

(2010) 09 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 1411/09

Rajeev Lochan and Rajendra Prasad

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34

Citation : (2010) ILR (MP) 85

Hon'ble Judges : Rakesh Chandra Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.C. Mishra, J.—This appeal has been preferred against the judgment-dated 28.07.2009 passed by Fifth Additional Sessions Judge, Rewa in S.T. No. 189/2005 whereby each one of the Appellants has been convicted and sentenced as under with the direction that the jail sentences shall run concurrently and also that in case of recovery of fine, an amount of Rs. 1000/- shall be paid to each one of the injured persons named below as compensation-

----- Convicted u/
s Sentenced to
----- 307 read
with 34 of IPC undergo R.I. for 7 years and to pay (for attempting murder of
fine of Rs. 1000/- and in default to Gaurishankar) suffer R.I. for 6 months.
----- 307 read
with 34 of IPC undergo R.I. for 7 years and to pay (for attempting murder of
fine of Rs. 1000/- and in default to Rishikesh) suffer R.I. for 6 months.
----- 324 read with
34 of IPC undergo R.I. for 6 months (for sharing a common intention in
causing injuries to Ruchita)

2. In the light of the guideline laid down in *Nathilal v. State of U. P.*, learned trial Judge, on the same day, delivered judgment in counter case numbered as S.T. No. 263/2007. In that case, cognizance of the offence u/s 323 read with Section 34 of the IPC for causing injuries to Appellant No. 1 Rajeev Lochan (hereinafter referred to as "A1"), his son Mukesh and Appellant No. 2 Rajendra (for short "A2") was taken upon the complaint made by A1. By that judgment, Gaurishankar, Rishikesh, Ruchita and Shivmurti Prasad (examined as PW9, PW10, PW2 and PW1 respectively in this case), were acquitted of the offences. Admittedly, no appeal has been preferred against the order of acquittal.

3. The prosecution case may briefly be stated thus-

(i) Amongst the injured persons, Gaurishankar is the stepbrother of the Appellants whereas Ruchita and Rishikesh are his daughter and son. The Appellants and the members of the complainant party are descendents of a common ancestor viz. Garud Prasad Shukla. At the relevant point of time, they were residing in village Belwa Sursari Singh where their ancestral land was located. However, their relations were marred with bitterness in the wake of dispute as to piece of the ancestral land known as Lalwawala Khet (for brevity "Khet"), an agricultural field comprising of lands covered by Revenue Survey Nos. 190 and 191.

(ii) On 10.04.2005 at about 2.45 p.m. Shivmurti Prasad (PW1), the elder brother of Gaurishankar raised alarms to the effect that the wheat crops sown by them and standing in the khet were being reaped by the Appellants and Mukesh and Satish (examined as DW1 and DW2), the sons of A1. Hearing the shouts, Ruchita apprised her father Gaurishankar and brother Rishikesh who, in turn, immediately rushed to the field. As they reached near medh (embankment) of Maniraj's Chauraha Bandh, they saw the Appellants as well as Mukesh and Satish coming towards them. The Appellants were armed with Gandasa and Ballam whereas Mukesh & Satish were carrying lathi and tangi respectively.

(iii) On being asked as to why they had cut the crops, the Appellants along with Mukesh and Suresh, while hurling abuses, jointly attacked Gaurishankar and Rishikesh with respective weapons. When Ruchita came forward to save her father and brother, A1 dealt a Gandasa blow that landed on her left wrist. Shivmurti and Kamta Prasad (PW8) witnessed the incident.

(iv) Ruchita (PW2) took Gaurishankar and Rishikesh in a Jeep belonging to Umashankar to CHC, Sirmour and after getting them admitted thereto, lodged the FIR (Ex.P-1) at Police Station situated at Sirmour only. Accordingly, a case u/s 307 read with Section 34 of the IPC was registered against the Appellants and co-accused Mukesh and Satish (since juvenile). After preliminary examinations, Dr. R.K. Ojha (PW6) referred the cases to S.G. Medical College, Rewa for further examinations and treatment. Dr. A.S. Siddiqui (PW7), working as Radiologist in the Medical College, noticed fracture on 8th and 9th ribs of Gaurishankar and Dr. Dipak Purohit (PW13), the Resident Surgical Officer, had to perform necessary

surgery to repair internal injuries noticed behind the external wound on the right side of Gaurishankar's chest.

