
(1994) 12 MP CK 0016

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 292 of 1979

Kamal Singh and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Arms Act, 1959 — Section 25, 27

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 323

Citation : (1995) CriLJ 1834 : (1995) J LJ 195 : (1995) 40 MPLJ 277

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.S. Tripathi, J.

This appeal has been preferred against the judgment and order dated 12th of October, 1979 whereby appellant Kamalsingh was convicted u/s 302 of the 1PC and was sentenced to imprisonment for life, by II Additional Sessions Judge, Guna. Other appellants Ratiram, Kripansingh, Badamsingh, Ramsingh and Parmalsingh were convicted u/s 302 read with Section 149 of the IPC and were sentenced to imprisonment for life each.

Appellants Kamalsingh, Ratiram, Kripansingh, Badamsingh, Ramsingh and Parmalsingh were further convicted u/s 148 of the IPC and were sentenced to two years" RI each. Appellant Ramsingh was further convicted u/s 325 of the IPC and was sentenced to nine months" RI.

Appellants Kamalsingh, Ratiram, Kripansingh, Badamsingh, and Parmalsingh were convicted u/s 325 read with Section 149 of the IPC and were sentenced to nine months" RI each.

Appellant Kripansingh was further convicted u/s 324 of the IPC and was

sentenced to six months" RI similarly, appellants Kamalsingh, Ratiram, Badamsingh, Ramsingh and Parmalsingh were convicted u/s 325 read with Section 149 of the IPC and each of them was sentenced to six months" RI.

Further, appellants Ratiram, Badamsingh, Ramsingh and Parmalsingh were convicted u/s 323 of the IPC and each of them was sentenced to six months" RI.

Appellants Kamalsingh and Kripansingh were also held guilty u/s 323 read with Section 149 of the IPC and each of them was sentenced to six months" RI.

All the above sentences were directed to run concurrently.

In brief, the facts of the case are that on 10th of April, 1979 the appellants along with others and formed an unlawful assembly in village Dahela. They had entered the Harijan Basti of Latura and others. There was enmity between to the community of Rajputs. The deceased Latura and other injured persons belonged to the community of Harijans.

According to the allegations made by the complainant, deceased Latura and his family members were claiming a piece of land in which their cattle use to graze. The appellants had attacked Latura and Latura was fired by appellant Kamalsingh and Latura had died. This occurrence is alleged to have taken place at 2 p.m. The FIR of the occurrence was lodged at police station Isagarh, District Guna at 7.20 p.m. the same day. In this occurrence witnesses Suma, Mannu, Bharosa and Parwatibai were injured. The following ante mortem injuries were found in the postmortem on the dead body of Latura:-

On chest wall on right side (laterally) - Injury No. (1) - Entrance wound (Gunshot wound) 1 cm in diameter, oval in shape on right lateral side of chest at the lower margin of 8th rib going horizontally, inflicted the rib, found fractured. Blackening and tattooing found around the entrance wound involving the area about 1/2 cm.

(2) Exit wound (two in number) on the left lateral side of chest (A) -1 -1/2 cms. of diameter in between 8th and 9th rib (intercostal space). Margins everted and irregular. (B) - 1-1/2 cms. of diameter in between 9th and 10th rib (intercostal space). Margins everted and irregular.

Around the exit wounds from 7th to 12th rib small round, boney, hard, ball like substance 6 in number found palable.

Incisions were given at the site of stoney, palpable substance and 6 Chhafras, are taken from subcutaneous tissues of the chest wall (left side).

Following injuries were found on the person of Soma:-

(1) A lacerated wound 4 x 1 cms. Scalp deep shaped, on right parietal region, A. P. in direction.

(2) A lacerated wound 2x1/2 cms. scalp deep of right side parietal region posteriorly, oblique in position.

- (3) A lacerated wound $2/3 \times 1/3$ cms on left parietal region on skull.
- (4) An incised wound $5 \text{ cms} \times 1/4 \times 1/4 \text{ cm}$ on lower region of right side of chest with abrasions on both the ends right extension of 8 cms and left extension of 6 cms. in a linear way obliquely.
- (5) An abrasion $1-1/2 \times 1-1/2$ cms on medial side and middle region or right leg.
- (6) A contusion $1-1/2 \times 1$ cms on anterior side of left knee.
- (7) A contusion 2×2 cms on lateral side of right knee.

Injuries Nos. 1,2, 3,6 and 7 are caused by hard and blunt object. Injury No. 5 is caused by friction against hard and rough surface. Injuries Nos. 1 and 3 are referred for X-ray examination to the Civil Surgeon, District Guna. Injuries Nos. 4 to 7 are simple in nature.

