

Naraln and ors. Vs. the State

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Court : Allahabad

Decided On : Sep-16-2004

Reported in : 2005CriLJ2001

Judge : M.C. Jain and ;K.K. Misra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302, 307, 323 and 324; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Crl. Appeal No. 1170 of 1981

Appellant : Naraln and ors.

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.N. Agarwal, ;P.N. Misra, ;R.L. Bhardwaj, ;G.S. Chaturvedi, ;A.P. Sahai, ;D.K. Singh, ;Apul Misra, ;Jai Narain, ;R.L. Sinha, ;V.S. Rajpoot and ;R.J.D. Misra, Advs.

Judgement :

K.K. Misra, J.

1. This Criminal Appeal has been filed against the judgment and order dated 20-5-1981 passed by Shri M.P. Singh, the then IV Addl. Sessions Judge, Etah in

Sessions Trial No. 46 of 1980 whereby he has convicted the appellant Narain under Section 302, IPC and Sections 307, IPC and 147. IPC and sentenced him to undergo life imprisonment, ten years R.I. and two years' R.I. respectively. Accused Asa Ram, Sri Ram, Pokhpal and Roshan have been convicted under Section 302, IPC read with Section 149, IPC and Section 307, IPC read with Section 149, IPC and sentenced to undergo life imprisonment and ten years' R.I. respectively. Accused Sri Ram and Pokhpal. have been further convicted under Section 147, IPC and sentenced to two years' R.I. Accused Asa Ram has been further convicted under Section 148, IPC and sentenced to three years' R.I. However, all the sentences have been directed to run concurrently.

2. The facts narrated in the F.I.R. are that P.W. 2 Ram Dayal, informant was ploughing his plot at about 7.00 a.m. His brother deceased Dhani Ram was cutting grass. His father Govind Ram was sitting nearby. All of a sudden, Asa Ram armed with gun, Narain armed with Lathi, Sri Ram armed with spear, Pokhpal, Charan Singh, Roshan and Ram Singh armed with Lathis, arrived there. Soon on arrival' Narain Singh at once gave a Lathi blow to the informant's father Govind Ram, hitting him on his head. Dhani Ram, brother of informant, rushed and snatched the Lathi from Narain. Narain thereupon snatched the gun from the hands of his father Asa Ram and fired at Dhani Ram with the intention to kill him. The shot hit Dhani Ram and he fell down. Sri Ram, Charan Singh and Roshan assaulted with Lathis and spears. Ram Singh, Pokhpal and Mohan Lal instigated and said 'put. them to death' (Maar do Salon Ko). Witnesses Bhojraj Singh, Asharfi Lal, Fateh Singh and several others from the village arrived there, saw the occurrence and intervened. The accused persons fled away towards the village. The informant went to the village and arranged a bullock cart through which he took his father and brother to the village and got scribed a report, from Asharfi Lal and went to the police station along with his brother, Dhaniram and father Govind Ram. He lodged the F.I.R. at, the police station Jalesar, district Etah at 10.30 a.m. A case was registered. The injured were sent to hospital.

3. Dhani Ram was medically examined by P.W. 1 Dr. R.S. Pratihari on 22-7-1979 at 11.30 a.m. He had sustained gun-shot injuries. He was in serious condition and was semi-conscious. He succumbed to his injuries at 11.43 a.m. and Dr. Pratihari

reported the factum of his death to S.O. The case was converted under Section 302, IPC. Constable Madan Singh had brought the information of the death of Dhani Ram at the Police Station. S.I. Chandra Bhan Sharma P.W. 7 went to the hospital and held inquest. He prepared other necessary papers and sent the dead body for postmortem.

4. Dr. Surendra Nath, P.W. 6 conducted post mortem examination on the dead body of the deceased Dhani Ram on 23-7-1979 at: 4.30 p.m. He was aged about 35 years and about 1-1/4 day had passed since he died. He found the following ante mortem injuries on the dead body:

1. Fire arm wound of entry 4 x 4 cms. x abdominal cavity deep on the right, thigh just below the inguinal ligament. Margins inverted. Blackening and tattooing present.

