

Bhajan Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 194 of 1975

(Jaswant Singh, P. S. Kailasam JJ)

31.08.1978

JUDGMENT

KAILASAM, J. -

1. The five appellants have preferred this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, from the Judgment and order of the High Court of Punjab and Haryana in Criminal Appeal No. 636 of 1971.
2. The five appellants and there others were charged for various offences, punishable under the Indian Penal Code for rioting armed with deadly weapons and for causing the death of one Pakhar Singh inflicting grievous and simple hurt to Pritam Kaur, wife of Pakhar Singh on April 17, 1970 at about 7.30 a.m. in the village Bassi of Nurpur Bedi Police Station. The Additional Sessions Judge, Patiala, found the accused not guilty of the various offences with which they were charged and acquitted them.
3. The State of Punjab preferred an appeal to the High Court of Punjab and Haryana against the order of acquittal. The High Court maintained the acquittal of three accused. Nikha Singh, Binder Singh and Jit Singh but reversed the order of acquittal of the appellants and convicted them under Sections 302/149, 325/149 and 148, I.P.C. and sentenced them to imprisonment for life and a fine of Rs. 1000 each for an offence under Section 302/149. They were also sentenced to rigorous imprisonment for 2 years, 1 year and 6 months for the offences under Sections 325/149, 148 and 323/149, I.P.C. respectively.
4. The case for the prosecution is that there was enmity between the deceased Pakhar Singh and Nand Singh and his family due to the land in dispute. One Bhagtu, father of Pakhar Singh, was the owner of the land in dispute in the village of Bassi. After his death, a dispute arose over the property between the deceased Pakhar Singh and his step sister Jaggir Kaur who is married to Nand Singh. Nand Singh and Bhajan Singh, appellants 1 and 2, are the sons of Dharam Singh, the third appellant. Dharam Singh's nephew, Jhaggar Singh, is the fourth appellant. It is the admitted case of the parties that there was litigation between Pakhar Singh on the one side and Jaggir Kaur on the other relating to the title and possession of the land in dispute. Proceedings were taken by the parties before the authorities for registration in the revenue records. On October 28, 1965, Pakhar Singh instituted a suit in the court of Sub-Judge, Ist Class, Ropar for a declaration that he is the sole owner of the land and that the defendant had no right or interest in the land or in the alternative for possession of the land as owner. On December 27, 1969, the Court passed interim order on an agreement between the parties in the following terms :

It is agreed in respect of the question of possession that status quo will be maintained. Therefore ex parte injunction issued in favour of the plaintiff stands modified to the extent that the parties will maintain status quo in respect of possession.

5. The prosecution also filed Ex. PF an extract from Khasra Girdawri, relating to village Bassi which showed that the deceased Pakhar Singh was the owner of the land and was cultivating it with wheat and gram crop during the rabi crop for the year 1970. According to the prosecution, Pakhar Singh had sown wheat crop and he and his wife went to the field at 7.30 a.m. on April 17, 1970 to harvest the crop where they found all the accused cutting and gathering the crop. The deceased protested and tried to stop the accused from removing the crop, but they did not listen. Pakhar Singh reminded them that the court decision is in his favour but the accused took up the weapons which they had concealed in the wheat crop and started beating the deceased. According to the prosecution, the five appellants were armed with Kulharas, Bhajan Singh with a barchha and the three acquitted accused with lathis. The accused attacked the deceased and during the melee, Pritam Kaur, wife of the deceased, who is examined as PW 3 in the case also sustained injuries. Hearing the noise, Arjun Singh, PW 4 and Tota Ram, PW 5 who were harvesting their crops in a nearby field belonging to them, came to the scene and saw the beating of the deceased by the accused. Soon after the occurrence, the accused ran away. Pakhar Singh was taken to the road-side from where he was put in a bus and carried to Nurpur Bedi. Pritam Kaur went to the Police Station and lodged a report at 11 a.m. As no doctor was available at Nurpur Bedi, the injured was carried in a taxi to Ropar hospital but before medical aid could be rendered to him, Pakhar Singh died.

6. The prosecution relied on the evidence of the injured eye-witness, PW 3, and two other eye-witnesses who came to the scene at the time of occurrence, i.e. PWs 4 and 5, Arjan Singh and Tota Ram. The trial court rejected the testimony of the eye-witnesses and acquitted the accused. The High Court found that the evidence of PWs 3, 4 and 5 are trustworthy and the trial court was in error in rejecting their testimony. It found, the prosecution has established its case beyond all reasonable doubt so far as the appellants are concerned and convicted them for various offences.

7. The question that arises for consideration in this appeal before us is, whether the prosecution has succeeded in proving the case against the appellant beyond all reasonable doubt.