(v) During investigation, the Appellants and the co-accused were apprehended and at their instances, respective weapons were recovered. After due investigation, charge sheet was submitted before JMFC, Sirmour against the Appellants whereas the co-accused namely Mukesh and Satish were prosecuted before the Juvenile Board.

4. The Appellants abjured the guilt and pleaded right of private defence of property as well as person by alleging that it was the complainant party that was the aggressor and had come to dispossess them from the Khet that was in their exclusive physical possession. In the examination u/s 313 of the Code of Criminal Procedure, A1 further asserted that-

at the time when he along with Mukesh and Satish was harvesting wheat crops sown by him in the Khet, members of the complainant party led by Gaurishankar carrying lathi, tangi and pharsa, started assaulting him with a view to driving him out of the field and A2, who came forward to save him, was also belaboured. At this point of time only, A1's sons Mukesh and Satish intervened and in order to save their lives, assaulted Gaurishankar and his companions with Tangi and Hansiya which were brought by them for cutting the crops.

whereas A2, while substantiating A1's version, confirmed that the injuries to the members of the complainant party were caused by Mukesh and Satish to prevent further assault on him and A1 after they had fallen down.

5. The prosecution sought to prove the charges by producing as many as 13 witnesses including the injured persons and the medical experts. As pointed out already, the defence examined Mukesh and Satish, the co-accused, to establish the plea of private defence. On a critical appraisal of the entire evidence, learned trial Judge, for the reasons assigned in the impugned judgment, concluded that the charges against the Appellants were proved beyond a reasonable doubt.

6. Legality and propriety of the impugned convictions have been challenged primarily on the ground of what is termed as mis-appreciation of the entire evidence on record. Learned Counsel for the Appellants, while inviting attention to the decisions of the Apex Court in Subramani and Others Vs. State of Tamil Nadu, and Satya Narain Yadav Vs. Gajanand and Another, , has submitted that right of private defence of person and property protected the offending acts in question. In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence, has contended that the convictions are fully justified.

7. In order to appreciate the merits of rival contentions in a right perspective, it is necessary to first advert to the medical evidence on record.

8. Existence of an incised wound measuring 1 1/2" x 1/4"x 1/4" on posterior aspect of Ruchita's left wrist was proved by Dr. R.K. Ojha (PW6). The injuries

noticed by him on the persons of Gaurishankar and Rishikesh and re-described by the Surgical Specialist Dr. Dipak Purohit (PW13) may be tabulated in the following manner-

Injuries on the body of Gaurishankar

----- As
described by Dr. Dr. R.K. As re-described by Surgical Specialist Ojha in his report
(Ex.P-11) Dr. Dipak Purohit in his report (Ex.P- 27)

----- (i)
Incised wound size 6" x 1" x (i) An incised wound present over muscle deep on the back vertical right parietal of scalp, size about 8 x deep, thoracic and lumber 0.5 cm, margin sharp, blood oozing region just to the right of present, tenderness present, midline. longitudinal in direction.

----- (ii)
Incised (penetrated wound) (ii) An incised wound present over size 6" x 2" x upto thoracic left parietal region of scalp, size cavity on the right infra-scapular about 10 x 0.5 cm, margin sharp, and infra-axillary region blood oozing present, tenderness horizontal. present, longitudinal in direction.

----- (iii)
Incised wound size 3"x 1/4" x (iii) An incised wound present over 1 1/4" on the head of right fronto mid parietal region of scalp, size parietal region, antro- about 5 x 0.5 cm, margin sharp, peritoneum blood oozing present, tenderness present, longitudinal in direction.

----- (iv)
Incised wound size 4" x 1/2"x (iv) An incised wound present over 1/2" on the left fronto parietal left scapular region, size about 12 x region, antro-peritoneum 5 cm, margin sharp, blood oozing present, tenderness present.

