
(1997) 07 PAT CK 0056

In the Patna High Court

Case No : Criminal Appeal No. 230 of 1985

Ramsubhag Singh, Panchanand Singh and Nand Kishore Singh **APPELLANT**
Vs
The State of Bihar **RESPONDENT**

Date of Decision : 10-07-1997

Acts Referred:

Citation : (1997) 2 PLJR 685

Hon'ble Judges : R.N. Sahay, J;N.N. Singh, J

Bench : Division Bench

Advocate : Shyameshwar Dayal, Amicus Curiae, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ravi Nandan Sahay and Narendra Narayan Singh, JJ.—There are three Appellants in this appeal, who were charged, tried and convicted by the 6th Additional Sessions Judge, Arrah in Sessions. Trial No. 187 of 1979. The first Appellant Ramsubhag Singh is the father of Appellants No. 2 and 3, namely, Panchanand Singh and Nand Kishore Singh. Ramsubhag Singh has been convicted u/s 302 of the Indian Penal Code and sentenced to imprisonment for life. The remaining two Appellants were acquitted of the charge u/s 302/34 I.P.C. and have been convicted u/s 307/34 I.P.C. and sentenced to seven years imprisonment.

2. This case is related to an occurrence which happened on 10th May, 1974 in village Piania PS. Udwanthnagar in the district of Bhojpur. In the said occurrence Ram Dhyan Singh lost his life while two persons had suffered severe injuries.

3. Admittedly the land dispute was the cause of the unfortunate occurrence. It appears that there was a piece of land measuring 5 kathas situated in the north of village Piania. This land, according to the prosecution case, was owned by the deceased Ram Dhyan Singh and Surajbansh Singh half and half. Surajbansh Singh, the co-sharer although had half share on the said land but he had sold entire 5 kathas of land to Appellant Ramsubhag Singh about a year before the

occurrence. Ramsubhag Singh filed Mutation case before the B.D.O., Udwananagar for mutation of his name with respect of 5 kathas of land purchased from Surajbansh Singh. Ram Dhyan Singh filed objection before the B.D.O. on the ground that Surajbansh Singh had no authority to sell the entire land when Ram Dhyan Singh had half share. The Mutation matter was to be heard only on the next day of the occurrence. According to the case of the prosecution, although Mutation case was yet to be decided, the Appellants armed with Bhala had gone to the disputed land to erect a marai. Ram Dhyan Singh having come to know of this fact sent information to Mahatam Singh and his son Ram Singular Singh. It may be stated here that the deceased had transferred the land to Mahatam Singh by way of exchange and he had no interest left on the land. Ram Dhyan Singh and Mahatam Singh went to the disputed land at 6.30 A.M. on 10.5.1974 and protested Ramsubhag Singh against proposed erection of marai on the plea that he should wait till the mutation case is disposed of. An altercation took place and there was exchange of hot words from both sides. In the meantime, Kalap Rai, Madhusudan Rai and Brinda Singh arrived and Intervened. It is alleged that Appellant Ramsubhag Singh suddenly dealt with three bhala blows on the chest of Ram Dhyan Singh which caused instantaneously death of Ram Dhyan Singh. It is further alleged that Panchanand Singh and Nand Kishore Singh, sons of Ramsubhag Singh assaulted Mahatam Singh with bhala and Ram Singar Singh with lathi portion of their bhala. Having seen Ram Dhyan Singh lying dead, the Appellants fled away from the scene of occurrence.

4. Rukmina Devi, widow of Ram Dhyan Singh accompanied by Rabindra Singh and Choukidar Dasai Ahir immediately proceeded to Udwananagar Police Station which is four miles from the village Piania. Fardbeyan of Rukmina Devi was recorded by the officer-in-charge of the Police Station, Kapildeo Tiwary at 8.30 A.M. The Officer-in-charge registered the case under Sections 302, 307/34 I.P.C. against the named accused persons and took up investigation of the case and proceeded to village Piania. The officer in charge first of all prepared inquest report of the deceased in presence of Gupteshwar Singh and Chandrakant Tiwari. According to the Inquest Report (Ext.-B), the dead body of the deceased Ram Dhyan Singh was lying north to the house of inquest witness Gupteshwar Singh in a parti field. The Investigating Officer found two injuries on the person of the deceased, one on the right side of the chest and the other on the lower part of the head. The Investigating Officer found swelling on the head. After inquest was prepared, the dead body of Ram Dhyan Singh was sent to Sadar Hospital for autopsy which was done on the same day i.e. on 10.5.1974.

