

Nagendra Pal Singh

Vs

State of U.P.

Criminal Appeal No. 98 of 1981

(S. R. Pandian, Kuldip Singh JJ)

06.03.1992

JUDGMENT

1. The appellant, Nagendra Pal Singh and his two brothers by name, Virendra Pal Singh and Phulendra Pal Singh took their trial on the allegations that on 30-7-1974 at about 6.00 p.m. in furtherance of their common intention the appellant, Nagendra Pal Singh fired 7 or 8 rounds with his licensed gun killing the deceased, Devi Singh and injuring six other witnesses. On the above allegations, the appellant was charged for the offences punishable under Ss. 302, 307, 324 and 323 read with S. 34, I.P.C. and his two other brothers (since acquitted) were charged for offences punishable under S. 302 read with S. 34, I.P.C. and S. 323 read with S. 34, I. P.C. The facts of the case can be summarised as follows:

Both the parties reside in the same village. They had a dispute over the enjoyment of a common passage. On the day prior to the occurrence i.e. on 29-4-1974 at 9.00 a.m. Virendra Pal Singh and Phulendra Pal Singh beat Brij Pal Singh uncle of Brij Raj Singh for the latter obstructing the construction of the house of the accused on the ground that they have encroached upon the common passage. In respect of this incident, a first information report was lodged by the victim Brij Pal Singh at the police station. On the following day i.e. 30-7-74 at about 6.00 p.m. the appellant and his two brothers standing at the door started abusing and threatened that if the prosecution party proceeded further in pursuance of the first information report lodged on the previous day they all would be killed. When Brij Raj Singh took strong objection to their conduct he was beaten with lathis by the two brothers of the appellant. By that time the prosecution party numbering about 8 reached the scene place wielding their lathis.

2. According to the prosecution, it was at this point of time that the appellant, Nagendra Pal Singh ran to the roof of his house taking his gun and shouted that he was an army . personnel and that he would kill all of them. When the prosecution party said that it was the appellant's brothers who started committing illegal acts on the previous day, the appellant without any reasonable cause or provocation opened fire with his gun and fired 7 or 8 rounds resulting in the death of the deceased and the causation of injuries to the witnesses. Brij Raj Singh (P. W. 1) went to the police station, Katghar and lodged the FIR at about 7.35 p.m. which was registered as a case under Ss. 302, 307, 323 and 341, I.P.C. against the appellant and his brothers. P.W. 8, the Sub-Inspector of Police took up the investigation, examined the witnesses, sent the injured witnesses to the hospital for treatment, held inquest over the dead body and sent the same for post-mortem examination.

3. While it was so, Phulendra Pal Singh who was taken to the police station along with his brother

lodged a counter FIR Exh. Ka 5 at 2.25 a.m. on 31-7-78. This counter FIR was registered under Ss. 147, 148, 324, 326, I.P.C. against 8 persons including P.W. 1 and some of the injured witnesses. The defence version as mentioned in the counter case is that all the persons named in the counter FIR attacked the appellant and his two brothers at 6.00 p.m. on the date of the occurrence with Tabal (cutting instrument) and lathis and inflicted injuries to all the three brothers and that while they tried to escape only the appellant and his brother Phulendra Pal Singh was able to enter into the house but Virendra Pal Singh who received serious injuries on his person remained motionless lying outside the house. It is further stated that all the accused persons in the counter FIR tried to enter the house of the appellant and his brother by scaling over the wall and they also pelted bricks and stones declaring that they had already killed Virendra Pal Singh and they would not leave the remaining two alive and that only in those circumstances the appellant apprehending danger to his life as well as of his brother and property fired with his gun some shots in the air in order to scare away the crowd, and that thereafter finding that the prosecution party had not left the place but attempted to enter into the house the appellant finding no other escape was resorted to open fire which unfortunately resulted in injuring the PWs and killing Devi Singh and that he did so only in the exercise of private defence apprehending imminent danger to his and his brother's body and property. P. W. 5, the medical officer who examined the injuries of the witnesses had testified to the fact that prosecution witnesses had sustained gun shot injuries. P.W. 2 who conducted the post-mortem examination found gun shot wounds in dead body and also recovered pellets. Coming to the injuries found on the accused inclusive of the appellant, P.W. 5 has stated that he found 7 injuries on Virendra Pal Singh of which one injury could have been caused by a sharp edged weapon like Tabal, Nagendra Pal Singh had three lacerated wounds on his skull besides certain abrasions. Phulendra Pal Singh had certain contusions and abrasions. Exhs. Kha 1 to 4 are the wound certificates of the appellant and his brothers. In the supplement report, it is stated that of all the injuries found on Virendra Pal Singh, there was fracture on the left ulna bone as well as lower part of the right leg. In the opinion of the medical officer, the injuries Nos. 3, 4 and 6 of Virendra Pal Singh were grievous in nature. He further states that injury No. 7 on him could have been caused by a sharp edged weapon like Tabal.

4. In this connection, our attention was drawn by the defence council to the opinion of the medical officer examined in the counter case instituted on a police report wherein the medical officer has given his evidence stating that there was a cut injury on Virendra Pal Singh besides swallowing and there were three cut injuries on the head of the appellant besides number of abrasions and similarly there were number of abrasions on Phulendra Pal Singh.

