

Pala Singh Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/760853

Court : Rajasthan

Decided On : Jan-21-1997

Reported in : 1997CriLJ2797

Judge : P.C. Jain;and Mohd. Yamin, JJ.

Acts : Indian Penal Code, 1860 - Sections 34, 302, 323, 397, 449 and 452; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : DB Cr. Jail Appeal No. 266 of 1992

Appellant : Pala Singh

Respondent : State of Rajasthan

Advocate for Def. : D.R. Bohra, Public Prosecutor

Advocate for Pet/Ap. : Suresh Kumbhat, Adv.

Disposition : Appeal allowed

Judgement :

Mohd. Yamin, J.

1. Appellant Pala Singh was tried for offences under Sections 449 and 302 of I.P.C. along with Kala Singh and Mst. Bobo by Additional Sessions Judge No. 2, Sriganaganagar. Vide the judgment dated 11 -5-92. Mst. Bibo was acquitted while

Kala Singh was convicted for offence under Section 323 I.P.C. and sentenced to the period already undergone. But Pala Singh was convicted Under Section 302 I.P.C. and sentenced to life imprisonment and a fine of Rs. 500/- and in default to further undergo four months S.I. It is against this conviction and sentence that Pala Singh preferred this appeal.

2. The case of the prosecution, in nut shell, is that on 10-7-91 Smt. Channo Devi wife of Bhika Ram who was admitted in Government Hospital, Srigananagar, gave a statement to a police officer alleging that Pala Singh was her neighbour. Smt. Bibo wife of Pala Singh used to abuse her. On 10-7-91 Smt. Bibo had a quarrel with Channo Devi, therefore, the terms were inimical. Bhikaram, the husband of Channo Devi, returned after work in the evening and took a bath. A coat was placed on the roof of the room and Smt. Channo Devi and her husband were sitting there at about 9 or 9.30 p.m. Kishanlal, Balo Bai and Rukma were also present. At that time Pala Singh came infront of their house and abused Smt. Channo Devi. He threatened that Channo Devi will be killed as she had abused. The persons who were present, came down-stairs. Bhikaram requested Pala Singh not to abuse. Then Pala Singh, Bibo and Kala Singh entered into the house of Channo Devi. Pala Singh was armed with a Gandasi. He inflicted a Gandasi blow on Bhikaram saying that he may be killed today. Bhikaram fell down as blood had started coming from his head. Pala Singh also gave beatings to Bhikaram with sticks. Bibo gave beatings to Smt. Channo Devi. It were Kishanlal and Balo Bai who intervened. Bal Bai also suffered some injuries. Kishanlal called Inder Raj from Dhani. By that time Bhikaram had become unconscious. Inder Raj and Kishanlal took Bhikaram to Government Hospital, Srigananagar. By that time Bhikaram died.

3. The FIR No. 63/91 was registered under Sections 452, 302, 397/34 I.P.C. at Police Station Matili Rathan Distt. Srigananagar. During the investigation postmortem of Bhikaram was conducted by PW-4 Dr. K.N. Markandey. Site plan Ex. P/8 was prepared which shows that abuses were hurled at place 'A' which is infront of the house of Smt. Channo Devi. It is also the place where occurrence took place. Blood smeared soil as well as control soil was seized from the place of occurrence. Blood stained shirt of Bhikaram was also seized. Accused appellant

was arrested on 11 -7-91. On 14-7-91 he gave an information that he would get the Gandasi recovered. It was recorded as Ex. P/18. Gandasi was recovered at his instance vide Ex. P/19 on 15-7-91. It had some blood stains. After due investigation challan was presented and the appellant was committed to the learned Sessions Judge along with co-accused persons. He was tried for offences under Section 449 and 302 I.P.C. Learned Sessions Judge acquitted him of the charge for offence under Section 449 I.P.C. but convicted for offence Under Section 302 I.P.C. for murder of Bhikaram and sentenced as stated above.

