

Raghunandan Prasad and ors. Vs. State

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Court : Allahabad

Decided On : Oct-01-1997

Reported in : 1998CriLJ1571

Judge : B.K. Sharma, J.

Acts : Evidence Act - Sections 105; Transfer of Property Act - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 323, 426, 427 and 452; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 2564 of 1980

Appellant : Raghunandan Prasad and ors.

Respondent : State

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.B.L. Gour, Adv.

Disposition : Appeal allowed

Judgement :

B.K. Sharma, J.

1. There is an appeal against the judgment and order dated 4-11-1980 passed by Sri Ghanshyam Das, the then IVth Additional Sessions Judge, Bulandshahar in

S.T. No. 228 of 1979, State v. Raghu Nandan Prasad and two others under Sections 147, 323, 426, 452 and 147, I.P.C. Police Station, Jahangirabad, whereby, he convicted the accused-appellant of the offence under Section 147, I.P.C. and sentenced them to undergo R.I. for a period of 6 months and further convicted them of the offence under Sections 323/149, I.P.C. and sentenced them to R.I. for 6 months.

2. Heard counsel for the parties. The prosecution story in this case was that the informant Ramesh Chandra lived in House No. 106, Mohalla Prabhu Dayal, Jahangirabad which previously belonged to Smt. Dropadi Devi who had executed on 28-10-1975 an agreement to sell the house to him, that possession of the house has been delivered to him on 28-10-75 i.e. the date of the agreement and since then, he was coming down in possession of the house, that the accused-appellants Raghunandan Prasad, Ram Avtar and Karanveer Singh wanted to take forcible possession over the said house, that on 28-12-1975 at about 10.30 a.m., when he was inside the house, all the three accused-appellants raided the house along with 40-50 persons who were armed with Lathi, Gun and Kattas, that they started demolishing the walls, that the informant's children Manorama and Ramanandi and he himself were inside the house, that the accused persons did Marpit with Manorama and Ramanandi, that the accused and their companions did Marpit and also firing and due to Shor the neighbours came and Ved Prakash, Dayanand Gaur tried to save the informant and others, whereupon, the accused-appellants did Marpit with them also, that the accused-appellants and their companions ran away when a large number of persons of the Mohalla collected. The prosecution F.I.R., Ext. Ka-1 was lodged by the informant Ramesh Chandra at the police station on 21-12-1975 at 11.45 a.m. Check remort Ext. Ka-2 was prepared on its b and C., Crime No. 533-A was registered A the police station under Sections 147, 148, 323, 452 and 427, I.P.C. against all the three accused-appellants and 40-50 unknown persons. After completing the investigation the I.O. submitted a charge-sheet against the present accused-appellants for the aforesaid offences.

3. From the side of the prosecution, there were 3 injured. Dayanand prosecution injured reached police station soon after the registration of the case and he was

despatched to primary health centre, Jahangirabad, where he was medically examined by Dr. J. L. Agrawal on 28-12-1975 at 12.10 p.m. He found the following injuries on his person :

1. Abrasion-cum-contusion .5 cm x .2 cm on the left tragus of ear, Reddish.
2. Abrasion 3 cm x 1 cm on the front of Rt. wrist joint.
3. Contusion 1 cm. x .4 cm. on the front of Rt. leg lower 1/3.
4. Abrasion 2.2. cm x 1 cm on the front of left leg upper 1/3.
5. Abrasion 2.4 cm x 1 cm on the front of left leg, reddish.
6. Abrasion with contusion 1 cm x .5 cm on the back of leg lower 1/3, reddish.

In his opinion, injuries were simple, caused by blunt object and friction of hard substance. Duration was fresh.

There were two more injured set up from the side of the prosecution. Their medical examination, however, was highly belated. Smt. Manorama, prosecution injured was medically examined by the same medical officer on 28-11-1975 but at 3.45 p.m. He found the following injuries on her person :

1. Lacerated wound .5 cm x .2 cm x . 1 cm on the Rt. side lower part of chin.
2. Abrasion 2.5 cm x .2 cm on the front of Rt. forearm lower 1/3.

In his opinion, injuries are simple and are caused by blunt weapon. Duration is fresh.

