

Rajasthan High Court

Sukh Pal vs State Of Rajasthan And Ors. on 3 January, 1985

Equivalent citations: 1985 (2) WLN 603

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Bench: D P Gupta, N M Kasltwal

JUDGMENT Narendra Mohan Kasltwal, J.

1. This appeal is directed against the judgment of the learned Sessions Judge, Bharatpur dated February 29, 1980, whereby appellant Sukhpal has been convicted under Sections 394 and 302 IPC and sentenced to imprisonment for life in both the offences. The sentences have been ordered to run concurrently.

2. Brief facts of the prosecution case are that a dacoity took place in the house of Chhitisria (PW 3) and Goverdhan (PW 4), residents of Rudawal district Bharatpur in the intervening night of 15th and 16th June, 1977. When the dacoits were escaping along with the looted goods, they were challenged by Arjun (deceased). When dacoits were passing in front of the house Gir Raj (PW 1), Ram Charan (PW 2) and deceased Arjun, the dacoits fired gun-shots, as a result of which Arjun succumbed to the injuries on the spot and Ramcharan (PW 2), Munni daughter of Gir Raj were injured. Munni succumbed to the injuries after 5-6 days of the incident. Ram Charan (PW 2) lodged a First information Report (Ex. P. 1) in the night at 15 minutes past 3 O'Clock in the police post Rudawal. Ram Singh (PW 7), in-charge police post went on the spot and started investigation. In the same night Chhitaria and Goverdhan also lodged reports (Exs. P. 3 and P. 7) and gave the list of the articles vide Ex. P. 6 and Ex. P. 10, which were looted from their houses. It appears that there after the dacoits could not be traced for a long time and subsequently on April 4, 1978. Sub-Inspector, police station, Bayana sent an information to Sub-Inspector, police Station, Rupwas vide Ex. p. 11 that one Sukhpal had been arrested in some other case at police Station, Bayana. Sukhpal, during investigation informed that he was one of the persons who had committed dacoity in the house of Chhitaria and Goverdhan at Rudawal, and Sukhpal had been sent to Jail in judicial Lock-up. The Sub-Inspector Rupwas, on April 6, 1978 submitted an application vide Ex. p. 12 before Narayan Lal (PW 8), Munsif and Judicial Magistrate, Bayana for taking the proceedings and holding identification parade of accused Sukhpal. Shri Narayan Lal Verma held the identification parade on April 7, 1978 inside Sub-Jail Bayana. Gir Raj (PW 1), Ramcharan (PW 2), Chhitaria (PW 3), Rewati (PW 5) and Sanjee were brought to Sub-Jail for identifying accused Sukhpal. Out of the aforesaid persons, Gir Raj, Chhitarmal and Rewati correctly identified the accused while Ramcharan and Sanjee did not identify. The police, after completing the investigation, filed a challan in the court of Additional Munsif and Judicial Magistrate, Bayana, who, subsequently, committed the case for trial to the Sessions Court Bharatpur.

3. It may be mentioned at this stage that in spite of efforts made by the police the other accused persons, associated in the dacoity in question, could not be found and as such the challan was filed only against Sukhpal. So far as the other persons, whose names were disclosed by Sukhpal as guilty associates in the crime, the police traced such persons, but during investigation, it was found that no case was made out against them and a final report as such was filed against them.

4. The learned Sessions Judge framed charges under Section 302, 395 and 396 against the accused. The accused denied the charges and claimed to be tried.

5. The prosecution, in support of its case, examined Gir Raj (PW 1) Ramcharan (PW 2). Chhitarmal (PW 3), Goverdhan (PW 5) and Rewati (PW 5) as eye-witnesses, and further Kewalsingh (PW 6), Head Constable, Police Station, Rupwas, Ramsingh (PW), incharge of police post Rudwal Narayanlal Verma (PW 8) in whose presence identification parade was held; and Dr. Kesav Das Gupta (PW 9), incharge, Medical Officer, Government Dispensary, Rudwal.

6. The accused, in his explanation under Section 313, Cr.P.C. totally denied the incident. He further stated that he had served on a floor mill of Chhitarmal and his elder brother Ramcharan had served Jagdish, who was sister's son of Chhitarmal. There was a fight between Chhitarmal and Jagdish. An amount of Rs. 320/- towards salary remained outstanding against Chhitarmal and the same was not paid inspite of demand. The accused further stated that on this account, he took a job on the floor-mill of Jagdish. Jagdish was a tenant in the house of Ramcharan Brahmin. As theft took place of some tins of oil Chhitarmal and in the report filed by Chhitarmal he implicated accused Sukhpal & his brother and also Jagdish. He further stated that he was kept confined for 4-5 days at the police post. Thereafter, Chhitarmal got Jagdish released, but nobody came to rescue Sukhpal and his brother. Subsequently Jagannath, Sarpanch of their village got them released. It was further stated by Sukhpal that he along with his brother Ramcharan used to go for taking their meals in the house of Ramcharan Brahmin, where Jagdish was living and as such the witness knew them very well. The accused produced Jagannath (DW 1) in defence.

