

State of Haryana

Vs

Tej Ram

Criminal Appeal No. 8 of 1975

(R. S. Sarkaria, R. S. Pathak JJ)

04.08.1980

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave by the State of Haryana directed against a judgment, dated January 23, 1974, of the High Court of Punjab & Haryana, arises out of these circumstances :
2. Dayawati, elder daughter of Harbans deceased was married to Rattan Lal, elder brother of Tej Ram, respondent herein. Dayawati was a one-eyed woman and was otherwise not mentally sound. Dayawati's younger sister, Mahindri, aged about 19 years, had separated from her husband, Bhule Gujjar, resident of Kamala, District Meerut, and was living with her father, Harbans deceased in village Ankhir.
3. According to the prosecution story, the deceased allowed Rattan Lal accused to take Mahindri as his second wife. Thereupon, Mahindri started living with Rattan Lal accused in village Rithoj which is a distance of about 20 miles from Ankhir. But the relations of Mahindri with Rattan Lal became strained and the latter started maltreating her about four or five months before the occurrence.
4. Harbans deceased made an application to the Magistrate and got a warrant issued under Section 100 of the Code of Criminal Procedure, 1898, alleging that his daughter Mahindri, had been wrongly confined by Rattan Lal against her will. In execution of that warrant, Mahindri was recovered and allowed to go to her father's house in village Ankhir. During the four or five months preceding the occurrence Rattan Lal and his brother, Tej Ram, came several times to the house of the deceased in Ankhir and unsuccessfully attempted to persuade him to send away Mahindri with them. On account of this, the two brothers (accused) were nursing grudge against the deceased.
5. On the midnight intervening the 15th and 16th of October, 1969, Rattan Lal, armed with a pharsa (a sharp-edged weapon), and Tej Ram, armed with lathi, came to the house of the deceased. The deceased, his two sons, Mahabir and Rajbir, his daughter, Mahindri, and his wife, Bhagwati were present in the house. Rattan Lal and Tej Ram awakened and asked the deceased to send Mahindri with them. The deceased did not agree. Mahindri was also not agreeable to go with them. Then, Rattan Lal and Tej Ram tried to take away Mahindri by force from the house of the deceased. The deceased intervened. Thereupon, Rattan Lal and Tej Ram made a concerted attack on the deceased, causing no less than 15 injuries, as a result of which, the deceased died at the spot shortly thereafter. When Rattan Lal and Tej Ram tried to drag away Mahindri, her brothers Mahabir and Rajbir intervened, but Tej Ram gave lathi blows to them, also. On hearing the hue and cry of the victims, the neighbour, Ranjit Singh, and chowkidar Khem Chand, who was there on patrol, were attracted

to the spot. They witnessed the entire occurrence. The villagers also collected. The miscreants ran away. The villagers did not pursue them on account of fear.

6. After the occurrence, Mahabir accompanied by Khem Chand, went to Police Station, Faridabad and lodged a complaint there on October 16, 1959, at 6.30 a.m. The special report about the murder reached the Illaqua Magistrate on the same day at 12 noon, at Gurgaon.

7. The post mortem examination on the dead body of Harbans deceased was conducted by Dr. S. K. Kalra (PW 1) on October 16, 1969. He found 14 injuries on the dead body. It is necessary to set out the particulars of those injuries as they indicate that two types of weapons were used in causing those injuries. The injuries found were as follows :

1. An incised wound 4 inches x 1/2 inch on the front of head, placed longitudinally.
2. An incised wound 3 inches x 1/2 inch into scalp deep on the head, longitudinally.
3. An incised wound 4 inches x 3/4 inch on the left side of the head, placed longitudinally.
4. A contused wound 1 inch x 1/4 inch skin deep on the front of the forehead placed longitudinally on the right side.
5. A contusion 1-1/2 inch x 1/2 inch on the front of forehead on the left side.
6. An abraded contusion 2 inches x 2 inches on the right shoulder.
7. An abraded contusion on the outer side of the right arm 6 inches below the shoulder.
8. A lacerated wound on the tip of the right ring finger.
9. A reddish contusion 4 inches long on the back obliquely placed.
10. Reddish contusion 6 inches long obliquely placed on the back in the middle.
11. Two contusions 5 inches x 1-1/4 inches on the back below injury No. 10, placed obliquely.
12. A contusion 6 inches x 1 inch on the left side of the chest.
13. Contusion 1 inch x 2 inches on the left shoulder.
14. An abraded area 3 inches x 1/2 inch on the back of left forearm.

