
(1994) 06 P&H CK 0003

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 58-DB of 1993

Surjit Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: June 3, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (1995) CriLJ 1059 : (1994) 3 RCR(Criminal) 323

Hon'ble Judges: S.S. Grewal, J; A.S. Nehra, J

Bench: Division Bench

Advocate: R.S. Ghai and Bipan Ghai, for the Appellant; I.P.S. Sidhu, AAG, for the Respondent

Final Decision: Allowed

Judgement

S.S. Grewal, J.

This appeal is directed against the order of Sessions Judge, Patiala, dated 4-1-1993, whereby the present appellant was convicted u/s 302 of the Indian Penal Code for intentionally committing the murder of Sital Singh of his village and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 200/-. In default of payment of fine he was ordered to undergo further rigorous imprisonment for one year.

2. In brief facts of the prosecution case as emerge from the first information report lodged by Tarlochan Singh son of the deceased and a student of 10+2 class are that on 29-11-89 a dance and music party was giving performance in the house of Gurmel Singh of his village in connection with his marriage. The marriage party was to leave on the next morning. Tarlochan Singh went to see that performnce. At about !() P. M. his mother Charanjil Kaur and his father Sital Singh came there and on their asking Tarlochan Singh PW left with his parents in order to return to their house. On their way back as they reached near the Nimwala Chowk Surjit Singh alias Sita appellant whose house is situated near that Chowk asked Sital Singh to come to his house as he wanted to talk to

him. Sital Singh went inside that house while his wife Charanjit Kaur and their son Tarlochan Singh remained in the street. In the meantime Sital Singh raised alarm "Na Maro Na Maro", On hearing that Tarlochan Singh and Charanjit Kaur PWs went inside that house and saw Surjit Singh appellant inflicting injuries to Sital Singh with Loon Ghotna (a short round flat stick with which salt and spices and such other material is grinded). Sital Singh was lying fallen on the ground in the courtyard of the house of Surjit Singh. At that time electric light in the verandah of the house of Surjit Singh was on. Charanjit Kaur and Tarlochan Singh PWs came forward to rescue Sital Singh. Surjit Singh appellant gave a sota blow on the fore-head of Tarlochan Singh and another blow with the sota to Charanjit Kaur PW on her head. Both Tarlochan Singh and Charanjit Kaur PWs out of fear came on the raise plat-form and raise alaram but no one came there immediately, in the meantime, Surjit Singh appellant ran away from the spot after inflicting injuries to the complainant party. Thereafter Tarlochan Singh PW and Charanjit Kaur PW went inside the house and found that Sital Singh had already succumbed to the injuries. Blood was oozing out of his head and there was injuries all over his body.

3. The motive for the crime is that Surjit Singh appellant suspected that Sital Singh had developed illicit relations with his wife Smt. Bhuro.

4. Leaving Charanjit Kaur and Sadhu Singh Chowkidar to guard the dead body of his father, Tarlochan Singh PW accompanied by Ram Singh Lambardar went to the police station and lodged (he first information report which was completed at 12.30 A.M. on 30-11-1989 and the special report reached the Ilaqa Magistrate at 3. A. M. on 30-11-1989. Tarlochan Singh PW also made supplementary statement Ex.PE/1 before S. I. Slier Singh PW. 11. The said Sub Inspector along with other police officials accompanied Tarlochan Singh and Ram Singh to their village and reached there at about 2 A.M. on 30-11 -1989. At that time dead body of Sital Singh was lying in the court yard of the house of Surjit Singh appellant which was being guarded by Charnjit Kaur and Sadhu Singh Chowkidar. SI Sher Singh then prepared inquest report and sent the dead body for postmortem examination through Head Constable Joginder Singh and Constable Gurdial Singh at about 9 or 10 A.M. on 30-11-1989. The Sub Inspector also inspected the spot, prepared rough site plan, lifted brick bats Ex. P2 to P4 and blood stained earth from near the spot which were duly sealed and taken into possession through seizure memos. Surjit Singh appellant was arrested on 8-12-1989. His shirt Ex. P 12 and Pajama Ex. P 13 were taken into possession through memo Ex. PL. On 10-12-1989 while in police custody Surjit Singh appellant was interrogated concerning the weapon of offence. In pursuance of his disclosure statement Surjit Singh appellant got recovered Loon Ghotna (hereinafter referred to as Ghouna) in broken condition from underneath a heap of Turi lying in a room of his residential house. The Ghotna was stained with blood. The same was sealed and taken into possession through seizure memo. After completion of the investigation the appellant was challaned, tried, convicted and sentenced, as stated earlier.

