

Bachnu and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-19-1990

Reported in : 1990CriLJ2731

Judge : S.I. Jafri, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304, 323 and 324; ;Code of Criminal Procedure (CrPC) - Sections 161 and 294

Appeal No. : Criminal Appeal No. 406 of 1979

Appellant : Bachnu and ors.

Respondent : State of U.P.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : G.C. Saxena, ;Anil Mullick and ;Keshav Sahai, Advs.

Disposition : Appeal allowed

Judgement :

S.I. Jafri, J.

1. This appeal has been preferred by Bachnu, Veer Singh, Rishipal and Chander-impugning their conviction and sentences recorded by Sri D. D. Srivastava, III Addl. Sessions Judge Meerut by means of his judgment and order dated 22-1-

1979 in S.T. No. 468 of 1977. Severally their conviction and sentences were--Rishi Pal was convicted under Sections 304 Part II I.P.C., 324/ 34 and 323/34 I.P.C. and he was sentenced to undergo R.I. for 7 years, 3 years and one year under the aforementioned Sections of the Penal Code respectively. The remaining appellants namely, Bir Singh, Bachnu and Chander were convicted under Section 323/ 324/34 I.P.C. and were sentenced to undergo R.I. for one year and two years respectively under the aforementioned Sections of the Penal Code.

2. Appellants and the complainant Vijai Pal P.W. 4 both belonged to village Samaspur Surani P. S. Sardhana District Meerut. Ram Pal deceased and his father Brahma Singh had some cultivatory land in the aforesaid village. On the day of incident, i.e. 5-2-1977, Ram Pal and his father were watering their fields since 8 p.m. and their turn was to last up to 11.40 p.m. Vijai Pal son of Brahma Singh also joined his father and brother in watering the field. At about 10 p.m., the flow of water declined upon which Brahma Singh P.W. 6, father of Vijai Pal complainant and Ram Pal proceeded towards the (Gool) source in order to find out the cause of stoppage of water to the field. They found the Gool Blocked and water diverted to another gool. Brahma Singh and Ram Pal spaded open the Gool and water started to flow again. After half an hour, the water again stopped coming to the field of the complainant whereupon Brahma Singh and Ram Pal again went to the spot and found the Gool again blocked and water diverted to another Gool. Brahma Singh again spaded open the Gool and diverted the water to his field. After opening the Gool, Brahma Singh stayed back at the spot in order to find out as to who on earth was doing this mischief. In a short while at about 11 p.m. accused persons consisting of Bachnu, Veer Singh Rishipal and Chander appeared on the spot and out of them Rishi Pal had a spear while the remaining appellants were possessed of Lathies. The accused persons started abusing Brahma Singh and also blocked the supply of water to the field of the complainant. This action of the appellants was objected to by the father of the complainant, namely, Brahma Singh and brother Ram Pal offended by the repeated objection from the father of the complainant and his brother, the accused persons assaulted Brahma Singh and his son Ram Pal by means of spear and lathi. It is also the case of the prosecution that during the course of assault, the father of the complainant Brahma Singh and brother Ram Pal had warded off the blows being

showered on them and in the melee, Rishi Pal accused had also sustained some injuries. The hue and cry raised during the course of assault that a number of witnesses were attracted to the scene of occurrence including Jagpal and Yashpal Harijans of the same village and on their intervention, Brahma Singh and Ram Pal were saved from further assault by the appellants. After the occurrence, the appellants bolted away from the scene. Injured Brahma Singh and Ram Pal were taken on a tonga to the police station and before the tonga could reach the police station, Ram Pal injured breathed his last on the way itself. On reaching the Police Station, Vijai Pal complainant submitted a written report Ex. Ka 5 and on the basis of the said written report, a case Under Section 302/323/324 I.P.C. was registered against the appellants. At this stage it is also worthy of mention that Jag Pal one of the witnesses who had come to intervene in the occurrence, also sustained injuries.