The third prosecution injured Smt. Ramanandi was medically examined by the same doctor on 28-12-1975 but at 3.50 p.m. He found the following injuries, on her person :

1. Contusion 3 cm x 1 cm on the side back mid-scapular region, reddish.

In his opinion injury is simple and is caused by blunt weapon. Duration is fresh.

4. About the same occurrence, there was a cross-case also. In fact, it was registered at the same police station at 11.45 half an hour prior to the registration of the present case. The cross F.I.R. was lodged at the police station by the Raghunandan Prasad, present accused-appellant No. 1. The material contents of the cross-F.I.R. Ext. Ka-2 lodged by Raghunandan Prasad accused-appellant were as follows :

PRARTHIAVAM RAM AUTAR SH ARM A PRADHAN LIPIK JANTA INTER COLLEGE JAHANGIRABAD MEN MOHALLA PRABHUDAYAL MEN HI DO MA KANON KE BAINAMA KRAMSHAH 3-12-1975 V 16-12-1975 KO KARVAYE THEY. INMEY EK MAKAN MEN PURANI TAMIR HAI AUR BASHAKL DUND HAI. DUSRA BHI PURANA KHASTA HALAT MEN HAI. ATAH PRARTHI NE AAJ LAGBHAG 11 BAJEY MAKAN PAR MARAMMAT AVAM NAI TAMIR HETU MAZDOOR LE JAKAR KARYA PRARAMBH KIYA KINTU TURANT BAD HI DAYANAND COMPUNDER APNEY DO LARKON CHUNNA AVAM VIR PRAKASH JINMEY CHUNNA PER BANOOK VEER PRAKASH PER KATTA? THA DONON NE FAIR KIYE. DAYANAND KE PAS LATHI THI JO KI EK BYAKTI KO LEKAR JISKA PARIWAR BHI SHATH THA HAMAREY MAKAN MEY GHUSA DIYA AUR CHUNNA NE MERE DO GOLIAN MARI JO EK MERE BANYE HATH MEN AUR DUSRI BANYEE TANG KE GHUTNEY MEN LAGI. ISI BICH GOLION KI AAVAJ SUNKER KUNDAN SINGH PUTRA AMAR SINGH TATHA BHUPAL SINGH RANA BUTRA KHAMANI SINGH AA GAYE JINHON NE MERI JAN BACHAYEE.

5. On the basis of check report, Ext. Kha-2, Crime No. 533 was registered against Dayanand (present prosecution injured, examined as P.W.) Chunna and Vir Prakash sons of Dayanand aforesaid and some un-known persons. There is common entry in the G.D. Ext. Ka-6 at 11.45 a.m. about the registration of both the cases. By this G.D. entry, prosecution injured Dayanand aforesaid and the informant and injured of the cross case Crime No. 533 Raghunandan Prasad 'both were forwarded to the primary health centre, Jahangirabad for medical examination;

6. The medical examination of Raghunandan Prasad was made by the same doctor on 28-12-1975 at 12.30 p.m. He found the following injuries on his person :

1. Gun shot wound of entrance 1 cm x 1 cm on the outer side of left palm middle 1 cm above the index finger. No tattooing, blackening, slight charring present, margins are inverted, bleeding present.

2. Gun shot wound of entries 2 cm x 1 cm x 1 cm on the outer side front of lower part of the thigh margin everted, no tattooing or blackening or charring present, bleeding present.

Injuries are kept under observation.

Advised X-ray for gun shot pellets.

In his opinion the injuries were caused by gun shot. Duration is fresh.

7. The ocular testimony from the prosecution side has been given by Ramesh Chandra, informant P.W.1 and Daya Nand P.W.2. Both has testified to the prosecution story as outlined above.

8. In this statement under Section 313, Cr. P.C. Raghunandan Prasad, accused-appellant denied the execution of the alleged Ikrarnama by Smt. Dropdi in favour of the informant and also the allegation that the informant was in possession of the house from the date of the alleged Ikrarnama. He denied the prosecution version of the occurrence and claimed that he was prosecuted to grab the house. He gave his version in the following words :

3-12-1975 VA 16-12-1975 KO BAINAMEY MAINEY VATRAM AUTAR SHARMA NEY LIYE THEY. DAYANAND VAGAIRAH. IN MAKANON KO LENA CHAHTHEY THEY IS LIYE VE RAMESH -CHANDRA KO KHADOYAE GRAM SE 6ULAKAR.LAYE AUR MERE MAKAN ME GHUSA DIYA JABARJASTI. MUJHEY CHOTEN PAHUCHAYEE. JISKI REPORT MAINE USI DIN KI JIS PER MUDAIMA CHALA RAHA HAL