5. Dr. S.N. Mishra RW. 8, who performed the autopsy on the dead body of Ram Dhyan Singh found the following injuries:

(i) Incised penetrating wound 1" x 1/2" x deep chest cavity piercing to the left plura and lungs. Nearly 12 ounces of dark blood was collected in the left chest cavity.

(ii) Incised wound 1" x 1/2" x skin" deep over the left ridge of the lower part of the chest.

(iii) Incised wound 3" x 1" x skin deep over right scrotum.

(iv) Incised wound 1" x 1/2" x skin deep on the occipital part of the head.

The post-mortem report is marked as Ext.-1. The injuries were caused by sharp cutting weapon such as bhala and all the injuries were ante-mortem. The age of the injuries was 30 hours at the time of, postmortem examination. According to the opinion of the doctor, death was due to injury No. (i) which had caused severe haemorrhage and shock.

6. The Investigating Officer on inspection of the place of occurrence found the dead body was lying in the western ridge of the disputed land. This field was 30 cubits in length from east to West and 36 cubits in breadth from north to south. He found a Mango Wood pole fixed in the ground near the northern ridge of the field. He also found a hole in the ground west of that pole which had been partially filled up by earth. He found a piece of bamboo tied at the head of the mango wood pole and hanging in the ground. He also found other holes in the field for affixing poles in them south and north of the mango wood pole. He also found a thatched roof in fallen condition, one yard west removed from the mango wood pole. The upper straw of the fallen marai appeared old and the straw used beneath that looked to be new. The Investigating Officer was of the opinion that the marai had been fallen few hours before his inspection. South of the marai he found one khuta fixed in the ground which appeared to have been recently fixed. He seized the blood stained earth beneath the dead body of Ram Dhyani Singh and prepared seizure list. The Investigating Officer visited the Sadar Hospital, Arrah and found Ram Singar Singh admitted there in injured condition. Statement of Ram Singar Singh was recorded by Arrah Town police Station. The Investigating Officer along with the police Inspector went to the hospital where police inspector had earlier recorded the statement of injured Ram Singar Singh and the Investigating Officer also recorded his statement. After investigation was completed, charge sheet was submitted on 9.12.1984 against the Appellants under Sections 302, 307 and 34 of the Indian Penal Code. In due course cognizance was taken, case was committed to the court of sessions and charges were framed.

7. The Appellants in their defence pleaded that the informant and other witnesses of the occurrence had suppressed the real facts and implicated the Appellants in a false and concocted case. The Appellant Ramsubhag Singh in injured condition was admitted in Sadar Hospital, Arrah where Arrah Town police recorded his statement at 1.00 P.M. on 10.5.1974. The defence of the Appellant Ramsubhag Singh is that he was in possession of the disputed land since six months. He had got the said land in exchange from Surajbansh Singh six months prior to the occurrence. In the morning of the day of occurrence when he was fixing khuta on the said land, the prosecution party consisting of Mahatam Singh,

Ram Dhyan Singh, Ram Singar Singh, Rajdeo Singh and Masudan Singh came to his house. Mahatam Singh told Appellant Ramsubhag Singh that he had purchased the land from Ram Dhyan Singh so he should not keep his cattle there. Ramsubhag Singh asserted that he had purchased the entire land from Surajbansh Singh. Mahatam Singh instigated other members of the prosecution party, who had formed unlawful assembly to kill Ramsubhag Singh and dismantle the marai. The deceased Ram Dhyan Singh gave bhala blow on the chest of Ramsubhag Singh with intention to kill him but this accused caught hold of bhala which caused only minor injury on the right side of his chest. The other persons named above assaulted Ramsubhag Singh with lathi so brutally that he lost his senses. Several villagers, who reached the spot, were horrified with the action of Mahatam Singh and others. The villagers had also assaulted the members of Mahatam Singh. Appellant Ramsubhag Singh had also asserted that his sons Appellants No. 2 and 3 were away from the village on the day. They had gone to Mahudahi to attend the marriage in the house of Ganesh Singh a few days prior to the occurrence. Ganesh Singh is cousin of Appellant No. 1. Both sides examined their witnesses respectively.

