

Sunil Vs. State

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Court : Delhi

Decided On : Jul-18-2011

Judge : Badar Durrez Ahmed; V.K. Jain, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34; Code of Criminal Procedure (CrPC) - Section 428

Appeal No. : CRL.A. 291/1997

Appellant : Sunil

Respondent : State

Advocate for Def. : Ms Richa Kapur, Adv.

Advocate for Pet/Ap. : Mr Nipun Bhardwaj, Adv.

Judgement :

1. The present appeal is directed against the judgment and order on sentence both dated 06.08.1996 delivered / passed by the Additional Sessions Judge, New Delhi in Sessions Case No. 82/1996 arising out of FIR 405/1991 registered at Police Station Vinay Nagar, under Section 302/34 IPC. Initially, there were three persons who were charged for having committed the offence punishable under Section 302/34 IPC. They were Sunil (the present appellant), Jagbir and his father Asha Ram. Jagbir and Asha Ram were acquitted by the learned Additional Sessions Judge by holding that in view of the evidence led by the prosecution, the

involvement of Asha Ram and Jagbir in committing the murder of Balraj is suspect and that the prosecution had failed to prove their involvement beyond a shadow of doubt. The present appellant Sunil was, however, convicted for committing the murder of Balraj. By virtue of the impugned order on sentence, the learned Additional Sessions Judge, sentenced the appellant Sunil to rigorous imprisonment for life and also directed him to pay a fine of ` 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for the offence punishable under Section 302 IPC. The benefit of Section 428 Cr. P.C was also directed to be given to the appellant.

2. The case of the prosecution is that the deceased Balraj and his brother PW5 Naurattan @ Kalu (complainant) as also the accused Sunil, Jagbir and Asha Ram used to keep pigeons and fly them as a sport. It is alleged on the part of the prosecution that on 2/3 occasions, the accused persons and in particular Sunil had caught / trapped the pigeons belonging to PW5 Naurattan. On the date of the incident, that is, on 25.10.1991, in the morning, Sunil is alleged to have again caught the pigeons belonging to PW5 Naurattan and to have clipped their wings. On earlier occasions also, there used to be altercations between Balraj and Naurattan on the one hand and Sunil and the other accused on the other with regard to the fact that Naurattans pigeons were being caught and kept by Sunil for the purposes of sale to others. It is alleged that on 25.10.1991 at about 2 pm when PW5 Naurattan had gone to CSC Market, Arjun Nagar and was climbing the stairs, the appellant Sunil chased him with a knife in his hand and threatened to kill him. At that point of time, Balraj, who was the elder brother of PW5 Naurattan is stated to have been standing at the shop of one Naresh PW2. Balraj is said to have enquired from the appellant Sunil as to why he was quarreling with his brother PW5 Naurattan. In the meanwhile, the other accused Jagbir and Asha Ram are said to have arrived at the scene. Both Asha Ram and Jagbir are alleged to have caught hold of Balraj from behind and thereupon the appellant Sunil allegedly stabbed Balraj on his chest and abdomen. Thereupon, Balraj started bleeding and fell down. While doing so, he cried out - "Sunil ne chaku mara hai (Sunil has stabbed me with a knife)". PW5 Naurattan then went to Balrajs home and brought his wife Smt. Bimla (PW4) to the spot. Thereupon, Smt. Bimla removed Balraj, with the help of one Kailash (PW8) in a three wheeler scooter

rickshaw to AIIMS hospital. On the way, Balraj is said to have told his wife Smt. Bimla that he had been stabbed with a knife by Sunil. On reaching the hospital, the doctor declared Balraj to have been brought dead.

3. On the same day, that is, on 25.10.1991, all the three accused, including the present appellant Sunil were arrested. It is the case of the prosecution that the appellant Sunil made a disclosure statement pursuant to which the blood stained knife Exhibit P-7 and his blood stained shirt Exhibit P-8 were recovered and seized. It is further the case of the prosecution that the blood group of the blood stains found on the knife and shirt matched the blood group „B which was that of the deceased Balraj. 4. The prosecution examined 18 witnesses in an attempt to prove its case against the accused. We have already pointed out that two of the three accused, namely, Asha Ram and Jagbir were acquitted by the trial court. The State has not preferred any appeals in respect of their acquittals. Thus, in the present appeal, we are only concerned with the appellant Sunil.

