

Narain Singh

Vs

State of Punjab

Criminal Appeal No. 218 of 1959

(Syed Jafar Imam, J. C. Shah, V. Narasimha Raju JJ)

21.08.1962

JUDGMENT

SHAH, J. -

After arguments were concluded in this appeal we ordered that the appellant Narain Singh be acquitted of the offence under s. 304 Part II of the Indian Penal Code of which he was convicted and the sentence passed on him be set aside. We proceed to set out our reasons in support of the order.

Narain Singh and his three nephews - Mehar Singh, Mewa Singh and Pakhar Singh - Were tried before the Court of Session, Ludhiana for offences punishable under s. 302 read with s. 34 of the Indian Penal Code, on the charge that on October 31, 1958, they had in furtherance of their common intention caused the death of one. Bachan Singh by making a murderous assault on him.

The prosecution case was that in the evening of October 31, 1958, when Narain Singh and his three nephews were irrigating their field, Bachan Singh diverted the flow of water into his own field. Narain Singh and his nephews were thereupon enraged, and there was a quarrel between them and Bachan Singh. Narain Singh and his nephews made an attack upon Bachan Singh and caused him serious injuries. According to the prosecution, Mehar Singh at the time of the assault was armed with a spear, Pakhar Singh with a Kaholi, Mewa Singh with a salang and Narain Singh with a stick. A complaint was lodged about the assault with the police, and Bachan Singh was removed to the Civil Hospital, Ludhiana. The Sub-Inspector of Police investigating the case recorded the statement of Bachan Singh, and a First Class Magistrate of Ludhiana recorded his declaration on the evening of November 2, 1958, Bachan Singh died on November 3, 1958.

Narain Singh and his nephews were then prosecuted before the Court of Session Ludhiana for the offence of murder. At the trial, Narain Singh pleaded that he had acted in exercise of the right of self defence and had caused injuries to Bachan Singh because the latter had thrown him down and had attempted to strangle him. His statement in the Court of Session, on which he was convicted, was as follows :-

"The correct facts are that when I objected to the deceased cutting the nakka he caught hold of me and threw me on the ground. I was alone at the time. The other three co-accused were not with me. After I had fallen on the ground the deceased attempted to strangle me. I was then wearing small kirpan. I unsheathed it and used it in self defence causing a couple of injuries to the deceased on the alarm raised by me, Mehar Singh (my co-accused) who was coming from the khal nearby, came to the spot and rescued me. He was armless and did not cause and injury to the

deceased. I did not carry any stick but was wearing a small kirpan as usual."

Pakhar Singh and Mewa Singh denied their presence at the scene of offence. Mehar Singh claimed that he was present at the scene, and he had tried to intervene and separate Bachan Singh and Narain Singh. Narain Singh and Mehar Singh relied upon the circumstance that they also had injuries on their person which were noticed when they were medically examined. Narain Singh had six contused injuries and Mehar Singh had one incised injury and four abraded contusions. Before the Court of Session, Jagir Singh - a witness for the prosecution made important variations in his story as originally related by him in his complaint at the police station. Kaka, who, it was claimed by the prosecution, was an eye-witness, did not support the case for the prosecution. Hakku, another witness, was not examined by the prosecutor, but was merely "tendered for cross-examination". One Johri whose name was not mentioned in the complaint was also examined by the prosecutor. Two statements of Bachan Singh which were in view of his death admissible as dying declarations - one recorded by the Investigating Officer and the other by the First Class Magistrate, Ludhiana - were also tendered in evidence. The Sessions Judge held that the evidence of Jagir Singh was unreliable and that Johri could not have witnessed the assault. The two dying declarations were, in the view of the Judge, unreliable, for Bachan Singh had before he made the statements ample opportunity to know how the investigation was proceeding, had consulted Jagir Singh and had opportunity of discussing with him the case to be set up. Again, the story set up in the dying declarations furnished no explanation of the injuries received by Narain Singh and Mehar Singh. The medical evidence was also not helpful to the case for the prosecution. Bachan Singh had four incised injuries on his person, three on the chest and the fourth on the "ring finger left side". None of these injuries could be caused with a salang or a kaholi : the incised injuries could be caused by a spear and also by a kirpan. Therefore in the view of the Sessions Judge the oral and other evidence was insufficient to sustain the charge of murder against the three nephews of Narain Singh. Relying, however, upon the statement made by Narain Singh he held that the injuries on the person of Bachan Singh were caused by the former. He observed that the marks of injuries on the person of Narain Singh "bore out his suggestion that Bachan Singh had obtained strong hold upon him with a view of strangulate him". But there was not "an iota of evidence on the record to prove that Bachan Singh had attempted to strangulate him". In the view of the Sessions Judge there being no marks of injury, however slight, around the throat of Narain Singh and that he had not made a complaint to the medical officer who had examined him shortly after the assault "it was apparent that Narain Singh could have no apprehension of death or grievous hurt.

