

Jamuna Chaudhary and Others

Vs

State of Bihar

Criminal Appeal No. 97 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

07.12.1973

JUDGMENT

BGE, J. -

1. Thirty one accused persons were sent up for trial before the Additional Sessions' Judge of Chapra of charges under Sections 147, 148, 323, 325, 326, 302/34, 302/149, Indian Penal Code. The appellant Jamuna Chaudhary was also charged separately under Section 302, Indian Penal Code. The prosecution case may be stated as follows : On July 15, 1965 at about 8 a.m. Dukharan Koeri, P.W. 22, his brother Sitaram Bhagat, P.W. 20, his sister-in-law Smt. Gulzaria, P.W. 12, were weeding plot No. 39, in village Rani Sariswam. Smt. Sujhani, P.W. 10, the mother of Dukharan, P.W. 22, Smt. Minia, P.W. 14, and Dukharan's niece Km. Ram Rati, P.W. 9, daughter of Sitaram, were also present there. A crowd of 80 to 85 persons from various villages, armed with Lathis, Bhalas, and Pharsas suddenly appeared and started attacking the unoffending Dukharan and his relations in field No. 39. Names of 25 persons, including the appellants, are mentioned in the First Information Report lodged at Police Station Mirganj, in District Saran, at 2.15 p.m. on July 15, 1965. In this evidence, Dukharan stated that he ran away to a distance of 2 to 3 bighas to the sough but returned to the scene of occurrence when the accused had dispersed and then he found a number of other persons lying injured. They were his brother Sitaram, P.W. 20, Tapi Bhagat, P.W. 3, Nagina Koeri, P.W. 13, Smt. Fekani, P.W. 17, and Laldhari who was lying unconscious and who never regained consciousness.

2. Injuries, proved by Dr. B. N. Duivedy, P.W. 4, who examined the injured on July 15, 1965 between 4.45 p.m. and 7 p.m., were : Two scratches and 4 Ecchymoses, all simple injuries, with some blunt weapon were sustained by Dukharan. Two Ecchymoses, simple injuries, with a blunt weapon were found on Fegu Bhagat. Two Ecchymoses, simple injuries with a blunt weapon were found on Smt. Mirachia. Smt. Phekan had one Ecchymoses, a simple injury with a hard weapon. Sitaram P.W. 20, had a lacerated wound 4 in. X 1/2 in. on the head, two punctured wounds 1/2 in. X 1/4 in. X 1/2 in. one on the left elbow and another on the nose, a swelling on the left forearm with compound fracture, a lacerated wound and two red Ecchymoses. Two of these injuries were grievous and the rest simple. Two were caused by some sharp weapon and the rest by a blunt weapon. Tapi Bhagat, P.W. 3, had a scratch, a red Ecchymosis and a swelling on right arm, a compound fracture and a lacerated wound, all caused by a blunt weapon. One of these injuries was grievous. Ram Nagina had a lacerated wound, 3 red Ecchymoses on the back, and two on the buttocks, a punctured wound on the lower jaw and another on the right of the thumb, two of these injuries were caused by a sharp weapon, and the rest by a blunt weapon. Smt. Sonjhania wife of Ram Gobind Bhagat, had a swelling on the right arm, with a simple fracture, a swelling of the left middle finger with a fracture and an Ecchymoses. Two of these were grievous injuries. Birjhan Bhagat, P.W. 15, had a punctured

wound, a simple injury caused by a penetrating weapon. Smt. Lachminia, P.W. 11, had a swelling of the right arms with a simple fracture and a lacerated wound. The first of these was grievous and the other simple. Km. Ram Rati, P.W. 9, had an incised wound 2 in. X 1/2 in. X 1/2 in. caused by a sharp edged weapon. Smt. Matia, wife of Ram Nagina Bhagat, had three red Ecchymoses which were simple injuries. Smt. Sonjaria wife of Sita Ram had a swelling and two Ecchymoses. Laldhari Bhagat who had become unconscious and did subsequently had a punctured wound 1/4 in. X 1/2 in. X 1/2 in. on the right thigh, a swelling 3 in. X 2 in. on the left temporal region of the head, and a scratch 1 in. X 1 in. on the right elbow. The first was by a piercing weapon like a Bhala and the second, which was serious, was with a lathi. Dr. Mehta examined as Court witness No. 1 proved the following injuries on Ramanandan Chaudhary, which he examined on July 15, 1965 at 11 a.m. :

