

Sri Narain and ors. Vs. State

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Court : Allahabad

Decided On : Jan-02-2003

Reported in : 2003CriLJ4954

Judge : S.K. Agarwal and ;R.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149, 300 and 323

Appeal No. : Criminal Appeal No. 3088 of 1981

Appellant : Sri Narain and ors.

Respondent : State

Advocate for Def. : A.G.A.

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

Disposition : Appeal allowed

Judgement :

1. This appeal was filed on behalf of Sri Narain, Ram Parwesh, Thagai, Ghisiyawan and Hari Nath. Sri Narain was convicted under Sections 148, 302/149 and 323/149 IPC and the remaining accused were convicted under Sections 147, 323/149 and 302 read with Section 149 IPC. They were, however, sentenced under Section 147 IPC for 6 months' R.I., under Section 323 read with Section 149 IPC for 6 months' R.I. and under Section 302 read with Section 149 IPC for life

imprisonment.

2. The prosecution story as adumbrated in the F.I.R., in brief, is that the accused and the deceased party are collaterals. They came from the same family tree of Sheo Govind, their ancestor. Sheo Govind has two sons Gobardhan and Gopi. Gobardhan has four sons viz. Sri Narain, Ghisiyawan, Ram Pravesh and Thagai. All of them were accused in this case. Gopi himself was injured in the case. His son Lalji died in the incident in the hospital as a consequence to the injuries suffered. His sons Keshawa and Parasnath are injured witnesses in the incident. They are P.Ws. 4 and 5. The incident occurred at field No. 332. The prosecution claimed that Lalji and Parasnath were ploughing the field when the assailant Sri Narain, Ghisiyawan, Ram Prawesh, Thagai along with Hari Nath and Chhedi who died during the trial accosted them there. An altercation preceded before accused persons lay on with Lathi and Pharsa upon Gopi and deceased Lalji; Keshawa Parasnath and Narendra reached the spot of occurrence on alarm. They were also assaulted. Litigation regarding the impugned field was going on between these parties for the last several years. It was pending in the Court of D.D.C. According to the prosecution this plot exclusively was in their possession being the property of their grand father Gopi. Gobardhan brother of Gopi was living separately and had nothing to do with this plot. However, the admitted fact was that the civil dispute was going on with regard to this plot between these parties. The present incident occurred on 23-6-1978 at about 8.00 or 9.00 a.m. when Gopi and Lalji were levelling the plot after ploughing plot No. 332. As earlier stated all these accused reached the plot. Sri Narain was armed with a Pharsa and the remaining accused were having Lathis. An objection was raised against the levelling of the field by the accused party. It was, however, resisted by Lalji and Gopi. Wordy dual between the parties ensued. Ghisiyawan exhorted his companions to kill them. Sri Narain assaulted Lalji with Pharsa and remaining accused wielded their Lathi upon Gopi. The informant Keshawa and his brother Paras and Narendra wielded Lathi and Kudal in their defence causing injuries upon some of the accused persons. After the assault the accused persons took to their heels.

3. Lalji was carried to the hospital immediately thereafter. Initially on a cot upto Betiyapur and from there on a taxi to the District Hospital. He was admitted there.

His injuries and injuries of other injured persons were examined in the District Hospital, Deoria. Keshwa after medical examination came to the police station with a written report which was transcribed by Bhaskar Choube. It was handed over at the police station. Written report in Ext. Ka-6. Check report, Ext. Ka-16, was prepared by Mohd. Hamaza, Head Moharir, at 7.40 p.m. on 23-6-1978. G.D. entry pertaining to it is Ext. Ka-17. The case was registered at the police station but since the concerned police station was Kasia, the papers, therefore, were sent there. These papers were received at P.S. Kasia on 24-6-1978 and the case was registered in G.D. Ext. Ka-8.

4. All the injured were medically examined at the District Hospital, Deoria, by P.W. 3 Dr. Jagdish Prasad Pande on 23-6-1978. Lalji was examined at 1.00 p.m. and following injuries were noticed :

1. Incised wound 6' x 1/2' bone deep at some places on middle of vertex obliquely from left to right. Advised X-rays.
2. Abrasion 1' x 1/4' on left knee front.
3. Abrasion 1/2' x 1/4' on middle of left, clavicle.
4. Abrasion 3/4' x 1/4' on the right ankle joint.

His injury report is Ext. Ka-2. General condition of Lalji was very poor. Reverse respiration was there and he was in coma. A memo to the police was sent. His injury No. 1 was kept under observation and X-ray was advised. This injury was caused by a sharp-edged weapon, according to medical opinion. Other injuries were caused by friction against some hard blunt object. His injuries were fresh.

