

Sampat Singh

Vs

The State of Rajasthan

Criminal Appeal No. 146 of 1967

(CJI M. Hidayatullah, G.K. Mitter JJ)

07.01.1969

JUDGMENT

MITTER, J. -

1. The main question involved in this appeal is, whether there was evidence to justify the finding that the appellant had exceeded his right of private defence in giving two blows with a dagger to one Shyam Singh one of which proved fatal.

2. The prosecution case was as follows : There was a long-standing enmity between the families of Achal Singh on the one hand and Hariram and his sons on the other on account of the fact that the admitted advance of Rs. 10,000 by Hariram to Achal Singh some years back had not been repaid in spite of numerous demands made from time to time. The houses of Hariram and Achal Singh were situated at a short distance from each other in the City of Jodhpur. Hariram had two sons, Rameshwar and Devilal. Rameshwar had been given in adoption to his uncle but the relationship between him and his brother, Devilal, continued to be quite cordial. Rameshwar was married to one Ratan Kanwar whose brother Shyam Singh came to lose his life in the way to be narrated hereafter. Achal Singh had two sons, Sampat Singh and Shyamlal. On March 28, 1963 at about 6 p.m. there was a quarrel between Devilal on the one hand and Asulal, Sampat Singh, Shyamlal and two friends of theirs, Kishensingh and Uttam Giri, on the other. This group of people started abusing Devilal, whereupon Rameshwar's wife Ratan Kanwar, tried to intervene and stop the quarrel. The said group who were all accused in the Sessions case which followed beat both Devilal and Ratan Kanwar. They also took away a golden jhumari from the right ear of Ratan Kanwar. Eventually people of the locality put an end to this affair. Ratan Kanwar sent messages to her husband Rameshwar and her brother Shyamsingh, deceased. Before Shyamsingh reached the place, all the accused came from the house of Achalsingh to that of Devilal and raised a shout asking the latter to come out. The accused were armed variously, Sampat Singh with a dagger and the others with lathis. Rameshwar who happened to be there tried to close the door of Devilal's house, but the accused managed to get in and dragged Rameshwar out and started beating him. Ratan Kanwar who tried to intervene was also hurt. She received a blow on the head with a dagger of Sampat Singh as also lathi blows from the others. Shyamsingh, the deceased, happened to come on the scene at that hour and the fury of the accused fell upon him. Achal Singh's son, Shyamlal, caught hold of Shyamsingh and Sampat Singh, appellant, struck blows with the jambia on Shyam Singh's thigh and on his back near the waist. People of the neighbourhood like Ambalal (P.W. 14), Nainsingh (P.W. 13), Satyanarayan (P.W. 15) and Bhagwandas (P.W. 16), who came in aid of Rameshwar's group were also injured by the accused. Nainsingh, Ambalal and Satyanarain were all injured by the jambia of Sampat Singh. Thereafter the accused left the place. Shyamsingh, Ratan Kanwar and Ambalal were taken away by Rameshwar to the police station and a first information report was lodged at 8.30 p.m.

3. The injured persons were sent to the hospital and Shyamsingh was admitted as an indoor patient. Dr. Ojha who examined Shyamsingh thought his condition to be critical and arranged for a dying declaration of Shyamsingh to be recorded at 9.25 p.m. Shyamsingh stated that he had been wounded by Sampat Singh by means of a Jambia. The City Magistrate, Jodhpur, who came in answer to a summons recorded another dying declaration at 10.50 p.m. The injury report on the person of Shyamsingh by Dr. K. C. Singhal was as follows :

(1) incised wound 1/4" X 1/2" X muscle deep tapering 2" X 1/10" below the medial aspect of the right thigh, middle part;

(2) incised wound 1 1/2" X 1/2" X cavity deep on the left lumbar region; and

(3) teeth marks elliptical in shape 1 1/2" in area on the left shoulder.

In spite of the operation performed on him Shyamsingh expired on March 31, 1963 at 4 a.m. and the post-mortem was performed on the body by Dr. Har Govind. Dr. Singhal also examined Ratan Kanwar, Ambalal, Nainsingh and Satyanarain. On the person of Ratan Kanwar there was only one incised wound, while there were three such wounds on the person of Ambalal, two on the person of Nain Singh and one on the person of Satyanarain. On the person of the accused Shyamlal there appeared various wounds but the injuries according to Dr. Har Govind were all simple in nature caused by a blunt weapon excepting a septic wound on the right little finger about which the doctor could form no definite opinion. On the person of some of the other accused several abrasions were noticed on medical examination. Sampat Singh, the appellant, had a septic wound of 3/4" X 1/2" skin deep on the right little finger and an abrasion 3/4" X 1/4" on the front of the right knee. The injuries were all simple in nature. The jambia which was recovered at the instance of Sampat Singh from his house was not found to be blood-stained. The accused Achalsingh was arrested long time after the crime, i.e. on 19th April, 1963.

