
(2008) 05 RAJ CK 0162
In the Rajasthan High Court

Prahlad Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Arms Act, 1959 — Section 25, 27, 3, 5
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 3 RLW 2651

Hon'ble Judges : Shiv Kumar Sharma, J; Mahesh Bhagwati, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Out of twenty nine persons arraigned before learned Special Judge, SC/ST (PA) Jhalawar for the murder of Manohar Singh, Nagu Singh, Inder Singh and Bapu Singh, twenty four were convicted and sentenced vide judgment dated February 13, 2004. However Kesar Singh and Ram Singh sons of Onkar Singh did not prefer any appeal and only twenty two appellants have preferred instant appeals. The conviction and sentence awarded to appellants are as under:

Prahlad Singh s/o Ram Pratap, Kalu Lai s/o Sriram, Babu Lal s/o Fateh Lal, Tanwar Singh s/o Man Singh, Prithvi Singh s/o Ram Lal, Inder Singh s/o Bhawani Lal, Man Singh s/o Umrao Singh, Bhagwan Singh s/o Prabhu Lal, Jagdish s/o Ram Lal, Man Singh s/o Salag Ram, Amar Singh s/o Purilal, Balchand s/o Ram Prasad, Bapu Lal s/o Ramlal, Suresh Kumar s/o Sriram, Prahlad Singh s/o Man Singh, Kanhi Ram s/o Prabhu Lal, Nand Ram s/o Salagram, Ram Prasad s/o Behru Lal, Shri Ram s/o Jetram, Ram Prasad s/o Jet Ram, Prahlad Singh s/o Nathu Lai and Bahadur Singh s/o Man Singh:

Under Section 147 and 148 IPC:

Each to suffer simple imprisonment for one year and fine of Rs. 500/-, in default to further suffer simple imprisonment for one month.

Kalu Lal s/o Sri Ram:

Under Section 302 and 302/149 IPC:

To suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer simple imprisonment for three months.

Prahlad s/o Ram Pratap, Babu Lal s/o Fateh Lal, Tanwar Singh s/o Man Singh, Prithvi Singh s/o Ram Lal, Inder Singh s/o Bhawani Lal, Man Singh s/o Umrao Singh, Bhagwan Singh s/o Prabhu Lal, Jagdish s/o Ramlal, Man Singh s/o Salag Ram, Amar Singh s/o Purilal, Balchand s/o Ram Prasad, Babu Lal s/o Ramlal, Suresh Kumar s/o Sriram, Prahlad Singh s/o Man Singh, Kahhi Ram s/o Prabhu Lal, Nand Ram s/o Salag Ram, Ram Prasad s/o Behru Lal, Shri Ram s/o Jetram, Ram Prasad s/o Jet Ram, Prahlad Singh s/o Nathu Lal and Bahadur Singh s/o Man Singh: u/s 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 1000/- , in default to further suffer simple imprisonment for three months.

Prahlad s/o Ram Pratap, Kalu Lal s/o Sriram, Babu Lal s/o Fatehlal, Tanwar Singh s/o Man Singh, Prithvi Singh s/o Ramlal, Inder Singh s/o Bhawani Lal, Man Singh s/o Umrao Singh, Bhagwan Singh s/o Prabhu Lal, Jagdish s/o Ramlal, Man Singh s/o Salag Ram, Amar Singh s/o Purilal, Balchand s/o Ram Prasad, Babu Lal s/o Ramlal, Suresh Kumar s/o Sriram, Prahlad Singh s/o Man Singh, Kanhi Ram s/o Prabulal, Nand Ram s/o Salagram; Ram Prasad s/o Behru Lal, Shri Ram s/o Jetram, Ram Prasad s/o Jet Ram, Prahlad Singh s/o Nathu Lal and Bahadur Singh s/o Man Singh : u/s 307/149 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs. 1000/-, in default to further suffer simple imprisonment for three months.

Kalu Lal s/o Sriram, Prahlad s/o Ram Pratap and Babu Lal s/o Fatehlal:

Under Section 27 Arms Act:

Each to suffer simple imprisonment for three years and fine of Rs. 500/-, in default to further suffer simple imprisonment for one month.

Sentences were ordered to run concurrently.

