

Mahendra Kumar and ors. Vs. State

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Court : Rajasthan

Decided On : Jan-08-2010

Judge : N.P. Gupta and; C.M Totla, JJ.

Appellant : Mahendra Kumar and ors.

Respondent : State

Disposition : Appeal allowed

Judgement :

N.P. Gupta, J.

1. The three appellants Mahendra Kumar, Brij Lal and Rai Singh seek to challenge the judgment of the learned Sessions Judge, Sriganaganagar dated 15.7.1986 passed in Sessions Case No. 89/85 convicting each of them for the offences under Section 302, 302 read with Section 34, 323, 323 read with Section 34 IPC and sentencing each of them for the offence under Section 302 with imprisonment for life, also sentencing each of them for the offence under Section 302/34 IPC for imprisonment for life and under Section 323 sentencing to 6 months' rigorous imprisonment and under Section 323/34 also sentencing to 6 months' rigorous imprisonment. All substantive sentences were ordered to run concurrently.

2. The brief facts are, that one Balram P.W. 5 lodged a First Information Report on 12.11.1985 at 11.30 in the night at Police Station Sadulshahar being Ex. P/9, to

the effect, that their agricultural land is situated in Chak 27 MJD Rohi Chapawali and near that is the land of their father's elder brother Sheochand. It is alleged that a government way and water course passes through the informant's land, while according to the Murabbabandi the way and water course should pass through the land of Sheochand, on that count there was enmity between the parties. With this it is alleged that on that day, he along with his brother Madan Lal and Hari Ram had returned after irrigating their fields, and after taking dinner the informant was going to the house of Mohan Lal, who happens to be informant's uncle, through the street, which street passes through front of house of Sheochand, at that time outside the house of Sheochand, the three accused persons, being sons of Sheochand were standing there at about 8 P.M., Mahendra was armed with Kassiya, while Rai Singh and Brij Lal were having Lathis. Seeing the informant all the three challenged that the informant troubles them day in and day out on the ground of way and water course, and therefore he would not be spared today. He was stopped from proceeding ahead, Brij Lal inflicted a Lathi blow, which landed on his left ear, Rai Singh inflicted another Lathi blow, which landed near his left eye. Then Mahendra inflicted Kassi blow, which hit his left lip, whereupon he raised a cry, which attracted his brothers Hari Ram and Madan Lal. It is then alleged that Mahendra with intention to kill Hari Ram inflicted a Kassi blow on his head, and simultaneously Rai Singh and Brij Lal also inflicted Lathi blows on the head of Hari Ram, as a result of which Hari Ram fell down. After falling, Mahendra inflicted yet another Kassi blow, and Brij Lal inflicted Lathi blow, on the head of Hari Ram. The cry attracted their father Mani Ram also, on whose challenge, the accused persons ran away. Hari Ram's injuries were bleeding, and he had become unconscious. Thereafter he was put on a cot, and in a tractor carried to Sadulshahar hospital, and after leaving the injured at hospital, he has come to lodge the report. In the night, Hari Ram died, therefore, the case registered on the report for offences under Section 307 and 341/34 was converted into one under Section 302 also. The injuries of Balram were examined, the post mortem examination of Hari Ram was got conducted, site was inspected, and after completing necessary investigation challan was filed against the three accused persons in the Court of learned Upper Munsiff and Judicial Magistrate, Sriganaganagar, where-from the case was committed. The learned trial Court

framed charges under Section 302 and 302/34, so also for the offence under Section 323 and 323/34 IPC. The accused persons obviously denied the charges.

