

Ram Nath and ors. Vs. State

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Court : Allahabad

Decided On : Nov-30-1990

Reported in : 1991CriLJ1825

Judge : H.C. Mital and ;G.D. Dubey, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 161; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 148, 149, 302, 304, 307, 323 and 325

Appeal No. : Criminal Appeal No. 685 of 1978

Appellant : Ram Nath and ors.

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.N. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

H.C. Mital, J.

1. The above two appeals have been preferred against the judgment and order dated 3-3-1978 passed by Sri Sushil Kumar, the then Ist Addl. District and Sessions Judge, Bijnor, convicting the appellants Ram Nath, Raghunath Singh

and Buddhu Singh Under Sections 304 and 323 both read with Section 34, IPC and sentencing them to five years and six months rigorous imprisonment respectively. Sri Sushil Kumar acquitted Dharampal Singh of the charge Under Sections 302, 323 and 325 read with Section 34, IPC. On being aggrieved the State has preferred appeal No. 1634 of 1978 against all the accused as in its view all of them should have been found guilty and convicted Under Sections 302 and 325 both read with Section 34, IPC, while the convict appellants Buddhu Singh, Ram Nath and Raghunath Singh have preferred their appeal against their conviction Under Sections 304 and 323 both read with Section 34, IPC.

2. The facts of the case in brief are that the parties are residents of village Jamalpur Pathani, P. S. Kotwali, Bijnor. Chaman Singh (deceased) and Buddhu Singh were real brothers. Accused Raghunath Singh and Ram Nath are sons of Buddhu Singh, while accused Dharampal Singh is nephew of Buddhu Singh. Chaman Singh had sold one and a half Bigha of land of joint Khata to Ram Singh and Karera a few months before the occurrence. Buddhu Singh accused wanted that the land should not be sold to an outsider as he wanted to purchase it himself. Hence the relation in between them became strained. It is said that on 7-7-1974 exchange of abuses had taken place in between them. Thereupon Buddhu Singh had threatened that he would settle the matter with Chaman Singh. On 8-7-1974 at about 8 a.m. when Chaman Singh was scraping gross in his field, while Jasram was ploughing it, the accused Buddhu, Ram Nath, Raghunath and Dharampal Singh all armed with Lathis attacked Chaman Singh and when Jasram intervened to save his father, he also received Lathi injuries. On the alarm raised by Jasram witnesses including Ram Singh, Karera, Dal Singh and Om arrived there and thereafter the accused left. Chaman Singh was taken to the police station in a bullock cart, but he succumbed to his injuries on the way. Oral report of the occurrence was lodged at P. S. Kotwali, Bijnor at adistance of three and a half miles at 10-45 a.m. on the basis of which case Under Section 302/323, IPC was registered against the accused and investigation started. Injuries of Jasram were examined on the same day at 1-50 p.m. at District Hospital, Bijnor by Dr. H.U.K. Zuberi and he found the following injuries on his person, vide injury report (Ex.Ka-11).

1. Double line contusion 3' x 1' on outer side of right arm middle part.
2. Contusion 3' x 1/2' on right arm outer side 1/2' below injury No. 1.
3. Contusion 3' x 1/2' on front of right shoulder joint, red.
4. Contusion 2' x 1' on outer side of right arm upper part, red.
5. Contusion 5' x 1 1/2' on back of right shoulder joint, red.
6. Contusion 2' x 1' on back of right shoulder joint, red.
7. Contusion 5' x 1' on back of right side upper part, red.
8. Abraded contusion 1/2' x 1/4' with swelling 3' x 3' on outer side of left fore-arm middle part.
9. Abrasion 1/4' x 1/4' on back of leftship middle part.
10. Contusion 2' x 1' on outer side of left leg upper part.
11. Abrasion 1' x 1' on front of left leg middle part.
12. Abrasion 1/2' x 1/4' on front of right leg lower part.
13. Abrasion 1/4' x 1/8' on right side of right toe lower part.

3. Postmortem examination on the dead-body of Chaman Singh was conducted by Dr. P. D. Gupta, Medical Officer, Civil Hospital, Bijnor on 9-7-1974 at 9 a.m. in the District Mortuary and he found the following ante-mortem injuries on his body.

1. Lacerated wound 1' x 1/4' bone deep on the top of the head.
2. Swelling 3' x 2 1/2' on the left parietal area 4' above the left ear.
3. Swelling on whole of the occipital area of skull.
4. Abrasion 3' x 2 1/2' on the posterior aspect of the left forearm in its middle third.
5. Contusion 2' x 1' on the back of the left hand.