5. Aggrieved against the order of his conviction and sentence passed by learned trial Court, Surjit Singh appellant has filed the present appeal.

6. Dr. I.D. Goyal, PW. 1 conducted autopsy on the dead body of Sital Singh on 30-11-1989 at 11.45 A.M. and found the following injuries :--

(1) Lacerated wound 1.5" x 0.5" x bone deep, 1" above the left eye brow. Clotted blood was present in the wound.

(2) Lacerated wound 1" x 5" x bone deep, 1" above injury No. 1.

(3) Lacerated wound 1" x 0.25" x muscle deep, 1" below injury No. 1. Clotted blood was present in the wound.

(4) Lacerated wound "T" shaped 0.5" wide with vertical limb 3" long and horizontal limb 1.5" long, 2" behind pinna of right ear. On dissection of wound, there was fracture of underlying skull bone. On opening the skull, there was dark brown blood in subdural space,, about 150 cc. meninges were congested and brain was lacerated.

(5) Lacerated wound 3" x 0.5" x bone deep 1" behind injury No. 4. Clotted blood was present.

(6) There were multiple irregular abrasions on front of right shoulder and outer side of right arm. All abrasions were brown.

(7) There were multiple irregular brownish abrasion on front of right leg extending from knee joint to the foot.

(8) Multiple abrasions irregular in shape, brownish in colour from left leg extending from knee joint to the foot.

(9) Lacerated wound 1" x 0.5" x bone deep on front of left leg 5" above the medial malleolus. Clotted blood was present.

(10) Lacerated wound 0.25" x. 0.25" x bone deep 1" below injury No. 9. Clotted blood was present.

(11) Lacerated wound 1" x 0.5" x bone deep on front of leg. 4" below tibial tuberosity. Clotted blood was present.

(12) Multiple irregular bluish red contusions involving whole of outer surface of right upper limb.

(13) Multiple bluish red contusion about 40 in number varying in size from 2" x 0.5" to 5" x 0.5" in size involving front and lateral sides of thorax and abdomen. On dissection of the chest, there was fracture of 4th, 5th and 6th ribs on left side and 6th and 7th on right side. There was effusion of blood in the adjoining tissues.

(14) There were multiple bluish red contusions varying in size from 3" x 1" to 6" x 1" involving lateral and front side of whole of right lower limb.

(15) There were multiple bluish red contusions varying in size from 3" x 1" to 10" x 1" involving lateral and front side of whole of left lower limb.

(16) Multiple bluish red contusion about 15 in number varying in size from 2" x 0.5" to 6" x 0.5" involving front and lateral surface of left upper limb.

(17) There was swelling of lower part of left arm, wrist joint and hand. On dissection, there was effusion of blood and fracture of lower end of radius and dislocation of wrist joint and fracture of 1st metacarpal bone.

Stomach contained about 150 cc of fluid contents. Small intestines contained semi solid contents and large intestines contained gases and faecal matter. Death in the opinion of the said doctor was due to shock and haemorrhage as a result of multiple injuries which were sufficient to cause death in the ordinary course of nature. Injury No. 4 alone was sufficient to cause death in the ordinary course of nature. All the injuries of the deceased except head injury could be caused by Ghotna whereas head injuries of the deceased could be caused by bricks Ex. P2 to P. 4 recovered from near the spot.

