

Ram Chand and ors. Vs. the State

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Court : Himachal Pradesh

Decided On : Mar-28-1952

Reported in : AIR1952HP57

Judge : Chowdhry, J.C.

Acts : [Evidence Act, 1872](#) - Section 114; ; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337 and 367

Appeal No. : Criminal Appeal No. 1 of 1952

Appellant : Ram Chand and ors.

Respondent : The State

Advocate for Def. : Dina Nath, Govt. Adv.

Advocate for Pet/Ap. : Daulat Ram and; Ishwar Das, Adv.

Judgement :

Chowdhry, J.C.

(1) This is an appeal by Ram Chand, Phagnu, Tulu, Bhadaru & Nandu against the judgment and order of the learned Sessions Judge of Mandi dated 31-12-1951. Ram Chand has been convicted under Section 325, I. P. C., and sentenced to three years rigorous imprisonment. Each of the remaining four appellants has been convicted under Section 323, I. P. C., and sentenced to four months rigorous

imprisonment.

(2) The committal of the appellants was also made for the aforesaid offences, but it became necessary for the Magistrate to commit them for trial to the Court of Session since one of the accomplices, Sahru, had been tendered pardon under Section 337, Cr. P. C., at an earlier stage when the inquiry related to offences triable exclusively by a Court of Session, i.e. for offences punishable under Sections 395 and 397, I. P. C.

(3) A number of shepherds, known as Gaddis, were returning with a large flock of sheep, about 700 in number, to Kulu Valley from Palampur side on 22-5-1951. Late in the afternoon they reached a locality known as Bhran Galu and they decided to camp there for the night. Covetous of a free supply of manure, one Ram Das, a prosecution witness in this case, offered them camping ground in his field. Close to that field was the potato field of Ram Chand, appellant, of which the crop had not yet sprouted. The remaining appellants and two others, Molu, who was acquitted by the Sessions Judge, and Sahru, who turned approver, were also there. There was an altercation between them and the Gaddis, which culminated in a fight between the two parties. In that fight one of the Gaddis, named Rorni, sustained two simple injuries in his head and a grievous injury in the shape of a broken lower jaw in Ram Chand's field. There is however material difference between the prosecution and defence versions as to how the quarrel started and Romi came to receive the injuries.

(4) According to the prosecution, as the appellants and their two aforesaid companions espied the Gaddis approaching from Palampur side they conspired to rob them of some of their sheep and other belongings. Accordingly, when the Gaddis came near them Phagnu and Tulu picked up a quarrel with Romi, who was at the head of the flock, on the road skirting Ram Chand's field, on the false accusation of the sheep having trespassed into the field. This led to an altercation and Romi was dragged inside Ram Chand's field and set upon by the appellants and their companions and belaboured with fists, kicks and a lathi, and pelted with stones. The broken jaw was caused by a stone hurled at Romi by Ram Chand appellant. Phagnu appellant removed a small tin case containing currency notes of

the value of Rs. 400/- from Romi's pocket. The currency notes got scattered on the ground in the process, and this gave opportunity to the other assailants also to help themselves with the booty. Two of Romi's sheep were also lifted and carried away by the assailants. It may be stated here that no part of this alleged booty was recovered by the police from any of the culprits except that Sahru approver professes to have discovered to them his share of Rs. 10/- from where he had hidden it.

(5) The defence version was that the quarrel with the Gaddis arose by reason of the latter's sheep having trespassed into Ram Chand's potato field. They denied having caused, any injury to Romi, but pleaded that it was Sahru approver who inflicted them.

(6) It is manifest therefore that, although the accused had denied infliction of injuries on Romi, the defence plea was clearly one of private defence of property. There is, however, no mention of this important aspect of the case in the judgment of the learned Sessions Judge. He has merely interpreted the defence version as one amounting to a plea of sudden fight, and accepting that plea, he held that Section 34, I. P. C., was not applicable in the case of appellants other than Ram Chand, and that their culpability must be determined in accordance with the part played by each of them in assaulting Romi. This omission naturally prejudiced the case of the appellants in the Court of Session.

(7) The part of the prosecution case which had reference to offences punishable under Sections 395 and 397, I. P. C., was totally disbelieved by the committing Magistrate, so that he committed the appellants to take their trial in the court of Session for only offences under Sections 325 and 323, I. P. C. The learned Sessions Judge has also discredited that part of the prosecution version more than once in his judgment. The questions that required determination therefore were: (1) Whether Ram Chand appellant caused grievous injury and: the other appellants simple injuries to Romi? and (2) If so, whether they were entitled to do so in exercise of right of private defence of property? As already stated, the learned Sessions Judge did not at all consider the second question. As regards the first, as between the prosecution and defence witnesses he gave preference to

the former because in his view their testimony found support from the circumstance that not a single person in the assailants' party was injured. He therefore concluded that Romi alone was pitted against the appellants and the latter were the aggressors.

(8) The circumstance of Romi having sustained injuries will be considered presently, but apart from that, the prosecution version, by which of course I mean that part of the prosecution version which still remained to be determined after discarding the story of dacoity, has been held as established by the evidence of the approver, Sahru, corroborated by that of six other eye-witnesses. Four of these latter were Romi and three other Gaddis of his party named Bushahri, Padru and Lachhman. The remaining two were the aforesaid Ram Das, who had given shelter to the Gaddis in his field close to the field of Ram Chand appellant, and his brother Dagi. Now, the evidence of an accomplice is always open to suspicion and so must be corroborated by independent evidence, direct or circumstantial, confirming not merely the material particulars of the alleged offence but also some particular connecting the accused with it. 'REX v. BASKERVILLE', (1916) 2 K. B. 658, and 'GORAKH NATH v. EMPEROR', AIR 1935 All 86, founded upon the English ruling. In the present case, the evidence of Sahru carries the taint not only of being the evidence of an accomplice but also of being intrinsically false, for he denied having assaulted Romi although almost all the other witnesses were unanimous that he did.

