

Mitter Sen and Others

Vs

The State of U. P.

Criminal Appeal No. 130 of 1971

(P.N. Bhagwati, R.S. Sarkaria JJ)

04.09.1975

JUDGMENT

BHAGWATI, J. -

1. The incident, out of which this appeal arises, took place at about 9.30 p.m. on August 2, 1967 in a village called Charra within the jurisdiction of Barla police station. The genesis of the incident was petty dispute which arose between the first appellant, on the one hand and Bhajan Lal, Raghubar Dayal and his brother Shyam Lal on the other. The houses of Bhajan Lal and the first appellant are situate adjoining to each other and each of these houses had a chabutra in front of it. The chabutra of Bhajan Lal was demolished by the Town Area Committee of Charra for facilitation construction of pacca drain and so also, the chabutras of various other residents of village but the chabutra of the first appellant was spared. Bhajan Lal carried a feeling that the first appellant was responsible for the demolition of his chabutra and he therefore, started bearing ill-will against the first appellant. He was supported by Raghubar Dayal and Shyam Lal who took sides with him in this dispute with the first appellant. On August 2, 1967 at about 7 p.m., there was exchange of hot words between Shyam Lal and the first appellant in connection with this dispute and, according to the prosecution, the first appellant is alleged to have said on this occasion that he would properly deal with Shyam Lal as he was a great supporter of Bhajan Lal. The prosecution case was that late in the evening on that day, at about 9.30 p.m., while Raghubar Dayal and Shyam Lal were lying in their cots on the chabutra in front of their house, the appellants and Chandra Prakash, Chiranji Lal, Hazari Lal and Prem Shankar came there and challenged Raghubar Dayal and Shyam Lal. The latter replied stating that they did not wish to enter into any quarrel with the appellants and their companions and asked them to go away. At that time, the appellants, Chiranji Lal and Hazari Lal were completely unarmed and the only two persons who had weapons with them were Chandra Prakash, who carried a knife and Prem Shankar, who had a danda. The appellants and their companions, according to the prosecution, dragged Raghubar Dayal and started assaulting him with kicks and fists and then Prem Shankar attacked him with his danda. Shyam Lal immediately intervened, but whilst he was trying to separate Raghubar Dayal, Chandra Prakash whipped out a knife from his pocket and gave three or four knife blow to Shyam Lal on hearing the noise, Raghubar Dayal's brother-in-law Sajjan Kumar and his nephew Laxmi Chand came out of the house with lathis and started assaulting the appellants and their companions. By this time some other neighbours also arrived on the scene and they were Prem, Chand, Raj Bahadur, Ram Kisan, Budh Sen and Bhagwan Das. The appellants and their companions thereupon ran away from the scene of the offence. Raghubar Dayal and Shyam Lal being injured were taken to the hospital at Charra and there, Raghubar Dayal got a report written by one Bhagwan Swarup and he took that report to the police station at Barla where a first information report was lodged and a case was registered. The injuries received by Shyam Lal were rather serious and he had, therefore, to be removed to the District Hospital at Aligarh but he expired at 6.40 p.m.

or August 3, 1967. Sub-Inspector Ram Prakash Gupta carried out the investigation and after it was completed, he submitted a charge-sheet against the appellants and Chandra Prakash, Chiranji Lal, Hazari Lal and Prem Shankar.

2. The defence of appellants Nos. 1 and 2 and Chandra Prakash was that, while the first appellant was in Jawahar Chowk at about 9.30 p.m. on August 2, 1967, the second appellant and Chandra Prakash came there for going to their house and at that time Shyam Lal, Raghubar Dayal, Laxmi Chand and Sajjan Kumar suddenly appeared and started assaulting them with dandas as a result of which they received injuries. Whilst this assault was going on the third appellant also happened to come there and he too was beaten. The third appellant also put forward the same defence and added that when he ran to the help of appellants Nos. 1 and 2 and Chandra Prakash and tried to intervene, Laxmi Chand aimed a knife at him and in exercise of the right of private defence, he snatched away the knife and wielded it and it accidentally struck Shyam Lal. Chiranji Lal, Hazari Lal and Prem Shankar totally denied their presence at the time of the incident and their defence was that they had been falsely implicated due to enmity.

3. Now, there was no dispute between the prosecution and the defence that an incident did take place at about 9.30 p.m. on August 2, 1967 and in this incident, on the side of the complainant, Shyam Lal received four knife injuries resulting in his death and Raghubar Dayal received six injuries caused by some hard and blunt weapon while, on the side of the accused, appellants Nos. 2 and 3 and Chandra Prakash received some injuries which appeared to have been caused by hard and blunt weapon. The controversy between the parties was as to where the incident took place - whether in front of the house of Raghubar Dayal and Shyam Lal or in Jawahar Chowk - and in what manner. The learned Additional Sessions Judge, on an appreciation of the evidence, came to the conclusion that the prosecution version in regard to the happening of the incident was correct and that the incident took place in front of the house of Raghubar Dayal and Shyam Lal in the manner alleged by the prosecution. The evidence led on behalf of the prosecution was substantially accepted by the learned Additional Sessions Judge and on the strength of that evidence, he held that the appellants and Chandra Prakash, Chiranji Lal, Hazari Lal and Prem Shankar were guilty of forming an unlawful assembly and in prosecution of their common object causing simple hurt to Raghubar Dayal and so far as Chandra Prakash was concerned, he found him guilty of committing the murder of Shyam Lal. The learned Additional Sessions Judge, in this view, convicted the appellants and Chiranji Lal, Hazari Lal and Prem Shankar under Section 147 and Section 323 read with Section 149 and sentenced each of them to suffer rigorous imprisonment for six months for the former offence and three months for the latter. They were, however, acquitted of the offence under Section 302 read with Section 149. Chandra Prakash was convicted by the learned Additional Sessions Judge under Section 302 and sentenced to imprisonment for life and he was also, in addition, held guilty under Section 148 and Section 323 read with Section 149 for which he was sentenced to suffer rigorous imprisonment for one year and six months respectively.