BRIEF FACTS

2. The prosecution case is woven like thus:

On September 10,2001 at 9.30 PM Shiv Raj Singh (PW. 5) SHO Police Station Sunel recorded Parcha Bayan (Ex. P. 17) of Amar Singh (PW. 15) who stated that around 6.45 PM while he was at his house, he heard hue and cry of his cousin, Indra Singh from the field known as "patwari-ka-khet". He came out of the house and saw that Man Singh, Bahadur Singh, Tanwar Singh, Kalu Lal, Dhakad, Sri Ram Dhakad, Suresh Dhakad, Ram Prasad Dhakad, Bal Chand, Shadi Lal Dhakad, Amar Singh, Bhawani Lal Dhakad, Nanda, Ratti Ram Dhakad, Prahlad, s/

o Pratap Dhakad, Jagdish Dhakad, Prahlad s/o Man Singh Dhakad, Indra Singh, Prithvi Singh, Kanhi Ram Dhakad, Bhag-wan Dhakad, Prahlad s/o Nathu Dhakad, Ram Prasad, Kesar Singh, Ram Singh, Bala Ram Dhakad, Babu Lai, Nand Ram and Man Singh who were armed with sword, guns, Kattas (country made gun), lathis and Gandasis caused injuries to Inder Singh and killed him. The assailants chased informant Amar Singh and inflicted sword blow on his right hand. When informant's father Bapu Singh made attempt to intervene, Man Singh opened fire at him as a result of which Bapu Singh died. Manohar Singh and Nagu Singh were also killed by them. On that parcha bayan case under Sections 147, 148, 149, 302, 302, 324 and 323 IPC was registered and investigation commenced. Autopsy on the dead bodies was performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested. On completion of investigation charge sheet was filed and in due course the case came up for trial before the learned Special Judge SC/ST (PA) Jhalawar, Charges under Sections 102B, 147,148, 302/149, 307/149 IPC, 3/25 and 5/27 Arms Act were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the explanation u/s 313 CrPC, the accused claimed innocence. Four witnesses were examined in support of defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. we have heard the submissions advanced before us by learned Counsel for the appellants, learned Public Prosecutor and learned Counsel for the complainant and scanned the material on record.

MEDICAL EVIDENCE

4. Death of all the four deceased was homicidal in nature. Deceased Manohar Singh vide Post-mortem Report (Ex, P. 4) received following antemortem injuries:

1. Incised wound 10 x 5 Bone deep Brain material out scalp post occipital parietal
2. Incised wound 2" x 1/2" B deep chin Rt. mandible Rt. up lower incisor broken
3. Incised wound 3" x 1" B deep obi. Rt. leg lat. L. 1/3
4. Incised wound 6" x 1" x B deep below obi. Tibia Rt.
5. Incised wound 3" x 1" skin deep obi. Rt. knee.
6. Incised wound 3" x 1" bone deep Ft. FA near wrist Ext. surface cut Red ulna bone.
7. Incised wound 3" x 1" x Bone deep with tibia left leg up 1/3 laterally.
8. Bruise 7" x 1-1/2" chest middle area obi.

According to Dr. Anil Kaushik (PW. 2), who performed the autopsy on the dead body, cause of death was coma as a result of sharp injury to brain.

5. Deceased Nagu Singh received following antemortem injuries vide Postmortem

Report (Ex. P. 12):

1. penetrating wound 1.5" diameter deep to brain material, Frontal bone.
2. Incised wound 3" x 1" B deep at scalp Rt. parietal
3. Incised wound 3" x 1" Bone deep scalp top left
4. Incised wound 1.5" x 1" x 1 left leg medially below knee.
5. Incised wound 1" x 1/2" x 1/2" left leg front top 1/3.
6. Incised wound 1" x 1/2" x 1/2" Rt. thigh laterally 1/3.
7. Abrasion 1" x 1/4" below Rt. eye.
8. Abrasion 1" x 1/4" below left eye.
9. Incised wound 1" x 1/2" upper lip left side.

According to autopsy Surgeon Dr. Anil Kaushik CPW. 2) the cause of death was coma as a result of injury to brain.

