

Dharam Vir Vs. State

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Court : Delhi

Decided On : Oct-15-1971

Reported in : ILR1972Delhi372

Judge : M.R.A. Ansari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 97 and 99; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 342

Appeal No. : Criminal Appeal No. 73 of 1971

Appellant : Dharam Vir

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; D.C. Mathur, Advs

Judgement :

M.R.A. Ansari, J.

(1) The appellant and his mother Sarti and sister Ram girl were tried before the Additional Session Judge. Delhi for an offence under section 302/34 Indian Penal Code for the alleged murder of one Rajinder on 1-10-1971. The prosecution case against these persons was that one Jhuttar, the father of the appellant, had purchased a portion of field No. 24. Chowkutiawala situated in village Pindralla, Delhi, from one Baldev for Rs. 450.00 and had occupied the said land.

Subsequently, by virtue of a settlement, this land was repurchased by Mangat son of Baldev from Jhuttar on payment of Rs. 450.00 and Mangat had cultivated the land and harvested the crop. On 1-10-1970, Mangat went to the land to plough it and was later on joined by his brother Rajinder. While Mangat and Rajinder were resting near this field, Sarti and Ram girl came there at about 12 Noon and asked Mangat and Rajinder as to why they had ploughed their land. Mangat and Rajinder replied that they had repurchased the land from Jhuttar and were entitled to plough it. The two women, however, objected to their ploughing the land and went back to the village and returned a little later along with the appellant. All the three of them again objected to Mangat and Rajinder ploughing the land. But Rajinder insisted on ploughing it. At this juncture, the appellant took out a knife from the right pocket of his shirt and at the instigation of Sarti and Ram Giri. inflicted a number of injuries on Rajinder. Mangat wanted to come to the rescue of his younger brother but was prevented from doing so by the two women. The attack on Rajinder was witnessed by Ram Lal also who happened to be grazing his cattle in the adjacent field. After thus attacking the deceased, the appellant ran away towards the fields carrying the knife with him and Sarti and Ram girl went back to the village. Mangat found that Rajinder had succumbed to the injuries. therefore, he proceeded to the Police Station at Najafgarh and gave report. The police arrived at the scene of offence and arrested the appellant and the two women. The clothes then worn by the appellant were found to be blood-stained and they were seized by the police. On information given by the appellant, the knife which was used by the appellant for attacking the deceased was also recovered. The appellant himself was found to be having an injury on the finger of his right hand. He was, therefore, sent to the doctor for examination of his injury.

(2) The prosecution examined 18 witnesses in the trial Court of whom P. Ws. 2 and 3 are the alleged eye-witnesses to the incident. They spoke to the facts already stated. In addition to these witnesses, P. W. 6, Mam Chand, was examined to prove an alleged confession made by the appellant to him immediately after the offence. This witness stated that he saw the appellant running towards his field with blood-stained clothes and also with blood dripping from his finger of his right hand and on being questioned by this witness, the appellant stated to him that he had killed Rajinder with the knife. Some witnesses

were examined to prove the alleged repurchase of the land by Mangat from Jhuttar and the alleged possession of the land by Mangat on the date of offence. But the Patwari of the village who was examined as P. W. I stated that according to the entries in the Khasra Girdawari, the land was in the possession of Jhuttar on the date of the offence and was shown as having been cultivated by him. The doctor who performed the post mortem examination on the body of the deceased was examined as P. W. I and according to him, there were five external injuries on the body of the deceased, namely,-

(i) a stab wound on the front of the chest on the left side, (ii) another stab wound on the left scapula, (iii) yet another incised wound on the upper part of the left side of the neck, and (iv) two parallel linear abrasions over the left cheek.

(3) On dissection, he found that the injury in the chest had penetrated the pericardium and pierced the left side of the heart through and through and there was collection of blood clot inside the chest cavity. He gave his opinion that death was caused as a result of shock and haemorrhage due to all the injuries and that injury on the chest was quite sufficient in the ordinary course of nature to cause death. The doctor, who examined the appellant, was not available for examination in Court and, therefore, the injury report given by him was proved by a clerk of the Police Hospital, Rajpur Road. According to this report, there was only one injury found on the person of the appellant, namely, a simple sharp linear cut 1/2' obliquely placed on the little right finger.

