

Bhagwan Tana Patil

Vs

The State of Maharashtra

Criminal Appeal No. 78 of 1970

(H. R.Khanna, R. S. Sarkaria JJ)

09.10.1973

JUDGMENT

SARKARIA, J. -

1. Bhagwan Tana Patil, appellant herein was tried along with his brothers, Sahadu Tana patil and Atmaram Tana Patil and his cousin, Bhimrao Dagadu Patil by the additional sessions Judge, Jalgaon on charges under Sections 307, 323 and 325, read with Section 34, Penal Code, arising out of an incident that took place at village Gudhe on September 15, 1967. Appellant was convicted under Section, 324, Penal Code and sentenced to two years rigorous imprisonment and a fine of Rs. 200, for causing an injury to Baliram Ukha with a knife. His three companions were also convicted for the same injury under Section 323 read with Section 34, Penal Code. All the four accused were further convicted under Sections 325/34 and 324/34, Penal Code, for causing grievous hurt to Bhagwan Parshram and simple hurt to Maharu Baliram, respectively.

2. On appeal, the High Court of Bombay maintained the conviction sentence of Bhagwan Tana Patil but acquitted the other three accused persons of all the charges levelled against them. Aggrieved by the said decision, Bhagwan Tana Patil has appealed to this Court by special leave.

3. The brief facts of the case may now be stated.

4. The fields of Sitaram Patil, a brother of the appellant, and those of Baliram Ukha (P.W. 2) are situate in the vicinity of each other in the area of village Gudhe. Baliram Ukha had grown hybrid Jowar in his field. Sitaram Patil had raised ordinary Jowar crop in his adjacent land, which was likely to have an injurious effect on the hybrid Jowar of Baliram Ukha. The latter was therefore, persuading Sitaram Patil to cut and remove his ordinary Jowar. Sitaram Patil had agreed to do so in a meeting held on September 15, 1967 for this purpose. This was, however, resented to by the accused. Another factor which possibly affected the relations of Baliram Ukha with the appellant, was that in the elections to the Gram Panchayat held in the year 1964-65, Baliram Ukha and the appellant contested the election as rival candidates. Baliram Ukha was defeated and the appellant was elected.

5. On September 15, 1967, at about 10 p.m. Baliram Ukha was in the first floor of his house, while his son, Maharu Baliram, was sitting on the ota (a ledge) in front of his residential house. Bhimrao (accused 4) came there and tauntingly asked Maharu Baliram as to why he was telling the people that he (Bhimrao) was preventing Sitaram Patil from removing his ordinary Jowar crop from the land. Immediately after flinging this question, Bhimrao, started giving fist blows to Maharu. Moments later, Shahadu (accused 2) and Atma Ram (accused 3) armed with sticks and iron bar, also

arrived and joined in the assault on Maharu with sticks and iron bar, also arrived and joined in the assault on Maharu. The hue and cry raised by the victim attracted persons from the neighbourhood. Baliram Ukha, also, after having a look of the scene from the window in the first floor, came down up the spot rescue his son. The appellant was standing there with a Jambia (knife) in hand, proclaiming that he would deal with whosoever dared intervene. As soon as Baliram Ukha came on the spot, the appellant stabbed him (Ukha) with the Jambia in the stomach. Baliram Ukha gave out a cry. Bhagwan Parshram (P.W. 13), who had already reached the scene, caught hold of the appellant by the hand, and, in spite of the stick blow given by accused 3, succeeded with the help of Maharu, in snatching away the Jambia from the appellant. In the struggle, the dhoti of the appellant got loose and fell at the spot. The appellant then bolted away leaving his dhoti behind. The other accused also took to their heels. At that moment, Tulsiram Dagadu, P.W. 1, came out to the spot from his house, which is only 100 or 125 feet away in the same street. Baliram Ukha told him that the appellant had stabbed him with the Jambia in the stomach. While Baliram Ukha was taken inside his house, Tulsiram Dagadu fetched the local Medical Officer, Dr. Thakare (P.W. 5), who stitched the wound of Baliram and bandaged it with the same dhoti, which had been left behind by the appellant. Thereafter, Tulsiram accompanied by Daga Shrawan, went to the Police Out-post, Kolgaon, 3 to 3 1/2 miles away, and reported the matter to Head Constable Gorakh Patil (P.W. 16) at 12 midnight. The Head Constable recorded the informant's complaint, Ex. 6, at about 12.30 a.m. and sent the Khabari Report, Ex. 48. to Police Station, Badhgaon, 18 miles away. The Head Constable reached the spot on the 16th September, 1967, at 3 a.m.