4. The appellants and Chandra Prakash, Chiranji Lal, Hazari Lal and Prem Shankar preferred an appeal to the high Court against their conviction and sentence. The High Court took the view that the participation of Chiranji Lal, Hazari Lal and Prem Shankar appeared to be doubtful and giving them the benefit of doubt, the High Court acquitted them of the offence charged against them. So far as Chandra Prakash was concerned, the High Court accepted the prosecution evidence that it was Chandra Prakash who whipped out the knife from his pocket and gave three or four knife blows to Shyam Lal, but it observed that this assault appeared to have been made by Chandra Prakash in the heat of the moment and it was therefore, a case under Section 304 and not under Section 302. The High Court accordingly reduced the conviction of Chandra Prakash from Section 302 to Section 304

and sentenced him to 10 years' rigorous imprisonment for that offence. Since the participation of Chiranji Lal, Hazari Lal and Prem Shankar in the incident was not accepted by the High Court, that reduced the total number of persons concerned in the incident to four and no conviction could, therefore, be based on Section 147, Section 148 or Section 149. The High Court accordingly set aside the conviction of Chandra Prakash for the offences under Section 148 and Section 323 read with Section 149. So far as the appellants were concerned, the High Court took the view that they had participated in giving beating to Raghubar Dayal and they were, therefore, guilty of the offence under Section 323 read with Section 34. The High Court accordingly convicted the appellants under Section 323 read with Section 34 and sentenced each of them to suffer rigorous imprisonment for three months. The appellants and Chandra Prakash preferred a petition for special leave to appeal to this Court against their conviction and sentence and on this petition, special leave to appeal was granted to the appellants, but it was refused to Chandra Prakash. Hence the present appeal by the appellants with special leave obtained from this Court.

5. Now, there are two serious infirmities in the evidence led on behalf of the prosecution which threw grave doubt on the veracity of the prosecution case against the appellants. In the first place, the evidence clearly shows that, on the side of the accused, appellants Nos. 2 and 3 and Chandra Prakash received injuries in the incident which took place between the parties. The second appellant had three contusions, the third appellant had one lacerated wound and Chandra Prakash had two lacerated wounds, two contusions and one abrasion. All these injuries according to Dr. Ram Niwas who examined appellants Nos. 2 and 3 and Chandra Prakash, could have been caused by a lathi or danda. The prosecution undoubtedly led evidence at the trial to explain how these injuries came to be received by appellants Nos. 2 and 3 and Chandra Prakash. The witnesses examined by the prosecution stated that on hearing the noise of the fight, Sajjan Kumar and Laxmi Chand came out of the house with lathis and started assaulting the appellants and their companions, suggesting that the injuries must have been received by appellants Nos. 2 and 3 and Chandra Prakash as a result of lathi blows given by Sajjan Kumar and Laxmi Chand. But when we turn to the first information report which was lodged by Raghubar Dayal, we do not find in it any mention of the names of Sajjan Kumar and Laxmi Chand (sic) came out with lathis and started assaulting the appellants and their companions in exercise of the right of private defence of the person of Raghubar Dayal and Shyam Lal. It is indeed strange that if Sajjan Kumar and Laxmi Chand did in fact come out of the house and start wielding lathis for saving Raghubar Dayal and Shyam Lal from further attack from the appellants and their companions, their names should not have been mentioned in the first information report. The first information report does mention the names of Ram Kishan, Prem Nalwala, Budh Sen, Bhagwan Das and Raj Bahadur, but it makes no mention of Sajjan Kumar and Laxmi Chand. Moreover, there is no explanation offered in the first information report as to how appellants Nos. 2 and 3 and Chandra Prakash came to receive the injuries. The evidence given by the prosecution witnesses in regard to the incident cannot, therefore, be accepted its face value and it cannot be relied upon implicitly for the purpose of founding the conviction of the appellants.

6. Secondly, it must be remembered that the appellants came to the chabutra of Raghubar Dayal and Shyam Lal emptyhanded. They did not carry with them any weapons, not even lathis or dandas. The only two out of the other companions of the appellants who, according to the prosecution, carried weapons were Chandra Prakash and Prem Shankar. Chandra Prakash undoubtedly had a knife but he was not brandishing it. It was in his pocket and there is no reason to believe that the appellants knew that he was carrying a knife. Prem Shankar was alleged by the prosecution to be carrying a danda. But his participation was not accepted by the High Court as established beyond reasonable doubt. We must, therefore, proceed on the basis that he was not present. If that be so, it is indeed difficult to see how any common intention could be attributed to the appellants to cause simple hurt to

Raghubar Dayal. The only part attributed by the prosecution witnesses to the appellants was that they assaulted Raghubar Dayal with kicks and fists. But this is not at all borne out by the medical evidence on record. We do not find from the medical evidence any injuries received by Raghubar Dayal from kicks and fist blows. It is, therefore, extremely doubtful whether the appellants gave any kicks and fist blows to Raghubar Dayal. The conviction of the appellants for the offence under Section 323 read with Section 34 cannot in the circumstances be sustained.

7. We, therefore, allow the appeal, set aside the conviction and sentence of the appellants and acquit them of the offence under Section 323 read with Section 34 of the Indian Penal Code. The bail bonds of the appellants will stand cancelled.

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