3. All the injured were sent for being medically examined at Sardhana P.H.C. at P.H.C. Sardhana, Dr. Brij Mohan Medical Officer in charge examined the injuries on the person of Brahma Singh on 6-2-77 at 12.30 p.m. and he found the following injuries on his person.

(1) Incised wound 1 cm x 0.3 cm x muscle deep on the front and inner side of right upper arm 3.5 cm.

(2) Abrasion 0.6 cm x 0.2 cm on the outer side of right fore-arm 3 cm below the elbow.

(3) Incised wound 4 cm x 0.5 cm x muscle deep on the palm surface of left hand extending the base of the thumb on the inter space between the thumb and left index finger and extending on the web up to the outer side of left hand at the base.

(4) Abrasion 1.2 cm x 0.2 cm on the front and inner side of right leg 11 cm below the right knee.

4. The autopsy on the dead body of Ram Pal deceased was conducted on 7-2-77 at 4.15 p.m. at P.L. Sharma Hospital Meerut and following ante-mortem injury was found on his person punctured wound with clean cut edges 1.5 cm x 1.0 cm right

side, front of chest lower part. Chest cavity deep.

5. Another injured witness namely Jagpal was also examined at P.H.C. Sardhana on 6-2-77 at 12.50 p.m. and the Doctor attending on him found the following injury on his person.

Abrasion 1.4 cm x 0.4 cm on the outer side and middle of left leg.

6. From the side of appellants, three of them have sustained injuries during the course of incident. Rishi Pal was examined on 6-2-77 at 7.25 a.m. by Dr. A. M. Bhartiya and in all, he had been recorded to have sustained five injuries one incised wound, one lacerated wound, one abraded contusion and two contusions. Likewise, Bachan Singh appellant was also examined at 7.40 a.m. on 6-2-77 and he was recorded to have sustained five injuries -- one incised wound, one lacerated wound, one contusion and two traumatic swellings. Chandra Pal appellant was also examined on 6-2-77 at 7.35 a.m. and he was found to have sustained five injuries -- one lacerated wound, one incised wound, one contusion and two traumatic swelling.

7. Genuineness of the injury reports of the appellants was admitted by the District Government counsel under Section 294 Cr. P.C. and hence formal proof thereof was dispensed with.

8. The investigation of the case was entrusted to S.I. Jai Pal Singh, P.W. 9 who after concluding the investigation submitted, charge sheet against all the appellants.

9. Accused persons pleaded not guilty to the charge framed against them and took the plea that they had been assaulted by the complainant and his men while they were watering their fields on their turn. It was further pleaded that they had caused the injuries to the complainant side in exercise of their right of private defence. To probabalise the defence version the accused persons examined Pritam D.W.1. He denied his having any talk with Vijai Pal supply of water to his field for the time between 8 p.m. to 11.40 p.m. The witness also filed documents Ex.Kha 1 to Ex.Kha 7 Ex.Kha 1 is the copy of the statement of Vijai Pal complainant which was

recorded by the Investigating officer under Section 161 Cr. P.C. wherein it was stated that the complainant was attracted to the scene of occurrence on hearing the alarm raised by his father and brother and on reaching the place of occurrence, he found Ram Pal his brother and Brahma Singh his father lying injured on the ground. Ex.Kha 2 is the copy of F.I.R. dated 6-2-1977 filed by Veer Singh at 9.30 a.m. at P.S. Delhi gate Meerut. Ex.Kha 3 is the injury report of Chandra Pal appellant accused. Ex.Kha 4 is the injury report of Bachan Singh. Ex.Kha 5 is the injury report of accused Rishi Pal. Ex.Kha 6 is the certificate from the Executive Engineer (Canals) vouching for the fact that Bachan Singh Appellant had utilised the water for irrigating his field from 11.40 p.m. to 6.55 a.m. on the fateful night. Ex.Kha 7 is also a certificate from the Executive Engineer (canals) vouching for the fact that Dharama son of Hariya, father of Preetam Singh D.W. 1 had also utilised the water for irrigational purposes from 3.99 p.m. to 11.36 p.m. on the day of occurrence.

