

Ghunnu and Others

Vs

State of U. P.

Criminal Appeal No. 576 of 1976

(Jaswant Singh, P. S. Kailasam JJ)

22.09.1978

JUDGMENT

KAILASAM, J. –

1. This appeal by the five appellants is by special leave against the judgment of the High Court of Allahabad against their conviction and sentences imposed on them.
2. Before the trial Court the five appellants and five others were tried for offences under section 147, 148, 302, 307 and 324, IPC read with Section 149 IPC. All of them were convicted under Section 302, 307 and 324, IPC read with Section 149, IPC and were sentenced to imprisonment for life under Section 302 and for seven year's RI under Section 307 and two year's RI for offence under Section 324, IPC. On appeal by the appellants, the High Court of Allahabad set aside the conviction and sentences imposed on five of the accused and confirmed the convictions and sentences imposed on the appellants by the trial Court for the various offences.
3. The appellants are Pasis by caste, and are residents of village Sinhar Kalan within the jurisdiction of Kotwali Dehat Police Station in the district of Mirzapur. The deceased and other injured prosecution witnesses are residents of the village of Rajdhar Ka Purwa and are Brahmins by caste. It is common ground that there was a long standing enmity between the Brahmins and the Pasis. Four days prior to the occurrence on August 2, 1970, there was a scuffle between the two groups in which the appellants, Ghunnu, Lachhman and five others received injuries while on the side of the prosecution, Lalta Prasad, deceased, and three others received injuries. The parties preferred complaints and two cases were registered and were under investigation on the date of the occurrence on August 6, 1970.
4. The case for the prosecution is that at about 9 a.m., Lalta Prasad, deceased, started from his village, accompanied by Thakur Prasad, Hira Lal and Devi Prasad, for Kotwali Dehat to have their statements recorded at the Police Station in the cases which were under investigation. Because of the strained relationship, it is stated that Lalta Prasad was carrying a pistol in his jhola while Devi Prasad was carrying a spear. When this party of four persons had passed on the Banwa Ki Bari, the five appellants and five others suddenly emerged from the sugar-cane crop of Bhullu. At that time, appellants Kishori and Ghunnu were armed with spears. Devi had a lathi and the others had gandasas. All of them started assaulting Thakur Prasad and when Lalta Prasad wanted to intervene, the assailants rushed towards him. Then Lalta Prasad took out his pistol and fired it in self-defence causing injuries to some of assailants. Devi Prasad and Hira Lal were also given a beating but they managed to escape. Devi Prasad wielded his spear like a lathi in self-defence. Hira Lal and Devi Prasad ran away to their houses and came back with some other persons but by that time, all the

assailants had escaped. Lalta Prasad and Thakur Prasad were found lying seriously injured. Both of them were laid on two cots and were taken to the Police Station and on the way, Lalta Prasad died. The persons who were carrying the cot of Lalta went straight to the Police Station while Devi Prasad took Thakur Prasad to Sadar Hospital and had him admitted. Thereafter Devi Prasad left for the Police Station and lodged the First Information Report at 11.45 a.m.

5. The counter version about the incident was given by Lachhman, one of the appellants before us, at 9.30 a.m. in the same Police Station. Investigation was taken up and the police filed the charge-sheet against the appellants, rejecting the complaint given on behalf of the appellants. The trial Court, after an examination of the evidence found that the version given by the prosecution is true and that the accused party were lying in wait in the sugar-cane field and were the aggressors. It also found that the injuries received by the appellants were during the scuffle in which they were the aggressors. The High Court also came to the same conclusion but acquitted five of the accused arraigned before the trial Court as the case against them had not been proved beyond reasonable doubt.

6. The question for consideration in this appeal is whether the prosecution has established its case that the appellants along with others were lying in wait in the sugar-cane field and attacked the prosecution witnesses and were the aggressors. It is also to be considered whatever the case set up by the defence is acceptable or not. It is admitted that there was a longstanding and bitter enmity between the two communities, Brahmins and Pasis and about four days before the date of the occurrence there was a scuffle in which some of the accused and the prosecution witnesses were injured. Except Bholanath, PW 4, the other witnesses belonged to the party of the prosecution and had bitter enmity. We have gone through the evidence of Bholanath and are not satisfied that he can be called as an independent witness. It is admitted that Bholanath was examined by the police after considerable delay and we are unable to hold that he is not connected with the faction. We have therefore to proceed on the basis that the prosecution witness belong to on faction. Their testimony will have to be closely scrutinised. In cases where there is admitted enmity and when in an occurrence persons belonging to the prosecution as well as the accused are injured, it is necessary to look into the facts that have been proved rather than accept the testimony of the witnesses at their face value.

