

Teja Singh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-1988

Reported in : 1988WLN(UC)360

Judge : Kanta Bhatnagar and; Sobhag Mal Jain, JJ.

Appeal No. : D.B. Criminal Appeal No. 329 of 1982

Appellant : Teja Singh and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Bhagwati Prasad

Disposition : Appeal Allowed

Judgement :

Kanta Bhatnagar, J.

1. In a trial for the charge under Section 302 IPC against Teja Singh appellant and under Section 302 read with Section 34 IPC against appellants Bhajan Singh and Mukhtyar Kaur they were held guilty for the aforesaid offences and by the judgment dated August 25, 1982 of the learned Additional Sessions Judge No. 1, Hanuman-garh all of them were sentenced to imprisonment for life.

2. Feeling aggrieved by their conviction and sentence the appellants have preferred this appeal in this Court.

3. Succinctly narrated the prosecution case is that on August 15, 1981 at about 4-4.30 p.m. Hazoora Singh (PW 6), his daughter Amro (PW 7) and Sadho Singh (PW 9) were sitting on cots beneath a tree out side the house of Hazoora Singh. When they heard cries from the house of Billoo Majhabi, all the three lushed towards that house and saw Malkiat Singh son of Hazoorasingh lying on a cot. Mukhtyar Kaur and Bhajan Singh appellants were catching hold of the legs of Malkiat Singh and Teja Singh was inflicting 'Kirpan' blows to him. The three appellants then jumped the wall going to the compound of Noor Samad and ran away. Malkiat Singh died instantaneous. Hazoora Singh (PW 6) went to Sarpanch Ram Pratap and on being asked by the latter to lodge the report at Police Station went to the Police Station Hanumangarh Junction and lodged the report with ASI Ikbal Singh (PW 10). The information reduced in to writing is Ex P 16. The ASI went to the site and prepared the inquest memo, site inspection memo and Panchnama of the dead body. On the next day. the ASI again went to the site and continued the invesigation. Teja Singh was arrested vide memo Ex. P 10 on August 23, 1981. On the information of Teja Singh Ex. P2. one 'Kripan' was recovered from his house which was taken in possession. Bhajan Singh appellant was also arrested on August 23, 1981 vide memo Ex. P.H. Mukhtyar Kaur was arrested on August 31, 1982 The post mortem examination on the dead body of Malkiyat Singh was conducted by Dr. Ram Lal Beniwal (PW 5) on August 16, 1981. The Doctor noted following external injuries on the dead body:

[1] An incised wound 7-1/2' x 11/2'x 1-1/2' on right lower jaw from angle of mendible to across mid-line;

[2] An incised wound 3' x 1' x 1' on left side cheek from angle of mendible to angle of mouth and upper lip;

[3] An incised wound 2-1/2' X 2' X 1/2' on right side of neck anterally middle part;

[4] Fracture of right left mendibles 1st, IIrd, IIIrd and IVth lower teeth.

Upon opening the body, the Doctor noted as under:

Injury to the neck on right side included the injury of right big vessel as the same was found to be cut.

Apart of left side upper lip, tip of tongue, left side cheek, a part of left pharynx were found to be cut as a consequence of external injury No. 2, stated above.

The above cut of big vessel was the result of above injury No. 3.

4. In the opinion of the Doctor injuries Nos. 1 to 3 were individually and collectively sufficient to cause death in the ordinary course of nature. Injury No. 4 was the result of injuries Nos. 1 and 2. The post mortem examination report is Ex. P 15.

5. Upon completion of necessary investigation charge sheet was filed against the appellants in the Court of Munsif and Judicial Magistrate, First Class, Hanumangarh. The learned Magistrate finding it a prima facie case exclusively triable by the court of Sessions, committed the case to the court of Additional Sessions Judge No. 1, Hanumangarh. The learned Additional Sessions Judge charge-sheeted the appellants Tejasingh for the offence under Section 302 IPC and other two appellants for the offence under Section 302 read with Section 34 IPC and recorded their pleas. All of them denied the charges and claimed to be tried. To substantiate its case prosecution examined ten witnesses in all. All the appellants in their statements under Section 313 of the Code of Criminal Procedure denied the allegations levelled against them. Ram Pratap, Sarpanch was examined as DW 1. The learned Additional Sessions Judge placed reliance on the prosecution evidence and passed the judgment under appeal.

