Khalaksingh Vs. State

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Court : Madhya Pradesh

Decided On : Feb-01-1957

Reported in : AIR1957MP153; 1957CriLJ1138

Judge : Dixit and ;A.H. Khan, JJ.

Acts : Evidence Act, 1872 - Sections 5; Code of Criminal Procedure (CrPC) , 1898 - Sections 154, 255, 271, 297, 367 and 540; Indian Penal Code (IPC), 1860 - Sections 96

Appeal No. : Criminal Appeal Nos. 18 and 40 of 1956

Appellant : Khalaksingh

Respondent : State

Advocate for Def. : T.S. Mungre, Government Adv.

Advocate for Pet/Ap. : K.P. Dey, Adv.

Judgement :

A.H. Khan J.

1. Khalaksingh son of Budheram was tried by the Additional Sessions Judge, Gwalior, under Section 302 of the Indian Penal Code, and Khalaksingh's son, Mangaram was tried for the offence under Section 302 read with Section 109 (abetment of murder). The Additional Sessions Judge convicted Khalaksingh

under Section 304(1) and sentenced him to seven years' rigorous imprisonment. Accused Mtingaram was acquitted. Against this decision Khalaksingh has preferred appeal No. 13 of 1956 & the Govt. of Madhya Bharat has preferred appeal No. 40 of 1955, against the acquittal of Khalaksingh Under Section 302, and also against the acquittal of Mangaram of the offence of abetment. As both the appeals arise out of the same case, they are being disposed of by a single judgment.

2. The prosecution story briefly is that two Children of Khalaksingh named Sita and Kapoora were playing in the Chopal of village Bhatpura on 3rd October 1954 at about 4 p.m. Gaurishankar, brother of Mama (deceased) stopped them from jumping about and playing there. It is said that Gaurishankar pulled them by the are also. They cried and went home and reported the incident to their elder brothers, Bhika and Mangaram. Both the elder brothers went to the Chopal and finding Gauri Shankar there, remonstrated with him and also threatened him. Gauri Shankar said to them 'you are two and I am alone.'

The two elder brothers suggested that Gauri Shankar's elder brother, Mansa Ram, who was, thereabout, could join him. Thus an invitation for a free fight was extended. On this, Gauri Shankar and Mansa with lathis on one side, and Bhika and Manga Bam with lathies on the other side were arrayed and the parties indulged in what is described as Ojha Ojhi and Hooda Hoodi. This means that they flourished their lathis, hit the Jathios on the grounds without causing any injury to any one. When this display of force was going on, the accused Khalaksingh appeared on the scene. From this stage the prosecution story branches off into two versions.

Acrording to one version, Khalaksingh appeared with a gun and according to the other version Khalaksingh came there armed with a stick, but that later on his yonger son, Sita fetched a gun and gave it to his father. Khalak Singh is first of all said to have asked the combatants not to fight, but later on Khalaksingh threw himself heart and soul in the fight, which hitherto was no more than mere brandishing of sticks. With the gun, which he either brought or which was later on handed over to him, he fired at Mansa Ham hiting him on the check. Mansa Ram

fell down and died. Pannalai, the uncle of Mansa Ram made the report at 9 p.m. the same day at Police Station Gird, mentioning the name of Khalaksingh as the person who fired.

3. In dealing first, with the appeal of the accused (Appeal No. 18 of 1956), I find that the defence of the accused is that he never took part in any fight, that he was not in the village at the time of occurrence, and, that because there is a long standing enmity between the family of the accused and the family of the complainant, he has been falsely implicated. There is no doubt that no love is loot between the parties, but that fact alone is not enough to reject the testimony of the prosecution, unless other circumstances exist, which render the prosecution evidence unworthy of credit.

It must be remembered that enmity is a double edged weapon; it may be that because of enmity the crime has been perpetrated and it may also be that the accused has been falsely implicated, In a case where parties are admittedly on inimical terms as in this case prudence enjoins that the Court should scrutinise the evidence with circumspection and that is what I propose to do.