7. The first circumstance that is established is that both parties gave their version soon after the occurrence. According to the defence, the occurrence was at 7 a.m. The complaint on behalf of the accused was lodged at the Police Station which is about five miles from the scene at 9.30. a.m. According to the prosecution, the offence was committed at 9.00 a.m. The complaint was lodged on behalf of the prosecution at 11.30 a.m. in the same Police Station. The courts below were inclined to hold that with a view to explain the delay, the prosecution has sought to fix the time of the occurrence at 9.00 a.m. Both the courts found that there was only one occurrence and it might have been between 7.00 and 9.00 a.m. The First Information Report lodged by the accused at 9.30 a.m. preferred by Lachhman, one of the appellants is marked as Ex Ka-21. It may be set out in full :

My name Lachhman father's name Nokhai, home at Village Sinhar Kalan Thana. Today I Basudeo, Dular taking ploughs and bullocks came to field of Bhairo Singh Thakur, which I was cultivating for several that Kulli Bhagwati Ram, Hira Lal, Dinanath of Rajdhar Parwa having lathi in and Nankoo father's name Shitla having gandasa and Devi father's name Mannu having pistol and Bunnar father's name Kare, having gandasa in hand and Thakur Prasad father's Kare Prasad having spears in hand and other people taking lathi came and told that Gundayee of you people has gone ahead - will not allow to cultivate - will kill you. Basudeo and Dular running to village went for

Gohar. Due to fear I stopped the plough. Nankoo plied Gandasa at me. At village Gohar Kishori, Madhu, Behari, Devi. Dhunnu taking lathi came. Devi fired pistol then we in our self-defence plied lathi and Kishori having snatched gandasa from Bunnar plied and Behari snatched pistol, jhola and pellet from Devi. Baba Ahir and Ghunnu Ahir and several other persons and ram Saroop Lohar had also seen this occurrence. Kishori, Behari, Madhu and Devi Pasi and Dhunnu Pasi who have received pellet injuries and I have received gandasa injuries having taken them have come. The pistol which has been snatched from Devi Pandey and fired pellets and two live pellets and jhola I have brought. Whatever I dictated was taken down.

It may be noted that in this report, it is stated that Lachhman, appellant and others took their ploughs and bullocks to the field of Bhairo Singh Thakur which Lachhman was cultivating for several years. At that time, the prosecution party armed with various weapons, Devi with a pistol, came and told them that they cannot go on with their cultivation and that they will kill the appellants. It is stated that after Nankoo plied gandasa at Lachhman and some others came with lathi and Devi fired a pistol. Lachhman and others in self-defence plied lathi and appellant Kishori snatched a gandasa and used it while another appellant snatched the pistol. The appellant also handed over the pistol which he had snatched from Devi and handed it over at the Police Station.

8. The version given by the prosecution at 11.45 a.m. is marked as Ex. Ka-1. The report was given by Devi Prasad against the five appellants and five others. The version as is in the First Information Report may be shortly summarised. According to this Report, when Devi Prasad along with his uncle Thakur Prasad and Lalta Prasad and Hira Lal were going to the Police Station forgetting their statements recorded at about 9 a.m., they reached the south-west corner of Banwa Ki Bari. The ten accused armed with various weapons emerged from the sugar-cane field and started attacking Thakur Prasad and Lalta Prasad. Lalta Prasad, it is stated, in order to save his life, took out his pistol and tried to fire it and the pistol gave noise and Lalta Prasad and Thakur Prasad being injured, fell down and the accused person rushed to beat Devi and Hira Lal and caused injuries to both of them. Devi Prasad also plied his spear like a lathi to save his life by which some of the accused might have received injuries and they took the injured to the Police Station. It may be noted that while, according to the defence, the occurrence took place in the field of Bhairon Singh, according to the prosecution, the incident took place in the south-west corner of Banwa Ki Bari. It is also the case for the prosecution that the accused attacked them and Lalta Prasad in order to save his life having taken out the pistol tried to fire it and pistol gave noise and Devi Prasad also plied his spear like a lathi to save his life by which some of the accused might have received injuries. Even a cursory reading of the two reports would indicate that both the sides were anxious to make out a case of self-defence and were trying as much as possible to explain the injuries found on the other side. It is very difficult in the circumstances to accept either of the versions as containing the whole truth. If it is possible to decide the scene of the occurrence with some certainty, it will solve the question as to who were the aggressors. Here also we feel considerable difficulty as admittedly the two scenes referred to by the parties are within one furlong of each other. The evidence of the investigating officer regarding the scene of the occurrence is that he inspected the scene as specified by the prosecution and found blood at one place in the Palihar field of Kalloo. He sealed the blood-stained and ordinary soil in separate dibba which are Exs. 5 and 6 respectively. He also found signs that there were attempts to remove the blood-stains. He also investigated the field of Bhairon Singh but could not find any blood-stains. The Chemical Examiner's report does not disclose that blood-stains collected by the Investigating Officer at the scene as mentioned by the prosecution were of human origin. The material placed by the prosecution regarding the scene of occurrence is not sufficient to determine the place of occurrence. Apart from the uncertainty of the scene, we feel some hesitation in accepting the case of the prosecution, that the prosecution party was on their way to Police

