

Rajkishore Singh and Others

Vs

State of Bihar

Criminal Appeal No. 173 of 1967

(S. M. Sikri, I. D. Dua JJ)

25.09.1970

JUDGMENT

DUA, J. -

1. This appeal by special leave by nine appellants is directed against the common judgment of the High Court of Judicature at Patna dismissing two criminal appeals (Nos. 457 and 481 of 1965) from the judgment of the first Additional Sessions Judge, Chopra : (1) convicting Rajkishore Singh, Bindheyachal Singh and Ram Bachan Bhar : (a) under Section 302/34, I.P.C., for the murder of Raj Bhallabh Dubey and sentencing them to imprisonment for two years; (2) convicting Dhup Narayan Singh, Bhikari Singh, Suresh Singh, Kirpal Singh, Behram Singh and Dudnath Singh; (a) under Section 326/149, I.P.C., and sentencing them to rigorous imprisonment for six years; (b) under Section 323, I.P.C., and sentencing them to rigorous imprisonment for one year and (c) under Section 147, I.P.C., but imposing no sentence; (3) convicting Dhup Narayan Singh, Bhikari Singh, Suresh Singh, Rajkishore Singh, Bindheyachal Singh and Ram Bachan Bhar, under Section 201, I.P.C., and sentencing them to rigorous imprisonment for two years with a fine of Rs. 100 each : in default of payment of fine they were to undergo rigorous imprisonment for six months. All the sentences were to run concurrently.

2. Before narrating the prosecution story the relationship of the appellants inter se may be broadly stated. Rajkishore Singh, Bindheyachal Singh, Dhup Narayan Singh and Suresh Singh, appellants 1, 2, 4 and 6 respectively are closely related to one another. Rajkishore Singh is son of Nagina Singh whereas Dhup Narayan Singh and Bindheyachal Singh are sons of Ram Das, brother of Nagina Singh and Ram Bachan Bhar is his ploughman. These six appellants belong to village Atmapur also known as Adampur. The remaining three appellants belong to village Santhi. Kirpal Singh and Bail Ram Singh are brothers and Dudhnath Singh is their Pattidar. We may now turn to the broad features of the background of the prosecution story. Khata No. 100 in village Sandhi consists of a number of plots including plots Nos. 2245 and 2246. The total area of this Khata consists of 7 Bighas, 8 Kathas and 3 Dhuria. The landlords of this Khata were Bal Bhadra Prasad and others and the recorded tenants Jang Bahadur Rai and Bal Govind Rai. Its rent having fallen into arrears the entire holding was sold in execution and purchased by the landlord themselves some time in September, 1932. Notwithstanding this sale in favour of the landlords the tenants continued in possessions of plots Nos. 2245 and 2246 where the present occurrence took place. The tenants also obtained Sada Hukumnama from the landlord some time in August, 1934, and paid rent to them. When the Zamindari vested in the State Government the owners mentioned Bal Govind and Jang Bahadur as their tenants being entered in the Jamabandi in 1963. Nagina Singh applied to the Land Revenue Department for correction of the Jamabandi entries basing his claim on the allegation that Raghunath Rai, Ramdhari Rai and others were Zarpeshigidars of the Malkiat interest of Khata No.

100 and for arrears of rent the Zarpeshigidars and obtained a decree and in its execution in September, 1922, had purchased the Khata and secured its possession. Out of the Khata one Bigha and 19 Dhuria appertaining to plots Nos. 2245 and 2246 were settled with Ram Das Singh, brother of Nagina Singh and the members of his family laid claim to the possession of the said two plots. These proceedings were still pending when the occurrence in question took place.