6. On the other hand, the appellant and Bhimrao (accused 4) also reached Police Station, Badhgaon, at 6.30 a.m. on the 16th September and lodged a counter-complaint, to the effect, that they had been assaulted at about 9.30 p.m. on the evening of 15th September in front of the house of Bhimrao (accused 4) by the prosecution witness, Baliram Ukha, Maharu, Bhagwan Parshram and others.

7. P.S.I. Thakur Sen these injured accused to the Medical Officer, Dr. Gune (P.W. 8). He himself reached Gudhe on September 16, 1967, at 1.30 p.m., and took over the Jambia, Ex. 34, from Maharu Baliram, to whom it had been entrusted by Bhagwan Parshram after snatching it from the appellant. The dhoti of the appellant was also seized vide Panchnama, Ex. 38. Dr. Aggarwal, P.W. 6, of Chalisgaon Dispensary was also brought at 6 a.m. He removed Baliram Ukha in a car to Dhulia Civil Hospital, where he remained under the treatment of Dr. Wani for about 11 days till his discharge from the Hospital on September 27, 1967.

8. Bhagwan Parshram and Maharu Baliram were examined and rendered medical aid by Dr. Thakare at 8 a.m. on September 16, 1967. Dr. Thakare then sent both of them to Dr. Gune, P.W. 8, who further sent them for radiological examination to Jalgaon Civil Hospital. The skiagram taken by Dr. Mandore, revealed a fracture of the proximal phalanx of the right ring finger of Bhagwan Parshram.

9. P.S.I. Thakur arrested the appellant on the 16th, accused 2 and 3 on the 25th September and accused 4 on the 2nd October, 1967. After completing the investigation, he laid a charge-sheet in Court against all the four accused persons.

10. All the accused denied the prosecution allegations against them and set up a counter-version that accused 4 was assaulted by Baliram Ukha, Maharu Baliram and other prosecution witnesses at about 9.30 p.m. in front of the house of Bhimrao, accused 4, with Jambia, with the result, that the appellant and accused 4 received injuries. They further stated that the Jambia, which was being wielded by Maharu Baliram, accidentally fell on his father, Baliram Ukha, and caused the injury. Accused 2 and 3 totally denied their presence at the scene of the incident.

11. The counter-case, in which all these material prosecution witnesses were arraigned as accused persons, was also committed to the same Court for trial. The additional sessions Judge found that the evidence of the prosecution witnesses in the instant case, was substantially true. He, however, rejected the counter-version set up by the accused. In the result, he convicted all the four accused in the present case, but acquitted Baliram Ukha and his companion in the cross case.

12. The main evidence in the case consists of the statements of the injured witnesses, Baliram Ukha, P.W. 2, Maharu Baliram P.W. 12 and Bhagwan Parshram P.W. 13. Evidence was also given by Tulsi Ram Dagadu P.W. 1, to the effect that before him, immediately after the assault, Baliram Ukha had denounced the appellant as his assailant. Besides this, there was the testimony of five Medical Officers viz. Dr. Thakare, Dr. Gune, Dr. Aggarwal, Dr. Mandore and Dr. Wani, who had examined or treated the injured persons.