3. In trial the prosecution examined 7 witnesses, and tendered in evidence 24 documents, while the accused persons in their statement under Section 313 stated, that there is enmity between the parties on the ground of way and water course, on which count Balram and Hari Ram entered their house and gave beating, and a false story has been cooked up. It was also given out, that the day of incident was Diwali, at about 7.30 in the evening Mahendra had gone to the house of Rajendra and Mahendra son of Sahi Ram, while Brij Lal and Rai Singh had gone to the other house received from their maternal grandfather, for lighting Diwali lamps. At about 8 PM Balram and Hari Ram came to their house, entered the Angan duly armed with Lathis, were under the influence of alcohol, and started hurling abuses, they were asked to desist by the mother of the accused persons, being Tulsi, whereupon Balram inflicted injury on the head of Tulsi, who fell down. Accused Mahendra, who was in the house, intervened. Then Balram and Hari Ram inflicted injuries on his head also. Thereupon Mahendra picked up Lathi available in the house and exercising the right of private defence of himself and his mother, he started inflicting injuries on Balram and Hari Ram. Then Balram and Hari Ram went out along with Lathis, Hari Ram fell down. Then he was taken away along with Lathi. It was at about quarter past 8, that Rajendra came, to whom the entire episode was narrated, Rajendra arranged for tractor trolley and carried Mahendra and Tulsi along with Prithvi son of Sahi Ram, another Prithvi son of Dakar Ram to Sadulshahar, and when they reached near Railway crossing, the SHO along with Balram's party met them, and they were taken to police station, their mother, another Prithvi and Hari Ram were taken to hospital. When the incident was narrated to police people, they did not lend any ear, rather at about 3 PM, except Mahendra other persons were left away and from the village, they apprehended Balram (sic Brij Lal) and Rai Singh, and false case has been prepared. In defence the accused persons examined Tulsi, their mother as D.W.1, and also tendered in evidence three documents, being Ex.D/1 to D/3. After completing the trial, the learned trial Court convicted and sentenced the accused persons as above.

4. Assailing the impugned judgment, learned Counsel for the appellant submitted, that the entire prosecution case is full of doubts, rather is a concocted story, sought to be supported by distorted evidence. In the first place it was submitted, that of course there is enmity between the parties on the ground of way and water course, but then, since the water course is already passing through the field of the victim party and it is the victim party, who desires that the way and water course should pass through the field of accused persons, it cannot be said that this enmity could provide any motive to the accused persons to commit the incident. In the next place it is submitted that the evidence of two eye-witnesses being P.W.5 and P.W.6 Balram and Madan Lal cannot be believed, for the reason, that their evidence does not tally with the medical evidence in regard to the number and location of injuries, and the discrepancy appearing has a material bearing on the controversy, inasmuch as, according to both the witnesses more than one injury is caused by the accused Mahendra with Kassi on the head of Hari Ram, while there is only one sharp edged injury on the head of Hari Ram, which too is simple one, and if read with the evidence of P.W. 1 Dr. Somprakash, it was injury No. 1 only which was fatal, while that injury No. 1 is a lacerated wound, and in all also there is only one sharp edged injury even on the person of the deceased, as such, apart from the fact that their evidence cannot be believed, it cannot be said with any certainty, as to how injury No. 1 was received by the deceased Hari Ram. Another submission made is, that as is clear from the evidence of P.W. 1 and 7, that accused appellant Mahendra and his mother Tulsi had also received injuries as noticed in Ex. D/2 and D/1 respectively, and which were received in the same incident. P.W. 1 has proved the reports Ex. D/1 and D/2 and has given the duration of injuries, while P.W. 7 has clearly stated, that these injuries were received by the victims, Mahendra and Tulsi in the same incident, as against which the prosecution party has clearly denied any injuries having been received by these two persons, so much so that the two eye-witnesses P.W. 5 and 6 have gone to the extent of stating that they did not see Tulsi there. Thus, the origin of the incident has not been correctly projected by the prosecution, and it probablises the incident to have occurred in the manner as suggested by the defence, and substantiated by the evidence of D.W. 1 Tulsi. The next submission made is, that a combined reading of Ex. P/9 and the statement of P.W. 5 Balram would show,