9. Ram Autar accused-appellant gave the following version in his statement under Section 313, Cr. P.C.

MAKAN KA BAINAMA HAMNEY KARA LIYATHA. AUR 18-12-1975 KO JHAGRA UNHON NE HAMARE SATH KIYA AUR BAD ME IKRARNAME VAGAIRAH JAL1THIYAR KIYE. MAIN MAUKE PAR MARP1TH KE SAMAY THA. JUTHA FASAYA GAYA.

10. Karanvir accused-appellant denied his presence at the spot in his statement under Section 313, Cr. P.C.

11. At the trial, the defence brought on record the check report of the cross F.I.R. (Ext. Kha-2) and injury report of the accused-appellant Raghunandan Prasad (Ext. Kha-1). The defence also filed certified copy of the Mukhtarnama (paper No. 47/3.B) dated 5-12-1975 executed by Smt. Dropadi Devi in favour of her husband Devi Das. The defence also filed a certified copy of the registered sale-deed dated 3-12-1975 executed by Devi Das in respect of house situated in Mohalla Prabhu Dayal, Town Jahangirabad (paper No. 47/2B) in favour of Ram Avtar Sharma and Raghunanadan Prasad (Accused-appellant) for Rs. 5,000/- and out of which Rs. 3507- were stated to have been paid before the registration (paper No. 49/2 Kha). There was recital in the sale-deed that the permission to sell has been obtained on 2-12-1975 (from the proper authority). There was also recital that the house is in two parts and this sale-deed is in respect of the part of which Devi Das vendor was himself the owner. In the northern boundary of the vended house was given the house of Smt. Dropadi Devi. The sale-deed also contained a recital that the house was dilapidated. The original sale-deed was on the record of O.S. No. 262 of 1977 on which the endorsement of Sub-Registrar dated 3-12-1975 was that the vendor acknowledged execution and receipt of Rs. 3500/- before hand and payment of Rs. 1500/ - before him.

12. The defence also filed certified copy of registered sale-deed dated 16-12-1975 (paper No. 48/2 Kha) executed by Devi Das husband of Smt. Dropadi Devi acting as her Mukhtar-e-am (i.e. holding a general power of attorney) in respect of the house situated in the same Mohalla in the western boundary of which was given the house of Smt. Dropadi Devi. In the sale-deed, the house was described as Purana Dund. The total consideration was given as Rs. 3,0007- which was to be paid at the time of registration. The transferees in this sale-deed were also the

same namely Raghunandan Prasad and Ram Avtar accused-appellants. The original sale-deed was on the file of O.S. No. 262 of 1977. It contained endorsement of the Sub-Registrar dated 16-12-1975 that the vendor acknowledged execution and also that Rs. 3000/- were paid before him.

13. The tried accused-appellant was not transferee in any of the two sale-deeds.

14. Now it will be seen that an occurrence did take place at the aforesaid date, time and place. The presence of Ramesh Chandra informant (P.W.) at the scene of occurrence is also not disputed even though he is not an injured in the occurrence. Dayanand P.W.2 is an injured in the occurrence and his presence at the spot is undisputed. As noted earlier, he has been nominated as an accused in the cross F.I.R. lodged earlier at the said police station about the same occurrence. The presence of Raghunandan Prasad and Ram Avtar, accused-appellants at the scene of occurrence is also not in controversy. Karanvir Singh accused-appellant has denied his presence at the spot and in regard to him and point of importance is that while Raghunandan Prasad and Ram Avtar house set themselves out as transferees in respect of the house where the occurrence took place. Karanvir Singh accused-appellant does not picture anywhere in these sale-deeds. His claim is that since he is a teacher and associated with Raghunandan Prasad and Ram Avtar, accused-appellants, he has been falsely implicated in this case.

