

Dharam Pal Vs. State

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Court : Delhi

Decided On : Jan-16-2007

Reported in : 137(2007)DLT467

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : Indian Arms Act, 1955 - Sections 27; Indian Penal Code (IPC) - Sections 34, 302, 304 and 323; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 144 of 1982 and 84 of 1983

Appellant : Dharam Pal; State

Respondent : State;ram Murti and ors.

Advocate for Def. : Ravinder Chadha, APP and ; Jagdish Prasad, Adv. in Criminal Appeal No. 144 of 1982 and ;

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv. and; M.L. Yadav, Adv. in Criminal Appeal No. 144 of 1982 and;

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal 144 of 1982 as also Criminal Appeal 84 of 1983 seek to challenge the judgment and order of the Additional Sessions Judge, Delhi, in

Sessions Case Nos. 71 of 1981 and 72 of 1981, arising out of FIR No. 79 of 1981, Police Station, Sultanpuri, Delhi whereby the learned judge vide his judgment and order dated 28.7.1982 has acquitted Ram Murti and Ranbir Singh of the offences punishable under Section 302 IPC and Section 323 read with Section 34 IPC while giving them benefit of doubt in Sessions Case No. 71 of 1981 titled State v. Ram Murti etc. However, the learned Judge went to hold accused, Dharam Pal guilty of the offence punishable under Section 304 Part-I IPC. He was, however, acquitted of the offence punishable under Section 323 read with Section 34 IPC in Sessions Case No. 71 of 1982. Dharam Pal was further held guilty for an offence punishable under Section 27 of the Indian Arms Act, 1955 and accordingly convicted in Sessions Case NO. 72 of 1981. Further, by his order dated 28.7.1982 the learned Judge sentenced Dharam Pal to undergo rigorous imprisonment for five years together with a fine of Rs. 1,000/- for the offence punishable under Section 304 Part-I, IPC in Sessions Case No. 71 of 1981 and in default of payment of fine further simple imprisonment for a period of three months. He was also sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 27 of the Indian Arms Act in Sessions Case No. 72 of 1981. Both the sentences were directed to run concurrently.

2. Brief facts of the case, as have been noted by the learned Additional Sessions Judge, are:

That Karan Singh deceased was the brother of accused Ranabir Singh and Dharam Pal. Accused Ram Murti was related to him as the uncle. All of them used to reside in village Ranikhera, within the jurisdiction of Police Station, Sultanpuri. Sometimes, prior to the date of the occurrence, deceased, accused Dharam Pal and Ranbir and their 4th brother Kartar got effected partition of their houses and pursuant to that settlement, the house adjoining the house of Subedar Lakhi Ram fell to the share of accused Dharam Pal and Ranbir and their 2nd brother, Kartar. On the date of the occurrence i.e. On 17.5.1981, a partition wall was being constructed by accused Dharampal and Ranbir so as to separate their portion from the portion of Kartar Singh and in that process, they are stated to have encroached upon some portion of Kartar Singh. It is alleged that on 17.5.1981, at about 6.30 p.m., Karan Singh (deceased) went to the said house and had some

altercation with the three accused out of whom accused Ram Murti was armed with a gandala, scuffled with Karan Singh and beat him with bricks, etc. When Karan Singh ran out of the house in order to save himself, all the three accused chased him. Ram Murti accused gave a gandala blow and accused Dharam Pal gave a knife blow in the right side abdomen of Karan Singh, as a result of which he fell down and later succumbed to his injuries. The said occurrence is stated to have been witnessed by Smt. Pushpa (PW-1) and Mukesh (PW-6), daughter and son of the deceased respectively and Smt. Kishni (PW-8). The former two are also stated to have received some injuries at the hands of the accused in the process of rescuing their father. Many persons of the village also collected on the spot. Police on being informed, reached the spot and registered the case on the basis of complaining statement of Smt. Pushpa and took up investigation by getting the scene of crime photographed, collecting the sample blood, controlled earth and seizing the various articles viz. gandala and chappals on the spot and the clothes of the deceased. The weapon of offence, i.e. The knife was recovered by the Police at the instance of accused, Dharam Pal, on the night intervening 17/18.5.1981. Postmortem examination was also got conduct conducted on the body of Karan Singh. Police also got accused, Ram Murti and Ranbir and Pws Pushpa Devi and Mukesh medically examined. After completion of the investigation, Police submitted challan against the three accused as above. Charges under Section 302 IPC read with Section 34 IPC and Section 323 IPC read with Section 34 IPC were framed against all the three accused (in S.C. 71/81) while a separate charge under Section 27 of the Indian Arms Act, 1959 was framed against accused Dharam Pal (in S.C. 72/81), to which charges the accused persons pleaded not guilty and claimed trial.

