
(1956) 11 SC CK 0001
In the Supreme Court Of India
Case No : Criminal Appeal No.101 of 1956

Brij Bhukhan and Others

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-11-1956

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1898 (CrPC) — Section 367
Penal Code, 1860 (IPC) — Section 149, 300, 302

Citation : AIR 1957 SC 474 : (1957) CriLJ 591

Hon'ble Judges : Syed Jaffer Imam, J;B. P. Sinha, J;B. Jagannadhadas, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Imam, J.—The appellants were granted special leave to appeal by this Court against the decision of the Allahabad High Court upholding their convictions under Sections 302 read with Section 149, 449 read with Sections 149 and 147, Indian Penal Code, and the conviction of the appellant Sheo Ram u/s 323, Indian Penal Code. So far as the sentence is concerned, the High Court affirmed the sentence of death passed by the Sessions Judge on the appellant Brij Bhukhan but reduced the sentence of death in respect of other appellants to transportation for life.

2. That the deceased Ram Prasad was killed in an incident at village Churyani on the 14th of September, 1954, at about 5 to 5-30 p. m. admits of no doubt. According to the version of the prosecution, Ram Prasad had gone to Fatehpur in connection with a revenue case, having left at about 8 o'clock in the morning and was due to return to his village Churyani at 5 or 5-30 p. m. His son Santosh Kumar had also gone to Fatehpur in the morning to attend his college and the arrangement between father and son was that they would return together in the evening by bus and Santosh Kumar was to meet his father at the bus-stand. Ram Prasad had instructed his servant Buddhu to meet him when the bus arrived

in order to carry his things home from the place where the bus would stop near his village. Ram Prasad and his son arrived at Churyani bus stand at about 5 p. m. and they were met by Buddhu. These persons started for their house. They had not gone very far when they were attacked by the appellants. When Ram Prasad was attacked by the appellants, he ran into the house of one Babu Lal Kayastha chased by the appellants. The appellants entered Babu Lal's house and dragged out Ram Prasad with violence and assaulted him on the threshold of the house. An inmate of Babu Lal's house, Srimati Jagarnathi in attempting to protect Ram Prasad received some injuries. On the alarm raised by Ram Prasad, Santosh Kumar and Buddhu, several persons from the neighbourhood came in time to witness the assault. The appellants, however, ran away Ram Prasad was lifted and placed on a cot, which was brought by Srimati Jagarnathi from inside the house and, after a little while, was taken on it to his house which was at a distance of 70 or 80 paces. Ram Prasad died very soon thereafter. The first information was lodged at police station Ghazipur at 7 p. m. by Ram Prasad's servant Buddhu in which the appellants were named. The defence version, as set up by the appellant Brij Bhukhan, was that he was attacked by Ram Prasad and three unknown persons who had come to his house at 7-30 the same evening and Brij Bhukhan used his weapon in self-defence. In these circumstances, he and those who came to protect him, i.e., his wife, Din Dayal, Khuda Bax and Shanker Lal were injured. The defence of other appellants was denial of participation in any assault. The appellants Sheo Ram and Ramu set up defence of alibi. On the version given by Brij Bhukhan, a case of the right of private defence was suggested.

3. Both the Courts below accepted the prosecution version of the occurrence and clearly found that the place of occurrence was at Babu Lal's house. They rejected the defence version in the clearest terms.

4. Before dealing with the main submission made by Mr. Sethi on behalf of the appellants, it is necessary to state a few facts. When the appellant Brij Bhukhan was arrested and produced at the police station he was found to have certain injuries on his person. On the 16th of September, 1954, he was examined by Dr. Shukla, the Medical Officer in charge of the District Jail, Fatehpur, who found five injuries on his person, none of which were serious. The High Court came to the conclusion, having regard to some of the injuries that they were of a nature as to make it too risky for Brij Bhukhan himself or anybody else acting on his behalf to create those injuries on his person. It was pointed out by the High Court that the prosecution suggested an explanation as to how Brij Bhukhan may possibly have received the injuries, namely, that when Brij Bhukhan tried to escape arrest, he stumbled on a cart and fell down and thus sustained these injuries. The High Court found it difficult to accept this suggestion. The learned Judges, however, thought that the defence put their own case about the injuries in cross-examination, suggesting that these might have been caused as a result of some beating that had been administered to him by the police at the time of his arrest. It was strongly contended by Mr. Sethi that if the evidence of Karan Singh, the

