

State of Rajasthan Vs. Darshan Singh

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Court : Rajasthan

Decided On : Dec-15-1999

Reported in : 2000(2)WLN110

Judge : N.N. Mathur and; A.K. Singh, JJ.

Appeal No. : D.B. Criminal Murder Reference No. 1 and D.B. Criminal Jail Appeal No. 294 of 1999

Appellant : State of Rajasthan

Respondent : Darshan Singh

Advocate for Pet/Ap. : Mr. Sandhu

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. This is a murder reference made by the learned Additional Sessions Judge No. 2, Sri Ganganagar, dated 17.5.1999 in accordance with the provisions of Section 366 Cr. P.C. for confirmation of death sentence, awarded to accused Darshan Singh, having held him guilty of committing murder of Tota Singh and convicting him of offence u/Section 302 IPC. The accused Darshan Singh has also challenged the conviction and sentence by way of filing an appeal through jail,

which has been registered as D.B. Criminal Jail Appeal No. 294/1999 'Darshan Singh v. State of Rajasthan'.

2. Brief facts of the case are that on 20th March, 1998, PW 1 Gurdeep Singh lodged an oral F.I.R. at Police Station Sadul Shahr at 9.15 P.M. stating inter alia that there was dispute between his father P.W. 3 Mohan Singh and uncle Darshan Singh (accused) with respect to distribution of the land. In order to resolve the dispute, his father had approached his maternal grand father Tota Singh (deceased) residing in village Indrapura as it was understood that he will be able to make, Darshan Singh understand. On the fateful day at about 5.45 P.M., his maternal grand father Tota Singh came to his house. At that time, he had gone to the house of Gora Singh, whose daughter was to be married. After 10-15 minutes, when he was returning to his house, he found that a big crowd had assembled in the lane. He rushed to his house fearing that some quarrel might not have taken place with Darshan Singh. When he reached to his house, he found that his maternal grand father was lying smeared with blood. His father Mohan Singh (PW 3), his mother Manjit Kaur (PW 2) an younger brother Bohad Singh (PW 8), sister Baint Kaur, uncle Chanra Singh and Bhola Singh were standing in the lane. He enquired from his father as to who caused injuries to his maternal grand father. Upon which, his father disclosed that while his uncle Darshan Singh was assaulting Bohad Singh, his maternal grand father, in order to save him, intervened. This enraged his uncle Darshan Singh. He gave a 'Barchhi' blow to Tota Singh and ran away. He also stated that his uncle Darshan Singh had also committed a murder about twenty years back and that he had returned from jail after having undergone the sentence. On this information, police registered a case for offence u/Section 302 IPC and proceeded with investigation. PW 9 Bhan Singh, SHO, PS, Sadul Shahr, reached on the spot. He prepared the inquest. The dead body of Tota Singh was sent for post mortem. The accused was arrested. In pursuance of the information given by the accused, a blood stained 'Sela' was recovered. After usual investigation, police laid a charge-sheet against the accused Darshan Singh for the offence u/Section 302 IPC.

3. The accused pleaded not guilty and claimed trial. The prosecution in support of the case examined twelve witnesses. The accused respondent in his statement

under Section 313 Cr. P.C. stated that he has been falsely implicated because of the land dispute. He also stated that Bohad Singh and his family members had assaulted him and Tota Singh.

4. The learned trial Judge held the accused respondent guilty of committing murder of Tota Singh. In the opinion of the learned trial Judge, it was a fit case for awarding the death sentence as the accused respondent had earlier also committed a murder for which he was convicted and sentenced to life imprisonment.

5. Assailing, the conviction of the respondent, it is contended by Mr. H.S. Sandhu, learned Counsel appearing for the accused, that no reliance can be placed on the testimony of the alleged eye witnesses namely PW 2 Manjit Kaur, PW 3 Mohan Singh and PW 8 Bohad Singh, as they are interested and inimical witnesses. It is submitted that the prosecution has not explained the injuries on the person of the accused respondent, as such, it must be inferred that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version. In the alternative, it is submitted that the defence version of the case be rendered probable on account of non-explanation of injuries throwing doubt on the prosecution case. A submission has also been made with respect to the nature of the offence. It is submitted that it is the case of single injury and, as such, no intention to commit murder can be inferred and that the accused ought to have been convicted for the offence u/Section 304 Part II IPC. It is also submitted that the material witnesses have not been produced. A submission has also been made on the point of sentence. On the other hand, learned Public Prosecutor has supported the Murder Reference and the judgment of the trial Court.

