

Suresh Chandra Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-05-1989

Reported in : 1990CriLJ2479

Judge : P.S. Gupta and ;Madan Mohan Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 307 and 394; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal Nos. 578 and 804 of 1978

Appellant : Suresh Chandra

Respondent : State of U.P.

Advocate for Def. : P.N. Misra, D.G.A.

Advocate for Pet/Ap. : Jai Pal Singh Kashyap, Adv.

Disposition : Appeal allowed

Judgement :

Madan Mohan Lal, J.

1. These two criminal appeals have been filed against the judgment and order dated 31-1-1978 passed by Sri B. I. S. Sodhi, the then Second Additional Sessions Judge, Budaun by which he has convicted the appellants Suresh

Chandra and Vijai alias Vijai Kumar under Sections 302/34, 307/34 and 394, I.P.C. and has sentenced each of them to undergo life imprisonment, four years' R.I. and four years' R.I. respectively thereunder. All the sentences have been made to run concurrently.

2. As both these appeals arise from the same judgment, hence these are being disposed of by this common judgment.

3. One Bankey Lal had four sons, namely, Ram Chandra deceased, Suresh Chandra appellant, Raja Ram and Ram Bharosey. P.W. 1 Smt. Shyam Piari is the widow of Ram Chandra deceased and P.W. 2 Ashok Kumar is their son.

4. Vijai alias Vijai Kumar appellant is a friend of Suresh Chandra appellant.

5. According to the case of the prosecution, Suresh Chandra appellant was previously in the service of police but due to misconduct he was removed from service. He was also involved in some theft cases. Ram Chandra deceased used to claim his share in the property of his father but Suresh Chandra appellant did not allow any such partition to take place. The relations between Suresh Chandra appellant and Ram Chandra deceased were thus strained.

6. It is further the case of the prosecution that on the night between 24th and 25th November, 1976, at about 2-2.30 a.m., Vijai appellant, armed with a pistol, and accompanied by his friend Suresh Chandra appellant, armed with a gun, and two other persons came to the house of Ram Chandra deceased. Firstly, both the appellants and one of their companions went to the room, situated on the first floor, where Smt. Shyam Piari, informant, along with her children, including P.W. 2 Ashok Kumar, injured, was sleeping. They forcibly opened the door and entered into the said room. Suresh Chandra appellant sat at the cot of Smt. Shyam Piari and at the point of the gun removed her golden ornaments. They had threatened Smt. Shyam Piari not to raise any noise. They then took Ashok Kumar, aged about 16 years downstairs and asked him to get the door of the room where his father, i.e. Ram Chandra deceased, was sleeping opened. The door of the said room was opened and Ram Chandra deceased came outside in the court-yard. The fourth companion of the appellants was already present there and he joined the

remaining miscreants. They beat Ram Chandra and Ashok Kumar and caused injuries to them. Suresh Chandra appellant fired a shot at Ram Chandra deceased which hit him and he fell dead at the spot. Vijai appellant had fired at Ashok Kumar as a result of which he sustained injuries. The appellants and their companions had also looted properties in the house. There was light of an electric bulb in the house at that time.

7. Noise had been raised which attracted the witnessess to the place of occurrence. The appellants and their companions then went away from the house with the looted property.

8. After the incident Smt. Shyam Piari went to police station, situated at a distance of 3 furlongs, where she lodged report of the incident on the same night at 3.15 a.m.

9. In order to prove its case the prosecution examined nine witnesses. P.W. 1 Shyam Piari, informant and P.W. 2 Ashok Kumar injured have given details of the incident. P.W. 9 Balloo is a recovery witness in whose presence three dhoties were recovered at the instance of Vijai appellant from his house in a box. The identification of the said dhoties was got conducted by Sri P.W. 8. Sri Balbir Singh, Deputy Collector. P.W. 4 Bhim Singh was Head Moharrir at P.S. Kotwali Budaun. He had recorded first information report of this case on 25-11-1976 at 3.15 a.m. and had registered this case. Constable Mohd. Faruq, P.W. 5 was a formal witness. Investigation of this case was conducted by P.W. 6 Sri M. C. Jain. He had also arrested Vijai Singh appellant and had then recovered the aforesaid dhoties at his instance from a box in his house.

