

SUPREME COURT OF INDIA

Baldeo Singh

Vs.

State of Bihar

Crl.A.No.209 of 1970

(P. Jaganmohan Reddy and D. G. Palekar, JJ.)

02.12.1971

JUDGEMENT

PALEKAR, J.:-

1. This is an appeal by special leave by seven accused who have been convicted by the High Court under section 302 r/w 149, I.P.C. and section 147, I.P.C. They are all sentenced to life imprisonment. In all nine persons were put up for trial before the Additional Sessions Judge, Monghyr. They included in the seven appellants, one Indradeo Singh and Babulal Singh. The Sessions Court convicted Indradeo Singh under section 302, I.P.C. and sentenced him to imprisonment for life. The other accused were all acquitted. Indradeo Singh appealed to the High Court against his conviction and sentence. The State also appealed against the acquittal of the remaining eight including Babulal. The High Court did not admit the appeal against Babulal but admitted the appeal against the appellants and after hearing, convicted the appellants as aforesaid. The appeal of Indradeo Singh was dismissed. The seven appellants and Indradeo Singh applied for special leave to this court. Leave was granted to the appellants only.

2. The incident out of which the case arises took place at about 1.00 P.M. on Sunday the October 4, 1964 in the village Belchi within the jurisdiction of Halsi Police Station which is about ten miles

away. A couple of hours earlier there was a prior incident in which the deceased Dhotan Singh and the aforesaid Babulal Singh, were involved. It appears that the buffaloes belonging to the accused grazed in the paddy field jointly cultivated by Dhotan Singh and his cousin Baleshwar Singh, P. W. 1. The paddy field was close to the Dalan of Babulal. On a protest made by Dhotan Singh to Babulal, there was an exchange of abuse. The matter, however, ended there without any harm being done.

3. At about 1.00 P. M. Baleshwar Singh, P. W. 1. and Dhotan Singh returned from their field to the village. This field was much further to the North of the village and it appears that Baleshwar Singh, P. W. 1. came to know from Dhotan Singh about the incident of grazing. As the two of them passed through the village lane on their way to their houses, the present incident occurred. The two were coming from North to South. As they came near the Dalan of Babulal, it was noticed that the nine persons referred to above were sitting in the Dalan. On seeing Dhotan Singh, Babulal is supposed to have cried "the enemy has come, assault and kill him." That was a signal, for all the nine of them to come out of the Dalan into the lane. Indradeo Singh had a 'saif' a kind of sharp double edged sword, in his hand while the other eight including the appellants and Babulal were armed with sticks. Immediately they came out, they surrounded deceased Dhotan Singh, and Indradeo pierced his saif into the chest of Dhotan Singh Baleshwar Singh, P. W. 1. Who was following him about 8 or 10 paces behind shouted "brother, run away". Thereupon Dhotan Singh ran back to the North. The case is that all those accused who were armed with lathis pursued him and assaulted him with the result that Dhotan Singh fell down some 67' away from the original place of assault and shortly thereafter he died. The First Information Report was lodged by P. W. 1 that same afternoon at about 5.00 P. M.

4. The defence was that all the nine accused had been falsely implicated. It was stated that there was a quarrel about the grazing of cattle between one Kailash Singh and the deceased Dhotan Singh and Babulal had nothing to do with it. It was during the course of this quarrel, somebody picked up a bamboo pole from the mandap of Harcharan Baba and attacked the deceased Dhotan Singh in the chest. Dhotan Singh and the prosecution witness belonged to one group and due to enmity and grudge all the nine accused who were close relative were falsely implicated.

5. The learned Sessions Judge after a careful scrutiny of the evidence accepted the story that there was an incident at about 10 O'clock. This incident concerned Dhotan Singh and Babulal. He also accepted the prosecution story that at about 1.00 p.m. Indradeo Singh had struck Dhotan Singh near the Dalan of Babulal with a 'saif'. As regards the participation of the other accused, he felt a doubt and gave the benefit of doubt to the other eight accused.

6. The High Court accepted the story of the prosecution substantially. From the fact that the appeal against Babulal was not admitted, it is clear that the High court was not satisfied about Babulal's participation. But so far as the present appellants are concerned, the High Court found that they must have been also present at the time of the assault along with Indradeo Singh and had participated in the incident by assaulting Dhotan Singh with lathis. It, therefore, held that besides

Indradeo Singh the present seven appellants were also liable to be convicted under section 302 r/w section 149, I. P. C. Indradeo Singh's appeal was, therefore , rejected by the High Court and the State appeal against the present seven appellants was allowed.

7. It is contended before us on behalf of the appellants that the High Court was not justified in reversing the order of acquittal by the Sessions Judge since the learned Sessions Judge had given good reason for the acquittal. The High Court, it is submitted, was not justified in reappreciating the evidence since the grounds given by the learned Sessions Judge were reasonable and cogent. On the other hand, it is contended, the reasons given by the High Court for converting the acquittal into a conviction were liable to challenge on several grounds.