Following injuries were found on the person of Mannu:-

- (1) A lacerated wound $2-1/2 \times 1/2$ cms scalp deep on right parietal region of skull, oblique in position,
- (2) A lacerated wound $1 \times 1/2$ cms scalp deep 3 cms posterior to injury No. (1) on right parietal region of skull.
- (3) A lacerated wound $1-1/2 \times 1/4$ cms scalp deep "A" shaped on left parietal region of skull.
- (4) A contusion 2×2 cms on posterior side of left shoulder.
- (5) A contusion 1×1 cms on posterior side of right shoulder.
- (6) A contusion 3×2 cms on posterior side and middle region of left leg transversely.
- (7) An abrasion $3 \times 1-1/2$ cms on anterior side of right knee.
- (8) An abrasion $1/2 \times 1/2$ cms on palmar side of distal phalyny of left little finger.
- (9) A semi linear abrasion of 5 cms on right cheek. Teeth markings present.

Injuries Nos. 1 to 6 are caused by hard and blunt object. Injury Nos. 7 and 8 are caused by friction against hard and rough surface. Injury No. 9 is caused by teeth bite.

Injuries Nos. 1 to 3 are referred to the Civil Surgeon Guna for X-ray examination. Injuries Nos. 4 to 9 are simple in nature. Duration within 24 hours.

Following injuries were found on the person of Bharosa:-

- (1) A contusion 7×2 cms (swelling present) on left shoulder extending up to back, caused by hard and blunt object. This injury referred to the C. S. Guna for X-ray examination.

(2) A contusion 2 x 1/2 cms post, side and middle region of right forearm, caused by hard and blunt object, simple in nature.

Both the above injuries were caused within 24 hours of the examination.

Following injuries were found on the person of Parwati Bai:-

(1) A contusion with swelling 3x3 cms oval in shape on upper and median region of forehead.

(2) A lacerated wound 3x1/2 cms on base and upper side of left index finger extending ant. and post.

(3) A lacerated wound 1/2 x 1/4 x 1/4 cms on tip and bed of nail of left middle finger.

(4) A contusion 2 x 1 cms posterior side and middle region of right forearm.

Injuries Nos. 1 to 4 are caused by hard and blunt Object. Injuries Nos. 1,3 and 4 are simple in nature. Injury No. 2 was referred to the Civil Surgeon, District Guna for X-ray examination. All the above injuries were caused within 24 hours of the examination.

One Karai widow of Bihari Chamar was also injured in the incident and following injury was found on her person :-

An abrasion 1 x 1 cms on forehead in upper end medial region. This injury was simple in nature caused by friction against hard and rough surface. This injury was caused within 48 hours of the examination.

The post mortem report of deceased Latura is Ex. P-28. Injury reports of injured Soma, Mannu, Bharosa, Parwatibai and Karai are Ex. P-29, P-30, P-31, P-32 and P-33 respectively.

Similarly, on the side of the appellants, Ratiram, Kamalsingh, Kripansingh and Badamsingh were also injured in the above incident. They were also medically examined by Dr. G. K. Sharma (P. W. 17), vide injury reports Ex. D-7, D-8, D-9 and D-10 respectively. The doctor has found following injuries on the person of appellant Ratiram :-

(1) Two abrasions 2x2 cms on left side of nose on (illeg.)

(2) Abrasion 4x3 cms on posterior side of left elbow.

Both above injuries are simple and caused by friction against hard and rough object. Injuries were caused during 24 hours of the examination.

The following injury was found on the person of appellant Kamalsingh:-

A lacerated wound 5 x 1 cm scalp deep on right parietal region of skull, just near to median place shaped and post, on direction.

The above injury was caused by hard and blunt object and was referred to the

Civil Surgeon Guna for favour of X-ray. The injury was caused within 24 hours of the examination.

Following injuries were found on the person of appellant Kripansingh:-

(1) A lacerated wound 3x2 cms scalp deep transversely. Infection is present, on left side of forehead near median line, caused by hard and blunt object. This injury was referred to the Civil Surgeon, Guna for X-ray examination.

(2) A lacerated wound 1 x 1 cms scalp deep. Inj. present, on left knee, caused by hard and blunt object, simple in nature.

(3) An abrasion 1 x 1 cms on left knee near injury No. 2, caused by hard and blunt object, simple in nature.

The above injuries were caused within 72 hours of the examination.

Following injuries were found on the person of appellant Badamsingh:-

(1) A lacerated wound 2 x 1/2 cms scalp deep A. P. in direction. Infection present. The injury was on right parietal region near median line.