15. Now we have to see whether the prosecution version of the occurrence was believable or the defence version of the occurrence is believable having regard to the totality of circumstances of this case. The question of possession becomes very material in such a case. Title as such is not the determining factor in such a case but the documents of title that have come on record, have a bearing on the question of possession. If the complainant side is in possession over the disputed land and the accused raid the house in actual possession of the complainant, and assaulted the complainant party they have to be criminally liable for the offence of rioting and of the offence under Secs. 323/149, I.P.C. for the simple injuries caused by all or any of them in prosecution of the common object of the assembly and the complainant had a right to defend his possession even by using force, and

if any of the accused-appellants received injuries in the occurrence, that would be covered under the exercise of the right of private defence of property and person by the complainant party. If, however, the accused-appellants Nos. 1 and 2 or any of them were in actual possession of the disputed house, they had a right to defend their possession at the spot even by using force, if the complainant party came there to disturb their possession and assaulted them so in that case if any one from the complainant party received -injuries in the occurrence, it would be covered under the. right of private defence of property and person of the accused party.

16. The defence has set up the right of private defence of-property and person claiming that accused-appellants Raghunandan Prasad and Ram Autar were in possession over the disputed house. The principles of law regarding proof of right of private defence have been aptly stated in the authority *Rishi Kesh Singh v. The State*, AIR 1970 All 51 (FB) : 1969 All LJ 657 on page 62 in Para 23 :-

An accused person who puts forward the plea of private defence will seek to prove it from the material on record, consisting of defence evidence, oral or documentary, and admissions elicited from such material in-two ways. In the first place, if this material is sufficient to show that the plea of private defence is more probable than the prosecution case, the plea will be taken as proved and the accused will be entitled to acquittal on the ground that he has discharged the onus laid on him by Section 105 of the Evidence Act. Alternatively, if this material (read in conjunction with the other evidence on record) is found to create a reasonable doubt in the mind of the Court regarding something that is required to be proved by the prosecution in order to establish the accused's guilt, the accused will be entitled to acquittal on the ground that the prosecution has failed to discharge the primary burden that lies on it in all criminal cases. In the vast majority of offences, mens rea is one of the essentials that the prosecution has to establish before the crime can be said to be proved; and a reasonable doubt as to whether mens rea is present or not must inevitably lead to acquittal. A person who inflicts harm in a lawful manner in order to protect his person or property is clearly devoid of mens rea and if the material relied upon by the accused creates a doubt as to whether he acted in exercise of the right of private defence, a doubt will simultaneously

arise as to whether he had the mens rea that must be proved in order to make his act a punishable offence. In such circumstances he will have to be given the benefit of the doubt regarding this essential prerequisite of the prosecution case and will be entitled to acquittal.

17. The authority held per-majority that the accused person is entitled to be acquitted if upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the general exception) a reasonable doubt is created in the mind of the Court about the guilty of the accused.

18. The defence has disputed the injury reports in respect of Smt. Kanorama Devi and Smt. Ramanandi. It has been pointed out that when the informant went for lodging the F.I.R. these two ladies were not taken by him to the police station, that they were also not named in the prosecution F.I.R. as injured persons, that the Investigating Officer had admitted that he (the informant) did not tell him the names of these injured in his first interrogation in the police station immediately after the registration of the case, that these two females have not entered the witness-box, that they have been got medically examined much belatedly and that this delay is unexplained, that the injuries recorded on their bodies were entirely superficial and claimed that these were capable of being managed and that these injuries were self-sustained or self-inflicted in order to buttress the prosecution case. It is argued that these two ladies were not taken to the police station promptly because they had received no injuries in the occurrence and that after their injuries were managed they were taken to the police station and got medically examined. Under the circumstances such inference is legitimate. Even assuming, though by no means holding, that these two females also received injuries on their person at the time of occurrence not much difference will be made because their injuries were simple in nature and if the accused-appellants or any of them are found to have the right of private defence of person or property or both, it cannot be said that they have exceeded their right.