3. The prosecution version of the occurrence may now be briefly stated. The two plots Nos. 2245 and 2246 which have been amalgamated belong to Banke Singh son of Jang Bahadur (P.W. 1) and Bal Govind Singh (P.W. 6) as their Kasht (cultivation) and they claimed to have been in possession all along. Three days prior to the occurrence in question which took place on October 23, 1963, Banke Singh had ploughed and harrowed the land. On the date of occurrence at 6 a.m. Banke Singh and Bal Govind went to the field to sow Jow and Korso crops. As they were about to finish the sowing operations Rajkishore Singh came there and suggested that sowing should be done only after the settlement of the dispute. Bal Govind suggested that a Panchayati Should be called to decide this matter. Rajkishore thereupon went to call the Panchas. Bal Govind also asked Banke Singh to call Radha Kishen from village Santhi and Raj Ballabh Dubey who was Upmukhia (who lost his life in the occurrence) from village Basantpur. Kashi Dubey (P.W. 3) and Balram Dubey (P.W. 4) and one Kapil Dev Tiwari were with Raj Ballabh Dubey at that time. On being apprised of the controversy Raj Ballabh Dubey agreed to act as Pancha. He took a blank piece of paper and a pencil with him and also persuaded the three persons mentioned above to accompany him. On arrival at the spot Bankey Singh found his uncle and Radha Kishan near the eastern side of the disputed field and Rajkishore Singh along with 40 or 50 persons variously armed towards the south-west corner of the field. An altercation appeared to be going on between the two parties. On Raj Ballabh Dubey's arrival Rajkishore Singh enquired from him as to why he had come there, to which Raj Ballabh Dubey replied that he had come to do Panchayati. Rajkishore retorted that the field belonged to him and there was no question of a Panchayati. This being refuted by Raj Ballabh Dubey there was exchange of hot words. Thereupon Rajkishore Singh and his partymen started throwing brickbats with the result that Bal Govind, Raj Ballabh Dubey and others began running towards north-east. They were chased by the party of Rajkishore Singh. Raj Ballabh Dubey appears to have lagged behind. Rajkishore Singh gave him a Bahala blow in the stomach. This was followed by another Bhala blow by Bindheyachal Singh on the left side of his stomach. Raj Ballabh Dubey as a result fell down in the field of Ram Chandra Singh. Thereafter Ram Bachan Bhar gave a blow on his chest. In consequence of these blows Raj Ballabh Dubey died. Kapil Dev Tiwari protested but he too was assaulted by Dhup Narayan Singh and Bhikari with Lathis felling him down. On protest being raised by Beliram against this high-handedness he also received Lathi Blows. Kripal, Dudhnath, Beliram and Suresh thereafter struck him with Lathis and felled him down. Thereafter Rajkishore Singh, Bindheyachal Singh, Bhikari and Dhup Narayan Singh tied on a Lathi towards the river Sarjoo. They threw the dead body into the river. The dead body was, however, not recovered in spite of search with the result that no post-mortem examination could take place.

4. As against this the defence version, to which a passing reference has already been made, is that the entire Khata No. 100 was purchased at an auction sale by Raghunath Singh, the Zarpeshigidar who settled the plots in dispute in November, 1925, with Ram Das Singh under a registered Patta. Ram Das Singh and Nagina Singh claimed to be in possession of the land in dispute by virtue of the said patta and used to pay rent as agreed. After the vesting of the Zamindari when no demand of rent was made from them they made enquiries and learnt that in the Jamabandi the entries had been made in favour of Bal Govind Singh. Thereupon they filed a petition for correction of those entries. Since they were in possession of the disputed land, three or four days prior to the occurrence in question it was ploughed on their behalf. On the day of the occurrence three men were sowing seeds

and Dhup Narayan Singh was washing his face when at about 10 a.m. some persons came from the northern side and began to assault the ploughmen and beat the bullocks. Dhup Narayan Singh rushed towards them and saw Bal Govind Singh, Shamsher Singh, Bankey Singh and others. When he protested and raise alarm ten persons came there to support him and 30 or 40 persons appeared in support of the opposite party. There was uproar and use of Lathis on both sides. Dhup Narayan Singh thereupon ran away. The accused denied having carried away the dead body of Raj Bhallabh Dubey and thrown it into the river. In arguments, relying on the cross-examination of Bal Govind Singh (P.W. 6) it was urged that Bindheyachal Singh was unable to use Bhalla with his right hand. But this was not the case of this accused at the trial and (P.W. 6) had merely learnt that Bindheyachal Singh's right hand had been damaged by electric shock. The witnesses for the defence deposed about the sale, the payment of rent and the possession of the dispute land by the accused. Evidence was also led showing injuries on the persons of Mahabir Basi and Ram Prakash Singh who were surprisingly enough not produced as witnesses to prove as to how they had received these injuries.