- "1. One penetrating wound 1/2" (?) X 1/4" X 2" on the right side of the chest in between the mid line and nipple.
2. Left little and left ring finger, chopped off except that they were hanging with a thine skin with the hand.
3. One incised wound 1" X 1/4" X skin deep, on the back of the right middle finger.
4. One incised wound 1" X 1/3" X 1/2" on the back of the right index finger.
5. One incised wound, 1 1/2" X 1/4" X 1/4" on the front of right thumb.

Injury No. 2, was of grievous nature and other of simple nature.

Injury No. 1, caused by sharp pointing weapon such as Bhala and other by sharp cutting such as pharsas."

3. All the injuries mentioned above were shown to have been caused within 12 hours of other examination so that they could be caused on the morning of July 15, 1965.

4. The accused did not produce any witness in defence. The statement of Ramananda Chaudhary under Section 342 Criminal Procedure Code setting out the defence version was : Ramanandan and some others had purchased some shikmi land from Nathuni Dube and had grown Makai on it. When he was ploughing one of the purchased plots numbered 30, at about 8 a.m. on July 15, 1965, Dukhharan, Sitaram, Birjan Nagina, Inder Sain, Tapi Bhagat came there and protested against the ploughing. As Ramanandan did not pay any attention to their protests, Dukhharan and Sitaram attacked him with Pharsas so that he fell down and became unconscious. A marpit look place after Ramanandan had fallen down. The suggestion was that the party of Dukhharan itself had attracted a number of persons who were injured. Ramanandan also filed a sale deed dated August 30, 1920 showing that he had purchased plots No. 24, 30 and 31.

5. The trial Court had discarded the defence version as it found that the marks of trampling of the crop were present in field No. 39. It had also held that an attempt had been made to show that the occurrence had really taken place in Plot No. 30 by some irregular marks made by ploughing up portions of field No. 30 so as to create evidence of some incident there. Its view was that, as seven women had been injured, it could not be believed that Dukhharan and Sitaram and others had gone to the field of Ramanandan to cause injuries. Its finding definitely was that the occurrence took place in plot No. 39. It also observed that the sale deed relied upon by the defence was too old to operate as a motive for an incident on field No. 30, but, it found that there was a dispute over

Shikmi land at a distance of 165 steps from the plot No. 39. According to the prosecution case, the only incident on that a day in this village occurred in field No. 39. The trial Court's finding that the cause of this incident was dispute over Shikmi land nearby was based on admissions of a number of prosecution witnesses : Phagu Bhagat, P.W. 1; Ramjit Singh, P.W. 5; Sheodhari Bhagat, P.W. 7; Birjhan Bhagat, P.W. 15; Sitaram Bhagat, P.W. 20; Dukhharan Koeri, P.W. 22.

