

Suraj and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-11-2005

Reported in : 2005CriLJ1849

Judge : Dipak Misra and ;A.K. Shrivastava, JJ.

Acts : Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 294, 302 and 506

Appeal No. : Criminal Appeal No. 410 of 1992

Appellant : Suraj and ors.

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Govt. Adv.

Advocate for Pet/Ap. : Rajendra Gupta, Adv. (for No. 1) and ;Ahadulla Usmani, Adv. (for Nos. 1 to 4)

Disposition : Appeal dismissed

Judgement :

A.K. Shrivastava, J.

1. By this appeal, the appellants have challenged their judgment of conviction and order of sentence passed by trial Court.

2. In brief, the case of prosecution is that on 13-6-1990 in the evening at 7.00 accused persons namely Suraj, Bablu, Ramesh, Bhura and Gopal pacified one Gulab at his house that he should not keep any relation with Ramdayal because accused persons were having inimical relations with said Ramdayal, however, when Gulab did not accept the request of accused persons and told them that he is having good relation with Ramdayal, at that juncture, accused persons Suraj, Bablu, Ramesh, Matru and Gopal gave blows of fists and kicks to him, he was also assaulted by lathi. These persons refrained Gulab who was going to lodge report. On the same day, during night hours, when Gulab, his mother Bhuri Bai, brother Bhagwandas and Tarwar alias Nanha (hereinafter referred to as the deceased) were sleeping, at that juncture, accused Suraj having 'Baka', Bablu with sword, Ramesh and Matru with lathi entered in their house and accused Suraj gave a 'Baka' blow on the head of the deceased. Accused Ramesh and Matru wielded lathis on the head of the deceased and rest other accused persons encircled the house of the deceased and pelted stones at the house of the deceased. The accused persons also hurled abuses of mother and sister and were also giving threat to kill.

3. On hearing the shriek of deceased and his family members, eye witnesses Raghubir Prasad and Ramdayal arrived at the spot and they saw that the deceased came out from his house and ran upto certain distance, however, he fell down and passed away, Gulab informed the incident to Village Kotwar Shambhulal who informed the police, Bhedaghat and thereafter the police party arrived at the spot. At the spot, Gulab lodged first information report in the shape of Dehati Nalishi and on the basis of said which, Head Constable of Police

Station, Bhedaghat wrote the first information report and registered the case against accused persons.

4. In furtherance to his investigation, the Investigating Officer sent the dead body of deceased for post mortem; seized the ordinary and blood stained earth, seized the pieces of bricks and stones; prepared spot map, prepared memorandum under Section 27 of the Evidence Act and on its basis seized the 'Baka' used in the commission of offence; seized lathis which were used in the commission of offence; sent Bhuribai and his daughter-in-law Nanki Bai, as they also received injuries on account of pelting of stones, to the hospital and after completing the investigation, charge sheet was submitted in the competent Court which, on its turn, committed the case to the Court of Session and from where it was received by the trial Court for trial.

5. The trial Court, on going through the charge sheet, framed charges punishable under Section 302 read with Sections 149, 148, 506 and 294, IPC. Accused persons denied the charges and requested for the trial.

6. In order to prove the charges prosecution examined as may as 11 witnesses and placed Ex. P/1 to P/20, the documents on record. The defence of accused is of false implication. Apart from the defence of false implication further defence of accused persons Suraj and Matru is that in the incident they also sustained injuries. In the evening of 13-6-1990, the deceased assaulted Sukkho Bai who is the aunt of accused Matru and who was living in front of the house of deceased and when the accused persons were going to lodge the report, at that juncture, the deceased wielded lathi on them and in the defence they also caused injuries to deceased. In their defence accused persons examined Dr. A.K. Yadu (D.W. 1) who had examined accused Suraj and Matru.