6. Mr. H.S.S. Kharlia, learned Counsel appearing for the complainant, has dealt with all the contentions raised by the accused respondent. He has made a serious attempt to bring the case in the category of 'rarest of rare case' to award the death sentence.

7. We have scanned the prosecution evidence carefully. P.W. 1 Gurdeep Singh has made a statement with respect to the incident as given in the F.I.R. He has stated that when he reached on the spot, his maternal grand father was dead. The

incident is alleged to have taken place at about 5.45 p.m. and he reached on the spot about 6 P.M. The F.I.R. has been submitted at 9.15 P.M. The distance between the police station and the place of incident is about 20 kms. It is also stated that after about 15 to 20 minutes, he left for Sadul Shahr for lodging the F.I.R. The efforts were made to arrange a jeep but as the same was not available, he had to go on foot. In our view, there is no delay in filing the F.I.R. Nothing has been elicited in the cross examination to disbelieve the testimony of this witness.

8. P.W. 2 Manjit Kaur stated that the accused Darshan Singh is her brother-in-law being the elder brother of her husband Mohan Singh (P.W. 3). The deceased Tota Singh was her father. They were having dispute with Darshan Singh with respect to distribution of land. With a view to settle the dispute, her father Tota Singh was invited because it was understood that Darshan Singh could be made understand by her father. Her husband Mohan Singh went to village Indrapura to invite Tota Singh. Accordingly, her father Tota Singh arrived at her house. Her son Gurdeep Singh had gone to attend the marriage at the house of Gora Singh. Accused Darshan Singh, armed with a 'Barchha', appeared in the lane and ensued quarrel with her son, P.W. 8 Bohad Singh. The high pitched voice attracted her husband Mohan Singh, daughter Baint Kaur, brother-in-law Chand Singh and Bhola Singh. Her father Tota Singh intervened in order to pacify Darshan Singh, who lost the temper and plunged 'Barchhi' in the neck of her father Tota Singh. Her father immediately fell down. There was a profuse bleeding. Accused Darshan Singh climbed on the 'Kotha', jumped and ran away. After sometime, her son Gurdeep Singh also arrived. The incident was narrated to him. She also stated that her father Tota Singh died instantaneously on the spot on account of the injury caused to him by 'Barchhi'. She also stated that after sometime, Gurdeep Singh was sent to make a report of the incident to the police. In the cross-examination she admitted that there was no enmity between Darshan Singh and her deceased father Tota Singh. She also admitted that oral altercation took place between Bohad Singh and Darshan Singh all of a sudden. She denied that any injury was sustained by Darshan Singh in the said incident. She denied the suggestion that her father was armed with a lathi and Bohad Singh was armed with a Barchhi. In spite of lengthy cross-examination, nothing has been elicited to discredit the testimony of this witness. She is a natural and trustworthy witness.

9. P.W. 3 Mohan Singh stated that accused Darshan Singh is his elder brother and deceased Tota Singh was his father-in-law. There was a dispute between him and Darshan Singh with respect to distribution of land. It was understood that Tota Singh could make Darshan Singh understand, therefore, with a view to sort out the dispute, he went to village Indrapura to invite him. On the fateful day, his son Gurdeep Singh had gone to the house of Gora Singh to attend the marriage. His younger son Bohad Singh was in the street. At that time, accused Darshan Singh appeared armed with a 'Barchha' and took up quarrel with him. Hearing their voice, his father-in-law Tota Singh came out. He was followed by his wife, daughter and brother Chand Singh. Bhola Singh also arrived there. His father-in-law reprimanded Darshan Singh for taking up the quarrel with Bohad Singh. Darshan Singh plunged 'Barchha' in the neck of his father-in-law Tota Singh. Tota Singh fell down on the ground and died instantaneously. Darshan Singh climbed on the 'Kotha', jumped out and ran away. After ten minutes, his son Gurdeep Singh arrived. They narrated the entire incident to him. After sometime, he left for the Police Station to lodge the report of the incident. He has proved police memos, prepared at the place of the incident. In the cross-examination, he admitted that verbal altercation between Darshan Singh and Bohad Singh took place for about ten minutes. Accused Darshan Singh was abusing him. Bohad Singh was asking not to abuse him. He denied if any injury was caused to Darshan Singh during the incident. He denied the suggestion that Tota Singh gave any lathi blow on the head of Darshan Singh. In spite of lengthy cross-examination, nothing has been elicited to discredit the testimony of this witness.