There was fracture of the skull 4 inches long, extending from side to side in the parietal bones. Blood was found clotted between the skull and the membranes. There was a contusion on the back of right lung. There were infiltrations of clotted blood in the skull. The death, in the opinion of the medical witness, was due to shock and hemorrhage, as a result of the aforesaid injuries which were ante-mortem and sufficient in the ordinary course of nature to cause death. Death according to the doctor (PW 1) must have followed almost immediately the receipt of the injuries. In

Dr. Kalra's opinion, incised injuries 1, 2 and 3 had been caused with a sharp-edged weapon like pharsa and the other injuries with a blunt weapon; that injury 3 was, also, individually sufficient to cause death; and that the internal lung injury could be due to external injury 10 or injury 11.

8. After the occurrence, both the accused remained in abscondence. Tej Ram, respondent was first arrested and put on trial in the Court of the Sessions Judge. He was convicted under Sections 302, 365/366/449 and 323, Indian Penal Code. But, on appeal, the High Court set aside his conviction on the ground that he should have been charged and tried for an offence under Section 302 read with Section 34, Penal Code. The case was, therefore, remanded for retrial. In the meantime, Rattan Lal, who was absconding, who also arrested and put on trial. After the remand of the case for retrial of Tej Ram, Mahabir, who had lodged the first information report, dies in an accident. His statements (Exs. PAA and PBB), which were made in the Court of the Committing Magistrate and Sessions Judge at the earlier trial, were transferred under Section 33 of the Evidence Act to the Sessions record. As against Rattan Lal, co-accused, the statements were transferred under Section 512, Criminal Procedure Code, as proceedings under that Section had been taken when Rattan Lal was absconding.

9. The learned Sessions Judge convicted both Rattan Lal and Tej Ram for the murder of Harbans deceased and each of them was sentenced to imprisonment for life. Tej Ram was convicted under Section 302 read with Section 34 and also under Section 449, Penal Code.

10. Both the accused appealed to the High Court against the order of their conviction. By its judgment, dated January 23, 1974, the High Court maintained the conviction of Rattan Lal, but acquitted Tej Ram of the charge under Section 302/34, IPC. Hence, this appeal by the State against the order of Tej Ram's acquittal.

11. The mainstay of the prosecution case was the testimony of five eyewitnesses, namely, Mahabir PW, Rajbir (PW 3), the sons, and Bhagwati, the widow of the deceased (PW 2), and Ranjit (PW 4), the neighbor, and Khem Chand, Chowkidar (PW 5). With regard to the testimony of eyewitnesses, the High Court, in agreement with the trial Court, found as under :

Three witnesses, namely Bhagwati, Mahabir and Rajbir, are quite natural witnesses. Bhagwati is the widow of the deceased, whereas the other two witnesses are his sons whose presence in the house of the deceased in the dark hours of the night is quite natural. Rajbir and Mahabir PWs are stamped witnesses as they also received injuries during the same course of the occurrence. Therefore, their presence at the time of occurrence is doubly assured. It would further be seen that keeping in view the number of injuries on the person of the deceased and the other two injured witnesses, it is apparent that the assailants whosoever they were, took some time in inflicting those injuries and further the appellants being close relations of the PWs could be easily identified by their talk even though it was dark time. After going through the evidence of Ranjit and Khem Chand Chowkidar, the other two eyewitnesses produced by the prosecution, we are inclined to hold that these two witnesses are also truthful witnesses and their presence at the spot at the time of the occurrence is also quite natural. Ranjit PW lives in the neighborhood of the place of occurrence and obviously there having been raised hue and cry, he was attracted to the place of occurrence. Khem Chand PW is the Chowkidar of the village who was also attracted to the place of occurrence on hearing Raulla. Both these witnesses having no animus

to falsely involve the appellants if the appellants were not the real culprits.

12. On these premises that the testimony of the eyewitnesses was trustworthy, the High Court, concurrently with the trial Court, recorded the finding that "there is no manner of doubt left that both of them (Rattan Lal and Tej Ram) were present at the time and place of occurrence". This was one material finding of fact on which the High Court agreed with the trial Court.

13. The second crucial finding of fact which has been affirmed by the High Court is that during the period of four months preceding the occurrence, both Rattan Lal and Tej Ram had repeatedly come to the house of the deceased and unsuccessfully attempted to persuade the deceased to send Mahindri back with them, and on every occasion, the deceased firmly refused to do so. Thus, both the others were nursing a grudge against the deceased.

14. Another incontrovertible circumstance in this case is that Rattan Lal and Tej Ram came armed to the house of the deceased at dead of night. The High Court has affirmed the trial Court's finding that both Rattan Lal and Tej Ram went, armed with a pharsa and lathi respectively, to the house of the deceased at that unearthly hour of the night.

15. In spite of the aforesaid findings, the High Court has acquitted Tej Ram on the ground that he did not share the intention of Rattan Lal to murder the deceased : In support of this conclusion, the High Court gave these reasons :

(1) The deceased died as a result of the injuries inflicted by Rattan Lal.