3. The Prosecution, in order to support its version, examined 20 witnesses. Of these, PW-1, Pushpa Devi, PW-6, Mukesh and PW-8, Smt. Kishni, are the alleged eye witnesses of the occurrence while the other witnesses are formal in nature.

4. The trial court, upon appreciation of evidence on record, disbelieved PW-1, Pushpa Devi, while relying partially on the statement of PW-6, Mukesh, but went on to hold that the story put forth by the defense is more plausible inasmuch as the deceased was the aggressor and that the appellant was justified in his right of

private defense to have used force but the force used was in excess thereof, convicted the appellant under Section 304 Part-I IPC.

5. The State has come up in appeal in Criminal Appeal No. 84 of 1983 challenging the acquittal of the remaining accused persons and also pleading that Dharam Pal be held guilty under Section 302 IPC. It was admitted by counsel for the State that the judgment of the trial court cannot be seriously attacked as regards the disbelieving of the Prosecution's case. He, however, submitted that the case of the defense, if taken on its face value, does not exonerate the accused persons of the crime. Rather, on their own admissions the accused should be held to be guilty under Section 302 IPC for causing death of Karan Singh.

6. Dealing with the evidence on record, it would be appropriate to discuss the ocular account of the eye witnesses in respect of the case of the Prosecution and thereafter the defense taken by the accused. PW-1, Pushpa Devi, daughter of the deceased, has narrated that she knows the accused persons, Ram Murti, her grand father, and Dharam Pal and Ranbir, her uncles. Kartar Singh is also her uncle. The witnesses deposes that earlier her grand father, father and uncles used to live in the same house in village Ranikhera. However, a dispute arose between Dharam Pal, Ranbir on the one side and the deceased on the other over the partition of the house in which they were living. On 17.5.1981 at about 6.30 p.m., the witness had gone to collect cow-dung to prepare dung cakes from the house of Kartar Singh. Her father, Karan Singh, was standing in the portion of the house of Kartar Singh. Dharam Pal and Ranbir were constructing a partition wall in their portion which slightly fell in the portion of Kartar Singh. Her father objected to the same and asked accused, Dharam Pal and Ranbir, to raise wall in their own portion. On this all the three accused persons started abusing her father and grappled with him. At that time, the witness states, to be standing nearby. Ranbir gave a brick blow to her father while accused, Ram Murti a gandala blow to her father. Seeing a knife in the hand of accused-Dharam Pal, her father tried to escape and ran outside in front of house of Subedar Lakhi Ram. All the accused chased him and in front of the house of Lakhi Ram got hold of her father from his arms while Ram Murti gave gandala blow and Dharam Pal gave a knife blow hitting her father on the right side abdomen. The witness goes on to state that she

does not know the number of injuries inflicted but they were more than one in number. While this incident was in progress, Mukesh, her brother, reached at the spot and tried to rescue his father by pelting bricks on the accused persons. Accused, Ram Murti, gave a gandala blow to Mukesh while Ranbir hit him with the brick. Thereafter all the accused fled towards the house of accused, Ram Murti. The witness raised alarm which attracted the neighbours. They put her father on a cot and he had succumbed to his injuries. The accused while fleeing left the gandala at the spot but took away the knife with them. The witness states that she sustained injuries on her right hand and right leg. Police arrived at the spot and recorded her statement, Ex. PW-1/A.

