

Ram Swarup and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-08-1988

Reported in : 1990CriLJ511

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

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1073 of 1978

Appellant : Ram Swarup and ors.

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv. and ;S.D.N. Singh, Adv.

Advocate for Pet/Ap. : G.P. Dikshit, ;Sanjiv Ratan and ;C.S. Saran, Adv.

Disposition : Appeal allowed

Judgement :

Madan Mohan Lal, J.

1. This is an appeal against the judgment and order dated 11-4-1978 passed by Sri J. S. Mishra, II Additional Sessions Judge, Fatehpur by which he has convicted Kalloo Singh under Section 302, I.P.C. and the remaining two appellants Ram

Swarup alias Mukka and Gulzar Singh under Section 302/ 34, I.P.C. and has sentenced each of them to undergo imprisonment for life.

2. Whereas Ram Swarup alias Mukka and Gulzar Singh appellants are cousins. Kallu Singh appellant is their nephew. Deo Nath deceased was the father of Bachchi Lal injured. Laloo Singh, informant, is the brother of Bachchi Lal injured. All of them are residents of village Maheshpur Mathetha, Police Station Kishunpur, District Fatehpur.

3. According to the case of the prosecution on 9-12-1974 at about 12.00 in the noon Deo Nath deceased and his son Laloo Singh, informant, were returning to their house from their Har with a load of Sarpat on their respective heads and when in the way passed in front of the house of Ram Swarup alias Mukka appellant one Raja Ram Gadaria, who was sitting there, wished 'Ram Jahar' to Deonath; but Ram Swarup alias Mukka appellant gave an abuse of his mother to Deo Nath by saying 'Aise Madar Chodon Se Ram Juhar Nahin Ki Jati Hai Jo Chore Badmashon Ka Sath Dete Hain'. On the same Deo Nath deceased also abused Ram Swarup alias Mukka, appellant and told him that he should be careful in abusing them. Thereafter Deo Nath deceased and his son Laloo Singh, informant, came to their house where Sarpat was unloaded, Bachchi Lal injured was already sitting on a cot in front of the house on which Deonath deceased also sat. Laloo Singh, informant, went inside the house. Deo Nath deceased narrated the aforesaid incident to his son, Bachchi Lal.

4. It is further the case of the prosecution that on the same day at about 2 P.M. Ram Swarup alias Mukka and Gulzar Singh appellants armed with lathis and Kalloo Singh armed with a ballam came at the door of the house of Surajpal. From there they started abusing Deo Nath deceased, who was sitting in front of his house situated at a distance of about ten steps from that place. Deo Nath deceased and his son Bachchi Lal injured told the accused persons not to give abuses. They came to the door of the house of Surajpal where the appellants were sitting. The appellants Ram Swarup alias Mukka and Gulzar Singh started beating Deo Nath deceased with lathis and when Bachchi Lal injured tried to intervene and plied his lathi in self defence, he was also given lathi blows. In the meanwhile Kallu

Singh, appellant, was said to have given a ballam blow in the abdomen of Deonath. Witnesses had been attracted to the place of occurrence. The appellants then ran away towards south. Deo Nath was brought to his house where he expired. The report of the incident was lodged on the same day at about 5-40 P.M. at Police Station Kishunpur situated at a distance of 5 1/2 miles.

5. In support of its case the prosecution examined Lalloo Singh, P. W. 2, who not only gave details of the marpit but also of the incident which had taken place earlier about two hours ago. Bachchi Lal, P.W. 1 injured and Nokhey Lal P.W. 3 had narrated the incident in detail. Chhedi Lal P.W. 5 was a panch of the inquest report of the dead body of Deo Nath deceased. Samples of bloodstained and unstained earth were also taken in possession from the place of occurrence in his presence. P.W. 6 Sri Karey Deen Singh was Head Moharrir at P. S. Kishunpur and he was examined to depose that when written report of the incident was handed over to him on 9-12-1974 by Lalloo Singh he had registered this case. P.W. 4 Dr. Abdul Wahid was the Medical Officer, P.A.C. Hospital, Fatehpur. He deposed that on 11-12-1974 at 2-30 P.M. he had conducted post-mortem examination of the dead body of Deonath deceased and found the following ante mortem injuries on the same:

(1) Punctured wound 2' x 3/4' x abdominal cavity deep with part of greater omentum protruding through it, situated in upper part of abdomen 2' from the midline at the level of the 9th rib with lacerated margins.

