

Supreme Court of India

Suraj Pal vs State Of U.P on 17 November, 1993

Equivalent citations: 1994 AIR 748, 1994 SCC Supl. (1) 528

Author: K J Reddy

Bench: Reddy, K. Jayachandra (J)

PETITIONER:

SURAJ PAL

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 17/11/1993

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

RAY, G.N. (J)

CITATION:

1994 AIR 748

1994 SCC Supl. (1) 528

JT 1993 Supl. 346

1993 SCALE (4) 402

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- This is an appeal under Section 379 CRPC read with Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. Suraj Pat, the appellant (original accused No. 1) along with three others namely Ram Laterey, Anokhey and Ram Saroop, was tried under Sections 302/34 IPC for the offence of committing the murder of Surendra Nath, the deceased in this case. They were also tried under Sections 307/34 IPC for causing injuries to Smt Satyawati, PW 2 and Jiwa Ram, PW 1. The trial court acquitted all of them. The State preferred an appeal and the High Court convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life. Anokhey accused was convicted under Section 324 IPC and sentenced to undergo RI for three years. The acquittal of the other two accused was confirmed by the High Court. This appeal is confined to the case of Suraj Pal, A- 1 only.

2. The prosecution case is as follows: The accused, the deceased and the material witnesses belong to Village Sokha, District Etah. PW 1 Jiwa Ram, Raghubar Dayal and Anokhey are real brothers. The deceased and one Jagdish were the two sons of Raghubar Dayal. PW 1 was unmarried. PW 2 is the wife of youngest brother of PW 1. The other accused were said to be belonging to the party of the appellant. In Village Sokha only Brahmins lived and the population was only about 50 persons. There was some open land near the house of PW 1. The area of the land was about two Bighas. PW 1 and his brothers were using it for tethering their cattle and had fixed their wooden pegs in that land. The appellant and his nephews were laying claim on the said land as the land belonged to Gram Samaj. They, however, succeeded in getting a lease deed from Gram Samaj. Because of this there were misunderstandings. A few months before the occurrence, the appellant and his nephews raised a wall on a portion of the disputed land and raised a thatched hut. Twenty days before the occurrence, PW 1 and his brothers succeeded in the litigation in respect of the SAID land. the patta executed by the Gram Samaj in favour of the accused was cancelled. A day before the occurrence in the evening all the four accused came there and tried to fix the wooden pegs. PW 1 as well as his other brothers resisted. The accused returned disappointed but while leaving the field they advanced a threat. On November 20, 1974 at about 8 a.m. all the accused came to the said field. The appellant was armed with a licensed gun of his father. Ram Laterey had a country-made pistol while the remaining two accused Anokhey and Ram Saroop had spears with them. All these four accused came in front of the house of PW 1. At that time, Raghubar Dayal, brother of complainant PW 1 and PW 2 were present there along with PW

1. The accused started abusing them. PW 1 and his brother Raghubar Dayal tried to pacify the accused. Just at that time the deceased Surendra Nath who was inside the house came out. PW 3 Radhey Shyam and PW 4 Subedar and one Ram Niwas also witnessed the occurrence. Ram Saroop accused instigated the appellant to shoot the deceased who gave a threat that they would not care for the gun and would not allow them to have illegal possession. At the instigation of Ram Saroop, the appellant fired a shot towards the deceased. The deceased was injured and he fell down. Another shot fired by Ram Laretey accused with a country- made pistol caused an injury to PW 2. The other accused wielded their bhalas and PW 1 received injury on his head. PW 1 went and got a report drafted by PW 11 and presented the same in the police station at 10 a.m. on the same day. A case was registered by PW 8 and he held the inquest over the dead body of the deceased and PWs 1 and 2 were sent for medical examination. PW 7, Dr R.R. Sharma, examined PW 1 and found on him one incised wound 3 cm x 1 cm x scalp deep on the right side of forehead, an abrasion on the back of the left fore-arm and another abrasion on the left elbow. PW 2 was also examined by the same doctor and he found on her one lacerated wound 1 / 10 cm x 1 / 10 cm x skin deep on the front of right arm middle part. He found that the margins of the wound were inverted, the skin around the wound was normal and there was swelling around the wound. He advised X-ray to determine the nature of the weapon which caused the injury and Dr M.C. Sharma, PW 6, a Radiologist took the X-ray and he deposed that no pellets were found embedded underneath the skin. On the basis of the X-ray report, PW 7 opined that the injury was not caused by a firearm. Dr S.N. Bhatnagar PW 5 who held autopsy on the dead body of the deceased found one gunshot lacerated wound on the front chest wall and right and left phase of neck and another gunshot lacerated wound on the lower lip, some contusions and abrasions. On internal examination, he found that both the pleural cavities were full of blood and the upper lobe of the right lung was punctured and lacerated and pericardium was also torn. He

recovered 15 pellets from the body and he opined that the deceased died due to gunshot injuries. The accused were arrested and the charge-sheet was laid.

