
(2004) 10 P&H CK 0063
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 402-DB of 1996

Sita Ram and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Citation : (2005) 1 AICLR 177 : (2005) 1 Cri.CC 517 : (2005) 1 RCR(Criminal) 17

Hon'ble Judges : V.K.Bali, J and K.S.Garewal, J

Advocate : Mr. R.S. Ghai, Senior Advocate with Mr. Bipan Ghai, Advocate. Mr. Sanjay Vashisth, D.A.G., Haryana., Advocates for appearing Parties

Judgement

K.S. Garewal, J.

1. The five appellants herein along with seven others were tried by the learned Sessions Judge, Faridabad for the murder of Ram Kumar. The learned trial Judge pronounced his judgment on July 15, 1996 and was pleased to convict Sita Ram for the murder and sentenced him to undergo rigorous imprisonment for life. Other four appellants were found vicariously guilty of the murder, which had been the common object of the unlawful assembly of which they were members, and they were also sentenced to undergo rigorous imprisonment for life. There were also sentences of fine and convictions under other lesser offences with corresponding sentences. All the sentences had been directed to run concurrently. Seven of the accused were acquitted.

2. The appellants as well as their acquitted coaccused were all members of the family of Indraj of Nangal Brahman, Tehsil Palwal. Indraj had owned and possessed 32 acres of land at the time of his death in 1990. Indraj was survived by his widow and three daughters, namely, Triveni, Nem Wati and Kishni. The appellants and their coaccused were the daughters, sonsinlaw and grandsons of Indraj as well as one grand daughterinlaw.

3. Ravi Dutt appellant was the husband of Indraj's daughter Triveni and his two

sons were Sita Ram (appellant) and Virender (acquitted coaccused). Nem Wati, an acquitted coaccused, was the second daughter of Indraj and her son Pittan is one of the appellants. Kishni was the third daughter. She was acquitted by the trial Court along with her husband Thakur Lal @ Thakuri but their two sons Sarda Ram and Kali Charan are appellants before this Court. A third son named Satpal and daughter-in-law Nem Wati (Kali Charan's wife) had also been tried and acquitted.

4. The deceased in this case was Ram Kumar son of Narain Singh (PW4). Deceased Ram Kumar and Narain Singh's nephew Sanjay had propounded a will said to have been executed by Indraj in their favour in respect of his estate. After Indraj's death a dispute had arisen regarding inheritance to his estate. Mutation on the basis of inheritance had been under dispute before S.D.O. (Civil), Palwal. On the other hand Indraj's daughters Triveni, Nem Wati and Kishni had filed a suit in the Palwal Court challenging the will in favour of Ram Kumar deceased and Sanjay.

5. The case of the prosecution as presented before the trial Court was that on April 27, 1993 at about 3 P.M. Narain Singh (PW4) and his family were busy in threshing their harvested wheat crop in their fields in Nangal Brahman. Narain Singh's sons Ram Kumar deceased, Rakesh (PW5), Rohtas (PW6), Narain Singh's wife Ram Wati (PW7) and daughter Munish Kumari (PW13) were also present in the fields at that time. Sita Ram, Pittan, Ravi Dutt, Sarda Ram, Kali Charan, Triveni, Thukri, Nem Wati, Kishni, Satpal, Virender and Nem Wati reached the fields variously armed. Sita Ram was carrying a ballam and Pittan a pharsa. Ravi Dutt, Sarda Ram and Triveni were armed with lathis. These persons trespassed into Narain Singh's fields and attacked Narain Singh and his family members. Sita Ram inflicted a blow on Narain Singh's right leg with a ballam, Ravi Dutt inflicted a blow with a lathi on his left leg, Pittan inflicted a pharsa blow from its reverse side on Narain Singh's head and Sarda Ram gave a lathi blow on his right arm. Rakesh (PW5) responded by giving a lathi blow on Kali Charan's head. Pittan inflicted a pharsa blow from its reverse side on the head of Rohtas (PW6). Sita Ram also inflicted a ballam blow on Rohtas's left hand followed by Sarda Ram giving a lathi blow on Rohtas's right leg. Nem Wati beat up Munish. Pittan gave a pharsa blow to Ram Kumar followed by Sita Ram giving a ballam blow on Ram Kumar's chest on the left side. This was the fatal injury. Ravi Dutt also gave a lathi blow to Ram Kumar. Pittan gave a pharsa blow on Ram Kumar's chest from its reverse side. Triveni inflicted a lathi blow on Ram Wati. The occurrence was also witnessed by Lalu and Bhajan Lal who had been attracted to the spot and after rescuing the injured, evacuated them to the hospital at Palwal. Ram Kumar later succumbed to the injuries.