8. PW 3 is the widow of the deceased, Pakhar Singh. The doctor, Shrimati B. Kalra, Medical Officer, Civil Hospital, Ropar. Who examined Pritam Kaur, gave her the wound certificate which is marked as Ex. PB. She had 10 injuries on her person. The first injury is a fracture in the middle of the right index finger which is a grievous injury. Injuries 2 to 10 are simple and were caused due to blunt weapon. The injuries clearly show that PW 3 was present at the scene. The fact, that immediately after the occurrence, she, along with PWs 4 and 5, took the injured to the Police Station and lodged the First Information Report, establishes that the prosecution version was made available at the earliest possible time. The First Information Report was given at 11.20 a.m. at the Police Station which is four and a half miles from the village. According to the First Information Report, when PW 3 and her husband, Pakhar Singh, were going to harvest wheat crop, the appellants and three others were already harvesting the wheat crop, from the same field. PW 3 asked them as to why they were harvesting the wheat crop when a dispute regarding the joint Khata was going on between them, and they had obtained a stay order from the court and the wheat crop belonged to them as they were the owners, the appellants started attacking Pakhar Singh. The First Information Report mentions that Gurnaib Singh dealt a Kulhara blow to her on her right index finger and the appellants, Nand Singh, Bhajna, Dharam Singh and Jhagar Singh dealt Kulharas,

lathis and barchha blows on the head, eyes and both the legs of Pakhar Singh. The First Information Report also mentions the presence of Tota Ram, PW 5 and Arjan Singh, PW 4 as having come there on hearing the noise and rescued the witness and Pakhar Singh. The evidence of these witnesses was sought to be discredited by the trial court mainly on the ground that her statement before the investigating officer belies the prosecution version. According to the A.S.I., Bhagat Singh, who was examined as PW 10, he recorded a statement from Pritam Kaur on April 18, 1970. According to the statement, only four persons, Nand Singh, Dharam Singh, Bhajan Singh and Jhagar Singh were named as the assailants. The story given in the statement is different from the prosecution case that was set up in the First Information Report and at the trial. PW 3 vehemently denied having made any statement on April 18, 1970. It may be noted that after PW 3 gave the First Information Report, she was examined at the inquest. There is no material on record to show that the statement, recorded from PW 3 at the inquest, is at variance with the First Information Report. The contention of the State is that PW 10, Bhagat Singh, A.S.I. had falsely introduced a statement with a view to help the culprits and spoil the prosecution case. The High Court accepted the plea and found considerable merit in the contention of the learned counsel for the State. The High Court pointed out that Pritam Kaur, having named all the accused as assailants in the First Information Report and having reiterated this position in her statement in the inquest proceedings, would not have given a different version to the Police Officer in a supplementary statement recorded on the 18th. The evidence of PW 10 discloses that on the evening of the 17th, he prepared the inquest report during which proceedings he examined PW 3 and recorded her statement. Later, he left for the scene which he reached at 5.30 p.m. In cross-examination, the witness stated that he had recorded the statement of Pritam Kaur on April 18 which is marked as Ex. DD. The version given by PW 3 in this supplementary statement is totally at variance with the prosecution case. It is difficult to perceive, under what circumstances the police officer came to record a supplementary statement. Though the statement of the case by the A.S.I. is appended to the inquest report, the statement of Pritam Kaur recorded at the inquest is not made available. There is no difficulty therefore, in coming to the conclusion that, the statement of Pritam Kaur during the inquest was in accordance with the First Information Report. We agree with the High Court that the supplementary statement, recorded by PW 10, is not entitled to any weight and that it cannot be used for discrediting the testimony of Pritam Kaur. The trial court was clearly in error in rejecting Pritam Kaur's evidence on the basis of the supplementary statement alleged to have been recorded from her by PW 10.

9. Another reason given for rejecting the testimony of PW 3 by the trial court is that though PW 3's daughter, Ranjit Kaur, was present and sustained injuries, that fact was concealed in the First Information Report. In the Report appended by the PW 10 to the Inquest Report, he mentioned that Pritam Kaur had got entered the report at the police station to the effect that when she and her daughter Ranjito went to their field for harvesting the wheat crop, four accused inflicted injuries on her, her daughter and her husband. It is not disputed that the First Information Report not only mentions the four accused but all the others. It is again clear that in the First Information Report, there is no mention of the presence of her daughter, Ranjit Kaur or her sustaining any injuries. The High Court rightly observed that Pritam Kaur had denied having made statement to the Police that Ranjit Kaur accompanied them and received injuries and that there was no reason for her concealing it when she gave the First Information Report. As the High Court rightly points out that if Ranjit Kaur was present and sustained injuries, she would have been a very valuable eye-witness and her presence would not have been omitted. We agree with the conclusion of the High Court that the presence of Ranjit Kaur and her sustaining injuries was introduced by the Police with a view to damage the prosecution case. On a consideration of the evidence of Pritam Kaur, we find that she is a thoroughly dependable witness. It is only natural that she accompanied her husband to the field

where wheat crop had been raised. She had sustained several injuries and there could be no difficulty in coming to the conclusion that she was present and witnessed the occurrence during which she sustained the injuries. Taking into account the fact that the First Information Report was given with the utmost expedition and that all the relevant particulars such as the name of the accused, the weapons which were used and the part they played have all been mentioned. We see no reason for rejecting her testimony. The fact that she had not mentioned the details such as which accused caused which injuries does not affect the credibility of her version. Her husband was in a critical condition and it is too much to expect that the report she gave at that time should contain all details about weapons and the injuries that were caused by the several accused.

