

Jarnail Singh and Others

Vs

State of Punjab

Criminal Appeal No. 84 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

17.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. There are four appellants (original accused Nos. 1, 2, 3 and 7). All of them were convicted U/ Ss. 302 and 302 read with 34, I.P.C. and sentenced to imprisonment for life. They were further convicted under S. 25 and S. 27 of the Arms Act and sentenced to one year's R.I. on each count. The sentences were directed to run concurrently. The appeal preferred by them was dismissed by the High Court. Hence this appeal. The prosecution case is as follows:

2. Milkha Singh is one of the deceased in the case. His paternal aunt was the wife of Phuman Singh. When the deceased Milkha Singh was young he lost his father about 15 years prior to the present occurrence. On compassionate grounds Phuman Singh used to help Milkha Singh in managing the properties. This went on smoothly for some time. It is alleged that Phuman Singh, his sons and their close relations became greedy and dishonestly ousted the deceased, Milkha Singh; his mother and his grand-mother from the land as well as from the farm-house. The deceased Milkha Singh shifted to the village of his father-in-law and began residing there. He launched proceedings against Phuman Singh and his three sons Jarnail Singh, A-1, Balbir Singh, A-2 and Amrik Singh, A-3 and succeeded in getting order of eviction. On some of the lands crops were standing, in respect of which on 18th January, 1976 the deceased Milkha Singh paid compensation and got the possession of the vacant land. On this the accused party was aggrieved against Milkha Singh, the deceased.

3. On 24th January, 1976 the deceased Milkha Singh went to his field at about 6-30 a.m. At the relevant time Assa Singh, P.W. 5, Gurdial Singh, P.W. 4, Kanaj Singh, P.W. 7, Bakhtawar Singh and Jaswant Singh, another deceased in the case, were in the company of the deceased Milkha Singh for harvesting the wheat crop. It is alleged that the three accused (A-1 to A-3) sons of Phuman Singh and his other relations A-4 to A-9 variously armed came on the scene. A-1 Jarnail Singh who was armed with a rifle hurled a lalkara at Milkha Singh- the deceased and his companions and simultaneously fired a shot hitting Milkha Singh on his left leg. A-3 Amrik Singh fired a similar shot from his rifle which caused an injury on the left leg of Milkha Singh as a result of which he fell down. On this Jaswant Singh, the other deceased requested the accused not to fire. A-1 Jarnail Singh fired another shot from his rifle hitting Jaswant Singh on his left shoulder as a result of which Jaswant Singh died on the spot. P.W. 5 Assa Singh and P.W. 7 Kanaj Singh who had also rifles used them in their self-defence while firing shots towards the accused. The accused again returned the fire. After this the accused went to the farm-house belonging to Milkha Singh, the deceased. From

there again they fired some shots towards complainant Gurdial Singh, P.W. 4 and others. P.W. 4 carried the injured Milkha Singh to his house where his mother and grand-mother were present. P.W.4 after apprising them about the occurrence left for the Police Station and lodged a report at about 8-00 a.m. which was recorded by A.S.I. Ajit Singh, P.W. 14. He registered the crime, took a posse of constables and went to the spot along with P.W. 4 and reached the same at about 9-30 a.m. He found that the accused were still busy firing shots from the farmhouse of Milkha Singh. P.W. 13 divided the police contingent into three segments and surrounded the accused and after some exchange of fire arrested the accused and seized the weapons. At the time of arrest he found that accused Kulwant Singh (A-7) was having some marks of injuries and he was sent for medical examination. P.W. 14 found the dead body of Jaswant Singh lying in the field. He prepared the necessary panchnama and seized number of empty cartridges. The dead body of Jaswant Singh was despatched for post-mortem. P.W. 3 the Doctor, examined Milkha Singh the deceased at about 11-30 a.m. at the Primary Health Centre, Sirhali. He found the pulse and blood pressure weak and referred the injured Milkha Singh to the General Hospital, Amritsar. P.W. 3 also examined Kulwant Singh, A-7 and found two lacerated wounds caused by gun-shots and he was also referred to the General Hospital, Amritsar. He also examined A-1 and on his person he found two abrasions and two contusions which were the result of a blunt weapon. Likewise he found some injuries on A-3 Amrik Singh which were all abrasions and simple in nature. Milkha Singh died later. P.W. 2 conducted the post-mortem on 25-4-76. He found four lacerated wounds and opined that the death was due to shock and haemorrhage as a result of those injuries which were caused by gun-shots. After completion of the investigation the charge-sheet was laid. The accused pleaded not guilty. A- 1, however, stated that Kulwant Singh, A-7 is his brother-in-law and used to visit his village and a day prior to the present occurrence A-7 came to his farm-house. A-7 was having his rifle issued by the Home Guards Department. A-1 further stated that he and his father were in possession of the farm-house since they had built it. He and Amrik Singh, A-3 slept outside the farm-house (behak) whereas Kulwant Singh, A-7 slept at the roof of the farmhouse with his rifle. At about 6/7 a.m. Jaswant Singh armed with sten-gun and Milkha Singh armed with rifle came there and asked him and Amrik Singh, A- 3 to vacate the farm-house and they began to belabour him and Amrik Singh, A-3 with-the butts of the sten-gun and rifle. A-1 raised an alarm. A-3 then- stood up and pointed his rifle against them. Thereupon the two deceased persons took positions and began to fire towards Kulwant Singh, A-7 with their respective weapons and then A-7 fired in self-defence. The two deceased persons received injuries and A-7 also received injuries. Jaswant Singh died on the spot and injured Milkha Singh was removed. The police came and detained him in the farm-house. A-1 further stated that he filed an appeal against the order of ejectment passed by the S.D.O. Taran Taran. But he has never been dispossessed and no possession was delivered to anybody of the land in his possession and police sided with the opposite party and fabricated a false case against him. The same statement was adopted by Amrik Singh, A-3, Kulwant Singh, A-7 and other accused.