----- (v)
Incised wound size 1"x 1/4"x (v) An incised wound present over 1/4" on the head, left parietal right paraspinal area at thoracic region medial to injury No. (iv). region about 3 cm away from midline, size about 18 x 2 cm, margin sharp, blood oozing present, tenderness present, longitudinal in direction, muscle deep

----- (vi)
Incised wound size 3"x 1 1/4."x (vi) An incised wound present over 1 1/4" on the left scapular area right side of chest at 8th & 9th intercostal space (full thickness thoracotomy wound) having slanting cut surface, skin out at higher level at 6th inter costal space and 6th rib level, then muscle cut at 7th rib level, then 8th rib cut right side, size about 15 x 2 cm, margin sharp, thoracic cavity lying open, right lung and diaphragm exposed, 8th & 9th right rib fractured with sharp edge, oblique in direction.

Injuries on the body of Rishikesh

----- As

described by Dr. Dr. R.K. As re-described by the Surgical Ojha in his report (Ex.P-10) Specialist Dr. Dipak Purohit in his report (Ex.P-28)

----- (i)
Incised wound size 4"x 1/4"x (i) An incised wound present over 1/4" on the head, frontal area fronto parietal region of scalp, size with profuse bleeding, horizontal about 14 x 0.5 cm, margin sharp, more on left side. blood oozing present, tenderness present, oblique in direction.

----- (ii)
Incised wound size 2" x 1/4" x (ii) An incised wound present over 1/4" on the left side of nose. left eyebrow, size about 4 x 0.5 cm, margin sharp, blood oozing present, tenderness present, oblique in direction.

----- (iii)
Incised wound size 1"x 1/4" (iii) An incised wound present over x 1/4" on the left eye brow. left side nose, size about 6 x 0.5 cm, margin sharp, blood oozing present, tenderness present, oblique in direction

----- (iv)
Incised wound with profuse (iv) An incised wound present over bleeding with cut on the bones, upper part of right arm, size about 7 dimension could not be taken x 0.5 cm, margin sharp, blood oozing due to profuse bleeding on the present, tenderness present, oblique upper fore arm and hand. in direction

----- (v)
Incised wound 2"x 1/2" x 1/2" (v) An incised wound present over on the right arm, posterior right leg, size about 2 x 0.5 cm, aspect, upper half margin sharp, blood oozing present, tenderness present

----- (vi)
Incised wound size 6"x 1 1/2" (vi) An incised wound present over x muscle deep on the left leg, lower part of left forearm posterior posterior and lateral aspect, 1 aspect and left hand dorsal aspect, cm half. size about 20 x 8 cm, margin sharp, blood oozing present, tenderness present, longitudinal in direction, movement of left wrist joint restricted

----- (vii)
Incised wound size 1"x 1/4" (vii) An incised wound present over x 1/4" on the right leg, medial lower 1/3 of left leg, size about 10 x aspect. 6 cm, margin sharp, blood oozing present, tenderness present, oblique in direction, bone deep -----

It was further proved by the radiologist Dr. A.S. Siddiqui (PW7) that there existed fractures in the right 8th and 9th ribs of Gaurishankar's chest. Corresponding X-ray plates (Ex.P-16, P-17 & P-18) and the report (Ex.P-15) were also tendered in evidence. Dr. Dipak Purohit (PW13), the RSO, affirmed that he had to perform surgery to repair the internal injuries sustained by Gaurishankar behind the incised wound on right side of Gaurishankar's chest. According to him, Gaurishankar had complained of difficulty in breathing. In his opinion, the injuries over chest, back and scalp received by Gaurishankar were dangerous to life. The Surgical Specialist also characterized the injuries received by Rishikesh

on right side of nose and left eyebrow as grievous.

9. Dr. R.K. Ojha further stated that he had also examined both the Appellants and co-accused Mukesh and found the under- mentioned-

Injuries on the body of A1 (as described in report (Ex.P-12).

(i) Contusion size 6" x 1" on both buttocks, horizontal, upper side

(ii) Contusion size 5" x 1" on both buttocks horizontal, parallel just below injury No. (i).