(2) Abraded contusion 3 1/2' x 1' on the right side of back just above the iliac crest and 3' from the midline.

6. On internal examination the doctor found abdominal walls punctured. The intestines were empty and the small intestines were lacerated under injury No. 1. According to the doctor death of Deonath was caused by shock and haemorrhage as a result of the aforesaid punctured wound.

6-A. Sri S. H. Tiwari, I.O. was examined as C.W. 1. He deposed that on 9-12-1974 this case was registered in his presence and that he left for the place of occurrence at 6-30 P.M. on the same day. He took dead body in possession and

for want of light he prepared inquest report thereof on the early morning of the next day. He found blood in front of the house of Surajpal. He took samples of bloodstained and unstained earth in his possession. He then recorded statements of the eyewitnesses etc. At the instance of the informant and other witnesses he inspected place of occurrence at that time. According to him the appellants had surrendered in Court on 18-12-74.

7. In their statements recorded under Section 313, Cr. P.C. the appellants denied the case of the prosecution. Ram Swarup alias Mukka further stated that the house, which the I.O. had shown in his site plan as that of the appellant Kallu Singh, belonged to all the three appellants and that all the appellants used to reside, in that house at the time of occurrence. He also stated that at the time of incident he, along with the remaining two appellants, was sitting at the door of his said house when Deonath deceased and Bachchi Lal injured, carrying load of sarpats on their heads, passed by, that Raja Ram 'Gadariya' wished 'Ram Juhar' to Deo Nath deceased on which he (Ram Swarup alias Mukka) appellant gave an abuse of his mother to Deonath and told Raja Ram 'Gadariya' that 'Chor-Badmash' like Deonath v/ere not wished, and that Deonath and Bachchi Lal proceeded to their house and unloaded their sarpats. He further stated that Deonath, carrying a lathi, and followed by Bachchi Lal, armed with lathi, and hurling abuses came to the door of his house. Deonath then struck lathi on the head of Ram Swarup alias Mukka. Bachchi Lal injured also struck lathi on his head. He also stated that Gulzar Singh, appellant, in his right of private defence wielded lathi on Bachchi Lal. Deonath deceased, however, continued to beat Ram Swarup with lathi. He further stated that when Kalloo Singh, appellant, found that his (Ram Swarup's) life was in danger, he went inside the house and brought a ballam and in the right of private defence plied the same, which struck Deonath deceased as a result of which he fell down. Ram Swarup got himself examined at District Hospital, Fatehpur.

8. Guljar Singh, appellant, stated that the incident took place in the manner stated by Ram Swarup appellant. Kalloo Singh stated that Deonath deceased and Bachchi Lal, injured, armed with lathis had come at the door of his house and started beatings Ram Swarup alias Mukka, that when Guljar Singh went to save

Ram Swarup, Bachchi Lal injured gave him lathi blows, that Deonath deceased continuously struck lathi on the head of Ram Swarup and that when he realised that Ram Swarup would be killed, he (Kallu Singh) went to his house and in order to save the life of Ram Swarup plied 'ballam' which struck Deonath deceased.

9. The appellants did not examine any witness in defence.

10. The learned Sessions Judge has believed the case set up and the evidence produced by the prosecution and has accordingly convicted and sentenced the appellants as aforesaid. Aggrieved by the same the appellants have filed this appeal before this Court.

11. We have heard the learned counsel for the appellants, complainant and the State and have perused the record of the case.

12. The main point involved in this case is as to which of the parties, i.e. the appellants or the prosecution side, was an aggressor in this case. Whereas the learned counsel for the appellants has asserted that it was the prosecution side which had taken the law in their own hands, the learned counsel for the complainant and the State have argued that they were the appellants who were aggressors. In our opinion, the place of the occurrence and the other attending circumstances will give a clue as to which side was the aggressor.

