

Chandersingh and ors. Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-05-2002

Reported in : 2003(1)MPHT219; 2003(2)MPLJ74

Judge : Bhawani Singh, C.J. and ;S.L. Kochar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 100, 101, 147, 149, 302, 323 and 324

Appeal No. : Criminal Appeal No. 198/94

Appellant : Chandersingh and ors.

Respondent : State of M.P.

Advocate for Def. : Z.A. Khan, Addl. Adv. General

Advocate for Pet/Ap. : Jaisingh, Sr. Adv.

Judgement :

S.L. Kochar, J.

1. Above named appellants, eight in number have preferred this appeal against the judgment dated 15-3-1994 rendered by First Addl. Sessions Judge, Ratlam in Sessions Trial No. 7/91, thereby finding appellants Chandersingh, Phundasingh, Juwarsingh and Nathusingh guilty of the offence punishable under Sections 147,

302/149, 324 and 323/149 of the Indian Penal Code, sentenced them each to undergo R.I. for two years under Section 147, imprisonment for life with fine Rs. 1,000/-, in default of payment of fine to suffer additional R.I. for one year under Section 302/149, R.I. for two years under Section 324 and R.I. for six months under Section 324/149 of the Indian Penal Code. He, finding appellants Madansingh, Shambhusingh and Ramsingh guilty for the offence under Sections 147, 302/149, 324 and 323/149 of the Indian Penal Code, sentenced them each to suffer R.I. for two years under Section 147, imprisonment for life with fine of Rs. 1000/-, in default of payment of fine to suffer R.I. for one year under Section 324/149, R.I. for six months under Section 323 and R.I. for one year under Section 324/149 of the Indian Penal Code. He further finding the appellants Lalsingh guilty of the offence under Sections 147, 302/149, 323/149 and 324/149 of the Indian Penal Code, sentenced him to two years' R.I., imprisonment for life with fine of Rs. 1,000/-, in default of payment of fine to suffer R.I. for one year, six months R.I. and one year's R.I. respectively.

All the substantive sentences have been directed to run concurrently.

2. The prosecution case as unfolded before the Trial Court was that on 18-5-90 at 5.00 - 5.30 PM, Berisal (P.W. 9) was proceeding towards temple. At that time, his son (deceased) Mangusingh was at the Bus Stand, Chandersingh reached there and told Mangusingh as to why did he took meals on the eve of vow (MAAN) of Harisingh's son. On this point, some hot talks were exchanged between them and appellants Chandersingh and Phundasingh started beating Mangusingh by lathi. Chandersingh intlicted a lathi-blow which landed on the head of Mangusingh. On calling by Chandersingh and Phundasingh, remaining accused persons also came there armed with Lathi, Dharia, Bangadi, Haliya and stones and started beating Mangusingh and Berisal. Mangusingh after sustaining lathi-injury, fell down on the ground and became unconscious. Accused Lalsingh also had come on the spot with a gun and told that if anybody dared to come there, he would finish him. Juwarsingh hit Berisal by stone which struck below his eye-lid and fell down unconscious on the ground. Bancsingh (P.W. 7), Kamalsingh (P.W. 12), Kalusingh also witnessed the incident. They took Mangusingh and Berisal to the police station. Dcvisingh (P.W. 4) lodged the report which was reduced in writing by Sub-

Inspector Rajendrasingh Ranawat (P.W. 13) as Ex. P-14. The injured were sent to hospital for examination and treatment. On 19-5-90, Mangusingh breathed his last at Jaora Hospital. His post-mortem report is Ex. P-18.

Injury reports of Mangusingh, Berisal, Devisingh and Kishorsingh are Exs. P-6, P-7, P-8 and P-9. According to the post-mortem report, the deceased died due to haemorrhage and shock because of the injuries.

3. After usual investigation, the appellants were charge-sheeted. They abjured their guilt. After trial, the appellants were found guilty and were convicted accordingly and sentenced as stated hereinabove.

4. Learned Counsel for the appellants submitted that the appellants had acted in right of private defence of persons. It was the complainant party who came armed with deadly weapons in front of the house of the appellants and opened assault on them. At that juncture, they used force in their defence. Ex. D-7 (First Information Report) was lodged by appellant No. 1 Chandersingh. Appellant No. 1 Chandersingh, appellant No. 2 Phundasingh and appellant No. 6 Juwarsingh had received injuries in the same incident. Their injury reports are Ex. D-1, Ex. D-2 and Ex. D-3 duly proved by Dr. Chhaganlal (P.W. 5). Learned Counsel placed reliance on the Supreme Court judgments reported in Mitter Sen and Ors. v. State of U.P. (AIR 1976 SC 1156), Lakshmi Singh and Ors. v. State of Bihar (AIR 1976 SC 2263), Kashiram and Ors. v. State of M.P. [(2002) 1 SCC 71], Suhramani and Ors. v. State of T.N. [2002 SCC (Cr.) 1659] and Bhagwan Swaroop v. State of M.P. (AIR 1992 SC 675).