(9) Coming to the corroborative evidence, it consists, as already stated, of the direct evidence of the aforesaid six eye-witnesses and the circumstantial one, of one of the Gaddis, Romi, being injured, but none of the appellants. Now, the testimony of these eye-witnesses is anything but independent, for, all have lied in regard to a material particular and two of them, Ram Das and his brother Dagi, were inimical to Ram Chand appellant. Each and every one of the eye-witnesses, including the approver, has given a detailed and graphic description of the alleged offence of dacoity. Both the Courts below have totally discredited that part of their testimony, and it was not contended before me by the learned Government Advocate that they were not justified in doing so. The learned Sessions Judge has merely brushed that part of their testimony aside by observing that it was not

believed by the committing Magistrate and was not worthy of belief in his own opinion also. He has however given no thought to the question whether in spite of that, these witnesses were worthy of credence in regard to the remaining portion of the prosecution version. This is another omission from which the judgment of the learned Sessions Judge suffers, and which has resulted in a further prejudice to the case of the appellants in that Court.

(10) There is a passage in the introduction to Field's Law of Evidence which has often been cited in dealing with the question of admixture of false and true evidence. It runs as follows:

'There is almost always a fringe or embroidery to a story, however true in the main. The falsehood should be considered in weighing the evidence; and it may be so glaring as utterly to destroy confidence in the witness altogether. But when there is reason to believe that the main part of the deposition is true, it should not be arbitrarily rejected because of a want of veracity on perhaps some very minor point. The case will, however, be different if one of the essential circumstances in the story be clearly unfounded. This, to use a felicitous expression of Mr. Hallam's, is to pull a stone out of an arch, the whole fabric must fall to the ground.'

Can it be said that the portion of the testimony of the aforesaid eye-witnesses relating to dacoity was merely an embellishment to the story related by them? An embellishment is addition of fictitious details in order to heighten the effect of a narrative, the narrative being in the main, true, attributable to the common human failing of exaggeration. In the present case, the commission of dacoity was as important a part of the entire narrative as the infliction of injuries on Romi. Indeed, it may even be said to be the pith and marrow of the narrative since, if the prosecution witnesses were to be believed, commission of dacoity was the main object of the appellants and injuries were caused to Romi only incidentally because he resisted the commission of that offence. That being so, it cannot for a moment be said that the part of the story relating to dacoity was merely a fringe or embroidery to the main story. On the contrary, it was the main part of the deposition of the witnesses and it was wholly untrue. This therefore had the effect, in the phraseology of the quotation cited by Field, of pulling a stone out of the arch

and therefore of the whole fabric of their testimony falling to the ground. The conviction of the appellants on the testimony of such eye-witnesses was therefore wholly unjustified.

(11) A closer scrutiny of the facts and circumstances of this case will further confirm the untrustworthiness of the eye-witnesses. (After discussion of the evidence the judgment proceeds): Again, the circumstance of Sahru being chosen as approver is very strange even though legal proof be wanting, that in this also, his uncle Ram Das had a hand. Admittedly, Sahru was one of the accused who had assaulted Romi. He was also the only accused against whom there was clear evidence of the alleged offence of dacoity, since he discovered to the police currency notes worth Rs. 10/- which he professes to have looted as his share of the booty. It is strange therefore that the alleged readiness of this witness to make a full and true disclosure of the whole of the circumstances of the case should, instead of being utilised by the prosecution as a confession against himself and his co-accused, have been made a ground for obtaining a pardon for him under Section 337, Cr. P. C. Indeed, it passes one's comprehension why it should at all have been thought necessary by the prosecution in this case to secure the help of an approver to establish the guilt of the other accused, for there were already as many as six eye-witnesses of the occurrence. It is only in exceptional cases that the prosecution should move, or the Magistrate exercise powers, for tendering pardon to an accomplice under Section 337, Cr. P. C. One such circumstance may be that it is otherwise not possible to bring the guilt home to the other accused. No such ground however existed in the present case, and the learned District Magistrate does not therefore appear to have exercised a sound discretion in holding, while tendering pardon to Sahru, that the evidence in the case was lacking. It appears therefore that not only were all the so called eye-witnesses produced by the prosecution essentially false witnesses, but two of them, Ram Das and Dagi, were inimical to Ram Chand appellant, and the former seems to have been busy, tutoring the other prosecution witnesses and shielding his nephew Sahru.

(12) The prosecution version of the occurrence appears also on the face of it to be unbelievable. (After discussion of the evidence the judgment proceeds): It is clear

therefore, that it was a case of fight between the Gaddis on one side and the appellants on the other, whilst the latter were trying to drive the sheep away from Ram Chand's field and the Gaddis were resisting it, and that both the parties were equally balanced in number. It is further admitted that none of the appellants was armed, and that the stick used by one of them was snatched from the hands of Romi himself. The indications are therefore clear that even if the injuries sustained by Romi were deliberately aimed at him, they were caused by some one or the other of the appellants in exercise of the right of private defence of property, and that it cannot be said that the right of private defence was exceeded.

(13) The appeal is allowed and the conviction and sentences of the appellants are set aside. They are on bail, their bail bonds are discharged, and they need not surrender. Convictions & sentences set aside.

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