10. Now I switch over to examine the case as set up by the prosecution. Prosecution examined in all nine witnesses in support of this case and out of them Vijai Pal Singh P. W. 4, Brahm Singh P.W. 6, Yashpal P.W. 7 were examined as ocular witnesses of the occurrence. Lekhram P.W. 5 has been examined to prove the factum of the water allotted to Preetam for the time between 8 p.m. to 11.40 p.m. having been sold to Vijai Pal Singh at the rate of Rs. 3/- per hour for irrigating his fields.

11. First of all, I take up that testimony of Brahm Singh P.W. 6 for scrutiny and appraisal. Brahma Singh P.W. 6 is the father of complainant Vijai Pal Singh and Ram Pal deceased. He is himself an injured witness. For proper appraisal of his evidence, a brief account of his deposition is given below. He deposed that while he and his son Ram Pal (deceased) were watering their fields, all of a sudden flow of water declined upon which he went to the Gool where he found his gool blocked and water diverted to another Gool. He spaded open his Gool and diverted supply of water to his Gool. After a lapse of half an hour, again flow of water to his field slowed down. He again went to the Gool where again he found the Gool blocked and water diverted to another Gool. He again diverted the water to his Gool and sat there along with his son Ram Pal for watching as to who was doing the

mischief. He further deposed at about 11 p.m. accused persons came at the scene of occurrence and began to hurl abuses at him and his son. When he objected to the abuses being hurled at him, the accused persons assaulted him and his son by means of spear and Lathies. The hue and cry raised by him, attracted a number of witnesses including Jagpal, Yashpal and Vijai Pal. The aforesaid witnesses intervened in the occurrence. Rishi Pal appellant inflicted spear on Ram Pal (deceased) which landed in his chest. Rishi Pal also assaulted him by means of spear which resulted in injuries to his right shoulders and thumb of his left hand. It is also deposed by the witness that during the course of occurrence he managed to snatch the spear of Rishi Pal and wielded the same in his defence and as a result, the accused persons also sustained injuries on their person.

12. Sri P. N. Mishra, learned counsel for the appellants pressed a number of contentions in his bid to inspire confidence in the defence version and to establish the right of private defence by the appellants. Firstly it is contended by the learned counsel that upon a consideration of the serious nature of injuries on the persons of the appellants which is apparent from the injury reports Ex.Kha 3 to Kha 5 in which appellants Chandra Pal and Bachan Singh and Rishi Pal had received as many as 15 injuries including incised wounds and lacerated wounds, it is more than obvious that the injuries inflicted on the complainant side were the result of the appellants exercising the right of private defence of their persons, inasmuch as that on the side of the complainant only one punctured wound was sustained by Ram Pal (deceased). Brahma Singh (injured) P.W.6 has sustained two incised wounds and two abrasions on his persons whereas Vijai Pal complainant has sustained only one abrasion on his left hand. Coming on the next limb of his arguments, the learned counsel further submitted that even the manner in which assaults were described by the prosecution, is caught in the web of grave doubts. While advertng to the deposition of Brahma Singh P.W.6, the learned counsel submitted that' according to Brahma Singh, P.W.6, he had managed to snatch the spear from appellant Rishi Pal after he had sustained injuries on his person and wielded the spear as a lathi in defence which resulted in injuries to the appellants. It is worthy of mention here that no typical spear injury was found on the person of the accused and the facts and circumstances on the record speak eloquently that in order to bring his version in conformity with the, nature of injuries on the person

of the accused, Brahma Singh had introduced in his evidence the factum of snatching the spear from the appellant Rishi Pal and using the same as a Lathi against the appellants. It is next submitted by the learned counsel that the story of snatching the spear by Brahma Singh from the hands of Rishi Pal appellant does not appear probable inasmuch as that this factum does not find any mention in the first information report. No doubt, there is a statement to the effect that it were Ram Pal, Brahma Singh who had tried to save themselves from the blows being inflicted upon them.

