

Biran Singh and Others

Vs

The State of Bihar

Criminal Appeal No. 210 Of 1970

(Y. V. Chndrachud, R. S. Sarkaria JJ)

17.10.1974

JUDGMENT

CHANDRACHUD, J. –

1. The three appellants to this appeal are brothers. They were tried along with the fourth brother, Bankey Singh, under Section 302 read with Section 34, Penal Code and for other incidental offences. The charge against them was that at about 6 p.m. on February 25, 1965 they committed the murder of one Brahmdeo Rai and caused injuries to two other : Ram Swaroop Yadav and Anup Rai. All the four accused were acquitted by the learned Additional Sessions Judge, Monghyr. The appeal filed by the State of Bihar against the order of acquittal was allowed by the High Court of Patna which convicted the appellant Biran Singh under Section 302, Penal Code and sentence him to imprisonment for life. The appellant Hirday Singh was sentenced to a similar term but under Section 302 read with Section 34. The appellant Hirday Singh was convicted under Section 323 and a sentence of four months was imposed on him. The fourth brother, Bankey Singh, died during the pendency of the appeal in the High Court. This appeal by special leave is directed against the judgment of the High Court.

2. On February 25, 1965 the deceased Brahmdeo Rai had gone to see a wrestling bout in a village called Laraiya Taur along with his elder brother, Anup Rai, and Ram Swaroop Yadav. While they were returning, they met the appellants and their brother Bankey Singh. the deceased asked the appellant Biran Singh as to why he was scandalising him and while they were arguing out their differences, Bankey Singh is alleged to have exhorted Biran Sing to kill Brahmdeo Rai. The appellants, Hirday Singh and Hiran Singh came in the meanwhile with lathis in their hands. Biran Singh is alleged to have given a blow with a lathi on the chest of the deceased. Bankey Singh and Hirday Singh are said to have assaulted the deceased with kicks and slaps. Anup Rai tied too rescue his brother but he and Ram Swaroop Yadav were also beaten by the appellants.

3. The trial Court acquitted all the four accused on the ground that the first information report was lodged after a long delay for which there was no satisfactory explanation; that the witnesses examined by the prosecution in support of its case were partisans of the deceased; that the witnesses had failed to offer any explanation at all of the injuries received by two of the accused; that the evidence did not shed sufficient light on the origin of the incident; that the prosecution story was unnatural and improbable and lastly that Narayan, the son of Anup Rai, though a material witness was not examined by the prosecution.

4. Learned Counsel appearing on behalf of the appellants has taken us through the relevant part of the evidence of eyewitnesses Sitaram (PW 1), Jivan Bind (PW 2), Borhan Thakur (PW 3), Bandhu

Yadav (PW 4), DOrik Yadav (PW 6), Ram Swaroop Yadav (PW 13) and Anup Rai (PW 14). The last two were injured during the course of the incident and their presence is not seriously disputed.

5. It is urged that the trial Court had given weighty reasons in support of the order of acquittal recorded by it and since two views of the evidence are reasonably possible, the High Court not to have interfered with the conclusion to which the trial Court had come. Having considered the evidence of the eyewitnesses and having seen the judgment of the High Court, we are unable to agree that two views of the evidence are reasonably possible in regard to the part played by the appellants Biran Singh and Hirday Singh. The High Court has considered each one of the reasons given by the trial Court in support of its judgment of acquittal and the High Court has given its own reasons why the view of the trial Court could not be accepted. There is, in our opinion, no doubt that Biran Singh inflicted a sword-blow on the head of the deceased and Hirday Singh caused an injury to Anup Rai.

