

**Mangat and anr. Vs. State**

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**Court :** Allahabad

**Decided On :** Jan-31-1966

**Reported in :** AIR1967All204

**Judge :** M.H. Beg, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367; [Indian Penal Code \(IPC\), 1860](#) - Sections 96 and 300; [Evidence Act, 1872](#) - Sections 3

**Appeal No. :** Criminal Appeal No. 857 of 1964

**Appellant :** Mangat and anr.

**Respondent :** State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** T. Rathore and ;Kishan Singh Khare, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.H. Beg, J.**

1. The appellant Mangat and his son Kanwla have been convicted of an offence punishable under the first part of Section 304, P. C. and sentenced to ten years' rigorous imprisonment by an Additional Sessions Judge of Meerut. The

prosecution case was that, while Khazan deceased was sitting and smoking in front of his house, near a well, on 11-9-1968, at about 4 p.m.. in village Silana, the two appellants, together with Prakash and Jadubira, two other sons of Mangat who were tried together with the appellants but acquitted, came along and attacked Khazan with lathis. On the intervention of Jagpal (P. W.1), and Jagdish (P. W. 5), the two sons of Khazan, and Khanno (P. VV. 6), the wife of Khazan, these three were also beaten. The injuries on the body of Khazan were serious and resulted in his death.

2. On 13-9-1968. Dr. Nahar Singh (P. W. 13), performed the postmortem examination on the body of Khazan, and he found 14 injuries which included two very serious injuries on the head causing internal fractures on the parietal bones. There were also other injuries on the shoulder and the chest showing that the head was aimed at. The cause of death was put down as shock and haemorrhage resulting from the injuries. On 12-9-1968, at 7.55 p.m. Dr. R. L. 'Chopra, Medical Officer. Baraul, had examined Jagdish P. W. 5, and found six injuries which consisted of one on the head, one on shoulder, two on the back, one on the face and one on the left leg. These injuries indicated that the assailants were strong enough to drive back Jagdish who sustained two injuries on his back. Soon after that, he examined Smt. Khanno (P W 6) and found one scabbed abrasion 5/8' x 1/4' on her right thigh. He also examined Jagpal (P W 1) at about the same time, and found a contused wound on the right scalp 3 1/2' above the right ear. The approximate duration of these injuries was given as 26 hours. This brings the time of occurrence to nearly 5 p.m on the previous day which is near enough when compared with the time estimated by the prosecution witnesses as about 4 p.m. on 11-9-68. The F.I.R. lodged by Jagpal (P.W. 1) at Police Station Chaprauli, three miles from village Silana, gives an account of the occurrence. It also mentioned that Jagpal and his brother had plied lathis in self-defence. It disclosed that the occurrence was seen by Baldeo (P.W. 3), Mangey (P. W. 4), Girwar (P. W. 12). Risala (P. W. 8) and Kashi Ram Pradhan (not produced).

3. The defence version, sought to be established through the evidence of Daya Chand (D. W. 2), the brother of Girwar (P. W. 8), was that Mangal came to the well to draw water where Khazan deceased and Jagdish (P. W. 5) and Jagpal (P. W. 1)

were present already with lathis. It was alleged that Khazan started abusing Mangat and told him not to draw water from the well situated on Khazan's land, whereupon Mangat protested and said that the well was joint. Khazan. Jagpal and Jagdish are alleged to have been attacked Mangat with lathis. In the meantime, Kawnla. appellant, is also said to have reached there and plied his lathis in self defence. According to Daya Chand (D. W. 2), Mangat had also picked up a 'Denda' lying near the well and used it to defend himself Mangat was said to have brought only a bucket although no bucket was found there. Daya Chand admitted that relations between Khazan deceased and Mangat were strained for a year or two before the occurrence. He also stated that he jumped 'in the midst of the Marpit', that Mangat was given 5 to 7 blows by Jagdish. and that Jagpal and Kanwla had received 4 or 5 blows where as Khazan had received only 2 to 3 lathi blows and the wife of Khazan had been merely pushed. But, Daya Chand had no injuries. The injuries proved on the body of Mangal, appellant, by Dr. D.S. Kapoor, who examined him on 14-9-63 were two contused wounds on the head, two scabbed abrasion on the forehead, and another scabbed abrasion on the right eyebrow. At about the same time, Dr. D. S. Kapoor also examined Kanwla and found a lacerated wound 1 1/2' x 4/10' on the head above the left ear, a contusion on the right arm, and a scabbed abrasion on the left cheek. The simple question which arose for determination was: Is the prosecution or the defence version as to how Khazan sustained his injuries and died correct?