4. The learned Additional Judge has convicted the accused under Section 304(1) Indian Penal Code and has held that he fired the gun at Mansa Ram, causing his death. But the learned Sessions Judge has also held that Khalaksingh used the gun in self-defence, but exceeded his right of self-defence and caused excessive injury. The learned Sessions Judge has been of the opinion that the accused could have prodded the deceased with the butt of the gun and could have thus protected himself. I shall now consider the evidence as to whether the Reused fired the gun or not and also whether there was any occasion for the exercise or the light of self defence,

5. The most important evidence with regard to the firing in this case is that of Gauri Shankar P. W. 10, who was in the thick of the fight himself. This witness (P. W. 10) gives a graphic description of how the whole incident happened. He says that at about 4 in the after-noon, Khalaksingh's two younger sons Sita & Kapoora came to the Chopal and began to jump over cots lying in the Chopal. He asked the boys not to jump like that, because the cots will get damaged. One of the boys, Sita

protested and said that the cots did not belong to the witness's father. On this he caught hold of both the boys by the arm and removed them from the Chopal. Both the boys abused him and went home weeping.

After sometime, Manga and Bhika the two elder sons of Khalaksingh came there armed with lathies, and began to abuse Gauri Shankar and challenged him to settle the old score. Gauri Shankar protested and said that while; he was alone they were two. Manga Ram suggested that the witness's brother, Mansa Ram, who was sitting some distance away, could join him and Mansa Ram thus also came there. Thereafter a fight began between Manga and Bhika on one side and Gauri Shankar and Mansaram on the other. They began to indulge in what is described as Hooda Hoodi and Ojha Ojhi. This witness has explained the meaning of Hooda Hoodi and Ojha Ojhi.

He says that it means the flourishing or brandishing of lathi in the air, making a pretence to hit. Prom this it appears that they confined their activities to the mere flourishing of the lathies in the air, and that it was no more, than a mere display of force, and that no one was being actually hit with lathis. The witness says that Ram Narayan and Balram P. Ws. 8 and 13 also came there, and, they tried to intervene without success. Jag-ram another P. W. 9 also came there. He also tried to intervene but with no effect, and, so he went home. Thereafter Khalaksingh, the father of the two combatants, Manga and Bhika, came on the spot, armed with a 12 bore double barrel gun. The father also joined the fight. This witness says that at the instigation of Manga Ram, Khalaksingh fired his gun at Mansa Ram.

It is said that Khalaksingh took two or three steps back and then fired, hitting Mansaram in the eyes. The shot killed Mansa Ram almost instantaneously. After this the accused Khalaksingh and his two sons went away. On reading the statement of this witness carefully, there is nothing in it which disentitles it to belief. He is a young boy of 17 years, and his statement appears to be quite natural without any attempt to cook the evidence. The only contradiction, which the learned counsel for the appellant has been able to point out is that in his statement before the Police he had stated that Karansingh was present on the spot with a lathi in his hand. But before the Sessions Judge he stated that he did not see

Karan Singh there.

There is no doubt that this is a contradiction but it is not material for the purpose of this case and makes no difference so far as the firing of the gun is concerned. His statement that Khalaksingh fired has been believed by the learned Sessions Judge. In this fight, the parties hurled abuses at each other and brandished lathies. It is possible that in the midst of this confusion, perhaps the witness did not fully observe the presence of all those persons who were there, or it may be that when making a statement before the Court more than six months after the actual occurrence, he did not remember the facts of Karansingh's presence. I would not discard his statement merely because of a contradiction which is not material and which does not go to the root of the case.

6. The learned counsel for the appellant has urged that the trial Court has not believrd him so far as his statement about the instigation of Mangaram is concerned. It is so, but the main reason for it is that other prosecution witnesses said that in the din and noise, they could not say definitely who instigated Khalaksingh to shoot and that it was perhaps Mangaram.

7. The second eye-witness in this case is Jagram P.W. 9. He says that when he was returning from his field, he saw that near the Chopal there was an altercation between Mangaram and Bhika on one side and Gaurishankar and Mansa on the other, He asked them not to fight but did not attach much importance to such quarrelling in which people were' confined to the flourishing of lathies in the air. So he went home. After he had reached home, he heard a lot of noise and when he came out, he saw that Khalaksingh had also joined the quarrel. Khalaksingh had gone with a gun and that at the instigation of Mangaram, Khalaksingh moved 3 or 4 paces and fired at Mansa Ram.

8. The next witness is Ealram P. W. 13. He substantially corroborates the statement made by Gauri Shankar P. W. 10. The criticism levelled at this witness is that in the statement before the committing Magistrate he said that the incident took place after Dashera. But as a matter of fact it occurred 3 or 4 days before Dashera. There is no doubt that this is a contradiction. But though he has faltered in his statement as to whether It was before or after Dashera, but all the same, in

both the Courts he has stated that the occurrence took place on Sunday and that fact is true. The statement of this witness was recorded before the Sessions judge eight months after the actual incident took place. This is a. variation in his statement but it, is an indisputable fact that the incident took place near about Dashera.