10. P.W. 8 Bohad Singh, aged 20 years, stated that accused is his uncle and deceased Tota Singh was his maternal grand father. He also stated that there was a dispute with accused Darshan Singh with respect to distribution of land. In order to sort out the dispute with maternal uncle, Tota Singh was invited. At about 5.45 P.M. while he was standing on the gate of the house, the accused arrived there armed with a 'Barchha'. He started quarrelling with him. Hearing their voice, Tota Singh came out. He was followed by his father Mohan Singh, mother Manjit Kaur, sister Baint Kaur, Bhola Singh, Chand Singh and Sandeep. Accused Darshan Singh plunged 'Barchha' in the neck of his maternal grand father Tota Singh. He immediately fell on the ground. There was profuse bleeding. The maternal grand

father died on the spot instantaneously, there is a lengthy cross-examination but nothing has been elicited to discredit the testimony of this witness.

11. P.W. 4 Jitendra is the photographer, who has taken the photographs of the place of incident. P.W. 5 Banwarilal, P.W. 6 Lakh Singh, P.W. 7 Badal and P.W. 12 Raj Kamal are the formal witnesses. P.W. 10 Rajesh Beniwal, S.H.O., P.S., Sadul Shahar, stated that on the information given by Gurdeep Singh, he had registered the F.I.R. He has proved the F.I.R. Ex. P. 1. He inspected the site and prepared the necessary memos. He has given all the details of the investigation. In the cross-examination, he has admitted that the accused was arrested on 20th March, 1998 and at that time, there were some superficial injuries on his person. He denied the suggestion that at the time of the incident, Tota Singh was armed with a lathi but deliberately he did not seize the lathi. P.W. 9 Bhan Singh has stated that on 24th March, 1998, he was posted as A.S.I. at Police Station, Sadul Shahar, on account of the illness of Rajesh Beniwal, SHO, PS, Sadul Shahar, he was entrusted the investigation. He has stated that in pursuance of the information given by the accused Darshan Singh, blood stained 'Sela' was recovered. The blade of the 'Sela' was seven and half inch in length. There was blood on the edges of the blade. He has also given the information about the collection of the material evidence from the spot.

12. P.W. 11 Dr. Manoj Kumar stated that on 21st March, 1998, he was posted as Medical Officer at Primary Health Centre. Sadul Shahar. He performed the post mortem of the dead body of deceased Tota Singh. He proved the post mortem report Ex. P. 23. He noted the following injuries on the dead body of deceased Tota Singh:

There is a incised elliptical wound 4cm x 1.5 cm x 5 cm deep at left side of lower part of Neck-carotid vessels are cut and clotted blood present in wound.

13. In his opinion, the cause of death was shock due to injury on the left carotid vessels. He also stated that he examined accused Darshan Singh on the same day and noticed the following injuries vide Ex. P. 24.