4. Mr. T. Rathore, appearing for the appellants, very adroitly, relied upon the findings of the trial Court which was in the following words:

'From the evidence and the circumstances discussed above the prosecution evidence cannot be acceptable about the accused being the aggressor.'

5. The trial court, however, had proceeded further to observe:

'I do not think therefrom, it should necessarily follow that Khazan and his sons were the aggressors'

6. The learned Sessions Judge came to the conclusion that there was Home dispute between the two brothers about the joint land over which the well was

situated. The learned Judge visualised the true state of facts as follows:

'The facts as noticed in the evidence would make out that Khazan was sitting smoking on the joint land belonging to him and his brother, the accused Mangat. Mangat comes to that land. A verbal talk ensued between the two which flared up in the sudden quarrel. It does not only stop there. This sudden quarrel degenerates into a sudden fight. The noise created on the occasion attracts the attention of the sons of Khazan as well as Mangat. For definite, at least Kanwla comes on the side of Mangat and Jagpal and Jagdish come from the side of Khazan. They are all armed and take part in the fight which had sprung up suddenly and injuries to people on either side were caused. The injuries caused to Khazan proved fatal though there was no premeditation for it. Both sides were armed and the offender causing the death of Khazan could not be said to have taken undue advantage. Nor there is evidence to show of their acting in any cruel or unusual manner. This would be a case covered by exception (4) to Section 300 I. P. C. The explanation attached to exception (4) says, 'it is immaterial in such cases which party offers the provocation or commits the first assault' It means that In the circumstances noticed above a right of private defence could not be claimed by anyone. This is the view taken by the Supreme Court in the case of *Jumman v. State of Punjab*, reported in : 1957 CriLJ586 '.

7. It is noteworthy that the case as found by the learned Sessions Judge was neither set up by the prosecution nor by the defence. It has to be borne in mind that while the Courts of criminal justice cannot come to correct conclusions without the use of imagination to some extent, the tendency to visualise and conjecture a state of events set up by neither side is dangerous and has to be carefully watched. Surmise can be used more liberally in giving an accused person the benefit of doubt which may reasonably arise, but, it cannot be used with equal facility in arriving at a conclusion to convict accused persons.

8. The applicability of the Supreme Court case of : 1957 CriLJ586 to a case in which it may be difficult to arrive at a conclusion as to which side commenced aggression, gave rise to a reference by my brother Bhargava J., to a larger Bench, and the view of this Court was stated by a Division Bench, in *Shubrati v. State*,

1959 All LJ 423, in the following words :-

'If both the parties come to Court with untrue facts and conceal the real truth they have themselves to blame and they cannot expect the Court to arrive at any definite conclusion on the unreliable evidence produced either for or against either of the parties. In such a case the Court will certainly attempt to separate the grain from the chaff but only if it is possible do so. In certain circumstances it may be found to be an impossible task. That is particularly so when the evidence of both the parties is thoroughly unreliable and cannot be accepted even in part with safety. In such a case, it is not open to the Court to make out a third case which is different from the case set up by both the parties. In such a case, the Court can only say that the matter is doubtful in the extreme and it is not possible to arrive at any conclusion one way or the other.'

9. It is true that the learned Sessions Judge has recorded certain conclusions, but, a perusal of the judgment indicates that those conclusions are purely speculative and not based upon the evidence given by either side. In Jumman's case, : 1957 CriLJ586 (supra), the question which really arose was whether plea of private defence could be assumed and then upheld for either side, but, in Subrati's case, 1959 All LJ 423 (supra), decided by a Divisional Bench of this Court, a somewhat different question arose. This was: Can the benefit of doubt be given to an accused person where a plea of self-defence is taken by the aroused and not positively established?

10. It seems that the learned Sessions Judge assumed that what was held in Jumman's case. : 1957 CriLJ586 (supra) by the Supreme Court was applicable to the case under consideration. The learned Judge, perhaps unconsciously, viewed the facts of this case in the light of what was laid down by the Supreme Court in Jumman's case : 1957 CriLJ586 . The learned Judge seems to have started with a preconceived notion that the facts of the present case fit the proposition enunciated by the Supreme Court in Jumman's case : 1957 CriLJ586 . It is the primary duty of a trial Court to come to a definite conclusion about the facts by 'separating the grain from the chaff' as the proverb goes. The application of law comes after that. Exception (4) to Section 300 I. P. C. was not intended as a

means of resolving doubts or of avoiding a definite decision where this is possible. It was only meant to be applied to facts of a case which are ascertainable with a reasonable amount of certainty. If, upon all the facts of a case, it is doubtful whether the accused were exercising a right of private defence or not, the accused must undoubtedly be given the benefit of doubt as was held by the Full Bench of this Court in *Parbhoo v. Emperor* : AIR1941 All402 . On the other hand, if it is possible to determine who the aggressor was, the duty to reach and record that conclusion must be performed.