10. The evidence of the two other eye-witnesses, PWs 4 and 5, Arjan Singh and Tota Ram, was rejected by the trial Court on the ground that their evidence was materially different from the statement made to the Police as, in their statement to the Police, they had only named four accused while in their evidence they would include three more persons. We find that the statement, alleged to have been recorded by PW 10, is not entitled to much weight. The evidence of these two witnesses was attacked on the ground that the field, in which the two witnesses were supposed to be harvesting their wheat crops, was far away and that they could not have witnessed the occurrence. It was also submitted that there was a Gurdwara between their field and the field in which the occurrence took place but the High Court considered the points raised and found that there was no obstruction between the field in which they were working and the scene of occurrence and that when the noise was heard they left their field and moved towards the scene and that there could be no difficulty in accepting the testimony of PWs 4 and 5. According to PW 4, he and Tota Ram reached the place of occurrence on hearing the accused and Pakhar Singh quarrelling. On the way they observed the accused, injuring Pakhar Singh and Pritam Kaur. It is also clear that both the witnesses accompanied Pritam Kaur and the injured as the First Information Report discloses that the informant, Pritam Kaur came along with Arjan Singh and Tota Ram and appeared at the Police Station and got recorded the First Information Report. On a consideration of the evidence of PWs 3, 4 and 5, the eye-witnesses, we are satisfied that they are natural witnesses and that their testimony is acceptable. Agreeing with the High Court we have no hesitation in finding that the prosecution has proved its case beyond all reasonable doubt.

11. The only question that troubles us in this appeal is about the possession of the wheat field at the time of the occurrence. If the accused were in possession of the field and deceased came to disturb that possession, the case would take an entirely different complexion. It is common ground that there were disputes regarding the land. Both parties were trying to get the 'patta' registered in their names. The Commissioner of Patiala Division in the proceedings under the Punjab Land Revenue Act found that, Jaggir Kaur and her mother Ram Kaur were in possession for 20 years but, whether the suit land was under consideration before the Commissioner is not very clear. A suit was filed by Pakhar Singh, deceased, on October 28, 1969. On the date of the incident, the suit was pending and an interim order was passed to the effect that the parties had agreed in respect of the question of possession that status quo will be maintained and therefore ex parte injunction, issued in favour of the plaintiff, stands modified to the extent that, parties will maintain status quo in respect of possession. This would indicate that, there was an agreement between the parties as a result of which the order of injunction was modified but from this order it is not clear as to who was in possession. Two material documents, that very much support the prosecution case regarding possession, are Ex. PE and PF. Ex. PE is an extract from Khasra Girdawri papers relating to the land in question, Khasra 23/11/2, in the village of Bassi; Pakhar Singh is entitled as co-sharer and it is stated that he has raised kharif crop for the year 1963 and rabi crop for the year 1964. In Ex. PF, an extract from Khasra Girdawri relating to the land, it is entered that Khasra No. 23/11/2, the owner is

Pakhar Singh and that he is the cultivator and co-sharer and that he has raised wheat and gram in the rabi crop for the year 1970. The occurrence was on April 17, 1970 and the evidence of PW 3 on this point is that her husband and she had raised the wheat crop. In fact she admitted that there was a dispute between Pakhar Singh and Nand Singh about the land which Pakhar Singh's father left. While she admitted that there was dispute about the land, she stated that her husband had filed a suit against Jaggir Kaur and stay order had been granted by the court in favour of Pakhar Singh. She denied that the stay order was vacated before the occurrence or that the court had ordered that the party in possession of the land should harvest the crops. We find that the evidence of PW 3 that the Civil Court had granted stay in favour of the plaintiff and that they had raised the crop and went to the field in question for agricultural operations stands unrebutted by the defence. Though the court would be entitled, on the material on record, to decide whether, the question of right of private defence has been established or not, it is the duty of the defence to make the necessary material available. They have failed to produce any order vacating the stay or any record to show that they had raised the wheat crop. The circumstances also probabalise the prosecution case. There were 8 persons on the field harvesting the crop and having necessary weapons to repel any protest by the deceased. If the accused were in possession, it is most unlikely that the deceased and his wife alone would come into the field to disturb the possession. On a close scrutiny of the material on record, we are satisfied that there are no grounds for not accepting the conclusion of the High Court that the possession of the deceased and his wife were disturbed by the accused. In the result, the plea of right of private defence of property has to be negatived.