5. It is stated before us that the case registered on the basis of the counter FIR ended in filing of a challan by the police and that case ended in conviction against the prosecution witnesses before the trial Court But neither of the counsel before us is in a position to say whether any appeal was preferred against the conviction and what was the result of the case thereafter.;

6. The trial Court for the reasons assigned in its judgment found the appellant guilty under S. 302, I.P.C. and sentenced him to imprisonment for life and also convicted him Under Ss. 324, 323 read with S. 34, I.P.C. and awarded the sentence of 3 years' rigorous imprisonment and one year rigorous imprisonment with a direction that the sentences should run concurrently. However, he was acquitted of the charge under S. 307, I.P.C. Phulendra Pal Singh and Virendra Pal Singh were acquitted of the charge under S. 302 read with S. 34, I.P.C. but were found guilty under S. 323 read with S. 34, I.P.C. and each of them was sentenced to undergo rigorous imprisonment for one year. An appeal was preferred by the appellant and his two brothers before the High Court. The High Court on consideration of the evidence on record found the appellant guilty of the offence of murder

and causing injuries to the witnesses and consequently confirmed the conviction of the appellant under Ss. 302 and 324, I.P.C. and maintained the sentences awarded by the trial Court. However, the High Court acquitted Phlundra Pal Singh and Virendra Pal Singh of their convictions and also acquitted the appellant of his conviction under S. 323 read with S. 34, I.P.C. Hence this present appeal by the appellant.

7. The questions that arise for our consideration in the present appeal are

1. Whether the appellant is or not entitled for a complete acquittal under the plea of self-defence of person and property;
2. Whether the appellant has exceeded the right of his private defence.

8. The date of occurrence, place of occurrence, time of occurrence and sustainment of injuries by both the parties are not in dispute. Whilst the learned defence counsel pleads for complete acquittal on the ground that the appellant was well within the right of self-defence of his person as well as of his brother, the learned counsel appearing for the State would argue that the appellant had exceeded his right of private defence and as such not entitled for complete acquittal on the plea of right of self-defence. Both the Courts below have rejected the right of private defence. Therefore, before examining the plea and counter-plea of the parties, we would like to point out certain salient facts and circumstances which would help the Court in arriving at a correct conclusion :

1. The police which registered the case on the basis of the First Information Report given by P.W. 1 relating to the death of the deceased as well as the injuries caused to the witnesses and also a counter case on the basis of the report given by Phulendra Pal Singh filed the charge-sheets after investigation in both the cases which would show that both the versions of the prosecution and the counter version of the accused were found to be true according to the investigations.
2. On the date of occurrence i.e. on 30-7-74, it appears that only the prosecution party started moving towards the house of the appellant and his brother on the pretext of challenging their abuses and attacked the appellant and his brothers with Tabal (sharp cutting instrument) and lathis.
3. The nature of the injuries sustained by the accused persons inclusive of the appellant demonstrably show that the prosecution party had used cutting instruments as well as lathis.
4. The appellant had sustained two cut injuries on the vital part of his body namely, the skull and his brother Virendra Pal Singh sustained one cut wound on his head, a fracture on the left hand, another comminuted fracture on the right leg and Phulendra Pal Singh sustained contusions and abrasions.
5. Whoever had caused the injuries to the appellant and his brothers might have been very close to the victims (the accused brothers) and caused the cut injuries.
6. It is not the case of the prosecution that at the time when the occurrence originated the accused persons were armed with any weapon.
7. After Virendra Pal Singh had fallen down with severe injuries, the appellant and

Phulendra Pal Singh entered into their house evidently apprehending danger to their lives.

8. Virendra Pal Singh could not enter into the house as he was lying outside the house with a number of fractures.

9. The prosecution party even after causing the injuries to the accused persons started pelting bricks and stones and tried to enter into the house of the accused persons by scaling over the wall and declaring from outside that they had already put an end to the life of Virendra Pal Singh though in fact he was not dead and they would not rest contented without killing the duo inclusive of the appellant.

10. It was only in such a dangerous situation the appellant who was an army personnel in order to scare away the crowd fired certain shots in the air and thereafter realising that it did not have any effect on the prosecution party surging towards his house got on the roof of his house and constrained to fire on the crowd which resulted in the death of the deceased and causation of injuries to 7 witnesses which injuries on the PWs were simple in nature.

11. As pointed out by the defence counsel the appellant did not use his gun even at the time when he and his brothers were attacked and caused with numerous and extensive injuries but resorted to firing only as a last resort when the prosecution party persisted in entering into the house by scaling over the wall of the house and threatened they would not allow the appellant and Phulendra Pal Singh to remain alive and declared that they have already put an end to the life of Virendra Pal Singh.

9. In our considered opinion, the circumstances, indicated above, lend ample support to the case set up in defence which is not an after-thought that being, the appellant fired shots only in the exercise of his right of his private defence of his person and his brother. Presumably, the appellant might have thought that Virendra Pal Singh who was lying with severe injuries outside the house and who could not get up and enter into the house was dead and might have entertained, in such circumstances a reasonable apprehension of imminent danger to his and to his brother's life. Both the Courts below have not adverted to these important and telling circumstances surrounding the case but had proceeded on the ground that one of the persons on the prosecution party was dead.

10. Therefore, in view of the peculiar facts and circumstances of the case we hold that the appellant is entitled for a complete acquittal on the plea of right of private defence and the submission made by the learned counsel for the State that the appellant had exceeded the right of private defence cannot be countenanced.

11. In the result, we set aside the convictions under Ss. 302 and 324, I.P.C. and the sentences imposed therefor. The appellant is acquitted.

12. The appeal is allowed accordingly. Appeal allowed.

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