

Taranath and ors. Vs. the State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/757846

Court : Rajasthan

Decided On : Oct-11-1973

Reported in : 1973(6)WLN736

Judge : V.P. Tyagi,; K.D. Sharma and; Dutt, JJ.

Appeal No. : D.B. Criminal Appeal No. 15 of 1971

Appellant : Taranath and ors.

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. O.C. Chatterji

Disposition : Appeal allowed

Judgement :

Dutt, J.

1. This an appeal by Tara Nath, Shivji Nath, Hansa Nath, Dhanna Nath and Basti Nath against the judgment of learned Sessions Judge Merta, dated November 30, 1970, by which Tara Nath was convicted under Sections 302, 324 and 148, I P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 100/-, in default of payment of fine to undergo further rigorous imprisonment for six months under Section 302, I.P.C. and to three years' rigorous imprisonment under Section 324, I P.C. and to two years rigorous imprisonment under Section 148, LPC. The other

four appellants were convicted under Sections 302 and 324 read with Section 149, I.P.C. and each of them was sentenced to undergo imprisonment for life and to pay a fine of Rs. 100/- in default of fine each to suffer further rigorous imprisonment for six months under Section 302 read with Section 149, I.P.C, and each of them to undergo rigorous imprisonment for one year under Section 324 read with Section 149, I.P.C. Out of these Shivji Nath, Dhanna Nath and Hansa Nath were further convicted under Section 148 IPC. and each of them was sentenced to undergo two years' rigorous imprisonment. Basti Nath was convicted under Section 147, IPC and sentenced to suffer rigorous imprisonment for one year All the sentences of imprisonment awarded to each of the appellants were, however, ordered to run concurrently.

2. The incident that led to the arrests and prosecution of the five appellants may be briefly narrated as follows.

3. On June 15, 1969, at about 1 a.m. Ganesh Ram son of Ladu Ram Gujar, resident of Goteli lodged a written report of an incident of beating with Roop Singh, Station House Officer at police station, Mondwa. It was alleged in the report that the informant and his son Ashia had brought their bullocks to a well known as 'Jhunjalawala' to make them drink water. After the bullocks had taken in water Ganesh Ram directed his son Ashia to take them back to his house. Ashia took away the bullocks with him and Ganesh Ram remained at the well. On June 14, 1969, at about 6 p.m. he heard a shout 'beat, beat' coming from the direction of a raised platform at the well. On hearing the shout, Ganesh Ram turned his eyes towards the raised platform and saw Prabhu Nath son of Mala Nath lying unconscious on it. He saw blood coming out of the head of Prabhu Nath Ganesh Ram rushed to the raised platform and saw Tara Nath appellant having a sword in his hand, with which he was going to inflict another blow on the body of Prabhu Nath. Ganesh Ram tried to catch hold of the sword with his hand in Order to prevent the assailant from causing any other injury to Prabhu Nath. But in an attempt to catch the sword he sustained a bleeding injury on his right hand thumb. Tara Nath thereupon went away from there. The other four appellants, namely, Shivji Nath, Hansa Nath, Dhanna Nath and Basti Nath who had encircled Prabhu Nath at the time when blows were struck upon his body by Tara Nath, also

disappeared from the place of occurrence. After accused had gone away from there, Prabhu Nath's wife and his son Jai Ram Nath came to the place of incident and took away Prabhu Nath injured in a bullock cart to police station, Moondwa. Ganeseh Ram also went with them.

