

Shri Sat Kumar

Vs

State of Haryana

Criminal Appeal No. 136 of 1970

(P. Jagmohan Reddy, P. K. Goswami JJ)

23.11.1973

JUDGMENT

GOSWAMI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana whereby the appellant, Sat Kumar, stands convicted under Sections 325/34 and 323/34 of the Indian Penal Code. He was sentenced to two years rigorous imprisonment under Section 323, I.P.C., and six months rigorous imprisonment under Section 323, I.P. C. Both the sentences were to run concurrently.

2. Originally there were four accused, namely, Ravi Dutt, his son, Ram Kumar and Narain Dutt and his son, Sat Kumar, who were committed to the Court of Session for trial under Sections 120-B, 307/34, 325/34 and 323/34, I.P.C. The prosecution story is that Suraj Bhan (P.W. 3) the injured person, was on inimical terms with he accused. During 1966-67 when Ravi Dutt was the Chairman of the Market Committee, Uchana, a successful 'no confidence motion' was moved against him and Ravi Dutt suspected Suraj Bhan as the instigator of the move to remove him which was effected on March 6, 1967. It is alleged that on March 15, 1967, accused Ravi Dutt and Ram Kumar had assaulted Suraj Bhan as a sequel to the aforesaid removal and a criminal case was registered against them which was pending at the time of the occurrence in the present case. Ultimately, however, that criminal case ended in acquittal. Ravi Dutt and Narain Dutt are real brothers. They complained against Suraj Bhan, who was the Secretary of the Market Committee, Narwana, for corrupt practices which on enquiry by the Inspector is stated to have been found to be false. It is, therefore, apparent that there has been bad blood between the parties.

3. According to the complainant, Suraj Bhan, on August 8, 1967, went to his village Uchana where his family was residing as it was a Teej festival. He was to return to duty on the following day, i.e. August 9, 1967. At about 9.30 a.m. on that day he was returning from Uchana and was going to the bus stand, Uchana, by road on foot. Near the kotah of one Bawa Ganesha Nand, accused Ram Kumar armed with lathis waylaid him and caused injuries on his person. Accused Ram Kumar gave a blow on his head with the sharp side of he gandasi and accused Sat Kumar gave lathi blows on his left arm and on other parts. Suraj Bhan fell down on the ground and while he was lying it is stated that accused Narain Dutt gave two or three lathi blows on his left foot and left lower part of the leg while accused Sat Kumar gave two or three lathi blows on his left buttock and back. On raising alarm by Suraj Bhan, P.Ws., Dalip Chand and Paras Dass came to the spot and saw the whole incident. A little later P.Ws., Men Singh and Sulekh Chand also came there when the latter disclosed that in the morning of that day at about 7.30 a.m. Ravi Dutt, Ram Kumar, Sat Kumar and Narain Dutt were conspiring outside the main gate of Mandi Uchana in order to make away with Suraj

Bhan. P.W., Man Singh brought a truck from Mandi Uchana and took Suraj Bhan therein to Narwana and Sulekh Chand also accompanied him. When they reached the bus stand, Narwana, A.S.I., Jaswant Singh, met them there by chance and he recorded the statement of Suraj Bhan which is marked as Ex. P.G. and which is the First Information Report in the case. After investigation the accused were charged under several Sections and the learned Additional Sessions Judge acquitted Ravi Dutt and Narain Dutt of the charges and also acquitted Ram Kumar and Sat Kumar under Sections 120-B and 307, I.P.C. Ram Kumar and Sat Kumar were, however, convicted under Sections 324/34 and 323/34, I.P.C., as stated above. The two convicted persons lodged an appeal before the High Court which accepted the appeal of Ram Kumar and acquitted him. Accused Sat Kumar's conviction, however, was maintained and hence this appeal by him with special leave. The prosecution examined ten P.Ws. and 8 defence witnesses were examined mostly to establish alibi by some of the acquitted accused.

4. In this appeal we are concerned only with the conviction of Sat Kumar. He did not examine any particular defence witness on his behalf. He pleaded not guilty to the charges and stated that the case against him was a false one and the prosecution witnesses had deposed against him due to enmity and party faction. On a question put by the Sessions Judge during examination under Section 342, Cr. P.C., if anything else he might like to say, accused Sat Kumar answered, "I was present in my fields at the alleged date and time of the present occurrence". The Additional Sessions Judge acquitted the accused under the charge under Section 12/B, who was the only witness revealing about the conspiracy amongst the accused persons.

