

Suratlal and Others

Vs

State of Madhya Pradesh

Criminal Appeals Nos. 404, 427 and 428 of 1974

(R. S. Sarkaria, R. S. Pathak JJ)

14.03.1980

JUDGMENT

SARKARIA, J. –

1. These appeals are directed against a judgment, dated August 24, 1974, of the High Court of Madhya Pradesh. They arise out of these facts :

2. Babulal, Suratlal, Gajraj, Ramesh Kumar and Mohanlal Rai, all the five were tried by the Additional Sessions Judge, Chhindwara in respect of offences under sections 302, 302/34, 302/149, 147 and 148, Indian Penal Code. Ramesh Kumar and Mohanlal were charged and tried by the same court in respect of offences under sections 302, 302/34, 302/147 and 147, Indian Penal Code. By his judgment dated July 26, 1971, the learned Additional sessions Judge acquitted Suratlal, Gajraj, Ramesh Kumar and Mohanlal of the charges under sections 302, 302/149 and 302/341, Indian Penal code. Gajraj was, however, convicted under section 147, 148 and 324, Indian Penal Code and was sentenced to imprisonment ranging from one year to two years with a direction that the sentences would run concurrently. Ramesh Kumar and Mohanlal and Suratlal were convicted under Sections 147 and 323, Indian Penal Code and each of them was sentenced to imprisonment ranging from six months to two years, sentences being concurrent. Babulal was convicted under section 302, Indian Penal Code simpliciter, and was sentenced to imprisonment for life. He was also convicted under Sections 147 and 148.

3. The convicted accused preferred appeals to the High Court of Madhya Pradesh. The State also filed a separate appeal for setting aside the acquittal of the accused persons on the murder charge against all the appellants, excepting Babulal. The High Court by a common judgment, dated August 24, 1974, dismissed the appeals of the accused persons but allowed the State appeal and set aside the acquittal of the appellants Suratlal, Gajraj, Ramesh Kumar and Mohanlal. All the convicted persons have now come in appeal to this Court against the judgment of the High Court.

4. The prosecution story was as under :

5. Ammolal [PW 2] had a cloth shop near Kamania Gate. On account of heavy sales, he called his younger brother Sarmanlal, deceased, and cousin, Gulzar [PW 21] to help him in business. In the evening at about 8 p.m. on the day of occurrence [November 22, 1970], he was sent by Ammolal for recovery of certain dues from one Ramesh near Patni Talkies. The deceased and their servant Jaichand [PW 5] went to Ramesh for this purpose. after about half an hour or so, they were on their way back. When they were near Kamania Gate, the appellants surrounded them and a scuffle ensued. The appellants started beating the deceased with kicks and fist, the said blows. Jaichand ran

to the shop and informed Ammolal how the appellants had encircled Sarmanlal. On receiving this information, Ammolal, Jaichand and Gulzar Prasad rushed to the spot. They found the five appellants beating Sarmanlal. A large crowd had gathered; the shops were open and there was electric light. When Ammolal tried to intervene, Suratlal appellant caught hold of Ammolal and threw him on the ground. It was further alleged that Babulal and Gajraj took out knives from their pockets and gave one stab blow each to the deceased. On seeing this and after saving himself from Suratlal, Ammolal ran away and concealed himself in a nearby lane from where he is said to have witnessed the incident. The story, as developed at the trial, is that after the initial bearing with kicks and fists, the said blows were given to the deceased after he was taken to the nearby side-lane opposite to the shop of Jagan, barber. After stabbing Sarmanlal there, it is said, all the appellants proceeded to the shop of Ammolal shouting that they had done away with Sarmanlal and would settle with Ammolal. They did not find Ammolal at his shop. Suratlal threw a knife at the board lying at the shop. The appellants then went away. Sarmanlal died in the hospital about half an hour after the receipt of the injuries. Ammolal then made the first information report at the police station.

6. Dr. Vaidya found the following injuries on the person of Sarmanlal :

[i] Cut wound vertical 1 1/2 inch x 1/4 inch on left side of epigastrium [abdomen].

[ii] Cut wound vertical 1 1/2 inches 3/4 inch, depth could not be probed, on left side of back. Crepitations were present over the chest wall.

[iii] Abrasion 1/2 inch x 1/4 inch of left knee.

[iv] Abrasion 1/4 x 1/4 inch on right forearm below wrist joint.

