

Ram Narain and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 178 of 1969

(A. N. Grover, M. H. Beg JJ)

29.08.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Allahabad High Court.
2. Ram Narain and seven others were tried by the Sessions Judge, Barabanki, on charges under Sections 302/149, 325/149, 323/142 and 147, Indian Penal Code. They were all acquitted. The State preferred an appeal to the High Court. The High Court set aside the acquittal of Ram Narain, Jag Mohan, Hari Prasad and Ghasitey and they were convicted under Sections 302/34, 325/34, 323/34 and 147, Indian Penal Code, and were sentenced to imprisonment for life, three years rigorous imprisonment and one year's rigorous imprisonment respectively, under the four counts. The acquittal of Sri Ram, Rahim Bux, Ram Saran and Ram Lakhan under Section 302/149 was upheld but each one of these persons was convicted under Sections 325 and 323 read with Section 149 as also under Section 147 of the Indian Penal Code. They were awarded the same sentences as the others on charges under these sections. The sentence in the case of all the convicted persons were to run concurrently. The present appeal has been filed by all the eight convicted persons.
3. According to the case of the prosecution there was a mango tree standing on the banjar land which was claimed by Ram Narain as belonging to him. Sarabjit deceased also laid claim to that land. On consolidation proceedings it was ordered that Ram Narain be recorded as the owner of the tree. He moved an application before the Town Area Committee of Satrikh for permission to cut the tree. Sarabjit filed an objection claiming that he would be filing a declaratory suit about his ownership of the tree. The Town Area Committee, however, granted permission to Ram Narain to cut the tree. Ram Narain, it is alleged, went along with other persons to cut the tree. Sarabjit asked him to desist from doing so and he later filed an application on July 19, 1965 before the Tahsilder seeking relief in the matter. On the morning of July 22, 1965 Gur Prasad P.W. 1 who is the son of Sarabjit saw Ram Narain coming in the company of others towards the tree, the obvious intention being to cut it. Gur Prasad went to his father Sarabjit, and informed about the matter. Thereupon, Sarabjit, his wife and Gur Prasad came to the spot where the tree was. According to the prosecution they told Ram Narain to cut the tree which not had already been cut to a certain depth. Ram Narain, his son Hari Prasad, Jag Mohan and Ghasitey are alleged to have shouted that Sarabjit and his wife and their son should be killed. They then assaulted them with lathis. Sarabjit, his wife and son tried to run away. When they reached the neighbouring fields of Sri Krishna, the others appellants are alleged to have surrounded them so that they could not run away and further injuries were inflicted on the instigation of those persons by Ram Narain, Hari Prasad, Jagmohan and Ghasitey. The incident attracted Makhan Ram, Manohar, Jagannath, Ram Pragat and other persons. Thereupon the

appellants ran away.

4. A first information report was lodged at 10.40 a.m. by Ram Narain, appellant. Therein he stated that when he was cutting a tree Sarabjit, Gur Prasad, Makhan, Ram Manohar and Ram Pragat came at 8 a.m. and beat him up. In the General Diary entry relating to this report injuries on the person of Ram Narain were noted. His injuries were also examined by Dr. O. P. Gupta on July 23, 1965. They consisted of five abrasions and one contusion the last injury being on the outer side of the left leg. It may be mentioned that the appellant Hari Prasad who was examined several days later as he surrendered on July 30, 1965 was found to have one abrasion on the neck. Gur Prasad P.W. 1 also lodged a first information report at 11.30 a.m. He took Sarabjit and his mother to the police station along with him. After recording their statements they were sent to the Civil Hospital. Gur Prasad had eight injuries two of which were contused wounds on the head. Injury No. 5 on his left hand was grievous. Smt. Pran Devi had four injuries two of which were contused wounds, one on the right side of the head and the other, on the left side of the forehead. Sarabjit having died his post-mortem examination was performed on July 23, 1965 in the morning. He had five injuries, three of which were contused wounds mainly on the head or in the region of the head. The internal examination showed that there was fracture of the skull. According to the doctor, Sarabjit's death was due to coma as a result of the head injuries.