Station for recording their statements in the case which was under investigation. According to the prosecution, Lalta Prasad was carrying an unlicensed country pistol and another person had a spear. Though it was sought to be explained that because of the bitter enmity and as there were several murders, Lalta Prasad used to carry the weapon, it is improbable that they would have gone to the Police Station armed with an unlicensed pistol. It is found that the prosecution party was released only on August 5, 1970 and it is unlikely that they were to be examined on August 6, 1970. The High Court found that no police officer was called to corroborate the prosecution that on the 6th morning, the day following their release from jail, they were called to the Thana for being interrogated. The investigating officer did not also state in the court that the prosecution witnesses were to be examined at the Thana on that date. It is also brought on record that the prosecution witnesses had cycles but preferred to go on foot to the Police Station. It is sought to be explained that they preferred to go on foot as it was rainy season and cycling was not convenient on kachcha roads. The courts below also have found that Lalta Prasad had only a "ganji" and "lungi" and that it is most unlikely that he would have gone in that dress to the Police Station. The High Court while finding that the prosecution had introduced the story that Lalta Prasad was wearing shoes and 'kurta' and that they were taken away by the appellants was improbable, observed that because it was summer, there was nothing improbable in Lalta Prasad going dressed only with 'ganji' and 'lungi'. On a consideration of all the circumstances, the absence of any evidence as to the appellants being expected for recording of a statement on the morning of the 6th, one of them going armed with an unlicensed pistol, their preferring to walk instead of using cycles, we feel that the story of the prosecution that they were innocently on their way to the Police Station cannot be accepted without reservation. Equally unacceptable is the story of the prosecution that the appellants were lying in wait in the sugar-cane field, for, there is no indication in the prosecution story as to how the accused would have expected the prosecution party to pass by that way at that time. We therefore find ourselves unable to accept the prosecution version regarding the place of occurrence or of their having been waylaid on their way, to the Police Station. The only fact that emerges from the material on record is that there was scuffle between parties and several of them were injured. With this limited material we have to determine as to whether the prosecution has made out a case against the appellants.

9. We may at this stage refer to the injuries sustained by the deceased, Lalta Prasad, and the prosecution witnesses on one side and the injuries sustained by the several accused on the other for determining as to how the incident took place.

10. Dr. Shankar Lal Jaiswal, PW 12 was the Medical Officer at Sardar Hospital, Mirzapur. On the date of the occurrence at 11.30 a. m., he examined the injuries on Thakur Prasad Pandey, PW 2, and gave the wound certificate Ex. Ka-23. He found on Thakur Prasad Pandey 28 injuries. Of them he found about 18 injuries were caused by sharp-edged weapon and the rest were caused by blunt weapon. He found the condition of the injured serious and sent information to the magistrate for recording a statement. Injuries 17, 24 and 28 were grievous. Injury 17 is a lacerated wound 2 1/2 inches x 1/6 inch on right index finger of right hand cutting phalanx bone. Injury 24 is incised would spindle shaped 6 inches x 3/4 inch semilunar in shape at the level just below lateral malleolus of right leg. The third injury was on the top of the right little finger of the right foot. At 4 p.m., the doctor examined Devi Prasad, PW 1 and found on him four injuries. All the injuries were simple in nature. Hira Lal, PW 3 also had four simple injuries. The post mortem disclosed 16 injuries on the person of Lalta Prasad. According to the doctor, the death was due to shock and haemorrhage, as a result of injury to the skull bones and injuries to the brain and lung. An examination of the injuries on the side of prosecution reveals that Lalta Prasad died due to fracture of skull bone and injuries to the brain and lung while Thakur Prasad sustained as many as 28 injuries, although simple, except

injuries 17, 24 and 28. The grievous injuries were fractures of a finger in the right hand and a toe in the foot.