(2) Actual participation of Tej Ram in the assault on the deceased is doubtful because "according to the statement of Mahabir, Tej Ram did not give any injury to Harbans deceased and he only gave injuries to the injured PWs. But according to Rajbir and Bhagwati PWs, Tej Ram appellant also gave injuries to the deceased. Thus, there is a contradiction in the ocular testimony as regards the giving of injuries by Tej Ram to the deceased in concerned."

(3) In any case, there is no circumstance to infer that Tej Ram, appellant, at any stage had shared the common intention with Rattan Lal, appellant, for murdering the deceased.

16. The High Court upheld the conviction of Tej Ram under Section 323, Penal Code, for causing hurt to Mahabir and Rajbir. It also set aside his conviction under Section 449, Penal Code.

17. Learned counsel for the appellant-State submits that the aforesaid reasons given by the High Court rest on premises which are factually wrong. The High Court, it is argued, has not correctly read the evidence of Mahabir and of Dr. Kalra (PW 1).

18. As against this, learned counsel for the respondent has tried to support the finding of the High Court, inter alia, on the ground that Mahabir's statement recorded in the Court of the Committing Magistrate in the earlier trial of Tej Ram, was never duly transferred to the trial Court's record under Section 288 of the Code of Criminal Procedure, 1898, and consequently, that statement, in which Mahabir had said that both Rattan Lal and Tej Ram had inflicted injuries on the deceased with their respective weapons, could not be treated as substantive evidence. It is pointed out that Mahabir had resiled at the previous trial from his statement in the Committal Court; and that the whole of that statement was not read over to him before being transferred as substantive evidence to the Sessions

record. It is pointed out that in cross-examination, Mahabir in his statement (Ex. PAA), transferred to the present trial under Section 33, Evidence Act, had only stated "that the alleged attack with pharsas and lathis was done in another one or two minutes". It is maintained that he did not say as to who had made this attack with pharsas and lathis, and that this statement was, also not incompatible with the construction that while Rattan Lal attacked the deceased with pharsa, Tej Ram assaulted the witnesses with lathi. In this connection reference has also been made to what the witness had stated at the initial stage of the cross-examination. It is to the effects : "I might have stated before the Committing Court that Tej Ram gave lathi blows to my father but my statement made today is correct". In examination-in-chief, the witness did not say that Tej Ram had caused any injury to the deceased. The Public Prosecutor, therefore, declared that the witness had turned hostile and cross-examined him with the permission of the court. The cross-examination shows that the witness was confronted with his statement, dated May 5, 1970, before the Committing Magistrate, wherein he had stated that Tej Ram accused gave lathi blows to his father. He was further confronted with the FIR (Ex. PV), in which he had categorically stated that both Rattan Lal and Tej Ram had given blows to his father. At first, the witness denied that he had stated so in his previous statements but then diluted it by saying : "I do not remember if I had stated in my statement before Shri P. L. Sanghi that Tej Ram had inflicted blows on my father with lathi, while Rattan Lal gave three pharsa blows to my father". He then added : "I have fully recollected that Tej Ram did not give any blow to my father".

19. It will be seen that Mahabir was not consistent in his statements with regard to the part played by Tej Ram in assaulting the deceased. In the first information report and in his statement before the Committing Magistrate, he had stated that Tej Ram also gave lathi blows to the deceased. In cross-examination, he, first, unwittingly conceded that the attack was made by them with pharsa and lathi. The sentence in which he had unwittingly conceded this fact, should be read in the context of the passage extracted below, which immediately precedes it :

Mahindri was sleeping in a room which did not have a roof and my father was sleeping under the Neem tree. Mahindri had also come there on hearing the Raulla. Rattan Lal started dragging Smt. Mahindri and then the incident happened. This scuffle lasted for about 2-3 minutes. The alleged attack with pharsas and lathis was done in another one or two minutes.

Read in the context, the implication is clear that the evidence of the witness was substantially to the effect, that the attack with pharsa and lathi was made on the deceased.

20. It may also be noted that the Public Prosecutor had, at the trial, made a statement on December 27, 1972 tendering in evidence under Section 33 of the Evidence Act, both the statements of Mahabir, one made before the Committing Magistrate and the other made at the previous trial, against Tej Ram accused. It was not argued before the courts below that either of these previous statements of Mahabir who has since died, was not admissible under Section 33, Evidence Act.

21. Be that as it may, Mahabir's earlier statement which he had made before the Committing Magistrate could be used to contradict him when he appeared at a witness at the trial. In fact, it was so used to show that the witness had deliberately resiled from a part of his previous statement to favour Tej Ram. Mahabir was confronted with that portion of his previous statement in which he had deposed to the participation of Tej Ram in the assault on the deceased. I did not give any satisfactory explanation, but at the same time, in a casual fashion, admitted having made that statement before the Committing Magistrate. This contradiction shows that the subsequent statement

in which he had tried to exculpate Tej Ram, was not true. There was other reliable evidence on the record, also, confirming this conclusion.