5. The learned counsel for the appellant submitted that the trial court has convicted the appellant Sunil on the basis of two purported dying declarations of the deceased Balraj as also in view of the testimony of PW5 Naurattan, who is the brother of the deceased Balraj. The trial court had also placed reliance on the testimonies of PW7 Phool Singh, PW17 Inspector A. K Sapra and PW18 Inspector M. S. Rathi for coming to the conclusion that the prosecution had proved that on 25.10.1991 itself, the appellant Sunil had been arrested and the blood stained knife Exhibit P-7 and the blood stained shirt Exhibit P-8 were recovered at this instance and were seized. Reliance was also placed on the CFSL reports Exhibit PW18/K and PW18/L to come to the conclusion that the blood group of the deceased Balraj and the blood found on the knife Exhibit P-7 and the shirt worn by the appellant Sunil Exhibit P-8 were of the same group „B. The trial court also was of the opinion that the appellant Sunil had failed to give any plausible explanation about the blood stains appearing on his shirt Exhibit P-8.

6. The learned counsel for the appellant submitted that PW2 Naresh Chand Chopra as well as PW8 Kailash have both turned hostile. Even PW5 Naurattan was hostile to a certain extent and had to be cross- examined by the learned APP.

The learned counsel for the appellant submitted that a bare reading of the testimony of PW5 Naurattan would indicate that he was actually not an eye witness of the stabbing incident. The learned counsel also submitted that the evidence on record casts serious doubts on the alleged dying declarations made by the deceased Balraj, both to PW5 Naurattan and to his wife PW4 Smt. Bimla because the evidence discloses that immediately after Balraj had been stabbed, he became unconscious and did not say anything. The learned counsel referred to the testimony of PW8 Kailash, who categorically stated that Balraj did not say anything to him or to Smt. Bimla. The learned counsel also submitted that PW2 Naresh Chand Chopra has not supported the prosecution case at all and stated that he had not seen any incident involving the accused and the deceased Balraj. The learned counsel submitted that PW2 Naresh is the person in whose shop Balraj is stated to have been standing when PW5 Naresh was being chased by the appellant Sunil, who was armed with a knife. The learned counsel for the appellant further submitted that the MLC Exhibit PW13/A, while it mentions that Balraj was brought to the hospital by his wife Bimla Devi, does not mention that he had been stabbed by Sunil. The MLC only records that Balraj had been brought dead at casualty at 2:44 pm on 25.10.1991. Thus, according to the learned counsel for the appellant no dying declaration was made by the deceased Balraj to his wife Bimla Devi on the way to the hospital. Because, if that were to be so, then, she would have mentioned the same and it would be written in the MLC. He also pointed out that there were many contradictions and inconsistencies in the testimonies of the key witnesses, namely, PW4 Smt. Bimla Devi and PW5 Naurattan. He also submitted that PW5 Naurattan, in his examination-in-chief, in the first instance, did not mention the stabbing incident. But, subsequently, he mentioned the same and furthermore, on cross-examination by the learned APP narrated the sequence of events as per the prosecution case. This, according to the learned counsel for the appellant, clearly indicated that PW5 Naurattan was not an eye witness as he had forgotten the correct sequence of events told to him and the same was only brought out when he was cross-examined by the learned APP. For all these reasons, the learned counsel for the appellant submitted that the case against the appellant Sunil is not free from doubt and, therefore, the impugned judgment and order on sentence be set aside and the appeal be allowed.

7. The learned counsel for the State submitted that although PW2 Naresh Chand Chopra and PW8 Kailash did not support the prosecution case in its entirety, however, their testimonies cannot be thrown out altogether. There are statements made by them which tend to support the prosecution case and the same can certainly be relied upon. It was submitted by the learned counsel that the presence of PW4 Smt. Bimla Devi, after the stabbing incident at the scene of crime, is proved by the statements of PW2 Naresh Chand Chopra and PW8 Kailash, both of whom State that PW4 Smt. Bimla Devi took the deceased Balraj from the spot to the hospital. It is also in evidence, on the basis of the MLC Exhibit PW13/A, that the deceased Balraj was brought to hospital by his wife PW4 Smt. Bimla Devi. Thus, the presence of PW4 Bimla Devi at the spot, after Balraj had been stabbed, according to the learned counsel for the State, stands established. It was also submitted that the fact that PW4 Bimla Devi accompanied the injured Balraj to the hospital also stands established. Therefore, according to the learned counsel for the State, there is nothing on record to doubt PW4 Bimla Devis statement that on the way to the hospital Balraj had told her that he had been stabbed by the appellant Sunil.