2. Multiple fire arm wounds of entry around injury No. 1 in an area of 20 cm. x 15 cm. on the right lower abdomen, 10 cms. below umbilicus and 1/3 upper portion of thigh anteriorly. Average size is 1/4 x 1/4 cm. All were skin and sub-cutaneous deep.

5. The doctor opined that the death of the deceased was caused due to shock and haemorrhage as a result of ante-mortem injuries.

6. It may also be stated that Dr. Pratihari had found the following injuries on the person of Govind Ram :

1. Lacerated wound 6 cms. x 1 cm. x muscle deep on left side of head, 10 cm. above the left ear. Bleeding present.

2. Lacerated wound 3 1/2 cms. x 1 cm. x muscle deep on top of the head 2 1/2 cms. back and right to injury No. 1. Bleeding present.

3. Reddish colour bruise 9 cms. x 4 cms. on right side of back near right axilla 5 cms. below the lower angle of right scapula. X-ray advised.

7. Injuries Nos. 1 and 2 were simple and injury No. 3 was kept under observation. He was examined at 11.45 a.m. on 22-7-1979 and the doctor found the injuries to

be fresh. About the weapon he opined that the injuries were caused by some blunt and hard object. After X-ray, a supplementary report was given by Dr. Pratihar about injury No. 3 and it was to the effect that V, VI, VII, VIII and IX ribs of right side were fractured and so this injury was grievous in nature,

8. After completing the investigation, the charge sheet was submitted and the accused appellants were committed to the Court of Sessions for trial.

9. The accused appellants in their statements under Section 313, Cr.P.C. denied the prosecution story and further stated that they had been falsely implicated in the case due to previous enmity. Accused Sri Ram and Pokhpal gave a cross version of the incident. According to them, they were ploughing their plot on 22-7-1979 in the morning. Injured Govind Ram, deceased Dhani Ram and Ram Dayal were sitting nearby under a tree. They were armed with Pistol, Pharsa and Lathi respectively. They came to the plot, which was being ploughed by Sri Ram and Pokhpal, untied the bullock from the plough and attacked them (Sri Ram and Pokhpal). Sri Ram, on being hit by Lathi and Pharsa by Ram Dayal and Dhani Ram, fell on the ground. Govind Ram fired at him but before the shot could hit him he had fallen down and it accidentally hit the deceased Dhani Ram. So, according to them, it was father's shot which hit the son and as a result thereof, the latter died. According to their statements, both of them sustained injuries. They also stated that they went to the police station to lodge a report and were arrested there. A case was registered at the police station under Sections 323 and 324. I.P.C. on 22-7-1979 at 12.20 p.m. These two accused were also sent to the hospital and Dr. R.S. Pratihar. P.W. 1 examined their injuries. The doctor found the following injuries on the person of Sri Ram on 22-7-1979 at 5.20 p.m.

1. Lacerated wound $5\frac{1}{2}$ cm. x $\frac{3}{4}$ cm. x muscle deep on top of head 11 cms. above the left ear. No fresh bleeding found.

2. Lacerated wound $3\frac{1}{2}$ cms. $\frac{1}{2}$ cm. x skin deep on right side of head 10 cms. above the right ear. No fresh bleeding present.

3. Abrasion $2\frac{1}{2}$ cms. x $\frac{1}{2}$ cm. on the middle part of right clavicle.

10. Dr. R.S. Pratihar, P.W. 1 found the following injuries on the person of Shri Pokhpal on 22-7-1979 at 5.10 p.m.:

1. Abrasion 3 cms. x 1/4 cm. on left upper arm, front side 7 1/2 cms. above the left elbow. Slight scab formation present.

2. Faint reddish blue colour contusion 4 1/2 cms. x 1 cm. on lateral side of left leg 15 cms. below the knee. X-ray advised.

3. Reddish blue bruise 3 1/2 cms. x 1 1/4 cms. on front side of left leg 18 cms. below the knee. X-ray advised.

11. The doctor opined that all the injuries sustained by them, excepting injuries No. 2 and 3 of Pokhpal. were simple and could have been caused by some blunt object. Injuries Nos. 2 and 3 of Pokhpal were kept under observation and X-ray was advised as indicated above.