7. In cross-examination, the witness admits that accused Ranbir and Kartar used to give salary to her father. She admits that it was agreed between the parties that her father would reside in the old house while his uncle including Ranbir and Dharam Pal would shift to the house in question. The partition took place about two months prior to the occurrence. She also admits that no portion of the house in question was given to her father. She admits that her father had to pay Rs. 2,000/- as cost of malba to accused and that the said amount was not paid in her presence. She admits that on a complaint of her uncle, Police had come to the village but she was not there in the village at that time. She admits that her in-laws' house is about 20 to 30 kilometers away from the village in question. She was married on 8.3.1981. She does not say how many days after her marriage she visited her parents' house. She admits that she does not know for how many days the wall was under construction and that no mason or labourer was working when the altercation took place. The accused persons were doing the work of wall themselves. She admits that she did not sign any memo of recovery. She denied that her father started dismantling the wall constructed by the accused persons by means of gandala. She admits that the accused had scuffled with her father while they were inside the house of the accused and it was there that the occurrence took place. She admits that she did not try to intervene to rescue her father. Nor sustained any injury inside the house nor her clothes were torn. She admits that Mukesh had reached the house in question when the deceased was still inside the house. She was extensively confronted with various improvements made in her statement.

8. PW-6, Mukesh, son of Karan Singh, stated that Ram Murti is the brother of his grand-father while accused, Ranbir and Dharam Pal, are real uncles. Kartar is another uncle and Smt. Kishni is her aunt (wife of Kartar). Pushpa is his sister. On 17.5.1981 at around 6/6.15 p.m. he was going to take a bath on the well of his house. When he passed through the house of the accused persons, he heard a noise from inside their house. He went inside and saw his father, Karan Singh, present in the portion of his uncle, Kartar. The accused persons were standing there. They grappled with his father. His sister was present nearby while her aunt, Kishni, was preparing tea in the verandah. Dharam Pal took out a knife and seeing that, his father ran outside the house being chased by Ranbir and Ram Murti who caught hold of him and accused, Ram Murti, gave a gandala blow and Dharam Pal gave a knife blow to his father. As a result, his father sustained injuries all over his body. The witness, in order to save his father, pelted stones and threw brick bats. The witness goes on to say that after causing injuries, the accused persons ran away from the spot. The witness also deposes that he was given an injury by Ram Murti with gandala, while his sister received injury in the brick bating. The accused ran away leaving their chappals and bricks at the spot.

9. In cross-examination, the witness admits that his father had no share in the house in question where the occurrence took place. The partition between his father and his uncles had been effected in the presence of Police. He admits that his sister had been married 2-3 months prior to the occurrence and she was staying in her in-laws house. She had come back to the house after 2-3 days and thereafter had gone back to her in-laws' house. She had come back one day prior to the occurrence. He admits that when he reached the house of the accused person, the grill of the roof top was lying dismantled and was lying inside the house in question. The tile bricks of the roof were also lying scattered near the said grill inside the house near poli. The construction of the wall had started in the morning of the day of occurrence. Dharam Pal and Ranbir were helping the mason in construction work. He admits that his father had gone for duty and returned at 6.30 p.m. Kartar was not present at the time of occurrence in the house and had gone for duty. The partition wall had been constructed to 2-3 feet in the front while it was complete to the ceiling at the rear side. The quarrel inside the house in question took place for about 10-15 minutes. He raised no noise when the quarrel

took place inside the house. Nobody raised an alarm when the accused were grappling with his father inside the house. The witness did not try to intervene at all either physically or verbally. The witness says that he was one step away from his father while her sister was two steps away from her father when the grappling was going on. But none of them tried to intervene to save their father nor raised alarm. None of the accused pushed his sister nor him. Dharam Pal kept standing nearby while the remaining two accused were grappling with his father. The bricks pelted by the witness did not hit any of the accused persons. It is deposed that one knife blow was given on the right side abdomen of his father and the other knife blow was given on the other part of his body. The witness deposes that gandala blows were given to my father by Ram Murti on his head, leg and other parts of the body. This witness was also confronted with all the exaggerations made in his statement in court.