that they are making attempts to shift the place of incident, inasmuch as, a reading of Ex. P/9 shows, that the informant means to convey that the incident occurred outside the house of the accused persons, where they were standing, while on the other hand according to P.W. 5 the incident is described to have occurred outside the House of Nandram, which is at a distance. Obviously there is nothing to show, that the accused persons had any information or knowledge about the victims likely to come at that place, so as to be standing duly armed with weapons, waiting for them to commit the incident. With this it was also submitted, that as is clear from post mortem report Ex. P/1 and the statement of the doctor P.W. 1 that there was alcohol smelling out from the stomach of deceased Hari Ram, while according to P.W. 5 immediately on receiving injury, Hari Ram became unconscious, and on suggestion of the persons gathered there the deceased was administered one cup of liquor, while according to P.W. 6 Madan Lal, the deceased was administered a glass of water, which is categorically denied by P.W. 5, and it is required to be comprehended, that a person lying unconscious cannot be made to consume alcohol, so as to allow it to travel upto the stomach. This aspect has been highlighted to contend, that this probablises the defence's version, about the two persons having come to their house under influence of alcohol, and to have committed the incident. It was also submitted that Mani Ram, who was the father of the victims, who is also said to have come, and on whose arrivals, the accused persons went away, has not been examined by the prosecution in the Court, though according to P.W. 7, the I.O., his statements were recorded during investigation. In substance, it was sought to be contended, that the incident was covered by the right of private defence of the accused Mahendra and his mother Tulsi. Thus, no offence is made out.

5. On the other hand, learned Public Prosecutor supported the impugned judgment, by placing implicit reliance on the evidence of eye-witnesses P.W. 5 and 6, out of which P.W. 5 is the injured eye-witness. It was also submitted, that there was motive to commit the incident. Then the story propounded by the defence was criticised, by contending, that it cannot be believed, that they met the SHO on the way to Sadulshahar and the SHO declined to receive the report, as the copy of the report produced by the defence as Ex. D/3, shows that a private complaint was lodged as late as on 22nd November 1985, while if the things were as alleged, the

private complaint would have been filed immediately, and not after more than a week.

6. We have heard learned Counsel, have considered the submissions and have gone through the record.

7. To start with it may be observed here, that as appears from the record, that the parties are close relations, inasmuch as, the three accused persons are brothers, being sons of Sheochand, while the victim Balram and Hari Ram so also the witness Madan Lal are also real brothers, being sons of Mani Ram. It has also come on record that Mani Ram and Sheochand, the fathers of two sides are the real brothers, whose wives are also real sisters. Thus, both the parties are very closely related to each other. It has also come in the evidence of D.W. 1 Tulsi, that her father had bequeathed all his property to Tulsi only. Then P.W. 5 Balram has also admitted that the name of the mother of the accused persons is Tulsi, and her father is Het Ram, whose house is in their village itself and that Het Ram had bequeathed all his property to Tulsi and died some 3-4 years ago. He has also admitted that the land and house of Het Ram are in possession of the accused persons, which is at a distance of about 200 paces. We simply rest at mentioning this only.

8. Coming to the merits of the matter, since the case rests on the evidence of the two witnesses, P.W. 5 and P.W. 6, who have come up as eye-witnesses, and out of them P.W. 5 is injured witness, we would better like to examine their evidence, ofcourse in conjunction with the other material available on record, including the evidence of Doctor P.W. 1, the post mortem report Ex. P/1, and the statement of the I.O. P.W. 7, and the injury reports of accused Mahendra and Tulsi Ex. D/2 and D/1 respectively.

9. According to P.W. 5 Balram, who has lodged the report, he has deposed in line with the FIR, however, he has stated that he was going to the house of his uncle Mohan Lal and when he reached near the house of Nandram Pandit, there, the three accused persons were standing armed with Kassiya and Lathi and when the witness wanted to go away, the three persons challenged him, that day in and day out he troubles them on the ground of way and water course, therefore, he would