13. As may be seen from the site plan the house of Deonath deceased is east faced. In front of the said house there goes a way from north to south. Towards south of the said house of Deonath deceased there is another rasta which goes from east to west. The house of Suraj Pal is situate towards south-east of the house of Deonath deceased, that is to say, in between the house of Surajpal and Deonath. deceased there are situated both the aforesaid rastas, i.e. one going from north to south and the other going from east to west. The house of Kalloo Singh, appellant, adjoins the house of Suraj Pal in the south. P.W. 2 Lalloo Singh has admitted in paragraph 11 of his evidence that in between the main gates of his house and the house of Surajpal there was a distance of 10 steps. The prosecution has tried to make a case that this incident had taken place in front of the house of Surajpal, that is to say, at a distance of 10 steps from the house of

Deonath deceased and Bachchi Lal injured. It is thus clear that in order to come from the house of the deceased to the place of occurrence one had to cross not only both the aforesaid rastas, i.e. one going from North to South and the other from east to west, but also to travel a distance of ten steps.

14. P.W. 1 Bachchi Lal, injured, stated in his examination-in-chief that his father Deonath had reached the door of the house of Surajpal and that he had also followed him. It was thus clear from his evidence that this incident took place at the front door of the house of Surajpal. A question arose as to when, according to the case of the prosecution, all the three appellants armed with ballams and lathis were standing at the place of occurrence why after all Deonath deceased and Bachchi Lal injured went there from their house. When Bachchi Lal injured was confronted with this situation in paragraph 11 of his evidence he remained silent for some time. When he was confronted with the position for the second time and asked as to why they had crossed the rasta and went from their house to the house of Surajpal, he denied that either he or his father had done the same. He was then inquired that if he and his father had not crossed the said rasta and gone in front of the house of Surajpal then how the incident took place there. To the same this witness replied that they were the appellants who had crossed both the aforesaid rastas, i.e. one going from north to south and the other going from east to west, and had come to the cot of his father and inflicted injuries with lathis and ballam in front of his house. When this witness was further confronted with the site plan he had the audacity to say that the I.O. did not come to the place of occurrence and that he had prepared the site plan by his imagination and that the place of occurrence in front of the house of Surajpal was wrongly shown in the site plan. He further stated that the said fact was told to him yesterday by his brother Lalloo Singh. This is all absurd and untrue. This witness, i.e. Bachchi Lal, injured, P.W. 1 had already admitted in paragraph 6 of his evidence that I.O. had come to the place of occurrence in the evening, that in the night he had recorded his statement and that in the morning he had also sent him for medical examination through a constable. As already observed, C.W. 1, I. O. Sri S. H. Tiwari has also stated in his evidence that he had reached the place of occurrence on the same day and that he had inspected the place of occurrence on the next day in the presence of the informant and other witnesses. P. W. 2 Lalloo Singh had not

denied the fact that the I.O. had inspected the place of occurrence on the next day. It is obvious: that when Bachchi Lal, P.W. 1, became conscious of the fact that in case it was admitted that they had left their houses suo motu and had gone 10 steps away to the place of occurrence after crossing two rastas, where the appellants were standing, they would be termed as aggressors specifically when as many as five injuries on vital part of the body i.e. head, were caused to Ram Swarup alias Mukka appellant, he shifted the stand and gave evidence contrary to the case of the prosecution that the incident had not taken place in front of the house of Surajpal but it had taken place in front of their own house, such a glaring and shifting stand regarding the place of occurrence shows that the prosecution has not presented true version before the Court and has suppressed genesis and the origin of the occurrence.

15. The learned counsel for the appellants has urged before us that in fact the occurrence had not even taken place in front of the house of Surajpal but had occurred in front of the house of the appellants. This argument does not appear to be without substance. P.W. 5 Chhedi Lal is a witness before whom the I.O. had taken bloodstained and unstained earth from that place of occurrence. He has stated that the I.O. had taken bloodstained earth from the place which was situate in front of the houses of Surajpal and Kalloo Singh. In our view, if blood was found at that place which was also situate in front of the house of Kalloo Singh then the incident obviously took place at that place. The said incident could take place in front of the house of Kallu Singh, appellant, only when Deonath deceased and Bachchi Lal injured by their voluntary acts had gone there. It is not the case of the prosecution that Deonath deceased and Bachchi Lal injured were forcibly brought there by the appellants. We are of the view that when having humiliated and provoked earlier, Deonath deceased accompanied by his son Bachchi Lal armed with lathi, came in front of the houses of Kallu Singh appellant etc. and the 'marpit' took place there, it cannot be said in any way that the appellants were aggressors.