12. The question now remains as to what are the offences for which the accused could be convicted. The parties are closely related and the dispute was actually between the brother and the sister, the brother, claiming the property as his own, while the sister, supported by her husband and his brothers claiming that it belonged to the sister. There was litigation in various courts and there were disputes about the actual possession. Obviously, the accused, by strength of members, wanted to conclude the litigation by taking forcible possession. There could be no doubt therefore that, they trespassed into the land and caused injuries to Pakhar Singh which ultimately resulted in his death. Pritam Kaur was also injured. In determining what offences the accused are guilty of, it is necessary to consider the injuries that were inflicted on the deceased. The doctor, who was examined before the Committing Magistrate and whose evidence was marked in the Session Court, found that the deceased had eight injuries. Injury 1 was an incised wound 3 x 0.5 x 0.75 inches on the right side of the scalp 4 inches above the left ear, almost vertical bone underneath cut and fractured; comminuted fracture of left parietal left temporal bone extending to frontal and occipital. Front parietal suture opened. This injury, according to the doctor, was sufficient in the ordinary course of nature to cause death. The other injuries, 2 to 6 are contusions and 7 and 8 are abrasions. Injuries 2, 3, 4 and 5 are below the knee on the right knee cap. Injuries 2 to 5 are contused wounds below the right knee injuring the bone. The bone was fractured to pieces. Injuries 2 and 3 are on the right leg below the knee. Injuries 4, 5 and 6 are contusion on the left leg below the knee. The bone below the left knee and the right knee are fractured into pieces. Injury 7 is an abrasion horizontal 2 inches left side of back at the crest of the left iliac bone. The doctor was of the view that injuries 2 to 8 could not collectively normally cause the death of Pakhar Singh. We agree with the doctor that the injury 1 is sufficient in the ordinary course of nature to cause death and whoever caused the injuries would be guilty of an offence punishable under Section 302. The other injuries are mainly below the knee on the right and the left legs resulting in the fracture of the bones. In the background of the incident, it is clear that due to the anxiety of the accused to harvest the wheat crop the occurrence took place. Taking into account all the circumstances we find the common object of the unlawful assembly was to cause a grievous hurt. It has to be considered whether all the accused should be found guilty of an

offence under Section 302/149, for the injury caused by one of the members of the unlawful assembly which is found to be sufficient in the ordinary course of nature to cause death. None of the appellants has been specially charged under Section 302 and it is therefore not possible to hold any one of the appellants guilty of causing the injury which is sufficient, in the ordinary course of nature, to cause death. We are also not satisfied from the circumstances that the injury was caused in prosecution of common object of the assembly or that the members of the assembly knew it likely to be caused in prosecution of the common object. On a consideration of all the circumstances we are satisfied that the common object of the unlawful assembly was to cause grievous injury with dangerous weapons, an offence punishable under Section 326. We, therefore, set aside the conviction and sentence, imposed on the appellants, under Section 302/149 but instead find them guilty under Section 326/149 and sentence them to seven years' rigorous imprisonment and a fine of Rs. 1000 each, and in default to undergo a simple imprisonment for six months. The conviction under Section 325/429, regarding the injuries caused to Pritam Kaur, PW 3, is confirmed. The sentence of 2 years' rigorous imprisonment, imposed on the appellants, for an offence under Section 325/429, for causing injuries to PW 3, is confirmed but, as the prosecution has not established the presence of the daughter, Ranjito, the conviction, under Section 323/149 regarding the causing of injury to her, and the sentence imposed for the offence, is set aside. The conviction of the accused under Section 148 is confirmed.

13. Before concluding the judgment we would refer to the plea of the accused that the High Court was in error in allowing the appeal against acquittal without substantial and compelling reasons. We do not think, the decision of this Court, relating to the grounds on which an appeal against the acquittal could be allowed by the High Court, is relevant, for, this appeal is under Section 2A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. By this section the accused, who has been acquitted by the trial court, but, on appeal by the State, convicted and sentenced by the High Court, as specified in the section, is entitled, as of right, to appeal to this Court. As a court of appeal this Court has got to go into all the questions of fact and law and decide the case on its merit. After a right of appeal has been provided under the said section, the question, whether the High Court interfered on sufficient grounds or not, will not be material, as this Court has to decide the case on its own merits. The decisions, regarding the scope of appeal against an acquittal, the powers, of the High Court to interfere in an appeal against acquittal by the State, which may be relevant when the Supreme Court is acting under Article 136, are not material in deciding an appeal by a person, whose acquittal has been set aside by the High Court, and who is entitled to prefer an appeal to this Court.

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