not be spared. With this, he was encircled, whereupon he raised a cry, then Brij Lal, coming in his front inflicted lathi blow on his left ear, Rai Singh inflicted lathi blow near his eye, Mahendra aimed a Kassiya blow, which was attempted to be prevented by him by raising hand and, therefore, it landed on his left lip. On his raising cry, his brother Hari Ram came, who was followed by Madan Lal. Then Mahendra inflicted one Kassiya blow on head of Hari Ram. Then Brij Lal and Rai Singh inflicted lathi blows on Hari Ram, as a result of which he fell down, then 10 paces behind, his father Mani Ram came, who challenged, whereupon the accused went away towards their house. This is the narration of the incident by Balram. It may be observed here, that from reading of this, it transpires, that the witness received three injuries, one on the left ear, other near left eye and third on the left lip, and the three injuries have been attributed to three accused persons. Likewise, Mahendra is also said to have received three injuries, one on the head by Kassiya, attributed to Mahendra, and two more injuries by lathi are attributed to each of the other two accused persons. Then in cross-examination, he has admitted, that the father of the accused persons is Sheochand, who is real brother of his father and that his mother and the mother of the accused persons are real sisters, Rajendra is the fourth brother of the accused persons, who is aged about 22-23 years. He has also stated that apart from the question of way and water course there is no other dispute between the parties. The ground of enmity between the parties has been explained by this witness, by stating that the water course and way passes through their land, while according to government it should be on the land of accused persons, and this is resulting into their suffering loss of 16 biswas of land. They requested accused persons in this regard, but the accused persons are not agreeable. Then regarding location of the house, he has deposed that the houses of the two parties are at a distance of 30-40 paces, and in between is the house of Nandram Pandit only. Then he has deposed that Mohan Lal is not the real uncle, but is the uncle in family. According to him the street to reach the house of Mohan Lal adjoins the door of the house of Sheochand. Then he has maintained that when he reached near the house of Nandram he saw the accused persons standing armed with weapons, and then to come in line with the FIR, he has tried to state, that they were standing outside their own gate, and when he reached near the house of Nandram, the accused

persons challenged him and encircled him outside the house of Nandram, which is at a distance of about 30-34 feet and injuries were inflicted at that place. Then he was confronted with First Report Ex. P.9, wherein it is not mentioned that the injuries were inflicted outside the house of Nandram, to which the explanation given was to be not remembering as to whether it was given out in the report or not. Then he has maintained that at that time he was not having any weapon, he raised a cry immediately on his being challenged by the accused persons, according to him Madan Lal and Hari Ram also were not having any weapons, many persons had collected on the spot. Then to test his reliability certain questions were asked, and he deposed ignorance as to who brought the cot, however, he is categorical to the effect that immediately on receiving injuries Hari Ram fell unconscious, whereupon somebody told to administer liquor to him, thereupon one cup of liquor was administered to Hari Ram, however no water was administered to him. He has admitted that in the FIR it is not mentioned that Hari Ram was administered liquor. He denied the suggestion about Hari Ram having already consumed alcohol before incident, and has also denied the suggestion that liquor cannot be administered to an unconscious person. He has admitted that the name of the mother of the accused persons is Tulsi and her father is Het Ram, whose house is in their village itself and that Het Ram had bequeathed all his property to Tulsi and died some 3-4 years ago. He has also admitted that the land and house of Het Ram are in possession of the accused persons, which is at a distance of about 200 paces. Then he has maintained that he did not see any injuries on Tulsi, rather she did not even come there. He has also stated that Mahendra was also not having any injuries, more so he could not receive because the victim party was not having any weapons. He has admitted that when the site plan was prepared, Police had gone to the house of accused, also but the witness did not enter that house. Then he has denied the suggestion about the Police having taken into possession blood stained earth from the house of accused persons. He has also denied the suggestion about Rajendra, accused Mahendra, Tulsi, Mohan Lal, Prithvi etc. having met them near Railway Level Crossing. He has also denied the suggestion about Police having left away Rajendra at 3 PM, and thereafter to have written the report of the witness. He has also denied the suggestion about Police having come to the witness' house in connection with the

report of Rajendra. He has also denied the suggestion about the witness and Hari Ram having gone to the house of accused Mahendra after consuming liquor, because the accused persons are not prepared to leave land for way and water course, and at the house of the accused, to have inflicted injury on the head of mother, so also on the head of accused Mahendra, at which time Mahendra picked up the stick, and in the right of self defence inflicted injuries, on account of which Hari Ram fell down and the witness also received injuries. He has also denied the suggestion about the incident having taken place in the house of accused persons. This is the entire evidence of P.W. 5.