5. The Trial Court held that the two plots in question were in the actual possession of Nagina Singh's family. They had been ploughing them prior to the date of the occurrence and on that day three men sowed Jow and Korso. Raj Ballabh Dubey was called to act as a Pancha and he came there with three companions. The party of the accused who were all armed collected there. After an altercation with Raj Ballabh Dubey the accused threw brickbats and after a chase assaulted Raj Ballabh Dubey, Kapil Dev and Bali Ram. This assault resulted in Raj Ballabh's death, whose dead body was carried away and thrown into the river Sarjoo. The alleged injury to Bindheyachal Singh's right hand was not considered to be sufficiently cogent to discredit the prosecution evidence implicating him. The appellants were convicted and sentenced, as already noticed.

6. The appellants challenged their conviction by means of two appeals presented in the High Court but that Court upheld their conviction and sentence. That Court expressed its final conclusion in these words :

"The evidence is that the accused persons had thrown brickbats and not being satisfied with that, even after the prosecution party took to their heels, they chased them and thereafter assaulted them. Chase by armed people resulting in assault certainly shows that the chaser has the common object to assault the members of the prosecution party. Therefore, it must be held that all these nine accused persons who had taken part in chase and assault became members of an unlawful assembly the common object of which was to assault the prosecution party and thereby committed the offence of rioting. Since Rajkishore Singh, Bindheyachal Singh and Ram Bachan Bhar were armed with Bhalas they have rightly been found guilty of the charge under Section 148, Indian Penal code. The remaining six accused persons who were armed with Lathis have also been rightly found guilty of the charge under Section 147, Indian Penal Code.

From the manner in which Rajkishore, Bindheyachal and Rambachan Bhar surrounded Raj Ballabh and assaulted him with Bhalas on vital parts of the body and thereby caused his death the irresistible conclusion is that they had common intention to kill him and as such they committed an offence under Section 302/34, Indian Penal Code, and so their conviction thereunder has to be upheld. Conviction of Dhupan, Suresh, Bhikari, Kirpal, Baliram Singh and Dudhnath under section 326/149, Indian Penal Code, is also fully justified. When they were members of an

unlawful assembly with common object to assault prosecution party and the members of that assembly were armed with deadly weapons, such as Bhala, the least knowledge that can be attributed to them is that there was likelihood of grievous hurt being caused to the members of the prosecution party.

The evidence of the eye-witnesses is that Rajkishore Singh, Bindheyachal Singh, Bhikhari Singh and Dhup Narayan ties the body of Rajballabh in a green Chadar and carried it from the place of occurrence towards the river Sarjoo on a Lathi. Evidence of P.W. s 5, 9 and 12 who saw the body being carried in a bundle shows that Suresh and Rambachan Bhar were also involved in the disappearance of the body, at times they were also carrying it. All these six accused persons have rightly been convicted and sentenced under Section 201, Indian Penal Code.

In face of the evidence of assault on Kapildeo and Balram Dubey already discussed above, conviction and sentence of accused Dhup Narain, Bhikhari Singh, Suresh Singh, Baliram Singh, Dudhnath Singh and Kripal Singh under Section 323 of the Indian Penal code are fully justified."

7. Before us the appellants' learned counsel strongly contended that on the concurrent finding of the court below that the possession of the disputed land was with Rajkishore Singh and his party and the fact that three ploughmen were injured during the course of the occurrence it must be held that the appellants were the victims of unlawful aggression at the hands of their opponents and whatever injuries they may be found to have inflicted, were caused in exercise of the right of private defence. It was emphasised that the appellants being in possession there could not be any question of their agreeing to any Panchayati and the story in this regard is a fabrication. Raj Ballabh Dubey, deceased, according to the argument, was a member of the party which came to take forcible possession of the land in possession of the appellants. He was a wrestler and a bully and, therefore, designedly brought by the opposite party to help them. There being no unlawful assembly formed by the appellants Section 149, I.P.C., was inapplicable and there being no common intention to murder or to commit an offence under Section 34, I.P.C., was also not attracted. The cases against individual accused persons, the counsel argued, were not considered by the courts below and that even the presence of the three appellants, sentenced to imprisonment for life, is not satisfactorily established on the record. It was further complained that in spite of repeated requests by the accused persons no identification parade was held. The identification at the trial in court without a prior test identification parade in the circumstances would be of little value, said the counsel.

