

Patori Devi and Another

Vs

Amar Nath and Others

State of Haryana

Vs

Amar Nath and Others

Criminal Appeals Nos. 509-510 and 650-651 of 1981

(B. C. Ray, K. Jagannatha Shetty JJ)

12.01.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. These appeals are directed against the judgment dated September 17, 1979 of the High Court of Punjab and Haryana acquitting all the accused by setting aside the conviction and sentence under Section 302 read with Sections 149 and 148 of the Indian Penal Code.

2. Three brothers, Balbir Singh, Bharat Singh and Lajja Ram were murdered on April 23, 1976 at about 3-4 p.m. The prosecution story was that Hari Singh, PW 4 and his brothers, Balbir Singh and Bharat Singh along with Lajja Ram were working in their fields on that fateful day. At that time, their buffalo chanced to have trespassed into the fields of Bhagat Ram alias Bhagtu, son of Rulia Ram. On this Bhagtu and his brother Jai Narain accompanied by Raja Ram came to the fields of the deceased to make a complaint. Lajja Ram, deceased assured these people that such a thing would not happen again. On this assurance being given, the said three persons went away. The prosecution story further went on to state that after about one hour of the said incident not only the three persons mentioned above but the remaining accused persons also came and stayed on the doul of the field of these persons. Bhagat Ram was stated to have been armed with kulhari (axe), Jagan Nath armed with a gandasi and the remaining persons were carrying lathis. They started raising lalkars and calling bad names. Balbir Singh brother of the complainant asked them not to do so. The accused took Balbir Singh towards their fields and started beating him. Lajja Ram and Bharat Singh deceased started running towards the accused in order to rescue their brother Balbir Singh. Smt. Patauri (PW 5), mother of Balbir Singh also started running raising a raula "bachao, bachao". On hearing her alarm, one Surinder Singh, son of Kala Ram also came there. Bhagat Ram gave a kulhari blow on the head of Balbir Singh while he was being dragged to the field of one Mangal. Jagan Nath gave two gandasi blows on his head on receipt of which the latter fell down and thereafter Amar Nath gave lathi blows on his back and neck. Balbir Singh died there and then. When Lajja Ram tried to intervene to save Balbir Singh, then on the lalkara of Amar Nath, Baij Nath, Parshotam Das, Raja Ram and Bhagat Ram gave some lathi blows to him. When Lajja Ram fell down on receipt of injuries, Bhagat Ram son of Sardha Ram and Jagan Nath gave kulhari and gandasi blows on his head and face. Amar Nath also gave lathi blows to him. As a result of injuries,

Lajja Ram also died there and then. Ram Naresh, Ram Autar, Jai Narain and Rameshwar Dass surrounded Bharat Singh and they started causing injuries to him with their lathis. When Bharat Singh fell down, Bhagat Ram son of Sardha Ram and Jagan Nath gave injuries to him with kulhari and gandasi. Bharat Singh succumbed to his injuries. Surinder Singh and Smt. Patauri raised alarm. It is stated that Amar Nath gave lalkara that the informant may also be caught and then the latter ran away to save his life.

3. This information was given to the Police Station, Butane by Hari Singh, PW 4, younger brother of the deceased. Sub-Inspector, Beant Singh (PW 9) started investigation and later on arrested the accused. The autopsy on the dead body of Balbir Singh was conducted by Dr. S. L. Chhabra, PW 1. He has found 5 injuries. Injury No. 3 was crushing on the left back of the head. The post-mortem of the dead body of Bharat Singh was conducted by Dr. J. K. Jain, PW 10. He found 12 injuries. The autopsy of Lajja Ram was conducted by Dr. Subita Anjwai, PW 11, who found 13 injuries. Some of them were incised and perforated.

4. The prosecution examined in all 11 witnesses. Hari Singh, PW 4 and Mst. Patauri, PW 5 furnished their own version of the incident being eye-witnesses.

5. When the accused were examined under Section 313 of the Code of Criminal Procedure, they denied the prosecution allegation. Jai Narain gave his own version as under :

I was working in the pair in my field. The wheat crop had been entirely cut. Balbir Singh came to me. He said that we people had removed the wheat bhaar. It was a little after dopehar. I said that we had not removed the wheat bhaar. He asked me to accompany him to his fields saying that I should have a look at his fields. I refused to accompany him. He started calling bad names to me. I also called bad names to him. Both of us exchanged abuses. He then started going away towards the fields. While going away he said that I would soon learn and that he would tell me. After a short while Bharat Singh, Lajja Ram and Balbir Singh armed with lathis came towards me. When they were at a distance of half a killa or 3/4th of a killa from me I started running away out of fear. My brother Bhagat Ram, my son Ram Autar and my nehow Ram Naresh were working near the tube well of Mangal and therefore I started running in the direction of tube well of Mangal. I started running at a fast speed but they also started running after me. I reached that place but they also came and started showering lathi blows on me. My brother Bhagat Ram and son Ram Autar came to rescue me but lathis were showered on them also. Bhagat Ram picked up the khalwa of a gaddi. I picked up a bamboo stick which was lying there. Ram Naresh picked up a khalwa of the gaddi. Ram Autar pulled out a baans from a chhan. In order to save ourselves and our lives we also started to beat them well (khoob marney lage). They fell down, we also fell down. The leg of my brother Bhagat Ram was fractured. I also received many injuries. Ram Autar also received injuries. That is how the ladaai took place.