11. In my opinion, the real question which arises in this case was the one which arose in *Shubrati's case* 1959 All LJ 423: (supra) and in *Parbhoo's case* : AIR1941 All402 and not the one which arose in *Jumman's case* AIR 1957 SC 169 (supra). The question of the applicability of Exception (4) to Section 300 I. P. C. could only arise if, after examining the facts of the case, it could be found with reasonable definiteness, as was found by their Lordships of the Supreme Court in *Jumman's case* : 1957 CriLJ586 ,that there was a sudden fight upon a sudden quarrel. It is not necessary that the plea of a sudden fight on a sudden quarrel should be taken by either side. It is, however, necessary that the facts of a case determined after a consideration of all the evidence, for the prosecution as well as the defence, must be capable of giving rise, with reasonable amount of definiteness, to the conclusion that it was a case of a sudden fight upon a sudden quarrel. In the case now before me, after having examined the whole evidence, I have come to the conclusion that the accused were undoubtedly the aggressors for the reasons given below.

12. The discrepancies and improbabilities in the statements of Jagpal (P. W. 1), Jagdish (P. W. 5) and Smt Khanno (P. W. 6), the two sons and wife of Khazan, were not such as to make it doubtful whether Jagdish and Jagpal were present during the 'Marpit' or whether Smt. Khanno had heard the beginning of the quarrel between her husband Khazan and Mangat appellant. The fact that these three persons were actually present at the time of the 'Marpit' is borne out by their injuries as well as by the statements made by the appellants under Section 342 Cr. P. C. and the case taken by the accused through the defence witness Daya Chand (D. W. 2). Even the learned Sessions Judge has come to the conclusion that the two sons were already there when the Marpit started. It is not very

material whether they were initially present at the Panchayati land, at a distance of about 150 paces from the well, which is not really far, or at a distance of only about 25 paces. It is possible that what is called the Panchayati land commences only at a distance of 25 paces from the well. It is difficult for witnesses, deposing at the end of March 1964 about an occurrence which took place in the afternoon of 11th of September, 1963, to recollect where particular persons came from. In recollecting such an occurrence after a few months, the witnesses could very well find themselves unable to remember correctly where others were or the exact place from which the witnesses had seen the occurrence. The learned Sessions Judge himself held, quite rightly, that the quarrel between Mangat and Khazan had attracted the sons of the two men, as well as other villagers who must have seen how the attack or 'marpit' started. The learned Sessions Judge, who had inspected the spot, also held that Jagpal and Jagdish, even if they were on what is called the 'Panchayati land', could have seen the beginning of the quarrel. It may be that they were not present near Khazan at that time as the learned Sessions Judge held, but it is not possible to conclude that they were not present to defend Khazan at all when Khazan was being attacked. It has not even been suggested by the defence that the injuries on the body of Jagpal and Jagdish were the result of some other occurrence.

18. If Jagdish and Jagpal were at a distance of some paces from the well at the time when the quarrel started, as has been argued for the appellants, it is clear that they had a right to come running to protect their father who was being attacked. The fact that they were at a distance of few paces would demolish the defence case that Jagdish and Jagpal were present with lathis in the company of Khazan in order to attack Mangat when Mangat arrived there. The prosecution case itself was that Mangat was alone at the well at that time, but the quarrel, before the actual attack by Mangat and his sons, had attracted the prosecution witnesses who saw the beginning of the 'Marpit'. It is unimportant, in my opinion, whether Jagpal and Jagdish remembered exactly from where each had fetched a lathi or at what stage of the quarrel he had done so. Discrepancies on such points could not seriously affect the credibility of a version established also from the evidence of witnesses other than Jagpal and Jagdish and Smt. Khanno. I do not think that Smt. Khanno's evidence could be doubted when she asserted that she,

from inside the house, heard how Mangat started abusing her husband who was sitting peacefully smoking his Huqua at that time. The mere fact that he stated that her son Jagdish was attacked on the Panchayati land by the accused could not discredit what she stated about how she heard Khazan telling Mangat not to abuse. All that could be inferred was that she had not seen where Jagdish was attacked. Such statements made by a witness ought to be cleared up by re-examination so as to bring out what the witness actually meant. Even if the statements of Jagpal and Jadish and Smt Khanno were not quite reliable, I find that they are supported by other eye witnesses and by circumstances. It is a well recognised rule in appraising evidence that even the statements of witnesses who are not totally reliable can be acted upon where they are corroborated by other reliable evidence.