7. The learned Sessions Judge believed the prosecution case and the evidence of identification proved by Gir Raj, Chhitarmal and Rewtiprasad. The learned Sessions Judge found that even the eye-witnesses had stated the presence of only four dacoits and as such no case was found established under Section 391 IPC. He, thus, held that the accused cannot be convicted under Section 395 and 396, IPC but he can be convicted for the minor offence of Section 394 IPC, He also found the accused guilty of Section 302 IPC and as such convicted and sentenced him in the manner indicated above.

8. It has been proved beyond any manner of doubt by the evidence of Chhitarmal (PW 3) and Goverdhan (PW 4) that the dacoity had taken place in their house in the intervening night of 15th and 16th June, 1977 and it is further established from the evidence of PW 1 Gir Raj PW 2 Ramcharan and PW 5 Rewtiprasad that when dacoits were trying to escape, they were challenged by Arjun and then the dacoits fired gunshot which resulted into the death of Arjun on the spot and Munni died after few days and Ramcharan and Chhitarmal also got gun-shot injuries in the incident.

9. Dr. Kesavdas Gupta (PW 9), Incharge Medical Officer, Govt. Dispensary, Rudwal, had examined the injuries of Kumari Munni, Ramcharan and Chhitarmal on June 16, 1977 and has stated that all these persons had gun-shot wounds. He had also conducted the autopsy of the dead-body of Arjun and had found gun shot injuries on his body. In the opinion of Dr. Kesavdas Gupta the cause of death of Arjun was brain hematoma leading to shock and because of gun-shot injuries. He had prepared the report Ex. P 22 at that very time and the injuries were sufficient in the ordinary course

of nature to cause death. Thus, the incident of dacoity and death of Arjun and Munni at the hands of the dacoits is fully established and even the learned counsel, for the defence was unable to assail the same.

10. The only question, thus, calls for determination is whether accused-appellant Sukhpal was one of the dacoits and if so, what offence has been committed by him.

11. In this regard, the prosecution has examined PW 1 to PW 5 as witnesses of the incident and the identification of the accused by Gir Raj. Chhitarmal and Rewati. Gir Raj (PW 1) has stated that he, along with his brother Arjun Sanjeev and Ramcharan were sleeping in the Nohra on the fateful, night Rewati their younger brother was sleeping in the Haweli, their mother Krishna was sleeping in front of the gate, that four dacoits entered inside their Haweli and started searching their room in the light of the torch and thereafter, their mother told as to who were these persons then the dacoits came out. The dacoits told their mother that they were Police people; some dacoits had come in their village and they had come to their search. Then, the mother told that if it was so, then they could see the rooms. Thereafter, the dacoits went away asking the mother not to raise any alarm and asked her to sit there otherwise she would be killed. There after, the dacoits went towards the village. Gir Raj further stated that there after Rewati came inside Nohra where he was sleeping and told him that four persons had come in the Haweli. Gir Raj then said that he along with Ramcharan, Arjun and Sanjiv checked whether their locks were not broken and found that the same were in tact. Thereafter, all the five brothers sat outside the Haweli. At this time, they saw that four persons were coming towards their Haweli from the village and one of these four persons was having two boxes over his head and one of them was having one box over his head. There was light of lamp post in front of their Haweli and they were able to see the dacoits in the said light. There after his brother Arjun tried to stop the dacoits but the dacoits asked him to clear the way otherwise threatened him to be killed. Gir Raj further stated that his brother Arjun did not move away and one of the dacoits fired a gunshot. Two shots were fired and Arjun fell on the ground due to the gun-shots. The dacoits then fired third shot, which hit his brother Ramcharan and Munni. Gir Raj further stated that they chased the dacoits. Chhitarmal and Goverdhan also chased the dacoits. The dacoits then fired 4th shot, which hit Chhitarmal. Chhitarmal and Goverdhan at that time were saying that the dacoits had looted their property.

12. Gir Raj further stated that he had gone in jail, Bayana for identifying the accused. He had identified one person, who was the accused person in the courts. Gir Raj also stated that this accused had also fired a gun-shots, but he was unable to tell whether the same was fired by gun or by a country made Pistol because the dacoits had thrown light by battery. He further stated that none of the miscreants could be caught. His daughter Munni was also injured by pellets. They had taken her to the hospital, where she remained for 2-3 days and thereafter she also died after 5-7 days. Gir Raj further stated that his brother Ramcharan had gone to lodge the report at Police Post Rudawal. Thereafter, the Police had come on the spot.