5. Suraj Bhan had twelve injuries on his person which Dr. B. C. Gupta, P.W. 1, described as follows :

- (1) A slightly curved incised wound 2 1/2" X 1/8" X scalp deep. The wound was slanting from right to left and downwards, on the left parietal region, 4 1/2" above the left ear. Wound was tapering at both the ends. At that moment the bleeding was moderate. His face, scalp and shirt and banian were very much soiled with fresh bleeding.
- (2) A transverse reddish contusion 2" X 3/4" on the back of left forearm 3 1/2" below the point of elbow. There was obvious deformity and swelling and a crepitus was present underneath the seat of contusion of the ulnerbone. Ulnerbone was broken. X-ray examination of the injury was advised to know the condition of radial bone.
- (3) An oblique reddish contusion 2 1/2" X 3/4" on the back of left hand accompanied by the huge swelling, movement at the fingers were very painful and restricted. X-ray examination was advised to know the condition of the underlying bone.
- (4) A transverse reddish contusion 2" X 1" on the outer side of the left knee.
- (5) A vertical deep red superficial abrasion 2" X 1" on the front of left knee at its lower half blood was oozing from the wound.
- (6) A vertically oblique reddish contusion 4 1/2" X 1" on the back of left thigh at its middle.
- (7) A transversally oblique reddish contusion 4" X 1" on the back of left thigh about its middle. The lower end of injury No. 6 and the outer end of injury No. 7 were

making an angle V.

(8) A light red contusion vertically oblique 3" X 2/4" on the back of left leg 3" above the ankle.

(9) A transverse dull red contusion 2 1/2" X 1/2" on the dorsum of left foot at its middle and outer half. Moderate swelling was present. Movements at the toes were painful and restricted. X-ray examination was advised to know the condition of the underlying bone.

(10) A transverse reddish contusion 6" X 1" on the middle of left back of chest.

(11) A vertically oblique contusion 6" X 2" on the back of lower part of left side of trunk.

(12) A vertically oblique contusion 5" X 1" on the back of left buttock.

P.W. 2, Dr. S. K. Soni, who conducted the X-ray examination of Suraj Bhan, found as follows :

(1) X-ray left fore - arm A.P. view :

There are fracture of both bones in the upper third. No callus formation was seen.

(2) X-ray left hand A.P. view : No fracture was seen.

(3) X-ray left foot :

There was fracture of shafts of second, third, fourth and fifth metatarsals. No callus formation was seen.

6. The learned Counsel for the appellant submits that conviction of the appellant is absolutely unwarranted on the uncorroborated testimony of the complainant, Suraj Bhan. He further submits that :

"As the complainants statement has been found as incorrect on very material points, for instance, the involvement of the other accused persons, who have been acquitted by the learned Sessions Judge, the High Court found it 'not safe to maintain the conviction of Ram Kumar on his testimony alone. Since the High Court has acquitted Ram Kumar on the above stated grounds, the same reasoning should apply to the case of Sat Kumar and no conviction can be based on the testimony of the complainant alone."

7. There is no rule of law that if the Court acquits certain accused on evidence of a witness finding it to be open to some doubt with regard to them for definite reasons, any other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness, should also be acquitted. It will, however, call for a closer scrutiny of the evidence and the Court must feel assured that it is safe to rely upon the witness for the conviction of the remaining accused.

8. We have gone through the entire evidence in this case and we do not know what would have been

the position if the State had appealed against the acquittal of the accused, Ram Kumar, so far as the charges under sections 325 and 323, I.P.C. are concerned. We are not satisfied with the High Court's reading of the judgment of the learned Sessions Judge as correct when it states that "the complainant's statement has been found as incorrect on very material points". We particularly asked the learned Counsel to draw our attention to any finding of the complainant, Suraj Bhan, as unreliable or incorrect. The incident which the High Court has pointed out with regard to the involvement of the other accused persons, who had been acquitted by the Sessions Judge, does not go to show that complainant, Chand, is unreliable with regard to the evidence relating to the charge of conspiracy. Suraj Bhan has no direct knowledge about the conspiracy and he was fair enough only to disclose in the F.I.R. that Sulekh Chand had disclosed this fact to him. He reiterated the same thing when he gave evidence before the Court. Our attention has not been drawn by the learned Counsel for the appellant to any other material point in the evidence to show any intrinsic infirmity in the evidence of Suraj Bhan. On the hand, it is pointed out on behalf of the learned Counsel for the State that even though Ravi Dutt was an arch-enemy of Suraj Bhan he had not implicated him in the First Information Report nor in his evidence before the Court. It was not possible for Suraj Bhan to know that on the date of occurrence Ravi Dutt would be lodging a complaint against him, as deposed to by D.W. 4, Shamsheer Singh, who was an Ex-Minister of State of Haryana. This also would establish that Suraj Bhan's conduct was entirely straightforward and he did not make any is corroborated by the medical evidence produced in the case. That some accused persons have been given benefit of doubt for the reasons given by the Sessions Judge and the High Court is not a sufficient ground to discredit his testimony with regard to the present appellant.