4. On examination by the Munsif-Magistrate of Jodhpur, Sampat Singh gave a version of the incident which was completely at variance with the prosecution story. According to this, he had learnt at about 5.30 p.m. on March 28, 1963, from his brother, Shyamlal, that Devilal and Shyamsingh had threatened to beat him. Some friends, viz., Asulal, Kishensingh and Uttam Giri had also gathered in their house for the purpose of going to a fair. Uttam Giri wanted to go to the house of Hotchand and the appellant directed his brother, Shyamlal, to accompany Uttam Giri. Shortly thereafter, he heard the cry of Shyamlal that he was being beaten and coming out of the house on to the road he found Shyamsingh, the deceased, Nainsingh, Ambalal and Satyanarain beating Shyamlal and Uttam Giri. Asulal and Kishensingh also came out and tried to save Shyamlal and Uttam Giri. Shyamlal was lying on the ground and Shyamsingh, deceased, was sitting on his chest. Shyamlal's eyes were bulging out. The appellant tried to free his brother from the clutches of Shyamsingh but as he could not do so with bare hands he took out the jambia which was tied round the waist of the deceased and wielded the same injuring Nainsingh, Ambalal and Satyanarain who were trying to attack him. He also gave a blow on the thigh of the deceased but even then Shyamsingh would not let go his brother Shyamlal, whereupon he gave another blow to Shyamsingh on his waist with the jambia. According to the appellant he had given these blows to save the life of his brother Shyamlal and had thereafter run away throwing the jambia on the spot. Shyamlal's version which substantially agree with that of his brother Sampat Singh was to the effect that Shyamsingh was trying to throttle him (Shyamlal) and he had practically lost consciousness; when he came round he found Shyamsingh, deceased lying near him and his brother Sampat Singh leaving him.

5. The accused were committed for trial to the Court of Sessions Judge, Jodhpur. There they repeated the statements made by them before the Committing Magistrate. According to the Sessions Judge, the version relating to the occurrence said to have taken place 6.30 p.m. on March 28, 1963, was not true. As regards the second occurrence on the same day at about 9 p.m. the Judge held that there was no beating given by any of the accused to the prosecution witnesses before Shyamsingh reached the place of occurrence. The Sessions Judge further found that his incident had taken place substantially in the manner deposed to by the accused Sampat Singh and others and not as alleged by the prosecution and that Shyamsingh had received the fatal injury with a jambia from Sampat Singh when the former was sitting on the chest of Shyamlal and had caught hold of his neck. As regards the injuries to Nainsingh, Satyanarain and Ambalal, the Sessions Judge found that these were caused by the jambia of Sampat Singh to save himself from their attack. The Judge further found that the jambia was not with the appellant initially but was taken from the person of the deceased. For this the Sessions Judge relied on the statement of the accused. He however held that the grip of the deceased on the neck of Shyamlal accused was not of such a nature as to lead to an apprehension that the deceased meant to cause death by strangulation. The Sessions Judge held that the deceased had caught hold of Shyamlal to facilitate the beating which he intended to give him and that Sampat Singh was a sufficiently powerful man who could have rescued his brother, Shyamlal, by pushing or dragging Shyamsingh aside and not by inflicting injuries with the jambia and the circumstances did not justify the resort to such severe measures. Alternatively, the Sessions Judge held that Sampat Singh had exceeded his right of private defence of his brother and could not be protected under the law for the consequences of his act. On this view, he convicted the appellant of an offence under Section 304, Part II of the Indian Penal Code and sentenced him to rigorous imprisonment for four years and a fine of Rs. 100 or in default to suffer two months further rigorous imprisonment. He was however acquitted of the offences under Sections 148, 302, 324/323/148 and 324/149, I.P.C. The other accused were all acquitted.

6. On behalf of the appellant it was urged before the High Court, as it was before us, that on rejection of the evidence of the prosecution witnesses with regard to the occurrence at 6 p.m. and 9 p.m. by the Sessions Judge, the appellant could not have been convicted merely on the basis of his statement under Section 342, Cr. P.C. Reliance was placed before us, as before the High Court, on the decision of this Court in *Narain Singh v. State of Punjab*. ((1963) 3 SCR 678). Therefore it was observed on an interpretation of Section 342 that -

"If the accused person in his examination under Section 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 circumstances 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 inculpatory, 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."

In that case the prosecution did not by reliable evidence establish affirmatively that Narainsingh had done any act which rendered him liable for the offence of murder. To quote the words of Shah, J., in that case :

"His responsibility, if any, arose only out of the plea raised by him if the plea amount 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."