6. The learned Additional Sessions Judge was not inclined to reject the testimony of the eyewitnesses but the difficulty which he felt in accepting their evidence was that they had presented before the Court an incomplete story. In paragraph 47 of his judgment the learned Judge observes that though it was quite possible that the accused and his partymen were aggressors it was equally possible that the deceased Brahmdeo Rai was the real aggressor and that one of the appellants might have dealt a fatal blow to him after he had assaulted Bankey Singh and Hirday Singh. This conclusion is indefensible both on facts and in law. The evidence of Dr. K. K. Mukherji and Dr. Verma who examined Bankey Singh shows that their injuries were simple in nature. There could therefore be no justification for any of the appellants to hit Brahmdeo Rai with a sword on a vital part of the body like the head. The conclusion of the learned Trial Judge is insupportable in law because what he has found is that after Brahmdeo Rai assaulted Bankey Singh and Hirday Singh, "one of the brothers brought out a saif from his home which was nearby and dealt a fatal blow to Brahmdeo." On the findings recorded by the learned Judge, Biran Singh and Hirday Singh cannot possibly be held to have acted in exercise of the right of private defence. Assuming that Brahmdeo Rai had assaulted Bankey Singh and Hirday Singh, they could not retreat to their house, fetch a sword and assault Brahmdeo Rai.

7. The learned trial Judge contented himself with the conclusion recorded towards the end of paragraph 47 of his judgment that it was unsafe to hold "that the party of the accused were definitely aggressors" which, according to the learned Judge, cast doubt on the version of the prosecution. Basing himself on this reasoning, the learned Judge gave to the appellants the benefit of doubt. It may for the purpose of argument be assumed that the appellants were not aggressors but even on that hypothesis the learned Judge ought to have examined whether they had acted within the strict bounds of the right of private defence. He did not apply himself to this question at all. On the contrary, he held in paragraph 49 of his judgment that

even the victims of aggression may have a chance to inflict severe and mortal injury on the aggressor. The severity of the injuries received is often a matter of chance. As I have said, the saif or the other sharp cutting weapon could have been brought by the accused after they were assaulted as their houses were very near. The comparison of the injuries is, therefore, not conclusive on the point of the accused being aggressors.

This conclusion is impossible to accept. While considering whether the right of private defence is available to an accused, it is not relevant whether "he may have a chance to inflict severe and mortal injury on the aggressor." In order to find whether the right of private defence is available to an

accused, the entire incident must be examined with care and viewed in its proper setting. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstance whether the accused had time to have recourse to public authorities are all relevant factors to be considered on a plea of private defence. The learned trial Judge was in error in excusing the sword attack on Brahmdeo Rai by saying that the severity of the injuries is often a matter of chance. Running to the house, fetching a sword and assaulting Brahmdeo Rai on his head with that sword are by no means a matter of chance. These acts bear the stamp of a design.

8. Though, however, there can be no doubt in regard to the guilt of the appellants Biran Singh and Hirday Singh, the order of acquittal passed by the trial Court in favour of Hiran Singh ought to be allowed to stand. Brahmdeo Rai made a dying declaration on the 26th morning and it is significant that he did not refer to the presence of Biran Singh. Secondly, the allegation is that Hiran Singh assaulted the deceased with a lathi on his chest. The post-mortem notes show that there was a lathi injury on the chest. We are unable to agree with the High Court that the lathi injury may have 'faded' or that it was not noticed by the doctor who conducted the post-mortem examination. We are also unable to agree that the evidence in regard to the lathi blow given by Hiran Singh can be said to be corroborated by the inquest report, Column 5 of which says that there was a swelling on the chest of Brahmdeo Rai. Lastly, it is significant that though Bankey Singh had received injuries, Hiran Singh had received none. Biran Singh was armed with a sword and was probably left alone. But if Hiran Singh came to the spot in the company of Bankey Singh and Hirdy Singh, it is unlikely that those who assaulted two members of this group would have allowed Hiran Singh to escape unscathed. Thus, there was enough justification for the view of the trial Court that Hiran Singh was entitled to the benefit of doubt.

9. In the result we dismiss the appeal of Biran Singh and Hirday Singh and allow that of Hiran Singh. Hiran Singh shall be set at liberty.

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