Suraj Bhan vs State Of Haryana on 18 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 785, 2002 (10) SCC 362, 2003 AIR SCW 209, 2003 SCC(CRI) 1457, 2003 (1) LRI 127, 2003 ALL MR(CRI) 573, 2002 (7) SLT 371, 2002 (9) SCALE 649, 2003 (2) SRJ 256, 2003 CRILR(SC&MP) 158, (2002) 9 SCALE 649, (2003) 25 OCR 196, (2003) 1 RECCRIR 250, (2003) 1 CURCRIR 33, (2003) 1 SUPREME 342, (2003) 1 INDLD 854, (2003) 1 CRIMES 406

Bench: N.Santosh Hegde, Arun Kumar

CASE NO.:
Appeal (crl.) 957 of 1995

PETITIONER:
Suraj Bhan

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 18/12/2002

BENCH:
N.Santosh Hegde & Arun Kumar.

JUDGMENT:

J U D G M E N T SANTOSH HEGDE,J.

Appellant Suraj Bhan and four others were charged for an offence punishable under Sections 148, 302, 325 & 323 read with Section 149 IPC for having committed the murder of one Kehar Singh on 20.3.1989 at about 8 a.m. before the Additional Sessions Judge, Sonepat. Learned Sessions Judge by his judgment dated 3.3.1992 convicted all the appellants under Section 302 read with Section 149 and sentenced them to undergo imprisonment for life. It also sentenced the accused before it for offences under Sections 148, 149 & Section 325 read with Section 149 and Section 323 read with Section 149. In appeal before the High Court of Punjab & Haryana, the High Court acquitted accused Ram Nivas A-3, Santosh A-4 and Darshan A-5 of all the offences charged against them, giving them the benefit of doubt. While it convicted Jagmender A-1 for an offence under Section 325 IPC and confirmed the sentence awarded on this count by the learned Sessions Judge. However, in regard to the appellant before us in these appeals, it confirmed the conviction awarded to him under Section 302 IPC and under Section 323 IPC and the sentence awarded by the trial court on these two counts were affirmed. The conviction of the appellant under Section 325 IPC awarded by the Sessions Court was however set aside.

It seems that both Jagmender, A-1 and the present appellant Suraj Bhan preferred this appeal but from the records, we notice that the appeal of Jagmender A-1 came to be withdrawn on the ground that he had already served the sentence imposed on him, therefore, Suraj Bhan is the lone appellant before us in this appeal.

Briefly stated, the prosecution case is that a week before the incident, namely, 20.3.1989, Ram Gopal, son of the appellant was caught plucking plums from the trees standing in the field of Kehar Singh, deceased, for which he was reprimanded by deceased Kehar Singh and his father Zile Singh. On this count, the appellant and his family members entertained an animosity against the deceased. On the date of the incident namely on 20.3.1989 at about 8 a.m. when the deceased Kehar Singh and PW-9 Mehar Singh, were returning from fields, they were attacked by the appellant and other acquitted accused persons with lathis and bricks, consequent upon which the deceased suffered severe head injuries. It is also stated that PW-9 also received injury in this attack. It is the prosecution case that after the attack the accused persons fled from the scene of occurrence and the deceased and PW-9 were taken to the Primary Health Centre, Juan but in view of the seriousness of the injuries suffered by the deceased, the local doctor referred them to the General Hospital at Sonepat where they reached at about 4.30 p.m. PW-14, the doctor who treated the deceased and PW-9 thought it fit that the deceased should be sent to the Medical College Hospital at Rohtak, hence, while treating PW-9, he sent the deceased to the said hospital at Rohtak. The further case of the prosecution is that in view of the fact that PW-9 Mehar Singh had to attend an examination, he went back to his place while deceased Kehar Singh was taken to the hospital by his uncle. After completing the examination, it is stated that PW-9 came to the hospital at Rohtak in the evening when he came to know that his brother had died so an intimation was sent to the Police Station at Gannaur where a complaint was registered and a special report was forwarded to the Ilaka Magistrate, Sonepat at 3 a.m. on 21.3.1989. Based on the said complaint, the investigating officer, PW-13 recorded the statements of the witnesses and on completion of the investigation, filed a chargesheet against the above-mentioned 5 accused persons.

The prosecution in support of its case examined PW-2, Dr. Satbir Singh, Medical Officer, Primary Health Centre, Juan, had stated that on 20.5.1989 when the deceased was brought to him, he was in a very serious condition and he could not treat him appropriately, hence, he made an entry in the OPD register and directed the said patient to be taken to the Medical College Hospital at Rohtak. PW-14, Dr. Ranjana Parihar, who examined the deceased when he was still alive on 20.3.1989 had stated that when she examined him, the patient was unconscious and she noticed 3 external injuries on him out of which injury No.1 was a contusion around the left eye with swelling of left upper and lower limb; injury No.2 was a defused swelling over left parietal area and the temporal region and injury No.3 was an abrasion on the lateral aspect of the left upper arm. She also stated that she had examined PW-9, Mehar Singh, at about 12 p.m. on that day on whom she noticed 2 injuries; the first one was a lacerated wound on the forehead and the second one was an abrasion on the thumb.