7. In our view, the ratio of that case is not applicable to the appeal before us. No doubt the Sessions Judge did not accept the genesis of the prosecution story, namely, the incident took place at 6 p.m. and was further of the view that the account given by the accused was to be preferred to that of the prosecution with regard to the second incident. But the High Court which sifted the evidence for itself did not take the same view of the facts as the learned Sessions Judge. According to the High Court, there was some sort of incident at about 6 p.m. between the sons of Achalsingh and Devilal and from verbal altercation the matter assumed serious proportion leading to a fight. The High Court held that the evidence of Rattan Kanwar and Devilal with regard to the assault and the snatching of the golden jhumari, though exaggerated, was not altogether without foundation. The accused other than Shyamlal may not have been present on the first occasion but they were there on the scene of the second occurrence. We may add that even the story of the accused goes to show that there had been some trouble before the incident at 8.30 or 9 p.m. The High Court did not accept the story with regard to the snatching of the jhumri and was of the view that the first occurrence furnished a background for what happened later on. The High Court also agreed with the trial court that the prosecution story that Achalsingh and his sons accompanied by Kishensingh and Uttam Giri had gone to the house of Rameshwar at about 8 p.m. and hurled abuses on him and others was not true inasmuch as if five persons armed with lathis and one with a dagger had entered the house of Rameshwar and dragged him outside there would have been marks of injury on Rameshwar who did not get himself examined. The High Court relied on the injuries found on the person of the deceased specially the teeth marks as going to show that Shyamlal had tried to free himself from the clutches of Shyamsingh deceased and at that stage Sampat Singh, the appellant, had appeared on the scene and finding the deceased sitting on the chest of his brother had tried to force them apart and when he found that he could not do this with bare hands he had taken the jambia from the waist of the deceased and inflicted two injuries on him. The prosecution evidence of Ratan Kanwar, Rameshwar and other witnesses was that the injuries to the deceased were inflicted while he was standing. This was not accepted by the Sessions Judge who, as already stated, found that the version given by the accused with regard to the injuries by the Jambia was the correct one. According to the High Court, however, the circumstances were more consistent with the infliction of the injury while the deceased Shyamsingh was standing. The High Court also commented on the fact that the Sessions Judge overlooked the statement of Dr. Ojha who had stated that the injury inflicted in the lumber region of the deceased was sufficient in the ordinary course of nature to cause his death. It may be noted that Dr. Har Govind's evidence was somewhat different. This doctor had stated that though the injuries were not dangerous to life, they could result in death. Examining the evidence of the two doctors, the High Court preferred the view of Dr. Ojha that the injury on the lumber region of the deceased was sufficient in the ordinary course of nature to cause death.

8. Ultimately, the High Court held that the Sessions Judge had not rejected the entire prosecution evidence but had considered the same along with the explanation offered by the accused in forming his own conclusion. The High Court also pointed out that the Sessions Judge had not rejected the evidence of all the prosecution witnesses on the point that it was the appellant who had given two blows by jambia on the deceased, one on the right thigh and the other on the waist. The striking of the deceased by the appellant with the jambia was the common case of the parties. The medical evidence showed that one of the wounds was sufficient in the ordinary course of nature to have

caused the death of Shyamsingh. Shyamlal, the brother of the appellant, was certainly having the worst of the struggle with Shyamsingh and the circumstances certainly justified the appellant's attempt to force them apart. Both courts held that the nature of the attack on Shyamlal by Shyamsingh was not such as to have necessitated the infliction of the second injury by the jambia. Both courts accepted the appellant's version that he was exercising his right of private defence of the person of his brother. The High Court negatived the contention that such right of private defence went to the extent of causing the death of the assailant by the appellant. The High Court did not accept the version that there was an attempt on the part of Shyamsingh to strangulate Shyamlal giving rise to an apprehension in the mind of the appellant that grievous hurt or even death might be caused thereby. The evidence did not disclose any marks of finger nails or bruises or even blue signs on the neck of Shyamlal who was examined two days after the incident. The High Court relied on the statement of the appellant himself before the committing court that the deceased had caught hold of the neck of his brother. On the evidence, the trial court did not find that the appellant had intention to murder Shyamsingh but he had exceeded the right of private defence of his brother by causing the serious injuries to the deceased with the jambia.

9. In our view, both courts, on the facts, were justified in coming to the conclusion that the appellant had exceeded his right of private defence. Neither court had relied only on the statement of the appellant under Section 342, Cr. P.C., to arrive at its finding. There was sufficient other evidence including the injury report and the testimony of Dr. Ojha to warrant the conclusion that the right of private defence had been exceeded and the appellant was rightly convicted under Section 304, Part II, I.P.C. In *Nishi Kant Jha v. The State of Bihar*, (Cr A No. 190 (N) of 1966 decided on December 2, 1968), it was held by this court that the court may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution. In that case, there were no eye-witnesses to the commission of the crime and the evidence was all circumstantial and the statement of the accused that he was present at the scene of the crime was a vital circumstance which taken in conjunction with other circumstances led the court to come to the conclusion that he was guilty of the crime imputed to him. In our view the decision in *Narainsingh's case* (*Supra*) does not apply to the facts before us and we hold that the evidence justified the conviction of the appellant. The appeal is, therefore, dismissed and the conviction and sentence upheld.

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