6. A very extraordinary feature of the case is that although, according to the prosecution case, only one incident took place at about 8 a.m. in the morning in the field No. 39 belonging to Dukhharan, over which no accused person had any claim whatsoever, yet, no mention was made of the severe injury on the head of Laldhari which made him unconscious, either in the First Information Report shown to have been lodged at 9.30 a.m. when the S. I. Radheyshyam Gupta, P.W. 23, went to the spot or in the statement of more than three out of sixteen alleged eye-witnesses. These three eye-witnesses were : Sheodhari Bhagat, P.W. 7, whose field is to the west of the field in which Dukharan is said to have been weeding, Birjhan Bhagat, P.W. 15, whose field is to the north of Dukharan's field, and Sitaram Bhagat, P.W. 20, the brother of Dukharan who was said to be actually weeding with Dukharan in the same field. The other 13 eye-witnesses, namely, Phagu Bhagat, P.W. 1, Tapi Bhagat, P.W. 3, Ramjit Shah, P.W. 5, Ram Chandra Sharma, P.W. 8, Km. Ram Rati, P.W. 9, Smt. Sujhani, P.W. 10, Smt. Lachhminia Devi, P.W. 11, Smt. Gulzaria, P. W. 12, Nagina Koeri, P.W. 13, Smt. Minia, P.W. 14, Smt. Fekani, P.W. 17, Smt. Marchhia, P.W. 19 and Dukhharan, P.W. 22, make no mention whatsoever of any incident involving the coming of Laldhari to the sense of occurrence of any attack upon him. Dukhharan, P.W. 22, who was in his own field with his brother Sitaram, had stated that he had runaway and come back to the field where he found Laldhari lying unconscious. But, he did not mention even this fact in the F.I.R. to the Investing Officer when he come to the spot. By that time he was bound to have seen Laldhari lying unconscious just as his brother Sitaram saw it if he could we believed. The omission from the F.I.R. made by Dukhharan, was however not put to him. Nevertheless, the fact that the incident was omitted and no mention is made whatsoever of the injury of Laldhari by thirteen alleged eye-witnesses is significant in judging whether Laldhari was injured during the incident on the field of Dukharan for which the F.I.R. was lodged or in some other probably not disconnected incident. It is very surprising that so many as thirteen eye-witnesses who, according to their own statements, were present at the scene for the whole duration of the occurrence, had not even mentioned the injury to Laldhari if the whole occurrence was really one and had taken place in plot No. 39. And, even out of the three who mention it, only Birjhan Bhagat says that Laldhari was attracted simply because he came there and forbade the assailants from committing an assault. This reason for the alleged attack on him also does not appear very convincing as there were, according to prosecution witnesses, several people objecting to any marpit.

7. It is true that the evidence of Dr. Duivedy shows that as many as fourteen persons, including Laldhari, were injured, as set out above. But the First Information Report mentions injuries only on seven persons as mentioned earlier. An examination of the evidence of the prosecution witnesses reveals that practically all of them said that Rajdhari assaulted Dukharan with a lathi which struck his left hand, Ramayan attacked Dukharan with a Khoncha directed at his chest, and Muni appellant used his Khoncha to inflict an injury on the head of Dukharan. Beyond that, each witness appears to have noticed only those who struck him if the witness sustained an injury at all. Km. Ram Rati, a child of 8 years, could only state that Ram Nath had assaulted her with a Pharsa on her left leg. Nevertheless, the witnesses were prepared to say, in the witness box, without indentifying the accused individually, that all the accused were amount the 80 to 85 persons who came to attack Dukharan and the members of his family, including women, without any apparent rhyme or reason, as there was no dispute, even according to the prosecution case, with regard to a plot No. 39. That

plot was admitted to be in the possession of Dukharan. Only Dukharan, among all the alleged eye-witnesses identified the accused individually at the trial. And, the grievance which was set up was with regard to some Shikmi land with which the members of the alleged mob from several villages were not shown to have had any concern. It is not shown what possible interest these over individuals, who are said to be the members of mob, could conceivably have had in the dispute between Dukharan and some of the accused persons so as to come to attack the unoffending Dukharan and members of his family without any apparent reason.

8. Dukharan had stated that he land his father used to pay rend of Shikmi land to Tapesar Dubey and Dhanraj Dubey. He admitted that Raghbir Chaudhary and the accused Rajdhari and Jamuna had a sale deed executed in respect of the above mentioned Shikmi land and that they had him to give up possession of the Shikmi land to which he did not agree. He also admitted that this was the cause of the ill-feeling between him and the two accused Rajdhari and Jamuna. He also stated that he had filed an application before the Block Development Officer, Hathwa, for granting him a receipt in respect of the rent of the Shikmi land, but his request turned down. Furthermore, he admitted that proceedings under Section 145, Criminal Procedure Code, had taken place between the parties over this land. Thus this Shikmi land was the cause of dispute between Dukharan, Rajdhari and Jamuna, accused in which the other accused persons could not have any real interest.