12. The prosecution in order to prove its case against the accused appellants examined seven witnesses in all at the trial. Out of them, P.W. 2 Ram Dayal -- informant, P.W. 3 injured Govind Ram, P.W. 4 Bhojraj and P.W. 5 Asharfi Lal are the eye witnesses. P.W. 1 Dr. R.S. Pratihar examined the injuries of Dhani Ram deceased. injured Govind Ram and accused Sri Ram and Pokhpal. P.W. 6 Dr. Surendra Nath conducted the post mortem examination on the dead body of the deceased Dhani Ram and P.W. 7 S.I. Chandra Bhan Sharma was the Investigating Officer of the case.

13. The accused appellants also examined two witnesses in defence, D.W. 1, Dr. N.K. Agrawal and D.W. 2 Ashif Ali. D.W. 1 Dr. N.K. Agrawal examined the injuries of accused Sri Ram and Pokhpal on 25-7-2004 at 10.30 a.m. and 10.45 a.m. respectively. D.W. 2 Ashif Ali was examined to prove the all bi of accused Bhoj Raj.

14. P.W. 2, Ram Dayal is the real brother of Dhani Ram. He has narrated the prosecution case as detailed hereinabove. It has also been stated by him that a day before the incident, the accused persons had gone to cut the Mend of the plot. He and others from his side had objected to it. He further deposed that from his

side nobody had assaulted Sri Ram or Pokhpal by Lathi or Pharsa. When the accused fired upon his brother Dhani Ram which hit him and assaulted his father Govind Ram, then his father wielded Lathi in self defence. He clarified that his father had used that Lathi which had been snatched by Dhani Ram from the accused Narain.

15. P.W. 3 Govind Ram is the father of the deceased Dhani Ram. He deposed that the Chak of accused Asa Ram was adjacent to the Mend of his field. Accused Sri Ram cut the Mend a day before the incident. He objected to it. On the day of the incident, he, Ram Dayal and Dhani Ram had gone to plough the field. Just before the incident, Ram Dayal was ploughing the field. Deceased Dhani Ram was cutting the bush at that time and he was sitting there. Accused Sri Ram cut the Mend through plough. When he objected to the breaking of Mend. Narain struck a Lathi blow to him which hit him in the head. Dhani Ram deceased snatched that Lathi of Narain. Then Narain snatched the gun from his father Asa Ram and fired at Dhani Ram, which hit him, and he fell down on the ground. Ram Singh, Mohan Lal. Pokhpal exhorted to kill them. Upon this, Roshan gave a Lathi blow to him. Then all accused ran to assault him. He explained that he had also used Lathi in self defence.

16. P.W. 4 Bhoj Raj has explained his presence that on the fateful day and time, he had gone to cut grass. On hearing noise, he went to the place of incident. His statement is consistent with the testimony of P.W. 2 Ram Dayal and P.W. 3 Govind Ram. He denied the suggestion that on the day of the incident he had gone to Jalesar.

17. P.W. 5 Asharfi Lal deposed that at the time of the incident, he had gone to his fields and hearing shouts he went to the place of incident. His name also finds place in the F.I.R. as a witness.

18. The trial Court acquitted Charan Singh, Mohan Lal and Ram Singh, giving them the benefit of doubt. Out of the five convicted accused appellants, three-Asa Ram, Sri Ram and Pokhpal have died and the appeal respecting them abated under order dated 20-7-2004. Roshan and Narain remain. For Roshan, arguments have been advanced by Sri P.N. Misra and for Narain by Sri G.S. Chaturvedi.

From the side of the State, Sri A.K. Dwivedi opposed the appeal.

19. The first contention of Sri G.S. Chaturvedi, learned counsel for the appellant Narain Singh is that there is no explanation of the injuries of the accused in F.I.R. It is well established that the F.I.R. is not an encyclopaedia to contain all the details. It is sufficient if broad facts constituting the offence are there, F.I.R. is not intended to be a detailed document. It is meant to give only the substance of allegations. F.I.R. need not give the circumstances of the commission of offence. It is not the duty of the prosecution to explain each and every thing in the F.I.R. itself. In the oral evidence before the Court, it has been explained that P.W. 3 Govind Ram has also wielded Lathi in defence. In these circumstances, absence of any explanation for the injuries suffered by the accused is not fatal to the prosecution case. The explanation of the injuries on the side of the accused has come through the oral evidence of the prosecution.