6. We heard Mr. Bhagwati Prasad, learned Counsel for the appellants and Mr. R.K. Soni, learned Public Prosecutor for the State and carefully examined the record of the case.

7. The learned Counsel for the appellants strenuously contended that the learned Additional Sessions Judge has not properly appreciated the evidence of the eye-witnesses and the discrepancies and contradictions in their statements on material points have been over-looked. It has also been stressed that the three eye-

witnesses viz. Hazoora Singh (PW 6), Amro (PW 7) and Sadhoo Singh (PW 9) are father, sister and uncle respectively of the deceased and in absence of any independent witness their testimony should not be believed. Specially when Ram Pratap Sarpanch (DW 1) has not supported the prosecution case and from the statements of the witnesses it can be inferred that the First Information Report was not lodged on the date of the incident but was rather recorded on the next day. It has also been argued that as stated by the three eye-witnesses a number of persons were sitting beneath the tree outside the house of Hazoora Singh (PW 6) yet none of them has been examined by the prosecution. The learned Counsel for the appellants vehemently argued that the relations between Jeet Singh, husband of Mukhtyar Kaur and his father Hazoora Singh witness were strained and, therefore, implicated and the learned Additional Sessions Judge has not taken this important fact into consideration. Advancing arguments on the question of motive, the learned Counsel for the appellants emphasized that Teja Singh had no enmity with Malkiat Singh and, therefore, he could not have any motive to commit his murder.

8. The learned Public Prosecutor controverting these submissions; submitted that the learned Additional Sessions Judge has rightly not taken into consideration the contradictions in the statements of the eye-witness on petty points and there is no reason to disbelieve the statements of the eyewitnesses whose presence outside the house of Hazoora Singh (PW 6) was natural.

9. The prosecution has led direct as well as circumstantial evidence in the case. The direct evidence is of Hazoora Singh (PW 6) his daughter Amro (PW 7) and Sadhoo Singh (PW 9) brother of Hazoora Singh. The learned Additional Sessions Judge has not placed any reliance on the recovery of 'Kripan' in pursuance of information furnished by Teja Singh and rightly so, because the chemical examination report regarding any blood on the 'Kripan' has not been produced.

10. First of all we would deal with the evidence regarding the motive for the commission of crime. The prosecution case is that Hazoora Singh had three sons viz. Malkiat Singh, Jeet Singh and Pritam Singh. Malkiat Singh was living with Hazoora Singh while Jeet Singh and Pritam Singh were living separate. The

relations between Jeet Singh and Hazoora Singh are said to be strained. The reason pointed out is that a few years prior to the incident of the murder of Malkiat Singh, Titar Singh brother of appellant Mukhtyar Kaur wife of Jeet Singh had abducted Guddi daughter of Hazoora Singh and a criminal case against Titar Singh was instituted and challan was filed. According to the prosecution witnesses that caused annoyance to Mukhtyar Kaur. About Teja Singh, statements of Amro (PW 7) and Sadhoo Singh (PW 9) are that he used to visit the house of Mukhtyar Kaur and, therefore, he helped Mukhtyar Kaur in getting rid of Malkiat Singh. Hazoora Singh (PW 6) has nowhere stated about any enmity with Teja Singh or Teja Singh being friendly with Mukhtyar Kaur so as to commit such a heinous crime at the instance of Mukhtyar Kaur. Hazoora Singh has stated that at a distance of 25-30 paces from his house there is the house of Billoo son of Sohan Singh where the incident had taken place. According to the witness in that house Billoo Singh was residing while in another portion of his house Kaddu Majhabi was residing. In yet another portion of his house appellant Teja Singh was residing. The witness has specifically stated that he had no enmity with Teja Singh. He has rather stated that at about 10.30 or 11.00 a.m. on the date of the occurrence Billoo and Teja Singh took Malkiat Singh with them. That, they had also taken Rs. 500/- from the wife of the witness for purchasing wheat for Malkiat Singh. He stated that they had not taken jute bags with them and told that they would get the wheat in the bags of Zamindar. If this statement is taken to be correct, then there arises no question of Malkiat Singh having any enmity with Teja Singh.