10. P.W. 3, Dr. Guru Charan Singh, the Medical Officer, District Hospital, Budaun, had medically examined Ashok Kumar on 25-11-1976 at 4.50 a.m. He had found the following injuries on his person :--

1. Two gun shot wounds of entry 0.5 c.m. x 0.5 c.m. each in an area of 2.00 c.m. x 1 c.m. over left parietal region 8 c.m. above left ear.

2. Three lacerated wounds 3 c.m. x 1.5 c.m. x scalp in an area of 3 c.m. x 1.5 c.m. over left parietal region 8 c.m. over left ear around injury No. 1.

3. Lacerated wounds with blackening of margins 14 c.m. x 7 c.m. x bone with fracture of underlying bone on the back of left elbow 4 c.m. below the elbow joint.

11. Post-mortem examination of the dead body of Ram Chandra deceased was conducted by P.W. 7 Dr. N. P. Singh, the then Medical Officer, District Hospital, Budaun on 25-11-1976. He had found the following antemortem injuries on the dead body of Ram Chandra deceased:--

1. Gun shot wound of entry 0.7 c.m. x 0.5 c.m. x cavity, circular, over front of chest in the mid line 8 c.m. below sternal notch wound was directed backward.

2. Lacerated wound 6 c.m. x 1 1/2 c.m. x scalp over (Rt) side of parietal bone 6 c.m. above the (Rt) eye brow.

3. Abrasion 1 c.m. x 1/2 c.m. over dorsum of middle phalynx of little finger (Lt) hand.

4. Abrasion 1 c.m. x 1/2 c.m. over dorsum of middle phalynx of ring finger (Lft.) hand.

5. Abrasion 1 c.m. x 1 c.m. over dorsum of middle phalynx of middle finger (Lft) hand.

6. Abrasion 1/2 c.m. x 1/2 c.m. over dorsum and root of (Rt) thumb (Rt. hand).

7. Abrasion 1/2 c.m. x 1/2 c.m. over dorsum and root of index finger (Rt) hand.

12. On internal examination the doctor had found sternum punctured underneath injury 0. 1 pleura, right lung, pericadium and heart were also found punctured. The doctor had recovered one bullet from thorax cavity. According to the doctor the death of Ram Chandra deceased had occurred due to shock and haemorrhage at about the time of the incident.

13. Both the appellants in their statements recorded under Section 313, Cr. P.C. denied the case of the prosecution. Vijai Kumar appellant further stated that the police had falsely implicated him in this case due to old enmity. Suresh Chandra appellant, on the other hand, stated that there was always a quarrel between his brother Ram Chandra deceased and his wife Smt. Shyam Piari, that whereas his brother was miser, his wife was extravagant and she used to take liquor and that his brother used to come to his house and take food and on account the same Smt. Shyam Piari P.W. 1 and Ashok Kumar P.W. 2 have implicated him in this case.

14. The appellants, however, did not produce any witness in defence.

15. The learned trial Court believing the case set up and the evidence produced by the prosecution, has convicted and sentenced the appellants as aforesaid. Aggrieved by the same the appellants have filed these appeals.

16. We have heard the learned counsel for the appellants and the learned Addl. Government Advocate and have perused the record carefully.

17. The prosecution has taken a case that there was enmity between Ram Chandra deceased and his family members, on the one hand, and Suresh Chandra appellant, on the other and that on account of the same Suresh Chandra himself with the help of his friend Vijai and two other companions, committed this crime. The prosecution has alleged that Ram Chandra deceased used to claim his share in the property of his father but Suresh Chandra appellant did not allow any partition to take place. At the out set it may be observed that it was high handedness on the part of Ram Chandra deceased to claim one fourth share in the property of his father.

18. P.W. 1 Smt. Shyam Piari has stated in her evidence that her husband had claimed one fourth share in the house of his father. In the first place it may be observed that when the father was alive and when the house belongs to the father, Ram Chandra deceased could not possibly claim any share in me said house. Besides, when Bankey Lal hald four sons and if Bankey Lal was to divide his property between himself and his four sons the share of Ram Chandra could not

exceed one fifth. Therefore, it was indeed too much for Ram Chandra deceased to have claimed one fourth share in the house of his father and that too when he himself was admittedly very well off as compared to Suresh Chandra appellant.