7. The appellant when examined u/s 313 of the Code of Criminal Procedure by the learned trial Court pleaded that on the night intervening 29/30-11-1989 dancing party came to their village on the occasion of the marriage of Gurmel Singh. In order to see that performance he went to the house of Gurmel Singh. At about 10 P.M. when he was watching the performance he heard a commotion in village that Sital Singh deceased had trespassed into his house in order to molest his wife and that inmates of the house and the neighbored had given injuries to Sital Singh. On hearing this commotion, he came to his house. His wife Bhuro told him that Sital Singh entered their house in order to molest her; that she raised an alarm which attracted her children and neighbored who caused injuries to Sital Singh in order to save her honour. During the same night he went to the Police Station to report the matter to the police but he was illegally detained by the Thanedar who subsequently implicated him in a false case. He denied the presence of Charanjit Kaur PW in the village and stated that she was away to the house of her parents.

8. In his defence Smt. Bhuro appeared as DW. I who deposed that she had illicit relations with Sital Singh for the last about 13 years. About one year prior to the present occurrence she had slopped Sital Singh to come to her house as her daughter was of marriageable age and other children had grown up. In spite of her objections Sital Singh used to visit her house against her consent and in a forceful manner and used to commit sexual intercourse with her against her wish and consent. On the night of occurrence her husband Surjit Singh went to the house of Gummel Singh in order to watch performance of the dancing party who had come to their village in connection with the marriage of Gurmel

Singh. At about 9 P.M. she was present in the kitchen and busy in cleaning the utensils. Sital Singh deceased trespassed in their house by scaling over the wall and wanted to commit sexual intercourse with her against her will and consent. She raised rōla for her safety as a result of which her children woke up and came near her. On hearing the rōla several other persons including her husband's brothers armed with sotas and bricks collected at the spot and all of them started giving beatings to the deceased. But to the injuries Sital Singh died. Her husband Surjit Singh was called from the house of Gurmel Singh and she narrated the entire occurrence to him. Surjit Singh then left for the police station during the night in order to lodge the report, but he was detained at the police station. She also narrated the entire occurrence to the police but the police did not take any action. Surjit Singh appellant then closed his defence.

9. We have heard the learned Counsel for the parties and have carefully perused the record with their help.

10. Both according to the prosecution as well as the defence Sital Singh deceased had developed illicit intimacy with Smt. Bhuro wife of Surjit Singh appellant. It is also the case of both the parties that Sital Singh deceased received numerous injuries inside the house of Surjit Singh appellant on the night of 29-11-1989 at about 9 or 10 P.M. and died there. Motive is a double edged weapon. At any rate in the instant case the motive cannot be said to be entirely on the side of the appellant alone to commit the murder of Sital Singh deceased.

11. According to the prosecution the occurrence took place at about 10 P.M. on 29-11-1989. After the occurrence Tarlochan Singh PW accompanied by Ram Singh Lambardar went and lodged the first information report at 12-30 A.M. on 30-11-1989 after covering a distance of six miles. The special report in this case reached the residence of the Ilaqa Magistrate at Patiala at 3 A.M. The first information report lodged in this case contains all the details except the manner that the head injuries of the deceased were caused as a result of hurling of brick bats which fact is conspicuous by its absence from the earliest version contained in the first information report wherein all the injuries of the deceased are alleged to have been caused by Ghotna. In these circumstances it is quite apparent that the first information report has been lodged with all promptitude. However, mere promptness is no guarantee of genuineness of the first information report and each case has to be decided on its own circumstance.

12. On behalf of the prosecution, it was urged that the first information report is not an encyclopaedia of facts and that supplementary statement made during the investigation became necessary when Tarlochan Singh PW who was in great agony was able to recall the manner in which the deceased had received head injuries as a result of brick bats. In view of the changed version it would be quite prudent to seek independent corroboration concerning the ocular account given by Tarlochan Singh and Charanjit Kaur PWs in the instant case.