Keshaw was examined at 1.45 p.m. and following injuries were found, according to his injury report, Ext. Ka-2A :

1. Contusion 6' x 1' on the back of right shoulder joint.
2. Abrasion 1' x 1/2' on forearm of middle part.
3. Contusion 4' x 1' on middle left leg, posterior part.

4. Traumatic swelling 2' x 2' on the dorsal of right palm.

His injuries were fresh and simple. They were caused by some blunt object.

Paras Nath was examined at 2.00 p.m. and following injuries were found, according to Ext. Ka-3, his injury report :

1. Contusion 4' x 1' on right scapular region.
2. Contusion 5' x 1' on left scapular region upper part.
3. Contusion 2' x 1/2' on the dorsal small finger of left hand.
4. Traumatic swelling 1' x 1' on the left forehead.

All the injuries were simple, caused by some blunt object. They were fresh.

Narendra was examined at 2.15 p.m. and following injuries were found, according to Ext. Ka-4, his injury report :

1. Contusion 2 1/2' x 1' on the left arm lower part.
2. Abrasion 1' x 1/2' on the right knee joint.

All the injuries were fresh and simple, caused by some blunt object and by friction against hard object or surface.

Gopi was examined at 3.00 p.m. and following injuries were found according to his injury report, Ext. Ka-5 :

1. Lacerated wound 1' x 1/4' x bone deep on the middle left middle finger. Advised X-ray.
2. Contusion 2' x 1' on left middle back chest.

Injury No. 2 was simple. Injury No. 1 was kept under observation and X-ray was advised. They were caused by some blunt object and were fresh.

5. Lalji died in the hospital on 24-6-1978 at 1.30 a.m. The autopsy on his person was conducted by P.W. 2 Dr. M. S. Alam on the same day at 3.30 p.m. and the following injuries were noted :

1. Incised wound $6\frac{1}{2}' \times 1\frac{1}{2}'$ x bone deep margin clean cut on the middle of vertex obliquely placed cutting the underlying right parietal bone and temporal bone at its parietal-temporal junction size $9' \times 1\frac{1}{10}'$ underneath meninges is cut in whole length of the wound. Brain tissue is also cut in the same line size $6\frac{1}{4}' \times 1\frac{1}{4}'$ extensive haematoma over the surface of the brain tissues.

2. Abrasion $1\frac{1}{2}' \times 1\frac{1}{4}'$ on the left side neck lower part just above the middle of left collarbone.

3. Abrasion $1' \times 1\frac{1}{4}'$ on the left knee joint.

4. Abrasion $\frac{3}{4}' \times 1\frac{1}{2}'$ on the right ankle joint outer aspect.

The death was caused due to coma as a result of ante-mortem injuries.

6. The accused did not plead guilty. Harinath stated that he had no concern with the impugned land or the accused Sri Narain and his brothers. He was implicated falsely due to personal enmity. The other accused pleaded that plot No. 331 is in possession of the accused persons and Marpit took place on that field when the other party tried to occupy it. Keshaw, Parasnath, Gulab, Narendra, Lalji and Gopi beat accused Sri Narain, Thagai, Ghisiyawan and Ram Prawesh and a false case was launched against them. An F.I.R. was also lodged from the side of the accused persons at P.S. Kasia tin 23-6-1978 at 10.40 a.m. by the appellant Ghisiyawan. On the basis of this written report check report Ext. Ka-7 was prepared and its investigation was handed over to P.W. 9 S.I. R.B. Rai. The investigation of the present case was also handed over to the same S.I. The S.I. (P.W. 9) continued the investigation only upto the afternoon on 24-6-1978 and thereafter it was taken over from him by P.W. 8 S.H.O. Rameshwar Singh of P.S. Kasia. This P.W. 9 had prepared the site map of the cross case first. He also recorded the statement of P.W. 1 Rajneti Rao. Blood was also recovered from the place of occurrence by him. Simple earth and bloodstained earth were taken. They

were sealed vide memo Ext. Ka-12. Further investigation was completed by P.W. 8 Rameshwar Singh, the second I.O.

7. On 25-7-1978 charge-sheet, Ext. Ka-10, was submitted against the present appellants. The injured accused were examined at P.H.C., Fazilnagar on 23-6-1978. The injuries of appellant Sri Narain were examined at 3.45 p.m. and the following injuries were found on his person :

1. Four lacerated wounds, two on left side and two on right side from left to right 1' x 1/10' x skin deep, 2' x 1/4' x skin deep, 1' x 1/10' x skin deep, 1 1/4' x 1/10' x skin deep.
2. Lacerated wound on surface of head 'T' shaped 1' x 1/10' x skin deep.
3. Incised wound on the dorsal surface of right forearm 2 1/2' x 1' x muscle deep.
4. Contusion on left shoulder 1' x 3/4' (red in colour).
5. Abrasion on the external surface of left forearm 1/2' x 1/10'. The injuries were simple. Injury No. 3 caused by sharp cutting weapon and rest by blunt object. Injury No. 4 was red in colour and all the injuries were less than a day old.