14. The prosecution version is supported by the evidence of Bakleo (P. W. 3). Mangey (P. W. 4), Risala (P W 8) and Girwar (P. W. 12) Baldeo (P. W 3) was a neighbour of Khazan He admitted, during his cross-examination, that he had come to the scene of occurrence when the marpit was going on, although he had stated, in the examination-in Chief, that Mangat was showering abuses and had asked the other accused to cause injuries on Khazan who was beaten even after he had fallen. He also stated that Kbazan did not ply any lathi in self-defence I do not think that the statement of this witness, that when he reached there Mangat had asked the other accused to cause injuries, can be interpreted as a contradiction of the statement, under cross-examination, that when he reached there he saw the Marpit going on. After all, abuse and instigation of other accused to beat could be said to occur in the course of the Marpit. The cross-examination of Baldeo could not bring out anything to show that he had any motive whatsoever to depose falsely against the accused persons. This witness certainly saw the marpit as soon as he arrived there, and, after the accused had been seen attacking, he saw Jagpal and Jagdish plying lathis in self-defence. He also saw the lathi blow given to Smt. Khanno. I am unable to discover any reason good enough for discussing the statement of this witness for the purpose of corroborating the version that the accused were the aggressors. It may be that Mangey (P. W. 4) was not so reliable as Baldeo (P. W. 3) and may have come a little later. It is also true that Risala (P. W. 8) stated that he saw the two sides exchanging blows when he reached there.

He, however, stated that Khazan was also beaten after having fallen. It is also true that Girwar (P. W. 12) admitted that he reached the place of occurrence after Smt. Khanno (P. W. 6) had come out so that he could not depose how or why the attack had commenced. The statement of a prosecution witness cannot, however, become useless merely because he saw the end of an occurrence and scrupulously said so. The fact that a man who had actually fallen and has no lathi with him and is being beaten by others who have lathis with them certainly corroborates the statements of those witnesses who say that the attack was commenced by those who came with and were seen plying lathis.

15. In addition to the statements of the eyewitnesses of the occurrence, there is the statement of the Investigating Officer, Kishan Lal (P. W. 14), who recovered a blood-stained lathi from the house of Mangal and another from the house of Kanwla appellant in the presence of Sial Singh (P. W. 10) whose testimony was not seriously questioned. Sial Singh (P. W. 10) frankly admitted that he did not see from what place inside the house the lathis were brought out by the Daroghaji. Never theless, the fact that blood stained lathis were brought out from the houses of the two appellants corroborates the prosecution version that they had plied lathis mercilessly against Khazan and his sons. Another circumstance, which corroborates strongly the prosecution version, is the much larger number of injuries on Khazan and his two sons as compared with the injuries of Mangal and Kanwla. It was argued before me that disproportion in the number of injuries is not enough to give a clue as to who started the attack. I am unable to accept this contention. If there is a great disproportion between the number of injuries inflicted on the two sides, it certainly indicates that those who had inflicted the target number of injuries were likely to be the aggressors. It may be that after an accused person had established his right of private defence, the mere excess in the number of injuries caused by the accused persons may not be weighed in what are called 'golden scales'. This does not mean that they have not to be weighed at all in any kind of scales. Nor does it mean that, where the accused persons have miserably failed to establish the alleged right of private defence, they can still invoke the principle that the injuries on the two sides should not be 'weighed in golden scales' .

