

State of M.P.

Vs

Gopi and others

Criminal Appeal No.530 of 1982

(Kuldip Singh, Dr. A.S. Anand JJ)

23.04.1992

### JUDGMENT

1. Gopi, Gajju and nine others were convicted u/ Ss. 302/ 149, 307/ 149, 148, 147 and 323 Indian Penal Code by the Additional Sessions Judge, Chhatarpur in the State of Madhya Pradesh. They were sentenced to life imprisonment and to different terms of imprisonment on various counts. The appeal filed by them before the Madhya Pradesh High Court was allowed, their conviction and sentences on all the counts were set aside and all of them were acquitted. This is State appeal against acquittal.

2. The prosecution case briefly stated is that Chunwada (P.W. 1), Beta (P.W. 2) and their brother Gatta(deceased)were going to their Himmat Pur fields on the morning of June 30, 1977 for ploughing. On the way they were attacked by the eleven respondents. Rajju armed with a gun, Gajju armed with a Ballam, Pyare and Shivvaram armed with Pharsas, Swamideen, Devideen, Raghohal, Bhagat, Gopi, Ramoutar and Bhakka armed with lathis stopped the complainants and on the exhortation of Rajju, Gajju gave a Ballam blow on Chunwada. On his shouts Gatta and Beta went to his rescue. Pyare and Shivvaram inflicted Pharsa blows on Beta while Gajju gave a Ballam blow to him. Gatta was also assaulted by them with Ballam and Pharsas. As a result of injuries Gatta and Beta fell down. Rajju caused further injuries to them with the butt of the gun. Gatta succumbed to the injuries while he was being taken to the hospital. According to the doctor, who performed the postmortem, there were four incised, wounds, four punctured wounds and a bruise on the body of deceased Gatta. There were eleven injuries on the person of Beta. Except one, the injuries were simple. There was one simple injury on the person of Chunwada.

3. The defence version on the other hand was that Ramoutar, Raghohal, Shivvaram, Pyare, Swamideen and Rajju were not on the spot and had been falsely implicated. The version of the remaining respondent was, that Chunwada, Beta and deceased Gatta had trespassed in the Kabra field of Gajju and they were sowing the same. It was further stated that Ram Vishal (P.W. 3) and Sarju belonging to the complainant party were standing armed with guns. When Gajju told them to desist from sowing, Beta, on the exhortation of Ram Vishal and Sarju gave a lathi blow on the head of Gajju and at the same time Chunwada inflicted Ballam blow on his chest. The respondents thus pleaded right of self-defence to person and property. On examination the doctor found a punctured wound on the right side of the chest of Gajju. The lung was punctured and air was coming out. According to the doctor the injury was grievous. There was another bruise on the occipital region.

4. Gajju was found lying injured in his fields whereas Beta and deceased Gatta were lying on the footpath.

5. At the trial Chunwada (P.W. 1) Beta (P.W. 2), Ram Vishal (P.W. 3) and Halku (P.W. 4) were examined as eye-witnesses of the occurrence which had taken place in Village Gobind Pura. Ram Vishal P.W. 3 was a resident of Village Gudgudu and Halku, P.W. 4 of Village Thanapukhra. Ram Vishal stated that he was going to village Baguli to meet his maternal uncle and village Gobind Pura fell on the way. Similarly, Halku state that he was on his way to Pachvara and on the way he stopped at Gobind Pura. The trial Court believing the eye-witness testimony convicted the respondents by rejecting the plea of self-defence raised by them.

6. Chunwada, P.W. 1 and Beta, P.W. 2 have categorically stated that they were going to Himmat Pur for the purposes of ploughing their fields when on the way they were attacked by the respondents. It was also the case of the complainants that near about the place of occurrence they did not own or possess any land. In the cross-examination Beta, P.W. 2 admitted that the foot-path by which they were going "goes from their village up to Singhpur". The village patwari who was produced as P.W. 5 submitted a site plan. He deposed before the trial Court that the footpath on which the complainants were going "goes from that village to Singhpur and does not lead to Himmat Pur". There is, thus, positive evidence on the record that the assertion of the complainants that they were going to Himmat Pur to plough their fields was not correct because the foot-path on which they were going did not lead to Himmat Pur and as such the question of their going to Himmat Pur to plough their land did not arise. The High Court thus came to the conclusion that the story put forward by the prosecution was not reliable. The other material fact which the High Court took into consideration was that Chunwada P.W. 1, Beta P.W. 2, Ram Vishal P.W. 3 and Halku P.W. 4 who were the eyewitnesses, denied any knowledge about the injuries suffered by respondent-accused Gajju. The injury on the person of Gajju being grievous and suffered in the same occurrence, should have been explained by the prosecution. This aspect of prosecution case further casts doubt on the veracity of the eyewitness.

7. As mentioned above the occurrence took place on June 30, 1977. Investigating Officer recorded the statement of Ramvishal P.W. 3 and Halku P.W. 4 on September 30, 1977 and October 7, 1977 respectively. The statement of Kalidin P.W. 6 was also recorded on July 30, 1977. No satisfactory, explanation, according to the High Court was given for this delay in recording the statements specially of P.W. 3 and P.W. 41 who were the alleged eye-witnesses.

8. Rajju-accused, according to the prosecution, was armed with a gun. It is highly improbable that in an attack with the intention of causing fatal injuries Rajju would not have used his gun and permitted others to use less effective weapons. Even after gajju had received grievous injuries the gun was not used by Rajju.

9. We are of the view that the High Court was justified in reversing the findings of the trial Court and acquitting the respondents. We see no infirmity in the High Court judgment. We agree with the reasoning and the conclusions reached therein. We, therefore, dismiss the appeal.

Appeal dismissed.

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