Police Officer, to whom this suggestion was made is accepted, the High Court was entirely in the wrong in suggesting that Brij Bhukhan had received these injuries as a result of beating administered to him by the police at the time of his arrest. On the contrary, the definite case of the defence had been that the injuries on Brij Bhukhan and his companions had been received as a result of assault made upon them by Ram Prasad and his companions. We have looked into the evidence and agree with Mr. Sethi that the High Court was in error in supposing that it was the case of the defence that Brij Bhukhan had received his injuries at the hands of the police at the time of his arrest. Mr. Sethi contended that the High Court, having misconceived the defence case in this respect, was wrong in thinking that the injuries on Brij Bhukhan were sustained by him at the time of his arrest. The case of the prosecution was definitely to the effect that no assault had been made on Brij Bhukhan in the course of the occurrence narrated by the prosecution witnesses. There was, therefore, a deliberate suppression of the fact that Brij Bhukhan had been assaulted in the course of the occurrence. That being so, it was unsafe to rely upon the evidence of the eyewitnesses who were interested witnesses. As to the manner in which the occurrence took place, the prosecution having concealed an important incident in the occurrence, the Court had not been told the entire truth. It was the duty of the Court, therefore, to consider the possibility of Brij Bhukhan having been assaulted first and when persons came to his rescue, he and his companions attacked his assailants. In these circumstances it cannot be said that Brij Bhukhan was guilty of any offence. Those who came to his rescue were entitled to commit assault in the exercise of the right of self defence of the person of Brij Bhukhan and they could not be said to have committed any offence unless it is proved that any one of them had exceeded the right of private defence. This contention was made by Mr. Sethi on the assumption that the occurrence took place at or near the house of Babu Lal. He, however, did not abandon the defence case, as set forth by Brij Bhukhan, of the occurrence having taken place near his house. Indeed, he strongly contended that, having regard to the circumstances, the defence case in this respect was more probable.

5. In view of the submission made, we have examined the evidence in the case and scrutinized the findings of the High Court and the trial Court. It is quite clear from those findings that the Courts below were satisfied that Brij Bhukhan and his companions were the aggressors and that in the course of the occurrence as set forth by the prosecution, neither Brij Bhukhan nor his companions were assaulted. It may not be possible on the evidence of Karan Singh, to come to the finding that Brij Bhukhan received his injuries at the hands of the police when he was arrested, but that does not necessarily mean that either Brij Bhukhan or his companions were assaulted in the occurrence which took place at or near the house of Babu Lal. The occurrence took place at about 5-30 p. m. and a First Information Report was lodged at the police station three miles away at 7 p. m. by Buddhu. It is significant that no first information was lodged by Brij Bhukhan or on his behalf by any one with respect to the defence version of the

occurrence. Brij Bhukhan's case that he had lodged an information but the police did not record it has not been accepted by the Courts below, and we can find no adequate reason for supposing that he had in fact done so. When examined u/s 342 of the Code of Criminal Procedure, Brij Bhukhan told the trial Court that he had gone to the police station between 11 and 12 p. m. on a cart to lodge a report and it was about 3 a. m. in the morning that he stated the fact to the Sub Inspector and he was told to wait. In the meantime, Buddhu reached the police station when the Sub-Inspector was told that Ram Prasad had died. The Sub-Inspector did not record his (Brij Bhukhan's) information. It is difficult to believe, having regard to the description of the injuries on Brij Bhukhan as deposed to by Doctor Shukla, that Brij Bhukhan stood in need of a bullock-cart to take him to the police station which was only three miles away. No adequate explanation has been given as to why it took Brij Bhukhan so long to reach the police station. He must have known that in the occurrence, whatever it was, that Ram Prasad had been very seriously assaulted. He himself had been convicted previously in a murder case. He ought to have realised that if he himself was the victim of an unprovoked assault, how necessary it was to have his version of the occurrence recorded as soon as possible after the occurrence. Furthermore, in the ample time which he had at his disposal, he could have had his injuries examined by a doctor before proceeding to the police station and could have produced a medical certificate to support his case. The injuries on his person were visible even on the 16th of September. They would have been clearly visible therefore to the police officer at the police station on the 14th September. It is difficult to imagine in the circumstances that a Police Officer would have declined to record his information. It is clear upon the prosecution evidence that Brij Bhukhan was not arrested until about 2 or 3 a. m. in the morning, although the Police Officer Karan Singh had searched for him at his house from 8 p. m. when he could not find him there. Ultimately at about 2-30 a. m., he found him outside his house and arrested him. It is impossible to say what Brij Bhukhan was doing in the meantime. He could have had himself medically examined at Ghazipur three miles away but he did not do so. The conduct of Brij Bhukhan makes it probable that he did not receive any injury in the occurrence deposed to by the prosecution witnesses. Therefore, the Courts below were entitled to believe the evidence of the prosecution witnesses to the effect that neither Brij Bhukhan nor his companions were assaulted in the occurrence deposed to by the prosecution witnesses. Believing or disbelieving witnesses is essentially a matter for the Courts of fact and in an appeal by special leave this Court will not ordinarily interfere with their discretion. This is not a case in which we should go behind the finding in this respect. Although the High Court was in error in thinking that it was the defence case that Brij Bhukhan had been beaten by the police at the time of his arrest, we do not think that that error has caused failure of justice in the circumstances of the present case. Having regard to the view which we take of the evidence, it cannot be said that either Brij Bhukhan or his companions were assaulted in the occurrence deposed to by the prosecution witnesses. Consequently the question of exercise of the right of private defence does not arise. It is unnecessary to