22. Firstly, the medical evidence rendered by Dr. Kalra shows that there were no less than eleven injuries caused with a blunt weapon on the body of the deceased. Two of those blunt-weapon injuries (4 and 5) were located on both sides of the forehead; while there was big contusion mark (injury 12) on the chest. There was infiltration of clotted blood in the scalp under injuries 4 and 5, also. There was side-to-side fracture of the skull (parietal bones). Underneath the external injuries 10 and 11, which were also contusions on the back-middle of chest, there was an internal injury to the lung on the right side. These injuries, according to the medical witness, though not individually fatal, contributed to the shock and hemorrhage, which caused the death "almost immediately". The medical evidence thus lent inferential support to the earlier version of Mahabir that Tej Ram also had assaulted the deceased with a lathi.

23. Secondly, the fate of the prosecution case against Tej Ram did not depend upon the transferred testimony of Mahabir only. There were other eyewitnesses, also, namely : Bhagwati (PW 2), Rajbir (PW 3), Ranjit (PW 4) and Khem Chand Chowkidar (PW 5). PWs 2 and 3 were inmates of the house of occurrence. PW 3 had also received injuries at the hands of Tej Ram. PW 4 was a neighbor. His house is situated in the vicinity of the place of the incident. PW 5 is the village Chowkidar and he was patrolling the area at 2 a.m. on the night of occurrence. He had a torch with him. He flashed his torch and saw both the accused assaulting the deceased with their respective weapons.

24. All these eyewitnesses were natural and probable witnesses. Tej Ram was not a stranger. He was the brother of Rattan Lal, the subrogated "son-in-law" of Bhagwati. PW 5 testified that Rattan Lal and his brother Tej Ram accused had often visited village Ankhir prior to the occurrence. Bhagwati (PW 2) had also testified how both the accused Tej Ram and Rattan Lal, had repeatedly visited their house and made unsuccessful attempts to persuade the witness and the deceased to send Mahindri with them. There was thus no difficulty in identifying the two culprits at the time of the incident by these witnesses.

25. All these witnesses consistently stated that both Rattan Lal and Tej Ram had made concerted assault on the deceased with a pharsa and lathi, respectively. Their version on this point receives corroboration not only from the medical testimony but from circumstantial evidence, also.

26. The circumstances which point to the participation of Tej Ram in the assault on the deceased in pursuance of a prearranged plan, and his having a common intention with Rattan Lal, to murder the deceased may be set out as under :

(1) Tej Ram also, in common with his brother Rattan Lal, was nursing a grudge against the deceased. During the period of some months preceding the occurrence both the brothers several times visited the deceased and attempted to persuade him to send Mahindri back with them. The deceased, however, persistently and obstinately rebuffed their efforts. In cross-examination of prosecution witnesses, the defence tried to establish that the deceased had repeatedly given his daughter Mahindri "in marriage" to different persons after receiving monetary consideration on each occasion and with Rattan Lal also be played the same rule. If that be a fact, then Rattan Lal and Tej Ram also had been cheated by the deceased of money as well as "wife". The deceased was, therefore, an anathema to them. The deceased was the

person who had thwarted the repeated attempts made by the two accused to take Mahindri back with them. When all persuasive attempts failed, the accused planned to abduct and bring Mahindri by killing the deceased who was an obdurate stumbling block in their way.

(2) The time chosen was dead of night. The occurrence took place at about 1 or 2 a.m.

(3) They came armed, Rattan Lal with a pharsa and Tej Ram with a lathi.

(4) Both the accused made a determined, concerted attack, causing no less than 14-15 injuries and killing the deceased almost at the spot.

(5) All the injuries were collectively sufficient to cause immediate death in the ordinary course of nature. One of the incised wounds on the head (attributed to the co-accused Rattan Lal) was also individually sufficient to cause death in the ordinary course.

27. The above circumstances unerringly lead to the conclusion that both Rattan Lal and Tej Ram had a common intention to cause the death of Harbans deceased and in pursuance of such intention both belaboured the deceased to death at the spot.

28. The learned Judges of the High Court were thus in error in acquitting Tej Ram of the charge under Section 302 read with Section 34, Penal Code. Accordingly, we allow this appeal, set aside the order of Tej Ram's acquittal passed by the High Court, and restore that of the trial Court whereby he was convicted under Section 302, read with Section 34, Penal Code for the murder of Harbans and sentenced to imprisonment for life. Tej Ram shall, if on bail, surrender to his bail, and be taken into custody to serve out the sentence inflicted on him.

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