19. There is no controversy that the alleged eqrarnama dated 28-10-1975 set up by the prosecution was in respect of the same house which was comprised in the two registered sale-deeds dated 3-12-1975 and 16-12-1975 (Paper 497 2 Kha and

48/2 Kha) respectively and now it is also plain that O.S. No. 463/75 for specific performance in respect of the same (the eqrarnama) was filed on 29-11-1975 prior in point of time than these two sale-deeds taken by Raghunandhan Prasad and Ram Autar accused-appellants in respect of different parts of the same house. The defence claims that this eqrarnama was fictitious and ante dated. The eqrarnama has not been filed and proved at the trial by the prosecution. In the prosecution FIR this eqrarnama and the filing of this suit have been suppressed' and the only allegation is that the informant lived in the house. As against this, in the cross FIR lodged by Raghunandan Prasad, present accused-appellant No. 1, at the same police station at 11-15 a.m. half an hour prior to the prosecution FIR (lodged at 11-45 a.m.) there was clear cut mention of the taking of the two registered sale-deeds dated 3-12-1975 and 16-12-1975. Both the sale-deeds contained recital about the delivery of possession to the vendees i.e., Raghunandan Prasad and Ram Autar, accused-appellants No. 1 and 2. In the normal course of human dealings, actual possession is delivered to the transferee as per recital in the sale-deed. Nobody would normally part with substantial amount of money and rest content with a paper transaction of sale containing a recital of delivery, of possession without actual delivery of possession. So the recitals in these two sale-deeds which were prior in time than the present occurrence do go in favour of defence.

20. The certified copy of the judgment dated 15-9-1976 in Original Suit No. 463 of 1975 (Ex. Ka-9) shows that subsequent to the present occurrence the suit was decreed for specific' performance of the agreement to sell against the heirs of Smt. Dropadi (who died during the pendency of the suit) but the defence claims that it was a collusive suit. It has been argued that under Section 3 of the Transfer of Property Act, registration of a document of sale unmovable property is notice to the whole world, that even in the ordinary course also Ramesh Chandra informant of the present case must have become aware of the two registered sale-deeds before the present occurrence, and yet no effort was made by Ramesh Chandra to implead the transferees in the said suit prior to the date of occurrence. It has also been argued that in any event, there was clear cut mention of these two sale-deeds in the cross F.I.R. of the occurrence and so Ramesh Chandra could not remain unaware of the contents of the said sale-deeds and yet even after the occurrence, he did not implead Raghunandan Prasad and Ram Avtar present

accused-appellants as defendants in the suit and seek in the said suit cancellation of the two sale-deeds or a direction to the two transferees in these sale-deeds to join in the conveyance by Smt. Dropadi Devi (later on by her heirs) in his favour for the specific performance of the agreement to sell with him, nor sought cancellation of the sale-deed of the portion of that house made by Devi Das husband of Smt. Dropadi Devi on her behalf claiming to be holding power of attorney from her nor sought a declaratory relief about the other sale-deeds by Devi Das claiming himself to be owner which certainly was a cloud on the title of Smt. Dropadi Devi if she was owner of the entire house.

21. It is disputed that Smt. Dropadi and Ram Das both died after occurrence. The learned A.G.A. relied on the above referred judgment to show that the suit was not contested by Smt. Deopadi Devi and her heirs after her death and claimed that this was a circumstance in favour of prosecution. The learned A.G.A. also claims that a sale-deed has also been executed in pursuance of the decree for specific performance of the said agreement to sell in favour of the informant. However the sale-deeds in favour of the accused-appellants Raghunandan Prasad and Ram Avtar, still appeared to be intact and not claimed to have been cancelled by any competent Court.

22. The decree did not file any title deeds of -Dropadi Devi and her husband and the prosecution too has not filed any title deed of Dropadi Devi in respect of the entire house. It is for the Civil Court to determine the dispute of title. Moreover, the subsequent events could not help us in determining the controversy at hand.

23. The learned A.G.A. has placed reliance on the sentence in the cross F.I.R. itself in support of his claim that the informant Ramesh Chandra was in possession of the house where the occurrence took place, 'EK BYAKTI KO LEKAR JISKA PARIWAR BHI THA MAMAREY MAKAN MEY GHUSA DIYA.' He also placed reliance on the statement under Section 313, Cr.P.C. given by Raghunandan Prasad accused-appellant before the trial Court which we have reproduced above. His argument is that the actual physical possession over the disputed house was of Ramesh Chandra informant from before the date of occurrence and since the same could not be denied by the accused-appellants, these recital were made in

the cross F.I.R. by way of explanation of the informant's possession. He also placed reliance on the defence suggestion made to the informant in his cross-examination that after going of Raghunandan accused-appellant from the spot, Dayanand P.W. 3 put him (the informant) into possession of the house. But the possession at the spot is to be seen at the time when the occurrence started and not at the close of it. There was nothing unnatural and improbable on the prosecution side taking forcible possession over the house in the course of the occurrence. It is the over all picture of the evidence and the circumstances which will matter in this case.