20. The second contention of Sri Chaturvedi, learned counsel for the accused appellant Narain Singh, is that admittedly both the sides had received injuries and that the accused acted in self defence. He urged that while acting in self defence, the accused could go to the extent of causing death to the aggressor(s). The theory of acting in self-defence cannot be upheld on the judicial scrutiny of the evidence on record. Narain gave the first Lathi blow to Govind Ram. Lathi was snatched by the deceased Dhani Ram from him. He, however, took the gun from his father and fired at Dhani Ram. When Dhani Ram fell down, the same Lathi was taken by Govind Ram and it was actually he who used it in self-defence. It cannot at all be inferred that the accused acted in self-defence in murdering Dhani Ram and assaulting Govind Ram. The aggressors were definitely the accused as otherwise there could hardly be any reason for one of them carrying a gun. It was Narain who snatched the gun from his father Asa Ram and opened fire on Dhani Ram which resulted in his death in hospital. The injuries suffered by the two accused Shri Ram and Pokhpal turned out to be simple wherefor there was plausible explanation that they were caused by Govind Ram in self-defence from the side of prosecution.

21. It was the individual act of Narain that without any justification he opened fire on Dhani Ram which resulted in his death. The incident took place at the field of the complainant and the start of assault was made from the side of the accused without any justification. The accused became offensive by ploughing Mend of the field of the prosecution side and launched the assault on objection being raised by Dhani Ram, deceased, Ram Dayal P.W. 2 and his father Govind Ram P.W. 3. Out of the injuries of Govind Ram, there were fractures of ribs and so his third injury turned out to be grievous. Two other injuries had been struck on his head causing lacerated wounds on left as well as right side. Govind Ram was an old man. The first blow was given to him by Narain on his head-vital part. It could even lead to his death. Moreover, by shooting at Dhani Ram, he made his intention clear that he could go to the extent of putting the victims to death. Therefore, he was guilty of the offence of murdering Dhani Ram, punishable under Section 302, IPC and attempt to commit murder of Govind Ram punishable under Section 307, IPC.

22. However, his conviction under Section 147, IPC cannot be upheld. The reason is simple that out of eight accused, three were acquitted by the trial Court and the fourth one namely, Roshan is being given benefit of doubt by this appellate Court. It reduces the number of assailants to be four out of whom three have already died. The result would be that so far as Narain is concerned, his appeal is to be dismissed, maintaining his conviction and sentences passed under Sections 302, IPC and 307, IPC.

23. Sri P. N. Misra, learned counsel appearing for the appellant Roshan submits that, the appellant Roshan is alleged to be armed with Lathi and the witnesses have not specifically mentioned that he had caused any Lathi injury. After going through the evidence of the eye witnesses, we find that the two independent eye witnesses, namely, P.W. 4 Bhoj Raj and P.W. 5 Asharfi Lal have not specifically mentioned that the appellant Roshan had caused any Lathi injury. No overt act has been assigned to him. Mere presence of this appellant at the place of occurrence would not make him liable. The appellant is entitled to get benefit of doubt. The appeal shall succeed so far as he is concerned.

24. In the final result, we partly allow this appeal. The conviction and sentences recorded against the accused appellant Roshan are set aside and he is acquitted.

25. The conviction of the accused appellant Narain under Sections 302 and 307, IPC with sentence of life imprisonment for the former and ten years rigorous imprisonment for the latter offence is upheld. Both the sentences shall run concurrently. He is on bail and shall be arrested and lodged in jail to serve out the sentences passed against him.

26. The appeal has already abated in respect of three accused appellants, namely, Asa Ram, Sri Ram and Pokhpal who died during pendency of the appeal.

27. Let the judgment be certified to the lower Court for reporting compliance within two months. Lower Court record be returned.

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