11. If the relations between Mukhtyar Kaur and Teja Singh were such that the latter would have helped the former in killing Malkiat Singh as stated by Amro (PW 7) and Sadho Singh (PW 9) then Malkiat Singh would not have accompanied Teja Singh, it is important to note that prosecution has not examined Billoo Singh at whose house the incident had taken place. Jeet Singh son of Hazoora Singh (PW 6), brother of Malkiat Singh and husband of Mukhtyar Kaur appellant and father of appellant Bhajan Singh has also not been examined to substantiate the prosecution case that Teja Singh had friendship with appellant Mukhtyar Kaur or there was any conspiracy amongst them for killing Malkiat Singh. There is nothing on record to suggest that in the incident of Guddi being abducted by Titar Singh, Malkiat Singh had played any important role so as to cause special annoyance

against him. In view of this type of evidence, we are inclined to hold that prosecution has failed to prove any motive against the appellants for the commission of the crime. At the same time we are alive of the principle that absence of motive may not always lead to the innocence of the culprit because motive is the subjective state of mind and in most of the cases cannot be proved by evidence.

12. The learned Additional Sessions Judge has discussed in detail the contradictions in the statements of the three eye-witnesses regarding the time they had come to sit beneath the tree outside the house of Hazoora Singh. The cots on which they were sitting i.e. one witness stating that all the three were sitting on different cots while other stating that they were sitting on the same cot; the sequence of their reaching to the place of occurrence and the direction in which assailants ran away.

13. We agree with the learned Additional Sessions Judge that after lapse of time witnesses may not exactly recollect the exact time each of them reached the place where they were sitting at the time of occurrence and whether they were sitting on one cot or on different cots, but the fact cannot be overlooked that none of these three witnesses have stated before the Police that they had seen the assailants jumping the wall and running away through the compound of Noor Samad. Their attention was drawn to this omission in their Police statements and they could not explain the reason for their not stating so. It is important to note that there are only three external injuries noted by the Doctor on the dead body of Malkiat Singh. The witnesses have stated that it was on hearing the cries from the house of Billoo Singh that they had gone to his house. They have claimed to have seen three, injuries being inflicted by Teja Singh to Malkiat Singh as if the assailant was waiting for the witnesses to see him causing all the three injuries. We would not have given importance to the contradictions in the statements of witnesses but for certain important facts which we would presently discuss to cast doubt on the truthfulness of their version. The first and the most important is the delay in recording the statements of the witnesses. Hazoora Singh and Amro were examined by the Police on the next day i.e. on August 16, 1981. Sadhoo Singh was examined on August 10, 1981. There may be good reason for examining the

father and the sister of the deceased on the next day because of it being night time of 15th when the Police had reached the site. But the explanation given by the Investigating Officer for not recording the statement of Sadhoo Singh till 20th is not plausible. Sadhoo Singh has admitted that his statement was not recorded by the Police on the next day of the occurrence, rather it was recorded after three or four days. He has stated that he was present in the village during those days. According to the witness he has gone to call Malkiat Singh's brother from falla in the night of the occurrence and returned on the next day. He has further stated that he was present there when Police had inspected the site but the Police had not called him that day. He then stated that on the next day of occurrence the Police had-interrogated him. Iqbal Singh, Investigating Officer has stated that Sadhoo Singh was not available till 20th and, therefore, his statement could not be recorded prior to that. He has denied the suggestion that Sadhoo Singh was there on August 16, 1981. Such an inordinate delay in recording the statement of important witness Sadhoo Singh casts a doubt on his presence at the time of the occurrence and his seeing the occurrence.