pronounce any opinion as to how Brij Bhukhan received his injuries. It may have been that he received them at the hands of the police at the time of his arrest when he was trying to escape, although Karan Singh was not prepared to admit any such thing. These injuries may also have been caused by friendly hands as deposed to by Doctor Shukla, who was a witness for the defence, although the High Court seemed to think otherwise. In whatever circumstances Brij Bhukhan received his injuries, he certainly did not receive them in the course of the occurrence deposed to by the prosecution witnesses. So far as the injuries on the companions of Brij Bhukhan are concerned, the High Court was of the opinion, that the prosecution contention that these injuries were manufactured may be true and it disbelieved the defence evidence that these injuries were caused at the hands of Ram Prasad and his companions. Having regard to the nature of the injuries on these persons, we are satisfied that the view of the High Court was correct.

6. Mr. Sethi made three further submissions which we now proceed to consider. He urged that in view of the medical evidence the offence committed by the assailants of Ram Prasad was not murder because none of them have been proved to be sufficient in the ordinary course of nature to cause death and the 3rd clause of Section 300, Indian Penal Code, was not applicable. It is true that the doctor has not said that any one of the injuries was sufficient to cause death in the ordinary course of nature. We have, however, looked into the nature of the injuries found on the body of Ram Prasad and can only infer from them that the assailants intended to cause Ram Prasad's death. It is significant that Ram Prasad died within a very short time of the assault on him. It is difficult to imagine how any human being could have survived the ferocity of the assault and injury No. 5, which was a contused area 7" x 8" over the left buttock and upper of left thigh (upper forth back) with five contusions varying in length from 3" x 2" and breadth 3/4"x1" with abrasion rupee size near scrotum, must have largely contributed to the death of Ram Prasad. Major portion of the injuries are of a kind indicating that they had been inflicted upon a man who had fallen down. Both the chambers of the heart were found empty which clearly indicated haemorrhage. If the numerous injuries found on the body of Ram Prasad had been inflicted in the manner deposed to by the prosecution witnesses, there can be little doubt that the assailants intended to cause his death. Furthermore, even if none of the injuries by themselves was sufficient in the ordinary course of nature to cause Ram Prasad's death, cumulatively they were certainly sufficient in the ordinary course of nature to cause his death, which in fact took place soon after the assault. In our opinion, if the prosecution evidence in this respect is accepted, the offence was clearly one of murder.

7. It was next contended that the evidence consists of interested persons only and corroboration by independent persons or by circumstantial evidence was necessary. In our opinion, there was ample corroboration by way of circumstantial evidence as to the place of occurrence. Blood had been found at Babu Lal's house and in front of it. Blood had also been found on the bedding and

clothing of the deceased. Although the origin of the blood on the earth could not be determined by the Chemical Examiner owing to its disintegration the existence of blood at the place of the occurrence which had fallen there as deposited to by the prosecution witnesses is strong corroboration of their evidence. The occurrence had taken place on the 14th of September and the stains on the earth were not examined by the Chemical Examiner before the 12th of November, 1954. It is not surprising, therefore that the stains on the earth had disintegrated and their origin could not be determined. Large stains of blood, which were found to be human, were found on the bedding, dhoti and two sheets. Human blood stains on the shirt and the vest of the deceased were also found. This clearly establishes that the deceased had bled profusely and the earth could have been stained with blood. So far as independent eye-witnesses are concerned, the High Court considered the evidence of Mst. Jagarnathi, a resident of Babu Lal's house as good evidence because she had received injuries in the occurrence. The defence attacked her evidence on the ground that she had some litigation in which Brij Bhukhan had taken a part against her. The High Court, however, thought that the litigation was not of such a nature as to create such animosity in her mind as to make her depose falsely against the appellant. Her evidence clearly corroborates the evidence of Santosh Kumar and Buddhu. There was therefore reliable corroborative evidence in support of the prosecution witnesses Buddhu and Santosh Kumar. The submission of Mr. Sethi must accordingly fail.

8. The last submission of Mr. Sethi was that even if the conviction of the appellants u/s 302/149 is upheld, this was not a case in which sentence of death should be maintained on Brij Bhukhan when a similar sentence passed on the other appellants was reduced by the High Court to transportation for life. The evidence clearly indicated that Brij Bhukhan did not actually commit any assault. At best he instigated the assault. When the assailants themselves were given a sentence of transportation for life, it was unreasonable to impose a sentence of death on Brij Bhukhan. We are, however, of the opinion that if the assault took place in the manner and in the circumstances alleged by the prosecution then the appellant Brij Bhukhan was responsible for the killing of Ram Prasad and that without his instigation Ram Prasad would not have been so severely assaulted as to die. Merely because leniency had been shown to the other appellants in the matter of sentence is no ground for reducing sentence passed on Brij Bhukhan. The prosecution evidence proves that the assault was a brutal and a premeditated one arising out of deep rooted enmity which Brij Bhukhan had towards Ram Prasad and his family. We decline to interfere with the sentence.

9. The appeal is accordingly dismissed.