8. Learned Additional Sessions Judge having analysed the evidence scrupulously came to the conclusion that the version, given by the prosecution witnesses are true and the plea of alibi with respect to Appellants No. 2 and 3 is not acceptably Learned trial judge in para-13 of the judgment has succinctly deal with the claims of Mahatam. Singh and the rival claim of Appellant Ramsubhag Singh in respect of plot No. 2376 khata No. 446 of village Piania, the area of which is 5 kathas as given in the order sheet of the mutation case. It appears from the discussions in para-13 of the judgment that the entire plot of 5 katha was allotted to Surajbansh Singh and he was coming in exclusive possession of the said land. Surabansh Singh was uncle of the deceased Ram Dhyan Singh. Being the rightful owner of the said land, he legally executed a deed of exchange in favour of Ramsubhag Singh on 12.10.1973 (Ext. D) and sequel to that Ramsubhag Singh entered into the possession of the said land. Mahatam Singh simply on the basis of survey entry in the name of deceased Ram Dhyan Singh purchased litigation by taking in exchange 2 1/2 dhurs of the P.O. Plot from the north by a deed of exchange dated 16.10.1973 i.e. subsequent to the deed of exchange executed by Surajbansh Singh. Mahatam Singh could not come into possession since Ramsubhag Singh was already in possession of the entire plot. The accused persons had put Palani, Nad and khuta after the exchange deed. In exchange of this plot by Surajbansh Singh, Ramsubhag Singh had exchanged his own land of plot No. 1991, khata No. 328 measuring 15 kathas to Surajbansh Singh. According to the Appellants Mahatam Singh had also exchanged his land measuring 8 decimals for 2 1/2 kathas of the deceased's land. However, Ram Dhyan Singh could not deliver possession to Mahatam Singh because Ramsubhag Singh was in possession. The prosecution party and the Appellants are entitled to raise plea of private defence in personal property. The possession of Ramsubhag Singh is supported by the evidence of Mahatam Singh himself. Mahatam Singh in

para-18 of his deposition has stated that there was mark of ploughing in the field and there was also a Dandand r which shows possession of the accused persons. The evidence of P.W.2 in para-6 indicates possession of the accused persons. The evidence of Rukmina Devi P.W. 3 shows that there was no Aal running in between the middle of the P.O. field. Investigating Officer could not find any mark of division showing separate possession of Mahatam Singh or his vendor deceased Ram Dhyan Singh. Significant Mahkgani Singh does not speak of his possession, but according to the widow of the deceased, the deceased was in possession. It appears from para 13 of the judgment of the trial court that there was bonafide dispute between Appellant Ramsubhag Singh on the one hand and the deceased Ram Dhyan Singh on the other hand.

9. A counter case was also registered against Mahatam Singh and Ors. on the fardbeyan of Appellant Ramsubhag Singh. Learned trial court has no doubt considered one of the evidence in favour of the defence as is obvious from para-18 of the judgment. The trial court found that the Appellants had right of private defence but trial court says-

defence case of going to the extent of causing such injury to Ramsubhag Singh for protecting his property" say the demolition of his palani being put on the portion of the land belonging to Ram Dhyan or his vendor Mahatam is not justified.

This finding is based on the injury sustained by Ramsubhag Singh which was simple in nature. According to the finding of the learned Trial Judge, the Appellant Ramsubhag Singh was not justified in inflicting injuries by bhala on Ram Dhyan Singh. In other words, he has exceeded the right of his private defence.

10. This Court while admitting this appeal had noticed the infirmities committed by the trial court and granted bail to the accused persons.