1. Lacerated wound 6 cm x 1/2 cm x muscle deep on left parietal region of scalp;

2. Bruise 3 cm x 2 cm on the left shoulder; and

3. C/o pain on right shoulder.

14. The injuries are simple in nature caused by blunt object. On careful scrutiny of the evidence of the eye witnesses Manjit Kaur (P.W. 2). Mohan Singh (P.W. 3) and Bohad Singh (P.W. 8), we find that their statements are natural and trustworthy. Nothing significant has been pointed out to disbelieve their statements. The only criticism made is that they are interested and inimical witnesses. It is well settled that merely because the witnesses are interested or related, their evidence cannot be brushed aside as normally such witnesses will not leave out the real culprits and rope-in innocent persons. The ocular testimony of three witnesses is corroborated by the medical evidence referred-to above. The evidence is further corroborated by the recovery of blood stained weapon of offence. The accused Darshan Singh while in police custody after making the disclosure statement vide Ex. P. 16, led the Investigating Officer in the presence of the motbirs and got the 'Barchha' (Sela) recovered vide Ex. P. 15. The recovery has been proved by the Investigating Officer, P.W. 9 Bhan Singh had motbirs P.W. 6 Lakh Singh and P.W. 7 Badal. The Serologist vide report Ex. P. 22 found the human blood on the 'Barchha' (Sela). He also found that Article 3 Kameej, Article 4 Chhaddar and Article 5 stained with 'A' group blood. The link evidence of keeping the Sela in the an intact condition till it reached to the F.S.L., has not been challenged. We ourselves have looked into the evidence. P.W. 5 Banwarilal stated that on 21st March 1998, he was posted as Head Constable, P.S., Sadul Shahr. The sealed articles were handed over to him by the Investigating Officer Bhan Singh, which he kept in the Malkhana. It is also stated that all the articles were handed over to Raj Kamal, P.W. 12, alongwith letter of S.P., Sri Ganganagar, to deliver those articles at the F.S.L. P.W. 12 Rajkamal has stated that he had collected the articles from Banwarilal, Malkhana Incharge of the Police Station, Sadul Shahr and delivered the same at the F.S.L. at Jaipur in sealed and intact condition.

15. It is contended by Mr. Sandhu learned Counsel for the appellant that as the injuries on the person of accused Darshan Singh have not been explained, the

inference must be drawn that the prosecution has suppressed the genesis and origin of the occurrence and, thus, has not presented true version of the incident, it is now well settled that where the prosecution evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood, the very fact that the injuries are not explained by the prosecution can not, by itself, be a sole basis to reject such evidence and consequently the whole case. Reference be made to latest decision of the Apex Court in Ram Sunder Yadav v. State of Bihar reported in 1998 S.C.C. (Cri.) 1630.

16. In the instant case, Ex. P. 24 shows that the accused has sustained few simple injuries caused by blunt object. All the witnesses have stated that the accused after inflicting injuries to Tota Singh climbed on the terrace, jumped and ran away. P.W. 11 Dr. Manoj Kumar has stated that such injuries can be sustained by fall. The evidence of the three eye witnesses on the material particulars, corroborated by the medical evidence and the recovery, is so convincing and natural that no doubt creeps into it for the failure of the prosecution to explain the injuries on the person of accused Darshan Singh. The prosecution case is not shaken at all on that account.

17. Learned counsel has next argued that the accused respondent has acted in right of private defence of person, it is submitted that the photograph of the site plan shows that there was a lathi lying near the dead body of Tota Singh, Which indicates that Tota Singh was armed with a lathi. He has criticised the investigation on the ground that the said lathi was not seized by the police. Learned counsel has referred to various decisions of the Apex Court to support the contention of self defence. In our view, the learned Counsel has raised the contention without any foundation. There is nothing to show that the deceased Tota Singh was armed with a lathi or in any case, there was any threat to the life of accused Darshan Singh by deceased Tota Singh. It appears that the learned Counsel has raised the contention only for the sake of raising the contention.

18. In alternate, it is submitted that as the only single injury has been attributed to the accused, as such, it can not be said that he had intention to commit murder. Thus offence will fall u/Section 304(ii) and not beyond that. In support of the

contention, he has relied on certain decisions of the Apex Court viz; Balaur Singh v. State of Punjab : 1995 CriLJ3611 Shitla Prasad v. State of U.P. : AIR 1994 SC1643 , Ayub v. State of U.P. : 1994 CriLJ1219 , Joseph v. State of Kerala : 1994 CriLJ21 Randhir Singh v. State of Punjab : 1982 CriLJ195 , and Virsa Singh v. State of Punjab : 1958 CriLJ818 . He has also referred to some of the decisions of this Court.

19. On the other hand, learned Public Prosecutor and learned Counsel for the complainant has argued that there is no invariable rule that in all cases of death by a single injury, the offence shall be culpable homicide not amounting to murder, punishable u/Section 304 (i) or (ii) IPC. In support of the contention, learned Counsel has placed reliance on decisions of the Apex Court viz; 1985 S.C.C. (Cri.) 231, Jai Prakash v. State (Delhi Administration) 1991 Cr. L.R. (S.C.) 167 and Baitullah v. State of U.P. : AIR 1997 SC3946 .