7. The trial Court, on scanning the evidence, came to hold that accused persons Suraj, Bablu, Ramesh and Matru committed offence punishable under Section 302/ 34, IPC, they were further convicted under Section 148, IPC. The other accused persons were convicted under Section 147, IPC. The learned trial Judge passed sentence against appellants Suraj, Matru, Bablu and Ramesh to suffer rigorous imprisonment of life for the offence under Section 302/34, IPC each, apart from the sentence of two years R.I. each under Section 148, IPC. The other accused persons were sentenced to suffer rigorous imprisonment of one year and six months for the offence under Section 147, IPC. Hence this appeal.

8. We have heard Shri Rajendra Gupta and Shri Ahadulla Usmani, counsel for the appellants and Shri S.K. Rai, Govt. Advocate, for the respondents.

9. In this case prosecution has examined P.W. 1 Munna who is the formal witness of seizure. P.W. 2 Gulab is an important eye witness, P.W. 3, S.L. Mishra is Assistant Sub Inspector who arrested the accused persons, P.W. 4 Bhuri Bai is the widow of the deceased and is also an eye witness, P.W. 5 Bhagwan Das is the son of deceased and is also an eye witness, P.W.6 Raghuvir Prasad, P.W. 7 Ramdayal and P.W. 8 Komal are the hostile witnesses. P.W. 9 Shiv Kumar is the Head Constable Who wrote the FIR on the basis of Dehati Nalishi Ex.P/5, P.W. 10 B.P. Tripathi is the Investigating Officer and P.W. 11 Dr. D.K. Shaklle is the Autopsy Surgeon.

10. The eye witnesses are P.W. 2 Gulab, P.W. 4, Bhuri Bai and P.W. 5 Bhagwan Das. These persons are family members of the deceased and, therefore, their evidence has to be considered cautiously. P.W. 2 Gulab and P.W. 5 Bhagwan Das are the sons of the deceased and P.W. 4 Bhuri Bai is widow of deceased. In his evidence Gulab has said that in the night of 13-6-1990, he along with his family members including the deceased were sleeping, at that time accused persons namely Suraj, Bablu, Ramesh and Matru came inside the house and told that if they will maintain any relation with Ramdayal they will be killed. In the evening at 7.00 p.m. accused Suraj, Bablu, Ramesh, Bhura, Gopal assaulted him, because this witness and his family members were having sweet relations with Ramdayal, however, accused persons were keeping enmity with him (Ramdayal). When this witness was going to lodge the report, accused persons refrained him and told not to lodge the report, otherwise he may face dire consequences. In the night at 2.30 hour all accused persons came inside his house and accused Suraj inflicted the blow of 'Baka' to the deceased, as a result of which his father scolded and on hearing his shriek, he, his mother and brother woke up. Appellant Suraj was having a 'Baka' and Bablu was having sword. Appellant Ramesh and Matru were carrying lathis and other accused

persons were standing nearby the house and they were pelting stones and pieces of bricks. Some of pieces of bricks and stones struck the body of his wife and mother. This witness has said that appellant Suraj gave a 'Baka' blow on the head of the deceased, as a result of which he fell down. Thereafter the village Kotwar went to lodge the report. The police party arrived during the morning hours at 7.00 and then he lodged (Dehati Nalishi) Ex.P/5 which bears his signature.

