

Ram Ashrit Ram and Others

Vs

State of Bihar

Criminal Appeal No. 36 of 1975

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

13.01.1981

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against a judgment, dated May 16, 1974, of the High Court of Patna. It arises out of these facts :

2. On April 22, 1967 at about 8 p. m., the informant, Suraj Nath Chaudhary (PW 12) was keeping watch on wheat lying in his thrashing floor. About 15 to 20 persons, variously armed, arrived there. He identified 13 out of those persons, who are the appellants herein, apart from one Munshi Ram (since dead).

3. On seeing these persons coming armed, PW 12 raised an alarm : Thief ! Thief !". However, Ram Ashrit appellant 1, Manki Ram appellant 2, and Kapildeo Ahir appellant 13, surrounded PW 12; while their companions started collecting wheat that lay stocked there in a chadar and bags. While Munshi and Manki were holding PW 12, Ram Ashrit dealt a bhala blow on his head. Ram Ashrit snatched away the single-barrel gun (Ex. 1) from PW 12. The gun was already loaded and during the struggle, the gun got fired. Munshi and Manki gave lathi blows to PW 12. On hearing the alarm, his brother, Bishwa Nath Chaudhary, cousin Sheonath Chaudhary and his co-villagers, Jagarnath Chaudhary and Bhagwan Chaudhary were attracted to the spot. The miscreants surrounded and assaulted them, also. Bishwa Nath Chaudhary (PW 10) received several lathi blows at the hands of Ram Bachan Ram, Janki Ram and Sheomuni Ram, appellants. At the same time, appellant Kapildeo Ahir hit Sheonath with a pharsa on the head, felling him to the ground. Sri. Ram and Ram Prasad Ram, armed appellants, indiscriminately beat Sheonath to unconsciousness. Ram Dhari and Chit Bahal appellants gave lathi blows to Sri. Bhagwan Chaudhary. PW 8 was assaulted with lathi by Rambans Ram and Rajnet Ram, appellants. On hearing the hue and cry, fifteen villagers, including PW 9 who was armed with a lathi and a bhala, arrived. On the arrival of these co-villagers, the appellants and their companions took to their heels carrying away with them the bundles of wheat, weighing 4 to 5 maunds, as also the gun they had snatched from PW 12. Some of the miscreants fled towards the North, while others ran away to the Chamar Toli in village Khodhri. The villagers chased them to that village and during the chase, there was exchange of lathi and bhala blows between the appellants and their pursuers. Sheonath, injured, was removed in an unconscious condition to Police Station, Karahgar, 8 miles away. At the police station PW 12 lodged the first information report (Ex. 2). After registering the case, Tribeni Singh (PW 14) commenced the investigation. The injured persons, namely, PW 8, PW 10, PW 12 and Sheonath Chaudhary were examined by Dr. Ramakant Rai (PW 13). The doctor found one lacerated wound and three bruises on the persons of Sri Bhagwan Chaudhary. Injury (i) was found to be grievous. Six injuries were

found on the person of Sheonath Chaudhary. Injury (i) was an incised wound on the head. Injury (ii), was a lacerated wound, located behind injury (i). Injury (iii) was an intensive bruise, 14 inches x 1 1/2 inches, elongated, across the chest and abdomen from the right mid point of the clavicle to the left of the tenth rib. There was ecchymosis of the left eye. Injury (vi) was punctured wound on the left hand, 1/2 inch x 1/4 inch x 1 inch. In the opinion of the doctor, injuries (i) and (ii) were grievous and (iii), (v) and (vi) were simple; that injury (i) had been caused with a sharp and pointed weapon. The rest of the injuries on Sheonath had been caused with hard and blunt substance. As a result of these injuries, Sheonath succumbed to his injuries on April 24, 1967. The post-mortem examination of his dead body was performed by Dr. K. N. P. Singh, who found the same six injuries on him. In his opinion, injuries (i), (ii) and (iii) were sufficient to cause death in the ordinary course of nature; and that injuries (i) and (ii) could be caused with the edge of the bhala. Dr. Ramakant Roy also found five injuries on the person of Suraj Nath Chaudhary.

4. After completing the investigation, all the thirteen appellants were prosecuted and committed for trial. All the thirteen denied the prosecution case and pleaded that they had been falsely implicated by PW 12 and his co-villagers out of enmity. The cause of enmity stated by the accused was that PW 12 and his companions had attempted to take forcible possession of mango trees standing in plot No. 38 which belonged to appellant, Radha Ram, and other members of his family. They alleged that on the same night, Suraj Nath Chaudhary along with his men had raided this mango grove and assaulted Chit Bahal, Munshi Ram and Sita Ram, father of appellant Shri. Ram. The police refused to register a case about it. Thereafter, Dukhi Ram (DW 1) filed a criminal complaint on April 24, 1967 in the Court of the Magistrate, Sasaram, who sent it too the police station for registration and investigation of the case.