(iii) Contusion size 1 1/2" x 1" on left hand upper part, medial and posterior aspect.

Injuries on the body of A2 (as described in report (Ex.P-13).

(i) Contusion with swelling size 1" x 1" on right temporal region just above right ear.

(ii) Contusion size 3" x 1" on right forearm, posterior and anterior aspect with right wrist.

(iii) Contusion size 6" x 5" on the left buttock

(iv) Contusion 5" x 4" on right buttock

(v) Contusion 2" x 1" on the right lumbosacral region

Injuries on the body of Mukesh (as described in report (Ex.P-14)-

(i) Contusion size 4" x 1" on left buttock, horizontal

(ii) Contusion size 4" x 1 1/2" on right buttock, horizontal

(iii) Contusion size 1/2" x 1/2" on left parietal region of head

10. Adverting to the other evidence, it may be observed that injured persons namely Gaurishankar (PW9), Rishikesh (PW10) and Ruchita (PW2) duly narrated the substratum of the prosecution version. The first informant Ruchita (PW2) clearly deposed that the Appellants and co-accused Mukesh and Satish were the authors of injuries received by her as well as Gaurishankar (PW9) and Rishikesh (PW10). As per statement of Ruchita, her uncle Shivmurti (PW1) had informed her that the Appellants and the co-accused were cutting the crops standing in the khet; she immediately communicated the fact to her father and brother; thereafter, she noticed that all the accused persons, armed with deadly weapons, were coming at embankment of Chauraha Bandh and on being asked by Gaurishankar and Rishikesh (PW10) as to why they had cut the crops, the Appellants as well as Mukesh and Satish started belabouring Gaurishankar and Rishikesh with respective weapons and when she came forward to intervene and stop them from assaulting Gaurishankar and Rishikesh, she was also beaten.

11. Injured Guarishankar (PW9) and his son Rishikesh (PW10) categorically

stated that they were assaulted by the Appellants as well as co-accused Mukesh and Satish. According to Guarishankar, A1 had dealt Gandasa blow whereas A2 had given blow with a Balam on his head. Corroborating the evidence of Guarishankar, Rishikesh affirmed that it was A1 who had struck Gandasa blow on his head whereas A2 had dealt Ballam blow on elbow of right hand.

12. According to Shivismurti Prasad (PW1), the elder brother of Gaurishankar, he was the first to witness that the crops raised by his younger brother Gaurishankar, were wrongfully being reaped by the Appellants. Kamta Prasad (PW8), though cited as eyewitness in the FIR, had only stated that he had seen Gaurishankar in a seriously injured condition and the Appellants running away from the spot.

13. Although, evidence of Gaurishankar, Rishikesh, Ruchita, Shivismurti and Kamta Prasad suffered from minor inconsistencies with reference to the recitals of the FIR lodged by Ruchita only and the case-diary statements of Gaurishankar and Rishikesh yet, fact of the matter is that presence of the Appellants as well as Mukesh and Satish at the place of alleged occurrence resulting into the aforesaid injuries was not disputed at all.

14. It is well settled that the number of injuries is not always a safe criterion for determining who the aggressor was See. State of Madhya Pradesh Vs. Ramesh, . As explained further, it cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence.

15. Although, the Appellants categorically stated that the crops of wheat belonged to them only yet, no cogent evidence was brought on record to establish that the crops were sown on disputed piece of the land by them only. It is true that Gaurishankar, in Para 5 of his cross-examination, clearly admitted that the Appellants had remained in continuous physical possession of the land in dispute but he was emphatic in asserting that after decision of the Civil Court, he had taken possession of the land in question in the Asadha month of Hindi calendar and had sown crops of Urad and Moong and in the next season, had sown the crop of wheat. Such an arrangement in the wake of the decision of the Civil Court was not improbable as the Appellants were none other the stepbrothers of Gaurishankar only. It also came on record that the Khet had remained in possession of their father namely Garud Prasad during his lifetime. Thus, probability of the defence that the Appellants were in cultivatory possession of the Khet even after the decision of the Civil Suit, was rightly held to be not established.