19. Presuming that Suresh Chandra appellant was aggrieved that his brother Ram Chandra deceased was demanding a share in the house of his father, then at the best his motive would have been to eliminate Ram Chandra and not to commit robbery/dacoity of his property. In this case, on the other hand, we find that a lot of property of Ram Chandra deceased was looted. The property looted in this incident is specified in the first information report. According to it one golden chain weighing 11/2 tola, one pair of golden jhala weighing 2 tolas, two golden rings weighing 4 annas each and another golden ring weighing 1/2 tola along with many saris and other clothes were looted. In all 33 items of property were looted and taken away by the robbers. In our view had Suresh Chandra appellant, with the help of his friend and companions, gone to commit this crime, his first and foremost object would have been to commit murder of Ram Chandra deceased and not to loot so many articles. It could be said that in order to confuse the investigating agency he might have tried to take away some property but looting as many as 33 items of the property cannot possibly be explained when the motive of Suresh Chandra appellant would have been to eliminate Ram Chandra. It may be noted that the miscreants had firstly gone to that room situated on the first floor of the house where Smt. Sham Piari with her children was sleeping. Ram Chandra deceased was not there. According to the evidence produced by the prosecution in this case the assailants instead of rushing to the room where Ram Chandra was sleeping firstly proceeded to loot ornaments and other property in the said room. Suresh Chandra appellant himself had been assigned the role of removing golden ornaments of his sister-in-law, i.e. Smt. Shyam Piari. Besides, having gone to the ground floor the assailants had not only committed the murder of Ram Chandra and caused injuries to Ashok Kumar but had opened the safe kept in that room. Looting of as many as 33 articles tend to show that probably this case was a case of robbery/ dacoity in which the inmates of the house who resisted, i.e. Ram Chandra and Ashok Kumar, were caused injuries. Therefore, we find force and merit in the argument advanced by the learned counsel for the appellants that after the commission of robbery /dacoity P.W. 1 Smt. Shyam Piari named Suresh

Chandra appellant and his friend Vijai in the first information report due to enmity and strained relations.

20. The learned counsel for the appellants has further urged before us that had the real motive of Suresh Chandra appellant been to commit robbery, along with his friend Vijai and others, then they were known to the victims, they would have in the normal course taken precautions to conceal the identity. The said submission cannot be said to be without substance because Suresh Chandra appellant would have in all probability borne a mask if he had to commit a robbery at the residence of his own real brother. At the risk of repetition we may say that this case appears to be a case of robbery in which murder was committed and that possibly Suresh Chandra appellant with his friend Vijai and companions would not have involved himself in such a crime, when, as already stated, his motive at the best would have been merely to eliminate Ram Chandra.

21. It is the case of the prosecution that Din Dayal and Sohan Lal had seen the miscreants going away from the place of occurrence after committing this crime, but these two witnesses had not been examined on the plea that they had turned hostile. Therefore, we have to examine the evidence of the informant and his son produced in this case carefully.

22. P.W. 1 Smt. Shyam Piari was not at all injured in the aforesaid incident. Whereas she was present in the room situated on the first floor of the house, murder of Ram Chandra was committed and the injuries to Ashok Kumar were caused in the ground floor. Therefore, we have to be satisfied that P.W. 1 Smt. Shyam Piari had seen the miscreants. She has stated in her evidence that both the assailants, who had fired, were standing at a distance of only one cubit from her husband. In our view had shots been fired at Ram Chandra deceased from such a close range as one cubit then he would have certainly suffered blackening and tattooing. The fact that there was no blackening and tattooing around the gun shot injury sustained by Ram Chandra deceased indicates that P.W. 1 Smt. Shyam Piary had not seen the assailants. Medical evidence to the effect that there was no blackening or tattooing around the gun shot injury suffered by Ram Chandra deceased rules out the version given by Smt. Shyam Piari P.W. 1 that

the shots were fired at her husband from a very close range. In our opinion, when medical evidence completely rules out the version given by the eye-witness, then the the version of the eyewitness cannot be believed. We are thus not satisfied that P.W. 1 Smt. Shyam Piari had seen the assailants.