11. Mr. Shyameshwar Dayal, who has assisted the Court as Amicus Curiae, took pains to place the entire evidence of the relevant witnesses in order to show that the Trial Judge committed wrong, firstly in convicting the Appellant No. 1 u/s 302 I.P.C. despite categorical finding of right of private defence and secondly in the facts of the case the Appellants are entitled to verdict of acquittal since the prosecution has totally suppressed the injuries sustained by Ramsubhag Singh. Learned Counsel submitted that the prosecution party had uprooted the marai belonging to the Appellants and the Appellants had right of private defence for protecting the property from the damage caused by Ram Dhyan Singh and that Appellant Ramsubhag Singh himself received injuries, though it was not grievous, the conviction cannot be held to be proper. The first decision cited by the learned Counsel for the Petitioner is Lakshmi Singh and Others Vs. State of Bihar, . In this case two persons had lost their lives on petty and trivial dispute like the present one. The Supreme Court observed in para-2 of the judgment: "On a perusal of the evidence and the circumstances of the case, we feel that the

prosecution has not come out with the true version and the result is that the murder of the two persons has to go unpunished, and this is yet Anr. misfortune of the case, but if the prosecution does not choose to put forward the true version it is to be itself squarely blamed for the failure of the case." Learned Counsel for the Appellants has strongly relied on this decision.

12. The Supreme Court in Lakshmi Singh's (supra) followed the decision in State of Gujarat Vs. Bai Fatima and Another, in which Untwalia, J. speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

13. The facts of the present case clearly fall within the four corners of either of the first two principles laid down in State of Gujarat Vs. Bai Fatima and Another, . In Lakshmi Singh's case (supra), same principle has been reiterated as follows:

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inference:

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

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 where the defence gives a version which competes in probability with that of the prosecution one.

14. In the instant case although Ramsubhag Singh had not received very serious injuries, fact remains that there are only three eye witnesses, namely P.W. 1 Mahatam Singh, P.W. 2 Masudan Rai and P.W. 3 Rukmina Devi and all are

interested witnesses. There is no independent witness to support the occurrence. It is doubtful whether Rukmina Devi was witness to the occurrence. There is no reason why she should have accompanied the male members who had gone to the disputed land. It is claimed that the occurrence had not taken place in the manner as disclosed in the First Information Report and it was not the true version of the occurrence. There is no mention of the injuries found on the person of Ramsubhag Singh.

15. Mr. Dayal, learned Counsel for the Appellants has relied on a recent decision of the Supreme Court on the same point in *Mahabir Choudhary v. State of Bihar*, 1996 (2) PLJR (SC) 15, Indian Law Reports Patna Series 245. In this case, three persons were killed in a land dispute. The right of private defence was negated by the High Court and conviction of the accused persons was confirmed because in the opinion of the High Court simply because some persons came shouting from village Malpura was not enough to give rise to a reasonable apprehension that grievous hurt would be inflicted to the accused. The Supreme Court reversing the judgment of this Court held:

when the acts of Malpura people amounted to mischief, Appellants had a right of private defence to thwart the same. Nonetheless the first degree of right of private defence cannot be denied to them.

16. In the instant case, the Appellants were assaulted by the prosecution party consisting of several persons, who were armed. It is no doubt true that on the heat of moment Appellant Ramsubhag Singh inflicted injury on the vital portion of the body of the deceased but it has also come in evidence that Ramsubhag Singh also sustained following injuries:

1. Lacerated wound 1 1/2" x 1/2" x bone deep over the middle of his scalp.
2. Incised wound 1/2" x 1/8" x 1/4" over the front of right chest.
3. Swelling 2" x 1 1/2" over the left thigh.
4. Swelling 1 1/2" x 1" over the right forearm.

Some of the injuries, according to J the doctor, was caused by bhala.

17. In view of the discussions made above, we come to the conclusion that the case against the Appellants is not beyond all reasonable doubt. From the evidence it cannot be said with certainty that the Appellants had exceeded to the right of private defence as stated by the trial court. The genesis of the occurrence as disclosed in the evidence also does not appear to be true.

18. In the result, this appeal is allowed and the conviction of all the three Appellants by the 6th Additional Sessions Judge, Arrah in Sessions Trial No. 187 of 1979 is set aside and they are acquitted of the charges. The Appellants are discharged from the liability of their bail bonds.