13. Yash Pal P.W.7 has also deposed in his statement before the court that Vijai Pal Singh had snatched lathi from Veer Singh appellant and wielded the same in self defence. About Brahma Singh also, he deposed that Brahma Singh had managed to snatch the spear from the hands of Rishi Pal and after snatching the spear, he had plied the same in self defence in order to ward off the blows being inflicted on him.

14. Coming to the evidence of Vijai Pal Singh, the learned counsel for the appellants submitted that evidence of Vijai Pal Singh who is the First Informant in the instant case cannot be acted upon as an ocular account of the occurrence inasmuch as that according to Ex.Rha 1, it is abundantly clear that he had; deposed before the investigating officer under Section 161 Cr. P.C. that he was attracted to the scene of occurrence consequent to the hue and cry of his father and brother and when he arrived at the scene, he found his father Brahma Singh and brother Ram Pal lying injured, on the ground. During cross examination when confronted with his statement before the investigating officer, he gave a trite explanation that he did not give this statement before the investigating officer. In view of this gaping infirmity, it is difficult to believe that Vijai Pal Singh was an ocular witness of all that had happened at the scene of occurrence and hence his evidence cannot be acted upon for conviction of the appellants in the instant case. Having eschewed from consideration the evidence of Vijai Pal Singh P.W.4, the conviction recorded against the appellants now rests upon the testimony of Brahma Singh P:W.6, father of Ram Pal (deceased) and Yash Pal P.W.7, who belongs to the Biradari of Brahma Singh P.W.6. The support lent by the above witnesses to the version of the prosecution does not breath life into the

prosecution case inasmuch as that having themselves sustained injuries, Brahma Singh and Ram Pal would be able to inflict as many as 15 injuries on the persons of the three accused during the course of occurrence. The possibility propped up by the learned counsel for the appellants that Ram Pal, Brahma Singh Jagpal and Yashpal armed with incised weapons like pharsa and lathies had assaulted the accused persons and inflicted injuries on their persons and retaliating, the accused persons in exercise of the right of private defence, had caused injuries to the complainant's party cannot be discounted. To bolster this probability, the learned counsel for the appellant adverted to the statement of Preetam Pal D. W. 1 in which it was given out by Preetam Pal that he had not consented to the water of his turn to be utilised by Brahma Singh for irrigating his fields. Admittedly, the turn of the accused was to commence from 11.44 p.m. onwards. A scrutiny of the entire record nowhere beckons that Vijai Pal Singh had a watch tied to his hand as to be able to pin point the time of occurrence and under the circumstances, the possibility that the occurrence had flared up after 11.40 p.m. when the water of the canal would have been diverted to the fields of the accused cannot be eliminated from consideration.

15. To summarise, the prosecution has bitterly failed to bring home the guilt to the accused-appellants on the basis of the evidence adduced by the prosecution. The defence has succeeded in establishing that the appellants had caused injuries to the complainant party in exercise of the right of private defence. The witnesses examined by the prosecution have not acquitted themselves well in inspiring confidence and truthfulness into the prosecution case. The prosecution version vis-a-vis the depositions of the witnesses adduced by the prosecution bristles with gaping infirmities and indigestible contradictions and in the conspectus of the above facts and circumstances, the prosecution version is not rendered worthy of being relied upon or acted upon for the conviction of the appellants in the instant case.

16. Upon a consideration of the facts and circumstances as propounded above, I am of the firm view that the conviction and sentences recorded against the appellants by the trial court cannot be sustained.

17. In the result, the appeal is allowed. The conviction and sentences recorded against the appellants by the trial court are set aside. The appellants are on bail. They need not surrender and their bail bonds are discharged.

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