16. Bachchi Lal P.W. 1 has admitted in his evidence that his brother-in-law Ram Kishore was a quarrelsome man. He also admitted that it had been rightly said that his father was taking the side of a thief and 'Badmash' i.e. the said Ram Kishore, Similarly, P.W. 2 Lalloo Singh had to admit in his evidence that the brother-in-law

of his brother Bachchi Lal injured, P.W. 1 was thief and 'Badmash', that he was on visiting terms with them and that on account of the same his father was said to be siding with the thief and 'Badmash'. In this context it may be observed that according to the admitted case of the prosecution when about two hours prior to the occurrence Deonath had passed in front of the house of Ram Swarup alias Mukka appellant, and Raja Ram had wished him, Ram Swarup had given abuse of his mother and retorted that such persons who side with 'Chor-Badmash' were not to be wished. In our opinion, when Deonath deceased in the presence of his son Lalloo Singh was given abuse of his mother etc. and was thus humiliated and provoked it was not unnatural if subsequently having talked to his other son Bachchi Lal he took the law in his own hands and proceeded towards the house of Kalloo Singh appellant etc., where this incident took place. In such a situation the appellants cannot be called to be aggressors.

17. The injuries sustained by Ram Swarup alias Mukka appellant also tend to show that the appellants were not aggressors. In our opinion, if Kalloo Singh was carrying ballam from the very beginning and the remaining two appellants were armed with lathis and had prepared themselves for an attack, then the prosecution side, which was taken by surprise, would not have succeeded to inflict so many injuries on the vital part of the body of Ram Swarup alias Mukka.

18. It is an admitted case of the prosecution that at the time of the incident Ram Swarup alias Mukka appellant had also sustained injuries. Lalloo Singh P.W. 2 and Nokhey Lal P.W. 3 have admitted in their evidence that they had seen blood on the head of Ram Swarup alias Mukha appellant at the time of incident. Ext. Kal is the injury report of Ram Swarup alias Mukha appellant and the same shows that he was medically examined by the Medical Officer, District Hospital, Fatehpur on 15-12-1974 and the following injuries were found on his person :--

(1) Septic wound 2' x 1' on anterior part of head. Sepsis present. Scalp deep contusion around wound present.

(2) Septic wound 3' x 1' on left side of scalp, scalp deep. Sepsis and pus present in the wound.

(3) Septic wound 2' x 1 1/2' on posterior half of scalp. Sepsis and pus present.

(4) Two healed wounds 1/4' x 1/2' in size each about 1' apart each other on left side of forehead, peeling of hard, black, dry scales present over wound.

All the said injuries were found to be 6-7 days old, that is to say they were caused at the time of the incident.

19. The learned counsel for the appellants has urged before us that the prosecution side had attacked Ram Swarup alias Mukka and when Kallu Singh appellant realised that Ram Swarup would be done away that he rushed to his house and brought out a 'ballam' which he struck to Deonath deceased in the exercise of right of private defence of the body of Ram Swarup appellant specially when it is found that the ballam was struck later on when the lathis had been plied. In this respect it may be observed that both Bachchi Lal, P.W. 1 and Lalloo Singh P.W. 2 have admitted in their evidence that the ballam was struck after lathis had been plied. This gives clue to the fact that the ballam was struck as a matter of last resort.

20. The judgment of the learned Sessions Judge shows that he also found difficult to declare the appellants as aggressors, that is why at one stage of his judgment he has observed as follows:--

'...At the worst it can be said to be the acceptance of the challenge of the accused and it can be said to be a free fight to test the strength of each other and so if in this very fight one of the members of the fight on receiving a fatal injury died, the other party which caused the death cannot take the plea of right of self-defence because in a case of free-fight, none of the two parties had a right of self-defence, and both the parties at that moment, in my opinion, will be deprived of the right of self-defence and both the parties would be committing a crime by taking the law in their own hands and so in this case if the accused persons had lodged a complaint case for punishing the complainant party for causing the injuries on their persons, the complainant party would have also been guilty for causing simple hurt on the person of the accused. Had there been cross cases for causing injuries on the persons of each other then there would have been cross cases free fight and both

the parties would have been found guilty and would have been convicted and sentenced for the offence which they had committed....'

21. In our view, if it was a case of free fight, then by the aid of Section 34, I.P.C. Ram Swarup alias Mukka and Gulzar Singh could not be convicted under Section 302, I.P.C. Besides, it may be observed, that if it was a case of free fight then the prosecution side had also to be convicted and sentenced. The appellants could not be penalised merely for the fact that they had not lodged any first information report. We are not satisfied that the appellants had committed any aggression.