13. According to the prosecution case the ocular account rests on the testimony of Tarlochan Singh son and Charanjit Kaur wife of Sital Singh deceased. The main occurrence both according to the prosecution and the defence took place inside the courtyard of the house of Surjit Singh appellant. The main question which arises for determination in this case is as to whether the presence of Tarlochan Singh and Charanjit Kaur PWs at the spot at the time of the occurrence is worthy of credence. According to the prosecution, Tarlochan Singh PW had gone to the house of Gurmaj Singh in connection with whose marriage dancing and music party had given its performance on that fateful night. According to Charanjit Kaur PW she and her husband went together to the house of Gurmaj Singh in order to bring their son Tarlochan Singh to their house. Since Tarlochan Singh had not returned by 10 P.M. on that winter night, naturally, it would cause concern for the parents to bring their son Tarlochan Singh a teen-ager to their house. In such a situation, normally Sital Singh alone was expected to go to bring his son Tarlochan Singh to his house. However, in view of the fact that the house of Surjit Singh appellant falls on the way, Charanjit Kaur did not trust that her husband alone would do the needful suspecting that her husband instead of going to the house of Gurmaj Singh was likely to go to the house of Surjit Singh to carry on his liaison with the wife of Surjit Singh appellant. She also accompanied Sital Singh deceased. The prosecution case that on the way back as the complainant party was passing near the house of Surjit Singh appellant, the latter asked Sital Singh to come and talk to him or that Sital Singh went with Surjit Singh appellant in his house at that odd hour of the night does not sound natural, probable or convincing. However, it seems that after Charanjit Kaur and Tarlochan Singh PWs had already gone back to their house and finding an opportunity the deceased alone went to the house of Smt. Bhuro wife of Surjit Singh appellant to fulfil his lust and was given injuries by the grown up sons, brothers of Surjit Singh appellant and other neighboured. In this view of the matter, the occurrence certainly has not taken place in the manner deposed to by the two eye-witnesses, produced by the prosecution.

14. Another important aspect of the case is that Tarlochan Singh is not a wholly reliable witness. After lodging the first information report he tried to change his version that at a later stage during the occurrence When the Ghotna with which Surjit Singh appellant had caused injuries to the deceased, broke into two pieces, he hurled brick bats and caused head injuries to the deceased. This change in stand was necessary after the doctor who conducted autopsy on the dead body of the deceased had opined that the head injuries of the deceased possibly could be caused by brick bats and not as a result of direct blows given with Ghotna. This aspect of the case contradicts the earliest prosecution version given in the first information report. The explanation given by the prosecution that Tarlochan Singh PW would not remember all the vivid details about the manner which the occurrence took place and gave the subsequent details in his supplementary statement to our mind would not constitute a plausible explanation in the circumstances of the present case. It is quite obvious that this change in the prosecution version was after the Investigating Officer obtained a copy of the post-mortem report. In view of the

circumstances detailed above the testimony of Tarlochan Singh and Charanjit Kaur PWs concerning the manner in which the occurrence took place does not sound natural, probable and convincing.

15. On the other hand the testimony of Smt. Bhuro wife of Surjit Singh appellant that as the latter was not present in the house and had gone to the house of Gurmel Singh to watch the performance of the dancing party seems natural, probable and convincing. It seems that taking advantage of the absence of the appellant, the deceased trespassed into the house of Surjit Singh appellant in order to satisfy his lust and on the alarm raised by Smt. Bhuro her grown up sons and brothers of Surjit Singh appellant and neighboured attracted to the spot and caused injuries to Sital Singh as a result of which he succumbed to the injuries. In the circumstances of the case the defence set up in this case seems more probable and convincing than the case set up by the prosecution.

16. For the forgoing reasons, we are of the considered view that the prosecution has failed to bring home charge u/s 302 of the Indian Penal Code against Surjit Singh appellant beyond reasonable doubt setting aside the order of conviction and sentence passed by the learned trial Court against the appellant we hereby acquit him. This appeal is allowed.