10. Then we come to the evidence of P.W.6 Madan Lal, he has stated to be the cousin of the accused persons, as the accused persons are the sons of his father's elder brother. Then he has stated that at the time of incident Balram had left for going to the house of his uncle Mohan Lal, while the witness and his brother Hari Ram were at the house. At that time, they heard cry of Balram, thereupon Hari Ram rushed, and the witness followed. When they reached near the house of Nandram, Mahendra, Brij Lal and Rai Singh were holding Balram, Mahendra was armed with Kassiya, while other two were armed with lathis, and all three were giving beating to Balram. The witness did not go near, therefore witness cannot say the sequence of infliction of injuries. He further deposed that he asked the accused to stop, however, Mahendra inflicted the Kassiya blow on the head of Hari Ram, then simultaneously Brij Lal and Rai Singh also inflicted lathi injuries on Hari Ram, as a result of which Hari Ram fell down, and after falling, Mahendra inflicted another Kassiya blow on the head of Hari Ram, and Brij Lal also inflicted one lathi blow on the head of Hari Ram. Then Mani Ram came and shouted, whereupon accused persons went away. Then victim was taken to Sadulshahar hospital. He has also stated that it is on account of enmity on the basis of way and water course, that the incident has been committed. We may pause here and recapitulate, that according to this witness, Mahendra had inflicted two kassiya injuries on the head of Hari Ram, one while Hari Ram was standing, other after he had fallen down, and Brij Lal has also inflicted one lathi injury on the head. Thus, two sharp edged weapon injuries and one blunt weapon injury were caused on the head of Hari Ram, while other two Brij Lal and Rai Singh had also inflicted lathi injury simultaneously. In cross-examination he has stated that first kassiya blow

inflicted by Mahendra had hit the back side of the head of Hari Ram, and the second injury inflicted by Mahendra with kassiya hit in the middle of the head. He has admitted that Hari Ram became unconscious at that time itself. He was not given any water to drink, though after the other people had collected, some water was put in the mouth of Hari Ram. Then he has stated that the Police had come at about 1-1.30 PM on the next day, and had prepared the site plan in his presence, and in presence of Balram. Police remained in village about 2 hours and recorded the statement of this witness after preparing the site plan. He has maintained that he did not see Tulsi, the mother of the accused on the site, and has also maintained that he, Mani Ram, Hari Ram and Balram were also not having any weapons with them. He also did not see any injuries on Mahendra. He has denied the suggestion about his not being on the site, and giving wrong statements, on account of the victim being brother. This is the entire evidence of P.W. 6.

11. A look at Ex. P/9 the FIR would show that therein it is alleged that the informant was going to the house of Mohan Lal through a street, which passes adjacent to the door of the house of Sheochand, and that the three accused persons were standing outside the house of Sheochand, armed with Kassiya and Lathi, Mahendra was armed with Kassiya and other two were armed with Lathis, and seeing the informant the three accused persons challenged and stopped him from going ahead, and then narrates the infliction of injuries. In our view, this leaves no manner of doubt that according to this report, the incident occurred at the starting point of street, and near the door of the house of Sheochand, the father of the accused persons, while in Ex. 13 the place of incident is shown to be much far away, inasmuch as, therein the house of the accused persons is shown in the south west, it is an oblong house, and the door is shown in the middle towards north, then the street is shown by figure 'E' in the east, while in the north very wide way is shown. Then in further north say north-west houses of Nandram and Omprakash have been shown, in front of which house, is shown a hand pump, and in further north and extreme west, is shown to be the house of Hari Ram, and in still further north-west is shown the house of Balram. With this background, according to Ex. 13 and 13A, the incident is said to have occurred outside the house of Nandram. Thus, it is clear, that the place of incident has been attempted to be shifted. The informant P.W. 5 was confronted on this aspect with

the FIR, and as noticed above, he has stated to have got written the report about incident having occurred outside the house of Nandram, though it is not written, though he has stated to be not recollecting as to whether he got it so mentioned or not. This, in our view, clearly shows, that the place of incident is sought to be shifted. Then from a reading of the statement of P.W. 1 Dr. Somprakash Jakhar, P.W. 7 Tarachand, SHO, Ex. D/1 the injury report of Tulsi and Ex. D/2 injury report of Mahendra, it is clear, that Tulsi and accused Mahendra had received injuries. The injury on the person of Tulsi is lacerated wound of $2\frac{1}{2}$ ' x $\frac{1}{4}$ ' bone deep on the occipital region of scalp; while accused Mahendra had seven injuries, out of which two injuries are on the middle of the scalp and left parietal, while two are on the left eye, and Tulsi was examined on 13th itself, whose duration of injuries have been described to be 18 to 24 hours by P.W. 1, while Mahendra was medically examined on 14th, and duration of his injuries has been shown to be 36 to 48 hours, while P.W. 7 had clearly stated, that he had undertaken investigation, as to how the injuries were received by them, and the investigation revealed that the injuries were received by Tulsi and Mahendra in the same incident, in the course of beating. Thus it is clear, that though simple but injuries were received on the vital part of the body, being head on two sides of the accused persons, and both the eye-witnesses P.W. 5 and 6, apart from omitting to give any explanation, are assertive to the effect that Tulsi was not seen on the spot, and Mahendra did not receive any injuries, and that they were not armed with any weapons. This clearly shows, that they are not giving the true version of the incident, and rather suppressing something material.

