

## Sunder Singh vs The State on 27 January, 1955

**Equivalent citations: AIR1955ALL367, 1955CRILJ671, AIR 1955 ALLAHABAD 367**

### JUDGMENT

Randhir Singh, J.

1. The appellant in this case has been convicted by the learned Additional Sessions Judge of Lucknow Under Section 302, I.P.C. and sentenced to death.

2. The case arose out of a murder said to have been committed within the precincts of the city of Lucknow. Ram Lal deceased was an orderly constable of the Deputy Inspector General of Police (Central Range) and used to live in the quarters attached to the residence of the Deputy Inspector General. Some other constables, who were also on the staff of the Deputy Inspector General, resided in the out-houses and one of them was Sunder Singh, who was driver of the staff car. It was alleged on behalf of the prosecution that Sunder Singh appellant, who was a widower, developed intimacy with the young wife of Ram Lal deceased, who also resided with her husband in a kothri close to the kothri of Sunder Singh.

On the night between the 2nd and 3rd February 1954, at about 10 P. M. Ram Lal and Sunder Singh went together on a cycle. Ram Lal was paddling the cycle while Sunder Singh sat behind him on the carrier. At about 1 A. M. Sunder Singh alone returned to the house of the Deputy Inspector General of Police and he was seen by three persons Ram Het, Sadhu Ram and Nabban Khan. Ram Lal did not return with him.

At about 6 A. M. a constable who happened to go out noticed a dead body of a constable lying about a furlong away from the gate of the residence of the Deputy Inspector General of Police. Some people went to see the corpse and it was found that the dead body was that of Ram Lal constable. Intimation was given to the Deputy Inspector General and a first information report was lodged by Ram Het constable at about 7.40 A. M. at the Hazratganj police station.

It was mentioned in this report that Ram Lal and Sunder Singh had gone together on a cycle and at about 1 A. M. Sunder Singh alone returned but Ram Lal did not return. The manner in which the dead body of Ram Lal was discovered is also mentioned in the report. Ram Het constable, who made the first information report, also mentioned in the report that he had suspicion that Sunder Singh had hacked Ram Lal to death.

3. After the report was lodged, Sub-Inspector Ishtiaq Ahmad came to the place of occurrence and started investigation. He recorded the statements of witnesses and prepared a site plan. The place

where the dead body was found as also the residence of the Deputy Inspector General of Police and other adjoining houses are shown in the site plan. Investigation continued and at 3 or 3.30 P. M. the investigating officer chanced to notice a few stains of blood on the shoes worn by the accused. Subsequently his kothri was searched and from a box of which the key was handed over by the appellant a blood-stained patloon and shirt were recovered from the box. The investigating officer was then taken to a culvert from underneath which a blood-stained karauli was taken out by the appellant and given to the Sub-Inspector. A recovery list of all these articles was then prepared and ultimately the appellant was sent up for trial.

4. The dead body of Ram Lal was sent after an inquest for post mortem examination, which was conducted by the Civil Surgeon. He found as many as 32 incised wounds and stab wounds on various parts of the body of Ram Lal, and death was due in his opinion to shock and haemorrhage from the extensive injuries received by the deceased. The deceased was a young man, about 28 years of age, and was well developed and muscular.

5. The defence of the appellant was that he did not know anything about the murder. He denied recovery of the blood-stained articles or the making over of the karauli as also the fact that he went out with the deceased at 10 P. M. on the night when the murder was committed.

6. The learned Additional Sessions Judge believed the story of the prosecution and found the case established satisfactorily against the appellant and sentenced him to death. He has now come up in appeal. There is also the usual reference by the Sessions Judge for the confirmation of the sentence of death passed against the appellant.

7. The prosecution examined all the three constables, Ram Het, Sadhu Ram and Nabban Khan, who had seen the appellant return alone at 1 A. M. Ram Het and Sadhu Ram also stated that they had seen the appellant and Sunder Singh going together on a cycle at 10 P. M. and that Ram Lal was paddling the cycle and Sunder Singh was sitting on the carrier. All these three Witnesses were brother constables of the appellant and were working together at the residence of the Deputy Inspector General of Police. No suggestion of any enmity of any kind has been made with any of these witnesses. An attempt has been made in cross-examination to show that these witnesses were also perhaps friendly with the wife of Rani Lal and any of them may have been instrumental in the death of Ram Lal. This suggestion, however, does not proceed beyond the stage of suggestion, and there is no evidence in support of it. We are unable, therefore, to give credence to this suggestion.

8. Besides these three witnesses, two witnesses of recovery Abdul Habib and Muhammad Irshad have also been examined. They were both 'rickshaw walas' and happened to pass on the road at the time when the sub-inspector was in quest of search witnesses. It has been pointed out by the learned Counsel for the appellant that such search witnesses are usually under the thumb of the police and it is not unoften that they are called for purposes of attesting recovery lists when no respectable person comes forward to witness the recovery.