4. On receiving the first information report of the incident, Station House Officer, Moondwa, registered a criminal case on its basis and commenced investigation. He reached the place of occurrence, inspected the site and prepared a site-inspection memo and a site-plan. He recovered blood-stained earth from the place of occurrence and some blood-stained thorns lying on the ground in the main entrance of the enclosure of Tara Nath accused. The injured was sent to Government Hospital, Moondwa for treatment and medical examination. Dr. Mangal Singh Sankhla, P.W. 10, examined the injuries of Prabhu Nath and recorded his dying declaration (Ex. P.I.). As the condition of Prabhu Nath was fasten deteriorating, Dr. Mangal Singh advised his relatives to take him to Nagaur. Prabhu Nath was taken to Government Hospital, Nagaur, wherein he was admitted as an indoor patient. He remained in the hospital for five days and eventually succumbed to his injuries on 19-6-1969. Tara Nath accused was arrested by Head Constable Mohan Singh P.W.14, on June 15, 1969, vide memo Ex P 6. After his arrest Tara Nath while being under police custody, gave Roop Singh, Station House Officer, an information that he had kept the sword on a comb in his newly constructed house and that he was prepared to get it recovered at his instance. Roop Singh, Station House Officer, recorded the above information in a memo Ex. P 16 and thereafter recovered a sword Ex. 1 along with its scabbard Ex. 2 from the place mentioned by Tara Nath in his information memo. All the articles recovered during the course of investigation were sent to the Chemical Examiner at Jaipur for analysis as they were suspected to have stains of blood on them. The reports of the Chemical Examiner and that of the Serilogist were tendered in evidence at the trial. It will not be out of place to mention that Tara Nath accused also lodged a verbal report with Roop Singh, Station House Officer at Police Station, Moondwa on the very day at about 11 pm. The verbal report was reduced into writing in the daily diary of the police station, at S No. 345. That report is Ex P, 19, on the record. Tara Nath alleged in the report that at about 9 p.m. he had seen Prabhu Nath deceased along with Jairam Nath, Gorakh Nath,

and Kesu Nath inside his enclosure. He also claimed to have seen his mother lying injured on the ground and his brother Shivji Nath having an injury on his person. As soon as Tara Nath entered into his enclosure, Prabhu Nath and his companions ran away from there. Tara Nath brought his mother and brother in a jeep-car to the police station, wherefrom they were sent for medical examination Government Hospital, Moondwa. Dr Mangi Singh examined Bnanwari and Shivji Nath and found injuries on the head of Bnanwari, mother of Tara Nath, was later on X-raved and designated to be grievous as it had caused fracture of frontal bone-left side The Station House Officer investigated into this case also, hut he did not file any challan against Jairam Nath, Gorak Nath and Kesu Nath. After conducting necessary investigation the police put up a challan against Tara Nath only in the court of Civil Judge Cum Magistrate First Class, Nagaur, but Committing Magistrate took cognizance against the other four appellants also upon complaint made to him in this behalf The learned Magistrate held an inquiry preparatory to commitment and committed all the five appellants to the court of Sessions Judge, Merta, for trial under Sections 302, 324, 148 and 147, I P.C. The learned Sessions Judge tried the appellant and convicted and sentenced each of them, as stated above.

5. Mr. O.C. Chatterji, learned Counsel for the appellants, did not seriously dispute that Prabhu Nath died of an incised injury sustained by him on his head. Dr. Mangal Singh, P.W.10, who had examined the injury of Prabhu Nath, stated in his deposition that the injury was an incised wound with muscle cat-bone ends visible-bleeding present-brain matter visible in the centre of the wound. The size of the wound, according to him, was 8' x1' x bone deep over the skull one end 1' left mid line and other and 7' right to mid line over parietal region. Duration of this injury was three to four hours preceding examination. The injury was dangerous to the life of the patient who was in a semi-conscious state having pulse beating 120 per minute, volume tension low, pupil reacting sluggishly. Dr. Sohan Lal, P.W. 12, also found this injury on the head of Prabhu Nath at the time of post-mortem examination In his opinion, death of Prabhu Nath occurred on account of shock and hasmon(sic) and paralysis of body caused by this head injury. The prosecution has, therefore, succeeded in proving beyond reasonable doubt that Prabhu Nath met a violent death on account of head injury The learned Counsel for the