24. One important circumstances worth notice is that the accused-appellant Raghunandan Prasad himself went to the police station and lodged this cross-F.I.R. at 11.45 a.m. while upto that time, the prosecution F.I.R. had not yet been filed, on the prosecution case itself it had been filed subsequently at 11.45 a.m. by Ramesh Chandra informant. His (Raghunandan Prasad's) injuries were recorded in the G.D. about registration of the case. Thus, he had no time to fabricate his injuries, he having gone immediately after the occurrence to the police station and lodged his defence F.I.R. (i.e. cross. F.I.R.) there. The prosecution F.I.R. was lodged by Ramesh Chandra but he had not received any injury in the occurrence. It was Dayanand who was the injured from the prosecution side. If the accused-appellant were the aggressors and Ramesh Chandra defendant were in possession, he would have been their first target and could not escape unhurt.

25. On the defence version in the cross F.I.R, Dayanand P.W. 2 had raided the house alongwith his sons and they were the aggressors and the receipt of injuries by Dayanand and non-receipt of injuries by the informant were circumstances fully consistent with this version. Dayanand (PW 2) is resident of another mohalla though he claims that it adjoins the mohalla where the occurrence took place. His house is not shown in the site plan prepared by the Investigating Officer. Dayanand claims to be doing Pooja in his temple and heard to have Shor coming from west from the house of Ramesh Chandra. Yet while Dayanand is an injured Ramesh Chandra is not an injured in the occurrence. This shows that the occurrence did not take place in the manner as claimed by the prosecution.

26. Now in the prosecution F.I.R. it has been said that the three accused-appellants raided the informant's house alongwith 40-50 persons, most of whom were students and started demolishing 'the same and mal-treated his children and did Marpit with them and also assaulted them with bricks and also fired with Katta and guns but from the side of the prosecution only three injured persons have been set up namely Dayanand (PW 2), Smt. Manorama (not examined at the trial) and Smt. Ramanandi (not Examined at the trial) and as noted earlier it was highly doubtful that Smt. Manorama and Smt. Ramanandi received any injury in the occurrence. Thus there remained only Dayanand injured and the injuries of Dayanand were superficial, caused by blunt weapon and simple in nature. Had the accused appellants been the assailants and 40-50 persons were accompanying them armed with Lathi, guns and Kattas as claimed by the prosecution there would have been serious injuries inflicted on the body of Ramesh Chandra informant and he could not escape without injuries and Dayanand P.W. 2 from his side could not escape with the simple and insignificant injuries found on his body. Even if we take for a moment that Smt. Manorama and Smt. Ramanandi had also received injuries in the occurrence their injuries were in any case feeble and the assailants would not have restrained themselves so as to inflict only these injuries. Then it is also noteworthy that though there is mention of fire-arms with the accused-assailants, there is no mention that any person was injured by any fire from their fire-arms.

27. In his statement at the trial as P.W. 1, Ramesh Chandra informant testified that the accused persons did Marpit with Smt. Manorama and Smt. Ramanandi and that on Shor neighbourers collected and Ved Prakash and Dayanand Gaur tried to save the victims, whereupon, the accused persons did Marpit with them, also. Ved Prakash accompanied the informant Ramesh Chandra to the police station as is clear from the G.D. entry aforesaid about the registration of the cross cases but no injury of Ved Prakash is recorded therein. There is also no medical examination of Ved Prakash got done by the prosecution.

28. The injuries of Dayanand (PW 2) which as noted above alone appear to have been inflicted in the occurrence, consisted of only six abrasions, 2 of which were accompanied by contusion. The defence suggestion is that Dayanand injured received these injuries by fall. Dayanand injured (PW 2) himself has stated in his