10. The accused, Ram Murti, took up the defense that he along with the co-accused had started construction of the partition wall and had not encroached on any portion of the land of Kartar Singh. He goes on to say that he came to the spot on hearing noise of the quarrel when he himself was assaulted by gandala by the deceased. He received head injury. Mukesh then came with a knife to help his father. The witness deposes that Dharam Pal gave him a push as a result of which he fell down and the knife was caught hold of by Dharam Pal who, in order to save himself and his brother and myself, inflicted an injury which accidentally fell on the abdomen. No other injury was sustained by the deceased. The other injuries were a result of the grappling when the deceased fell on the grill inside the house. The grill had sharp pointed edges. The deceased had inflicted injuries on this accused since he requested him that he should not quarrel with his brothers. He received no injury at the hands of Pushpa or Mukesh.

11. Accused, Dharampal, in his statement under Section 313 Cr.P.C. took up the same defense. He states as under:

The facts are that myself and my brother Ranbir, deceased and Kartar Singh were formerly living jointly in the house situated in village-Abadi. Deceased was the eldest. Whatever we used to earn, we used to give him, and he was controlling the

household affairs. When we grew up and Ranbir got married, we asked for partition of the property. Kartar also wanted partition. Deceased did not agree to it as he was interested in getting whatever possible from us. We then made a petition to panchayat and panchayat effected partition in terms of partition deed. Sarpanch effected partition and made demarcations of respective portions of the house situated outside the abadi. We started construction of partition wall. After two days of construction, on the evening of date of incident, when myself and Ranbir were there in the house trying to collect the bricks, deceased came and started abusing us that how we were making construction. He then left and after sometime we came to know that he had started demolishing roof of poli, and had removed the grill. Malba and grill belonged to us. Myself and Ranbir came and requested him with folded hands not to do so and that it was not proper on his part to have acted that way. He started abusing and saying that he would even demolish the partition wall, struck gadala against partition wall near poli and demolished a part of the boundary wall. My brother Ranbir objected to it, whereupon, deceased started giving abuses and hit Ranbir with gadala on his head as a result of which he started bleeding. In order to prevent him from further assault, he grappled with him and in the scuffle, deceased fell on the grill and received superficial injuries. On hearing of noise and commotion, Ram Murti, who resides at the back of this house, came there and asked deceased why he was behaving that way and he should not have inflicted injuries on Ranvir. Deceased started abusing him also and hit him with gadala as a result of which Ram Murti also received injuries on his head and hands. Then scuffle ensued. All this happened inside the house. In the meantime, Mukesh came there holding an open knife in his hand and tried to pass on the knife to his father-deceased when I hit Mukesh and threw him on the bricks. Knife fell down which I caught hold of. At that time, deceased had held gadala in his hand and had raised it in order to inflict injuries on Ram Murti and/or Ranbir who were standing side by side. In order to save them, I hit deceased with knife which incidentally landed on his abdomen. Gadala fell down from his hand and I inflicted no other injury on his person. This fight had taken place inside the house near poli. Deceased, after receiving injuries, came out and fell near the charpai. We then put him on the cot and he died. In the meantime, somebody gave information to police and a police officer in plain

clothes came there and made inquiries. The whole village deposed as to how deceased had inflicted injuries on the person of Ranvir and Ram Murti and had then received injuries. Local police came and took us to police station. His daughter was called from her in-laws house and then we were sent for medical examination, i.e., Ranbir and Ram Murti were sent for medical examination and on our return, false FIR was recorded and we were implicated in this case. I have not committed any offence. If I had not inflicted injury to deceased, then he would have killed us all and there was imminent danger of injuries to our person.

Similar is the defense taken up by accused, Ranbir.