appellants, however, urged that the prosecution could not account for the injuries sustained by Shivji Nath and his mother Mst. Bhanwari and, therefore, its failure raises a strong presumption that the appellants acted in the right of private defence of person. He further submitted that even if the appellants had not set-up the plea of exercise of the right of private defence of person, they could get benefit of it if such a plea was probalised by the evidence led by the prosecution. In support of his above submissions, learned Counsel for appellants invited our attention to the recovery of blood-stained thorns from the main entrance gate of the appellants' enclosure and contended on the strength of this fact that the occurrence did not take place at the well as alleged by the prosecution witnesses but it did take place inside the enclosure of the appellants near its main entrance gate. He further drew our attention to the injuries sustained by Mst. Bhanwari and Shivji Nath appellants also, which are Exs. D 9 and D. 10 on record and which, according to him, clearly reveal that Mst. Bhanwari had sustained two injuries, out of which one was on her forehead, which was, later on, found grievous upon X-ray examination and Shivji Nath had two injuries, one on his index finger and the other over flexor aspect of his left hand. Learned Counsel's main contention is that if incident occurred at the well in the manner alleged by the prosecution witnesses, Mst. Bhanwari and Shivji Nath, appellant, could not have received injuries on their bodies and blood could not have been found on the thorns lying at the main entrance gate of the appellants enclosure.

6. The learned Counsel appearing on behalf of the State, on the other hand, argued before us that there was no material on record from which it could be reasonably inferred that Mst Bhanwari and Shivji Nath, appellant, had sustained injuries on their persons in the course of the same transaction in which Prabhu Nath received a fatal blow on his head. As for the recovery of the blood-stained thorns from the main entrance gate of the appellants' enclosure, the learned Counsel for the State, gave an explanation that the bullock cart which was brought to take away Prabhu Nath injured to Government Hospital, Moondwa, from the well soon after the occurrence, was made to stand near the main entrance gate of the appellant's enclosure and when the cot of Prabhu Nath was placed on the bullock-cart, the blood coming out of the wound of Prabhu Nath trickled down and fell on thorns lying at or about the entrance gate of the appellants. According to the

submission of the learned Counsel for the State, neither the appellants had pleaded the right of private defence of person, nor could they adduce satisfactory evidence to substantiate such a plea or to show existence of such circumstance as might bring their case within the general exception specified in Section 96 of the Indian Penal Code.

7. We have given our anxious consideration to the rival contentions. At the outset it may be observed that even if the accused specifically does not plead right of private defence of person or property, the court may take cognizance of this fact, if, upon scrutiny of evidence before it, it arrives at a conclusion that the accused acted in exercise of his right of private defence. In this connection, reference may be made to an authority of the Supreme Court in *Munshi Ram v. Delhi Administration* AIR 1968 SC 702, wherein it was observed that the plea of self defence might be considered if it arose from the material on record.

8. The pertinent question that arises for determination, therefore, is whether from material on the record it can safely be held that the appellants or any one of them acted in the exercise of their right of private defence of person. The prosecution case is that the murderous assault was made by Tara Nath on the head of the deceased while other appellants encircled him to prevent him from making good his escape. If this version given out by the prosecution witnesses is taken no right of self defence could accrue to Tara Nath or any other appellant at all because, in such a case, the accused were clearly aggressors. But the prosecution evidence in the present case does not appear to us to be true and convincing. From a bare reading of the depositions of the prosecution eye witnesses, it is evident that their evidence stands discredited on crucial points by their previous statements, which they had made to the police during the course of investigation. The first eye-witness produced by the prosecution is Bhoor Nath, PW. 1. He was contradicted by portion A to B of his police statement Ex. D 2, wherein he stated the time of occurrence to be 9 p.m. In his deposition at the trial, he changed his version by stating that the incident took place at about sun-set. He could not give any reasonable explanation about this discrepancy in his two statements. He was further contradicted by his police statement Ex. 2, wherein he did not state that the five appellants were crying 'Maro Maro' (beat beat) when they had come cut of