8. The learned counsel for the State further submitted that on the basis of the statements of PW7 Sh. Phool Singh, PW17 Inspector A. K. Sapra and PW18 Inspector M. S. Rathi it had been established that the blood stained knife and blood stained shirt belonging to the appellant Sunil was recovered at his instance on 25.10.1991 itself. Furthermore, as per the CFSL report, the blood found on the knife Exhibit P-7 and the shirt Exhibit P-8, matched the blood group of the deceased which was group „B. The learned counsel for the State also submitted that PW9 Dr Ramesh Chander, who conducted the post mortem examination on the dead body of Balraj noticed the following ante mortem injuries:-

"1. Stab wound was present on front of chest left side situated 13 cm below clavicle and 12 cm from middle line just on the lateral border of the left nipple. Wound is obliquely placed going medially downwards, backwards also. The margins were clean cut. Size was 1.5 cm x 0.5 cm x chest cavity deep. Gaping was

present and coagulated blood was present over the wound.

2. Stab wound was present on right hyaline cartilage situated 27 cm below mid clavicular point and size was 1.5 cm x 0.5 cm x abdomen deep. Margins were clean cut. Gaping was present and wound was obliquely placed going medially upwards and backwards.

3. Stab wound was present on the back of left shoulder. One cm. left to mid-line and 10 cm. below acromion. Wound is superficial and piercing muscles only. It was obliquely placed with clean cut margins. Size was 1.5 cm x 0.5 cm x 5 cm deep. All these injuries were ante mortem and fresh before death."

The learned counsel also submitted that PW9 Dr Ramesh Chander had given the cause of death to be hemorrhagic shock due to injuries caused by a sharp edged weapon and in his opinion the said injuries could have been caused by the knife recovered (Exhibit P-7).

9. The learned counsel for the State also submitted that although PW1 Narain Singh and PW2 Naresh Chand Chopra did not support the prosecution case, however, PW1 did state that an altercation had taken place between the deceased Balraj and Sunil at the spot where Balraj was ultimately found stabbed. Importantly, PW1 Narain Singh also proves the presence of PW5 Naurattan, as he stated that he had seen him at the spot.

10. The learned counsel for the State also submitted that this was a case of both ocular evidence as well as dying declarations and they corroborated each other. The learned counsel also submitted that the ocular evidence is that of PW5 Naurattan, who is the younger brother of the deceased, Balraj and whose presence had been established even by PW1 Narain Singh. Once the presence of PW5 Naurattan stands established, there is no reason to doubt the oral dying declaration made to him by the deceased Balraj to the effect that "Sunil ne chaku mara hai". The learned counsel for the State submitted that both the dying declarations as well as the ocular testimony of PW5 Naurattan have been believed

by the trial court and the same has resulted in the conviction and sentencing of the appellant Sunil. The learned counsel submitted that no interference with the impugned judgment or order on sentence is warranted in the facts and circumstances of the present case and the appeal ought to be dismissed.

11. On a consideration of the arguments of the counsel on both sides and upon an examination of the evidence on record, we find that the following stand established:-

(i) That the deceased Balraj received the above mentioned ante mortem injuries caused by a sharp edged weapon, which resulted in his death. This fact stands established from the testimony of PW9 Dr Ramesh Chander, who conducted the post mortem examination on the dead body of Balraj.

(ii) That the said ante mortem injuries were possible with the knife Exhibit P-7. This was also the opinion given by PW9 Dr Ramesh Chander.

(iii) That the blood stains on the knife Exhibit P-7 and the blood of the deceased found at the spot, had the same blood group „B. This is established by the CFSL reports Exhibit PW18/K and Exhibit PW18/L.

(iv) That PW4 Smt. Bimla Devi took the deceased Balraj from the spot to the hospital (AIIMS), where Balraj was declared as having been brought dead. This fact is clearly established by the MLC Exhibit PW13/A.