7. The abrasions could be caused due to a fall or by grazing against the ground. The death was due to injury [i], which in the opinion of the doctor, was sufficient to cause death in the ordinary course of nature. Injury [ii] was simple.

8 Mr. Mulla has made a statement at the Bar that Babulal who has been held by the Courts below to have caused the fatal injury to the deceased, is now out of jail, his sentence having been remitted by the Executive Government. For this reason, Mr. Mulla has referred to his case only, incidentally. Mr. Mulla has taken us through the evidence of the eye-witnesses. Two of the accused persons, namely Babulal and Mohanlal Rai, had also injuries, including incised wound. They were examined by the Medical Officer at the instance of the police, about seven days after the offence.

9. The first contention of Mr. Mulla is that the prosecution had failed to give any explanation of the injuries on these accused persons. The reluctance on the part of the accused to get themselves, medically examined, it is submitted, is an indication of the fact that these injuries were not fabricated by the accused.

10. The learned counsel appears to be right in his contention. The prosecution has not explained as to how these two accused sustained the injuries. We will presently see as to what is that effect of the failure of the prosecution to explain this fact.

11. The second point pressed into argument by Mr. Mulla is that all the eye-witnesses, namely, Ammolal [PW 2], Jaichand [PW 5], Talan Singh [PW 6], Rajkumar [PW 4] and Rajkumar [CW 1] admit that along with the five appellants, was seen one tall person, wearing a coat and pants. The High Court has observed that all the witnesses say that the tall stranger did not participate in the

assault on the deceased and that he was unarmed. This fact does not appear to be absolutely correct. PW 4 did not deny the defence suggestion that this tall man standing by the side of the accused, was carrying a knife in his hand. He tried to evade the question by saying that he did not pay attention to ascertain this fact. PW 5 stated that this tall stranger was having some glittering object in his hand and that he had also joined the quarrel from the side of the accused, with Sarmanlal in front of Verma Pharmacy. PW 6 stated that the tall man must be a companion of the accused because during the scuffle he was moving here and there. The witness could not say definitely whether that man was empty-handed or had any weapon with him.

12. Further more circumstances appearing in evidence, suggest that Ammolal [PW 2] was also carrying a knife which was found at the board of his shop. The prosecution suggested that this was the crime weapon, of Suratlal, but this is negated by the fact that no blood was found on it.

13. The High Court has found that at the time of the incident in front of Verma Pharmacy, the three accused Suratlal, Gajraj and Babulal took out their knives and threatened to stab Ammolal. But the independent witness, Talan Singh, does not speak of any knife with anybody or of the uttering of any threat to Ammolal in front of the Verma Pharmacy. Even the interested witness, Jaichand speaks of only one knife with Suratlal accused.

14. In this state of the evidence, the conclusion reached by the Trial Judge after a full appraisal of the evidence, to the effect, that knives were not taken out by any of the accused in front of Verma Pharmacy and that none of the accused held out any threat to Ammolal there, could not be said to be unreasonable. Similarly, the view of the Additional sessions Judge, that the evidence of the interested witness to the effect, that Mohanlal and Ramesh Kumar had before Jagan barber's shop exhorted their companions to kill Sarmanlal with a knife, was not creditworthy, could not be said to be clearly wrong.

15. The trial court after evaluating the evidence on record disbelieved the prosecution story that after the occurrence, all the five accused proceeded in a body to the shop of Ammolal and there Suratlal threw a knife at the price-board placed in front of Ammolal's shop. This part of the story came out from the mouth of the interested witnesses, Jai Chand and Anand Kumar who are servants of Ammolal.

16. After hearing the arguments of the counsel on both sides and after going through the evidence on record and the judgments of the courts below, we are of opinion that the view of the evidence taken by the trial court was also reasonably possible. In such a situation, when two views of the evidence, one indicating conviction and the other supporting acquittal, are equally possible, the High Court should not have disturbed the findings of the trial court. In this case, however, the question was whether Suratlal, Gajraj, Ramesh and Mohanlal Rai could be held vicariously liable for the fatal blow given by Babulal to the deceased. The trial court, after appraising the evidence threadbare, answered this question in the negative. In its opinion, the common object of the unlawful assembly constituted by the five accused persons was to give a good thrashing to the deceased, and no more, and the fatal blow by Babulal to the deceased was not given in the prosecution of the common object of that assembly. This finding could not be said to be clearly erroneous.

17. We will therefore, while upholding the conviction of Babulal and dismissing his appeal, allow the appeals of his co-accused, and qua them restore the order of the trial court.

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