PW-15, Dr. Partap Singh, Medical Officer General Hospital, Hissar who conducted the post mortem on the dead body, having noticed the external injuries had opined that all the injuries were anti-mortem in nature and the cause of death was due to shock and haemorrhage as a result of head injury which was sufficient to cause death in the ordinary course of nature. From the above medical

evidence it is clear as held by the courts below, that the prosecution has proved that deceased Kehar Singh died a homicidal death.

The question then is : who is responsible for this attack on the deceased as well as on PW-9. For this purpose, the prosecution primarily relies on the evidence of PW-9 and PW- 10 who were the eye-witnesses to the incident in question. the Sessions Court relied on the evidence of these witnesses to come to the conclusion that the accused persons before it were responsible for causing the death of deceased Kehar Singh while the High Court came to the conclusion relying on the very same evidence that it is not safe to convict A-3 to A-5 of the offences charged against them since there is a possibility of the prosecution witnesses roping in the entire family of the appellant, hence, taking a cautious view of the matter, it found A-1 Jagmender guilty of an offence punishable u/s. 325 IPC and convicted him, as stated above, while the present appellant was found guilty of offence u/s. 302 IPC.

Dr. G S Sangwan, learned counsel appearing for the appellant, contended that in view of the discrepancies and improvements found in the prosecution case, it is not safe to rely upon the same even to convict the appellant herein. For this purpose he pointed out that PW-9 who is supposed to be an injured witness, has stated in his evidence that while the appellant gave a lathi blow to the deceased on the left side of his head, A-1 Jagmender also gave a lathi blow to the deceased on the left side of his head. Learned counsel pointed out that this witness had further stated that a third lathi blow was wielded on the deceased by accused Ram Niwas which hit the deceased above his left eye. Learned counsel pointed out that if we compare this evidence of the eye witness with the medical evidence, it is noticed that the deceased had suffered only one injury on his head, therefore, the prosecution has failed to explain the discrepancy between the ocular and medical evidence. In such circumstances, he contended that it is not safe to rely on the evidence of this witness. He also pointed out that most likely, this witness was not present at the time of the incident because even according to him, he had an examination to attend in the evening of the date of the incident which he did attend and relying on the sequence of events that has taken place and the distance which this witness had to cover from the hospital to the place of the examination, he contends that it is highly improbable that he was present at the place of incident. He also pointed out that the complaint in question was lodged by this witness at about 7 p.m. when the incident as such had taken place at about 8 a.m., therefore, no reliance should be placed on the evidence of this witness. Commenting on the evidence of PW-10, learned counsel submitted that though this witness had stated that the deceased was assaulted only once by the appellant, rest of his evidence contains so much of improvements that it is not safe to rely upon this witness, mainly because of the fact that he was a close relative of the deceased and his presence at the place of the incident was also doubtful.

As contended by the learned counsel for the appellant, we have noticed that there is some contradiction in the evidence of PW-9 and the medical evidence. While the medical evidence notices one injury on the left parietal bone of the deceased and the doctor has stated that the other external injury found on the head of the deceased was consequential to the first injury; evidence of PW-9 shows that there was more than one assault on the deceased i.e. from the appellant. The courts below have accepted this part of PW-9's evidence. While appreciating the evidence of PW-9, we should bear in mind the fact that this witness was also a victim of attack simultaneously when the

deceased was attacked. It is possible that this witness might not have witnessed the number of attacks on the deceased while he must have been trying to concentrate on defending himself but the fact remains and he has stated that the appellant attacked the deceased on his head with a lathi which injury corresponds to the injury noticed by the doctor. If we read his evidence in conjunction with the evidence of PW-10, it is crystal clear that so far as the injury suffered by the deceased on his head is concerned, the same was dealt with by the appellant herein, and the consequence of such blow on the head of the deceased has been spoken to by the medical evidence adduced by the prosecution. We find no contradiction in the evidence of PW-10 so far as this part of the prosecution case is concerned while of course he has made some improvements in his evidence in regard to some other aspect of the case with which we are not concerned while considering the case of the appellant. Since the two courts below have chosen to place reliance on the evidence of PWs.9 and 10 which we do not consider to be either unreasonable or perverse, we are also inclined to accept the same. If that be so, it is clear that this appellant had dealt a blow on the left parietal side of the head of the deceased consequent to which the deceased has died, therefore, the High Court is justified in coming to the conclusion that this accused is responsible for the death of the deceased. Hence, we find no ground to interfere with the finding of the High Court on this count.

Learned counsel then argued that since the appellant has dealt only a single blow, the offence if at all, cannot be the one falling u/s. 302 IPC or at the most, it would come u/s. 304, Part II, IPC since there is absolutely no material to show that the appellant had any knowledge that he would be causing an imminent death of the deceased. In this regard we have examined the medical evidence and the manner in which the assault in question has taken place. The doctor has opined that the injury was caused in such a manner as to cause the death of the deceased which on dissection found by the doctor, had caused a fracture of the left parietal bone causing extra dural haemotoma. The doctor has opined that the death was due to shock and haemorrhage and as a result of the head injury which was sufficient to cause death in the ordinary course of nature. We are of the opinion that the appellant must be attributed with the knowledge that when he used a lathi forcefully on the head of a person, he was likely to cause death of the said person, the prosecution has also proved that this appellant had the intention to kill the deceased, therefore, we have no hesitation in rejecting the argument of learned counsel on this count also For the reasons stated above this appeal fails and the same is hereby dismissed.