3.The prosecution examined 11 witnesses and mainly relied on the evidence of PWs 1 to 4, who figured as eyewitnesses. When examined under Section 313 CRPC all the accused denied their participation and pleaded that they were falsely implicated due to enmity. The appellant, however, pleaded alibi and DWs 1 and 2 were examined in support of his plea of alibi. DW 1, Ram Singh, Deputy Jailor, District Jail, Fatehgarh produced a register Ex. Kha3 to prove an entry dated November 20, 1974 to show that the appellant went to District Jail, Fatehgarh to meet one Rajendra Kumar an undertrial prisoner, DW 2. The evidence of DWs 1 and 2 would only at the most show that the appellant visited the jail to, see DW 2. DW 2 conceded that the appellant had no special reason to meet him. The High Court has rightly rejected this evidence in support of plea of alibi holding it to be flimsy. We have also perused the evidence of DWs 1 and 2 and we do not think that any importance can be attached to the same.

4.Now, coming to the evidence of the four eyewitnesses, PWs 1 and 2 out of them were injured witnesses. The trial court rejected the evidence of all the four witnesses holding that they were not independent and that there were some inconsistencies particularly regarding the number of shots fired by the appellant and Ram Laterey accused. The trial court also rejected their evidence on the ground that their version that PW 2 received gunshot injury was falsified by the medical evidence and therefore the entire evidence should be discarded. The trial court, to a large extent, accepted the defence suggestion that the occurrence must have taken place during night time and some dacoits might have committed the offence mainly relying on the medical evidence which shows that there was semi-digested food in the stomach of the deceased. The trial court took the view that if the occurrence took place at about 8 a.m. or so then there would not have been partly digested food and that the presence of partly digested food would show that the occurrence would have taken place during night time.

5.We have gone through the judgment of the Sessions Court and we find that almost all the reasons given by the trial Judge for rejecting the evidence of the eyewitnesses are highly unsound and on the basis of certain surmises their evidence has been rejected. The High Court has examined the evidence of PWs 1 to 4 in detail and the High Court has rightly held that the suggestion by the defence that the occurrence could have taken place during night in a different form and during a dacoity, has no basis whatsoever. From the medical evidence as well as the other circumstances it is concluded that the deceased as well as PWs 1 and 2 received injuries during the same transaction. That being the position their evidence cannot be doubted on the mere ground that semidigested food was found in the stomach of the deceased. As rightly pointed out by the High Court there is absolutely no material to show as to when the deceased took the breakfast. It is quite possible that he might have taken the breakfast in the early hours of the morning. As a matter of fact there was only 8 ounces of food material in the stomach and that the doctor could not give any definite opinion about the time as to when the victim could have taken his last meal.

6.Learned counsel for the appellant submitted that all the four eyewitnesses deposed that PW 2 received injury due to a firearm and in view of the evidence of the doctors, PWs 6 and 7 that version

is falsified and therefore their version has rightly been rejected by the trial court. It is true that the version of the eyewitnesses is that injury to PW 2 was caused by pistol shot. The medical evidence only shows that no pellet was found but the description of the injury that the margins were inverted would show that it could have been an injury caused by country-made pistol shot. In any event the prosecution case is that three or four shots were fired and it is quite possible that the witnesses thought that this injury is due to one of the shots by country-made pistol and on the basis of the opinion that the injury might have been caused by a firearm, the evidence of the eyewitnesses cannot be rejected. At the most it can be said to be an embellishment.

7.The FIR in this case was given at the earliest 'moment and all the necessary particulars were mentioned there. Learned counsel for the appellant, however, strenuously contended that it is not specifically mentioned that firearm shot by the appellant caused the death of the deceased. In the FIR it is mentioned that the appellant and Ram Laterey accused fired with a gun and a country-made pistol. It is specifically stated that the appellant was armed with a gun and he fired the same. Then it is mentioned that the deceased fell down after receiving the injury. We do not think that there is any inconsistency between the recitals in the FIR and the present version in this regard.

8.Learned counsel further submitted that all the eyewitnesses are interested and there is every likelihood of their having falsely implicated the appellant and in this context his further submission is that since other accused are acquitted of the charge under Sections 302/34 IPC, the self same evidence cannot be relied upon to convict the appellant under Section 302 IPC simpliciter. We see no force in this submission. Just because the witnesses are interested, their evidence cannot be rejected on that ground alone. The same has to be subjected to a closer scrutiny and in the instant case the appellant is convicted for his individual act. To that extent their version is consistent and is supported by the medical evidence also. The evidence of PWs 1 and 2, the injured witnesses is very important. They were examined by the Doctors and the medical evidence fully establishes that PW 1 must have received the injury during the same transaction and we are further satisfied that PW 2 also must have received the injury during the same occurrence. PWs 1 and 2 have given consistent versions. The minor variations pointed out by the trial court in their evidence, in our view, do not affect the veracity of these witnesses. Having gone through the records, we are satisfied that there are no two views possible in this case at least so far as the case against the appellant is concerned. That he was responsible for causing the death of the deceased, is established beyond all reasonable doubt and the High Court was justified in reversing his acquittal. Thus, there are no merits in this appeal. It is accordingly dismissed.