13. In the cross-examination, Gir Raj admitted that he had seen the dacoits from a distance of 15-20 paces. Arjun was hit from a distance of 8-10 paces. He further stated that the dacoits went on moving and fired. He also stated that had not seen any particular marks of identification on the

face of the dacoits. Neither the police nor the Magistrate asked him about the features of the dacoits. At the time of identification one Magistrate had not asked that the accused whom he was indentifying, had fired any gun-shots or not. As no such question was put as such he did not tell about it. He further stated that if the Magistrate would have asked this question then he would have certainly told that the accused Sukhpal had fired the gun-shot. He denied the suggestion that the accused was ever employed in the flour mill of Chhitarmal. He also denied the suggestion that the case was falsely lodged against the accused on the ground that the accused might be compelled to work on the flour mill of Chhitarmal.

14. Ramcharan (PW 2), who is brother of Gir Raj (PW 1), and Rewti (PW 5) pounge brother of Gir Raj have narrated the same story as given by Gir Raj. Chhitarmal (PW 3) and Goverdhan (PW 4) are the persons, in whose house the dacoity was committed. They have also stated that they were chasing the dacoits and they had already hit Arjun. Chhitarmal (PW 3) also stated that he also received injuries at the hands of the dacoits. He has seen the dacoits in the light of lamp-post. He also identified accused Sukhpal. In the identification parade, held in the jail, Bayana, he further stated that the accused had also fired a shot.

15. Narayan Lal Verma (PW 8) has stated that identification parade was held in his presence in Sub-Jail Bayana on April 7, 1978. He got the identification done by witnesses Ramcharan, Rewtiprasad, Sanjiv, Gir Raj and Chhitarmal. Out of the persons, Ramcharan, and Sanjiv did not identify the accused correctly, but the witnesses Rewti, Gir Raj and Chhitarmal correctly identified the accused. He had taken all precautions which were necessary for such identification. He had called each witness separately. He has proved Ex.P. 2, which contains his signatures. He has stated in the cross-examination that he had not mentioned the names and caste etc. of the persons, who were brought for identification. He, however, stated that the persons who were brought for identification parade were of the same features and age as that of the accused. Whatever the accused had told at the time of holding the identification, was recorded in column No. 10. It was wrong to suggest that the accused had told at that time that he was employed with Chhitarmal.

16. Mr. Gupta, learned counsel for the defence submitted that no reliance can be placed on the identification held in this case. It was submitted that the accused had told that he was shown to the witnesses by the police at Rudawal and a note to that effect is contained in column No. 10 of Ex. P. 2. It was also submitted that there was no special features of the accused, which might have been noticed by the witnesses and in the absence of such special features, it was not possible for the witnesses to identify him after 10 months of the incident. We do not find any force in this contention. Though the accused had told at the time of his identification that he was shown by the police to the villagers at Rudawal and a note has been put in this regard in Column No. 10, but there appears to be no substance in such objection; The accused was arrested in connection with some other cases and was sent to judicial lock-up in Sub-Jail, Bayana on 3-4-78 itself. The witnesses had identified him in the parade held on 7-4-78 and no question arises of the accused being shown to the witnesses or other villages at Rudawal during this period. There was no irregularity committed in identification parade. A number of other persons of similar features and age group were mixed with the accused as stated PW 8 Narayanlal, and there is nothing to disbelieve his testimony. Atleast three witnesses have clearly identified the accused as one of the dacoits and they have clearly stated

that they had seen all dacoits in the light of lamp-post.

17. The identification cannot be discarded merely on the ground that the witnesses had not stated anything about the features of the accused. The learned Sessions Judge has also believed such evidence and has cited certain authorities also, but we do not want to multiply our judgment by further authority.

18. Mr. Gupta, learned counsel for the appellant, then, submitted that no case is established under Section 302 IPC in as much as none of the eye-witnesses have slated it was the bullet fired by the accused-appellant, which resulted into the death of Arjun. So far as Munni is concerned, there was no charge of Section 302 IPC for the death of Munni.

19. We have given our careful consideration to this aspect of the matter. All the eye-witnesses have stated that all the dacoits were firing and they have also stated that accused Sukhpal was also firing and they had seen the accused firing from his gun. It view of the above statement, it cannot be definitely said that it was the bullet fired from the gun of the accused-appellant alone, which hit Arjun and resulted into his death. The accused-appellant as such cannot be held guitly for the offence of Section 302 IPC. The only Section under, which the accused, in the circumstances of the case, can be found guilty is Section 394 IPC. He is a young-man of about 20 years and in our view, the ends of justice would be met if he was awarded rigorous imprisonment for a period of 10 years for offence under Section 394, IPC.

20. In the result, this appeal is allowed in part; the conviction and sentence of the accused-appellant under Section 302, IPC is set aside and he is acquitted of the charge under Section 302. His conviction under Section 394, IPC is maintained, but his sentence is reduced from imprisoment for life to that of 10 years' rigorous imprisonment.