9. Apart from the statement or Gauri Shan kar, (P.W.10), which has been discussed above, I should like to place particular credence in the statement of Bhogiram, who was examined as a court-witness. He is a person who lives in the village and his presence has been referred to by almost all prosecution witnesses. The accused submitted an application to the Sessions Court that Bhogiram should be examined as a Court-witness land he was examined as such. The application made by the accused for the examination of this Witness as a Court-witness inclines one to the view that the defence considered him to be above local prejudices and treated him as a witness of truth.

This Court witness says that when he was at home, he heard a lot of noise, whereupon he came out and went to the Chopal. He saw that Gauri Shankar, Managaram and Bhika were quarrelling with each other and that Ram Narayan Patel P. W. 8 and Balram P. W. 13 wore trying to intervene. He too advised the combatants not to fight. But no one listened to him. In the meanwhile Khalaksingh arrived there with a lathi in his hand and he too joined the quarrel. After the arrival of Khalaksingh, Mamaram deceased also joined the light. Khalaksingh's son, Sita handed over a gun to Khalaksingh and Khalaksingh fired it at Man-saram. When the defence saw that this Court-witness, for whom they made a special request to the Court, did not depose in their favour, they cross-examined him at length but they could not shake his testimony.

The criticism of this witness by the learned counsel for the appellant is that the witness and the father of the deceased Mansaram lived in the same house. This witness when he was put this question whether he shared the house with Shamlal did not hide it and stated that he lived in the upper storey and that Shamlal lived in the lower one. He says that he did not see any one hitting Khalaksingh with lathi, nor did he see Mansaram hit Khalaksingh with a lathi, and he further asserts that it

is not true that Mansaram raised lathi to hit Khalaksingh whereupon Khalaksingh fired upon him.

10. Bam Narayan P.W. 8 is another witness who substantially corroborates the statement of Gauri Shankar. This witness alter recounting the prosecution story has stated that when Khalaksingh arrived at the scene, he said to the combatants 'Gam Khao Lado Mat' which means have patience and do not fight. The learned counsel for the appellant wants to make capital out of these words, and, he contends that any one who has uttered these words would not fire. But deeds speak louder than words. All I can say about these words, assuming that they were uttered, is that at the early stage of the fight, Khalaksingh perhaps wanted to play the role of a pacifist, but as the fight continued, in the heat of the moment he lost his patience and fired.

11. After discussing the evidence of the prosecution witnesses, I shall now devote my attention to some of the criticism that has been levelled against the evidence as a whole. The first point urged by the learned counsel is that the names of the eye-witnesses were not given in the FIR. It is true that the names are not there but it is also true that it is not necessary to give the names of eye-witnesses in the F.I.R. According to Section 154 cf the Criminal Procedure Code, under which an F.I.R. is made what is required is that 'information relating to the commission of a cognisable offence'' should be given.

The words relating to the commission of a Cognisable offence do not and cannot mean that the information must give details of all the elements of the offence or give the names of the witnesses. I am afraid this objection is void of any force.

12. The learned counsel for the appellant has laid great stress on the fact that because of the charring of the skin with, gun-powder and the presence of all pellets at one place in the body, it must be concluded that the gun was fired from a distance of a foot. But all the prosecution witnesses are unworthy of belief, because some have stated that the gun was fired from 5 to 6 paces and that other have deposed that it was fired from about 15 hands. The learned counsel places reliance for his contention on Santra Singh v. State of Punjab; (S) AIR 1956 SC 526 (A) in which the statement of Dr. Goyle, the ballistic expert is referred to, and.

it is said that he had deposed that the burnt edges of the wound show that the distance between the muzzle and the victim will only be a few inches and not more than nine inches.