5. At the trial, the appellants examined two persons, namely DW 1 and DW 2, in defence. They also produced their first information report and the complaint petition (Ex. B) and a copy of the deposition of Dr. S. M. Karim (Ex. C) to show that Chit Bahal, appellant 10 had received gunshot injuries.

6. The Additional Sessions Judge, who tried the case, rejected the defence version and convicted the appellants of an offence under Section 396, Penal Code, and sentenced each of them to imprisonment for life.

7. In the other case initiated on the complaint of Dukhi Ram (DW 1), the police, after investigation, laid a charge-sheet in court against nine persons, out of which seven are prosecution witnesses in the case against Ram Ashrit Ram and others initiated by the appellants, alleging commission of offences under Sections 307 and 342 etc., Penal Code. In that case, the Additional Sessions Judge came to the conclusion that the prosecution had failed to establish its case and accordingly acquitted those nine persons. Against the acquittal of those persons, the States filed Appeal 125 of 1970 in the High Court.

8. On the other hand, all the thirteen persons (appellants herein) who were convicted under Section 396, Penal Code, also, filed an appeal before the High Court. The High Court dismissed both these appeals and maintained the conviction of the 13 appellants, herein, in respect of the offence under Section 396, Penal Code. Hence this appeal by special leave.

9. The counter-version so far as it can be gathered from the written statements and the copy of the FIR (Ex. B) of the cross-case lodged by Dukhi Ram, and the cross-examination of the prosecution witnesses in the instant case, is that on the day of occurrence, Suraj Nath Chaudhary (PW 12) armed

with his gun and Bhagwan Chaudhary were forcibly plucking mangoes from the mango trees belonging to Ram Ashrit and the other appellants. Dukhi Chamar son of Sita Ram appellant stopped them from doing so. Thereupon a quarrel ensued between the parties. On hearing the noise of this quarrel, the villagers belonging to the respective castes of the complainant and Suraj Nath of the appellants gathered. Suraj Nath Chaudhary (PW 12), Ganga Sagar Chaudhary (PW 7), Ram Ashrit Ram (appellant), Bishwa Nath Chaudhary (PW 10), Jag Narain Chaudhary (PW 9), Ramji Chaudhary (PW 11), Wadon Chaudhary and Bhagwan Chaudhary started assaulting Sita Ram, father of Dukhi Ram and Munshi Chamar. Suraj Nath (PW 12) causes injuries to Chit Bahal, a companion of the appellants, by gun-fire. Thereupon, the appellants and persons of their brotherhood wielded their lathis in self-defence and then fled away to their houses.

10. This defence version was also put to PW 12 in cross-examination. PW 12 has admitted that there are six mango trees standing in plot No. 38 at a distance of about five or six plots from the khalian of the witness. The mango trees were on the day of occurrence laden with fruits. PW 12 further admitted that plot No. 38 was originally recorded in the name of Ram Lagan Ram; and that Ganga Dhari was the son of Ram Lagan Ram; while Radha Ram accused and Sita Ram are the sons of Ganga Dhari. The witness further conceded that Ram Ashrit, Munshi and Manki are the sons of Radha Ram accused. Munsu has since died. It is further not disputed that Shri Ram accused and Dukhi Ram, who lodged the cross-complaints against PW 12 and others, are the sons of the said Sita Ram. Suraj Nath Chaudhary (PW 12) further admitted that they had claimed the lands in plot No. 38 before the Settlement Officer, whereas the descendants of Ram Lagan Ram had made a counter-claim too those lands and on account of this dispute, there was rivalry between the parties. The Settlement Officer, however, disallowed the claim of PW 12 and his associates and upheld the claim of the accused and other descendants of Ram Lagan Ram. Thereupon, proceedings under Section 144, CrPC were instituted against both the parties as there was apprehension of a breach of the peace. PW 12 did not say whether those proceedings had been decided against PW 12 and his party men. He, however, expressed ignorance about the result of those proceedings under Section 144, CrPC.

11. Thus, it was common ground that there were two warring factions in this village. One faction consisting of the land-owners or Chaudharies of the village. The complainant and prosecution witnesses of the occurrence belong to that faction. The members of the opposing faction are mostly Harijans. All the appellants, excepting Kapildeo who is an Ahir, belong to this faction. There is enmity between these two factions, engendered inter alia by the dispute between PW 12 and the descendants of Ram Lagan Ram over the mango grove.

12. Furthermore, all the material witnesses of the prosecution, namely PWs 6,7,8,9,12 and 16 are either interrelated or otherwise interested in the prosecution. Therefore, before their testimony could be safely acted upon it had to pass the test of close and severe scrutiny. We have examined the evidence of these witnesses carefully and find that their evidence was intrinsically improbable and unreliable. The core of the prosecution case was that the thirteen appellants and others came armed in a body and forcibly removed and carried away the wheat grain which was lying thrashed on the thrashing floor of PW 12, and whilst committing this dacoity or removing or carrying away the wheat, they caused injuries to PW 12 and others including the deceased Sheonath Chaudhary. We find that the substratum of this story viz., that there was a dacoity or forcible theft of wheat grain stood improbable, if not falsified, by the surrounding circumstances of the case.