9. It appears to us that Radheyshyam Gupta, P.W. 23, the Investing Officer had not been sufficiently careful of astute in investigating the extent of truth which could or did lie behind the defence version. He had however, stated that the defence version was given to him as soon as he met Ramanandan at the Hospital after the occurrence. He said :

"Ramanand had stated in his fardbeyan that he had taken two Bighas of land under sale deed from Nathuni Dubey. He also said this that while he was getting that land ploughed, accused person came and asked to unyoke the plough and on refusal Dukharan and Sitaram assaulted him with farsa and Nagina dealt bhala blow on his chest and on the hulla raised by him they fled away. He had made Lalchand Bhagat, Chandrika Bhagat and Gudar Ahir as his witness. I had taken their statement and they are also witnesses in the charge-sheet.

He had stated the time of occurrence as 8 a.m. and I took his statement at 10.30 p.m. in the hospital."

10. The Investigating Officer had stated that he did not find any marks of blood either in plot No. 39 or in plot No. 30. He also said that he did not find footprints in Plot No. 30 which is at a distance of 165 steps north west of plot No. 39. It is true that he had stated that he found 2 or 3 gathas of maize (makai) crops trampled upon in the north of field No. 39. He also deposed that he found "marks of trampling towards the north of the field". About plot No. 30 where, according to the defence version, the occurrence had taken place, he said :

"I found maize crops sown in plot No. 30 which were 4" - 5" inches high. I found it ploughed not properly. At places space is left unploughed in between one jote (ploughed strip of land) and another.

This field appears to be ploughed in an improper way and I found it north west corner not ploughed. The field appeared to be ploughed again."

He also stated : "I found Plot No. 30 in the possession of Dukharan. It was shown papers also in connection with Shikmi land". The Investigating Officer had stated that, although he found injuries on the person of Ramanandan, he had made no enquiries from the witnesses as to how the appellant Ramanandan had received these injuries. His statement shows that he had sent Jamuna also for an injury report so that this accused too must have been injured. Furthermore, he had stated : "I did not even enquire from the witnesses of this case about the footprints and trampling found in the Shikmi land". It is thus clear that the prosecution had not placed the whole set of relevant facts before the Court. The accused, not infrequently, try to conceal their injuries in such cases as they become evidence of involvement in an incident.

11. The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. It is apparent that the prosecution witnesses had tried to omit altogether any reference to at least the injuries of the appellant Ramanandan because there was a cross case in which such an admission could have been made use of to support the prosecution in that case. Dukharan, however, made a very feeble and obviously untruthful attempt to account for the injuries of Ramanandan by saying that he had snatched a pharsa from one of the members of the crowd and had started swinging it around. He could not, however, state whether any one was injured by it. He even stated that he did not recognise the man from whom he had snatched the pharsa. Although he said that he knew Ramanandan from his childhood, he could not say whether all his fingers were present on the day of occurrence. It was apparent that he was trying to conceal some occurrence over the Shikmi land that morning in which the fingers of Ramanandan were chopped off. He admitted that there was a dispute between Raghubir, Jamuna, and Rajdhari which had lasted 2 1/2 to 3 years over the Shikmi land. In fact, this dispute was given as the only cause of the incident set by the prosecution.

12. As neither the prosecution nor the defence have, in the case before us, come out with the whole and unvarnished truth, so as to enable the Court to judge where the rights and wrongs of the whole incident or set of incidents lay or how one or more incidents took place in which so many persons, including Laldhari and Ramanandan, were injured, Courts can only try to guess to conjecture to decipher the truth if possible. This may be done, within limits, to determine whether any reasonable doubt emerges on any point under consideration from proved facts and circumstances of the case.