examination-in-chief, 'RAGHUNANDAN NE MUJHEY DHAKKA DIYA JISSEY MAIN NEECHE GIR GAYA AUR MUJHEY CHOTEN AAYEE.' In his cross-examination he was suggested that he fell down by the Dhakka (push) of Raghunandan. Doctor Jawahar Lal, Medical Officer (PW 3) stated in his testimony at the trial that the injuries of Dayanand could have come by falling on the Malba of house and land. Obviously the injuries of Dayanand were not such type of injuries which one would expect to come if the accused-appellants had come to the spot accompanied by 40-50 persons armed with weapons to assault and to take possession as is the prosecution case. This makes the prosecution story highly doubtful. It is true that even the defence version in the cross F.I.R. postulates the presence of a number of persons at the spot from the side of the accused-appellants Raghunandan and Ram Autar Sharma. In fact the F.I.R. and cross F.I.R. both involve demolition work at the spot. The prosecution says that the assailants raided the house and started demolishing the informant's house and the cross F.I.R. says that Raghunandan Prasad Sharma and Ram Autar Sharma carried labourers to the house for repairs and reconstruction and started the work and at that time the prosecution party came there and the Investigating Officer has recorded in the site plan by point 'A' the spot where bricks were dismantled in repair. In the prosecution F.I.R. there is allegation of Marpit and assault by bricks and fire with Katta and guns while according to cross F.I.R. Dayanand was carrying Lathi accompanied by his sons Ghunna carrying gun, Veer Prakash carrying, Katta and Chunna fired two shots which injured Raghunandan Prasad present accused-appellant.

29. The informant had testified that the accused-appellants did Marpit with Ved Prakash and Dayanand when they tried to save them. Dayanand (PW 2) on the other hand testified that some persons were beating two women but he further stated that he does not recognise who were those assailants. He claimed that Karanveer, Ram Autar accused-appellants were throwing the articles of Ramesh Chandra informant. The informant did not testify to any such throwing of articles. About Rabhunandan accused-appellant, he stated that he (Raghunandan) gave a push to him (Dayanand P.W. 2). Thus he does not claim that Karanvir and Ram Autar accused-appellants had inflicted any injury on his body. Thus there is discrepancy in their testimony which also throws doubt over the prosecution case.

30. As noted earlier Raghunandan Prasad accused-appellant went to the police station immediately after the occurrence and lodged his defence F.I.R. (cross F.I.R.) there and he was got medically examined promptly and consequently there was no occasion for him to fabricate any injuries. Moreover his injuries were not such as could be fabricated, self-sustained or self-inflicted. In fact the prosecution does not dispute his injuries before us as having been received in the occurrence. It has been pointed out by the learned counsel for the accused-appellants that the injuries of the defence injured Raghunandan Prasad have not been explained by the prosecution in the F.I.R. or during the investigation or even at the trial and that in the prosecution F.I.R. no mention has been made of any injury having been received by the accused-appellant Raghunandan Prasad by fire or otherwise. There is of course a mention in the prosecution F.I.R. of fires by Katta and guns by the accused party and the coming of witnesses on hearing sound of fire but there was no mention that it were these fires which injured the accused-appellant Raghunandan Prasad. At the trial, the informant Ramesh Chandra (PW 1) did not say in his examination-in-chief that Raghunandan Prasad, accused-appellant received any injury much less a fire arm injury, during the occurrence. In his cross-examination, he was suggested about Raghunandan Prasad, accused-appellant, having received fire arm injury. He pleaded ignorance saying, 'YAH MUJHEY NAHIN PATA KI RAGHUNANDAN MULJIM KO GOLI KI CHOT AAYEE.' He volunteered that the accused persons were having Kattas and they alone fired. In his examination-in-chief, he said that the accused-appellants were accompanied by 40-50 persons who were carrying Lathi gun and Katta. In other words, none of the accused-appellants were alleged by him in his examination-in-chief to be carrying Lathi, gun and Katta Now in his cross-examination he said that the accused persons were having Kattas in their hands and they fired. The defence suggestion to him was that two sons of Dayanand (PW 2) came there alongwith Katta and gun and it were they who fired which resulted in fire-arm injury on the body of Raghunandan Prasad accused-appellant. But even in cross-examination he did not say 'that Raghunandan Prasad accused appellant received fire arm injuries by the fire of the accused-appellants themselves or by the fires of their companions. Dayanand (PW 2) in his examination-in-chief did not say anywhere that Raghunandan Prasad accused-appellant received any fire-arm injury in the

occurrence. In fact, he did not say in his examination-in-chief that any of the accused-appellants or any of their companions were carrying any fire-arm or used any firm-arm. In reply to a Court, question he stated that the accused-appellant Ram Autar was having something like a Katta in his hand and other two accused-appellants were empty handed.