their enclosure to attack the deceased. In his deposition at the trial he made an improvement upon his version by telling that the appellants had been raising cues e.g 'beat' 'beat'. Similarly Bhoor Nath did not say in his statement before police that he had seen four of the appellants encircling Prabhu Nath before the fatal blow was inflicted upon his head by Tara Nath. Again, he was confronted with and contradicted by his police statement, wherein he did not state that Taranath had aimed a second blow on Prabhu Nath. In his police statement this witness clearly stated that Mohan Nath, Suja Ram and Hema Ram had come to the place of occurrence for rescue of the injured and after their arrival the accused had run away from there. In his deposition before the trial court he gave a different version by stating that these three persons Hema Ram, etc. had reached the place of occurrence after the accused had disappeared from there Bhoor Nath admitted in his cross-examination that a civil suit instituted by him and others against Tara Nath appellant was pending in the court of Civil Judge, Nagaur, prior to this occurrence and that Tara Nath had lodged a complaint against him and others in the court of Civil Judge cum-Magistrate First Class, Nagaur, some time prior to this incident. The evidence of Bhoor Nath is full of material contradictions as indicated above. It appears that he had suppressed the real facts and made improvements on his initial version. No reliance can be placed upon the testimony of such a witness who has no respect for truth. Another eye-witness is P.W. 4 Chhotu Nath. His evidence also is not free from serious infirmities. This witness is related to Prabhu Nath deceased. He also was confronted with and contradicted by his previous police statement, wherein he did not state that the appellants while coming out of their enclosure were crying 'beat' 'beat' and that four of them had encircled the accused Prabhu Nath before he was beaten by Tara Nath with a sword. He further admitted in his cross-examination that he did not state in his police statement the names of the persons who were there at the well at the time of occurrence. Similarly he did not state before the police that the deceased also had abused Tara Nath and Shivji Nath. Upon careful scrutiny of his evidence, it appears to us that he had not seen the occurrence, because had he been present, he could have at least named the persons who were present at the well. The other eye-witnesses produced by the prosecution are Moti Ram, P.W. 6, Jawan Nath, P.W. 7, Keshu Nath, P.W. 9, Sugna Ram, P.W. 11, Samandra Nath, P.W. 13 and Ganesh, P.W. 19.

They had also been confronted with and contradicted by their previous statements, which they gave out before the police during the course of investigation, on all the material points on which P W. 1 Bhoor Nath and P W. 4 Chhotu Nath were discredited. They also could not give any reasonable explanation for the discrepancies and omissions appearing between their statements at the trial and their statements before the police. Curiously enough, Moti Ram, PW. 6 Samandra Nath, P W 13 and Gaaesh, P.W.19, had gone to the length of saying that Tara Nath appellant, upon being asked by the persons present at the well not to quarrel with deceased on a petty matter, gave a threat in the following words: 'You have not seen a man like me' and thereafter went away from there to come back again with his brothers. The other eye-witnesses had not said in their depositions anything about the above threat. Even Moti Ram, P.W 6, did not mention this fact in his police statement for reasons best known to him. Apart from this, the evidence of all the eye-witnesses does not explain away injuries sustained by appellant Shivji Nath and his mother Mst. Bhanwari. On the other hand, it appears, these eye-witnesses deliberately resiled from their previous police statements on the material point of time of occurrence in order to make the court believe that appellant Shivji Nath and Mst. Bhanwari had sustained injuries on their persons in the course of some other incident which took place at about 9 p.m. on the day of occurrence. It will not be out of place to mention that Tara Nath had made a report of the incident of beating to the police on the very day at about 11 p.m. in which the occurrence was alleged to have taken place at 9p.m. on 14th June, 1969. Prosecution eye-witnesses in the present case also stated in their previous statements before the police that this occurrence took place at 9 p.m. but later on in their depositions at the trial they had changed the time of occurrence by stating that the incident occurred at about sun-set. To our mind, this change had been deliberately made to show that Bhanwari and Shivji Nath appellant had received injuries on their bodies after this occurrence at about 9 p.m. Consequently, we do not feel inclined to hold that the prosecution has succeeded in proving beyond reasonable doubt that the incident took place in the manner alleged by the eye-witnesses.