13. The prosecution case, as propounded by PW 12 and the other witnesses of his party at the trial, was that when the accused persons collected wheat in chadars and were carrying away the same on

their heads, ten or fifteen villagers including the other PWs, variously armed came to the spot, whereupon the accused ran away carrying the booty on their heads. They were pursued by the villagers till they entered the house of Radha Chamar in the Chamar Toli (habitation) along with the stolen wheat grain and the gun seized in the evidence of PW 9. If this story of dacoity were true, there should have been, firstly, a trail of wheat leading from the Khalian of PW 12 to the house of Radha Chamar in the Chamar Toli, and secondly, the wheat alleged stolen or the chadars in which it was bundled, should have been found in the house of Radha Chamar from which all these accused were admittedly arrested. But neither of these evidential things were found by the Investigating Officer. The absence of such circumstantial evidence goes a long way to discredit the prosecution story that the appellant party had come armed to commit dacoity and forcibly stole and carried away wheat crop from the Khalian of PW 12; and that the injuries to the prosecution witnesses and the deceased were caused by the appellants whilst committing dacoity.

14. Furthermore, the police investigation appears to have been biased in favour of the complainant party. The Investigating Officer did not take the Fardbeyan of the informant Suraj Nath Chaudhary (PW 12), in the police station, notwithstanding the fact that they were admittedly present in the police station at that time. On reaching the village, the Investigating Officer did not forthwith inspect the alleged scene of occurrence, but postponed the inspection of the spot to the following morning. This delay could have given a chance to the complainant party to fabricate false circumstantial evidence at the alleged scene of crime. In the written statement of Ram Ashrit accused, it was alleged that though Chit Bahal appellant had gunshot injuries on his person when he was arrested along with the other accused persons from the house of Radha Ram by the Investigating Officer, but the latter did not record any gunshot injury on the person of Chit Bahal. It was only under the orders of the sub-Divisional Magistrate, Sasaram passed on a petition filed on behalf of Chit Bahal, that the latter was examined by Dr. S. M. Karim, Civil Assistant Surgeon, Sasaram on May 3, 1967. This fact is not disputed by the learned counsel for the State. It does show an attempt on the part of the Investigating Officer to suppress evidence which would have supported the defence version.

15. Further, as observed already, all the material prosecution witnesses who testified with regard to the occurrence are interrelated or otherwise interested in the prosecution. From the evidence of PWs 6, 7, 8, 9, and 16, it appears that Bishwanath and Suraj Nath are brothers and the deceased Sheonath was their first cousin. PW Jag Narain is the uncle of Suraj Nath. PW Ramji is the son of Jag Narain. PW Jagan Nath is the grandson of PW Ram Badan. PW Ram Kedar Singh is admittedly related to PW Jagan Nath. All these material prosecution witnesses are Kurmis by caste.

16. On the other hand, as already noticed, the appellants, Ram Ashrit, Manki Ram, Radha Ram and Shri. Ram, who are the descendants of Ram Lagan, had a dispute about the mango grove in plot No. 38 with animus against the appellants, and a motive to distort the truth. There is every reason to suspect, therefore, that the story that the appellants came armed and committed dacoity and caused the injuries to persons of the complainant party whilst committing dacoity is not true. The surrounding circumstances, negative as well as positive, suggest that there was a fight between both the parties in the course of which members of both the parties received injuries and that the cause of the fight was not dacoity, but probably the dispute over the mango grove which had been decided by the court concerned in favour of those appellants, who are descendants of Ram Lagan.

17. According to the Investigating Officer (PW 14), when the licensed gun of Suraj Nath Chaudhary (PW 12) was seized by the witness from the house of Radha Chamar, it was found in a broken condition. This circumstance also lends some support to the defence version that PW 12 and his party men had attacked the appellants party and PW 12 opened the fire by causing gunshot injury

to Chit Bahal, and when PW 12 reloaded the gun to fire again, Ram Ashrit appellant snatched the gun from PW 12 and broke it. PW 12 tried to deny even this patent fact and stated that no damage was caused to the gun on account of any lathi blow falling on it.

18. There are many other infirmities and contradictions in the evidence of the prosecution witnesses. It is not necessary to burden this judgment by dealing with all of them. Suffice it to say that in the absence of corroboration to a material extent in all material particulars, it was extremely hazardous to convict the appellants on the basis of the testimony of these highly interested, inimical and partisan witnesses, particularly when it bristles with improbable versions and material infirmities.

19. We, therefore, allow this appeal, set aside the conviction of the appellants and acquit them of the charges levelled against them. If any of them is on bail bounds stand discharged.

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