6. Deceased Inder Singh vide Postmortem Report (Ex. P. 13) received following antemortem injuries:

1. Incised wound 3" x 1" Bone deep (Fracture) scalp lat. of occipital area.
2. Incised wound 5" x 3" x Bone deep transverse trachea oesophagus cut.
3. Incised wound 6" x 2" Bone deep chin front obliquely with cut mandible.
4. Incised wound 3" x 1" x 1/2" cheek Rt. Side transversely
5. Stab wound 1" x 1/2" x cavity deep abdomen obliquely 3" below umbilicus

According to autopsy Surgeon Dr. Anil Kaushik (PW. 2) the cause of death was hemorrhagic shock as a result of injuries.

7. Deceased Bapu Singh vide Postmortem Report (Ex. P.93) received following antemortem injuries:

1. Gunshot injury 1-1/2" diameter circular with blackening in 2" are going from down to upward upto base of the skull. Rt. pallets costal from the wound as well recovered as from brain material both of the skull, plastic circular cover of bullet is also recovered.
2. Incised wound 3" x 1/2" B deep occipital region.
3. Incised wound 3" x 1/2" Bone deep top of scalp
4. Incised wound 3" x 1/2" x B deep back on VC Trans, of liver.
5. Incised wound 2" x 1/4" bone deep left leg up 1/3
6. Lacerated wound 2" x 1/2 bone deep Dorsum of hand base of Mid & Rt.

7. Lacerated wound 1" x 1/2" x SK deep Rt. leg L 1/3 skin tibia

According to autopsy Surgeon Dr. Anil Kaushik (PW.2) the cause of death was coma as a result of gunshot injury to brain.

8. Injuries sustained by the informant Amar Singh were incorporated in the Injury Report (Ex. P. 19) which reads as under:

1. Incised wound 3" x 1-1/2" x Bone cut Right knee.
2. Incised wound 2" x 1/2" Bone deep Rt. leg
3. Incised wound 2" x 1" x Bone deep Left knee
4. Incised wound 1" x 1/2" x muscle deep Right thigh
5. Incised wound 3" x 1/2" bone deep Rt. sole near heal.
6. Incised wound 1" x 1/2" x bone deep Left thumb.
7. Incised wound 3" x 1" x Bone deep right wrist
8. Incised wound 2-1/2" x 1-1/2" x Bone deep Rt. thumb.
9. Incised wound 1" x 1/4" x 1/4" medial aspect of lower 1/3 left leg.
10. Incised wound 1-1/2" x 1/2" x Muscle deep above left leg.
11. Lacerated wound 2-1/2 x 1/2 x Bone deep middle of parietal region of head.
12. Lacerated wounds (two) 2" x 1/2 x bone deep and 1-1/2" x 1/2" x 1/4" Rt. parietal part forehead.

INJURIES SUSTAINED BY THREE APPELLANTS

9. We also notice that appellants Man Singh vide injury report (Ex. D. 10), Bahadur Singh vide injury report (Ex. D.19) and Ram Prasad vide injury report (Ex. D.20) received injuries thus:

Man Singh (Ex. D. 10):

1. Incised wound 3 x 1/2 x 1/2 on Rt. shoulder
2. Abrasion 2 in number irregular size.

Bahadur Singh (Ex. D. 19):

1. Incised wound 3-1/2" x 1" deep to joint Rt. shoulder
2. Incised wound 2" x 1/2" x Muscle deep Rt. Forehead
3. Incised wound 1"x 1/4" x skin deep left hand posterior laterally

Ram Prasad (Ex. D. 20):