6. The injured persons in this case, namely, Narain Singh (PW4), Rakesh (PW 5), Rohtas (PW6) and Munish Kumari (PW13) were medicolegally examined at Civil Hospital, Palwal between 7 P.M. and 7.45 P.M. on April 27, 1993 by Dr. Krishan Kumar (PW3). After concluding the medicolegal examination of the witnesses, Dr.

Krishan Kumar sent information to S.H.O., Police Station Sadar, Palwal and on its basis SubInspector Rattan Singh (PW14) reached the Hospital at 8.45 P.M. After obtaining a fitness certificate regarding the fitness of the injured persons to make statements, SubInspector Rattan Singh (PW14) recorded the statement of Narain Singh (PW4), which was concluded at 9.10 P.M. at the Hospital and it was sent to the Police Station. On the basis of this statement F.I.R. was registered at Police Station Sadar, Palwal at 9.20 P.M. under Section 302 etc. I.P.C.

7. The Investigating Officer proceeded to examine the dead body of Ram Kumar and prepared the inquest report, whereafter the body was sent for postmortem examination which was conducted by Dr. Banwari Lal (PW2) on the following morning at 9.30 A.M. The Medical Officer found only the following two injuries on the dead body :

"1. A stab wound on the left side of the chest 4" below the left nipple on the anterior axillary line, horizontally placed of the size of 1/2". On following the path, the weapon passed through intercostal space, diaphragm, spleen through and through and then large intestine (anterior wall of intestine). Size of the wound was 1" x 1/4". On dissection the peritoneal cavity was full of blood. Corresponding cut was present on the shirt, which was smeared with blood.

2. Reddish contusion on the back 3 1/2" x 1" in size lying obliquely in the middle."

8. In the opinion of the Medical Officer death was due to shock and haemorrhage as a result of the injuries which were antemortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was few minutes to an hour and between death and postmortem 24 hours.

9. The Investigating Officer inspected the spot on the following day, prepared its site plan, lifted bloodstained earth and also recorded the statements of the witnesses. Sita Ram and six other accused were arrested on May 2, 1993 and a ballam was recovered from the possession of Sita Ram on May 5. Ravi Dutt was arrested on May 5. Triveni and Kishni were arrested on May 21. After completion of investigation the accused were sent up for trial. At the trial the accused were charged under Sections 148, 302 read with 149, 325 read with 149 (for causing injuries to Narain Singh and Rohtas), 324 read with 149 (for causing injuries to Narain Singh) and 323 read with 149 IPC (for causing injuries to Narain Singh, Ram Wati, Rakesh, Rohtas and Munish Kumari). The accused pleaded not guilty and claimed to be tried.

10. At the trial, the main witnesses examined by the prosecution were Dr. Banwari Lal (PW2) (with regard to the postmortem examination of the deceased), Dr. Krishan Kumar (PW3) (with regard to the medicolegal examination of Narain Singh, Rakesh, Rohtas and Munish Kumari), Dr. S.L. Mehra (PW10) (with regard to the fractures on the fifth metacarpal bone on the right hand of Narain Singh and first metacarpal bone on the left hand of Rohtas). The eyewitnesses to the occurrence, who were examined at the trial, were Narain

Singh (PW4), Rakesh (PW5), Rohtas (PW6), Ram Wati (PW7). Sohan Lal (PW8) (with regard to the disclosure statement made by Sita Ram and recovery of a ballam in pursuance thereof), Patwari Halqa Rajender Singh (PW 9) (in respect of the drafted site plan of the alleged place of occurrence), Bhajan Lal (PW12), Munish Kumari (PW13) and SubInspector Rattan Singh (PW 14).

