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No. 08, Arul Nagar, Seera Thoppu,

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Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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CASE ANALYSIS ON SURAJ VS STATE OF UTTAR PRADESH, (2010) 7 SCC 515

Author - Shubham More, Student at NLIU, Bhopal

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INTRODUCTION

The case at hand is a Criminal Trial. It is a case where the medical evidence submitted by a doctor had come into question, and his opinions were even declared hostile. The case relies on witness statements submitted by three prosecution witnesses, two of whom are the deceased's wife and daughter. The consistency of witness statements with the medical evidence submitted also came into question. Essentially, the reliability of witness statements also came into question at one point. Even though the doctor was declared hostile in his opinion, the evidence he had submitted did not have to wipe out itself if it was worthy of reliance, according to the court. The judgment hence boiled down to the consistency of witness statements and whether there was any material contradiction in their evidence citing their truthfulness.

SIZE OF BENCH: Division Bench

APPELLANTS: Suraj, Hari Singh

RESPONDENT: State of Uttar Pradesh

Criminal Trial, Criminal Appeal No. 1223 of 2004

ADVOCATES FOR APPELLANTS: Ms Shally Bhasin, Ms Anne Mathew, Rishi Maheshwari and Anil Nag

ADVOCATES FOR RESPONDENT: Pramod Swarup (Senior Advocate), T.N. Singh, Rajeev Dubey, Kamalendra Mishra and Praveen Swarup

DIVISION BENCH: Justice G.S. Singhvi and Justice C.K. Prasad

Judgment delivered by: C.K. Prasad

Decided On: July 6, 2010

BRIEF FACTS

1. On 23-03-180 at 10 am, the deceased (Mansha), along with his wife (PW1), daughter (PW3) and friend Chitwa Chamar (PW2), were going to harvest the Masur crop belonging to the deceased. When they came near Gurwahi Bukhari, all of the accused confronted them. Suraj was allegedly carrying a *farsa* and Hari Singh with a lathi.
2. Baladin abused Mansha and exhorted to kill him, upon which all accused assaulted Mansha with *farsa*, lathi etc. The accused fled the scene. The villagers gathered at the place on the alarm raised by Mansha's wife, daughter and friend. While PW1 made arrangements for a bullock cart for Mansha, he died.
3. The medical officer in charge, Dr A. K. Srivastava, conducted the deceased's post-mortem. He claimed that the deceased suffered from contusions, lacerations, and incised and punctured wounds and hence died as a result. Later, it was proven that he did not measure the dimensions of the wounds on the deceased's person but still gave opinions out of his reach.
4. Suraj and Hari Singh, along with Shyam, Gulab and Baladin, were on trial for the offence under sections 302/149, 147 and 148 of the Penal Code, 1860. Baladin died during the pendency of the trial. All of them were convicted of Sections 302/149 by the Sessions Court, Hamirpur. Hari

Singh was additionally found guilty under Section 147 of the IPC.

5. All the convicted appealed before the Allahabad High Court during the trial of which Shyam and Gulab also passed away. The appeal was eventually dismissed, which led to the appellants approaching the Supreme Court, who preferred an appeal by special leave.

MATERIAL FACTS:

1. All five accused cornered the deceased and attacked him on provocation by the Baladin. They exhorted to kill him and left him with grievous injuries. The eyewitness to the incident includes the deceased's wife, daughter, and close friend.
2. The doctor (Prosecution Witness 6) did not measure the dimensions of the wounds on the deceased's person and proceeded to speculate about the type of injuries he suffered.
3. Baladin, Shyam and Gulab passed away during the pendency of the respective trials.
4. During the trial, it came to light that the medical officer conducting the post-mortem did not measure the dimensions of the wounds on the deceased's person.

IMMATERIAL FACTS:

1. The deceased (Mansha), along with his wife (PW1), daughter (PW3) and friend Chitwa Chamar (PW2), were going to harvest the Masur crop belonging to the deceased. When they came near Gurwahi Bukhari
2. The villagers gathered at the place on the alarm raised by Mansha's wife, daughter and friend.
3. Suraj and Hari Singh, along with Shyam, Gulab and Baladin, were on trial for the offence under sections 302/149, 147 and 148 of the Penal Code, 1860. Baladin died during the pendency of the trial.

ISSUES:

1. Are all five accused jointly liable for Mansha's death?
2. Can appellants still have the joint liability of a crime, albeit the death of others accused?
3. Does a medical officer being declared hostile wipe out his evidence?

CONTENTIONS FROM APPELLANTS:

The appellants denied having committed the offence. The prosecutions examined six eyewitnesses, including PW1, PW2 and PW3. They also examined Dr A. K. Srivastava (PW6) about the post-mortem he conducted on the dead body as the medical officer.

Ms Shally Bhasin learned counsel submits that the doctor, during the trial, failed to mention anything about any injury sustained by the deceased or the cause of death. She further submitted that the post-mortem report has not been put on a record or proven as an exhibit. Hence, the appellants argued that the doctor is also declared hostile; the most they shall be charged is under Section 324 of the Penal Code.

The counsel for the appellants then points out that according to the doctor PW6, the deceased suffered four punctured wounds, which cannot be caused by any of the weapons the accused were alleged to be carried by the 'eyewitnesses'. Hence, the statement of the 'eyewitnesses' did not corroborate with the medical evidence submitted by the prosecution and the medical evidence, therefore, deserves to be rejected.