22. The learned counsel for the appellants had also urged before us that the prosecution had placed tainted facts before the Court by producing only interested and inimical witnesses and by withholding independent witnesses. This argument is not devoid of force. It may be observed that whereas P.W. 1 Bachchi Lal, being an injured person, is an interested witness. As already observed, he gave inconsistent version in his evidence. In our view where a witness makes two inconsistent statements in his evidence with regard to a material fact and circumstance; the testimony of such a witness becomes unreliable and unworthy of credence. He also did not speak truth when he stated that he was not annoyed when he came to know that his father had been insulted, abused and humiliated on account of his brother-in-law (Sala). We are, therefore, not prepared to place any reliance upon him. Lalloo Singh P. W. 2 is the son of the deceased and brother of the injured. He is thus also a highly interested witness. P.W. 3 Nokey Lal is inimical to the defence side. He has admitted that Bihari, father of Ramswarup alias Mukka appellant, had filed money suit against him which he had contested. The said suit was decreed. On account of the same, we are of the view that this witness also cannot be said to be an independent witness. It is not a case where independent witnesses were not available. It is stated in the first information report that this incident was witnessed by Chandra Pal Singh, Mitthoo Lal and Ram Kishore etc. Lalloo Singh P.W. 3 admitted at the end of his evidence that the incident was seen by 10-15 witnesses. In our view when this incident was witnessed by 10-15 persons and no independent witness had been examined in this case it is difficult to place reliance upon the interested and inimical witnesses and hold on the basis of the same that the appellants were aggressors.

23. The learned counsel for the State has urged before us that when Deonath deceased was aged about 60 years he would not have gone to the place of occurrence to commit any crime. In this respect it may be observed that P.W. 1 Bachchi Lal himself admitted that his father was wrestler. Therefore, we find nothing unacceptable if Deonath, accompanied by his two young sons, went to the place of occurrence to take revenge of the humiliation which he had already suffered at the hands of Ram Swarup alias Mukka appellant specially when we find that the prosecution side had succeeded to inflict as many as five injuries on the vital part of the body of Ram Swarup appellant.

24. The learned counsel for the complainant has urged before us that whereas at the stage of his bail it was stated from the side of the accused that the ballam injury was caused by a third person but before the trial Court it was admitted that the ballam was plied by Kalloo Singh appellant in the exercise private defence. This argument has got no substance, firstly, no such paper or plea has been proved in this case and secondly because none of the appellants was inquired about it in their statements recorded under Section 313, Cr. P.C.

25. The learned counsel for the complainant has also referred us to State of U.P. v. Ram Swarup, 1975 All Cri C 47: (AIR 1974 SC 1570) and has tried to urge that the right of private defence is a right of defence, not of retribution and that it is available in case of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage manages a situation wherein the right can be used as a shield to justify an act of aggression. Whereas there can be no dispute with regard to the said principle it may be observed that the same has got no application in the present case. In that case before the Supreme Court after an earlier dispute one Ganga Ram later on went back to the market with his three sons armed with gun, lathi and knife. All of them threw challenge that they wanted to know whose authority prevailed in the market. In that case it was contended on behalf of Ganga Ram and his son Ram Swarup that they had fired shots in exercise of the right of private defence. In that context the Hon'ble Supreme Court made above observation that the right of private defence was a right of defence, not a retribution etc. The facts of the present case are quite different. It is not a case where the appellants had gone to the place of Deonath deceased to attack

him and his son Bachchi Lal. But on the other hand, we find that having been insulted, humiliated and provoked Deonath accompanied by his sons came towards the house of Kallu Singh appellant. In such a situation it cannot be said that the appellants had stage managed a situation where the right of private defence can be used as a shield to justify an act of aggression.

26. In the result, therefore, we are of the opinion that it was not proved in this case beyond reasonable doubt that the appellants or any of them was an aggressor. The learned Sessions Judge has committed an error by convicting and sentencing the appellants. Accordingly, this appeal is allowed and the conviction and sentences of Kalloo Singh appellant under Section 302, I.P.C. and those of Ram Swarup alias Mukka and Gulzar Singh appellants under Sections 302/34, I.P.C. are hereby set aside and they are acquitted. They are on bail. They need not surrender to their bail-bonds which hereby stand discharged.

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