13. On appeal, the High Court reappraised the evidence of these prosecution witness against the background do defeat of Baliram Ukha at the hands of the appellant in the Panchayat elections of 1964-65, and the dispute over the removal of the Jowar crop between the parties. It noted that the prosecution witnesses had failed to give any satisfactory explanation of the incised injury found on the appellant (accused 1) and Bhimrao (accused 4). In view of this circumstance, it was observed "that the prosecution witnesses cannot be said to have given the true version of the incident in all its particulars". It was further found that the prosecution witnesses had tries to give a "highly exaggerated" account, inasmuch as they said that several stick blows and iron-bar blows were inflicted on the person of Maharu Baliram though according to the medical evidence, there was only one simple injury on his person. The learned Judges, therefore, concluded that "the word of the prosecution witnesses could not be accepted, unless the same was corroborated independently in material particulars". Appreciating from this point, the learned Judges found that the evidence of the prosecution, so far as it related to the assault by the appellant on Baliram Ukha, was cogent, reliable and corroborated in material particulars by other evidence. As against the remaining accused, they found that such corroboration was not forthcoming; instead, there were several suspicious circumstances, which made the case against accused 2 to 4 doubtful. These circumstances, according to the learned Judges were : non-mention of accused 2 to 4 as assailants in the complaint that had been lodged at the Police post by Tulsi Ram Dagadu after having a talk with Baliram Ukha at the spot; failure of Maharu and Bhagwan Parshram to take medical help from Dr. Thakare who had arrived at the house of Baliram Ukha, on the day of occurrence and unexplained delay in the arrest of accuse Nos. 2 to 4. The High Court, therefore, while maintaining the conviction and sentence of the appellant, acquitted the other accused, giving them the benefit of doubt.

14. Mr. Mukherjea, learned Counsel for the appellant, contends before us that once it was found by the High Court that the prosecution witnesses had not given a truthful account in material particulars qua the acquitted accused, it was improper for it to maintain the conviction of the appellant on the basis of the same tainted evidence. Learned Counsel has tried to show the there was no independent corroboration of the evidence of these witnesses in material particulars even qua the appellant. It is stressed that the failure of the prosecution witnesses to give any satisfactory explanation of the incised injuries of the appellant and accused No. 4 was, by itself, sufficient to disbelieve their evidence in its entirety. On this point, our attention has been invited to the statement of Dr. Thakare, who, in cross-examination, said that the cut injuries found on the middle finger and ring finger of the right hand of the appellant, could be caused with the Jambia, if he was warding off Jambia blows attempted on him. In the face of this clear testimony of Dr. Thakare, it is argued, the Courts below were not justified in making out the explanation that the appellant might have sustained those injuries when Bhagwan Parshram was trying to snatch away the Jambia from the appellant, and the

latter was trying to hold fast to it.

15. The contention appears to be untenable. The mere fact that the evidence of the prosecution witnesses was not firm and safe enough to be relied upon with regard to the part assigned to the acquitted accused in the occurrence, was no ground to reject it mechanically against the appellant also. The maxim *falsus in uno falsus in omnibus* is not to be blindly invoked in appraising evidence adduced in our courts where witnesses seldom tell the whole truth, but often resort to exaggerations, embellishments and 'padding-up' to support a story however true in the main. It is the function of the court to disengage the truth from falsehood and to accept what it finds to be true, and reject the rest. It is only where truth and falsehood are inextricably mixed up, polluting beyond refinement, down to the core, the entire fabric of the narration given by a witness, that the Court might be justified in rejecting his evidence in toto. In the present case, the High Court has positively held that these witnesses, in their evidence, had falsely implicated the three acquitted accused. It only found that qua the acquitted accused, their evidence was infirm and the requisite confirmation of their evidence from independent sources was lacking. The case against the appellant stood on a far better footing. The interested evidence of Baliram Ukha and Maharu Baliram had been sufficiently corroborated by independent evidence, so far as the appellant was concerned. Excepting that he belonged to the brotherhood of Baliram Ukha nothing substantial could be pointed out against the integrity of Bhagwan Parshram. P.W. 13. He had no axe of his own to grind against the appellant. His coming on the scene of occurrence was highly natural and probable. P.W. Bhagwan Parshram did give an explanation in his statement at the trial of the incised injuries found by which he had wrenched out the Jambia from the hand of the appellant, and said that the injuries might have been sustained by the appellant during that struggle with the same Jambia. A similar explanation was given by Baliram Ukha in his deposition at the trial. It is, therefore, not correct to say that the Courts below had themselves invented an explanation for the injuries of the appellant, which the witnesses had not given. True that the explanation given was not found impeccable but there is no hard and fast rule that simply because the prosecution witnesses did not explain the injuries on the person of the accused, their entire evidence should be discarded. The observations of this Court in *Bankey Lal v. State of Uttar Pradesh* ((1971) 3 SCC 184 : 1971 SCC (Cri) 253) are in point. The evidence of Bhagwan Parshram could not be brushed aside merely because he had not given a flawless explanation of the injuries of the appellant, which, according to Dr. Gune, P.W. 8 were very superficial and could be suffered by consent, with a razor-blade. Bhagwan Parshram's evidence, which was found by the Courts below to be fully trustworthy qua the appellant and we think rightly - was by itself sufficient to fix beyond doubt the identity of the appellant as the assailant of Baliram Ukha.