1. Incised wound 7" x 1-1/2" x bone deep Rt. side of face.

2. Incised wound 4" x 2" x bone deep 3" behind left ear.

3. Incised wound 3" x 1/2" x bone left forehead.

OCULAR EVIDENCE

10. Superstructure of prosecution case is founded on the ocular evidence of injured witness Amar Singh (PW. 15), Ishwar Singh (PW. 12), Lai Singh (PW. 14), Chain Singh (PW. 17) and Smt. Bhura Bai (PW. 24). In his deposition Amar Singh (PW. 15) stated that on September 10, 2001 around 6.45 PM while he was drinking tea in his house along with his father Bapu Sijigh, his wife Krishna Bai and mother Bhanwar Bai, he heard hue and cry of his cousin Inder Singh from the field known as "Patwari-ka-khet". He forthwith came out of the house and saw that his uncle Man Singh, his sons Bahadur Singh, Tanwar Singh, Ram Singh, Kesar Singh, Ram s/o Jetraj, Suresh and Kalu s/o of Sri Ram, Ram Prakash s/o Jetraj, Balchand, Ram Pratap, Prahlad s/o Dhad, Mam Singh s/o Salaram, Prithvi Singh s/o Ramlal, Jagdish, Bapulal s/o Ramlal, Kanhiram and Bhagwan Lal s/o Prabhu Lal, Amar Singh s/o Purilal, Babu Lal s/o Fatehlal, Prahlad s/o Man Singh, Ram Prasad s/o Bherulal, Prahlad s/o Nathu armed with lathis, Gandasis, Kattas (country made gun), sword and pharsis were chasing Inder Singh. Prahlad s/o Rampratap, who had Katta, opened fire at Inder Singh as a result of which Inder Singh fell in the Khal of Shiv temple. Other assailants also gave beating to Inder Singh. The assailants then surrounded him (informant Amar Singh) and his uncle Mansingh gave blow with lathi on his head, Tanwar Singh gave blow with sword on his right hand and Prithvi Singh inflicted sword blow on his left hand. Thereafter Balchand, Ramprasad, Sriram, Suresh, Bherulal, Ramprasad, Nandram and Mansingh gave beating to him by sword, pharsi and axes. Hearing his cry when Bapu Singh came to save him, he was also surrounded and gave beating meanwhile he went inside the house. Thereafter he saw that Kalulal opened fire with his katta that hit on the neck of Bapu Singh. Assailants Sriram, Suresh, Ramprasad, Bhagwanlal, Kanhiram, Prithvi Singh, Jagdish, Nandram and Mansingh and Bapu Lai also gave beating to his father Bapu Singh. When Manohar Singh and Nagu Singh came over there, they were also surrounded by Man Singh, Bahadur Singh, Tanwar Singh, Sri Ramdhar, Suresh, Kalulal, Babulal, Prithvi Singh, Jagdish, Nandram, Mansingh, Amar Singh s/o Purilal, Prahlad s/o Bherulal, Ram Prasad and Prahlad s/o Nathulal, who inflicted injuries on their person with kattas, swords, lathis and axes. Bahadur Singh opened fire that hit on the head of Nagu Singh. Man Singh s/o Salagram inflicted axe-blow on the head of Manohar Singh whereas blow inflicted by Nandram hit the chest of Manohar Singh. Testimony of Amar Singh gets corroboration from the statements of Ishwar Singh (PW. 12), Lal Singh (PW. 14), Chain Singh (PW. 17), Barji Bai (PW. 19) and Smt. Bhura Bai (PW. 24).

SUBMISSIONS ADVANCED ON BEHALF OF APPELLANTS

11. It is contended by learned Counsel for the appellants that alleged Parcha Bayan of Amar Singh was recorded in his own house. Amar Singh as per injury

report (Ex. P. 19) had sustained as many as 12 injuries out of which 10 were incised wounds and two. were lacerated wounds on parietal region. Dr. Anil Kaushik (PW. 2) admitted in the cross examination that Amar Singh was semi conscious and was not in a state of speaking. In such a situation testimony of Amar Singh could not have been relied upon. It is further urged that the injuries sustained by the appellants Man Singh, Bahadur Singh and Ram Prasad were not explained by Amar Singh and out of 29 assailants named in the Parcha Bayan five were not named by him at the trial.

12. Testimony of Ishwar Singh (PW. 12) and Lai Singh (PW. 14) was criticised by learned Counsel on the ground that they were not named in Parcha Bayan. They were child witnesses and did not explain the injuries sustained by Man Singh, Bahadur Singh and Ram Prasad.

13. Evidence of Chain Singh (PW. 17), Barji Bai (PW. 19) and Bhura Bai (PW. 24) has been attacked on the ground that they were not present at the time of incident. They are interested witnesses and related to the deceased persons. They also did not explain the injuries sustained by Man Singh, Bahadur Singh and Ram Prasad.