14. Importance of examining eye witness as early as possible need not be over emphasized because it eliminates the possibility of improvement in the statement of eye-witnesses. If Sadhoo Singh was present there and the Investigating Officer did not examine him for four days the inference would be that Hazoor Singh was manipulating to create a witness to substantiate his case against the appellants. If the Investigating Officer is to be believed that Sadhoo Singh was not available till 20th and he was not there on August 16, 1981 then also the conclusion would be the same i.e. Sadhoo Singh was not actually there and he was procured as an eye-witness. We are, therefore, not inclined to place any reliance on the statement of Sadhoo Singh specially so when he happens to be the uncle of the deceased and the unexplained delay in recording his statement casts a doubt on his being an eyewitness to the occurrence.

15. So far as Hazoor Singh (PW 6) and Amro (PW 7) are concerned it is noteworthy that he happened to be the father and sister of the deceased respectively. Mere relationship and interestedness of the witnesses in the deceased would not in all cases lead to the conclusion that the witnesses are narrating a false story.

How ever, in cases where the prosecution case jests solely on the evidence of relatives and interested witnesses, the Courts are to be cautious in scrutinising their evidence in order to ascertain whether utmost reliance can be placed on their version. If an occurrence takes place inside the house or at a place where only relatives are available, it cannot be expected from the prosecution to produce independent witnesses. But in the case like the present one when the offence has been committed in the house of Billo Singh and if Hazoora Singh and Amro are to be believed that there were five or six persons other than these two witnesses and Sadhoo Singh sitting beneath the tree then in the natural course of events they must also have heard the cries from the house of Billoo Singh and would have rushed to the site along with Amro and Hazoora Singh On hearing the cry Hazoora Singh and Amro could not have expected that the cry might be on account of attempt of murder of Malkiat Singh so as to make them run ahead of others. Other persons sitting there must have run ahead of Hazoora Singh an old man with poor eye sight. Hazoora singh and Amro have admitted that others sitting there had also reached the place of occurrence immediately after them. The distance between the plnce where the witnesses were arid the place where Malkiat Singh was murdered is said to be 25-30 paces If Hazoora Singh and Amro are to be believed that it was after their reaching the house of Billoo Singh that the three blows with 'Kripan' were inflicted by Teja Singh to Malkiat Singh and thereafter Teja Singh and the other two appellants, who are said to be catching hold of the legs of Malkiat Singh, jumped the wall and ran away through the compound of Noor Samad, then the other persons present beneath the tree must have also reached the site before the assailants took to heels and they would have been at least in a position to see the assailants running away through the compound of Noor Samad. It is pertinent to note that no person other than Hazoora Singh, Amro and Sadhoo Singh has been examined by the prosecution to state as to whether the said eye-witnesses were actually sitting there beneath the tree and whether there was any cry from the house of Billoo Singh so as to attract the attention of the said eye-witnesses and Ors. sitting by their side This was necessary for the prosecution specially when according to the alleged eye-witnesses other persons had also reached the house of Billoo Singh after them When independent witnesses are available in the case and are not examined by the prosecution, it

raises a suspicion about the truthfulness of the statements of the witnesses specially when the eye-witnesses are related to the deceased and have strained relations with two appellants Makhtyar Kaur and Bhajan Singh.

16. The learned Counsel for the appellants emphatically argued that the prosecution not examining independent witnesses and feeling content with the statements of the three relatives must lead to the inference that those independent witnesses, if examined, would not have supported the witnesses who are family members of the deceased. To substantiate this contention, learned Counsel for the appellants drew our attention to certain circumstances which according to him suggest that the First Information Report containing the names of the assailants must not have been recorded on the date of the occurrence itself rather it was recorded on the next day when there was sufficient time with the family members to make out a case against the appellants.