Injuries of appellant Thagai were examined at 4.30 p.m. on the said date. Following injuries were found on his person :

1. Lacerated wound on the dorsal surface of right ring finger on upper part 1' x 2/10' x skin deep.
2. Incised wound on the lateral surface right little finger 1' x 1/2' x muscle deep.
3. Contusion on the left scapular region 1' x 1" (red in colour).

All the injuries were simple. Injury No. 2 was caused by sharp cutting weapon, and injury Nos. 1 and 3 by blunt weapon. Injury No. 3 was red in colour and they were less than a day old.

Appellant Ghisiyawan was also examined at 3.00 p.m. on the same day and the following injuries were found on his person :

1. Lacerated wound on the left side of head on temporal region 1' x 1/10' x skin deep.
2. Lacerated wound on dorsal surface of left hand and index finger 1/2' x 1/10' x 1/10'.
3. Lacerated wound on the dorsal surface of left hand 3/4' x 1/10' x 1/10'.
4. Contusion on left forearm 2' x 1/2' (red in colour).
5. Contusion on left scapular region 3' x 1/2' (red in colour).
6. Abrasion on the lateral surface of left thigh 1' x 1/2'.
7. Contusion and an abrasion on left side back 4 1/2' x 1/2' (red in colour) abrasion 1/4' x 1/4'.
8. Abrasion on right scapular region 1/2' x 1/4'.
9. Complaint of pain on lower and lateral part of right arm.

All the injuries were simple, caused by hard and blunt object. Injury Nos. 4, 5 and 7 were red in colour and rest not fresh and less than a day.

Injuries of appellant Ram Prawesh were examined on that day at the P.H.C. at 3.25 p.m. and the following injuries were found on his person :

1. Lacerated wound on medial surface of left ear between head and ear 1/2' x 1/10' x skin deep.
2. Contusion on head on right side 1/2' x 1/2' (red in colour).
3. Contusion on left arm 3 1/2' x 1/2' (red in colour).
4. Contusion on outer surface of left thigh 2 1/2' x 1' (red in colour).
5. Complaint of pain of left forearm.
6. Complaint of pain on dorsal surface of left hand.

7. Contusion on dorsal surface of right hand 2' x 1 1/2' (red colour).
8. Lacerated wound on top of right ring finger 1/2' x 1/10' x skin deep.
9. Contusion on lateral surface of right thigh red in colour 2 1/2' x 1/2'.

All the injuries were simple, caused by some hard and blunt object. Injuries No. 2, 3, 4, 7 and 9 were red in colour and injuries No. 1 and 8 not fresh and less than a day old. The reports of their injuries are Exts. Kha-1 to Kha-4. They were filed by the appellants from the record of the cross case.

8. Learned counsel for the appellants has submitted that the prosecution witnesses explained very belatedly the defence injuries. The dispute, according to defence, was on plot No. 331, whereas the prosecution has tried to make it 332. There is no sufficient evidence except a bald assertion about the position by P.W. 4 Keshav. No documentary evidence with regard to the possession over the property was filed. In the face of the litigation between the parties the possession was not proved clinchingly by the prosecution. The prosecution in order to prove its case had examined three eyewitnesses. They are P.W. 1 Rajneti Rao, P.W. 4 Keshav and P.W. 5 Paras. Out of them Keshav and Paras were injured witnesses. These two witnesses had turned hostile and they have not corroborated the prosecution story in its broader perspective, especially on the use of Pharsa, which caused the death of Lalji. These witnesses have denied having seen Sri Narain using Pharsa upon Lalji. Rest of the witnesses have already dealt with their formal witnesses. Their evidence shall be discussed as and when it would be necessary.

9. P. W. 1 Rajneti Rao has his field in the west of the field of Lalji, where the incident took place. In between, according to him, field of Dagaroo intervenes. At the time of occurrence he was in his field and he has supported the prosecution regarding the incident as discarded in the F.I.R. However, with regard to the use of Pharsa, he did not support the version as contained in the F.I.R. His statement was that initially it was with Chhedi and he could not see as to who used the Pharsa upon Lalji. For this reason the other two witnesses (P.Ws. 4 and 5) were declared hostile.