5. In contra, learned Addl. Advocate General Shri Z.A. Khan submitted that the appellants have caused number of injuries on the person of the deceased Mangusingh and also to witnesses Devisingh (P.W. 4), Berisal (P.W. 9) and Kishorsingh (P.W. 10). Their injuries reports are Ex. P-6, Ex. P-7, Ex. P-8 and Ex. P-9. Looking to the number and nature of injuries, the appellants are not entitled to get benefit of self-defence. He placed reliance on the Supreme Court judgments reported in Gurnamsingh and Anr. v. State of Punjab [1995 Supp (3) SCC 743] and Amar Malla and Ors. v. State of Tripura [(2000) 7 SCC 91].

6. Having heard learned Counsel for the parties and after giving our anxious consideration on the evidence available, we are of the considered view that the appellants are entitled to get benefit of the provisions of right of private defence of their persons.

7. Admittedly in the same incident, three appellants namely, Chandersingh, Phundasingh and Juwarsingh have been injured. Their injury reports have been duly proved by Dr. Chhaganlal (P.W. 5). Complainant party was also prosecuted in a counter-case vide Sessions Trial No. 60/92 for assaulting the appellants. Appellant Phundasingh has sustained incised wound on his skull measuring 5 x 1 x 1 cm. caused by sharp-edged weapon. Appellant Juwarsingh received lacerated wound on left shoulder measuring 10 x 4 cm and another injury on left knee measuring 5 x 5 cm. Appellant Chandersingh received incised wound measuring 4 x 1 x 1 cm at 5th vertebrae and another incised wound at his left wrist. He also received two abrasions measuring 10 x 1/2 cm at his left shoulder. The number and nature of injuries on the persons of these appellants are clearly indicating that they were assaulted by hard and blunt and sharp-edged weapons.

8. None of the prosecution witnesses has come forward to explain the injuries on the persons of these appellants. Only Devisingh (P.W. 4) tried to explain these injuries, but only half-heartedly. According to him, these appellants might have received injuries when the witnesses were trying to save the deceased. In the same breath, he has also stated in para 13 that positively he was not knowing as to how these appellants have sustained injuries. Learned Trial Court in para 42 of its judgment has considered this statement of Devisingh as explanation of injuries on the persons of these three appellants. We are unable to accept the statement of this witness as explanation of injuries on the persons of these appellants. This witness has nowhere stated that he or other witnesses of the incident caused injuries in their defence to the appellants. This witness was not bold enough to state that he and other witnesses had assaulted the appellants in their self defence. He has given somewhat evasive reply regarding injuries and the same cannot be considered as explanation.

9. Supreme Court in the case of Laxmi Singh (supra) has held as under :--

'In a murder case, the non-examination 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 inferences :--

(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 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 in probability with that of the prosecution one.

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 outweighs the effect of the omission on the part of the prosecution to explain the injuries.'

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10. Applying the test laid down by the Supreme Court, we are constrained to hold that in the present case, the appellants who have received injuries (incised) having bleeding and the same could be easily visible to the witnesses, but none has explained as to how the appellants sustained those injuries, for which the counter case was registered against them by the same police station. In this case, it cannot be said that the appellants have received minor and superficial injuries. Therefore, omission on the part of the prosecution to explain the injuries on the

persons of accused persons is indicative of the fact that the appellants were not the aggressors and acted in their self defence.

11. Similar view has been taken by the Supreme Court in the cases of Mitter Sen and Ors., Kashiram, Lakshmi Singh, Subramani and Bhagwan Swaroop (supra).

12. Learned Addl. Advocate General placed reliance on the case of Gurnamsingh (supra), but the ratio of this case would not apply in the facts and circumstances of the present case, because in this case, the explanation offered by the witness that on being assaulted, he and deceased retaliated in exercise of their right of private defence. Such is not the situation in the present case. In the case in hand, witnesses have not explained the injuries on the persons of the appellants not only in the First Information Report and the case diary statements but also in the Court. Though Devisingh (P.W. 4) has admitted the presence of injury and bleeding on the persons of aforementioned three appellants, but has stated that he was not able to say that as to how the appellants sustained injuries.

13. In the present case, one fact also is significant that the incident had taken place in front of the house of the appellants. Map Ex. P-5 duly proved by Devisingh (P.W. 4) as well as the Investigating Officer Rajendra Singh Ranawat (P.W. 13) is clearly establishing this fact. There was no reason for the injured persons to carry with the sharp edged weapons while going to the temple or passing in front of the house of the appellants. This shows that because of some previous incident, they had come to pick-up the quarrel and they were the aggressors.

14. Looking to the number of injuries on the person of the deceased and appellants, it could be said that the appellants may have exceeded the right of private defence, but none can be held responsible for this because, specific overt act of individual appellants have not been described by the witnesses.

15. This is the settled principle of law that the accused persons cannot be held responsible for exceeding the right of private defence with the help of Section 34 or 149 of the Indian Penal Code. Therefore, it is incumbent upon the prosecution to establish as to who was the accused responsible for fatal blow. In absence of

positive statement in this regard, none can be convicted. [See : Subramani and Ors. v. State of T.N. (supra)].

16. In the wake of aforesaid legal and factual discussion, we are unable to concur the judgment and finding of conviction of the Trial Court and, therefore, the same is set aside and the appeal deserves to be allowed.

17. Consequently, this appeal is allowed. The conviction of the appellants as passed by the learned Trial Court is set aside and they are acquitted of the offences with which they have been charged. The appellants are on bail, their bail bonds shall stand discharged.

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