12. Then a combined reading of the statement of P.W. 1, the post mortem report Ex. P/1, and the statement of P.W. 5 and 6 does clearly show, that P.W. 5 and 6 are not disclosing the correct picture, inasmuch as, there is only one incised wound of $\frac{3}{4}$ ' x $\frac{1}{4}$ ' x $\frac{1}{8}$ ' on the right frontal region of the scalp of deceased Hari Ram, Hari Ram has in all four injuries on his person. Thus, the number of injuries as deposed by P.W. 5 and 6 to have been inflicted, so also the number of injuries inflicted by each of the accused persons, and with the weapon, as deposed by P.W. 5 and 6 does not find any corroboration in Ex. P/1. According to P.W. 1 vital injury is injury No. 1, which is a lacerated wound. At the cost of repetition it may be observed here, that according to P.W. 5 only three injuries were caused to Hari

Ram, being one by Mahendra with Kassiya, and one each by Brij Lal and Rai Singh with lathi, as a result of which Hari Ram fell down. He does not depose any further injuries to have been caused to Hari Ram after he had fallen down. On the other hand, according to P.W. 6, first blow was inflicted by Mahendra with Kassiya on the head of Hari Ram, then both the other two accused persons also inflicted lathi injuries, on account of which Hari Ram fell down, and after so falling Mahendra inflicted yet another Kassiya blow on the head of Hari Ram, and Brij Lal also inflicted a lathi blow on Hari Ram when Hari Ram was in a fallen condition. Thus, according to P.W. 6 at least three injuries were caused on the head of Hari Ram, of which two were sharp edged weapon injuries, which are not found in the post mortem report, Ex. P/1. Thus the fatal injury, as attributed by P.W. 6 to Brij Lal, is not deposed by the injured witness, P.W. 5 Balram. With this, significantly, the father of the three i.e. Balram, Hari Ram and Madan Lal, Mani Ram, who is alleged to have arrived on the spot, and on whose arrival, the accused persons went away, has not been produced by the prosecution during trial, even though as deposed by P.W. 7, the I.O., during investigation he did record the statement of Mani Ram.

13. Then a look at the post mortem report and the statement of P.W. 1 does show, that the deceased was smelling alcohol from the stomach also. It is in order to attempt to cover up the things, Balram P.W. 5 has tried to depose, that after Hari Ram fell down, he was made to consume one cup of liquor, and was not given any water, while P.W. 6 Madan Lal does not depose administration of any liquor, and categorically submits that he was given water. With this, the witnesses are categorical, that Hari Ram became unconscious instantaneously. In our view, it cannot be disputed, that unconscious person cannot consume alcohol. May be that alcohol may be poured on the mouth, which might emit alcohol smell during post mortem report, but then alcohol cannot be made to travel upto stomach, unless it is swallowed by the person concerned, which is not possible in case of an unconscious person. Obviously, the consequence is, that there is no escape from the conclusion, that the deceased had consumed alcohol before the incident, and since it was emitting bad smell, which clearly establishes that he must have consumed alcohol in good quantity.

14. Then we comprehend the enmity background. The prosecution wants the Court to believe, that the way and water course is existing on the land of the victims, which according to the government, should be on the land of the accused, for which the prosecution side had requested time and again to the accused side, but the accused side did not agree, and that there is no other grievance. It is required to be comprehended, that assuming this to be so, it would give a motive to the victim side and not to the accused side, inasmuch as, the victim are losing 16 biswas of land, which according to them, they are losing unnecessarily and, therefore, they may be aggrieved, but it does not give any cause of committing offence to the accused persons. Then as admitted by P.W. 5, that the mother of the three accused persons, Tulsi, and the mother of the victims are real sisters. Likewise, fathers of the two sides are also real brothers. With this, it has also been admitted by P.W. 5, that the father of the two ladies, being Het Ram, whose land and house exists in the same village, had willed away his entire property to Tulsi, the mother of the accused persons. This does indicate, that rather this could be a point of grievance to the prosecution side, as the entire property is given away to the mother of the accused persons, to the exclusion of the other sister, being the mother of the victims, but then, that could not give any occasion to the accused persons to commit the offence.