8. It is true that both the courts below have upheld the possession of the plots in dispute to be with the family of Nagina Singh. But this finding is clearly not conclusive on the question of the guilt or innocence of the accused. The courts below, it may be pointed out, have, believing the prosecution evidence, upheld the story about panchayati. In spite of elaborate arguments addressed by Mr. Nuruddin, the learned counsel for the appellants, we are unable to find any cogent ground for disagreeing with the evaluation of the prosecution evidence on this point by the courts below. The judgment of the learned Additional Sessions Judge contains a very exhaustive discussion on this point and the reasoning seems to us to be unexceptionable. The High court on appeal, after appraising the testimony of the eye-witnesses and considering the attending circumstances and the probabilities of the case, also agreed with those conclusions. The finding on this point on which both courts have agreed is binding on us and must be accepted as final, not open to re-assessment.

9. The next question relates to the actual occurrence. That a conflict did take place at the time

alleged by the prosecution at the place of the occurrence and that the deceased was present there is not disputed even by the accused persons. The difference between the two rival versions lies in the fact that each side claims to be the victim of aggression by the opposite party. The denial of Panchayati by the accused having been repelled as unacceptable it seems to us to be more probable that the accused after having agreed to a Panchayati desired as a second thought to go back on it and for this reason felt anxious to frustrate the offer of Panchayati. On this point too the courts below have concurrently accepted the version of the prosecution witnesses which again seems to be in consonance with the probabilities and is also supported by the attending circumstances may be that Raj Ballabh Dubey was a wrestler, though this fact is denied by Bankey Singh (P.W. 1) according to whom Raj Ballabh Dubey used only to take physical exercises regularly, but that by itself does not mean that the acceptance of the prosecution version by the two courts below must be held to be so grievously erroneous as to require it to be reversed by us. Their appraisal of evidence being free from any serious infirmity has to be accepted. According to the Trial Court the prosecution party was not armed and the injuries on the persons of Mahabir and Ram Pravesh, who were not examined as witnesses, have not been shown to have been caused in the course of the present occurrence.

10. The medical evidence in regard to their injuries, in the statement of Dwarka Prasad (D.W. 5), a private medical practitioner, did not impress the court, The plea of private defence was expressly ruled out. The High Court agreed with his view, That court added that if at all there was a right of private defence available to the accused in the beginning, it must be deemed to have ceased as soon as the prosecution party took to their heels and in that situation to chase the fleeing men and to assault them at a considerable distance could not be justified on the plea of the right of private defence. The final outcome of the conflict on the facts found is also, in our view, proof positive of the aggression by the accused. We have, therefore, no option but to accept the concurrent conclusions of the two courts below on this point as well. The further question of the dead body of the deceased Raj Ballabh Dubey having been carried away by the party of the accused is similarly concluded by the concurrent findings of the two courts below and despite the persuasive manner of Mr. Nuruddin's arguments we have not been able to find any infirmity in these conclusions. A faint-hearted suggestion thrown by the appellant that Raj Ballabh Dubey's dead body having not been traced, his death cannot be considered to be conclusively established has on the evidence and the conclusions of the courts below merely to be stated to be rejected.

11. The next question which requires consideration is that of guilt of the individual accused persons. The Trial Court found Raj Kishore, Bindheyachal Singh and Ram Bachan Guilty of the murder of Raj Ballabh Dubey and liable to be punished under Section 340/34, I.P.C. The charge under Section 302/149, I.P.C., according to that court was not made out against all the members of the prosecution party though one under Section 326/149 was clearly established. The High Court also upheld the guilt of the three appellants Raj Kishore, Bindheyachal Singh and Ram Bachan Bhar under Sections 302/34, I.P.C. The evidence of Bankey Singh (P.W. 1), Kashi Dubey (P.W. 3), Bal Govind Singh (P.W. 6) and Balbhadra Singh (P.W. 10) was relied upon for this finding. This evidence, in our view, fully supports the conclusions of the two courts below and no ground for interference in this appeal is made out. The appellants' learned counsel drew our attention to the dying declaration of Balram Dubey (P.W. 8), Exhibit J., recorded by Shri R. K. Singh on 24th October, 1963, in which he imputed his own injuries to Lathi blows by Bindheyachal Singh. According to the counsel this at least throws a serious doubt on Bindheyachal Singh's complicity in the murderous assault on the deceased by Bhala as deposed to be other witnesses. This submission, though attractive on first impression, is unacceptable on deeper thought on the facts and the conclusions of the courts below. The Trial Court did not rely on this dying declaration. The