5. The defence of Ram Narain and Hari Prasad was that they had acted in self-defence. According to them, while they were cutting the mango tree which they were entitled to do, Sarabjit and Gur Prasad along with Ram Pragat and Makhan came and assaulted them with lathis and they had to inflict blows in self-defence. Jagmohan gave out that he was implicated falsely. According to Ghasitey he was falsely implicated because he was the brother of Jagmohan. Ram Lakhan, Ram Saran and Rahim Bux stated that they had been pairokars of Jagmohan in some election matter at which the rival candidate was Makhan Lal P.W. 2 and they had, therefore, been falsely implicated. Sri Ram stated that he had also been falsely implicated because it was under his Chairmanship that the resolution permitting Ram Narain to cut the mango tree had been passed by the Town Area Committee.

6. The learned Sessions Judge did not rely on the eye-witnesses for the reasons, inter alia, that they had suppressed the truth by not explaining the injuries on the person of two of the accused, namely, Ram Narain and Hari Prasad. In his view the prosecution had not come with clean hands and there was a certain amount of plausibility in the defence set up that Ram Narain and Hari Prasad had not only been stopped from getting the tree cut but they had also been attacked and given a beating first when they used their weapons in exercise of the right of self-defence of person. They may have exceeded that right but as there was no evidence to fix to identify of individual or individuals who delivered the fatal blows none of the accused persons could be convicted of an offence under Section 304, Part I of the Indian Penal Code. The High Court was of the opinion that the injuries on Ram Narain and Hari Prasad could possibly have been self-inflicted. According to the High Court the witnesses of occurrence examined at the trial were Gur Prasad P.W. 1, Makhan Lal P.W. 2, Ram Pragat P.W. 5 and Ram Manohar P.W. 6 and with the exception of the first witness the other witnesses saw the occurrence from the stage when beating was being administered by the four of the accused persons, Ram Narain, Jagmohan, Hari Prasad and Ghasitey. These witnesses could not, therefore, state how the assault on the side of the accused stated. Their evidence, however, showed that all the three injured person were unarmed and when they witnessed the occurrence it was a one-sided affair. In other words the injuries were being inflicted by the aforesaid four accused. As regards the other four accused, namely, Siri Ram, Rahim Bux, Ram Saran and Ram Lakhan the prosecution case itself was that at the initial stage they did not either participate in the making of the

assault nor incited the assault. It was later on that they are alleged to have surrounded the injured persons and thereby assisted in the beating. The High Court thus came to the conclusion that these four accused were members of an unlawful assembly having the object of beating only and not killing of any of the injured persons whereas the other four were guilty of the offence under Section 302 read with Section 34 apart from other offences of which they were convicted.