11. In cross-examination the abovesaid witness has said that on account of the said incident, he and his family members were under fear and for this reason he did not go to lodge the report. He has further stated that he and his family members were bare handed. The suggestion put to him that the deceased gave 'Farsa' blows to Suraj and Matru was specifically denied by him. On being confronted that how accused Suraj and Matru received injuries he explained that since accused persons were pelting stones and bricks there is possibility of receiving injuries. This witness has said that he cannot say that how accused Suraj and Matru sustained injuries by sharp edged weapon. As per the version of this witness accused Suraj, Bablu and Ramesh came to him and these three persons asked him not to keep any relation with Ramdayal, but he did not agree. Thereafter appellant Bhura and Gopal also arrived there and all these five persons assaulted him by lathis, fists and kicks. This incident occurred nearby his house in the evening. At that juncture, the inhabitants of village assembled there. Thereafter, he narrated the incident to village Kotwar Shyamlal and requested him to lodge the report, but, he did not lodge any report. On the next day, he showed his injuries to Sub Inspector and he was also medically examined. The suggestion put to this witness that in the evening he, his brother Bhagwan Das, Babulal and other family members caused 'marpeet' to one Sukkho Bai. Later on he admitted that a case is pending against him, his brother Bhagwandas and Babulal on account of causing 'marpeet' to Sukkhobai, however, this witness is not aware that accused Suraj lodged report in police station on account of causing 'marpeet' to Sukkhobai. This witness was further cross examined and when on being asked to him whether he was in deep sleep he said that since in the evening accused persons gave threat to him, he did not have sound sleep and was awaking time to time. Thereafter this witness has said that he saw appellants Suraj, Bablu, Ramesh and Matru entering in the house but he did not raise any alarm. Ramesh was carrying a lathi and Bablu was having a sword. According to this witness he did not see Bablu, Ramesh and Matru causing injuries to his father (deceased). But, he has specifically said that appellant Suraj gave one 'Baka' blow on the head of the deceased. However, causing injuries by the 'Baka' on the head of the deceased by Suraj has not been mentioned in the FIR and this witness is unable to state the reason. Later on this witness has said that when the blow of 'Baka' was given by Suraj, at that juncture, his father fell down and on account of receiving injuries, the deceased raised alarm and thereafter he ran from the place of the occurrence i.e. open courtyard and outside in the Gali he fell down. In very specific word this witness has said that except Suraj, Ramesh, Bablu and Matru, all other accused persons encircled his house. On being asked to him that how many stones and bricks were thrown by these persons, this witness was unable to give their number. But, he has said that some of them struck the body of his wife and mother. Though this witness has said that he narrated all these facts in his report, but, he is unable to state the reason why these facts do not find place in his report Ex.P./5. This witness explained that on account of fear he did not go to lodge the report. When Sub Inspector arrived in the village, at that time the dead body was lying in the gali, this witness pointed out the place of occurrence to Sub Inspector. According to him, the mattress was not stained with blood however, some blood was found in the courtyard but he did not point the blood stained place of his open courtyard to Sub Inspector nor the blood stained earth of open courtyard was seized. On being further cross examined this witness has stated that though he narrated in his report the presence of his mother, wife and brother at the place of occurrence and also stated they witnessed the incident but why this fact was not written in his report, he cannot say. Though this witness was cross-examined from different angles by the defence counsel but he remained vivid except certain minor contradictions.

12. Another eye witness is P.W. 4 Bhuri Bai who is the widow of the deceased. This witness has corroborated the testimony of his son P.W. 2 Gulab. According to her, the mattress on which the deceased was sleeping was stained with blood and the Sub Inspector saw the mattress. According to her, when police party arrived at the spot at that juncture the dead body was lying near by open courtyard. This witness has specifically said

that the deceased was not assaulted in the lane (Gali) nearby the house but he was assaulted inside the house. She has further stated that nearby the house there is an electric pole and electric connection is also installed in her house. She has stated that the electric bulb was on but why this fact has not been mentioned in her police statement Ex. D/1, she cannot say. According to this witness Suraj Natthu, Matru and Bablu came inside the house and except these four persons none else entered inside the house. Natthu and Matru were carrying lathis. When Suraj inflicted injury to her husband she was not sleeping and was awakened but this fact has not been stated by her in her police statement Ex.D/1. This lady emphatically denied the suggestion put to her that her husband (deceased), before the incident took place caused 'marpeet' to accused Suraj and Matru though she was unable to state that how these two accused persons received injuries. This witness has categorically stated, as it was stated by P.W. 2 Gulab, that after receiving the injuries by her husband on his head, he ran away from the spot, On being confronted, this witness stated that she did not give statement to police that dead body was lying in the gali but later on in paragraph 13 she has specifically stated that when she and her family members woke up they saw that deceased was running away and ultimately he fell down in gali, According to her, she also screamed when accused persons were causing injuries to her husband. Thus, on the material point this witness has corroborated the testimony of P.W. 2 Gulab.