11. After conclusion of the prosecution evidence, the accused were examined without oath under Section 313 Cr.P.C. and denied the various items of prosecution evidence that were produced against them. Sita Ram (appellant) gave the following counter story :

"It is a false case. The entire version has been concocted to implicate me and other members of my family. My father Ravi was busy in gathering the harvested crop from the field under our cultivation on 27.4.1993 at about 4.00 P.M., when the complainant Narain Singh and his sons Rakesh, Rohtas and Ram Kumar and daughter Munish trespassed therein and had tried to forcibly remove the harvested crop therefrom. When my father Ravi objected to that, Narain Singh had inflicted a lathi blow on his head whereas Ram Kumar, who was armed with a ballam, had inflicted a blow with that weapon to him (Ravi) on his right leg whereas the other sons and daughter of Narain Singh had given fist blows to him (Ravi). Therefore, my father Ravi had snatched that ballam from Ram Kumar and inflicted a blow to him with that weapon in defence of his person and property and Ravi had also inflicted injuries from blunt side of that ballam to other members of the family of Narain Singh in selfdefence. Ravi had started cultivating that land after his marriage with the daughter of Indraj."

12. Similar version was also given by Ravi Dutt appellant. The other appellants and the acquitted accused pleaded that they were not present at the spot and had been falsely implicated in the case. When called upon to enter defence, the accused examined Dr. Kamal Satyarthi (DW1) who testified regarding the presence of two injuries on Ravi Dutt appellant.

13. The learned Sessions Judge came to the conclusion that the appellants had perpetrated the crime and had gone to the place of occurrence armed with deadly weapons. They had been members of an unlawful assembly. The murder had been committed by Sita Ram with a ballam, in prosecution of the common object of the unlawful assembly formed by the appellants. Therefore, Sita Ram was convicted under Section 302 IPC while the other four appellants were convicted under Section 302 read with 149 IPC. There were also convictions under lesser offences. However, seven accused had been acquitted.

14. The learned counsel for the appellants took us through the evidence recorded at the trial and argued that the occurrence had taken place in the field which was in the possession of the widow and the three daughters of Indraj. The mutation of inheritance had been sanctioned in their favour and they were cultivating the land. According to the learned counsel, Narain Singh had misstated in the F.I.R. that the occurrence had taken place in their field. In crossexamination Narain

Singh admitted that the place of occurrence was the field of Paras Ram who was his cousin but he omitted to mention this in the statement on the basis of which the case had been registered. According to Narain Singh, Paras Ram's field adjoined the fields of Indraj but Narain Singh's own holding of 7 acres was at a considerable distance from the fields of Indraj. Learned counsel for the appellants also contended that there was no evidence on record to establish that Paras Ram's field adjoined Indraj's property, Paras Ram had not been examined and the site plan did not reflect the location of his land.

15. Reference had also been made to the site plan drafted by the Halqa Patwari, who admitted in his cross-examination that the place of occurrence was killa No. 37/15, that this field was under the cultivation of its owner, namely, the widow and the three daughters of Indraj. After Indraj's death the mutation of inheritance had been sanctioned in favour of his widow and daughters. Furthermore, the Investigating Officer of the case had admitted that the place of occurrence was the field of Ravi Dutt and bloodstained earth (earth ?) had been lifted from there. Infact, there was no field near the place of occurrence which was owned by Narain Singh.

16. On the basis of the above analysis of evidence regarding the possession of the land where the occurrence had taken place, the learned counsel for the appellants argued that the appellants were entitled to exercise right of private defence of property and had infact done so. The appellant had not committed any offence.

17. Learned counsel for the appellant referred to the medical evidence in order to show that during the course of the occurrence only one grievous, nay fatal, injury had been inflicted with a ballam which had pierced the chest of the deceased. The blade of the ballam inflicted a stab wound on the left side of the chest 4" below the left nipple, the weapon had passed through inter costal space, diaphragm, spleen which was cut through and through and the large intestine. On dissection the peritoneal cavity had been found to be full of blood.

18. Apart from this, Narain Singh (PW4) had also been injured and had received a simple lacerated wound on the right parietal region, a similar wound on the right parietotemporal region, an incised wound on the left leg, a lacerated wound on the right leg and a lacerated wound on the dorsal surface of the second phalanx of right thumb, contusion and abrasion on the right little finger. Out of these injuries, the injury on the right thumb was declared to be grievous.

19. Rohtas (PW6) received a contusion with a lacerated wound on the left thumb, two contusions on the occipital region. Except the grievous injury on the left thumb all other injuries were simple.

20. Rakesh (PW5) received a lacerated wound on the left temporal region and had bleeding in the left ear. Both injuries were simple. Munish Kumari received two contusions on the right jaw and head, both injuries being simple.

