

Sunder

Vs

State of Haryana

Criminal Appeal No. 701 of 1981

(M. M. Punchhi, S. C. Agrawal JJ)

28.04.1992

JUDGEMENT

S. C. AGRAWAL, J.

1. This appeal by special leave is directed against the judgment and order of the High Court of Punjab and Haryana dated April 8, 1981 whereby the appellant has been convicted of the offences under Sections 302, 325/34, 323/34, 324/34, IPC. Hukmi, the son of the appellant was acquitted of the offence under Section 302, IPC but his conviction for the offences under Ss. 325/34, 324/34 and 323/34, IPC was maintained.

2. The case of the prosecution is, briefly, as under :

Nanka Ram had three sons appellant; Sunder, Hira Ram PW- 18 and Wazir Chand, deceased. Nanka Ram had divided his land into four shares. After giving one share to each of his three sons, he kept one share for himself. Nanka Ram was residing with the deceased. The appellant was not happy with this arrangement and he wanted Nanka Ram to divide his fourth share amongst the three sons and he suspected that the deceased and Hira Ram, PW-18, were not allowing Nanka Ram to accede to this demand of the appellant. The houses of the appellant and deceased and Hira Ram, PW- 18 are adjacent to each other and are divided by a common wall. On August 15, 1979, the date of the occurrence, in the morning when the deceased was leaving his house, the appellant told him to get the share of Nanka Ram divided or otherwise bad consequences would follow. In the evening at about 6.00 p.m., the deceased along with his brother, Hira Ram (PW-18) was coming to their house with a bundle of fodder on his head from the fodder cutting machine and Smt. Parmeshwari (PW 11) the wife of the deceased was coming behind them. When the deceased reached near the house of the appellant, the appellant told Hukmi that the deceased should be taught a lesson for not giving the share from the land of the old man and thereupon Hukmi gave a push to the deceased on which the bundle of fodder fell down on the ground. Smt. Parmeshwari and Hira Ram raised a noise which attracted Hari Chand (PW-16). After Hukmi had given the push to the deceased, the appellant gave two blows with a Kasia to the deceased as a result of which he fell down on the ground and in the meanwhile Hukmi brought a Kulhari from the house and gave blows with the same on the person of Hira Ram. The appellant also inflicted blows on the person of Hira Ram. Both the accused thereafter ran away. The deceased as well as Hira Ram were taken to the hospital near Sirsa in a jeep but in the meanwhile Wazir Chand had died.

3. The First Information Report about the incident was lodged at Police Station, Sirsa at 10.35 PM on August 15, 1979, on the basis of the statement of Smt. Parmeshwari recorded in the hospital.

4. The postmortem examination of the dead body of the deceased, Wazir Chand, was conducted by Dr. Karan Singh, (PW 3) on August 16, 1979 at 11.00 a.m. and following injuries were found on his person:

"1. Incised wound 7 cm. x 1 cm. x scalp deep horizontal on the back of head in midline and to the left, 13 cms. above the posterior hair margin.

2. Incised wound 13 cms. x 2 cms. x 8 cms. deep (bone and brain under it cut), 6 cm. from top of left pinna and directed to the right and slightly backwards, cutting and separating left occipital lobe completely and right one partially and injuring the tentorium cerebelli in mid-line."

4A. In the opinion of the doctor, the death was caused as a result of shock and haemorrhage due to injuries. Injury No. 1 was found to be simple but injury No. 2 was individually sufficient to cause death in the ordinary course of nature. Hira Ram was medically examined by Dr. R. S. Chaudhary, P.W. 4, on August 15, 1979 at 9.45 p.m. Eleven injuries were found on his person. Eight were incised wounds, two were lacerated wounds and one was contusion. The contusion which was on the back of left forearm above the left wrist was found to be grievous after X-Ray examination. The appellant was arrested on August 18, 1979 and he was medically examined by Dr. Gurtej Singh. P.W. 1, on the same day at 6.30 p.m. The following injuries were found on his person:

1. An abrasion of size 1 cm. x 1/2 cm. on the nose hard scab was present. It was 1/4 cm. below the root.

2. An abrasion of size 1 cm. x 1 cm. on face in left side on maxillary bone. Hard scab was present.

3. An abrasion of size 2 cm. x 1/3 cm. on the lateral side of neck, hard scab was present. It was 3 cm. from mid-line.

4. An abrasion of size 2 cm. x 1/2 cm. on the chest hard scab was present. It was at the level of nipple in mid-line.

5. Abrasion of size 3 cm. x 1 cm. on the medial side of left arm, hard scab was present. It was 15 cms. above the elbow joint.

