

PETITIONER:
SUKHPALLALAL RAIRAMRUP SINGH & ORS.

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 08/01/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO. 286 OF 1989
WITH
CRIMINAL APPEAL NO. 287 OF 1989
J U D G M E N T

M.K. MUKHERJEE, J.

The five appellants in these three appeals were tried for offences punishable under Sections 147, 304 (Part II) read with Section 149, and 330 IPC. The allegations against them were that on September 17, 1982 they committed rioting and in course thereof caused bodily injuries to Phoola Devi of village Phera with a view to extorting confession from her which ultimately resulted in her death on September 23, 1982. The trial Court acquitted one of them namely, Sukhpal (the sole appellant in Criminal Appeal No. 460 of 1989) and convicted the other four under Section 304 (Part II) read with Section 34 IPC and sentenced each of them to suffer rigorous imprisonment for five years. Assailing the judgment of the trial Court the four convicts preferred an appeal and the State of Madhya Pradesh, in its turn, filed another appeal against the acquittal of Sukhpal and for enhancement of sentences of the other four appellants. In disposing of the two appeals by a common judgment, the High Court set aside the acquittal of Sukhpal and convicted him under Section 304 (Part II) read with Section 149 IPC and dismissed the other appeal. The above judgment of the High Court is under challenge in these three appeals which have been heard together.

Sukhpal was a Major and the other four appellants were constables of the Special Armed Force (S.A.F), Gwalior and at the material time they were camping at Chhatarpur to look after the law and order situation there. At the time of her health Phoola Devi was a member of the Janpad Panchayat and Gram Panchayat and was a social worker of the same area. According to the prosecution the appellants used to indulge in anti-social activities and were responsible for gambling and illicit distillation. As their such activities had created a terror among the villagers Phoola Devi took up the cudgels against them. On August 5, 1982 the Company Commandant of S.A.F. was to visit the village and Phoola

Devi had planned to submit a representation to him complaining about the illegal activities of the appellants. This visit was, however, cancelled. It is alleged that the appellants had learnt about such move of Phoola Devi.

The further prosecution case is that on September 17, 1982 at or about 8 A.M. the appellants entered into the house of Phoola Devi on the pretext that they had information that she was having in her possession contraband ganja and unlicensed pistol. Phoola Devi was, however, not in the house at that time and her nephew told them that there was no such material. In the meantime Phoola Devi came back home and denied the accusation levelled against her. Appellant Sukhpal then abused her and appellant Ramrup Singh caught hold of her hair and started beating her. She was dragged outside the house and then taken towards the police station. While being taken to the police station, the appellants continued to beat her with lathis and a Beshram stick. At the police station they let her go on an assurance that she would pay Rs. 150/- and would not lodge any complaint. Phoola Devi, however, went to Chhatarpur and lodged a complaint on September 18, 1982. She was then sent for medical examination by Dr. S.K. Dixit (P.W.4), who examined her and gave his report (Ex.P-2). Thereafter Phoola Devi left the village out of fear and went to the nearby town of Banda (Uttar Pradesh) where she died on September 23, 1982. Her death was reported at Kotwali, Bandavide. Dr. Vishal Chand (P.W.5) performed the autopsy and gave his report with his opinion that Phoola Devi died of rupture of liver and excessive bleeding. On receipt of the report of the post-mortem examination and after completion of investigation police submitted chargesheet against the appellants.

The appellants completely denied the charges levelled against them. Their contention was that on September 17, 1982 an unlicensed pistol was recovered from the possession of Phoola Devi and hence they brought her to the police station. She however managed to run away from there and they did not know how she met with her death later on. According to the appellants she used to manufacture illicit liquor with the connivance and assistance of Devi Dayal (P.W.1), Dasharath Prasad (P.W.2) and Baby (P.W.3) and others and they were falsely implicated in the case at their instance.

To sustain the charges levelled against the appellants the prosecution examined Devi Dayal (P.W.1), Dasharath Prasad (P.W.2) and Babu (P.W.3) as eye-witnesses, besides two doctors and the Investigating Officer. On appreciation of the medical evidence the trial Judge firstly held that the prosecution succeeded in establishing beyond doubt that Phoola Devi met with her death due to rupture of her liver caused by an injury on her chest. After recording the above finding the trial Judge considered and discussed the evidence of the eye-witnesses and held that owing to the assault by four of the appellants (except Sukhpal) with lathi and stick she sustained the above injury, besides others. As regards Sukhpal, the trial Judge held that though he was present on the spot he was not in any way liable for the death of Phoola Devi as he did not take part in the assault. After reappraising the evidence the High Court concurred with all the findings recorded by the trial Judge against the four convicted appellants; and in reversing the acquittal of Sukhpal the High Court observed that merely because he did not give any beating to the deceased it did not mean that his case was distinguishable from the others for, admittedly, the other four appellants were working under his command. According to the High Court when the

evidence of eye-witnesses unmistakably pointed to the fact that all the accused persons went to the house of Phoola Devi together to search the same and when Sukhpal headed the group he ought to have, if he was not a party to the assault, stopped such beating. As he did not take any such step it was evident that he had approved of the action of the other members of his group who were working under his direction and, therefore, he was also a party to such assault. With the above findings the High Court recorded the impugned conviction against him.