The investigating officer Ishtiaq Ahmad has given an explanation which appears to us to be very probable. He stated that the only houses which were in the vicinity of the house of the Deputy

Inspector General of Police were those of Ministers and he sent word to those persons who resided in the outhouses of the Ministers' residences but none of them turned up and he, therefore, waited for some persons to pass on the road in order to take their assistance as witnesses for the recovery. The Sub-inspector could not exert his influence to persuade witnesses who resided in the compound of the Ministers' houses to come and witness the recovery and it is, therefore, very probable that witnesses passing on the road were called.

9. Another circumstance relied upon on behalf of the appellant to discredit the testimony of these witnesses was that the ink with which the signatures of the attesting witnesses were affixed was different from the ink with which the recovery lists were scribed. No doubt there seems to be some difference in the shade of the two inks but the names of the witnesses appear in the body of the recovery list and it is, therefore, difficult to believe that witnesses at random were subsequently obtained and made to sign the recovery list.

In order to explain this circumstance, the learned Counsel for the appellant has argued that the police probably put down the names of those witnesses in advance as they could very well count on their support even in their absence. While such a suggestion may not be beyond the range of possibility, we do not think that under the circumstances it could be possible for the sub-inspector to note down the names of the probable witnesses in the distant hope that they may be available and also agreeable to attest the recovery lists. The mere fact that the two witnesses, who attested the recovery lists, happened to be rickshawalas is no ground for rejecting their testimony. They have been examined and cross-examined at length. We have been taken through their statements and it appears to us that there is no good ground for disbelieving them.

10. The articles, which were found in the box and on the person of the appellant, were sent along with the 'karauli' which was handed over by the appellant, to the Chemical Examiner and the Serologist for examination. The report shows that all these articles were stained with human blood. It has been argued on behalf of the appellant that there was no evidence to show that the box was searched and the karauli was recovered at the instance of the appellant. No doubt evidence has not been led on this point but it appears to us that the investigating officer was not asked about these matters presumably as it was thought that any statements made to the investigating officer by the appellant during the course of investigation may not be admissible in evidence. It can well be presumed that the Sub-Inspector could not have reached the culvert without being led to it by the appellant who was the only person who knew about the karauli and the place where it was concealed.

11. It has been pointed out that the recovery of blood stained articles from the box of the appellant and the handing over of the karauli by the accused would amount to a compelled production of incriminating evidence and as such it amounts to an infringement of the fundamental right under Article 20(3) of the Constitution. Reliance has been placed on certain observations of their Lordships of the Supreme Court in - 'M. P. Sharma v. Satish Chandra', AIR 1954 SC 300 (A). In this reported case a search and seizure of documents in the possession of the accused was made in pursuance of warrants issued under Section 96, Criminal P. C. and it was argued that the recovery of incriminating articles in the course of the search so made amounted to compelled production of

evidence which was incriminatory. Article 20(3) of the Constitution is as follows:

' No person accused of any offence shall be compelled to be a witness against himself."

It was argued before their Lordships of the Supreme Court that the guarantee in Article 20(3) was only against "testimonial compulsion" and that it was confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. It was, however, held by their Lordships that there was no good reason to confine the contents of the constitutional guarantee to testimonial compulsion only and that it would extend to production of material evidence also.

In the light of the observations of their Lord-ships of the Supreme Court we have to examine if in the present case the appellant had been compelled to produce any material evidence which could have incriminated him. No doubt if there had been any evidence to prove that the appellant had been compelled to produce the incriminating articles, the argument advanced on his behalf could have had some force. In the present case not only there is no evidence that the appellant was compelled to produce the incriminating articles, but there is not even a suggestion to that effect anywhere in the evidence or in the cross-examination of witnesses.

It has further been argued that a presumption of compulsion should be raised in this case also as is to be assumed in cases where a confession is made by an accused before the police. Sections 25 and 26, Evidence Act expressly exclude from evidence a confession made by an accused person before the police. It is possible that these two sections in the Evidence Act may have been enacted to safeguard against any possible compulsion which might bring about a confession; but no presumption of compulsion can be raised in every case where also the admission of evidence has not been expressly excluded by statute. To assume compulsion in all cases where recovery of incriminating articles is made during the course of an investigation would be to brush aside a very strong circumstantial evidence, and this could not have been the intention of the Framers of the Constitution in framing Article 20(3) of the Constitution.

We are unable, therefore, to agree with the contention that the evidence about the recovery of the incriminating articles by the police during the course of the investigation was not admissible in evidence in view of Article 20(3) of the Constitution.