6. Abrasion 1/2' x 1/4' on the back of the right elbow joint.
7. Contusion 3' x 1' on the posterior aspect of the right fore-arm.
8. Swelling of whole of the right hand.
9. Contusion on whole of the lower half of the back of the right side.
10. Contusion of whole of the right buttock.
11. Abrasion 3' x 2 1/2' on the inner aspect of the right leg just below the right knee joint.
12. Abrasion 6' x 4' on the front of the right leg extending up to its inner side, in its lower half.
13. Contusion 6' x 2' on the inner aspect of the left knee joint and lower one fourth of the left thigh.
14. Abrasion 1' x 1/4' on the inner aspect of the right knee joint at its lower border.
15. Abrasion 1/2' x 1/4' on the middle of the left leg on its inner aspect.

3A. After completion of the investigation charge-sheet was submitted and at the trial the accused pleaded not guilty. To prove its case the prosecution examined in all four witnesses, of whom P.W. 1 Jasram is the son of the deceased, he had also received injuries and has lodged the FIR. P.W. 3 Ram Singh is the other eye witness of the occurrence and both of them fully corroborated the prosecution case, stated above. P.W. 2 Head Constable Hem Singh proved the FIR (Ex. Ka-1) prepared by him at the dictation of Jasram and registration of the case and other documents. P.W. 4 S. I. D. P. Saxena, the Investigating Officer proved the other necessary papers. Genuineness of the injury report of Jasram as well as postmortem report was admitted by the accused, hence those Doctors were not examined. On the other hand, the version of the defence as contained in the telegram (Ex. Kha-7) sent on the same day at 9-40 p.m. to the Superintendent of Police, Bijnor, has been that Churdi s/o S. Chaman Singh was plucking mango from his grove whereupon Buddhu Singh had reprimanded and slapped him in the

morning. Immediately thereafter at about 8-30 a.m. when Buddha Singh along with other accused ploughing the field, Jasram and Hoshram along with their father Chaman Singh and Chander s/o Natthu of whom Chander and Hoshram armed with Tabals, Jasram and Chaman Singh armed with Lathis arrived there and accosting 'Kaise Sale Ne Hamare Ladke Ko Mara Hai, Inhen Jaan Se Maar Do' attacked them with their weapons and at that time Ram Nath who had come with food also tried to intervene. He was also attacked with Tabal and Lathi and on hearing their alarm Kripal Singh, Ase and Lambe also arrived; that Buddha and his sons also wielded Lathi in self-defence; that they had also received injuries. According to Charam Pal he has been falsely implicated because of an earlier dispute with Chaman Singh regarding a passage and on that account a Mar Peet had taken place and Panchayat had decided it and since then the complainant had enmity with him. He also alleged that on 14-4-1973 Chandrapal s/o Natthu and his wife had also beaten him about which report (Ex. Kha-6) was lodged at P. S. Kotwali, Bijnor, and he got his injuries examined. Ex. Kha-5 is the original injury report prepared by Dr. P. D. Gupta.

4. In support of defence accused examined six witnesses of whom D.W. 1 Dr. S. C. Agarwal proved the injuries of Raghunath Singh, Ram Nath Singh and Buddha Singh. Raghunath Singh, Ram Nath and Buddha Singh were examined on 10-7-74 in between 9-30 p.m. to 10-15 p.m.

Injuries of Raghunath vide injury report (Ex. Kha-1)

1. Contusion 1/2' x 1/4' (oblique) diffuse swelling 1 x 1/2' on the left side of the forehead about 1' above the left eyebrow along the hair line.
2. Scabbed abrasion 1/2' x 1/4' on the top of the centre of the nose.
3. Scabbed abrasion (horizontal) 1/2' x 1/4' on the middle of the front aspect of the chest about 2' above the lower end of the sternum.
4. Scabbed abrasion (vertical) 1' x 1/2' on the upper part of the left shoulder blade.
5. Scabbed abrasion 1' x 1/2' (vertical diffuse swelling around 3' x 2' on the dorsum of the hand on the outer side about 1' above the root of the index finger.

Injuries of Buddhu Singh.-- vide injury report (Ex. Kha-2):

1. Scabbed abrasion (oblique) 2' x 14' on the lower part of the back aspect of the left fore-arm.
2. Oblique contusion 3' x 1/2' on the upper part of the right shoulder blade.

Injuries of Ram Nath Singh.-- vide injury report (Ex. Kha-3):

1. Incised wound (oblique) 1' x 1/4' x skin

on the inner side of the dorsum of the middle of the left hand. Pus present.

2. Scabbed abrasion (oblique) 2' x 1/8' on the right side of the upper part of the right shoulder-blade.

5. In the opinion of Dr. Agarwal all the injuries were two and half days old and could be caused on 8-7-1974 at about 8-30 a.m.