13. It appears to us that the prosecution had, rather vainly, tried to prove that only one occurrence took place between the parties on the morning of July 15, 1965 and that this was in the field of Dukharan only and that whether injuries were inflicted on various persons were all sustained in the course of that occurrence. We are unable to hold, after perusing the statements of the prosecution witnesses, that this part of other prosecution version of the incident is proved beyond reasonable doubt. It does not explain all the proved facts and circumstances. If we were to resort to guess work and conjecture, we may be able to infer that some incident took place over the Shikmi land also which was shown to have been ploughed. This ploughing was probably earlier and led to the incident in which Ramanandan lost his fingers. The aggression must, at that time, have come from the party of Dukharan. We cannot, however, definitely come to this conclusion as no party has led any evidence to prove what we are left only to guess and conjecture from proved facts and circumstances. We think that there is enough indication given by proved facts and circumstances to show that the incident in which a number of women sustained injuries must have been the result of a legally unjustified retaliation against an earlier attack upon Ramanandan and others. This may also explain why persons from other villages are said to have joined in the attack upon the party of Dukharan probably out of sympathy for Ramanandan.

14. We think that the trial Court had, after coming to the conclusion, on quite unsatisfactory material, that the whole occurrence must have taken place on field No. 39, failed to examine the manner in which the dispute must have originated and the occurrence developed, perhaps by stages, into one resulting in injuries of so many persons. It appears from the statement of persons actually injured that they were not able to make out all the members of the crowd, which assembled, but they could remember those who had inflicted injuries upon them.

15. In the circumstances brought out from the total evidence in the case, both ocular and circumstantial, we think that it will not be safe to convict any person for any offence other than that revealed by the injuries he is shown to have inflicted upon an actually injured witness deposing against him. An injured witness, in any case, would not easily substitute a wrong person for his actual assailant. It has not been shown to us that there was motive for such substitution. It also appears to us that, although, the actual quarrel originated and the assault began somewhere in the Shikmi land where Ramanandan was over whelmed by the party of Dukharan, yet, when a large number of persons came to help of Ramanandan, out of sympathy for him, it must have extended further so that the party of Dukharan must have been chased. By that time, a number of women folk, who may have been working in and around the field of Dukharan may have come the scene and tried to take the side of their men folk. Hence, they too were injured. The injured witnesses could be relied upon only for that they depose about injuries inflicted upon them at this last stage of the whole occurrence. There may have been even short gaps of time between the different stages.

16. On the evidence on record we are also left guessing as to how Laldhari deceased could have been injured. It is true that three out of thirteen witnesses, as already indicated above, have stated that Jamuna gave the lathi blow which resulted in the death of Laldhari. But, we think that, where so many witnesses, who had an equally good opportunity to observe what Jamuna appellant did, did not involve Jamuna at all and omit even mentioning so prominent a feature of the occurrence as the attack on Laldhari, it could not be held beyond reasonable doubt that the fatal injury on Laldhari deceased was actually caused by the lathi of Jamuna, appellant, and of no other person. We, therefore, think that Jamuna is entitled to the benefit of doubt which emerges on the question as to who caused that injury on Laldhari.

17. The trial Court had acquitted 18 out of 31 accused persons on the ground that no overt act had been proved against them. It had, however convicted Jamuna Chaudhary separately under Section 302, I.P.C., and sentenced him to imprisonment for life. The remaining 12 appellants, namely, Rajdhari, Muni Chamar, Ramayan, Ramanandan Chaudhary, Kishundeo Ahir, Sheopujan Chamar, Ganga Chaudhary, Ramsewak, Palakdhari, Swaminath, Raja Ahir and Ramnath, were convicted under Sections 326/149 and sentenced to undergo rigorous imprisonment for six years each. Appellants Ramanandan and Sheopujan Chamar were also convicted under Section 325 and sentenced to four years rigorous imprisonment. The appellants, Rajdhari, Sheopujan Chamar, Ganga Chaudhary and Ramnath were also convicted under Section 324, I.P.C., and sentenced to undergo rigorous imprisonment for three years each. Appellants Muni, Ramayan, Kishundeo Ahir, Sheopujan Chamar, Ramsewak, Palakdhari, Swaminath, Raja Ahir, were convicted under Section 323 and sentenced to undergo rigorous imprisonment for one year. No separate sentence was passed against Rajdhari, Sheopujan Chamar, Ganga Chaudhary and Ramnath under Section 148 or against Jamuna, Muni Chamar, Ramayan, Ramanandan, Kishundeo Ahir, Ramsewak, Palakdhari, Swaminath, Raja Ahir for conviction under Section 147, I.P.C. The sentences so passed were directed to run concurrently.

