

Bhadar Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-05-1999

Reported in : 2000CriLJ1174

Judge : Mohd. Yamin, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 99, 100, 307, 324 and 326;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 400 of 1983

Appellant : Bhadar Ram

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : Vijay Bishnoi, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Mohd. Yamin, J.

1. Appellant Bhadar Ram has been convicted under Section 326, IPC by learned Sessions Judge, Sriganganagar in Sessions Case No. 28/83 for a period of three

years rigorous imprisonment with a fine of Rs. 100/- and in default of payment of fine to undergo rigorous imprisonment for three months. Appellant was tried for offence under Section 307, IPC as well.

2. The facts in brief are that on 24-3-1983 at 9.00-10.00 P.M. Nand Ram went to out-skirts of village Mammur to defecate. House of Meera is situated nearby. Mohan, Bhadar and Bholia were found present there out of whom Mohan and Bhadar were armed with gandasi and Bholia was armed with a sela. After seeing Nand Ram, Mohan Ram cried that Nand Ram had come and he should be done away with Nand Ram then cried and his wife Smt. Niko, mother Smt. Narayani, sister Reshma and brother Gyani Ram came immediately. Then Bhadar Ram appellant inflicted gandasi blow on the head of Nand Ram. Nand Ram fell down. It was further alleged that Bhatia injured Nand Ram by sela. It is further alleged that Nand Ram's brother Gyana Ram and accused Mohan Ram had a dispute about some land and Nand Ram used to help him, therefore, Mohan Ram and Nand Ram had enmity with him. Nand Ram was taken away by Gyani Ram, Narayani and Reshma to the house of Gyani Ram from where he was taken in he morning to hospital of Sriganganagar. On 25-3-1983 the injured was examined by Dr. Rajendra Kumar Gupta and he found four injuries on his person. On 25-3-1983 Gyani Ram went to police station Chunawad at 1.00 P.M. and reported the matter vide Ex. P/7. Sukh Dev Singh, Head Constable, went to hospital Sriganganagar but Nand Ram was found in unconscious condition. Hence his statement could not be recorded that day. He went to the site and prepared site plan Ex. P/8 alongwith memo Ex. P/8-A. Blood was found on the spot. He seized blood smeared soil as well as control soil. He recorded statements of other witnesses and seized clothes vide Ex. P/11, Ex. P/12, Ex. P/13 and Ex. P/14. Investigation was handed over to Bhajan Singh who recorded statement of Nand Ram on 1-4-1983. He also seized shirt and turban of Nand Ram which were drenched with blood. They were sealed. Appellant as well as co-accused persons were arrested. On disclosure statement made by appellant Bhadar Ram a gandasi was recovered vide Ex. P/23. After investigation, challan was submitted before the Magistrate having jurisdiction who committed the case to the learned Sessions Judge.

3. Learned Sessions Judge framed charges under Sections 307/326, 324/34, IPC against the appellant who denied his indictment and claimed trial. The other two co-accused persons were also tried by learned Sessions Judge. They are Mohan Ram and Bholia but they have been acquitted. Prosecution examined as many as nine witnesses in support of its case. Appellant was examined under Section 313, Cr.P.C. He produced Mohra DW-1 as a witness in defence. Learned Sessions Judge, after hearing both the parties, convicted and sentenced the appellant as stated above.

4. I have heard the learned counsel for the appellant as well as learned Public Prosecutor at length.

5. Learned counsel for the appellant submitted that the learned Sessions Judge accepted the theory of defence and even then convicted the appellant. He submitted that the appellant has been falsely implicated and deserves acquittal.

6. Learned Public Prosecutor agreed that in case defence of the accused is accepted, the appellant has to be acquitted. However, with their help, I have gone through the entire evidence on record.

7. PW-1 Narayani stated that Nand Ram was her son and she lived in front of the house of Gyani Ram who is her another son. She heard noise in the night from the side of the house of Roopa. It was Nand Ram who was crying. She came out and saw that appellant was assaulting Nand Ram. Then Nand Ram was brought to her house and thereafter taken to Ganganagar hospital. She admitted in cross-examination that Nand Ram was not assaulted before her and when she reached she found that Nand Ram had already suffered an injury so she cannot be relied as an eye-witness of the occurrence.