4. We have heard the learned amicus curiae as well as learned Public Prosecutor at length.

5. The main thrust of the learned amicus curiae during the course of arguments has been that the prosecution has not been able to prove that the accused appellant inflicted Gandasi blow to Bhikaram. He has submitted in the alternative that if it was inflicted it was so done in self defence because the incident took place at the common passage at place 'A' and not in the house of Bhikaram as alleged by the prosecution. He also submitted that the accused appellant suffered serious injuries which were examined by PW-4 Dr. K.N. Markandey and mentioned in Ex. D/3. He has, therefore, submitted that when the appellant was attacked by Bhikaram and suffered two serious injuries on his head, he might have attacked on Bhikaram in self defence of person. Relying on *Asraf v. State of Rajasthan* 1995 SCC 291, AIR 1973 SC 473 : (1973 Cri LJ 677) *Deo Narain v. State of UP* and AIR 1971 SC 1208 : (1971 Cri LJ 1057) *Dominic Varkey v. State of Kerala*, he has submitted that the appellant deserves acquittal.

6. On the other hand, learned Public Prosecutor has supported the judgment of conviction and sentence of the appellant.

7. The first question is whether the death of Bhikaram was homicidal? PW-4 Dr. K.N. Markandev has stated that he conducted the postmortem of the dead body of Bhikaram on 10-7-91. He found an incised wound 3' x ' ' underlying bone cut on fronto parietal region near mid line. The wound was on right frontal region just near the mid line. On opening it was found that there were fractures of frontal bone, parietal bone and bone of skull in middle. The cause of death was intra cranial

injury. It was sufficient in ordinary course of nature to cause death. He prepared Ex. P/3 postmortem report. From his evidence it is well proved that the death of Bhikaram occurred due to the injury on his head.

8. The question arises, who inflicted this injury? PW-1 Kishanlal and PW-2 Mst. Channo Devi have deposed that Pala Singh came near the house of the complainant party and abused Channo Devi, then Bhikaram objected to it. Pala Singh went away. He again came after 5 or 7 minutes along with two other assailants and had a Gandasi in his hand. He inflicted Gandasi blow on the head of Bhikaram. The memo of site plan Ex. D/2 was put to Kishanlal during his cross-examination and it shows that the occurrence took place at place 'A' in the site plan which is outside the house of complainant party. This witness Kishanlal has tried to hide the fact of causing injuries which were found on the body of Pala Singh. Arrest memo of Pala Singh Ex. P/15 mentions that Pala Singh had injuries on his person especially on his head. On 11-7-91 Pala Singh appellant was also examined by Dr. K.N. Markandey, PW-4, who found injuries mentioned in Ex. D/3 on the person of Pala Singh. They are as follows :-

- (1) Lacerated wound 2' x 1/5' scalp deep over the head.
- (2) Lacerated wound 1' x 1/5' x scalp deep on left parietal region.
- (3) Contusion 4' x 1' on the right side of back.
- (4) Abrasion (2) in number 1' x ' and ' x ' on the back of left scapular.
- (5) Abrasion 1' x ' on left thigh.

9. It was suggested to Kishanlal in cross-examination that since ladies had quarrelled in the morning, the complainant party went to the house ' of Pala Singh and abused him and when Pala Singh came out of his house to the place of occurrence, Bhikaram attacked on him with a lathi and the other persons of the complainant party also attacked on him and then Pala Singh inflicted a Gandasi blow on the person of Bhikaram to protect himself. PW-9 Balo Bai is herself an injured eye-witness who has stated that it was Pala Singh who inflicted Gandasi blow on the head of Bhikaram. According to her Brijlal and Chhotu were also

present but the prosecution has not produced them. She was also suggested during cross-examination that the complainant party went to the house of Pala Singh from the back varandah to kill him. Thus from the statements of these witnesses it is well proved that it was Pala Singh who inflicted Gandasi blow on the head of Bhikaram. The defence version of the story was also put to them. During his statement Under Section 313 Cr.P.C., Pala Singh admitted that he inflicted a Gandasi blow on Bhikaram but according to him it was in the right of private defence as Bhikaram had inflicted lathi blows on his person while abusing him outside the house. It is well proved that the prosecution has been able to prove that it was Pala Singh who inflicted Gandasi blow on the person of Bhikaram.