23. The learned Additional Government Advocate has urged before us that the prompt first information report in this case corroborates the evidence given by P.W. 1 Smt. Shyam Piari. No doubt the record shows that whereas this incident took place on the night between 24th and 25th November, 1976 at 2-2.30 a.m. the first information report, on the other hand, was lodged at the police station, situated at a distance of three furlongs, at 3.15 a.m. It is not a case where the informant had no sense of time. She had given time of the incident as 2-2.30 a.m. in her first information report. In her evidence as well she gave different timings i.e. the time when the incident took place and the time when she reached the police station. However, at an unguarded movement, she admitted in her cross-examination that the Sub-Inspector had written the report at her house after interrogating her. After this admission the learned Sessions Judge considered it proper to put a Court question and to the Court question as well Smt. Shyam Piari re-affirmed that at first report was written at the house and thereafter she was taken to the police station where again the report was written. This lady further admitted in her evidence that the sub-Inspector had come to her residence at 2 a.m. in the night. In our view, when the sub-Inspector had promptly reached the house of the informant and when after her interrogation report was written in the house, the said report lodged at the police station has lost corroborative value. Therefore, we do not consider it safe to rely upon the evidence of P.W. 1 Smt. Shyam Piari.

24. Coming to the evidence of P.W. 2 Ashok Kumar he has admitted in his evidence that the miscreants by flashing torches in his eyes had almost made him blind and that, therefore, he was unable to see anything. He has further admitted that on account of the said fact he was unable even to see as to who was that miscreant who had flashed torch in his eyes. This witness has also admitted in his evidence that immediately after sustaining injuries he had become unconscious and he had thereafter regained consciousness in the morning. On account of the

same the learned counsel for the appellants had urged before us that probably P.W. 2 Ashok Kumar was taken by surprise and that due to the flash of light in his eyes and due to his becoming unconscious immediately on receiving injuries he could not see any miscreants. We find force in this submission specially when we notice that the evidence of P.W. 2 Ashok Kumar cannot be reconciled with the medical evidence.

25. P.W. 2 Ashok Kumar has stated in his evidence that the shots were fired at him from a distance of 8-10 feet. In our view, had the shots been fired from such a long range, then Ashok Kumar would not have sustained any blackening on any of his wounds. As may be seen from the injuries reproduced above the third injury of Ashok Kumar had blackening on margins. In our view, the said blackening could occur only when the shots had been fired at Ashok Kumar from a close range and not from a distance of 8-10 feet. As already observed, we are of the view that when the medical evidence completely rules out the version given by the witness, the said version of the eye-witness cannot be believed. Therefore, we are of the opinion that although Ashok Kumar, P.W. 2, was injured but the way and the manner in which the crime was committed, he could not have an opportunity to recognize the assailants.

26. In the result, therefore, we do not consider it safe to rely either upon P.W. 1 Smt. Shyam Piari or upon P.W. 2 Ashok Kumar.

27. In the end the learned Addl. Government Advocate has urged before us that the recovery of three saris at the instance of Vijai appellant lends support to the case of the prosecution against the said appellant. We do not find much force in the said argument because P.W. 2 Ashok Kumar has admitted in his evidence that all these three saris were new and the saris of the said type were available in the market and that there was no special mark of identification on the said saris. Therefore, we are of the opinion that the recovery of any such sari even at the instance of Vijai appellant does not lend any strength to the case of the prosecution.

28. In view of what has been stated and discussed above, and for the reasons stated, we are of the opinion that the prosecution has failed to prove its case

beyond reasonable doubt against the appellants or any of them. The appellants are entitled to get benefit of doubt.

29. Accordingly, both the appeals are allowed and the conviction and the sentences of the appellants under Sections 302/34, 307/34 and 394, I.P.C. are hereby set aside. Suresh Chandra and Vijai alias Vijai Kumar appellants are held not guilty of the offences which they have been charged and they are accordingly acquitted thereof. Both the appellants are on bail. They need not surrender to their bail bonds, which* hereby stand discharged.

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