16. Still another circumstance which supports the prosecution version is the place of occurrence which is right in front of the house of Khazan. If Mangat had been taking water from the well regularly, without objection in the past, it is very difficult to conceive of a sudden fight developing over it. The prosecution has also established the two motives alleged for the attack. The first motive was that Mangat was Khazan's brother who wanted to dominate Khazan and was highly displeased with him for having attended a feast at the house of Charan Dass (P. W. 7) to which Khazan had strong objections. Charan Dass (P. W. 7) as well as other witnesses deposed that there was a dinner at the house of Charan Dass (P. W. 7) at the Mundan ceremony of Om Prakash son of Charan Das. Mangat and his sons did not attend it because Charan Das had joined service in Delhi and had broken his relations from Mangat. Charan Das (P. W. 7) stated that Mangat had threatened to kill Khazan in his presence because Khazan had disobeyed Mangat and attended the dinner. This is borne out by what Mangat was proved to have told Khazan in the course of the quarrel which started at the well in front of the house of Khazan where Khazan was sitting alone at that time.

The second motive, which has been duly proved by the evidence of Jagpal (P. W. 1) and Jagdish (P. W. 2), is the taking of the she-buffalo from Chunni of Dariaganj on Batai. This had offended Mangat because Chunni was his customer who used to send cattle to be reared up on Batai. Chunni was probably annoyed at the conduct of Kanwla who had withheld Rs. 15/- he owed to Chunni. As against this, the appellant could prove no intelligible motive for the alleged attack said to have been begun by Khazan and his two sons on Mangal with lathis. Even if Khazan and his sons could have objected to the drawing of water by Mangal from the well, it was difficult to understand why they should start attacking Mangal with lathis when they could have removed Mangal who was said to be unarmed and alone at that time according to the defence version, without using lathis. Moreover, the defence version is absolutely incompatible with the number of injuries found on the two sides. It is inconceivable that an attack should be begun by lathis used by the three men on one person, who sustains only three minor injuries and who is able to cause, with the help of his son as many as 22 injuries on the other side. The defence version that Smt Khanno was only pushed also does not fit in with the medical evidence. This was therefore, a simple case in which the prosecution

version, as to who the aggressor was has been proved to be true beyond all reasonable doubt whereas the defence version could not possibly be held to be true. It was not necessary to resort to the principle laid down in Jumman's case, : 1957 CriLJ586 (supra) which did not apply at all.

17. Before I part with the case, I may observe that the trial court appears to have been misled by minor discrepancies into believing that the prosecution version, as to who the aggressor was could not be said to have been established beyond all reasonable doubt. It has to be remembered that the human faculties of bearing, sight, recollection, and of description, are necessarily imperfect. An American Judge, Justice Bolein quoted, with approval, the following expression of an opinion by a character in a story:

'We know that to tell the truth is not merely a good intention. It is a damn difficult thing to do. It's a skill to be practised. It's a technique, It's an effort. It takes brains. It takes watching. It takes humility and self-examination. It is a science and an art.'

Professor Munsterberg has pointed out 'We never know whether we remember, perceive or imagine.' The late Mr. H. G. Wells once said that the human mind is an imperfect instrument which, in attempting to grasp facts, unconsciously twists and turns them often. An American Judge. Justice Jerome Frank, has repeatedly emphasised, in his book. 'The Law and Modern Mind', the tendency of even truthful witnesses to make incorrect statements quite subconsciously. Nor-ton, in his work on the 'Law of Evidence' has observed:

'Discrepancies, often trifling in them selves, when compared with the great mass of evidence in the case, are only too frequently made in Indian Courts the ground for acquittal or disbelief. It may of course happen that discrepancies occur in such material parts of the evidence are so glaring and so utterly irreconcilable with the truth of the rest of the case, or with the story of the particular witness as to afford just grounds for an unfavourable verdict, or for rejection of the whole of a particular witness evidence. But, this is comparatively seldom the case: and the acute and practised Judge will generally be able to sift the wheat from the chaff, to separate the true from the false, and if, after this has been done there remains a residuum of credible testimony, he should thereon found his judgment not reject the whole

evidence on account of its being more or less tainted with incredibility.'

These considerations, in judging the testimony of ordinary human witnesses, should be kept in mind by trial courts in appraising evidence.

18. The result is that, after having gone through the whole evidence I accept the prosecution case that the appellants were the aggressors I am not satisfied that the trial Court was justified in doubting the prosecution case even against the two acquitted accused persons I have no doubt whatsoever in my mind that the prosecution case against the two appellants is true. Nevertheless, as the attack was perhaps not intended to cause the death of Khazan, and there is no appeal against the acquittal of the appellants from the charge under Section 302/34 I. P. C., I need not consider the question whether the offence committed by the appellants was culpable homicide amounting to murder. I uphold the convictions and sentences passed upon the appellants and dismiss this appeal. The appellants, who are on bail, will surrender forthwith to serve out the remaining periods of their sentences.

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