(v) That the shirt (Exhibit P-8), which was worn by the appellant Sunil, also had blood stains of the same group „B as that of the deceased.

12. The fact that the knife Exhibit P-7 and the shirt Exhibit P-8 had blood stains of the same group „B as that of the deceased is a very important and relevant fact. This would link the knife and the shirt with the incident. The question that remains to be answered with regard to the knife Exhibit P-7 and the shirt Exhibit P-8 is, whether they can be linked with the appellant Sunil. On examining the testimonies of PW7 Phool Singh, PW17 Inspector A. K. Sapra and PW18 Inspector M. S. Rathi, it is more than clear that the said knife Exhibit P-7 and the shirt Exhibit P-8 were recovered at the instance of the appellant Sunil on the same day as that of

the occurrence, that is, on 25.10.1991. There is nothing on record to controvert the said recoveries. Thus, there is a clear linkage between the knife Exhibit P-7 and the shirt Exhibit P-8 on the one hand and the appellant on the other.

13. While it is true that the testimony of PW5 Naurattan, who is stated to be an ocular witness, does not inspire much confidence insofar as him being an eye witness of the stabbing incident is concerned, this would not enable us to detract from the position that PW5 Naurattan was present, at least, immediately after the stabbing incident. Thus, while we may not believe PW5 to be an eye witness of the actual stabbing incident and the run up to the said incident, he was certainly present at the spot immediately thereafter. His presence has been admitted by PW1 Narain Singh, who has otherwise been declared hostile. Another fact to which PW1 Narain Singh testified was that on 25.10.1991 at about 2 or 2:30 pm, when he was going to his house, after making purchases at Arjun Nagar Market, he heard a verbal altercation between Sunil and Balraj. He, however, did not support the prosecution case thereafter inasmuch as he stated that he did not see any occurrence or quarrel between Sunil and Balraj and that all the accused persons had not caused any injuries to Balraj in his presence. He also negated the presence of Jagbir and Asha Ram along with Sunil. However, as pointed out above, this witness (PW1 Narain Singh) clearly fixed the presence of Sunil and Balraj and PW5 Naurattan at the spot. He also stated that he had not seen PW2 Naresh Chand Chopra, the shop keeper.

14. Thus, it is clear that the presence of PW5 Naurattan at the spot stands established, though it is not clear as to whether he had actually seen the stabbing or not. We have some doubt as to whether PW5 Naurattan had actually seen Sunil stabbing Balraj because his description does not seem to be plausible. According to him, on 25.10.1991, at about 2 pm, he went to CSC Market at Arjun Nagar and was climbing the stairs. Sunil ran after him with a knife in his hand and threatened to kill him. He ran away. But Sunil followed him and at that point of time, his brother Balraj was found standing at the shop of PW2 Naresh. According to PW5 Naurattan, his brother Balraj questioned Sunil as to why he was quarreling with his brother Naurattan. Then, it is stated that, in the mean time, the other accused Asha Ram and Jagbir had also arrived at the scene. Asha Ram had caught hold of

his brother Balraj from behind by clutching him with his arms and Jagbir had also caught hold of Balraj with his arms from behind. Then, there is no narration about what happened. But, PW5 Naurattan states that he went to summon his brothers wife Bimla Devi and brought her to the place of occurrence and Bimla and Kailash removed Balraj to the hospital in a three wheeler scooter as Balraj was in an injured condition. It is, at this point, that he stated that he had seen Sunil stabbing Balraj at the chest and abdomen and that Narain Singh and he tried to save Balraj. He also stated that his brother had fallen on the ground and had stated that "Sunil ne chaku mara hai".

15. From the above, it is clear that in the first instance PW5 Naurattan had jumbled the sequence of events. He stated that after Asha Ram and Jagbir had caught hold of his brother Balraj, he went to summon Balrajs wife Bimla and brought her to the place of occurrence and then he states that he had seen Sunil stabbing Balraj in the chest and abdomen. It is not even the prosecution case that PW4 Smt. Bimla or PW8 Kailash were witness to the stabbing incident. Thus, the stabbing incident did not take place after the arrival of Smt. Bimla Devi and Kailash on the scene. Although in the cross-examination by the learned APP, the sequence had been corrected by this witness, when he stated that "in fact, I had gone to my house after the stabbing had taken place". It is this jumbling of the sequence of events that has introduced an element of doubt in our minds with regard to the claim of PW5 Naurattan that he was an eye witness of the actual stabbing incident.