16. Enmity is a double-edged weapon that may provide a motive for crime and also for false implication. Moreover, the judgment in the counter case would be relevant for a limited purpose that is to know what was held in that case on the

evidence appearing in that case only. In other words, each case has to be decided on the basis of evidence adduced in that case only.

17. In the face of these facts and circumstances, learned trial Judge did not commit any illegality in holding that the Appellants had no occasion to exercise the right of private defence.

18. Section 34 does not say "the common intention of all" nor does it say "an intention common to all." Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As observed in *Chinta Pulla Reddy and Others Vs. State of Andhra Pradesh*, , Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34, it is not necessary to show some overt act on the part of the accused *Babulal Bhagwan Khandare v. State of Maharashtra* AIR 2005 SC 1460 referred to. Accordingly, even if for the sake of arguments it was accepted that Mukesh and Satish had also participated in the joint assault; the Appellants were jointly liable for the injuries caused by these juvenile offenders also.

19. In *Subramani's* case (above), the Apex Court reiterated the well-settled position of law relating to right of private defence in the following terms-

While it is true that in exercise of the right of private defence only such force may be used as may be necessary, but it is equally well settled that at a time when a person is faced with imminent peril of life and limb of himself or other, he is not expected to weigh in golden scales the precise force needed to repeal the danger. Even if he, in the heat of moment, carries his defence a little further than what would be necessary when calculated with precision and exactitude by a clam and unruffled mind, the law makes due allowance for it.

20. In *Satya Narain Yadav's* case (supra), the Supreme Court further explained that the right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. However, as pointed out already, the plea of right of private defence of property was not tenable. Moreover, as the complainant party was not the aggressor, the Appellants were also not entitled to claim right of private defence of body.

21. There can not be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries of the accused See. *Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others*,

22. Number, nature and situs of injuries gave considerable assistance in coming to a finding as to intention of the accused persons to kill Gaurishankar and

Rishikesh. It is also well established that infliction of bodily injury sufficient to cause death is not essential and intention coupled with some overt act in execution thereof is sufficient to record finding of guilt in respect of the offence u/s 307 of IPC. Accordingly, the prosecution evidence comprising of testimony of the injured persons, a promptly lodged FIR, supportive eyewitness account and substantially consistent medical evidence was rightly considered as sufficient to bring home the charges.

23. For these reasons, none of the grounds raised against legality and propriety of the impugned convictions is sustainable. As such, the convictions deserve to be maintained as well merited.

24. This brings me to the question of sentence. The Supreme Court in *State of Madhya Pradesh Vs. Saleem @ Chamaru and Another*, has emphasized the need for imposition of a just and appropriate sentence in a case of attempt to murder. Although, factum of compromise entered into by Gaurishankar, Rishikesh and Ruchita has already been recorded on 30.03.2010 yet, the permission to compound the offences was declined for these reasons-

(a) the offence u/s 307 of the IPC is non-compoundable.

(b) the other offence, though compoundable, are so intrinsically connected with the acts constituting the offence of attempt to murder so as to form the same transaction See. *Rameshchandra J. Thakkar Vs. Assandas Parmanand Jhaveri*, State of Maharashtra,

25. Learned Counsel for the Appellants, while inviting attention to the fact that they have already suffered imprisonment for a period of more than 13 months, has submitted that reduction of the term of custodial sentence to the period already undergone would be sufficient to serve the ends of justice. However, taking into consideration nature, number and situs of the injuries; social impact of the crime and other relevant circumstances of the case, the prayer is not acceptable. Nevertheless, interests of justice would be met if the term of custodial sentence u/s 307 of the IPC is reduced to 2 years and that of sentence u/s 324 of the IPC is also reduced proportionately.

26. Consequently, the appeal is allowed in part. In the result-

(i) The convictions u/s 307 read with 34 of the IPC (on both counts) and consequent sentences of fines are hereby affirmed. However, the term of corresponding custodial sentences is reduced from 7 years to 2 years.

(ii) The conviction u/s 324 read with Section 34 of the IPC is hereby affirmed. However, term of custodial sentence is reduced from 6 months to 2 months.

with the direction that the jail sentences shall run concurrently.