

Bhagirath

Vs

State of Madhya Pradesh

Criminal Appeal No. 146 of 1971

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

08.09.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court. It arises out of these facts.

2. Three persons, named Gopal, Bhagirath and Manohar were tried by the Additional Sessions Judge, Indore on charges under Sections 307, 307/34, Penal Code for the attempted murder of their co-villager, Kashiram. There was also a charge under Section 324 against Gopal for causing hurt to Devisingh (PW 2). The trial Judge convicted Bhagirath appellant under Section 307, Penal Code and sentenced him to three years' rigorous imprisonment. Gopal and Manohar were acquitted. Bhagirath's appeal was dismissed by the High Court, his conviction was maintained but the sentence was reduced to two years' rigorous imprisonment. Hence this appeal by him.

3. The prosecution story ran as under :

3A. Bhagirath appellant and Gopal, the acquitted accused, are real brothers. On March 30, 1969, Kashiram (PW 1) returned to his village Samavadiya at about 6 p.m. He went into his house and bolted it from inside. Immediately thereafter the appellant and the two acquitted accused, armed with weapons, raided the house, hammered at the entrance door, broke it open, pulled out Kashiram and forcibly took him to a distance of 80 feet. There, Bhagirath and Gopal struck one spear blow each on the left flank of Kashiram, while Manohar gave him a farsi blow. The blade of the spear of one of the assailants got detached from its wooden handle and was left embedded in the wound of Kashiram. Devisingh (PW 2) tried to intercede but Gopal dealt him a blow, too. The assailants then ran away. Devisingh (PW 2) went to the police station, Khudel and lodged the first information report (Ex. P-1).

4. Sub-Inspector Shankerrao Chouhan came to the village for investigation. There the appellant, also, handed over a written complaint to the Sub-Inspector accusing that Kashiram, Devisingh and others had assaulted them. On this report, another case was registered against PWs Kashiram, Devisingh and two others.

5. The prosecution examined eight eyewitnesses. PW 2, 5, 7 and 9 are the sister's son, wife, brother's wife and brother respectively of Kashiram, while PWs 8 and 14 are his nephews. Smt. Keshar (PW 6) is the daughter-in-law of Kashiram's brother. All the eyewitnesses were thus closely

related to Kashiram.

6. At the trial all the witnesses with one voice reiterated the story that has been set out at the commencement of this judgment.

7. All the three accused in their examination under Section 342, Cr. P.C. denied the prosecution case. The appellant set up a counter-story. According to the defence, Kashiram is a notorious bully and a desparate character. On the day of occurrence, at about 6 p.m. he alighted from a tempo near the hotel in village Samavadiya. Brandishing an open knife, he started abusing the villagers in general who were languishing near the hotel. Some of his relations and friends bodily carried away Kashiram and locked him inside his house so that he may not cause harm to anybody. Kashiram was however in rage and in a bellicose mood. He attempted to break open the locked door with a sword from inside. Ultimately Kashiram succeeded in coming out by scaling the wall. Sword in hand, he charged at Bhagirath and caused the latter a serious injury on the face. Kashiram caused another injury to Bhagirath. A third blow attempted by Kashiram landed on the ground with the result that his sword broke into two. While Bhagirath and Kashiram were scuffing, Devisingh, Puriya Narayan and Mukand armed with sword and spears came there and assaulted the appellant.

8. The courts below have rejected as false, this part of the prosecution story that Kashiram was pulled out from his house, and taken to a distance of 15 paces in the lane and there assaulted by the three accused.

9. In this connection, the learned trial Judge said :

Both pieces of the door clearly show that violence was put on it from inside and not outside. The edges of the holes were inverted showing that the weapon had been thrust from inside and not from outside. The defence version therefore, is supported that Kashiram was shut by his friends and his associates in his house when he acted like a bully after his arrival from Indore.

10. On this point the learned Judge of the High Court observed :

Kashiram's statement that he was pulled out from his house is equally false. If the assailants, including the appellant, were armed and he came out, nothing could have prevented the assailants from making an assault on him then and there. They would not drag him to a distance of about 80 feet and then assault him.

11. It was concluded :

The prosecution witnesses have deliberately concealed to disclose (sic) the circumstances which preceded the infliction of injuries to Kashiram.

12. Further, both the courts found that the prosecution version, that Bhagirath and Gopal caused one injury each with their spears to Kashiram, stood falsified by the medical evidence according to which there was only one injury on Bhagirath which could be caused with a spear.

13. Notwithstanding their finding that to a material extent the prosecution story was false, the courts below have worked out the conclusion that this was a case of free fight in the course of which, Kashiram and Devisingh on one side, and Bhagirath and Manohar accused on the other received injuries. In reaching this conclusion, the courts were influenced by the fact that the accused had also

not come out with the whole truth. For suppression of truth, the High Court censured both the sides thus :

It is, therefore, evident that while making their statements at the trial, not only the prosecution witnesses but the appellant also were anxious to avoid their responsibility for the injuries which were received by the rival party.

14. It appears to us that the approach of the courts below in reconstructing a story different from the one propounded by the prosecution and then convicting the appellant on that basis, was clearly erroneous. It was never the prosecution case that there was a fight or pitched battle between two parties. According to the prosecution, the occurrence was only a one-sided affair, that PW Kashiram was forcibly pulled out and taken from his house by the three accused to a distance of 80 feet, and there assaulted. In the F.I.R., Devisingh made no mention whatever of the injuries received by the accused side. At the trial also, the prosecution witnesses brazenly refused to concede that the appellant or his companion Manohar had received any injury at the time of occurrence. Contrary to what these prosecution witnesses had stated, the courts have come to the conclusion that these injuries, there of which were incised wounds, were received by the accused side in the course of a free fight, at the hands of the complainant party.

15. It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court, on its own, make out a new case for the prosecution and convict the accused on that basis.

16. Assuming for the sake of argument that this was a case of free fight, then also, it could not be said with any stretch of imagination, that the appellant was the author of the solitary injury received by Kashiram. Dr. Harish Chander (PW 4) found only one stab wound - Which in his opinion could be caused with a spear - On the left chest of Kashiram. According to Devisingh, the star witness of the prosecution the broken blades of both the spears wielded by Bhagirath and Gopal, had been left embedded in each of the stab wounds inflicted by them on Kashiram, and the witness had pulled out both the blades from the wounds and kept them at his house. Thereafter he handed over one of those blades to the police. Assuming that Devisingh's version to the extent that he found one broken spear blade embedded in the solitary wound found on Kashiram was not untrue, the question that still remained to be determined was, whether this blade was of the spear alleged to have been used by the appellant. A negative answer to this question is available from the testimony of Balmukand (PW 14) himself. In examination-in-chief itself, this witness stated :

Gopal had caused a blow with a spear which had struck Kashiram on the left side of his abdomen ... so the blade remained inside and the stick came out of the blade and remained in the hands of Gopal .... Devisingh had taken out the blade of the spear from the body of Kashiram.

17. If PW Balmukand were to be believed this solitary wound to Kashiram was caused by Gopal, the acquitted accused and not the appellant.

18. Thus from whatever angle the matter may be looked at, the prosecution had miserably failed to make out a case against the appellant. When the substratum of the evidence given by the eyewitnesses examined by the prosecution was found to be false, the only prudent course, in the circumstances of this case, left to the court was to throw out the prosecution case in its entirety

against all the accused.

19. For the foregoing reasons, we allow this appeal, set aside the conviction of the appellant and acquit him.

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