(4) When examined under section 342 Criminal Procedure Code, the appellant denied that the incident took place in the manner alleged by the prosecution witnesses. He denied that the land was repurchased by Mangat from his father and stated that the land was in the possession of his father ever since he attained the age of discretion. He further stated that on 29-10-1970 when he went to plough the land, the deceased and P. Ws. 2 and 3 and three other persons by name, Ram Phal, Subey and Gajraj came to the field and prevented him from ploughing the land saying that the land belonged to them. He went home and informed his parents about this and his mother went to the police station and gave a report. On 1-10-1970, he again went to the field for collecting the dried up poolies. Just then.

Ram Phal, Subey and the deceased Rajinder came there and started ploughing his field. He stopped them from doing so and tried to pick up the dried up poolies. Ram Phal and Subey started beating him. The deceased then came and took out a knife from the pocket of his pants and assaulted him. He warded off the blow with his left hand and received an injury on his finger. The deceased again assaulted him and he caught hold of the knife and the deceased struck him on the little finger of his right hand. He then snatched the knife from the deceased. Subey took up a Gheesat and hit him on the head. Ram Phal started beating him with fists and slaps. The appellant then made use of the knife in order to save his life and property. The other two accused Sarti and Ram girl denied that they were at all present at the time of the incident and stated that they had been falsely implicated. Only one witness was examined in defense and he was a Head Constable of the Police Station of Najafgarh. He produced a report which was given by Sarti on 29-9-1970.

(5) On a consideration of this evidence, the learned trial Court held that the land where the offence took place was not in possession of Mangat and the deceased as alleged by the prosecution but was in the possession of the appellant and his father. He also held that the incident did not take place in the manner stated by P. Ws. 2 and 3 and that the two women had been falsely implicated in the case. As the land was in >the possession of the appellant, the learned trial Court held that he had a right of private defense of his property. But the learned trial Court, at the same time, rejected the version of the incident as alleged by the appellant in his statement under section 342 Criminal Procedure Code . He, therefore, held that the appellant had exceeded his right of private defense of property and was guilty of an offence under section 304, Part I, Indian Penal Code . He convicted the appellant accordingly and sentenced him to undergo rigorous imprisonment for three years. The other two accused were acquitted. The appellant has preferred the appeal against his conviction and the sentence passed against him.

(6) Although the appellant has admitted in his statement under section 342 Criminal Procedure Code . that he inflicted the injuries on the deceased with the knife as a result of which the deceased died, he has taken the plea of self-defense of person and property. The first question to be decided, therefore, is whether the

appellant had the right of self-defense of property. In other words, it has to be considered whether it was the appellant and his father who were in possession of the land in dispute on the date of the offence or whether it was the deceased and his brother Mangat who had possession of the said land. It is admitted by P. Ws. 2 and 3 that P. W. 2's father had at one stage sold away the land to Jhuttar, the appellant's father, for Rs. 450.00 and also that in pursuance of this sale, Jhuttar had taken possession of the land and had also cultivated it. But according to the prosecution, the land was repurchased by P. W. 2 on the re-payment of the amount of Rs. 450.00 to Jhuttar. This repurchase is said to have been brought about by a written document. That written document has, however, not been produced. At one stage, P. W. 2 stated that this document was in the custody of the deceased and had been mislaid by him some where, but, at another stage, i.e., in his report, Ex. P/B, given to the police soon after the incident, he had stated that this document was in his own custody. The evidence of the Patwari, P. W. li, on the other hand, is to the effect that according to the Khasra Girdawari, Jhuttar was shown as cultivator in respect of this land. An extract from the Khasra Girdawari which is marked as Ex. P/L was actually prepared on 14-9-1970. According to the entry in this Khasra Girdawari, the land was in the possession of Jhuttar. therefore, the trial Court was right in his conclusion that the land in question was in the possession of the appellant on the date of the offence and was not in the possession of Mangat and deceased. The appellant, therefore, had the right of private defense of his property. But this right of private defense is subject to various restrictions which are mentioned in section 99 Indian Penal Code . There is no right of private defense in cases in which there is time to have, recourse to the protection of the public authorities. In this case, according to the appellant, the deceased and others had attempted to plough the land on 29-9-1970 and in that connection, his mother Sarti had actually made a report to the police. Having made the report, the appellant ought to have waited for the police to investigate and to take appropriate action against the alleged trespassers. Even on the date of the offence, the deceased and the other two persons mentioned by the appellant were only ploughing the field. They were not either destroying the crop standing in the land or cutting and carrying it away. No irreparable loss would be suffered by the appellant by the deceased and the others merely ploughing the

land. Further, the right of private defense of property extends to the voluntary causing of death only in certain cases affecting property, namely, robbery, house-breaking by night, mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property and theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defense is not exercised. The act of ploughing the land cannot come under any of the categories of the offence mentioned in section 103 Indian Penal Code and, therefore, the right of defense of property did not extend to the voluntary causing of death. The learned trial Court was, therefore, right in holding that the appellant had exceeded his private defense of property and was not protected either under section 97 or section 103 Indian Penal Code .