7. We find it difficult to concur in the view of the High Court that the injuries on Ram Narain could possibly have been self-inflicted. According to the first information report lodged by Gur Prasad P.W. 1 the occurrence took place at about 9 a.m. in the morning. The complainant party was the first in point of time to lodge the first information report which was done at 10-40 a.m. In the General Diary an entry was made relating to this report in which injuries on the persons of Ram Narain were noted. It is barely possible to believe that within such a short period of an hour and a half Ram Narain could have inflicted the injuries which were found on his person. We shall not take into consideration the injuries of Hari Prasad because he was examined much later and he had only an abrasion but the injuries on the persons of Ram Narain could not be completely ignored. At the same time we find it very difficult to accede to the contention of the learned counsel for the appellants that the injuries on Gur Prasad, Sarabjit and Mst. Pran Devi which were of a serious nature had been inflicted on them in exercise of the right of self-defence of person. It is established from the evidence that when Ram Narain and his companions started cutting the tree Gur Prasad P.W. 1 ran towards his house which was not very far to inform his father and soon after he came to the spot along with his father and mother. The very fact that Mst. Pran Devi also came with her husband and son indicated, to some extent, that these persons had not come to the place where the tree was being cut to employ force of inflict any beating on the party of the accused. The nature and the number of injuries which were inflicted on them by the party of the accused was such that the evidence of the eye-witnesses can be well-believed that it were Ram Narain and three other accused persons who had inflicted those injuries. There can be no doubt about the presence of Ram Narain because he was injured. He was, however, an old man of 65 and we cannot believe that he and Hari Prasad, his son, could have done so much damage by way of injuries to the members of the complaint's party. It is more probable, therefore, that apart from Ram Narain and Hari Prasad the other two accused persons Jagmohan and Ghasitey must have been active participants in the beating. The beating does not seem to have stopped at the spot where the tree was but blood was found at point No. 2 which is at a certain distance from point No. 1 where the tree was. Blood was also found in the field of Sri Krishna at point No. 3 in the plan Ext. Ka-22. It is alleged that Sarabjit, Mst. Pran Devi and Gur Prasad were found lying soon after incident in the field of Sri Krishna. The case of the prosecution thus was that when Gur Prasad brought his father Sarabjit and his mother Mst. Pran Devi to the spot these persons merely protested against the tree being cut. Then the party of the accused started inflicting the beating. The assault continued while they were running towards the field of Sri Krishna. The medical evidence as also the presence of the blood as shown in the plan corroborates the evidence of the eye-witnesses about the beating having been given in the manner indicated above.

8. It is true that apart from Gur Prasad P.W. 1 the other witnesses who had their fields in the neighbourhood of the tree had not seen the origin of the trouble. But Gur Prasad had given evidence and medical and circumstantial evidence corroborates his version. The absence of any explanation with regard to the injuries on Ram Narain is certainly an infirmity in the case of the prosecution which cannot be lost sight of but it must be remembered that generally the witnesses are anxious to suppress any injury which might have been inflicted by any one from the complainants party. It has been suggested on behalf of the State that possibly Gur Prasad or Sarabjit had a lathi or a stick in his hand which might have been used on the person of Ram Narain when the beating started from his

side but we are wholly unable to endorse the view of the learned Sessions Judge that the injuries inflicted on Gur Prasad, Sarabjit deceased and Mst. Pran Devi were inflicted in exercise of the right of self-defence. In view of the medical and circumstantial evidence which corroborates the eye-witnesses the case of the prosecution with regard to Ram Narain, Jagmohan, Hari Prasad and Ghasitey cannot be rejected.

9. As regards the other four accused namely, Siri Ram, Rahim Bux, Ram Saran and Ram Lakhan who have been convicted by the High Court under Sections 325 and 323 read with Section 149 as also under Section 147 of the Indian Penal Code the only part attributed to them was that they had surrounded Sarabjit and others and had thus helped in injuries being inflicted on them. The learned Sessions Judge gave several reasons for howing that the eye-witnesses were not completely independent. The High Court does not appear to have noticed all those reasons. The very fact that they did not mention anything about the injuries found on the person of Ram Narain makes it unsafe to rely on their evidence completely unless independent corroboration is available. There is no circumstantial or other reliable evidence which furnishes corroboration of their testimony with regard to the part attributed to the aforesaid four persons.

10. There is some material on the record which shows that there were party factions in the locality in question and a doubt does subsist about the correctness of the prosecution version with regard to Siri Ram and the other three persons having been falsely implicated.

11. In the result the appeal of Ram Narain, Jagmohan, Hari Prasad and Ghasitey is dismissed but that Sri Ram, Rahim Bux, Ram Saran and Ram Lakhan allowed. They (Siri Ram, Rahim Bux, Ram Saran and Ram Lakhan) are acquitted of the charges of which they were convicted by the High Court. They were released on bail by this Court and their bail bonds shall stand discharged. We are informed that Ghasitey was released on bail under some mistaken interpretation of this Court's order, dated August 28, 1969. If that is so, Ghasitey shall surrender to his bail bonds.

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