9. All the accused were defended by one Counsel before the Sessions Judge. It appears that in the cross-examination of Suraj Bhan the following appears :

"It is incorrect to suggest that these injuries to me were caused at Narwana and not at Uchana. It is also wrong to suggest that only one person caused these injuries, i.e. by Sat Kumar accused near bus stand Narwana."

This suggestion would go to show that the appellant has taken the entire responsibility for the injuries sustained by Suraj Bhan and that the occurrence took place at Uchana and not at Narwana. The learned Sessions Judge as well as the High Court rightly came to the conclusions that the occurrence took place at Uchana as alleged by the complainant and after perusal of the evidence we have no reason to differ from that conclusion. The fact that Suraj Bhan has lodged the First Information Report within half an hour at a place twelve miles away from Uchana travelling in truck leaves no possibility for any concoction of a false case against any of the accused persons. The reason for his not going to the Uchana P. P. (Police post) but to Narwana P. S. (Police Station) due to his fear of being again beaten up by the accused persons is a reasonable explanation which the Courts below have rightly accepted. He also stated that there was no doctor available at Uchana and since his anxiety was first to come under the protection of the police, who would naturally send him for medical attention, there was nothing wrong in his immediately getting into a truck and proceeding to Narwana Police Station before reaching which he met the A.S.I. of Uchana who recorded First Information Report immediately. Another significant fact is that the accused stated in his examination under Section 342, Criminal Procedure Code, that 'he was present in his fields at the alleged date and time of the present occurrence' This also would go to show that he was in Uchana, where the occurrence had taken place. There is, therefore, no substance in the contention that the occurrence was at Narwana and not at Uchana.

10. The evidence of the complainant, Suraj Bhan, is that he was hit by Sat Kumar. In his evidence

he has disclosed that :

"..... after him Sat Kumar accused gave two-three lathi blows on my left arm, causing fracture of the bones. I then fell down on the ground, my right hand beneath me and with my left side upwards ..... While I was lying Sat Kumar gave two-three lathi blows on my left buttocks and back. I raised voice 'Mar Dia, Mar Dia.' Dalip Chand and Paras Dass P.Ws. also reached the spot and saw the whole occurrence."

The Courts below have disbelieved the two persons, namely, Dalip Chand and Paras Dass and Sat Kumar has been convicted by the High Court on the sole testimony of Suraj Bhan corroborated by other circumstances. After careful perusal of the entire evidence of Suraj Bhan we are clearly of opinion that on his testimony supported by the medical evidence, conviction of the appellant under Sections 325 and 223, I.P.C., is clearly sustainable.

11. The learned Counsel for the appellant strenuously submits that there were no blood marks at the place of occurrence at Uchana. He drew out attention to the site plan, Ex. P.L. with marginal notes marked Ex. P.H. in the handwriting of A.S. I., Jaswant Singh, P.W. 10, who had prepared the same on August 9, 1967. He submits that if Uchana was the place of occurrence, the A.S.I. would have certainly found blood marks which he would have noted in Ex. P.L. No questions were asked to this witness with regard to blood marks. Apart from this Ex. P.L. contains the title "plan of village Uchana Kalan prepared on the pointing out of the witnesses in case (F.I.R) No. 172, dated August 9, 1967, for an offence under Section 307, I. P.C., relating to Police Station Narwana" It is clear that this site plan, which shows Mark No. 1 as the place of occurrence, is in consequence of a statement made during investigation to the A.S.I. by some witness whose name even has not been disclosed. Since the A.S.I. had already registered the case under Section 154, Criminal Procedure Code, after obtaining the First Information Report from Suraj Bhan and proceeded to the spot in the course of investigation would be hit by Section 162(1), Criminal Procedure Code, and inadmissible in evidence except for the purpose of contradiction of the witness when examined in Court either by the accused or by prosecution with the leave of Court. A plan prepared in the way done showing the place of occurrence cannot be admissible in law and no reliance can be placed on the place of occurrence as indicated therein. The learned Sessions Judge in admitting such a document has to exclude the statements of witnesses which are sought to be indirectly introduced in the evidence by means of a site plan or a sketch. At any rate nothing turns on the absence of blood marks in the site plan since the point was not agitated by the accused during the cross-examination of the police officer.

12. The learned Counsel finally submits that the accused is 21 years of age and should be dealt with leniently or, at any rate, under the provisions of the Probation of Offenders Act. We are not at all satisfied that the accused was under 21 years of age at the time of occurrence. He has given different age at different times and the point was not agitated at the appropriate stage when the age could be clearly established. We have got to take note of the fact that there has been political rivalry between the parties and the accused were gunning against the complainant for quite some time although the earlier criminal case, which was instituted six months prior to the occurrence, ended in an acquittal. This case occurred during the pendency of that case. We are, therefore, unable to consider this matter leniently with regard to sentence.

13. In the result the appeal fails and is dismissed. The accused will surrender to his bailbonds to serve out the sentence.

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