plan the place where the witnesses and the injured were, raised doubt in the truthfulness of the assailant was acquitted not only on that ground but on a number of Other grounds such as non-examination of witnesses arriving first at the place of occurrence, non-production of report lodged at the out-post, Parcha Bayan being recorded after deliberation and the statement of the alleged eye witnesses being different from the medical opinion regarding the direction of the gun shoot, etc. In the present examination, the defence could not establish that they were not present at the site and were falsely claiming to be the eyewitnesses to the occurrence. The statement of the eye witnesses are corroborated the recovery of the blood stained Kassi in pursuance of the information furnished by Kikar Singh, appellant. Jagvir Singh (PW 6) is the motbir to the recovery memo Ex.P.9 and there is nothing to disbelieve his testimony. Gurdeep Singh (PW 8) was the Head Mohrir of Police Station, Anoopgarh. He has stated about the articles remaining in his charge in the Malkhana in sealed condition from 22.5.83 onwards. Reghuveer Singh (PW 9) FC has stated about the articles being given to him on 15.7.83 by Head Mohrir in charge Malkhana for being taken to chemical examiner. The witness has stated that he deposited the articles in Forensic Science Laboratory in sealed condition vide receipt Ex.P.27. There is evidence of Balwant Rai that the blood stained Kassi was sealed at the site and was deposited in the Malkhana of the police station. As stated earlier, the group of the blood on the Kassi and that on the Kamiz & Mukiya (towel) of Jeet Singh, which he Was having with him, was the same.

13. In view of the cogent and convincing evidence of the three eye witnesses and the recovery of weapon of offence stained with blood of the blood group of the deceased, we are in agreement with the learned trial Judge that prosecution has succeeded in proving Kikar Singh to be the author of the injuries sustained by Jeet Singh which caused his death.

14. The learned Counsel for the appellant next argued that even if the prosecution case about Kikar Singh causing injuries to Jeet Singh is believed, it cannot be said to be a case of murder. The learned Counsel contended that the case will fall within the ambit of exception 4 of Section 300 IPC because it was without premeditation, in a sudden fight in the heat of passion and out of three injuries only

one was fatal. To substantiate his contention Mr. Garg referred to the principle enunciated in the case of Tliakarda Lata Ji v. State of Gujarat {191A Criminal Law Journal 612. In that case the allegation was that the relations between the appellant and the deceased were not cordial and when on the fateful day the deceased was sitting and the other eyewitnesses were also there, the accused went there and hurled abuses and then went to his house and brought Dhariya and caused injuries to the deceased. The prosecution evidence regarding the accused going to his house and bringing Dhariya was disbelieved for the reason that when there were three men who were not quite unarmed the injuries on the body of the appellant showed. The accused would go back to his house and fetch Dhariya and inflict injury on the head of the deceased. It was also doubtful whether the injury caused by the accused to the deceased was with sharp edge of the Dhariya or not. The deceased sustained two contused wound, one on temporal region and the other on the left middle forearm and two contusions, one contusion on elbow joint and another contusion on the outer side of the left forearm on its upper third. In those circumstances, when the appellant also sustained incised wounds and two contusions, the learned Judges were of the opinion that the occurrence had taken place without pre-meditation in a sudden fight, in a heat of passion, without the accused taking undue advantage. The accused was held guilty Under Section 304 Part I. The facts of the present case are altogether different and do not attract the provisions of Section 300 exception 4. Exception 4 provide that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

15. True it is that the occurrence in this case was without premeditation and it appears to be in the heat of passion upon Jeet Singh restraining Kikar Singh to throw earth in his field but the nature of the injuries and the weapon used indicate the intention of Kikar Singh to commit murder. The first blow inflicted by Kikar Singh was on the head, which caused the fall of Jeet Singh. That was the incised wound on the right Parieto occipital area, which fractured the bone. The assailant Kikar Singh did not feel content by that and he inflicted two more blows to Jeet Singh, one on the right scapular area causing the fracture of the bone. The third

injury sustained by Jeet Singh while lying on the ground was on the right side of the neck. By that injury all the vessels of the right side of the neck were cut, cervical vertebra along with the spinal cord were cut through larynx and so also right side of mandible. Injury No. 3 according to the doctor was sufficient in the ordinary course of nature to cause death and patient had died due to shock, and hemorrhage due to bleeding from the vessels of neck. Had it been a case of the appellant inflicting only one injury while Jeet Singh was standing it was understandable that there was no intention to commit murder. The very fact of the appellant inflicting three blows with a sharp edged weapon like Kassi and the second and third blow being after the fall of Jeet Singh and proving fatal brings the case within the perview of clause (3) of Section 300 IPC. In these circumstances, the conviction pf the appellant Under Section 302 IPC is justified.

16. Consequently, the appeal has no merits and is dismissed.