(2) A lacerated wound 2-1/2x 1/2 cms scalp deep in direction, inj. present, on right parietal region (illeg.) lateral to injury No. 1.

(3) A lacerated wound 1x1/2 cms scalp deep A. P. in direction, infection present, on right parietal region 2 cms. lateral to injury No. 2.

(4) A contusion 3x2 cms antero-lateral side of right thigh just above knee joints.

All the above injuries were caused during 72 hours of the examination. Injuries Nos. 1 to 3 were referred to C.S., Guna for X-ray examination. Injury No. 4 was simple in nature.

The necessary papers were prepared by the Investigating Officer like Panchnama, memos etc. and after completing investigation charge sheet was submitted against the appellant, in Court.

The prosecution had examined as many as 18 witnesses. P. W. 1 Bharosa, P. W. 2 Mannu, P. W. 3 and P. W. 4 Taja are witnesses of fact. They had narrated about the incident.

P. W. 5 Sundariya was also a witness of fact but she was declared hostile as she did not support the prosecution version. P. W. 6 Champa is another witness of fact who has supported the prosecution case. P. W. 7 Soma is another injured witness who had supported the charges against the appellants. P. W. 8 Sundara is another witness regarding the fact. He had reached later on and had seen the deceased and injured persons. P. W. 9 Gayaprasad is a witness of Panchnama of the dead body of Latura. P. W. 10 Swarnasingh had arrested four of the appellants. P. W. 11 Radheshyam is the Patwari who had prepared the site plan Ex. P. 15. P. W. 12 Nand Kishore Parihar proved the sanction for prosecution of

Kripansingh u/s 25 and 27 of the Arms Act. P. W. 13 Kashiram had sent the sealed bundles from the hospital to the police station. P. W. 14 Narendra Singh is the police constable who had taken the deadbody to the mortuary for postmortem. P. W. 15 Mustafa Khan was the head-constable who had prepared the copy of the FIR and made entries in the general diary. P. W. 16 Muratsingh Chauhan is the Investigation Officer who had given out the detail of the investigation. P. W. 17 Dr. G. K. Sharma had proved the postmortem report and injury reports of the injured persons on the complainant side as well as of the accused side as indicated above. P. W. 18 Y. S. Agrawal was the Radiologist who had taken the X-ray of witnesses Soma, Mannu and Bharosa and proved the X-ray reports and plates Ex. P. 34 and P. 34-A.

The learned Additional Sessions Judge accepted the prosecution evidence and convicted and sentenced the appellants as aforesaid aggrieved by which the present appeal has been filed.

We have heard Shri J. P. Gupta, learned counsel for the appellants and Shri K. B. Chaturvedi, learned Government Advocate for the State and examined the record.

It was pointed out that one of the appellants Kripansingh had died during pendency of the appeal. The appeal of Kripansingh stood abated.

The Occurrence alleged to have taken place on 10th April, 1979 at 2 p.m. FIR was lodged at 7 p.m. the same day, which is Ex. P. 1 on record. Latura had died in this incident. From the version given by P. W. 1 Bharosa, who was injured in this incident, there was dispute between the appellants party and the party of the Harijans in the village. One Shishupal son of Ramsingh, the appellant, was grazing his cattle in the field of the witness. The witness asked him to remove his cattle from the field whereupon abuses were exchanged. He also attacked Bharosa with a stick. Bharosa also gave a slap on the face of Shishupal. Thereafter, Shishupal went to his house, the witness also went to his house. Thereafter, Neemabai and Ratiram reached to the house of this witness. Neemabai had given a lathi blow to Bharosa, then Neemabai and Ratiram left for their houses. Again Ratiram came back and gave a lathi blow to Bharosa. His father Latura who was on the Chabutra of Kagalia, hid this witness in the house of Lampu. This witness then climbed over the roof of Gumna from where he witnessed that appellants Kamalsingh, Kripansingh, Parmal, Badam, Ramsingh, Ratiram and Lakshmansingh and others were coming towards that side. Kamalsingh was armed with a gun. Kripansingh was armed with a sword. Badarnsingh and Parmalsingh were armed with Luhangis and others were armed with lathis. Latura was on the Medh of the field. The appellants started talking with Latura. Witnesses Soma, Mannu, Sundra and Parwati came on the spot. Thereafter, Kamalsingh fired at Lalurn who fell down on the ground. Badam gave a lathi blow to Latura. The mother of the witness Champabai was given kick and fists-blow. Champabai also challenged the appellants who was also given kicks. Parmalsingh and Badamsingh had given lathi blows to Karaibai, the grand mother of this witness and also to his mother Champabai. Soma was given lathi blows by

appellants Ramsingh and Ratiram. Kripansingh gave blow by a sword. Lakshmansingh had caught hold of Soma. In this way, the parties engaged in marpeet. Soma and Mannu had also received injuries. Latura had died on the spot.