8. PW-4 Nand Ram is the person injured himself who stated that Gyana Ram and Mohan Ram had a dispute because of land and he was helping Gyana Ram who is his brother, therefore, Mohan Ram nurtured enmity with him. He went to defecate himself at about 8-9 P.M. about 20 paces away from his house. He reached near the house of Meera where he was assaulted by gandas by appellant Bhadar Ram who inflicted injury on his head. He thereupon fell down and became

unconscious. This according to him was done in front of his wife Smt. Niko. He was suggested in cross-examination in very clear terms that he went to the house of Smt. Meera who is the widow sister-in-law of Bhadar and caught hold of her and when she cried, appellant in order to save her, assaulted him. His wife Smt. Niko has not been produced in witness box. However, Reshmi who is his sister was present in the village that night. She stated that on hearing cries. Bhagwanti, Narayani and she herself went at the site and Nand Ram was assaulted before her. She is the real sister of the injured to whom it was suggested that she had not seen the occurrence as she had come with her mother and her mother has stated that she did not see the occurrence. But she said that when Nand Ram was assaulted she was at 2-4 paces away from the place of incident and was beholding it. She was also suggested that Nand Ram trespassed in the house of Smt, Mera, caught hold of her and appellant assaulted Nand Ram in defence of this incident. In the circumstances when she accompanied Smt. Narayani who has stated that when she reached Nand Ram had already suffered injuries by assault, it can very safely be inferred that she had not seen the occurrence.

9. PW-6 Gyani Ram stated that Nand Ram made hue and cry. He came out and found that Bhadar inflicted a gandas blow on his head before him. This witness made hue and cry and then appellant and the co-accused persons went back. It was he who reported the matter to the police. The FIR is Ex. P/7. The police came and inspected the site, prepared Ex. P/8 site plan and memo Ex. P/8-A which I will discuss later on. This witness was cross-examined at length. He maintained that his brother Nand Ram was assaulted by appellant before him. But he denied the suggestion that Nand Ram entered into the house of Smt. Meera, tried to catch hold of her and the appellant, in order to save her honour, inflicted injury on the head of Nand Ram. Strangely this witness did not state in the FIR that as soon as head injury was caused to Nand Ram, Nand Ram became unconscious. He was asked a definite question that he did not see the incident but he maintained that he did see. If it is accepted that he had seen then he has to tell all the details, but he is not able to do so. He admitted that only one injury was caused to Nand Ram when he was standing and all other injuries were inflicted when he fell down. The other witnesses have not deposed. So this witness Gyani Ram is not a fully reliable witness. No other eye-witness has been produced on behalf of

prosecution.

10. It was contended by learned Public Prosecutor that mere relationship between injured and witnesses cannot be a ground to discard their evidence. He is right because in *State of Rajasthan v. Smt. Kalki* AIR 1991 SC 1390 : 1981 Cri LJ 1012, it has been held that 'related' is not equivalent to 'interested' and an interested witness may be one who derives some benefit from the result of a litigation. A witness who is natural one and is the only possible eye-witness in the circumstances of a case cannot be said to be 'interested'. In this case mere relationship would not be sufficient to discard the evidence of these three witnesses i.e. PW-1 Narayani, PW-5 Reshrni and PW-6 Gyani Ram. But. their evidence has to be read with very great care and caution. I have done so while reappreciating the evidence and it can very well be said that they were the witnesses who reached after the injured Nand Ram was assaulted.

11. So far as nature of injury on the head of Nand Ram is concerned, it is PW-3 Dr. Rajendra Kumar Gupta who deposed that it was an incised wound of 2-3/4' x 1/4' x bone deep from left frontal region to right frontal region caused by sharp weapon and was grievous. X-Ray examination was done by PW-2 Dr. Kailash Nath Markandey who found fracture of both parietal bones. Thus the injury was grievous as found by learned Sessions Judge as well.

12. It was PW-7 Sukh Dev Singh who started investigation, went to the site and prepared Ex. P/8 site plan together with memo Ex. P/8-A, PW-8 Lal Chand is an attesting witness of site plan. It was submitted by learned Public Prosecutor that in case a hue and cry is made from the house of Mohra, it was not possible for the inmates of the adjacent house to hear her cries. From the site plan Ex. P/8,1 find that No. 3 is the house of Mohra. It is situated at such a place from where if the cries are made, accused appellant could have come to save Mst. Mohra, Place shown by No. 1 is the house of Nand Ram, No. 2 is the house of Roop Ram (father of the appellant). According to the site plan 'A' is the place where occurrence took place. It is very near to the house of Mst. Mohra who is the widow bhabhi of accused appellant.

13. The Investigating Officer PW-7 Sukh Dev Singh was suggested that Smt. Mohra Devi told during the investigation that appellant entered into her house in the night and caught hold of her and when she made hue and cry Bhadar came and saved her. So right from the very beginning the case of the appellant was that he assaulted Nand Ram in order to save honour of Smt. Mohra who is his widow sister-in-law.

14. The story of recovery of gandasī at the instance of appellant is of no use to the prosecution as the gandasī did not have stains of blood.