Magistrate who had recorded it was not examined as a witness and according to its contents Balram Dubey was not fully conscious at that time. Now this witness is 75 years of age and had received six injuries as stated by P.W. 19, Dr. Sahai. One injury was grievous and it had resulted in fracture of humerus bone. He was medically examined at about 1 p.m. on 24th October. The doctor of course does not seem to have recorded in his injury report that he was unconscious but that does not necessarily mean that later, at about 2.35 p.m. when his dying declaration as recorded, his condition would not have become worse. But this consideration apart, the High Court has found sufficient evidence even after excluding the testimony of Balram Dubey (P.W. 6) on which to sustain the finding that Rajkishore, Bindheyachal Singh and Ram Bachan Bar had assaulted Raj Ballabh Dubey with Bhalas with the intention of killing him. Incidentally it may be pointed out that Ram Narayan Dubey, brother of the deceased, had more than once filed written application in the court of the Magistrate seized of the case, stating that Balram Dubey and Kapil Dev Tiwari had been won over by the accused. Two such applications are dated 3rd February, 1964 (Ex. 14) and 20th June, 1964 (Ex. 14/1). These applications were filed in connection with the insistence of the accused to have them identified only Ram Bachan Bhar on 24th June his evidence was discarded. On considering all the circumstances we do not think that on the basis of Ex. J. alone it is possible to discard the evidence of the two eye-witnesses which has been accepted by both the courts below. At this stage we may also appropriately dispose of the appellants' arguments seriously pressed before us that in spite of repeated demands by the accused test identification parades were not held with expedition and this has prejudiced the appellants. The first application, to which our attention was drawn in this connection, was put up before the Sub-Divisional Officer dealing with this case on 2nd January, 1964, in which it seems to have been prayed that the accused persons should not be produced in court on 3rd January, 1964 and also not till the test identification parade was finished. This application was, however, not pressed on behalf of the accused. On 3rd January, 1964, the accused were produced in custody and the court gave a direction to expedite the test identification parades. It appears that later the accused started pressing for immediate test identification parades. But in view of the fact that there was a counter-charge of some of the witnesses having been won over and the fact that the accused were apparently also known to the identifying witnesses test identification parade in this case can hardly be of any use. Kapil Dev Tiwari, the other identifying witness, died a natural death before he could appear as a witness in the case. So the test identification by him which is not a substantive piece of evidence but can only be used as corroborative evidence could not be of much evidentiary value. What has just been stated clearly shows that the identification parades are of little value to the prosecution and there is no question of the accused having been prejudiced by the late identification parades. We are not relying on them at all. The appellants' suggestion somewhat casually made during the course of the arguments that Bindheyachal Singh was not capable of wielding Bhalas with his right hand, which argument was not accepted by the Trial Court, appears to us to be without foundation.

12. This takes us to the other charges. Here again, the evidence of three witnesses P.W.s 1, 3 and 6 has been accepted by both the courts below and we are unable to find any cogent ground for disagreeing with them. The likelihood of the infliction of grievous hurt by the unlawful assembly, having a common object of assaulting the prosecution party, who were chased while running away, is amply established and has been so found by the courts while running away, is amply established and has been so found by the courts below. No legal infirmity or failure of justice has been made out. The general alternative submission that the appellants had only exceeded their right of private defence is equally unfounded because on the facts on the record and on concurrent conclusion of the two courts below there is no question of any right of private defence because the prosecution party has not at all been shown to be the aggressors. The question of exceeding this right can thus hardly

arise. This appeal accordingly fails and is dismissed.

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