

Kundan Singh vs Delhi Administration on 20 December, 1974

Equivalent citations: AIR1975SC1484A, 1975CRILJ1085, (1975)3SCC822, AIR 1975 SUPREME COURT 1484, 1975 3 SCC 822, 1976 (1) SCJ 141, 1976 MADLJ(CRI) 124, 1975 SCC(CRI) 241

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Bench: A.C. Gupta, M.H. Beg, Y.V. Chandrachud

JUDGMENT

M.H. Beg, J.

1. The appellants before us by grant of special leave, Mohinder Singh, Kundan Singh and Piara Singh were convicted under Section 302/34, Section 364/34 and Section 325/34, I.P.C and sentenced to life imprisonment, 5 years R.I. and 2 years R.I respectively by an Additional Sessions Judge, Delhi. The Delhi High Court had confirmed their convictions and sentences.

2. The learned Counsel for the appellants points out that there is no eye-witness at all of the alleged murder which is said to have resulted from the illicit relations between the deceased Surjit Singh and Jaswant Kaur the widow of Tara Singh and who is the mother of Mohinder Singh, appellant, and the sister of the appellants Kundan Singh and Piara Singh. Tara Singh is said to have died about a year and a half before the occurrences of 2-7-1968 which were the subject matter of the charges against the three appellants before us as well against Joginder Singh the elder brother of Tara Singh and his wife Pritam Kaur who were acquitted by the Trial Court, and Kartar Singh who was acquitted by the High Court.

The First Information Report relating to abduction and murder was lodged on 2-7-1968 at police station Kingsway Camp at 2.45 P.M. by Jaswant Kaur, PW. 1. It discloses the following prosecution case: Jaswant Kaur was living with her three sons including Mohinder Singh and two daughters. She had developed illicit relations with Surjit Singh resident of Kingsway Camp during the lifetime of her husband. These were so open that all her relations knew about it. Her eldest son Mohinder Singh aged about 22 to 23 years and other relations were very resentful due to all this. They stopped her maintenance allowance. She used to often remain at the house of Surjit Singh alias Ajit Singh during the day time and spent her nights with a girl friend at Shakti Nagar. Her brother-in-law, Joginder Singh and his wife were also very annoyed with her. On the morning of 1st July, 1968, her relations did not even allow her to enter her house. On the 1st July, 1968, her son Mohinder Singh and her brother-in-law Joginder Singh, his son Bhajan Singh and one Jit Singh had beaten her with shoes and dundas, but she could not lodge the F.I.R. of that occurrence. On the morning of 2nd July, 1968, they all conspired with Kartar Singh, a resident of Gandhi Nagar to bring Ajit Singh into their

house, sent away the children from the house and then the five accused persons, Kartar Singh, Mohinder Singh, Joginder Singh, Kundan Singh and Piara Singh took Surjit Singh into an adjoining room, beat him up with shoes and sticks. They then forced Jaswant Kaur into the same room and asked her to sleep with Ajit Singh and they beat her as well. Surjit Singh her paramour, succumbed to his injuries. Mohinder Singh and Piara Singh removed the blood stained cloths from his body. Jaswant Kaur's brother-in-law's wife wiped the blood off from the floor.

3. In her evidence in court Jaswant Kaur, P.W. 1 had gone back upon her statement to the police and the F.I.R. She tried to make out that some strangers and not the accused had attacked Surjit Singh and her. We, however, find that the Sessions Judge as well as the High Court have committed the mistake of drawing largely upon the version of Jaswant Kaur, P.W. 1 in her statement to the police which could only be used to contradict her statement in court.

4. The only other direct evidence is of Satpal Singh, P.W. 2 and of Gur Lal, P.W. 4 who were staying at the house of Surjit Singh when the accused persons are said to have come to Surjit Singh's house to take him away with them. The accused persons are said to have led Surjit Singh for some distance while talking to him. He was not even properly clothed as he had been bathing under a hydrant. It was alleged by Sat Pal Singh that Surjit Singh had sent for his clothes through him and then had got into a car with the accused and Gur Lal, P.W. 4. Sat Pal Singh had identified Mohinder Singh in court as the driver of the car, and Kartar Singh the acquitted accused person and Piara Singh and Kundan Singh appellants as the companions of Mohinder Singh who took away Surjit Singh and Gur Lal. Gur Lal, P.W. 4, who was also declared hostile by the prosecution was said to have been dropped from the car somewhere on the way. He did not identify any of the appellants. His evidence therefore was of no use. It is pointed out to us that there was no identification parade during investigation to corroborate the evidence in court of Sat Pal Singh, P.W. 4. We do not propose to have entered into that question in this case.