15. Keeping in view all the above discrepancies and infirmities in the evidence if we examine the statement of D.W. 1 Tulsi, it shows, that she has deposed, that she had two more sisters out of which one has died. The mother of Balram is her real sister, her father is Het Ram, who had land and house in village Chapawali, Het Ram had no male issue, and had willed away his entire property to the witness only. Then she has deposed that it was on the day of Diwali, that at about 8-8.30 in the evening, she along with Mahendra and her husband were in the house, her husband has a poor vision, around 8.30 Balram and Hari Ram came in the house, both were armed with lathis and called upon to give water course and way, and started hurling abuses, when the witness asked them to stop, Balram inflicted a lathi blow on her head, which started bleeding, and she fell down. Mahendra intervened to save, whereupon Balram and Hari Ram inflicted lathi injuries to Mahendra, thereupon Mahendra picked up a lathi, lying in the house and gave beating to Balram and Hari Ram, then there was a free fight. According to her, Brij

Lal and Rai Singh had gone to the house received from their Nana for lighting Diwali lamps. After the fight was over, Balram and Hari Ram went outside. When Rajendra came he saw injuries on the person of witness and Mahendra, they narrated entire incident to Rajendra. Then Brij Lal and Rai Singh had also come, and the incident was narrated to them also. Then Rajendra took the witness on a cot, and Mahendra in the tractor trolley, to hospital Sadulshahar, which tractor was being driven by Prithvi. Mohan, another Prithvi, and Pandit Hari Ram was also with them. When they reached near Railway Level Crossing, Police came in a jeep, and apprehended Mahendra, Rajendra, Prithvi and Mohan, and the witness was asked to go to hospital, thereupon Hari Ram Pandit took her to hospital along with other Prithvi. She was not medically examined, and on next day at about 3.30 Rajendra came and got her medically examined. In cross-examination she has deposed, that before this incident there was no dispute with Balram, her garments got stained with blood, Police people did not take her blood stained cloths. She has also stated that she received one injury on the head, but the assailants intended to inflict more injuries. She has denied the suggestion of injury being self-inflicted one. She has also stated that when she was medically examined, Police was present, but police was siding with the other party.

16. In our view, the story deposed by this D.W. 1, more appropriately fits in the sequence of things available on record. She clearly explains as to how the injuries were received on either side, and also gives out the entire factual situation, including the motive, and grievance.

17. After closely examining the material on record, we find, that the incident did not occur in the manner as the Court is asked to believe by P.W. 5 and 6, rather it more probably occurred in the manner as deposed by D.W. 1 Tulsi, and if that is so, then the act of the appellants, in inflicting injuries to Hari Ram and Balram, is clearly saved by their right of private defence.

18. Ex. D/3 is there on record, being the complaint lodged by Rajendra in the Court, and also alleging therein, that things were narrated to Police, but Police did not entertain the report, nor lend any ear, rather even did not get Mahendra medical examined, rather at much later point of time, he was got medically

examined. Thus, the possibility is not ruled out about the matter having been reported to the police, when the police met on the Railway Level Crossing, and it is very well possible, that since Hari Ram died, Police authorities might have given more attention to the story propounded by the victim Balram, but then, the fact does remain, that the matter about receiving the injuries by Mahendra and Tulsi was informed to the Police at that time itself, and cannot be said to be an afterthought, more so when, as noticed above, the investigation made by P.W. 7 itself did reveal, that injuries were received by these two persons Tulsi and Mahendra, in the same incident.

19. Thus, in our view, the learned trial Court was in error in finding the accused persons guilty.

20. Resultantly, the appeal is allowed. The impugned order is set aside, and all the accused persons are acquitted of all the charges. They are on bail; they need not surrender. Their bail bonds stand cancelled.

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