12. The defense, in order to establish their case, examined DW-1, Lakhi Ram, who deposes that he knew Karan Singh who was related to him as a grand son. Karan Singh and his three brothers used to reside in the house situated inside the village. Accused, Ranbir and Dharam Pal, were brothers and their brother, Kartar Singh, wanted to be separated and for that purpose they approached this witness. The witness deposes that he called Karan Singh but he was not prepared for a partition on the ground that he had brought his brothers up and till such time they compensate him, he would not allow them to separate. The witness tried to persuade him but he was not agreeable. However, with the assistance and intervention of the whole Panchayat, Karan Singh agreed to do partition but later refused. Then, Dharam Pal and Ranbir made an application to the Panchayat to effect partition. As per the settlement, structure of poli was to go to the share of Dharam Pal and Ranbir. It was also agreed that the malba of the roof could be taken by Karan Singh on paying Rs. 2,000/- to Dharam Pal and Ranbir. The house, inside the village, fell to the share of Karan Singh. Although Karan Singh agreed to abide by the decision of the Panchayat, he later resiled and in spite of this witness trying to persuade him, would not listen. The Panchayat demarcated the division in the house outside abadi between Kartar Singh, Dharam Pal and Ranbir. Dharam Pal, two days prior to the occurrence, had begun constructing a partition wall and the witness, being an elderly man of the village, warned Dharam Pal and Ranbir to constructed along with the demarcated points. The witness deposes that on the day of the occurrence, he was woken up by his son who informed him that a quarrel was going on outside. He went there. He saw Karan

Singh coming out of the house holding his abdomen with one hand. He fell down opposite my house. The three accused followed him from the house. They did not scuffle or cause any injury outside. He noted blood on the head of Ram Murti and Ranbir. Karan Singh was lifted and placed on a cot by the accused persons. Pushpa, daughter of Karan Singh, is married in a different village and on the day of occurrence she was away to her in-laws' house three days prior to occurrence as her husband had come to fetch her. The Police came to the spot and took away the three accused. The witness learnt after two days that they had been involved in a murder case. He along with other members of the village went to the Police Station and contacted the SHO who informed them that whatever was destined had occurred and expressed his inability to release the accused persons.

13. In cross-examination, this witness denied that the accused persons were outside the house. In fact, they were present inside the house. About 20-30 people had collected outside the house. He admits that he was at the gate of the house when he saw Karan Singh coming out of the house. He did not see any other injury on the person of Karan Singh except on the abdomen. He did not see any injury on Mukesh and Pushpa was not present

14. DW-2, Ram Kala, states that on the eve of the occurrence he saw Karan Singh, deceased, coming out of the house with a gandala in his hand and hurling abuses while preventing his brothers from constructing the wall. The witness tried to pacify Karan Singh, but he charged towards Kartar's house. In cross-examination, he states that Karan Singh was satisfied with the share given to him but was unhappy over the distribution amongst the three brothers.

15. DW-3, Khazan Singh, deposes that he knew Karan Singh, deceased, who belonged to his village. His house is adjoining to that of Dharam Pal, Kartar etc. which is situated in the outskirts of the village. On the fateful day, he was present outside the house of Birmanand master which is opposite the house in question. He saw Karan Singh coming to the house of Dharam Pal with gandala in his hand. Karan Singh climbed up the roof of poli and started dismantling the grill etc. of the poli by means of gandala and threw the building material and the grill in the courtyard. Ranbir followed by Dharam Pal came there and asked Karan Singh as

to why he was dismantling the poli as it fell in their share. Karan Singh abused them and a verbal altercation took place amongst them. Karan Singh thereafter began further dismantling the partition wall under construction. Ranbir stopped him from doing so. Karan Singh hit Ranbir Singh with gandala. Thereafter Ranbir pushed Karan Singh who fell on the grill lying on the ground. Seeing the quarrel increasing, the witness went to the house of Ram Murti and informed him who came on the spot. Ram Murti confronted Karan Singh as to why he was quarreling, whereupon Karan Singh struck him also with a gandala blow. The witness came out from the house and saw Karan Singh coming out in an injured condition. Ram Murti was also bleeding from his head. He along with 3-4 persons went to the Police Station, Sultanpuri to apprise the Police of the correct facts.

16. In cross-examination, this witness states that Mukesh was present at the spot and had come to the spot with a knife in his hand. The dead body of Karan Singh was lying near the door inside the house in question and blood was also lying on the ground near the body. The body was picked up from there and made to lie on a cot outside the house of Lakhi Ram. The witness states that he had seen Karan Singh coming out of the house in an injured condition. He further deposes that Karan Singh had, in fact, not stepped out of the door of the house and he had fallen inside the door of the house in question. He admits that Karan Singh received only one stab wound in his abdomen.