6. Bluish black contusion of size 4.5 cm. x 2 cm. on the posterior aspect of right forearm. It was 7 cm. above the wrist joint.

7. 3 abrasions size of individual, it was 2 cm. x 2 cm. on the anterior aspect of left knee joint, hard scab was present.

8. Abrasion 1/2 cm. x 1/2 cm. on posterior aspect of right thumb at its base. Hard scab was present.

9. Abrasion of size 2.5 cm. x 2 cm. on the anterior aspect of right knee joint. Hard scab was present.

10. Complained of pain in buttock, no mark of injury."

5. According to Dr. Gurtej Singh duration of the injuries was about 72 hours and that the said injuries were possible at about 7.00 p.m. on August 15, 1979, and that the injuries were caused by a blunt weapon which could be a lathi. He has also opined that the possibility of the injuries being sustained on account of having fallen on brick pieces from a cycle on the road could not be ruled out.

6. During the course of investigation, the investigating officer, Chandgi Ram, PW 21, seized blood-stained earth from outside the house of the appellant and three clothes, namely, Chaddar, Parna and Khes belonging to the deceased having blood-stains were recovered from the house of the appellant.

7. After completion of investigation, the police filed the challan against the appellant and Hukmi and they were charged with offences under Sections 302/34, 325/34, 324/34, 323/34, IPC. The prosecution has examined Smt. Parmeshwari (P.W. 11), Hari Chand (P.W. 16), Smt. Bagga Bai (P.W. 17) and Hira Ram (P.W. 18) as the eye-witnesses of the occurrence. In his statement recorded under Section 313, Cr.P.C., the appellant has stated that he was separate from his father for the past 15 years and there was never any land - dispute and that on day of the occurrence, there was an altercation between the women in the family of the deceased and the appellant's family and that he had intervened and had abused the wife of the deceased and that in the evening, after sunset, when it was dark and the appellant was present in his Bakhal, the deceased and Hira Ram came into his house armed with lathis and started assaulting him with lathis and thereupon, he picked up a small kassia which was lying in the courtyard and caused injuries to them in self-defence.

8. The Additional Sessions Judge, Sirsa convicted both the accused persons for offences under Sections 302/ 34, 325/34, 324/34 and 323/34. On appeal the High Court set aside the conviction of accused Hukmi under Section 302/34 and acquitted him of said offence and in view of the acquittal of Hukmi, the conviction of the appellant was altered from under Sections 302/ 34 to Section 302 of IPC. The conviction of the appellant and Hukmi for offences under Sections 325/34, 324/34 and 323/34 was upheld and the sentence imposed on the appellant for the said offences was maintained. The sentence of imprisonment imposed on Hukmi for the said offences was reduced to the period of imprisonment already undergone.

9. Shri Kohli, the learned counsel for the appellant, has urged that the High Court has erred in rejecting the plea of the right of self-defence raised by the appellant. The submission of Shri Kohli is that no explanation has been offered by the eye-witnesses examined by the prosecution for the injuries found on the person of the appellant which, according to medical evidence, were received at about the time of the alleged occurrence and that the High Court was in error in proceeding on the basis that the said injuries could be caused as a result of the appellant having fallen from a cycle on bricks on the road side.

10. As noticed earlier the evidence of Dr. Gurtej Singh shows that the injuries found on the person of the appellant had been sustained at about the same time as the alleged incident. None of the eye-witnesses examined by the prosecution has offered any explanation for the said injuries. Dr. Gurtej Singh, P.W. 1, has expressed the opinion that the possibility of the injuries found on the person of the appellant being caused as a result of having fallen on brick pieces from the cycle on the road

could not be ruled out. Agreeing with the said opinion of the doctor, the High Court has observed that it is in prosecution evidence that the appellant ran away from the place of occurrence after causing injuries and the appellant could not be arrested up to August 18, 1979 and it may well be that while he was riding the cycle after causing the injuries, he got the simple injuries on his person by a fall. The said view of the High Court, in our opinion, is based on pure conjecture. There is no evidence on record to show that the appellant was having a cycle with him when he had escaped from the place of occurrence or that he had a fall from the cycle at about time of the occurrence. In the circumstances, it must be held that the injuries found by the on person of the appellant have not been explained by the prosecution.