8. The medical evidence showed that the deceased Dhotan Singh had in all six injuries. They are as follows:

(1) One bruise 4" x 2 1/2" on the right temple with the swelling on the eyelids.

(2) One penetrating wound 1" x 1/2" x 3 1/2" on the left side of the chest between 2nd and 3rd ribs just by the side of the breast bone going downwards and backwards with 5 abrasions 1" x 1/4" each around it.

(3) One bruise 2 1/2" x 1" on the right shoulder.

(4) One abrasion 1 1/2" x 1" on the front of the left leg just below the knee with swelling around.

(5) One swelling 2" x 1" on the back of the left elbow with an abrasion 1/2" x 1/4" on it.

(6) One swelling 2" x 2" on the outer aspect of right arm.

Out of these six injuries, injury No. 2, it is now established, is the injury caused by the 'saif '. The other injuries, according to the prosecution were caused by lathi blows, while the defence plea is that they might have been caused when Dhotan Singh heavily fell on the ground after he ran from the place where he was first attacked by Indradeo Singh. The learned Sessions Judge was inclined to hold, especially, in view of the unsatisfactory state of the evidence, that the injuries might have been

caused by the fall. The High Court, on the other hand, thought that the injuries must have been caused by lathi blows. It is necessary to be stated that the suggestion that these injuries might be by a fall had been made at the very threshold of the case in the cross-examination of Baleshwar Singh P. W. 1.

9. The learned Sessions Judge duly noticed that the prosecution witnesses belong to a group inimical to the accused and, therefore the evidence had to be closely scrutinized. As often happens in the case of group rivalries and enmities, there is a general tendency to rope in as many persons as possible as having participated in an assault. The courts, have, therefore, to be very careful and if after a close scrutiny of the evidence, a reasonable doubt arises with regard to the participation of any of those who have been roped in, the courts would be obliged to give the benefit of doubt to them. On a perusal of the judgement of the learned Sessions Judge, we find that the necessary caution had been observed in his approach to the evidence.

10. The appellants, who as we have already stated, are close relations of Babulal have been convicted principally on the evidence of the three eye witnesses Baleshwar Singh, P. W. 1, Sadhu Saran Singh, P. W. 4 and Pyare Singh, P. W. 10 and the medical evidence. The learned Sessions Judge found that these three eye witnesses who claimed to have seen the assault from beginning to end had not given a satisfactory account as to how the appellants had participated in the assault. According to Baleshwar Singh, P. W. 1, on the signal given by Babulal, all nine accused came out of the Dalan into the lane. They surrounded deceased Dhotan Singh and then Indradeo Singh struck the saif into his chest. So far as Indradeo Singh using the saif is concerned, there is no dispute now. The dispute is about the participation of the appellants. It is said that they were all armed with lathis and with these lathis, they assaulted the deceased Dhotan Singh. In his examination-in-chief, Baleshwar Singh stated that when he shouted to his brother to run away, Dhotan Singh began to run and as he began to run, the appellants gave lathi blows to him. It is to be remembered that the distance between the place where the saif was used and the place where the deceased actually fell is described as about 40 paces and, on measurement, has been found to be 67'. Baleshwar Singh, P. W. 1 was very close and he should be expected to know when and where the assault with lathis took place. Having said in his examination-in-chief that the appellants used their lathis as Dhotan Singh started running away which would mean just near the place where he was pierced with the saif, he stated in his cross-examination that after the assault with the saif Dhotan Singh ran, the appellants chased him and when Dhotan Singh fell down after running a distance of 40 to 42 cubits they assaulted him with lathis. He said that he could not notice if during the chase, Dhotan received any blows because he himself was running away. In other words, according to Baleshwar Singh in his cross-examination he had seen the appellants giving Dhotan Singh lathi blow after he fell down. In the F. I. R. he had stated that he was assaulted with lathis while he ran away. Indeed he does not say which of the appellants beat him and on which parts of the body. The High Court appears to have been impressed by this because the witness did not show undue zeal to implicate any particular appellant by attributing the lathi blows to any of them in particular. Indeed this is unexceptionable, because in a melee where several people are giving blows at one and the same time it will be impossible to particularize the blows, and if any witness attempts to do it, he may excite grave suspicion with regard to his veracity. At the same time it cannot be forgotten that it is simpler to make an omnibus statement that all the accused assaulted with lathis because that obviates close cross-examination. Therefore, the point as to where and when the lathi assault took place assumes