17. From the material on record, it appears to us that the story put out by the defense as being more probable. PW-1, Pushpa, has been introduced merely to supplement the statement of Mukesh. She had been married a few months prior and is stated to have come to her parents' house one day prior to the occurrence. This does not get corroborated by any witness from her in-laws side to show that Pushpa, in fact, had been in the village on the day of the occurrence. DW-1, who is the grand-father, categorically states that Pushpa was not present in the village and that she had gone along with her husband a day prior to the occurrence. There is hardly anything to disbelieve DW-1 who is the father of the deceased as also of the accused. The trial court has adequately dealt with this witness and its reasoning in disbelieving appeals to us. The analysis need not be re-stated here. It is proved on record that a partition had been effected between the family and the

deceased had received a satisfactory share but was meddling in the share of the other three brothers who amongst themselves had no quarrel. It also appears from the evidence that Ram Murti as also Ranbir had been inflicted injuries by the deceased who came armed with gandala to the house of the accused persons in order to prevent them from constructing the partition wall on their own portion of the property. It is also in evidence that grappling took place in the house of the accused persons while the deceased was trying to dismantle the wall. It was during this grappling that the deceased caused injuries to Ram Murti and also to Ranbir. It is also in evidence that Mukesh tried to intervene by coming armed with a knife. It was accused, Dharam Pal, who snatched the knife from Mukesh and sensing the danger to himself and other members of his party, inflicted a single blow in the abdomen of the deceased. There is also evidence on record to show that it is the accused who put the deceased on the cot. In these circumstances, it would be fair to accept the plea of the accused of the right of private self-defense and the right of defense of property. The trial court, while agreeing with the defense that it had a right of private defense of person and property, has assessed the use of force as being in excess of such a right.

18. We have carefully examined the judgment under challenge and the reasoning of the learned Judge and find that the learned Judge was right in rejecting the Prosecution's version and holding that the defense version was more probable. However, having arrived at the conclusion that the defense version was more probable and holding that the deceased had gone to the house of the accused; had an altercation with the accused persons; indulged in violence and started demolishing the partition wall and caused injuries to Ram Murti and Ranbir. Dharam Pal, was well within his right to have used force in defending himself and property. However, with great respect to the learned Judge, we find his reasoning as regards use of excess force, to be not correct. It is wrong to say that there is nothing on record to establish that the deceased was going to assault any of the accused persons so as to cause their death or cause them grievous injuries. Once, we accept the defense version as being more probable, then there is material on record to show that the deceased was armed with gandala, he struck a blow on the person of Ram Murti and in this violent process also struck Ranbir. It is difficult to gauge as to what is the nature of the injuries that are likely to be

caused, or the bodily injuries that are likely to be given would be dangerous so as to cause death in that moment of violence. To require the accused to first gauge the nature of injury before protecting himself, would be adding insult to injury and doing great violence to intelligence. Rationality of action cannot be judged hypothetically. The reality of a situation must not be lost sight of nor judged in the hind sight on the touchstone of idealism.

19. There is no gauge by which the person who is being assaulted can determine the intent with which injuries are being caused by the assailant. In the heat of the moment, when the two, out of the three, have already sustained injuries which were stated to be bleeding, there is every possibility for Dharam Pal to have apprehended sufficient danger to himself justifying his taking recourse to protecting himself, that too with a knife which was brought to the spot by the son of the deceased in order to assist the attack of the assailant on the defending party. The trial court has rightly held that Dharam Pal had no intent of causing death of the deceased, but wrongly presumed that the intention was to cause bodily injury likely to cause death. There is evidence enough to show that the deceased was angry enough, well armed and opened the attack. The protective action of the accused, Dharam Pal, was justified and the single blow inflicted by snatching the weapon from the assailant was not excessive use of force in his right to self defense.

20. In the result, we acquit the appellants of the charges and allow Criminal Appeal No. 144 of 1982 while dismissing the appeal of the State being Criminal Appeal No. 84 of 1983.

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