17. It has been argued that names of the assailants must not have been disclosed by Hazoor Singh when he went to the Police Station at the instance of Ram Pratap Sarpanch Hazoor Singh has stated that immediately after the incident he went to Ram Pratap Sarpanch and told him about the occurrence. That, 15 to 20 minutes thereafter Ram Pratap reached the site, that, thereafter, the witness brought Shakoor and Tulla and along with them went to the Police Station. Ram Pratap Sarpanch is the first person to whom Hazoor Singh has narrated the incident. He was the best person to state as to what was the immediate version of Hazoor Singh, the eye witness and father of the deceased. As such prosecution should have examined Ram Pratap Sarpanch. However, for the reasons best known to the prosecution, he was not examined from the prosecution side and was examined as DW 1. Ram Pratap Sarpanch has clearly stated that Hazoor Singh (PW 6) went to him and informed that Malkiat Singh has been murdered but Hazoor Singh did not name any body as the assailant. That he thereafter went to the site He has denied the suggestion in the cross examination that Malkiat Singh has told him the name of Bhajan, Teja Singh and Mukhtyar Kaur as the culprits. He has also stated that his statement was recorded by the Police. From his cross examination nothing can be discerned which may cast a doubt on the truthfulness of his version. Hazoor Singh's (PW6) not telling the names of the assailants to the

Sarpanch Ram Pratap before going to the Police lends support to the defence version that till that time the names of the assailants were not known. The question then would arise that if the names were not known, how they appear in the First Information Report said to have been lodged by Hazoora Singh on the same day. The defence argument is that the information must have been lodged by Hazoora Singh but names must not have been disclosed and the information Ex.P 16 must have been recorded on the next day. To substantiate this contention, the learned Counsel for the appellants submitted that Shakoor and Tulla said to have accompanied Hazoora Singh to the Police Station have not been examined by the prosecution not their signatures or thumb impressions have been taken on Ex.P 16. Signatures of the persons accompanying the informant may not be necessary on the Information lodged before the Police but this fact assumes importance in the present case in view of the statement of Hazoora Singh who has stated that the signatures of Shakoor and Tulla were not taken at the Police Station rather they were taken at the site. The witness further stated that the signatures or the thumb impression were not taken at the Police Station because nothing was written there. He has further stated that after inspecting the site his thumb impressions was taken and thereafter the impressions of Shakoor and Tulla were taken. That on the next day he had gone to the Police Station and then on a number of papers his thumb impressions were taken. He has also stated that at the site his thumb impression was taken on one paper but all thumb impressions on all papers were taken at the Hanumangarh Junction Police Station.

18. Ex P 2 the Inquest report, Ex.P 3 and Ex P 4 the memos for recovery of the soil, Ex. P 5 the recovery of the beddings. Ex. P 6 recovery of the cot, Ex. P 7 recovery of the blood stained clothes, Ex. P 8 Panchnama, Ex. P 9 the site inspection memo and Ex. P 9 A the site inspection memo, all bear the thumb impressions of Hazoora Singh and if his statement is taken to be true his thumb impressions on various memos were taken at the Police Station and not on a single paper at the site, then, the argument of the learned Counsel for the appellants that the First Information Report Ex. P 16 was not recorded on 15th but on 16th and thumb impressions of Hazoora Singh was taken on it on that day has force. Specially so when Hazoora Singh himself has stated that signatures or thumb impressions of Tulla and Shakoor were not taken at the Police Station

when he went with them to lodge the report because nothing was written at the Police Station on that day. All these circumstances looked in the light of the statement of Ram Pratap Sarpanch that Hazoora Singh did not disclose the names of the assailants and only told that Malkiat Singh has been murdered, raises a suspicion on the prosecution case that Hazoora Singh and Amro had seen the appellants committing the crime. When prosecution has not been able to establish the case against the appellants beyond all shadow of reasonable doubt, there can be no justification for their conviction and they deserve to be acquitted.

19. Consequently, the appeal of Teja Singh, Bhajan Singh and Mukhtyar Kaur is allowed. Their conviction and sentences are set aside and they are acquitted of the charges levelled against them. Appellants Bhajan Singh and Mukhtyar Kaur are on bail. Their bail bonds stand discharged. Appellant Teja Singh is in jail. He will be set at liberty forth with if not required in any other case.

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