considerable importance. It is clear from Baleshwar Singh's evidence that he was not definite as to when the assault by lathis commenced. In one place he said that the assault by lathis was made immediately after Dhotan Singh was pierced with the saif. In his cross-examination he changed to story and said that the assault with lathis was made after Dhotan Singh had run about 67' and fell there. It is to be remembered that he fell on his face. So his head and back were exposed to lathi blows. If Baleshwar Singh is telling the truth. Dhotan Singh should have heal marks, bruise marks, swellings etc. on the head and also on the back. But the medical evidence does not disclose that he had any such injuries. This was an important point and due weight should have been given by the High Court to this circumstance before believing Baleshwar Singh, P. W. 1. Several contradictions on this score have been noticed by the High Court which also noted that the learned Sessions Judge had adversely commented on his demeanour as a witness. But all that has been brushed aside with the observation that the discrepancies in the evidence of P. W. 1 cannot be taken seriously. The other eye witness Sadhu Saran Singh, P. W. 4 gave a different account. He said that the appellants chased Dhotan Singh as he ran, beat him with the lathis and so he fell down. Later he said that when Dhotan Singh was running away, he was not assaulted. At another place he said that Dhotan Singh was assaulted both from behind and in front and quickly corrected himself and said that Dhotan Singh received all the blows from behind. Then he added that he had received the blows before and after he fell down. In his statement before the police he had not said that anybody gave Dhotan Singh any blow after he fell down. The evidence of the third eye witness Pyare Singh, P. W. 10 is not much better. He said that all the appellants attacked him with lathis at the very spot where he fell and that these lathi blows were given when he was standing and as a result of these blows, he fell down. In another place in his evidence he said that when Dhotan Singh fell he was assaulted with lathis. In the Committing Court, however, he had stated that Dhotan Singh had been assaulted with lathis when he was running. It would be, therefore, seen from the evidence of these eye witnesses that they are not able to give a correct version as to when he was given lathi blows. Their evidence is seriously discrepant. The important point to be remembered, however, is whether Dhotan Singh could have escaped receiving a number of blows on all parts of his body if he was set upon by seven persons with lathis in their hands, and whether he would not have received even one blow on the head or the back or the legs from behind. It is quite clear from the absence of any such injuries on the back side that he must not have been beaten while being chased. Secondly, if he was attacked by all these persons just at the place near the Dalan where a deep thrust into the chest was made with the saif by Indradeo Singh, it is impossible to conceive that Dhotan Singh would have been able to move even a few feet. As a matter of fact the eye witnesses actually say that when Indradeo Singh was piercing Dhotan Singh with the saif, the appellants were surrounding him. Baleshwar Singh, P. W. 1 says that when the accused persons being armed with lathis and a saif ran towards Dhotan Singh, he could not run away. It appears to us that if about nine persons armed with lathis and a saif intended an attack in the narrow lane, he could hardly have been allowed to escape. The evidence of some of the witnesses that he was assaulted after he fell down 67' away is equally absurd because the rear side of the body of Dhotan Singh being exposed, there should be many injuries visible on that part of the body. In our opinion, therefore, the learned Sessions Judge had very good and cogent reasons to doubt the evidence about the assault with lathis, especially when we know that the parties were on inimical terms and there was every likelihood of as many relations of Babulal as possible being involved falsely in the incident.

11. Out of the five injuries alleged to have been caused by lathis, four are definitely on the front side and the fifth is a bruise on the right shoulder. It cannot be definitely asserted that this bruise on the right shoulder could not have been sustained when Dhotan Singh heavily fell on the ground on his

face when he was running after being pierced in the chest. The other injuries in our opinion, were quite likely to be caused in the course of the fall. Much was made of the fact that the Medical Officer Dr. Biresh Narain Prasad, P. W. 6 was not asked in his cross-examination as to whether these injuries could not have been caused by a fall. We do not think that in the circumstances of the case much importance could be attached to this omission. That these injuries were caused in the course of the fall had been suggested at the earliest stage of the trial. That being the position, it would have been fair for the prosecution to eliminate this possibility by asking the Medical Officer Dr. Prasad whether those injuries could have been received during the course of a fall. Dr. Prasad was careful in making his statement in his examination-in-chief. He did not want to be definite that these injuries must have been caused by lathis. This is what he said "The penetrating wound in the chest was caused by some sharp pointed weapon, may be 'saif'. The remaining injuries were caused by some hard blunt substance, may be by lathi also". Indeed it would have been safer for the defence to cross examination the medical officer in greater detail with regard to these injuries. But it cannot be said that the learned cross-examination was guilty of any error in not pursuing the point seeing that, at an earlier stage, he had suggested that those injuries could have been caused during the course of a fall and still the prosecutor had not chosen to negative this suggestion by putting the possibility to the Medical Officer who was examined later. In any event it is quite clear that these injuries could not have been the only injuries to be caused if the assault had taken place with lathis in the manner as alleged by the prosecution witnesses. In these circumstances, we think that the learned Sessions Judge was reasonably justified in coming to the conclusion he did.

12. The appeal is, therefore, allowed, the order of conviction and sentence is set aside and the appellants are acquitted.

Appeal Allowed.