4. From the above it can be seen that the place and time of occurrence are not in dispute. The presence of appellants and the witnesses cannot also be in doubt. The only question that arises for consideration is as to who were the aggressors. The trial court after considering the orders passed by the civil court and the other circumstances held that the accused were the aggressors. The trial court, however, acquitted accused Nos. 4, 5, 6, 8 and 9 but convicted A-1 Jarnail Singh for committing the murder of Jaswant Singh and sentenced him to imprisonment for life. It also convicted A-1 Jarnail Singh and A-3 Amrik Singh for committing the murder of Milkha Singh under Ss. 302/34, I.P.C. and sentenced each of them to undergo imprisonment for life. A-2 and A-7 were convicted under Ss. 302/34, IPC in respect of both the murders on the ground that they were present during the first part of the occurrence and they were sentenced to imprisonment for life. All of them were also convicted

under Ss. 25 and 27 of the Arms Act as mentioned above. The High Court dismissed the appeal filed by them confirming the findings of the trial court.

5. In this appeal, the learned counsel for the appellants submitted that A-1, A-3 and A-7 also had injuries and the plea set up by A-1 that they fired in self-defence, ought to have been accepted. As mentioned above both the courts below held that the accused were the aggressors. The crucial point of possession of land in question was considered by both the courts below and it was held in favour of the prosecution. It is a common ground that Milkha Singh obtained an eviction order on 31st December, 1975 against the accused. It is also a common ground that against the said eviction order in the appeal preferred by the appellants the Collector on 5-1-76 passed the stay orders. But before that Milkha Singh had taken out the execution proceedings. On 15-1-76 he sought the delivery of the land and according to the prosecution the execution thereto was carried by P.W. 11 Field Kanungo and accordingly Milkha Singh got actual possession of the land on 18-1-76. The defence, however, questioned the authenticity of the execution proceedings contending that it was only a paper delivery and that the accused were never dispossessed. The fact remains that on 21-4-76 the appeal filed by the accused persons was allowed and the orders of eviction were recalled. The occurrence has taken place on 24-4-76. While it is the case of the defence that till the date of occurrence their possession was not disturbed, the case of the prosecution is that they took possession on 18-1-76. It is in this background that both the courts below decided that Milkha Singh, the deceased was in possession at the time of the occurrence.

6. From the various orders of the revenue authorities mentioned above it is clear that there was a scramble for possession. The fact remains that ultimately the appeal preferred by the accused was allowed on 21-4-76. The said proceedings however would show that Milkha Singh was put in possession on 18-1-76. Therefore it stands to reason that the accused having succeeded in appeal, went to the land to take back the delivery. Learned counsel for the State submitted that the accused had no right to take the forcible possession and ought to have a recourse to the civil authorities for restitution of the possession.

7. Learned counsel for the appellants, however, submitted that the appellants having succeeded in the appeal, had gone to the field with a view to ask the prosecution party to vacate the premises. That by itself does not render them to be aggressors for the purpose of denying them the benefit of right of self-defence.

8. After careful consideration of the facts and circumstances of this case, we find it difficult to accept this contention. Both the courts below have rightly held that the accused already having won the appeal, tried to take law into their own hands in order to oust Milkha Singh, the deceased by show and use of force and take forcible possession of the land. The evidence of the eye-witnesses amply establishes the same. Regarding the injuries found on the accused Nos. 1, 3 and 7, P.Ws. 4, 5 and 7 have consistently deposed that P.Ws. 5 and 7 in self-defence shot at the accused and caused those injuries. There is absolutely no doubt about this aspect of the prosecution case. The presence of accused Nos. 1, 3 and 7 is not in dispute and their participation in the occurrence also cannot be doubted. So far as Balbir Singh, A-2 is concerned, in our view, his case is on the same footing as rest of the acquitted accused. No doubt the prosecution witnesses have stated that he was armed with a sten-gun and was present in the company of the other accused. But he did not cause any injury to anybody nor there is cogent evidence to show that he used the sten-gun. Out of the three main witnesses, only P.W. 4 deposed that Balbir Singh, A-2 also fired shots but he also deposed that Nirmal Singh, acquitted accused also fired from his fire-arm and in general way he has stated that the accused fired more shots from the roof top of the behak (farm-house) later. P. Ws. 5 and 7,

however, did not say that Balbir Singh, A-2 fired. The learned trial Judge convicted him on the sole ground that he was later arrested at the scene of occurrence and at that time he was found in the possession of sten-gun. In this context, we have to bear in mind that, according to the prosecution, when the police arrived, the firing was going on and several people were present. This was the second part of the occurrence and according to the prosecution during this part there was an exchange of fire between the police party and the people gathered there. Regarding the second part of the occurrence, the courts below were not prepared to accept this story. That being the case, the case of Balbir Singh, A-2 is not in any way different from that of the acquitted accused because according to the prosecution itself, some of the acquitted persons also were armed with fire-arms. They were acquitted on the ground that their participation was not proved. Applying the same test, we think it is not safe to convict Balbir Singh, A-2. In the result convictions and sentences awarded against Balbir Singh, A-2 are set aside. If he is on bail, his bail bonds shall stand cancelled. The convictions and sentences passed against other accused namely A-1, A-3 and A-7 are confirmed. Accordingly the appeal is allowed so far as A-2 is concerned and dismissed as against A-1, A-3 and A-7. Order accordingly.

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