11-12. The injuries that were found on the appellants may now be noted Lachhman had one grievous injury, incised wound 2 1/2 inches x 3/4 inch on the upper end of left forearm on its posterior aspect cutting the ulna bone underneath oblique in direction. The injuries according to the doctor were caused by some sharp-edged weapon. The appellant, Madhu had three injuries :

(1) Three lacerated marginal circular wounds 1/10 inch x 1/10 inch x skin deep in area of 4 inches x 3 inches on the front of thigh at its middle 1/3rd.

(2) Three lacerated marginal circular wounds 1/10 inch x 1/10 inch x skin deep in area of 4 inches x 3 inches on the front and outer side of left leg on its upper 1/3rd.

(3) Three lacerated marginal circular wounds 1/10 inch x 1/10 inch x 1/10 skin deep tone on inner side and one on inner side of right foot.

These injuries were caused by some firearm pellets. The appellant, Behari had two injuries on his person :

(1) Two lacerated marginal circular wounds 1/10 inch x 1/10 inch x skin deep in area of 4 inches x 2 inches on the back left forearm at its upper 1/4th.

(2) One lacerated marginal circular wound 1/10 inch x 1/10 inch x skin deep on the outer side of the left foot.

These injuries were caused by some firearm pellets. Burn marks were not found. Dhunnu had four injuries on his person. Injuries 3 and 4 are marginal circular wound 1/10 inch x 1/10 inch x skin deep, probably due to pellets. Devi had three injuries on his person and according to the doctor were caused by firearm pellets. Kishori Lal had two injuries and according to the doctor were caused by firearm pellets. Thus it will be seen, while appellant, Lachhman had a grievous incised pellets, cutting the ulna bone, the other five appellants, Madhu, Behari, Dhunnu, Devi and Kishori Lal had gunshot injuries caused by pellets.

13. According to the version given by the prosecution in the First Information Report, the accused, armed with various weapons, emerged out of the sugar-cane field, began to assault Thakur Prasad and Lalta Prasad and at that time Lalta Prasad, in order to save his life, having taken out the pistol, tried to fire it and the pistol gave noise. This version of the prosecution would indicate that the pistol was fired at close range. Though five persons were injured according to the prosecution, only one shot was fired but the courts below found it to be likely that at least two shots were fired. Taking into account the spread of the pellets and the injury on five persons in various parts of the body, we agree with the courts below that at least two shots would have been fired. Probabilities are that shots were fired from a distance for, otherwise it is unlikely that the pellets would have spread so as to injure five persons on various parts of their bodies. If the prosecution version is true that the firing was after the accused started assaulting Lalta Prasad and when they were at close range, the injuries from the pistol would have been of a different nature. There is no indication of any burning or scorching. On the other hand, the spreading of the pellets would indicate that the shots were fired from a distance. This circumstance would show that the prosecution story that the shot was fired at close range cannot be accepted. If it was fired from a distance, the question arises as to why it

became necessary to fire. Though it cannot be stated, with certainty, it is quite probable that after the firing took place, the prosecution party was attacked. The 28 injuries found on Thakur Prasad and the injuries caused to Lalta Prasad would indicate that there was persistent beating by the accused though the attack might have taken place after the firing of the pistol. On a careful consideration of the injuries found on the prosecution party as well as the accused, and the nature of the gunshot injuries, we find it impossible to reject the case of the defence that the attack by them followed the firing of the pistol. While what happened cannot be determined with certainty, we feel that this is a case in which the appellants are entitled to the benefit of doubt. In the result, we find that the appellants caused injuries after the firing of at least two shots from the pistol. As 28 injuries were caused to Thakur Prasad and the skull bone of Lalta Prasad was fractured resulting in his death after the pistol had been snatched, it can be safely presumed that the accused exceeded their right of private defence and caused the injuries when there could have been no cause for apprehension that death or grievous injury would be caused to them. We acquit all the accused of the offence under Section 302, IPC, read with Section 149 but find them guilty on an offence under Section 326, IPC, read with Section 149 and sentence them to five years' rigorous imprisonment. We affirm the conviction of all the appellants under Section 307 read with Section 149 but reduce the sentence to five years' rigorous imprisonment. The conviction and sentence of the appellants of the other offences are also confirmed. The sentence will run concurrently. The appeal is allowed to the extent indicated above.

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