13. Similar type of evidence is that of P.W. 5 Bhagwan Das who is also the son of the deceased and was sleeping in open court-yard at the time of incident. According to him appellant Suraj caused injuries by 'Baka' to his father and when appellant was running from the spot again an injury was dealt by Suraj, at that juncture, Bablu was having a sword, Ramesh and Matru were carrying lathis, Bablu, Ramesh and Matru did not take part in 'marpeet'. The other accused persons encircled the house and they were pelting stones and bricks, they were also hurling the abuses. This witness has stated that nearby his house there is an electric pole and the bulb of pole was on. The bulbs of his house were also on. According to him, on account of pelting of stones his mother and bhabhi sustained injuries. His father fell down outside the open courtyard. In the morning police party arrived at the spot and investigated the matter. This witness was cross examined at length but he remained embedded in his version. In cross-examination he has stated that before the incident took place, in the evening, except Matru all the accused persons caused 'marpeet' to Gulab by fists and lathis, they could not go to police station because their house was encircled by the accused persons. The Kotwar also did not go to lodge the report of the incident which took place in the evening. However, he (Kotwar) did go to inform police in regard to the happening of the incident which occurred in the night. According to him, the family members called Kotwar and narrated the incident to him and thereafter requested him to lodge the report. The police party arrived in the village along with Kotwar. Thereafter the defence counsel cross examined this witness in regard to the incident occurred with Sukkho Bai. The suggestion put to him was denied that on the date of incident he and his family members caused 'marpeet' to Sukkhobai. Again this witness denied the suggestion that when accused persons Suraj and Matru were coming back after lodging the report, at that juncture the deceased caused 'marpeet' to these two persons and in defence accused Suraj and Matru caused injuries to his father. Except certain minor contradictions which does not go to the root of the matter the evidence of this witness cannot be disbelieved.

14. If we analyse the evidence of above three eye witnesses, it is clear that appellant Suraj, Matru, Ramesh and Bablu in the late night entered inside the house of the deceased where deceased and his family members were sleeping in open courtyard and Suraj gave blow of 'Baka' which landed on the head of the deceased, as a result of which he tried to flee from the spot but on account of injuries soon thereafter he fell down in the gali which is adjoining to his house and ultimately he passed away. The other accused persons namely Matru, Ramesh and Bablu were carrying lathis and sword and other accused persons were pelting stones and bricks from outside.

15. In order to testify the truthness of these three eye witnesses we shall now scrutinize the evidence of autopsy surgeon P.W. 11 Dr. D.K. Shakley. According to the doctor, the deceased received two injuries, First injury is a lacerated wound on the top of head on midline 2' x 1/2' scalp deep. Second injury is incise wound in the form of chopping of shape on the right side of frontoparietal region and the size of this wound is 2 1/2' x

1'. According to doctor, both the injuries were ante mortem and injury No. 2 was caused by sharp edged weapon and injury No. 1 was caused by hard and blunt object. The deceased died on account of head injury. According to the doctor on 30-7-1990 police constable brought to him, a lathi and a 'baka' and after examining these weapons he opined that the injuries which were caused to the deceased could have come by the two weapons. According to the doctor, the death of deceased was homicidal in nature. Post mortem report is Ex.P/19. In cross examination doctor has deposed that injury No. 1 i.e. injury caused by hard and blunt object was simple in nature, however, injury No. 2 which was fatal, if, caused to a person who was lying , he could not wake up and flee.

16. If the evidence of the eye witnesses is considered in proper perspective, it is revealed that appellant Suraj was having a 'Baka' and there is a definite evidence of eye witnesses that it was used in order to kill the deceased. If we see the spot map Ex. P/ 6 it is revealed that gali, where the dead body of the deceased was found, is adjoining to the open courtyard of the deceased. It has come in the evidence of prosecution witnesses that when deceased woke up injury of 'Baka' was dealt by appellant Suraj, as a result of which he tried to flee from the spot but after running to some distance, he fell down in the gali and passed away. The evidence of eye witnesses is quite clear and the spot map Ex.P/6 also shows that the gali is adjoining to the open courtyard of the deceased and the deceased fell down at that place and passed away. Merely because blood stained earth of the open courtyard was not seized by the investigating officer would not discredit the entire case of the prosecution and will not rub the testimony of the eye witnesses, which is otherwise quite reliable. After the arrest of accused persons at their instance 'Baka' and lathis were seized and the presence of blood was found on the 'Baka' in the, Forensic Science Laboratory.