15. Accused appellant admitted even under Section 313, Cr.P.C. that about 10-11 P.M. his sister-in-law Mohra cried to save her. He rushed to her house and found that the door of her house was opened and appellant was grappling with her. The appellant assaulted Nand Ram and inflicted gandasī blow which he had taken when going to the house of Mohra. Then Nand Ram ran away from where. Smt. Mohra was examined in defence by the appellant. She stated that she was asleep in the courtyard of her house. It has small boundary wall. At about 10-11 P.M. Nand Ram grappled her body, she woke up and started crying. Then Bhadar Ram, whose house is adjacent, came armed with a gandasī, Nand Ram left her. He was chased by Bhadar Ram and two injuries were inflicted by Bhadar Ram on Nand Ram in front of her. She admitted that Nand Ram was a married person and it was submitted by the prosecution that Nand Ram, being a married man, could not have indulged in this activity. He is not right. Nand Ram as told by him as PW-4 is aged about 40 years. Mohra is a widow aged about 30-35 years and it was possible that Nand Ram could have gone there in order to outrage her modesty for attempt to commit rape. It is not always correct to say that a married man could not indulge in such activity. She stated that blood was found outside her house when police came in the morning. She stated that her father-in-law is a blind man and she told the story of her woe to the Sarpanch named as Girdhari. No report could be lodged because her father-in-law was a blind man and the Sarpanch did not help her. Ordinarily Mohra who is a widow lady would not involve her honour in order to save appellant in case defence was not true. The learned Sessions Judge did consider the defence but was of the view that since right of defence was a right subject to restrictions indicated in Section 99 of IPC and one

of the conditions is that harm indicated in self defence must be no more than is legitimately necessary for the purpose of defence and since the appellant exceeded his right, he was punished. Learned Sessions Judge relied on AIR 1974 SC 1550 : 1974 Cri LJ 1015, Onkarnath Singh v. The State of U.P., the facts of which were completely different than the facts of the present case. In that case on the day of occurrence when Deep Narain returned home Girja Singh complained to him how Onkarnath had beaten him without any rhyme and reason. Deep Narain Singh assured him that he would censure and correct Onkarnath. When Jagdish Narain reached home Deep Narain told him how Onkamaih had beaten Girja Singh at about noon. Thereafter the two brothers Narain and Deep Narain proceeded together to their cotton field. When they were coming back from the field, they met Onkarnath and Chhabi Nath. Deep Narain asked Onkarnath as to why he had beaten Girja Singh. Onkarnath insolently replied that he had done so that he would repeat the feat and would see what Deep Narain could do. A scuffle ensued. Both the parties then proceeded to their respective houses. The deceased and his brother had hardly gone 70-80 paces and reached near the Darwza of Hanuman Prasad, when all the five appellants and Amar Nath Singh came there in a body and surrounded them. Chhabi Nath attempted gandasas on the head of Jagdish Narain which the latter warded off on his hands. Vijai Bahadur Singh snatched away the gadasa from Chhabi Nath. The assailants then ran away leaving Deep Narain and Jagdish Narain injured at the spot. The facts in the citation relied by the learned Sessions Judge were quite different. But the principle laid down is that the harm indicated in self defence must be no more than is legitimately necessary for the purpose of defence and the right is contemporaneous with the commencement and existence of a reasonable apprehension of danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real, present and imminent.

16. Applying this principle itself in this case, I find that there was a real danger to the body of Mohra who at the dead hour of night was grappled by Nand Ram in order to outrage her modesty for committing rape. She is a widow lady, nobody to help as her father-in-law was a blind man. She came later on, made complaints to Sarpanch about the incident who did not pay any heed. It was appellant who after hearing her noise and whose duty as her deceased husband's younger brother

was to save her, came after hearing her hue and cry. He was a young boy of 23-24 years of age. He saved her from the clutches of Nand Ram and assaulted him with gandasi when he was running. It cannot be said that it was done in excess of right as a right of reprisal for punishment. Appellant saw Nand Ram grappling with his widow sister-in-law, was enraged because of grave and sudden provocation. He came prepared having a gandasi in his hand when he heard hue and cry of his sister-in-law at the time of dead hour of night on his part. Had he a firearm with himself he could have come with a firearm and could have shot at Nand Ram seeing that Nand Ram was grappling with his widow sister-in-law at that dead hour of night. To say that it was not in a right exercised in defence then what else could be. Section 100 of IPC gives a right of private defence of the body to the extent of causing death when an assault is made with an intention of committing rape. Accused appellant had seen Nand Ram grappling with his sister-in-law and he has probalised the defence. I am of the view that he had a right of private defence in assaulting Nand Ram. Reference may be made to Salikram v. State, (1990) 1 Crimes 630 (Madh Pra). In this case accused was entitled to right of private defence under Section 100 (thirdly) IPC and consequently entitled for acquittal.

17. In the result, the appeal is allowed. Conviction of the appellant under Section 326, I.P.C. is set aside and he is acquitted. His bail bonds are cancelled.