16. But, this does not mean that the testimony of PW5 Naurattan can be thrown out in toto. The fact that PW5 Naurattan was present at the spot stands clearly established, as indicated above. The fact that he went to his house to call Balrajs wife Smt. Bimla Devi also stands established. The fact that Smt. Bimla Devi came to the spot and had taken Balraj to hospital from the spot itself has also been established by the prosecution. So, although we may not rely upon PW5 Naurattan as an eye witness of the actual stabbing incident, other parts of his testimonies, which are unshaken in cross-examination by the defence, can certainly be relied upon. We must also not forget that PW5 Naurattan was 16 years old at the time of his testimony before Court on 01.11.1993. In other words, he must have been

about 14 years old at the time of the incident. There is a possibility that he may have been confused about the sequence of events. However, nothing has been brought out in cross-examination or on the basis of other evidence on record to show that when his brother Balraj was lying injured on the ground, he had not made a dying declaration to PW5 Naurattan that Sunil had stabbed him ("Sunil ne chaku mara hai").

17. The fact that PW8 Kailash has not supported the prosecution case inasmuch as he stated that when Balraj was found lying injured, he was not talking nor did he tell him or Smt. Bimla anything, does not take away anything from the testimony of PW5 Naurattan that Balraj had told him that Sunil had stabbed him. This is so because both Kailash and Smt. Bimla Devi arrived at the scene after PW5 Naurattan. There are some contradictions between the testimonies of PW8 Kailash and PW4 Smt. Bimla Devi as to which of them arrived at the spot earlier. But, there is no confusion or doubt with regard to the fact that PW5 Naurattan was the first in point of time to see his brother Balraj in an injured condition. Thus, the statement of PW8 Kailash that Balraj did not say anything to him or to Smt. Bimla Devi does not take away anything from the statement of PW5 Naurattan that Balraj had told him that it was Sunil who had stabbed him.

18. There is also some doubt as to whether PW8 Kailash accompanied Bimla Devi to hospital or not. He says that he did not go to hospital with Bimla Devi, whereas PW5 Naurattan, PW2 Naresh as well as PW4 Bimla Devi all say that Balraj was taken to the hospital by Bimla Devi and Kailash.

19. From the foregoing discussion, it is apparent that the prosecution has been able to establish that there was an altercation between Sunil and Balraj. It has also been able to establish that the altercation took place around 2- 2:30 pm on 25.10.1991 and that is the time when Balraj received the ante mortem injuries mentioned above, to which he succumbed. The ante mortem injuries were caused by a sharp edged weapon and in the opinion of PW9 Dr Ramesh Chander, the same could have been caused by the knife Exhibit P-7 which was recovered at the instance of Sunil. The knife Exhibit P-7 had blood stains on it and as per the CFSL report Exhibit PW18/L, the blood group was the same as the blood group of the

deceased. The shirt Exhibit P-8, which was worn by Sunil and had been seized on the date of the incident itself, that is, on 25.10.1991, also had blood stains. As per the said CFSL report, the blood stains were also of the same blood group „B. Apart from this, the prosecution has also established that PW5 Naurattan was present at the spot. Although he may not have witnessed the actual occurrence, there is nothing to controvert his testimony with regard to the oral dying declaration made to him by his brother Balraj to the effect that Sunil had stabbed him with a knife. The prosecution has also established that Smt. Bimla Devi arrived at the scene on being called by PW5 Naurattan and it is she who took her husband Balraj in a three wheeler scooter rickshaw to AIIMS, where he was declared as having been brought dead. In her testimony, she has also stated that in the course of journey to the hospital, Balraj had told her that it was Sunil who had stabbed him. Even if we do not go by this dying declaration, the dying declaration made to PW5 Naurattan, stands uncontroverted. That fact, coupled with the surrounding circumstances, clearly point towards the appellant Sunil even if we were to disregard PW5 Naurattan as an eye witness of the actual incident of stabbing.

20. For all these reasons, no interference with the impugned judgment and order on sentence is warranted. The sentence of the appellant had been suspended for the duration of the appeal and he had been released on bail. The suspension of sentence stands cancelled. The appellant be taken into custody. The appeal is dismissed.

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