10. According to the statement of P.W. 5 Paras, P.W. 1 Rajneti Rao arrived at the scene of occurrence 20-25 minutes later. However, this witness himself alleges that he reached there immediately on the initiation of the quarrel. This witness was unable to give the number of the plot where the dispute had occurred. According to him Narendra did not possess any Lathi. He was a child. His statement further shows that since Lathis were plying therefore, he could not see who caused the Pharsa injury, though he stated that Pharsa injury was caused to Lalji. According to him large number of persons were already present there when he arrived at the scene of occurrence. He had also admitted that Sri Narain etc. from the side of the appellants suffered injuries of Kudal and Lathi, which were plied by the prosecution side. According to him both the sides fought for 2-3 minutes. He was unable to tell who caused injury to him. The entire incident culminated into 2-3 minutes when Lathi were plied many people closed their eyes. In his field along with him two labour were also working. These labour did not come to the place of occurrence. They remained in his field is his statement. He did not come close to the field of occurrence. From his field he only advanced 2-4 steps and witnessed the incident from there. Initially an altercation was going on and then suddenly Marpit started. These witnesses had admitted that the appellants had enmity with his elder brother Bhagwati. He made an evasive reply to the question whether he stood as surety of the prosecution party in the cross version, he denied that he appeared as a witness in the Chakbhandi on behalf of the prosecution but admitted that no one of his name and parentage is there in the village. He did not accompany Lalji to Deoria. In the circumstances his presence at the spot to witness the incident appears highly improbable. It is likely that after the Lathis were wielded from both the sides he came to the spot and, therefore, it is not possible to discern from his evidence as to in what manner the incident broke out between the parties. Thus, the initiation of the incident seems clearly to be shrouded in mystery and that mystery is not resolved from the statement of this witness. He did not corroborate the prosecution story of use of Pharsa by Sri Narain. The same is the position with regard to the evidence of other witnesses. These two witnesses, P.W. 4 Keshav and P.W. 5 Paras, have half-heartedly admitted use of Lathis and Kudal from their side, but have completely denied having seen any injury upon the accused party. From the evidence and the injury

reports, Exts. Kha-1 to Kha-4, it is explicitly clear that four persons have sustained blunt object injuries on the side of the defence; Denial of their injuries despite the fact that the witnesses admitted plying of weapon from their side in the circumstances was deliberate on the part of the prosecution. P.W. 4 Keshav in response to question No. 12 stated that he did not see any weapon with any of the accused initially. This witness came to the spot after the assault upon his grandfather and father was already launched. Lalji had suffered only one fatal injury on the skull. It was an incised wound 6 1/2' x 1/2' x bone deep. The injury had a cut on the right parietal bone. The medical officer had stated categorically that a Pharsa could cause this injury. On the suggestion of the prosecution he had also admitted that if the Kudal is sharp-edged this injury could be there from that Kudal. P.W. 3 Dr. Jagdish Prasad Pandey stated clearly that this injury could be from a Kudal. The width of the injury is only 1/2'. The injury had a cut underneath. Therefore, in all probability it was an injury caused from a Pharsa. However, there is conflict with regard to the user of Pharsa amongst the accused. Initially the injury was said to have been caused by Sri Narain but P.Ws. 4 and 5 have denied that Sri Narain caused this injury upon Lalji. P.W. 1 Rajneti Rao had also not corroborated this part of the prosecution case. According to him Pharsa was with Chhedi. Who caused the incised injury he was unable to disclose. In the circumstances this injury could not be attributed to any one of these assailants.

11. The defence injuries were larger in number than the prosecution injuries. Four persons on the side of the defence have sustained large number of Lathi injuries. The defence F.I.R. came into existence first. The investigation was commenced on their F.I.R. Subsequently, the report from P. S. Kotwali, Deoria, was received at P.S. Kasia and investigation in this case was commenced in all probability the next day. Since both the injured witnesses have turned hostile, none of the I.Os. have disclosed the time of initiation of the investigation in any of the Parchas. Apart from it, none of the Parchas bore any date underneath the signatures of the Circle Officer or the Superintendent of Police. The investigation apparently in this case was commenced by P.W. 8 S.H.O. Rameshwar Singh. Though P.W. 9 R. B. Rai stated that he had started the investigation in this case as well, but there is evidence that the papers were sent to him. The only evidence on record is that, the papers were sent to S.H.O. through the constable who was at that time

discharging his duties at some other place. In these circumstances, the prosecution has failed to fix the exact place of occurrence. The deceased was found lying in field No. 382, whereas the other injured from both the sides were lying on field No. 331. From this it appears that the incident had taken place on field No. 331 and not on 332 as alleged by the prosecution. Moreover, the prosecution has failed to prove clinchingly its possession over plot No. 332. In this circumstance, the true genesis of the Marpit remained covered under the cloud and it is difficult to find out as to in what manner the incident started, and who was the aggressor is still difficult to uncover.

12. In the circumstances, the conviction of these appellants could not be confirmed and, therefore, sentence could also be not granted under any count. The appeal, in the circumstances adverted to above, is allowed and the judgment and order passed by Court below is hereby set aside. The appellants are, therefore, acquitted of the charges. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are hereby discharged.

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