10. Gandasi was recovered on the basis of information given by the accused appellant. PW-9 Udaram motbir proves it. Now the question remains whether the accused appellant inflicted Gandasi blow to Bhikaram which caused his death in private defence of his person?

11. Right from the beginning it was so suggested to the witnesses of the prosecution. Accused appellant had injuries on his head even when he was arrested on 11-7-91 and the injuries are of such a nature that they cannot be self suffered. We have already stated the details of the injuries of accused appellant Pala Singh PW-4 Dr. K.N. Markandey had examined him on 11-7-91 and has stated specifically that the injuries were of the duration of within 2-3 days that comes to the same time when the occurrence took place. Injury No. 1 of the accused appellant i.e. lacerated wound on the head had developed infection as it was having pus. Therefore, it is possible that the accused appellant suffered injuries during the incident.

12. It has been submitted on behalf of the defence that the place of occurrence has been changed by the prosecution during the trial and the benefit should go to the accused appellant. We have considered it. There is no doubt about it with the allegation that the incident took place inside the house of the complainant party but the presence of blood at place 'A' in site plan proves that the occurrence took place at that place. The place is in front of the house of complainant party which is at quite a distance from the house of Pala Singh. So the incident had taken place

at place 'A' which is the northern corner of the house of the complainant party.

13. The material question remains whether the appellant assaulted Bhikaram in private defence of his person. As stated above it was suggested to Kishanlal PW-1, who is an eye-witness, during the cross-examination that Pala Singh came out from his house when Bhikaram, Channo and Balo abused Pala Singh. It was also suggested that when Pala Singh came out from his house, Bhikaram inflicted lathi blows on him and cause many injuries and then Pala Singh inflicted Gandasi blow on Bhikaram in private defence of his person. This witness also denied the fact that Pala Singh suffered any injury. It hardly matters because the fact is that Pala Singh had as many as five injuries on his person when he was arrested on 11-7-91 and when he was examined by Dr. K.N. Markandey on the same day at 6.30 p.m. injury. No. 1 had pus. So firstly, PW-1 does not admit the injuries on the person of accused appellant. As such prosecution does not explain them. However, accused appellant himself stated in his statement Under Section 313 Cr.P.C. the circumstances in which he inflicted Gandasi blow on the person of Bhikaram in order to defend his person.

14. PW-2 Channo Devi was also suggested that Bhikaram inflicted lathi blows on the person of appellant when she along with her husband, husband's brother and sister went to quarrel with Pala Singh. She was also suggested that Pala Singh inflicted one blow in his self defence. So the case of the accused appellant, right from the beginning, was put to the prosecution witnesses. They are not admitting it and the prosecution is not explaining as to how the accused appellant suffered injuries which are not self inflicted. The injuries on the head of appellant could be caused only when somebody would inflict them by blunt weapon. The two injuries on the head of the appellant suggest that he was attacked and the injuries were caused by deceased Bhikaram. When the situation is such that two serious injuries on the head of accused appellant were first inflicted by deceased Bhikaram, appellant was justified to protect his person. He, therefore, caused blow with Gandasi on the head of Bhikaram in order to defend himself. Accused appellant was faced with imminent peril of life and was not expected to weigh in golden scales, the precise force needed to repeal the danger. The aforesaid view is fortified by *Asraf v. State of Raj* (supra).

15. It is well settled that the question of exceeding the right of self defence is entirely a question of fact to be decided according to the circumstances of each case AIR 1971 SC 1208 (supra). In Deo Narain v. State of UP (supra) the Apex Court had expressed that for exercising the right of private defence, it is not necessary that, the party exercising it. must have actually received some injuries at the hands of aggressor. It is a preventive and not punitive right.

16. In view of abovs discussion, we hold that the accused appellant exercised his right of private defence anil, therefore, viewed from this angle the. appellant cannot be convicted for offences Under Section 302 I.P.C.

17. Consequently, the appeal succeeds. The conviction and sentence awarded to the accused appellant, by the trial Court is set aside. Appellant Pala Singh is acquitted of the charge Under Section 302 I.P.C. He is in custody and shall be released forthwith if not required in any other case.