20. We have considered the rival contentions. The question is whether the offence committed by the accused respondent amounts to murder. In order to appreciate the contention, it will be appropriate to read Section 300 IPC, which reads as follows:

300. Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

2ndly. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

3rdly. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

4thly. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death of such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing

death or such injury as aforesaid.'

Exception 1. When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other persons by mistake or accident.

The above exception is subject to the following provisos:

First. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2. Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3. Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will, towards the person whose death is caused.

Exception 4. 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 under advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

21. In our judgment, this is a case which falls in the third category as enumerated above. It is not the case of the prosecution that the accused intended to commit murder of deceased Tota Singh. Thus, clauses I and II are ruled out. The ingredient of clause III is not the intention to cause death but intention to cause particular fatal injury. The nature of intention to cause a particular injury can be gathered from genesis of the occurrence such as sudden quarrel, grappling etc., kind of weapon used, part of the body hit and the amount of force employed. Once such an intention to cause particular injury is established and if the intended injury is found to be sufficient in the ordinary course of nature to cause death, clause III is attracted and it will be murder unless one of the Exception of Section 300 IPC is attracted.

22. In the instant case, the evidence is that there was enmity between the families of two brothers namely accused Darshan Singh and PW 3 Mohan Singh with respect to distribution of land. But there was no enmity with the deceased Tota Singh. Infact, the positive case of the prosecution is that Tota Singh who was an old person, was in a position to influence the accused Darshan Singh and make him understand to settle the dispute. He was infact invited by Mohan Singh to make Darshan Singh understand and sort out the dispute. However, the accused Darshan Singh arrived at the house of Mohan Singh armed with a Barchha. A quarrel ensued between the accused Darshan Singh and PW 8 Bohad Singh. Tota Singh, who was inside the house, hearing the raised voice of said two persons, came out and tried to pacify accused Darshan Singh. There is a specific and consistent evidence that everything happened all of a sudden. There was an oral altercation between the accused Darshan Singh and deceased Tota Singh. There

was absolutely no reason for Darshan Singh to cause injury to the deceased Tota Singh. However, all of a sudden, he gave a Barchhi blow on the neck of deceased Tota Singh. The post mortem report shows that there is an incised elliptical wound 4cm x 1.5cm x 5cm deep at left side of lower part of neck cutting the carotid vessels. It cannot be disputed that the neck is a vital part of the body. The meaning of the internal carotid artery has been given in the Concise Handbook of Human Anatomy, which is as follows:

Internal Carotid Artery - enters the skull through the carotid canal to run through the cavernous sinus and divide into the anterior and middle cerebral arteries, which are major components of the arterial circle at the base of the brain.

23. The said injury caused the death of Tota Singh instantaneously. The accused had used deadly weapon like Barchha. Thus, in our judgment, it is a case which falls in the third category of Section 300 IPC. We are in agreement with the trial Court and hold that the accused has been rightly convicted for the charge of murder of Tota Singh.

24. The next question arises for consideration is whether the reference made by the Addl. Sessions Judge should be accepted and the sentence of death be confirmed?

25. It is well settled that a death sentence is to be awarded only in rarest of rare cases. The only aggravated circumstance given by the trial court which brings the instant case in the category of 'rarest of rare cases' is that the accused respondent is a previous convict of the same offence. In our view, when a convict has been held guilty for the charge of murder on earlier occasion, that cannot be a sole aggravated circumstance for awarding the death sentence. The consistent view is that unless the nature of the crime and the circumstances of the offender reveal that a criminal is menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose lesser punishment and not the extreme punishment of death, which should be reserved for exceptional cases only. In the instant case, the killing was not for the gain and further it appears that the deceased was not the target for the murder. There is nothing so uncommon about the crime as to make the instant case an exceptional

one and the mere fact that the accused is a previous convict, will be not be sufficient to bring the case within the category of 'rarest of rare cases'.

26. In view of the aforesaid discussion, the Reference made by the learned Addl. Sessions Judge to confirm the death sentence is rejected. The appeal filed by accused Darshan Singh is also rejected. However, the conviction Under/section 302 IPC is upheld. The accused Darshan Singh is sentenced to imprisonment for life and to pay a fine Rs. 100/- and in default to further undergo one month's rigorous imprisonment.

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