14. Learned Counsel for the appellants further canvassed that place of occurrence has been changed by Ishwar Singh (PW. 12), Lai Singh (PW. 14) and Kalu Ram (PW. 23). Learned Counsel took us through the statements of these witnesses.

15. It was next contended by learned Counsel that origin and genesis of the incident has been withheld and since three persons of the accused party sustained injuries, the appellants had right of private defence of their person. In support of his submissions learned Counsel placed reliance on various judicial pronouncements.

16. Fact situation emerges from the material on record may be summarized thus:

(i) Four persons viz. Manohar Singh, Nagu Singh, Inder Singh and Bapu Singh died in the incident.

(ii) Amar Singh (PW. 15) sustained as many as 12 injuries out of which 10 were incised wounds and two were lacerated wounds on parietal region.

(iii) Accused appellants Man Singh, Bahadur Singh and Ram Prasad also sustained incised wounds and the injuries were not explained by the prosecution witnesses.

(iv) Report lodged by accused appellant Man Singh was entered in , Rojnamcha Ex. D. 15A.

17. In Babu Ram and Others Vs. State of Punjab, , the Apex Court indicated thus:-(Para 19)

Further, it Is important to point out that the omission on the part of the

prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or when the defence gives a version which competes in probability with that of the prosecution case.

18. In the instant case where four persons were murdered by a group of assailants, non explanation of injuries of three accused by the prosecution does not assume much importance. It cannot be inferred that the prosecution has suppressed the genesis and origin of the occurrence. We see no reason to disbelieve the testimony of Amar Singh (PW. 15), who is an injured eye witness. Amar Singh categorically stated that he was fully conscious at the time of recording of Parcha Bayan. Shiv Raj Singh SHO (PW. 5), who recorded Parcha Bayan of Amar Singh at his house, also deposed that when he recorded Parcha Bayan of Amar Singh he was conscious.

19. So far as the argument in regard to change of place of the incident is concerned, we find that the deceased persons were done to death while they were running for their life. The assailants chased them and inflicted injuries on their person.

20. We also find no merit in the submission of learned Counsel for the appellants that there was a probability of the accused having acted in self defence. There is nothing on record to show that at the time of incident the appellants were facing imminent peril of life and limb. The defence in the instant case has not succeeded in establishing with a balance of probability that the four deceased persons first assaulted Bahadur Singh, Man Singh and Ram Prasad and thereupon they assaulted the four deceased.

21. In order to attract the provisions of Section 149 IPC the prosecution must establish that there was an unlawful assembly and that the crime was committed in prosecution of the common object of the assembly. The prosecution in the instant case has established beyond reasonable doubt that except appellant Bapu Lai, who was not named in the Parcha Bayan, all other appellants were members of unlawful assembly and they committed crime in prosecution of the common object of the assembly and they were rightly convicted and sentenced.

CONCLUSION

22. For these reasons, we dispose of instant appeals in the following terms:

(i) We allow the appeal of Bapu Lai s/o Ram Lai and acquit him of all the charges. Appellant Bapu Lai is on bail, he need not surrender and his bail bonds stand discharged.

(ii) We find no merit in the appeals of Prahlad Singh s/o Ram Pratap, Kalu Lal s/o Sriram, Babu Lal s/o Fateh Lal, Tanwar Singh s/o Man Singh, Prithvi Singh s/o Ram Lal, Inder Singh s/o Bhawani Lal, Man Singh s/o Umrao Singh, Bhagwan Singh s/o Prabhu Lal, Jagdish s/o Ram Lal, Man Singh s/o Salag Ram, Amar Singh s/o Purilal, Balchand s/o Ram Prasad, Suresh Kumar s/o Sriram, Prahlad

Singh s/o Man Singh, Kanhi Ram s/o Prabhu Lal, Nand Ram s/o Salagram, Ram Prasad s/o Behru Lal, Shri Ram s/o Jetram, Ram Prasad s/o Jet Ram, Prahlad Singh s/o Nathu Lal and Bahadur Singh s/o Man Singh and the same stand dismissed.

(iii) The impugned judgment of learned trial Court stands modified as indicated above.