(7) The next question for consideration is whether the appellant had the right of private defense of his person. The answer to this question depends upon whether the statement of the appellant made under section 342 Criminal Procedure Code . can be accepted. According to the appellant not only did the deceased attack him with the knife and cause injuries on his finger, but the other two persons who were present, namely, Ram Phal, and Subey, also attacked him-Ram Phal with his fists and Subey with a Gheesat. If this version is accepted, then, undoubtedly, the appellant had the right of private defense of his person even to the extent of causing death of the deceased. It is contended by the learned counsel for the appellant, Shri D. R. Sethi, that the learned trial Court having disbelieved the evidence of P. Ws. 2 and 3 in toto and having in effect held that they were not eye-witness to the incident and there being no other evidence to prove the manner in which the incident occurred, the learned trial Court was wrong in not accepting the version of the appellant. It will not be open to the learned trial Court to reject the exculpatory portion of the appellant's statement and to accept only the incriminating portion and to convict the appellant only on the basis of the incriminating portion of his statement, contends the learned counsel for the appellant. In support of his contention, the learned counsel has cited a decision of the Supreme Court in *The State of Gujarat and another v. Acharya Shri Devendraprasadji Pande and others* : 1971 CriLJ760 wherein it was held that the

Court cannot split the statement of the accused under section 342 Criminal Procedure Code . into various parts and accept a portion and reject the rest and that the Court should either accept it as a whole or not rely on it at all. The rule laid down by the Supreme Court in that case is, however, to be read along with the rule which is now well-settled-that a confession of an accused person must be accepted as a whole or rejected in toto in the absence of any other independent evidence but that if the exculpatory portion of a confession is falsified by other independent evidence or is inherently incredible, it is open to the Court to reject the exculpatory portion and to accept the incriminating portion of the confession. In Emperor v. Balmukand,⁵¹ Allahabad 1011(2) full Bench of the Allahabad High Court held that where there is no evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. The rule laid down by the Allahabad High Court was approved by the Supreme Court in several cases. Reference may be made to the case of Parvinder Kaur v. The State of Punjab : 1953 CriLJ154 and the case of Nishi Kant Jha v. State of Bihar : 1969 CriLJ671 . In the latter case, the following passage from law of Evidence by Taylor (11th Edition) was quoted with approval by the Supreme Court :-

'IN the proof of confessions-as in the case of admissions in civil causes-the whole of what the prisoner said on the subject at the time of making the confession should be taken together.....

BUT if after the entire statement of the prisoner has been given in evidence, the prosecutor can contradict any part of it, he is at liberty to do so; and then the whole testimony is left to the jury for their consideration, precisely as in other cases where one part of the evidence is contradictory to another. Even without such contradiction it is not to be supposed that all the parts of a confession are entitled to equal credit. The jury may believe that part which charges the prisoner, and reject that which is in his favor, if they see sufficient grounds for so doing. If what he said in his own favor is not contradicted by evidence offered by the prosecutor, nor is improbable in itself. it Will be naturally believed by the jury; but they are not bound to give weight to it on that account, being at liberty to judge of it, like other

evidence, by all the circumstances of the case.'

(8) The Supreme Court also quoted with approval the following passage from Archbold's Criminal Pleading Evidence and Practice, (36th Edition)

'IN all cases the whole of the confession should be given in evidence; for it is a general rule that the whole of the account which a party gives of a transaction must be taken together; and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his contemporaneous assertion of a fact favorable to him, not merely as evidence that he had made such assertion, but admissible evidence of the matter thus alleged by him in his discharge..... It has been said that if there be no other evidence in the case or none which is incompatible with the confession, it must be taken as true; but the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the jury, to say whether the facts asserted by the prisoner in his favor be true.'

(9) In the case before the Supreme Court, the exculpatory part of the Statement of the accused was rejected on the ground that it was not only inherently improbable but was contradicted by the other evidence.