9. Now we proceed to consider the version given out by the defence. Shivji Nath appellant stated in his statement under Section 302, Cr.P.C. that on that date of

occurrence his brother Chena Nath was drawing water from the well. Jairam Nath and Samandar Nath, who were also there at the well, snatched away the pitcher of his brother Ghena Nath and began to hurl abuses at him. Jairam Nath and Samandar Nath after some time went away to their house while abusing Shivji Nath and Chena Nath. After a short time Prabhu Nath accompanied by Keshu Nath, Gorakh Nath and Jairam Nath came there having armed themselves with Barchis and lathis and on seeing Shivji Nath ran after him Shivji Nath entered into his enclosure in order to save himself. His mother Mst. Bhanwari was standing inside the enclosure at that time. On seeing the assailants entering into the enclosure, she rushed to its entrance gate while crying do not beat do not beat.' Prabhu Nath resented her intervention and caused a Barchi blow to her, which fell on her head. Jairam Nath and Gorakh Nath also beat her with lathis. As a result of the beating she fell down. Shivji Nath turned back to rescue her. But he was beaten by Keshu Nath with a Barchi Shivji Nath succeeded in a snatching the Barchi from the hand of Keshu Nath and wielded it in his defence. The assailants went out of the enclosure of Shivji Nath. As Bhanwar Singh and Tola Ram had come there, they asked the assailants not to kill Shivji Nath. After short while, Tara Nath also came there on hearing the noise as he was working on the Moondwa road where construction work was going on. Tara Nath thereafter went to village Kuchera on foot brought a jeep-car from there in order to take away the injured to the police station and then to the hospital He took the injured to the police station, Moondwa and lodged a verbal first information report of this incident with Roop Singh, Station House Officer, which is Ex. P. 20. The injured were medically examined thereafter by Dr. Mangal Singh PW 10, who found the following injuries on the bodies of Shivji Nath and Mst. Bhanwari:

Shivji Nath:

1. Wound with blood clotted 5/8' x 1/8' over lateral aspect of left index finger at first inter phalangeal joint-
2. Wound with blood clotted 4/8' long over flexor aspect of left hand 4/8' below finger base.

Mst Banwari:

1. Wound with blood clotted 2 x 2/8' x 1/8' over the left side of fore-head lower end ' above eye-brow;
2. Bruise with tenderness 2' x 1' over lateral aspect of left arm upper 1/3rd region

The head injury sustained by Mst. Bhanwari was got X-rayed by Dr. Paras Ram Joshi, D.W. 1. Upon X-ray examination it was found to be grievous.

10. From the referred to above defence version, it is evident that neither Shivji Nath, nor other appellants had specifically pleaded exercise of the right of private defence of person because they did not say that fatal injury was caused to Prabhu Nath by anyone of them in self defence, but, as stated above, the appellants can get benefit of this plea if the same arises from the material on record or if there are such facts and circumstances as may tend to show that Prabhu Nath played a role of an aggressor and in the course of making an attack on Bhanwari and Shivji Nath sustained a fatal injury on his head at the entrance gate of the enclosure of the appellants and that during the course of the same incident Bhanwari and Shivji Nath also received injuries on their bodies at the hands of the deceased or his companions.

11. The first circumstance established on the record is that the investigating officer Roop Singh found blood on the thorns which were lying at the entrance gate of the enclosure of the appellants His evidence on this point is that some thorns were stained with blood and that one or two stalks also were wet with blood. Roop Singh, Station House Officer, made a note of this fact in the site-inspection memo Ex. P. 5, also which is marked A to B. The presence of blood on the thorns and stalks near about the entrance gate of the enclosure of the appellants could not reasonably be explained away on any other hypothesis than the one that the occurrence or the 'Marpeet' took place at the entrance gate of the enclosure. The explanation given out by the prosecution eye-witnesses for the presence of blood on these thorns and stalks is not convincing because no eye-witness has said that blood was oozing out from the wound of Prabhu Nath and was trickling down on the ground when his cot was placed on the bullock-cart which was lying in front of the entrance gate for being taken away to the hospital.