But their Lordships of the Supreme Court 3n the same judgment have also quoted from Taylor's principles and practice of Medical Jurisprudence. Vol. 1, 10th Edition, at page 441, under the heading 'Burning of the Wound', to the effect that (it is impossible to state rules as to precise distance from which it is possible to producp marks of burning, for this depends on the quantity ana nature of the powder, the. method of charging, and the nature of the weapon. It is unusual, however, to get marks of burning beyond a yard or a yard and a half with a shot gun.') The Supreme Court decision referred to by the learned counsel for the appellant is distinguishable in this case for more reasons than one. Firstly, no ballistic expert hag been examined in this case. Secondly, Dr. Taylor himself said in so many words that it is not always possible to ascertain precisely the the distance from which a gun is fired, And last but not the least in the case before the Supreme Court, a plan was drawn by a draftsman who was asked to prepare a sketch map of the place of occurrence, and, who prepared it after ascertaining from the witnesses as to where exactly the assailant and the victim stood at the tiem of the commission of the offence.

The draftsman actually measured the distances between the two Places which were shown to him by the witnesses and thus put it down on the plan. But in this case no draftsman has been examined, nor has any draftsman prepared sketch map by actually measuring the distance, after ascertaining it from the witnesses. For the above reasons I think the Supreme. Court case does not help the accused. I may as well say that as a general rule it is not always easy to guess the distance correctly, and, if we add to it the fact that the witnesses in this case were illiterate villagers, the distance indicated by them can not be expected to be mathematically correct.

13. The learned counsel for the appellant has also urged that there are two versions regarding the fact as to when and how Khalaksingh possessed the gun. According to Gauri Shankar, Ram Narayan, Jagram and Balram, he arrived at the

spot with a gun in his hand. According to Bhogiram the court-witness (whom the accused requested the Court to examine) Khalaksingh came there with a lathi and that subsequently he was handed over a gun by his son, Sitarsun. It is true that there is variance on the point, but, this is immaterial. It does not matter whether Khalaksing brought a gun with him, or whether he was given the gun later on by his son.

What matters is whether Khalaksingh fired the gun at Mansaram or not, and on this point there is no contradiction whatsoever. Even Bhogiram, the witness relied upon by the defence states that Khalaksingh did fire the gun.

14. With regard to the defence evidence, it is enough to say that the learned counsel for the appellant has made only a passing reference to it in a half-hearted manner. The trial Court has elaborately discussed the evidence and has recorded its finding that the accused has not succeeded in establishing his alibi. I may in passing refer to the attitude of the defence which struck me as queer. Although the plea taken in defence is that the accused was not present when the quarrel took place, yet the whole trend of the cross-examination was towards an attempt to carve out a case of self-defence.

On a review of the entire evidence I have no doubt that Khalaksingh fired at Mansaram deceased and caused his death. Regarding the question of self-defence, it is significant that the accused has not taken that plea. But as observed by Woodroffe J. in a Pull Bench decision of the Calcutta High Court (Upendra Nath Das v. State. 19 Cal WN 653: (AIR 1915 Cal 773) (B) that 'it cannot be laid down as a genera] proposition of universal applicability that a Court cannot and should not consider a case in favour of the accused which he has not raised. If such a case arises on the prosecution evidence, it should be put to Jury for consideration whatever line might have been taken by the accused'.

Let us now consider whether there was an occassion for the accused to exercise the right of self-defence. The of self-defence. The learnerd Additional Sessions Judge is of the opinion that because Mansaram raised his stick at Khalaksingh. it save Khalaksingh an occasion to exercise the right of self-defence. In holding that the accused exceeded his right, the Sessions Judge has observed that instead of

shooting the deceased with the gun, the accused should have prodded him with the butt of the gun. I do not agree with the learned Additional Sessions Judge on this point. If Mansaram, the deceased had lifted his lathi to deal a blow at Khalaksingh,' and if Khalaksingh had apprehended that the blow would cause grievous hurt or death then Khalaksingh was justified in shooting at the deceased.

15. The right of private defence commences from the moment there is an apprehension that grievous hurt or death will be caused by the other party. But I do not agree with the learned Judge that the occasion for the exercise of the right of self-defence had arisen in this case. My reasons are twofold,

16. First, the two most important prosecution witnesses in his case are Gauri Shankar P.W. 10, who was one of the combatants, and Bhogiram the Court-witness, who was examined at the instance of the accused. None of these witnesses say that any blow Was aimed at Khalaksingh. Gauri Shankar P. W. 10 has stated that

^^ge lc esa nwj ls vks>k vks>k gks jghFkh**

which means that the sticks were being flourished from a distance and that no actual beating was being done. This Ojha Ojha or the flourshing of the sticks in the air according to the statement of Jagram P. W. 9 continued for about 10 minutes. Gauri Shankar, who was involved in the fight has clearly stated:

^^;g ckr xyr gS fd eSaus ealkjke o gjyky us [kydflagij ,d lkFk ykBh NksM+h rc [kydflag us cUnwd pykbZ**

Bhogiram. the court witness, has stated that he did not see any one hitting Khalaksingh with a stick. He has also definitely asserted that he did not 'see Mansaram raise his lathi to hit Khalaksingh.