31. The learned counsel for the accused-appellants has agreed that the failure of 'prosecution to explain the injuries of Raghunandan accused-appellant was fatal for the prosecution. He relied on the authority Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263 : 1976 Cri LJ 1736 wherein it was said, 'It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inference :-

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable.

(3) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes improbability with that of the prosecution one. We must hasten to add that as held by the Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 (reported in AIR 1975 SC 1478) : 1975 Cri LJ 1079 there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and

disinterested, so probable, consistent and creditworthy, that it far out-weighs the effect of the omission on the part of the prosecution to explain the injuries.

32. Learned counsel for the accused-appellants also relied on the authority *Mohar Rai v. The State of Bihar*, AIR 1968 SC 1281 : 1968 All LJ 1094 where the version of the accused-appellants that they sustained injuries at the time of occurrence was held to be highly probalised by the injuries found on the body of the accused-appellants which were such as could not have been self-inflicted.

33. The proposition in these authorities related to murder cases but even in the present case it will have to be seen in the light of the surrounding circumstances as to whether the omission on the part of the prosecution to explain the injuries on the person of the accused would be material or not.

34. The learned A.G.A. has relied on the authority *State of U.P. v. Mukunde Singh*, (1994) 2 SCC 191 wherein it was observed that merely on the ground that the prosecution witnesses have not explained injuries on the accused, the High Court ought not to have rejected their evidence out right. There is no conflict between the observations made-in this authority and the observations made in the authority of *Lakshmi Singh* aforesaid. In the *Lakshmi Singh*'s case also, it was said that the inference to be drawn in each case would depend on the fact and circumstances of the case and there may be case where the non-explanation of injuries by the prosecution may not affect the prosecution case at all.

35. In the present case the injuries of *Raghunandan* accused-appellant were fire arm injuries which were kept under observation though there is no X-ray and supplementary report about it and the injuries of the prosecution side were only feeble. If a comparison were to be made the injuries of accused-appellant (*Raghunandan Prasad*) were for more serious than the injuries of any of the prosecution injured. The present is not a murder case in respect of which the observations in these authorities relate but the non-explanation by the prosecution may be taken as a circumstance along with other circumstances to come to the conclusion as to whether the prosecution story can be safely believed.

36. In view of the above discussion, the prosecution story bristles with improbabilities and the prosecution evidence is discrepant and improbable. It is difficult to accept the prosecution case that the informant was in possession of the disputed house at the time of occurrence and that the accused party raided the house and committed the occurrence as claimed by the prosecution. In all probability the accused-appellants Raghunandan Prasad and Ram Autar Sharma were in possession of the disputed house as, purchasers of the same by registered sale-deeds aforesaid and that Dayanand (PW 2) and the party raided the disputed house, fired at Raghunandan Prasad accused-appellant and inflicted fire-arm injuries on his person and forcibly put Ramesh. Chandra informant into possession. That being so, the right of private defence of property and person is held to be available to the accused-appellants Raghunandan Prasad and Ram Autar Sharma and consequently they were not liable for the injuries received on the person of Dayanand (PW 2) and even the injuries of Smt. Manorama Devi and Smt. Ramanandi, if taken to have been inflicted during the occurrence, which were all simple injuries and it cannot be said that both these accused appellants or any of them exceeded their right of private defence. On the evidence it is, 'also found that Karanvir Singh accused-appellant. was not present at the spot at the time of occurrence and so not liable for any offence. At any rate the material and circumstances on record to give rise to a reasonable doubt as to whether the disputed house was in possession of the complainant or the accused appellants Nos. 1 and 2 and consequently reasonable doubt arose whether they had the necessary mens rea to make them guilty of the offences with which they were charged. In other words in any case a reasonable doubt arose about the guilty of the accused-appellants. Consequently, in any view of the matter the appeal is fit to be allowed.

37. For the reasons aforementioned the appeal is allowed and the accused-appellants are found not guilty of the offence under Sections 147 and 323/149, I.P.C. Their conviction is set aside and they are acquitted of the same. They are on bail from this Court. They need not surrender to it. Their bail bonds are cancelled and sureties discharged.

38. Let a copy of this judgment be sent to the Sessions Judge, Bulandshahr within a fortnight for information and compliance. The compliance report shall be submitted by the Sessions Judge, Bulandshahr to this Court within a month from today.

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