12. Another circumstance, which has been brought on record is that there were injuries on the bodies of Shivji Nath, appellant, and his mother Mst. Bhanwari, which have not been explained away by the prosecution. All the prosecution witnesses have denied that any injury was caused to Mst. Bhanwari or Shivji Nath during the course of incident by Prabhu Nath or any other person of his party. They did not even claim to see Mst. Bhanwari coming at the place of occurrence. It is proved by the evidence of Dr. Mangal Singh, P.W 10, and Dr. Sohan Lal, P.W.12 that the injury caused to the head of Bhanwari was a grievous wound. This injury by no stretch of imagination could be held to have been self-inflicted. Mst. Bhanwari has appeared in the witnesses box and has stated on oath that this injury was caused to her head by Prabhu Nath with a sharp-edged weapon and that another injury was inflicted on her left arm by Gorakh Nath with a lathi. As a result of these injuries, she fell on the ground and became unconscious. There is no reason to disbelieve her evidence, especially when the prosecution witnesses have not given any account for the presence of injuries on her body.

13. The third circumstance is that the prosecution eye-witnesses could not prove beyond reasonable doubt that the occurrence took place in the manner alleged by them, On the other hand, they have tried to depose falsely by making improvements on their earliest version that the occurrence took place at about sun-set and not at 9 p.m Having regard to all these facts and circumstances, we have no hesitation in holding that the incident did not take place in the manner alleged by the prosecution witnesses and that Prabhu Nath received the fatal blow on his head in the course of the same incident which took place at the entrance gate of the appellant's enclosure and in which Bhanwari and Shivji Nath had sustained injuries on their bodies. It is highly probable that when Prabhu Nath and his companions assaulted Mst Bhanwari and Shivji Nath with blunt as well as sharp edge weapons, Shivji Nath or any of his brothers including Tara Nath might have dealt a blow on the head of Prabhu Nath with a sword It is most unlikely that upon the petty quarrel which ensued between Tara Nath and Prabhu Nath over a pitcher full of water, all the five appellants had brought deadly weapons from their houses and one of them, i.e. Tara Nath struck the fatal blow on the head of Prabhu Nath with a sword after the rest had encircled him. The probabilities of the case are, therefore, in favour of the appellants. The evidence afforded by the

circumstances mentioned above cannot be lost sight of as it goes to probabalise that Prabhu Nath accompanied by Jairam Nath, Gorakh Nath and Keshu Nath had attacked Shivji Nath and Mst. Bhanwari at the entrance gate of the appellant's enclosure and that in the course of this attack he might have received the fatal injury on his head at the hands of Shivji Nath or his brother Tara Nath, who was perfectly justified, under the circumstances, to deliver a counter-attack for the safety of his mother. The injury which was inflicted on the head of Prabhu Nath in self defence was not out of proportion to the injuries caused to the persons of Mst. Banwari and Shivji Nath. Having regard to the entire evidence and the circumstances of the case, we find it difficult to hold that the charges against the appellants have been proved by the prosecution beyond reasonable doubt. The evidence of the prosecution witnesses relating to the incident does not appear to be true and reliable. The circumstances established on the record clearly show that the appellants had acted in self-defence, although they had not specifically pleaded the right of private defence.

14. For the foregoing reasons, we accept this appeal, set aside the convictions and the sentences passed against the appellants by the learned Sessions Judge, Merta and acquit them of all the offences with which they were charged. Accused-appellants Shivji Nath, Dhanna Nath. Basti Nath and Hansa Nath are on bail. They need not surrender to their bail bonds, which are hereby cancelled. Accused-appellant Tara Nath is in Jail. He shall be released forthwith, if not required in connection with some other case.