6. D.W. 2 Sukhbir Singh proved about the dispute with Chaman Singh and about the Panchayat which took place subsequently and Panchnama (Ex. Kha-4). D.W. 3 Dr. P. D. Gupta proved the injury report dated 14-4-1973 of Dharampal (Ex. Kha-5) according to which he had received one lacerated wound and three abrasions. D.W. 4 Court Muharrir Prem Pal Singh proved the FIR (Ex. Kha-6) dated 14-4-1973. D.W. 5 Nishpal Singh proved the copy of the telegram (Ex. Kha-6). He had brought the record from the Telegraph Office. Lastly, Ram Nath accused examined himself on oath as D.W. 6 and supported the version as given in the telegram.

7. Learned Sessions Judge, however, believed the prosecution evidence and disbelieved that of the defence holding that the injuries on the persons of the accused could be fictitious or self-inflicted, hence he convicted and sentenced the appellants as stated above, but gave benefit of doubt to Dharampal Singh and acquitted him.

8. We have heard the learned D.G. A. and Sri P. N. Misra, learned counsel for the convict appellants and Dharampal Singh. On behalf of the convicts it was argued

that the Mar-peat no doubt had taken place on 8-7-74 at about 8/8-30 a.m. in between the parties in which Chaman Singh deceased and Jasram had received injuries. According to the defence version on the side of the convicts all the three, namely, Buddhu Singh, Ram Nath and Raghunath Singh had received injuries. At that occurrence presence of their injuries has been concealed by the prosecution. The same was neither mentioned in the FIR nor in the statement Under Section 161 Cr. P.C. nor in the evidence produced before the Court below; that according to the prosecution the occurrence had taken place in the field of Chaman Singh, while according to them the occurrence had taken place in their field; that there was no clinching proof like the recovery of blood from either of the two places and thus the prosecution failed to prove that the occurrence had taken place in the field of Chaman Singh. It was further pointed out that on the evidence on record the origin of the fight was shrouded in mystery and that even if the defence version was not proved, unless the prosecution proved its case to the hilt, their conviction was liable to be quashed and the Government appeal in any case was liable to be dismissed. In his judgment the learned Sessions Judge has disbelieved the defence version that all the three accused, namely, Buddhu Singh, Ram Nath and Raghunath had also received injuries at that time. In his view the defence version was not probable as on the side of the complainant there were large number of injuries than on the side of the accused and only two persons were injured, while two escaped completely unhurt on the side of the accused. He further found the examination of the injuries on 10-7-74 after two and a half days suspicious and the explanation given for the delay as unsatisfactory. In his view it appeared that the accused could not get a Doctor who could give a report according to their desire, hence they got themselves examined on 10-7-74 when they could get such a Doctor. He has also observed that the injuries could be self-inflicted also, as admitted by Dr. S. C. Agarwal (D.W. 1). He, therefore, totally rejected the defence version and has further observed that even the telegram was sent late after obtaining legal advice to make out a case of self-defence.

9. On behalf of the accused-appellants it was argued that they could not do better than to produce the Doctor, Sri S. C. Agarwal (D.W. 1), the Medical Officer of the Government District Hospital, who had examined their injuries. It was further argued that it was immaterial whether the injuries were got examined on 10th July,

1974 after two and a half days and if the same had been examined on 8th July, 1974, itself, even then the nature of the injuries would have remained the same. Hence unless it is believed or held that Dr. S. C. Agarwal had perjured, there is no reason to disbelieve his testimony that he had examined the injuries as noted in the injury reports (Exs. Kha-1 to Kha-3); that the duration of the injuries as given in the injury report and deposed by Dr. Agarwal clearly indicate that the same had taken place on 8th July, 1974 in the morning at about 8-30 a.m.

9A. While examining the papers on record we have come across the order dated 23-7-74 of Sri H. N. Singh, the then learned Sessions Judge, Bijnor. On behalf of the three appellants it was alleged that they themselves had received injuries at the hands of the deceased and they had acted in self-defence. The application was supported with telegram and the injury reports. The learned Sessions Judge has specifically stated in the order that he got the three appellants summoned from jail and verified their injuries as noted in their injury reports physically one by one on their persons. The scars of all those injuries were present on their person. He, therefore, found it a fit case for bail.

