

Sone Lal and Others

Vs

State of U. P.

Criminal Appeal No. 220 of 1974

(Syed M. Fazal Ali, Baharul Islam, A. Varadarajan JJ)

03.04.1981

JUDGMENT

ISLAM, J. -

1. This appeal by special leave has been directed against the judgment and order passed by the Allahabad High Court dismissing two appeals filed by the appellants before it. The appellants were convicted under Section 302, 307 and 323 all read with Section 149 of the Penal Code. They were sentenced to imprisonment for life, search, under Section 302/149, rigorous imprisonment for 7 years, each, under Section 307/149 and rigorous imprisonment for six months, each, under Section 323/149 of the Penal Code. Appellants Harish Chandra and Nathu were further convicted under Section 148 of the Penal Code and sentenced to rigorous imprisonment for two years, each. The sentences were directed to run concurrently.

2. The facts material for the purpose of disposal of this appeal may be stated thus. The prosecution alleges that there was long standing enmity between the parties of the deceased and the appellants. Some time prior to the incident a flour mill was installed and a house constructed by PW 1, Pahelwan, in his plot of land. In front of the flour mill and the residence of Pahelwan there was some vacant land in his possession. The appellants had started throwing rubbish on the land. Pahelwan and his son, Ram Swarup (deceased) objected to this. The appellants were annoyed at the objection of Pahelwan and his son Ram Swarup. On December 31, 1968 at about noon appellants Harish Chandra and Ram Swarup had some altercations with Pahelwan and Ram Swarup in connection with throwing of rubbish on the aforesaid land and as a consequence the relation between the parties worsened. In the evening at about 8 o'clock on January 1, 1969, appellant, Ram war, armed with a lathi went to the front of the flour mill of Pahelwan and started to hurl abuses on Pahelwan and his son Ram Swarup, Appellant, Ram Sewak, challenged Pahelwan and his companies to see them that day. At that time, it has been alleged, an electric light was burning in the front of the room of the flour mills as usual. At the call of the appellant, Ram Sewak, the other appellants came variously armed with lathis and spared and started giving blow to Pahelwan and his sons, Ram Swarup, both of whom, according to the prosecution, were unarmed, Pahelwan, somehow managed to snatch the spear from the hand of the appellant, Ishwari, and started giving blows to the assailants in order to defend himself. At that time, it has been further stated, appellants Harish Chandra and Nathu fired their gun and pistol respectively. As a result Ram Swarup was hit and he fell down in front of the flour mill. The shot of Nathu hit PW 1 Pahelwan Lal Ram and Shri Kishan, all of whom received injuries. Lekh Raj, PW, then attacked the appellants with his lathi, as a result of which some injuries were caused to the appellants including Harish Chandra. Thereafter the appellants escaped.

3. Ram Swarup succumbed to bullet injuries while he was being removed to the police station. A first information report was lodged by PW 1, and eventually the appellants were committed to the Court of Session that convicted and sentenced as stated above. Their appeal was also dismissed by the High Court as earlier stated.

4. Learned Counsel for the appellants submitted that large number of injuries had also been received by the appellants and that there was no finding by the courts below as to how the assault initially started and which party was the aggressor; prosecution has not explained as to how the appellants received the injuries. As such, he submitted the conviction for the offences with the aid of Section 149, Penal Code, was bad in law. In support of his contention he relied on a decision of this Court in *Lakshmi Singh v. State of Bihar*. This Court in that case has held : (SCC p. 401 : SCC (Cri) p. 678, para 12)

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interest or inimical witnesses or where the defence given a version which competes in probability with that of the prosecution one.

5. The submission of the learned counsel is that the injuries found on the person of the appellants have not been explained by the prosecution. The injuries are serious. The appellants had the right of private defence, and therefore, they have committed no offence.

6. The submission of the learned counsel is not warranted by the findings of the High Court. The High Court agreeing with the trial court has held that the prosecution case as alleged has been established by the evidence of the prosecution witness. The High Court as well as the trial court has rejected the defence version of the case, in view of their inconsistent pleas before the Committing Court and the trial court. Before the Committing Magistrate pleas of appellants, Harish Chandra and Sone Lal, were alibi. The defence of appellants, Ram Swarup and Nathu, was that the occurrence had not taken place on the land of PW 1, Pahelwan as alleged by the prosecution but it had taken place at a different place. According to them there was a quarrel in respect of some property between Ram Swarup (deceased) and Zorawar, brother-in-law of Ram Swarup, in which appellant Nathu intervened whereupon Pahelwan (PW 1), Lal ram, Shri Kishan, Triloki, Ram Swarup Prasad, Munna Jamadar, Lekhraj and others attacked the appellants and in that incident injuries were received by PW 1 and the deceased. The defence of appellant, Ishwari, before the Committing Magistrate was that Pahelwan (PW 1), Lekhraj and others attacked him, as a result of which he became unconscious. The defence of the appellants before the Sessions Judge was one of the right of private defence. The defence of appellants Harish Chandra before the Sessions Judge was in alibi. The defence of the other appellants was that Ishwari had been returning from Ghurwal Chak. At that time he was attacked by the prosecution witnesses and the deceased. The incident took place on a land between residence and flour mill of PW 1 and in that assault the appellants had to defend

themselves.

7. On a consideration of the evidence on record the learned High Court agreeing with the Sessions Judge has accepted the version of the prosecution and rejected that of the defence. In coming to that conclusion the High Court has also taken notice of the fact that PW 1, had a licensed gun. Had he and Ram Swarup and other PWs been the aggressors, he (PW 1) would not have come without the gun. In view of the "inconsistent pleas" and "in view of the fact that no infirmity worth the name has been shown in the statement of eyewitnesses of the occurrence", the High Court accepted the prosecution case as true and held "that the defence case is false". The High Court has also held that "appellants were the aggressors".

8. It is therefore, not correct to suggest as contended by the learned counsel for the appellants that there were no findings on record to show as to how the quarrel started and that the appellants were the aggressors.

9. From the findings of the learned courts below the facts that emerge are - (1) that it was the appellants who were the aggressors; (2) that the occurrence took place on the land in front of the house of PW 1, Pahelwan, who was in possession thereof; (3) that PW 1 and the deceased had the right of private defence of property and person and they did exercise that right. Aggressors, even if they receive injuries from the victims of their aggression cannot have the right of private defence. The findings are that PW 1 and the deceased were unarmed. PW 1 snatched a weapon from one of the assailants and caused injuries on them. On the top of it two of the appellants brought firearms and fired at the deceased and PW 1, as a result of which the deceased expired. The submissions of learned counsel for the appellants do not stand scrutiny.

10. This appeal has no merit and is dismissed.

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