CONTENTIONS FROM RESPONDENTS:

The counsel representing the state argues that upon inspection of the original records, they found that Dr A. K. Srivastava had stated all injuries sustained by the deceased in the post-mortem report, including contusions, abrasion, laceration, and incised and punctured wounds. The counsel also submitted that despite PW6 being declared hostile as a medical officer, it should not wipe out his entire evidence for the nature of injuries and cause of death.

APPLICABLE LAW AND RELATED CASES:

- **Article 32 Indian Constitution – “Right to seek Constitutional Remedy:** Remedies for enforcement of rights conferred by this Part;
 1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
 2. The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
 3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
 4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”
- **Section 302 Indian Penal Code – “Punishment for murder:** Whoever commits murder shall be punished with death or imprisonment for life and shall also be liable to a fine.”
- **Section 149 Indian Penal Code – “Unlawful Assembly:** Every member of unlawful assembly guilty of offence committed in prosecution of common object. –If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.” - Ingredients of Unlawful Assembly:

1. Five or more people
 2. They must have an unlawful common object.
 3. These conditions may coordinate with an exhaustive list given under s141.
 - a. overawing of central or state government or its offices
 - b. resistance to execution of legal process
 - c. commission of mischief (destruction in such manner that person has to invest money to get it repaired), trespass (intimidation, annoyance, threatening, incite) or any other offence (involving trespass).
 - d. forcible possession dispossession
 - e. illegal compulsion
- **Section 302/149 usually constitutes “Common Object,** i.e., a purpose that is shared by all the members of an unlawful assembly. Prior agreement and consensus. Required before the crime takes place. Not required before the crime takes place. Pre-arranged plan. Hence, when a group of people has a common object to kill another person, they can be charged under Section 302 read with Section 149.”
- Ingredients of common object:
1. Five or more people
 2. They must have an unlawful common object.
 3. These conditions may coordinate with an exhaustive list given under s141.
 - a) overawing of central or state government or its offices
 - b) resistance to execution of legal process
 - c) commission of mischief (destruction in such manner that person has to invest money to get it repaired), trespass (intimidation, annoyance, threatening, incite) or any other offence (involving trespass).
 - d) forcible possession dispossession
 - e) illegal compulsion

4. An offence must be committed by at least one member of the unlawful assembly.
5. Such an offence has been committed in pursuance of common object of that assembly or must be such that the members of that assembly knew it to be likely committed or has the knowledge of it likely to be committed.

- **Section 148 Indian Penal Code – “Rioting, armed with deadly weapon:** Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

- **Section 147 Indian Penal Code – “Punishment for Rioting:** Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

- **Section 324 Indian Penal Code – “Voluntarily causing hurt by dangerous weapons or means.—**Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

- **Bimbadar Pradhan vs State of Orissa** ¹⁰⁵
- Facts: Bim Pra was a government servant along with four accused forged documents for the purpose of misappropriating government funds along with falsifying official records. Two people died during the trial. Another became an approver after which one more died during trial. Leaving behind one accused. Held: Court found Bimbadhar to be guilty of all offences 409, 471A, 120B. On appeal HC upheld trial court’s decision.

Court: In the Topan Das case, all other accused were acquitted. In present case three of the accused have died. The approver is not acquitted, his name will not be struck off from the list of the accused he is just not getting prosecuted. Hence, Bimbadhar was still liable for the offences

CONCRETE JUDGMENT:

The appellant’s defence was of false implication from the patterns examined from cross-examinations over three trials.

Because Dr A. K. Srivastava claimed punctured wounds on the deceased’s body, he admitted he did not measure the dimensions of injuries before giving his opinion. The court observed that the trial and appellate court rightfully ignored the doctor’s opinion.

However, the doctor found contusions and incised wounds on the deceased’s person, which is consistent with the eyewitness statements and has no material contradiction. The court found the prosecution to have been able to prove their case beyond all reasonable doubts. The accused Suraj and Hari Singh were thus charged with Section 302/149 whereas Hari Singh was additionally charged with Section 147 of the Penal Code. They both underwent imprisonment for life. Hence, the court found no

¹⁰⁵ Bimbadhar Pradhan v. State of Orissa, 1956 SCR 206

merit in the appeal and dismissed it accordingly.

RATIO DECENDENDI

- Declaration of a witness to be hostile does not have to wipe out his material evidence if such evidence does not contradict the facts of the case or witness statements.
- All parties to a crime are held jointly liable for said crime, albeit the death of some of the parties during the pendency of the trial.

CONCLUSION

This particular instance involved a criminal trial. Three prosecution witnesses—two of whom are the deceased's daughter and wife—submitted witness statements that constitute the basis for the case. In one instance, a doctor's medical testimony was contested, and his ideas were even labelled hostile. It was also questioned if witness accounts matched the provided medical findings.

In the post-mortem report, Dr. A. K. Srivastava listed all of the deceased's injuries, including contusions, abrasions, lacerations, and pierced and incised wounds. Suraj and Hari Singh were accused with violating Penal Code Section 302/149, and Mr. Singh was also accused of violating Section 147. The court noted that the testimony of the "eyewitnesses" did not support the medical evidence that the prosecution had provided. Therefore, the medical evidence should be disregarded. The attorney further argued that PW6's testimony on the nature of the injuries and the cause of death should not be completely discounted even if he was deemed hostile in his capacity as a medical expert. False inference from patterns observed during cross-examinations over three trials served as the appellant's defense.

Suraj and Hari Singh were therefore charged with violating Section 302/149, and Hari Singh was also charged with violating Section 147 of the Penal Code. They were both sentenced to

life in prison. The appeal was thus rejected by the court since it had no merit.