17. Learned counsel for the appellants, by inviting our attention to Dehati Nalishi Ex.P/5 has stated that there is no Specific averment that Suraj caused injuries by 'Baka', It be seen in Dehati Nalishi, the presence of appellants Suraj, Matru, Ramesh and Bablu is shown and it Has also been stated that Suraj was carrying a 'Baka' and the deceased received injuries on his forehead. Merely/because it has been stated that the appellant Suraj caused injury by 'Baka' in Dehati Nalishi it cannot be said that he had not committed any offence. On the basis of Dehati Nalishi, FIR was registered in the police station. It is well settled in law that FIR is not a substantive piece of evidence but it can be used for the purposes of corroboration and contradiction. In the case of Superintendent of Police, CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : (2003 Cri LJ 2322) the Supreme Court has laid down the law that it is not necessary that the FIR must disclose all facts and details relating to the offence reported. What is required is that the information given must disclose the commission of a cognizable offence and must provide a basis for the police officer to suspect the commission of such an offence. In another case, Kamma Otukunta Ram Naidu v. Chereddy Pedda Subha Reddy (2003) 11 SCC 293 : (2003 Cri LJ 4967), the Supreme Court has held that if minute details are omitted in the FIR, it cannot be held that the case of prosecution becomes doubtful. In the FIR it has come that abovesaid four persons entered inside the house and out of these four persons namely Suraj, Matru, Ramesh and Bablu, Suraj caused 'Baka' injury and other three accused persons were standing there and they were also carrying weapons. Thus, even if there is some minor contradiction in regard to carrying the sword or lathi by other three accused persons would not be much fatal. In the case of State of M.P. v. Mansingh, (2003) 10 SCC 414 in the FIR it was not mentioned that accused was carrying a knife, in that situation the Supreme Court has held that it would not wash away the effect of the evidence tendered by the injured witness. In the case of Om Prakash v. State of Uttaranchal, (2003) 1 SCC 648 : (2003 Cri LJ 483), it was held that FIR need not contain exhaustive account of the incident when prosecution evidence have given all the essential and relevant details of the incident naming the accused, merely because non-mention of certain further particulars in FIR which were stated by the prosecution witnesses before the Court, deposition of the prosecution witnesses cannot be said to be improvement over the version in the FIR, Learned counsel for the appellants vehemently submitted that in the FIR it has not been mentioned that the deceased after receiving injuries ran towards the gali and fell down. True, it has not been mentioned in the FIR that deceased fell down, in the gali, but, it has been specifically stated that after receiving the injuries the deceased fell down nearby the house. We have already discussed hereinabove after giving our anxious and bestowed consideration to spot map Ex.P/6 that the place where

the dead body of the deceased was found in the gali adjoining to open courtyard, (Angan) of the deceased, and, therefore, it is very difficult to say and hold that the deceased did not sustain injuries in his house. In the case of *State of Haryana v. Ram Sarup*, (2002) 7 SCC 250 : (AIR 2002 SC 3114), it was held that merely there is omission in the FIR that of the deceased having walked a few yards from the cot had not been mentioned, could not be given much significance. In the present case also there is similar type situation, and thus, merely on account of this type of omission in the FIR, by itself, may not be sufficient to rebut the prosecution's case. At this juncture, we would like to say that the case of accused persons is not that they were having any inimical relations with deceased and his family members and therefore they were falsely roped in the offence. According to the prosecution, the incident occurred because, accused persons tried to convince deceased and his family members that they should not keep any relation with Ramdayal for which they did not agree. Thus, if complainant party and accused persons were not having any inimical terms, then why the family members of the deceased, who are eye witnesses will implicate the accused persons in the commission of the offence. It is also clear from the evidence that Suraj, Matru, Ramesh and Bablu entered inside the house of the deceased, they were carrying deadly weapons and other accused persons were pelting stones and bricks from outside of the house. Learned counsel for the appellants have tried to pursue us on the basis of the statement of P.W. 4 Bhuri Bai that Ramesh did not enter inside the house in late night when the incident occurred, but, the evidence of other two eye witnesses is quite cogent and reliable and further in FIR the name of Ramesh is also there along with Suraj, Matru and Bablu and according to FIR, these four persons entered inside the house.