16. Then, there was the evidence of Tulsiram Dagadu, P.W. 1. His house was also located in the vicinity of the place of occurrence. Immediately after the incident, he talked to Baliram Ukha and the latter told him how he had been stabbed on the stomach by the appellant with the Jambia. This statement of Baliram Ukha was spontaneous. He had no time to spin out a false story. Tulsiram Dagadu reproduced this statement in complaint, which was lodged by him without loss of time, with the Head Constable of the Police out-post, Kolgaon.

17. Learned Counsel for the appellant contends that P.W. Tulsiram Dagadu had also an animus against the appellant, because on the complaint of accused No. 2, the business of the distribution of sugar was taken away from the witness. In this connection learned Counsel has referred to paragraph 9 of the statement of the witnesses.

18. There is obviously no force in this contention. Only a suggestion was put to the witness that

about 1 1/2 years ago, accused No. 2 who was elected as a member of the Gram Panchayat, had made a complaint against the witness that the latter was distributing sugar amongst his Bhaubands only and selling the remaining sugar in the black market. The suggestion was emphatically denied. The very fact that Tulsiram Dagadu did not name accused No. 2 in the complaint, even as an associate of the appellant in the assault, underlined the truthful, unexaggerated and unbiased nature of the account given by the witness.

19. The medical evidence also confirmed that the injury of Baliram Ukha could have been caused with the Jambia, Article 2.

20. It was next contended by Mr. Mukherjea that several independent witnesses of the occurrence were available but the prosecution deliberately failed to examine them. This failure, according to the Counsel, seriously undermined the prosecution case.

21. According to Baliram Ukha, P.W. 2, a crowd of 25 or 30 persons was surrounding son, Maharu Baliram, when he (Ukha) came down to the spot. Maharu Baliram also said that about 25 to 30 persons, including Punju Irbham, Devaram Fula and Daga Shrawan Nathu Parmeshwar had come on the spot. He further disclosed that Krishna Dagadu, Chindu Vedu and Gangaram Tanga, were witnessing the occurrence from their house, 50 to 60 feet away. It is not disputed that the houses of the accused and their kinsmen are also situate in this very street. Possibly many of the persons in the initial crowd who were not rescuing Maharu Baliram were on the side of the accused. The evidence is not clear, precise and definite as to the sequence and time of the arrival of these persons, named by Maharu Baliram at the scene. The evidence of those persons who did not see the whole incident or who did not come out from their houses to these spot would stand on the lower footing than that of Bhagwan Parshram, who actively intervened to stop the assault and disarm assailant. The prosecution had examined the best informed witnesses whose evidence was necessary to unfold the narrative and to establish the identity of Baliram Ukha's assailant and the manner in which he (Ukha) was assaulted. It was not necessary for it to examine all those persons, who had come to the spot at one stage or the other, or who had seen the occurrence from a distance. There is nothing on the record to suggest that the production of those witnesses was withheld by the prosecution from any oblique motive. We, therefore, negative the contention of the learned Counsel.

22. Lastly, it was contended that since there was a melee, and the assault on Baliram Ukha took place in an instant in the darkness of the night, there could be a mistake about the identity of the assailant.

23. We do not find force in this argument. The appellant was caught almost red-handed by the witness. He was disarmed after a struggle and the witnesses were close to the appellant for sufficient time. The assailant was fully known to the witnesses, being a resident of the same locality. There could be no question of intentional or mistaken substitution of the appellant in place of the real culprit.

24. The reasons given by the High Court in support of its conclusion are cogent and convincing and no ground has been made out which would warrant an interference with its decision. The result is that the appeal fails and is dismissed.

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