10. We have referred to the above contents of the order with a view to appreciate the defence evidence whether the injuries noted on the person were wholly fictitious as alleged on behalf of the prosecution. We are conscious of the fact that this order was not tendered in evidence at the trial. However, it is a judicial order and its contents can be noted. The genuineness of the order was neither/ nor could be doubted. In that view of the contents of the order we have no doubt that the accused appellants had received injuries. We have, therefore, no reason to doubt that they had got their injuries examined on 10th July, 1974, through Dr. S. C. Agarwal who noted the injuries on their person as contained in Ex. Kha-1, Kha-2 and Kha-3. There can be no reason to doubt that the observation of the learned Sessions Judge could be false. Hence once it is believed that the accused appellants had received injuries on 8th July, 1974 at about 8/8-20 a.m. it is for the prosecution to explain their presence. On behalf of the State learned D.G.A. has referred to a recent decision of the Hon'ble Supreme Court in the case of Vijayee Singh v. State of U.P. AIR 1990 SC 1459 : (1990 Cri LJ 1510). In support of his contention it was not necessary for the prosecution to have explained the injuries

of the accused.

11. In the case before the Supreme Court a rioting had taken place at about 8 a.m. and in the course of that rioting two persons were killed and two persons had received injuries. In respect of those offences fourteen accused were tried Under Sections 148 and 302 read with Section 149, IPC and some were tried for the offence Under Section 307, IPC. In that occurrence two of the accused had also received injuries. There was gun-shot injuries on one of the accused and on other accused there was lacerated wound. The Doctor, however, admitted that the gun-shot injuries were five tiny abrasions in the area of 4' x 4' on outer surface of right thigh. On X-ray Report ten radio opaque shadows were found. Those pellets remained embeded in the thigh. On behalf of the defence plea of private defence was also taken. The plea regarding non-explanation of injuries of the prosecution witnesses was rejected as the evidence of the material witnesses even otherwise was found to be cogent, convincing and acceptable as two of the witnesses were also injured. As regards the evidence of acting in self-defence it was held that the accused had proved infliction of injuries on them by the complainant party in the course of the occurrence and, therefore, their plea appeared to be reasonably true and consequently they were entitled to the right of the self-defence. The next question arose whether they had exceeded that right. On behalf of the appellants it was urged that it could not be said with certainty that the appellants had exceeded the right and, therefore, they were entitled to acquittal. Their Lordships observed and held as follows:

'In *Amjad Khan v. The State*, 1952 SCR 567, AIR 1952 SC 165 : (1952 Cri LJ 848) on the facts and circumstances of the case it was held that the accused was entitled to a right of private defence of the body even to the extent of causing death as there was no time to have recourse to the authorities and had reasonable grounds for apprehending that either death or grievous hurt would be caused either to himself or to his family. These things could not be weighed in too fine a set of scales or 'in golden scales' In *Puran Singh v. State of Punjab*, AIR 1975 SC 1674 : (1975 Cri LJ 1479) it is observed that the right of private defence of property or person, where there is real apprehension that the aggressor might cause death or grievous hurt to the victim, could extend to the causing of death

also and it is not necessary that death or grievous hurt should actually be caused before the right could be exercised. A mere reasonable apprehension is enough to put the right of private defence into operation. It is also observed that the question whether a person having a right of private defence has used more force than is necessary would depend on the facts and circumstances of a particular case.

In the case before us as per the evidence of the material witnesses the two deceased were only proceeding along with the rasta towards the pump set for taking bath. Even on the plea set up by Chirkut Singh, accused No. 6, it is not stated specifically that deceased Nos. 1 and 2 were armed with any deadly weapons. Therefore, the assailants had definitely exceeded the right of private defence when they went to the extent of intentionally shooting them to death by inflicting bullet injuries. Therefore, the offence committed by them would be one punishable Under Section 304, Part 1, IPC.'

12. From the above it is clear that their Lordships in the above referred case of Vijayee Singh (Supra) held that the assailants had exceeded the right of private defence not only because they had intentionally indulged in intentional shooting and causing death by bullet injuries, but the deceased were also unarmed and were just going along with their Rasta towards pumping set for taking bath, that is, there could not be any apprehension of receiving any injury from those persons to the accused.

13. In the present case, however, all the present three appellants had received injuries and one of them had also received incised wound, while the deceased as well as the injured witness Jasram (P.W. 1) were caused injuries by the appellants with Lathi or Dandas, i.e., on the side of the complainant there was even use of some sharp edged weapon along with Lathi, while on the side of the accused appellants they had used Lathi only and, therefore, it cannot be said that the present appellants had at all exceeded their right of self-defence.

14. We accordingly set aside the conviction and sentences of the appellants Ram Nath, Raghunath Singh and Buddhu Singh Under Sections 304 and 323 both read with Section 34, IPC. They are already on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

15. Govt. Criminal Appeal No. 1634 of 1978 accordingly has no force and is hereby dismissed.

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