#X X X X X##

The only apprehension which Narain Singh had was simple hurt and this certainly gave him no right to take the life of Bachan Singh." The Sessions Judge, therefore, held that Narain Singh was justified in resisting Bachan Singh in exercise of the right of defence of person, but was not justified in using "the kirpan in such a manner and with such-force as to cause the death of Bachan Singh by piercing one of his lungs". The Sessions Judge accordingly acquitted Mewa Singh, Mehar Singh and Pakhar Singh of the offence charged and convicted Narain Singh of the offence punishable under s. 304 Part II of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for five years.

Against the order of conviction and sentence Narain Singh preferred an appeal to the High Court of Punjab. The High Court agreed with the view of the Sessions Court that the evidence was sufficient to establish the case for the prosecution, the High Court also held that the Sessions Court was justified in relying upon the statement made by Narain Singh under s. 342 of the Code of Criminal

Procedure and in holding that Narain Singh "had exceeded the right of self-defence" and by causing the death of Bachan Singh by stabbing him with a kirpan, had committed an offence punishable under s. 304 part II Indian Penal Code. The High Court, however, reduced the sentence imposed upon Narain Singh to rigorous imprisonment for 3 years and subject to that modification dismissed the appeal against the order of conviction and sentence. With special leave Narain Singh had appealed to this Court.

The case for the prosecution was that Narain Singh, when he participated in the assault on Bachan Singh, was armed with a stick, but the evidence of the witnesses about the assault on Bachan Singh has not been accepted by the Court of Session and the High Court. In the view of the Courts injuries on the person of Bachan Singh were caused by Narain Singh by striking him with a kirpan, and the three nephews of Narain Singh had not participated in the assault. In finding Narain Singh guilty of the offence under s. 304 Part II for causing injuries to the victim Bachan Singh with a kirpan the Court of Session and the High Court have accepted a case which was not the case of the prosecution, but have relied only upon the statement Narain Singh made in his defence. Under s. 342 of the Code of Criminal Procedure by the first sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under s. 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation - if any, of the incident which forms the subject-matter of the charge and his defence. By sub-s. (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial. If the accused person in his examination under s. 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety. It is not open to the Court to dissect the statement and to pick out a part of the statement which may be incriminative, and then to examine whether the explanation furnished by the accused for his conduct is supported by the evidence on the record. If the accused admits to have done an act which would but for the explanation furnished by him be an offence, the admission cannot be used against him divorced from the explanation.

The courts below were of the view that the prosecution evidence as it stood, was insufficient to bring home the charge against Narain Singh and his nephews. The case for the prosecution that Narain Singh was armed with a stick and joined in the assault upon Bachan Singh was sought to be established by affirmative evidence. The case failed because the evidence in support of the case was unreliable. Narain Singh admitted that he had caused injuries to Bachan Singh with a Kirpan carried by him, but he explained that he caused the injuries when he was thrown down and Bachan Singh was attempting to strangulate him. There can be no doubt that if a person reasonably apprehends that his assailant is attempting to strangulate him, exercise of the right of defence of person extends even to causing death of the assailant. Narain Singh pleaded that he had fallen down and Bachan Singh attempted to strangulate him and therefore he caused injuries to Bachan Singh in exercise of the right of self defence. This plea had to be considered as a composite plea : it was not open the court to investigate whether Narain Singh could have reasonably apprehended such injury to himself as justified him in causing the death of Bachan Singh. Where a person accused of committing an offence sets up at his trial a plea that he is protected by one of the exceptions, general or special, in the Indian Penal Code, or any other law defining the offence the burden of proving the exception

undoubtedly lies upon him. But this burden is only undertaken by the accused if the prosecution case establishes that in the absence of such a plea he would be guilty of the offence charged. The prosecution case, however, did not by reliable evidence establish affirmatively that Narain Singh had done any act which rendered him liable for the offence of murder. His responsibility, if any, arose only out of the plea raised by him : if the plea amounted to a confession of guilt the court could convict him relying upon that plea, but if it amounted to admission of facts and raised a plea of justification, the court could not proceed to deal with the case as if the admission of facts which were not part of the prosecution case was true, and the evidence did not warrant the plea of justification.

The courts below were, therefore, in our judgment, in error in convicting Narain Singh of the offence under s. 304 Part II of the Indian Penal Code.

Appeal allowed.

</html