18. When the appellant took their appeal to the High Court neither the evidence of the witnesses nor

the cases of the individual accused except Jamuna were discussed at all. The High Court observed that, in view of the arguments advanced, it would reduce the sentences of each of the accused persons, other than Jamuna appellant, by half. So far as Jamuna appellant was concerned, it dealt with the case only to point out that the head injury was a stray one. This injury had been held by the High court also, to be outside the scope of the common object. The High Court came to the conclusion that the appellant Jamuna could only be convict under Section 304, I.P.C. In part of the injury on Laldhari's head. Therefore, convicting him under that Section, it sentenced him to five years rigorous imprisonment. It maintained his conviction under Section 147, I.P.C. With the necessary modifications, the appellants' appeals were dismissed.

19. We are unable to discover from the judgment of the High Court whether the learned Counsel for the appellant had confined his submission to those affecting the sentences or alterations of the Section under which the appellant Jamuna was to be convicted. We can only infer, from the observations of the High Court, that this may explain the very superficial manner in which the case was dealt with by the High Court. We may, however observe that learned Counsel are expected to assist Courts in reaching a correct conclusion in the case in which so much evidence and so many witnesses and points worth consideration were there. The High Court had dealt with the appeal in a very summary fashion. It would have been better if the statement of reasons for the conclusions reached by it was more enlightening. The judgment under appeal does not comply with the requirements of Section 367, Criminal Procedure Code.

20. In view of the rather laconic judgment given by the High Court of Patna in this case which has come up before us by special appeal, we were inclined at one stage, to send this case back to the High Court for re-writing of the judgment, but, it was pointed out, on behalf of the appellants, that the case is quite old and would impose unnecessary hardship on the appellants if they were to face further proceedings in the High Court. We have, therefore, gone through the main features of the evidence ourselves. We have, for the reasons already given above, come to the conclusion that, on the evidence on record, it would not be safe to hold that it was Jamuna Chaudhary only and not somebody else who could have inflicted the fatal injury on Laldhari deceased. Moreover, we cannot be quite definite about the circumstances in which it was inflicted. Hence Jamuna Chaudhary is entitled to the benefit of doubt so far as this injury to Laldhari is concerned. We have also come to the conclusion that the injured witnesses who have given specific acts of accused who struck them could be relied upon to convict particular accused persons. This is the test which the trial Court had correctly employed against individual accused persons. We think that the use of Sections 147 and 149 against them was also justified. The High Court had reduced all sentences by half. We maintain their convictions. But as we are informed that the sentences awarded have been undergone almost for the whole period by each convict appellant, we think that ends of justice will be served by reducing their sentences to the periods already undergone. The result is that we give Jamuna Chaudhary, appellant, the benefit of doubt for the offence under Section 304, I.P.C., and acquit him of the charge for it. We, however, hold Jamuna Chaudhary guilty of offences punishable under Section 147, I.P.C., with the other accused. We maintain all the convictions of the other accused persons also. But, we reduce the sentences of the appellants for various offences of which they have been convicted to the periods already undergone. This appeal is allowed to the extent indicated above. As the sentences of all the appellants are reduced to the period already undergone, they will be released forthwith unless wanted in some other connection.

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