12. The cycle of the deceased was found at a distance of about a furlong from the place of occurrence. It is possible that the cycle may have been thrown away by the assailant at a distance after the murder of Ram Lal had been committed.

13. An examination of the post mortem report shows that the injuries on the neck were on the back part of it. It is, therefore, probable that the appellant, while sitting on the carrier, might have struck the deceased on the neck while he was quite unaware of it and the rest of the injuries might have been caused after he had fallen down, It was not very difficult to overpower a man under these circumstances even though the assailant may be only one.

14. The learned Counsel for the appellant has also pointed out to us certain discrepancies in the statements of Ram Het and the investigating officer with regard to the making of the report and the visit of the Deputy Inspector General of Police to the place where the dead body was found. Ram Het states that a telephonic message was sent to the police station at Hazratganj and that the Sub-Inspector arrived thereafter. He also states that the D. I. G., Sub-Inspector and other persons went to see the dead body. The Investigating Officer, Ishtiaq Ahmad, on the other hand, denies having visited the dead body in the company of the Deputy Inspector General of Police on the receipt of a telephonic message.

The Additional Government Advocate has put before us a possible explanation. He suggests that it was probably an effort on the part of the investigating officer not to drag the Deputy Inspector General of Police into the investigation or into the evidence and he, therefore avoided any mention of the presence of the Deputy Inspector General of Police at the place where the corpse was lying or at any time during the course of investigation. We feel, however, that if the Deputy Inspector General, a highly responsible officer, was present at his house at the time when the investigation was started, there would have been nothing improper if he had been called into the witness box to depose to facts which came to his knowledge shortly after the dead body was recovered. It would have been, on the other hand, of great assistance in the trial of the case. The fact remains that there is a discrepancy on this point. This discrepancy does not, however, affect the material part of the investigation.

15. Whether the report was lodged after a telephone call had been made at the police station or before it, it cannot be doubted that the investigation started at about 8 A. M. Even if the first information report is rejected as inadmissible, on the ground that intimation had been made on the telephone to the police station, the facts mentioned in the first information report are clearly mentioned in the deposition of Ram Het constable who made the first information report. Ram Het has definitely stated that Sundar Singh used to visit Ram Lal's quarters and used to cut jokes with Ram Lal's wife. He has also stated that Ram Lal used to remonstrate with his wife and warned her not to go out and indulge in frequent talks.

16. The case rested, no doubt, entirely on circumstantial evidence but the circumstantial evidence in this case appears to be so strong and almost conclusive that the inference that the assailant of the deceased could be no other than the appellant himself is irresistible. The learned Additional Sessions Judge has remarked that any irregularities or any planting of blood stained clothes into the box of the appellant could not have been done because the investigation was done almost under the very nose of the Deputy Inspector General of Police. Although there is nothing on the record to show that the Deputy Inspector General of Police took any active interest in the investigation, there seems to be no reason to believe that the investigating officer should have gone to the extent of getting

blood stained clothes planted or a blood stained karauli placed under a culvert only to implicate Sundar Singh, who, according to the statement of Ram Het, was a favourite driver of the Deputy Inspector General of Police.

17. Much stress has been laid on some discrepancies in the statements of the investigating officer and some witnesses with regard to the recovery of shoes of the deceased. The inquest report shows that the deceased was found wearing a pair of shoes and "socks at the time when the inquest was made. The investigating officer, however, mentioned that no shoes were recovered on his body, in his statement before the committing Magistrate, When, however, his attention was drawn to the inquest report, he stated that he had given the earlier statement on account of faulty memory.

The learned Counsel for the appellant has also pointed out to some overwritings and additions made in the entries in the malkhana register with regard to the property deposited there. No importance seems to have been attached to the shoes and socks of the deceased, but when the investigating officer realised that some account had to be given of these articles also, it is possible that some entries may have been made subsequently in the malkhana register with regard to the shoes of the deceased. These shoes and socks are, however, not in the list of the articles recovered from the dead body and the explanation of the investigating officer is that as the shoes of Ram Lal bore no blood stains they were not taken into possession. Ram Lal deceased had a number of clothes on his body which were all found to be stained with blood and which were taken into possession. No importance attaches to the non-recovery or to the discrepancies with regard to the entries of the shoes of Ram Lal in the malkhana register.

18. We are satisfied that the case has been established beyond a shadow of doubt against the appellant and he has been rightly found guilty by the learned Additional Sessions Judge. The learned counsel for the appellant has also addressed us with regard to the sentence awarded to the appellant. In view of the very brutal manner in which the deceased was murdered by the appellant, we feel that the only proper sentence was the one awarded by the Court below. We, therefore, uphold the conviction and confirm the sentence of death passed upon the appellant. The reference made by the learned Additional Sessions Judge is accepted. The sentence of death shall be carried out according to law. Leave to appeal to the Supreme Court has been asked for and is allowed.