5. From the evidence of past relations between Jaswant Kaur and members of her family and Ajit Singh deceased, we find that Ajit Singh had been trying to induce Jaswant Kaur to return to her house and not to pester him by coming to his house where he was living with his own wife. Apparently, relations between Ajit Singh and Jaswant Kaur had brought disgrace to the family of Mohinder Singh. We have no reason to doubt the version of Sat Pal Singh, P.W. 2 which finds corroboration from other evidence dealt with at length by the Trial Court and the High Court that the four accused persons had induced Ajit Singh to accompany them. But, as no conversation between them and Ajit Singh except that they wanted to have a talk with Ajit Singh was heard by Sat Pal Singh, we are unable to find any evidence of the use of force or deceit in taking away Ajit Singh to the house of Mohinder Singh. It is clear that Ajit Singh went voluntarily. They may have taken Ajit in order to find some lawful solution to the problem before them. We also find that Jaswant Kaur was also seriously injured and had a stab wound and Mohinder Singh had one injury on his hand. Further more, we find that Mohinder Singh himself had gone and lodged the F.I.R. at 1.20 P.M. at police station, Roshanara in which he alleged that his mother and Ajit Singh, who had illicit relations between them, were found on one bed and were injured at his house and he wanted help. This suggested that he was not aware that Ajit Singh was dead.

6. After having been taken through the relevant evidence the most significant part of which is the post-mortem report we are unable to hold that the circumstantial evidence against the above-mentioned accused is enough to bring home a charge under Section 364/34, I.P.C. or under Section 302/34 beyond reasonable doubt. It is, however, clear to us that the appellants did play a leading part in taking away Ajit Singh to the house of Mohinder Singh and had actually, on an earlier occasion, threatened him with dire, consequences. Considering the background their inability to account for the injuries of the deceased who was found lying injured in the house of Mohinder Singh and the injuries of Jaswant Kaur and Mohinder Singh, we think that the Trial Court and the High Court correctly concluded that atleast the three appellants before us inflicted the injuries on the deceased Ajit Singh in the occurrence that took place at the house of Mohinder Singh on the morning of 2nd July, 1968. We are, however, unable to conclude that each of the appellants must have intended to bring about the death of the deceased. If that was the intention it would have been, most probably, put into execution in a very different fashion. The injuries on the body of Ajit Singh deceased together with the injuries on the body of Jaswant Kaur and one on Mohinder Singh enable us to guess that whatever may have taken place at the house of Mohinder Singh must have been the result of some sudden quarrel due to exchange of hot words. However, we cannot indulge in guess work except to conceive of reasonable possibilities left open by circumstantial evidence. We think that the possibility of the common intention to give Ajit Singh only a beating was not excluded by the evidence on record. There were five injuries on his body and they were as follows:

(1) Rt. eye-lid is bruised with ecchymosis round about CLW, (2) 3" x 1/2" scalp on right parietal, region directed transversely, edges of the wound ragged, (3) Scattered abrasion over an area 1" x 1/2". over rt. side of forehead and another (4) 1/2" x 1/2" behind the right ear. (5) scattered abrasions over back of right elbow over an area 1" x 1/2".

The doctor stated that., under the skull bones, "brain surface is bruised with few blood clots in sutural spaces" He also deposed that death in his opinion is "due to rupture of the spleen and intracranial haemorrhage possibly by a blunt force injury."

7. The above-mentioned evidence therefore shows that death was the combined result of rupture of the spleen as well as of one of the blows on the head. We do not even know which accused caused the severe stray injury on the head. We cannot hold all the accused liable for it unless there was a common intention to cause such injuries as may cause death. On this aspect, we are left in the region of doubt.

8. In these circumstances, we think that the ends of justice would be served if we set aside the convictions and sentences of the appellants under Section 302/34 and Section 364/, 34, I.P.C. and convict each of the appellants under Section 304 Part II I.P.C We, accordingly, do so. We also maintain the conviction and sentences of the appellants under Section 325/34, I.P.C. and the sentences to run concurrently with those under Section 304, I.P.C. As we are informed that each of the appellants has been in jail for about 5 years, we sentence them to the period already undergone and direct that they be released forthwith.