This witness, Bharosa, admitted in the cross examination that Shishupal was a boy of only five years, whom he had given a slap. Shishupal is alleged to have given stick blow to the witness which appears funny circumstance. The prosecution version that Shishupal had given a stick blow to the witness Bharosa is highly improbable. The boy of five years had given stick blow to Bharosa was not at all understandable in the circumstances of the case and it appears that very genesis of the prosecution case is doubtful. The other boy Munshi was only 10 years of age who was said to have been grazing his cattle in the field of the witness. In the cross examination this witness was confronted with the injuries caused on the side of the appellants. The witness denied that any of the appellants was injured. He went to this extent that none of the witnesses were armed with any weapon and they had not used any weapon in this incident. The witness specifically stated that they had not used any arm and no injury was caused on the side of the accused. He stated that he had no knowledge that any of the appellants was injured in this incident. Ultimately, he admitted that when the appellants ran away then only he reached near the body of this father Latura and he had seen the occurrence only after the appellants ran away.

Other witnesses like Mannu (P. W. 2), Parwatibai (P. W. 3), Sundariya(P. W. 5), Champabai (P. W. 6) and Soma (P. W. 7) all belong to the same family of the complainant. They are highly interested and partisan witnesses. Even P. W. 8 Sundra also belongs to the same family.

The alleged occurrence had taken place in the broad-day-light at 2 p.m. but no independent witness has been produced. A large number of villagers had assembled on the spot but the prosecution was not able to produce any independent witness in this case. None of these witnesses has been able to explain the injuries on the side of the appellants.

It is important to note that the appellants had also lodged a cross FIR in this case but the same was not properly investigated.

The injuries were also on the side of the accused. Appellant Kamalsingh was injured. He had received lacerated wound and fracture was caused vide Injury Report Ex. D- 8.

Similarly, in this incident, appellants Ratiram, Kripansingh and Badamsingh were also injured and their Injury-reports are proved on record as Ex. D-7, Ex. D-9 and Ex. D-10 respectively. They had received large number of injuries. Contusions, abrasions were on their bodies and Kamalsingh also sustained a fracture. In this way, the appellants claimed that they had used their weapons in self defence. When Kamalsingh got a severe injury on his head i.e. fracture than he fired a gun shot in his self defence. The aforesaid injuries are proved on

record on the side of the appellants. Learned counsel for the appellants raised a very important point that when injuries of the appellants were not explained by the prosecution, the entire prosecution case has to be thrown out. On record, the injuries of the appellants were proved as above. They ought to have been explained by the prosecution. There is no mention of any injury on the side of the appellants in the FIR. Also the witnesses did not disclose any injury on the side of the appellants. Even the witnesses showed their ignorance regarding any injury to any of the appellants. Highly interested and partisan witnesses were produced. Although some of the witnesses were injured but since they did not explain the injuries of the appellants, the prosecution story becomes doubtful.

We have noticed after examining the entire evidence on record, that there is no explanation for injuries on the side of the appellants in this case. In such a case where a cross FIR was lodged, appellants were injured and were medically examined on their injuries were proved on record, it was incumbent on the part of the prosecution to explain the injuries on the side of the appellants or these injuries must have been explained by the prosecution witnesses. The prosecution and the witnesses both ignored this fact and no explanation was offered at any stage. The learned Additional Sessions Judge had already disbelieved the prosecution version in respect of the remaining accused like Lakshmansingh, Narayansingh and Dhoomansingh and they were acquitted of all the charges. Only the present appellants were convicted and sentenced as aforesaid.

Once we find that injuries on the side of the appellants were not explained by the prosecution, the very genesis of the prosecution case becomes doubtful and the charges could not be taken to have been established in such a case. In the case of Mitter Sen and Others Vs. The State of U.P., it was held that when the injuries on the side of the accused are neither self inflicted nor self suffered nor self sustained and they are not explained by the prosecution, the entire prosecution case has to be thrown out. Similar view was expressed in the case of Shivji and Others Vs. State of M.P., In the cases of Ram Milan and others Vs. State of Uttar Pradesh, , Kesha and others Vs. State of Rajasthan, and State of Karnataka Vs. Babu and others, it has been held that suppression of injuries on the side of the accused is fatal for the prosecution when the same were not explained at any stage.