21. Ravi Dutt, on examination at 11.30 P.M. at Primary Health Centre, Panhera Khurd, was found to have a lacerated wound 12 cm x 3 cm on the scalp and a sharp wound 6 cm x 1 cm with gaping edges and clean margins on the right thigh.

22. The question to be considered in this case is whether all or any of the appellants possessed the right of private defence of either body or property. The subsidiary question would be, whether the right was available to all the appellants or not ? Did one or more of the appellants exceed the right of private defence ?

23. Law provides that nothing is an offence which is done in exercise of the right of private defence (Section 96 I.P.C.). Law also states that every person has a right to defend his own body and body of any other person against any offence affecting the human body. Every person also has a right to defend property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit these offences (Section 97 I.P.C.). Right of private defence of the body extends to causing death, if the assault by the assailant may reasonably cause apprehension that death may be the consequence or the assault may cause reasonable apprehension that grievous hurt may be the consequence, or the assault may be with intention to commit rape, gratifying unnatural lust, kidnapping or abduction or wrongfully confining someone (Section 100 I.P.C.). Right of private defence of property extends to causing death of the wrong doer if he commits robbery, house breaking by night, mischief by fire on any building etc. or a place used as a dwelling unit or building etc or theft, mischief or house trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt may be the consequence (Section 103 I.P.C.).

24. In the present case the prosecution has failed to prove that the field where the occurrence took place was either owned or possessed by Narain Singh or his family. In fact Narain Singh did not have any land near the place of occurrence. On the contrary, evidence established that the field where the occurrence took place was killa No. 37/15 where there was a heap of harvested wheat. This was a part of the original holding of Indraj deceased which had devolved on his heirs widow and three daughters. All the five appellants were close relations of Indraj. Sita Ram, Pittan, Sarda Ram and Kali Charan were his grandsons while Ravi Dutt was Indraj's soninlaw. Narain Singh had admitted in crossexamination that the entire land left behind by Indraj had continued to be under cultivation of his daughters and widow and the land had never been cultivated by him. However, the witness wrongly stated that the occurrence had not taken place on this land. As has been observed above, evidence produced at the trial categorically established that the occurrence had taken place near a heap of harvested wheat on a field which was a part of the holding of Indraj. Therefore, the appellants possessed the right of private defence of property and were entitled to exercise

the right since the deceased accompanied by his father Narain Singh, Rakesh (PW5), Rohtas (PW6), Ram Wati (PW7) and Munish Kumari (PW13) had criminally trespassed on their land. According to Section 105 IPC right of private defence of property commenced when a reasonable apprehension of danger to the property commenced, in the present case the right commenced when the complainant party entered the property. The right would continue as long as the complainant party remained on the property and the trespass continued.

25. Consequently, we hold that Pittan, Ravi Dutt, Sarda Ram and Kali Charan had not committed any offence since they had exercised the right of private defence of property in a bona fide and legitimate way by stopping the complainant party from entering the property and by resisting trespass. However, this cannot be said of Sita Ram because the trespass committed by the deceased and other members of the party was not of the type mentioned in Clause Fourthly of Section 103 IPC. Only house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, entitled anyone to exercise the right of private defence of property extending to causing death. The present was a case of simple criminal trespass defined under Section 441 I.P.C. punishable under Section 47 I.P.C. Therefore, Sita Ram by stabbing Ram Kumar in the chest with a sharp edged spear exceeded the right of private defence of property. Sita Ram could well have stopped Ram Kumar from trespassing on the property by inflicting lesser injury, say on the legs. Therefore, Sita Ram's act may not be murder but would be covered under Exception 2 of Section 300 I.P.C. and he was liable to be convicted under Section 304 Part II I.P.C.

26. In view of the above discussion, appeals of Pittan, Sarda Ram, Ravi Dutt and Kali Charan are allowed and they are acquitted of the charge. Sita Ram's conviction is converted from one under Section 302 I.P.C. to one under Section 304 Part II I.P.C. Sita Ram is sentenced to undergo rigorous imprisonment for seven years for causing the death of Ram Kumar. Sita Ram shall also pay Rs. 1.50 lacs as fine which shall be given as compensation to the heirs of the deceased. The amount shall be paid within two months, failing which the amount shall be recovered in terms of Section 421 Cr.P.C. and Sita Ram shall have to undergo a further term of 11/2 years rigorous imprisonment.

27. The appeal stands disposed of in the manner indicated above.

JUDGMENT accordingly.