Bhagat Ram and Ram Naresh adopted the version given by Jai Narain but adduced no evidence in defence.

6. The trial court on a consideration of the evidence did not find it possible to accept in toto the prosecution version. The trial court said thus :

The court may be justified in not accepting the entire version of any one of the parties. It appears to me that Balbir Singh, the two brothers of the complainant fell into the hands of the accused persons, but it is difficult to state whether injuries to him were caused as soon as he fell into the hands of the accused persons at the adjoining doul, or whether injuries to him were caused to him when he was being taken towards the field of Mangal or whether injuries to him were caused for the first time after he was taken up to some distance. It appears that the remaining brothers of the said person did not know all this until the said person had been taken away up to a distance of three killas. It appears to me that the remaining two brothers of the said person who also got killed, then went to the field where at that moment Balbir Singh was being manhandled by the accused persons and in the first flush they were able to wield lathi blows, resulting in injuries to three of the accused persons. It appears that on this the accused persons retaliated ferociously and committed the murder of the said two brothers also. I am not impressed by the defence version that the complainant party ran after Jai Narain accused and that Jai Narain accused started running towards the tube well of Mangal, but he was overtaken and injuries were caused to him and that when Bhagat Ram son of Rulia Ram, Ram Naresh and Ram Autar came forward to help him they were also beaten up and then all the four of these accused persons gave beating to Balbir Singh and his two brothers. I have already stated that Jai Narain who has given out his age as 74 and Bhagat Ram as 76, could not have participated in such a manner that these two along with Ram Autar and Ram Naresh would have been in a position to cause such extensive injuries to three young persons as have been caused in the present case. I am of the view that the injuries to the three brothers, resulting in their deaths, were caused in the manner stated just now. From this it does not appear to be a case of even free fight, a case which was not been argued upon by anyone of the parties. I am of the view that the theory of self-defence has not been proved either directly or indirectly. I am of the view that the prosecution case is proved that the accused person, would (sic) armed with deadly weapons, formed an unlawful assembly, the common object of which was to commit the murder of Balbir Singh and whose common object during the course of achievement of the initial common object, also became the murders of the remaining two brothers of Balbir Singh. I am of the view that all the accused persons are guilty of an offence under Section 148, of the Indian Penal Code and all of them are guilty of an offence under Section 302, of the Indian Penal Code read with Section 149 of the same Code for causing the murders of Balbir Singh, Lajja Ram and Bharat Singh. The accused persons are therefore, convicted accordingly under Section 148, of the Indian Penal Code and under Section 302, of the Indian Penal Code read with Section 149 of the same Code.

7. It will be seen from the above conclusion of the trial court that the right of private defence put forward by the accused was not accepted. The High Court, in appeal, however had accepted that version. The High Court compared the injuries suffered by the deceased and also by the accused. The High Court found that the deceased in all suffered as many as 30 sharp and blunt weapon injuries whereas three accused sustained in all 22 blunt weapon injuries. In regard to the eye-witnesses, PW 4 and PW 5, the High Court found it difficult to accept their version. The High Court was of the opinion that brother and mother of the deceased appeared to have suppressed their own part and exaggerated the part played by the accused. The High Court also found fault with the prosecution for having suppressed the fact of causing injury to three of the accused. Upon an

appraisal of the evidence, the High Court concluded :

On the aforesaid analysis the true state of affairs on the record as appears to us is that the prosecution had advanced a false story that the appellants had assaulted the deceased persons. The version given by the defence that they were attacked first and were given various injuries indiscriminately appears to be reasonably true. At any rate, the prosecution has suppressed the true version of the story and the court is not in a position to arrive at the truth so as to discard the defence version as not being reasonably true.

8. So stating the High Court gave the verdict in favour of the accused since the first assault by the deceased on the accused was bound to create a reasonable apprehension in their mind that grievous hurt, if not death, would be the consequence. The support to this conclusion was drawn from the injuries suffered by the accused and in particular, injury No. 1 on the person of Bhagat Ram, which was grievous.

9. Challenging the decision of the High Court, both the State and the informant have appealed to this Court with leave. We gave our anxious consideration to rival contentions urged in this appeal and in particular, the contention of Mr. R. K. Kohli that the accused had exceeded the right of private defence. Indeed, that appears to be the only contention that requires to be considered, but unfortunately, in view of the intrinsic evidence on record and the number of injuries suffered by the accused, we do not think we can accede to the contention of Mr. Kohli. We are of the view that there was a soft-peddalling in the investigation, if not suppression of a part of the incident. If the prosecution had revealed the entire story, we would have been able to find the nugget of truth. On the material on record, however, we are unable to find fault with the findings recorded by the High Court.

10. The number and nature of injuries sustained by the accused and the deceased in any case, may furnish good evidence to consider whether the accused had exceeded the right of private defence. But in the instant case, we do not want to rest our conclusion solely on the injuries sustained by the accused and the deceased.

11. In the result, these appeals fail and are dismissed.

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