Thus, we find that since the injuries on the side of the accused were not explained by the prosecution, the prosecution story could not be believed and the charges could not be established against the appellants.

In the alternative, it was argued on behalf of the appellants that they had used their weapon in self defence. Even Kamalsingh had fired his gun when he got a blow on his head which was fractured and other accused also after receiving injuries in the incident used lathis and sword in their self-defence.

For the individual act of Kamalsingh also it has been argued that even he did not exceed the right of private defence when he fired his gun, in view of the fact that

at first he had a lathi blow on his head fracturing his skull and only then he in this desperate moments he had fired his gun. In the facts and circumstances of the case, we agree with the argument advanced on behalf of the appellants that even Kamalsingh did not exceed right of private defence as he fired his gun after getting a blow on his head fracturing his skull. Only one shot was fired and in that view of the matter also it could not be said that it was not fired in self-defence. Had there been repeated firing it could be argued by the prosecution that it was not in self-defence but in the present case Kamalsingh had fired only one gun-shot when he was given a severe blow on his head fracturing his skull. He had also fired his linceneed gun and in that view of the matter it could not be said that he had used any unauthorised weapon.

The houses of the parties are nearby. The place of occurrence is outside the house on the path way. In that view of the matter also the place of occurrence was such that both the parites had come out from their houses and the incident took place on spur of moment in view of the slap given by Bharosa to a boy of five years. Both the parties got outraged and engaged in this marpeet and sudden quarrel was started on the fact that a boy of 5 years was beaten by Bharosa.

As such, we find that the very genesis of the prosecution case is doubtful. Injuries of the appellants were not explained. On the same set of evidence some of the co-accused like Lakshmansingh, Narayansingh and Dhoomansingh were already acquitted by the trial Court and no State appeal was filed against their acquittal and the same finding had become final. All the prosecution witnesses are near relations, interested and partisan witnesses. No independent witness was produced in this case when a large number of villagers had assembled on the spot. The cross case of the appellants against the complainant party was not properly investigated and as such investigation in this case could not be said to be fair.

On the other hand, learned counsel for the State argued that the appellants had no right of self defence when Kamalsingh fired his gun which proved fatal for Latura. He relied on the case of Sone Lal and Others Vs. State of U.P., on the point that even if injuries are not explained, the right of self-defence is not available when the accused were found to be aggressors. In this case it could not be said that the appellants were aggressors and, therefore, right of self-defence was not available to them.

The other point argued on behalf of the State was that at least Kamalsingh had fired his gun exceeding the right of private defence and he should be held guilty. Reliance was placed on the case of Dwarka v. State of U.P. 1993 Cri App 2242. In view of the evidence, as examined above, it could not be said that the appellants were aggressors and when Kamalsingh fired his gun after receiving a severe blow on his head fracturing his skull, it could not be said that he had exceeded the right of private defence.

Lastly, learned counsel for the State argued that at least Kamalsingh should be held guilty for exceeding right of private defence u/s 304, Part-I of the Indian Penal Code. Learned counsel relied on the cases of Dharam Pal and others Vs. State of Uttar Pradesh, and Tarjinder Singh Vs. State of Haryana, In those cases when several gun shots were fired it Could be said that right of self-defence was exceeded, but in the present case only one gun shot was fired and that too in self-defence after receiving a severe blow on the head by Kamalsingh which fractured his skull. Therefore, in this case it could not be said that firing single shot in self-defence was an act of exceeding the right of self-defence.

The probabilities in this case have to be examined in view of evidence and facts established on record. The quarrel started on account of the fact that Bharosa had given beating to a boy of only five years. Bharosa was called and both the parties, one of the Tahakurs and the other of the Harijans assembled and engaged in this marpeet when Kamalsingh was given a blow on his head, fracturing his skull, he used his gun. The place of occurrence was also outside the houses between the residential houses of the parties. In such a case it could not be said that the appellants had formed an unlawful assembly. Further it was pointed out that Kamalsingh had already suffered more than 5 years in jail. Irrespective of his being in jail for mere than five years, we are of the firm opinion that even he had not exceeded the right of self-defence in this case and, therefore, we find that none of the charges were established against the appellants beyond doubt, by any cogent and reliable evidence.

In view of the discussions made above, we find that the appeal succeeds. The appeal is allowed. The judgment and order, under appeal are set aside. The appellants are acquitted of all the charges levelled against them. The appellants are on bail. They need not surrender. Their personal bonds and surety bonds are discharged.