(10) The criticism of the learned counsel against the judgment of the learned trial Court has some force, because it would appear from the judgment of the learned trial court that it had disbelieved the evidence of the eye-witnesses, P. Ws. 2 and 3, completely and had even doubted their presence at the time of the incident. If the evidence of these witnesses is left out of the consideration or is thus rejected, then there is no other evidence to prove in what manner the attack on the deceased took place and there is no other evidence to disprove the version of the appellant as given in his statement under section 342 Criminal Procedure Code . The version of the appellant cannot be rejected on the ground that it was inherently improbable merely because his version was not corroborated by the medical evidence on record. The injury report of the doctor who had examined the appellant does show that there was a cut injury on one of the fingers of the appellant's right hand. The existence of this injury will probablise not only the prosecution case that the injury was caused while the appellant was attacking the

deceased with the knife but it will also probablise the defense version that this was caused when the deceased himself attacked the appellant with a knife. The learned trial Court has not specifically rejected the appellant's case that apart from the deceased there were two other persons along with him at the time when the deceased attacked the appellant. If, therefore, the deceased attacked the appellant with a knife and there were two other persons present along with the deceased who could be expected to take part in the attack against the appellant, then, the appellant would have been justified in apprehending that unless he himself attacked the deceased with the knife, he would be over-powered by the deceased and his companions and would be killed by them. The learned trial Court, therefore, was wrong in rejecting the appellant's version on the ground that it was inherently improbable. But the learned counsel for the State, Shri D. C. Mathur, contends and I think quite rightly that the learned trial Court was not justified in rejecting the evidence of P. Ws. 2 and 3 completely and that the learned trial Court ought to have convicted the appellant on the strength of the evidence of these witnesses together with the incriminating portion of the statement of the appellant. Even according to the appellant, the deceased was not alone at the time of the incident but was accompanied by two other persons. If these two persons were not P. Ws. 2 and 3 but were Ram Phal and Subey as alleged by the appellant, then, there is no reason why their names were not mentioned in the report given by P. W. 2 to the police and why it was necessary to substitute in their place the names of P. Ws. 2 and 3 as eye-witnesses. The presence of P. Ws. 2 and 3 at the scene of offence is quite natural and probable. The deceased by himself would not have attempted to plough the land of the appellant. Even on the earlier occasion, the deceased and five other persons had attempted to plough the land. It is but natural and probable that on the date of the offence also, the deceased was not alone but was accompanied by others in their attempt to plough the appellant's land. P. Ws. 2 and 3 would naturally show that the land was in their possession. But even if this statement is false, there is no reason to disbelieve their evidence with regard to the actual occurrence. The learned trial Court has rejected their evidence on two grounds, namely-

(i) that P. W. 2 could have been prevented by the two women Sastri and Ram girl from going to the help of the deceased. and '(2) that P. W. 2 who was armed with

a staff would not have merely witnessed the attack on the deceased by the appellant without trying to save the deceased by using his staff against the appellant.

(11) Even if the Explanation given by P. W. 2 for not going to the help of the deceased is not accepted, it is obvious that P. Ws. 2 and 3 would have been afraid to intervene when they found the appellant armed with a knife. The evidence of P. Ws. 2 and 3 is corroborated by the report Ex. P/B which was given by P. W. 2 very soon after the incident. The evidence of these witnesses is further corroborated by the injury report of the doctor who examined the appellant. There was only one slight injury on the finger of the appellant and this could have been very well caused while the appellant himself was attacking the deceased with the knife. The absence of any other injury on the person of the appellant also corroborates the evidence of P. Ws. 2 and 3 that the appellant himself was not attacked by any one. If the evidence of P. Ws. 2 and 3 is accepted, then, I see no valid reason why the learned trial Court should not have accepted their evidence, and the plea of self-defense of person completely fallen to the ground. The appellant could not have had any apprehension of death or grievous injury at the hands of the deceased or P. Ws. 2 and 3. therefore, he did not have any right of private defense of his person to the extent of causing the death of the deceased.

(12) Having convicted the appellant under section 304, Part I, Indian Penal Code , the learned trial Court has awarded a sentence of rigorous imprisonment for three years. The reason given by the learned trial Court for awarding such a lenient sentence is that the appellant was aged 17 years. This is hardly a valid ground for awarding the lenient sentence. The proper sentence to have been awarded was at least a sentence of rigorous imprisonment for seven years. But since the State has not filed any revision against the sentence, I do not propose to issue any notice to the appellant for enhancement of the sentence.

(13) Accepting the evidence of P. Ws. 2 and 3 with regard to the actual incident and also accepting the incriminating portion of the statement of the appellant under section 342 Criminal Procedure Code . and rejecting the exculpatory portion, I uphold the conviction of the appellant under section 304, Part I, Indian

Penal Code . Both the conviction of the appellant and the sentence passed against him are, therefore, confirmed and the appeal is dismissed.

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