We have heard the learned counsel for the appellants at length and considered the entire evidence on record. Our such exercise persuades us to hold that the findings that have been recorded by the High Court against the five appellants are proper and justified and no interference in respect thereof is called for.

When the evidence of the eye witnesses is considered in the light of the respective cases of the parties it stands fully established that the appellants came together to the premises of Phoola Devi on the plea that they wanted to search it. If the defence contention that on such search an unlicensed pistol was recovered was true, it was obligatory on their part to prepare a seizure memo in respect of the same and then register a case against Phoola Devi. Similarly, it must also be said, if really she had managed to run away from the police station after she was brought there under arrest, it was expected that not only there would be some daily diary entry in the police station in support thereof but also a prosecution launched against her for escaping from lawful custody. In absence of any evidence either oral or documentary to support the defence story we are unable to accept the same. We hasten to add that we are not unmindful of the settled principle of law that the prosecution must stand on its own feet and not on the weakness of the defence but, then these telltale circumstances not only falsify the defence story but also land credence to the prosecution case that to wreak their vengeance on Phoola Devi for her having lodged complaint against them to their superiors that the appellants came to her house on the false pretext of searching for unauthorised firearms and forcibly took her to the police station - beating her all the way - as testified by the three eye-witnesses.

It was however contended on behalf of the appellants that even if it was assumed that the story as given out by the eye-witnesses was true the appellants could be held guilty only for an offence under Section 323 IPC, and not 304 (Part II) IPC, in view of the nature of injuries found by Dr. S.K. Dikshit (P.W.4) who first examined Phoola Devi. The learned counsel for the appellants submitted that having regard to the facts that she died six days after the alleged assault at a different place and that Dr. Vishal Chander (P.W.5), who held autopsy, found some more injuries on her person it was evident that she met with her death owing to injuries she sustained later.

Having carefully gone through the evidence of the two doctors we do not find any substance in this contention. It is of course true that while Dr. Dikshit found four injuries on the person of Phoola Devi Dr. Chander found six. The reason for such discrepancy as to the number of injuries is not far to seek. The two injuries which were found by Dr. Chander - and not by Dr. Dikshit - were on the gluteal region (the buttocks) and needless to say those could not have been noticed without disrobing the victim. It is not unlikely therefore that Dr. Dikshit did not, keeping in view

her modesty, examined her thoroughly but consequent upon her death Dr. Chander was free from such inhibition.

We next get from the evidence of the two doctors that both of them found contusion on the right side of the chest (breast) of Phoola Devi besides other injuries. Dr. Chander testified that on internal examination he found that the liver was ruptured and opined that shock and excessive bleeding owing to such rupture was the cause of her death. The cause of such rupture according to Dr. Chander, was the above contusion (which was described by both the doctors as injury No. 3). Since the above injury was earlier seen by Dr. Dikshit, it is obvious that the victim sustained the same in the incident in question and not later on, as contended by the defence. As according to Dr. Chander the above contusion was sufficient in the ordinary course of nature to cause death the offence that was committed by causing the above injury cannot but be one under Section 304 (Part II) IPC. We, therefore, find no reason to disturb the concurrent findings of the learned Courts below that the four appellants (whose conviction was upheld by the High Court) were responsible for the death of Phoola Devi. As regards the appellant Sukhpal, we are of the view that the High Court was fully justified in setting aside his acquittal. The evidence on record clearly demonstrated that out of spite, he along with his men went to the premises of Phoola Devi on the false pretext of searching the same, brought her out and dragged her to the police station while assaulting her on the way which ultimately resulted in her death. All the appellants including Sukhpal are therefore guilty of the offence of committing culpable homicide not amounting to murder in prosecution of their common object. We, therefore, uphold the conviction of appellant Sukhpal under Section 304 (Part II)/149 IPC and alter the conviction of the other four appellants from Section 304 (Part II)/34 IPC to 304 (Part II)/149 IPC.

Coming now to the question of sentence we feel that the appellants should adequately compensate the members of the deceased's family for the atrocities they committed taking advantage of the haplessness of Phoola Devi. We, therefore, while reducing their substantive sentence of rigorous imprisonment from five years to three years direct the appellant Sukhpal to pay a sum of Rs. 20,000/- and each of the other four appellants a sum of Rs. 10,000/- as fine. In default of payment of fine, Sukhpal will suffer rigorous imprisonment for two years more and the four others one year more. The entire fine, if realised, shall be paid to the heirs of deceased Phoola Devi as compensation. The appellants, who are on bail, shall now surrender to their bail bonds to serve out the sentence.

The appeals are thus disposed of.