17. Second only one Prosecution witness Jar-gram (P. W. 9) in his statement has said that

^^ealk us [kydflag ij ykBh mBkbZ Fkh rks [kydflag5&6 dne ihNs gVk] ml ij eaxk us vkokt nh fd cUnqd ekj] rc [kydflag us cUnwdnh**

But Jagram has also stated

^^xkSjh o ealk us oSls gh [kydflag ij yB~BmBk;s] tc yB~B mVk;s ml oDr [kydflag us cUnwd ugha pykbZ**

Now after carefully reading the entire statement of Jagram and also the statement of other witnesses, my conclusion is that both the parties were flourishing lathies in the air and that from the way in which the lathies were being brandished in the air it appeared as if they wanted to hit though actually no one was hitting any one. This gesticulation with lathies was mistaken by Jagram (P. W. 9) and he thought that the stick had been lilted to hit Khalaksingh. But Khalaksingh who had actually taken part in Jhuma Jhumi, which lasted for about 10 minutes, knew well enough that the lathies were being lifted and brandished not with a view to hit any one, and that it was a mere display of force.

In these circumstances it is not possible to assume that Khalaksingh had any reasonable apprehension in his mind, that on the mere raising of the lathi, if at an raised, the lathi will fall on him, or for the matter of that on his sons. In the absence of a reasonable apprehension he cannot, be said to have been justified in shooting.

18. For reasons stated above I would dismiss the appeal of the accused.

19. Regarding the Government Appeal No. 40 of 1946, against the acquittal of Khalaksingh of an offence under Section 302. I have already held in Khalaksing's Appeal No. 18 of 1956, that Khalaksingh had no occasion for the exercise of right of self-defence. I need not cover the ground again and having held that Khalaksingh had no occasion for the exercise of a right of self-defence, the Government appeal must be allowed for the precise reasons. The accused must be held guilty under Section 302, Indian Penal Code. Much capital is sought to be made out) of the statement of Jagram (P. W. 9) that Man-saram lifted his stick at Khalaksing, but as I have discussed earlier in this judgment, the evidence on the whole shows that both the parties lifted their sticks and brandished them in the air. as if they wanted to strike but no one was bang actually hit.

The process of brandishing the lathies in the air continued for about 10 minutes. In these circumstances Khalaksing could not have thought that he was being struck, and in consequence the occasion for the exercise of the right of self-defence 'did not arise in this case.

20. Regarding the Government Appeal against the acquittal of Mangaram, I find that:

(i) his name did not at all appear in the F. I. R.

(ii) No doubt Gauri Shankar P. W. 10 has stated that Mangaram accused instigated his father, accused Khalaksingh to fire, but other prosecution witnesses do not corroborate him. Jagram P. W. 9, who is an eye-witness does not definitely state that Mangaram instigated his father. In cross-examination he has stated :

^^eSa vankt ls dgrk gwa fd og vkokt esxk dhgksxh exj 'kksjxqy T;knk gks jgk Fkk bl okLrs lgh ugha dg ldrk fd vkokt esxk dhFkh ;k Hkhdk dh Fkh fd cUnwd ekjA**

(iii) Although Balram P. W. 13, has stated before the Sessions Judge that Mangaram instigated Khalaksingh to fire, yet he did not say so in his statement before the Police. The omission by him is significant.

(iv) Ram Narayan P. W. 8 has stated that he cannot 'definitely say whether Mangaram or Bhika instigated the father to shoot. Either one or the other instigated the father.

21. The evidence referred to above does not satisfactorily prove that it was Mangaram, who instigated the father and I would not like to disturb the finding of the trial Court about the acquittal of Mangaram on a charge of abetment,

22. In result I would dismiss the appeal of the accused Khalaksingh (Appeal No. 18 of 1956). I would also partly dismiss the Government Appeal No. 40 of 1956 so far as it relates to the acquittal of Mangaram. But allowing the Government Appeal regarding Khalaksingh accused, I would set aside his conviction and sentence under Section 304(1) and convict him under Section 302, Indian Penal Code and sentence him to life imprisonment.

Dixit, J.

23. I agree.