18. It has also been canvassed to us by learned counsel for the appellants that the incident took place during the odd hours in the night at 2.30. Neither in the FIR nor in the police statement it has been contended by the witnesses in regard to the existence of electric light and, therefore, mentioning the existence of electric light is an improvement in the testimony of the prosecution witnesses. Recently the Supreme Court in the case of *Chitarmal v. State of Rajasthan*, (2003) 2 SCC 266 : (2003 Cri LJ 889) has held that if murder has taken place in night, the failure to mention about the existence of electric pole in the FIR is not of much consequence and is not fatal to the case of prosecution particularly when on site inspection an electric bulb was found in front of the gate of the house. In the present case also, in the gali, which is adjoining to the open courtyard of house of deceased there is an electric pole.

19. It has been argued on behalf of the appellants that accused Matru and Suraj sustained injuries and the prosecution has utterly failed to explain those injuries, which would mean that in the right of private defence, accused persons caused the injuries to the deceased. Learned counsel has also invited my attention to the evidence of D.W. 1 Dr. A.K. Yadu and submitted this doctor had examined accused Matru and Suraj on 14-6-1990. Accused Matru sustained five injuries. The first injury is lacerated wound on left parietal region and the second injury which is an incise wound was found on the right upper forearm. The third injury was a swelling found on left forearm, fourth injury is an abrasion, on the left knee and fifth injury on left thumb. Similarly accused Suraj sustained three injuries. First injury is an abrasion on the left side of the back of the head; second injury is lacerated wound on the right temporal region and for the third injury the accused was complaining the pain in the left ribs. However, according to the doctor, all the injuries sustained by both the accused persons were simple in nature, and if that is the position, according to me, the prosecution was not obliged to explain the injuries. In this context we may profitably rely the decisions of Apex Court in the cases of *Takhaji Hiraji v. Thakore Kubersing Chamansing*, (2001) 6 SCC 145 : (2001 Cri LJ 2602), *Rizan v. State of Chhattisgarh*, (2003) 2 SCC 661 : (2003 Cri LJ, 1226) and *Sucha Singh v. State of Punjab*, (2003) 7 SCC 643 : (2003 Cri LJ 3876).

20. We have also considered the reasonings assigned by the learned trial Judge and we do find them to be quite cogent. During odd hours in the night at 2.30 accused persons entered inside the house of the deceased and assaulted him when he was sleeping. The accused persons were carrying deadly weapons which would indicate that their intention was only to kill the deceased. The blow of 'Baka' was dealt on the head of the deceased which is a vital part. Another blow of hard and blunt object is also on the head of the deceased and

it has come in the evidence that Baka' was being carried by Suraj and other accused persons were carrying lathis and there is corresponding injuries in the post mortem report. Thus, we are of the considered view that appellants Suraj, Ramesh, Matru and Bablu were rightly convicted under Section 302/34 as well as under Section 148, IPC. The other appellants were convicted under Section 147, IPC, however, they had already completed their entire sentence and, therefore, the appeal on their behalf was not pressed and I.A. No. 2803/92 was filed to delete the names of appellants Nos. 5 to 9 on that ground and this Court on 6-5-1992 allowed the said interim application and the names were deleted.

21. Judging from all angles, we could not find the impugned judgment to be faulty. In the result, the appeal falls and is hereby dismissed. Appellants Suraj, Matru, Ramesh and Bablu are on bails, their bail bonds are cancelled and they are hereby directed to surrender forthwith, in order to serve the remaining part of their sentence.

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