11. Apart from that, there is another circumstance which lends support to the plea of self-defence raised by the appellant. The clothes of the deceased, namely, Khes (Ex. P. 16), Parna (Ex.P. 17) and Chaddar (Ex. P.18), which were blood-stained, were recovered by the investigating officer from the Bakhhal in the house of the appellant on August 16, 1979. There appears to be an effort on the part of the eye-witnesses to avoid reference to these clothes. Smt. Parmeshwari, P.W. 11, has stated that the deceased was wearing only underwear and Baniyan when he received the injuries. She does not make any mention about these clothes. Hari Chand (PW 16) and Hira Ram (PW. 18) have stated that at the time when he was attacked the deceased was wearing underwear, chaddar and baniyan. They do not make any mention about Khes and Parna. The presence of these clothes in the house of the appellant is sought to be explained by Smt. Bagga Bai (P.W. 17), who has stated that she had gone to remove the blood-stained clothes of deceased which were lying on the spot but in view of the Ialkara (shout) given by the appellant and his wife and due to fear, she did not go to the spot and returned to her house and that the one Khes and Chaddar which were blood-stained were removed from the spot by the appellant and his wife and they were taken inside the house. During the course of cross-examination, she has deposed that she wanted to pick up the blood-stained clothes lying on the spot about ten or fifteen minutes after the removal of the dead body of the deceased. Smt Parmeshwari, Hari Chand and Hira Ram have, however, stated that immediately after the incident both the accused ran away from the place of occurrence and no evidence has been adduced to show that the appellant had returned by the time the deceased and Hira Ram were removed. Moreover according to Hari Chand and Hira Ram only the Chaddar was left lying at the spot when the deceased was removed while Smt. Bagga Bai says that Chaddar and Khes were left lying there. None of them mention about Parna which was also recovered from the house of the appellant. In the circumstances, we are of the opinion that the presence of blood-stained clothes of the deceased in the house of the appellant, has not been explained by the prosecution.

12. The evidence with regard to motive for the alleged occurrence is also not very convincing. Hari Chand, the brother-in-law of the deceased makes no mention of any dispute between the appellant and the deceased. He has stated that the appellant separated from his father prior to his (Hari Chand) marriage and that the appellant and the deceased had good relations. According to Smt. Parmeshwari, the marriage of Hari Chand took place about 15-16 years back. This lends support to the statement of the appellant recorded under Section 313, Cr.P.C. that he has been living separately from his father and other brothers for the past 15 years and that there was no hostility between them. The only evidence which has been adduced to prove the threat allegedly extended by the appellant to the deceased on the morning of the date of occurrence is that of Smt. Parmeshwari (PW 11). Hira Ram (PW 18) makes no mention of this incident of the dispute between the appellant and the deceased with regard to division by Nanka Ram of his share in the property amongst the three sons, including the appellant. Assuming that there was such a dispute there is nothing to show that it had assumed such an urgency as to impel the appellant to take the extreme step of assaulting the deceased, who was none else than his youngest brother, without any provocation on his part.

13. It may also be mentioned that even though according to the prosecution, the incident took place outside the house of the appellant on a public street in a residential colony, no person except the members of the family has been examined as an eye-witness. The incident took place at about 7.00 p.m. in the month of August and it is not unlikely that other persons would have witnessed the occurrence if it had taken place in the manner as alleged.

14. In view of the facts and circumstances referred to above, and especially, the fact that the prosecution has not offered any explanation for the injuries found on the person of appellant and there is no adequate explanation for the recovery of blood-stained clothes of the deceased from inside the house of the appellant, we find it difficult to accept the case set up by the prosecution about the manner in which the incident took place. The said circumstances, on the other hand, lend support to the plea of right of self-defence put forward by the appellant. We are, therefore, of the opinion that the injuries that were inflicted on the person of the deceased were inflicted during the course of exercise of right of private defence by the appellant.

15. According to the prosecution evidence, both the injuries found on the person of the deceased were inflicted by the appellant with a kassia and said evidence finds support from the medical evidence of Dr. Karan Singh (P.W 3) which shows that the said injuries could be caused by a kasia. Keeping in view the nature of the injuries that were found on the person of the appellant and injuries found on the person of the deceased, we are of the opinion that in inflicting the fatal injury on the person of the deceased the appellant has exceeded the right of private defence available to him. The appellant is, therefore, liable to be convicted for the offence under Section 304 Part I, IPC for culpable homicide of Wazir Chand and not for the offence under Section 302, IPC for which he has been convicted by the High Court. His convictions for the offences under Sections 325/34, 324/34 and 323/34 for causing injuries to Hira Ram P. W. 18 are upheld, order of sentences running concurrently sustaining.

16. In the result, the appeal is partly allowed. The conviction of the appellant for the offence under Section 302, I.P.C. is set aside and instead he is convicted for the offence punishable under Section 304 Part I, IPC and he is sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. The convictions and sentence of the appellant for the offences under Ss. 325/34, 324/34 and 323/34, IPC are sustained. Appeal partly allowed.

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