
(1999) 12 AHC CK 0124
In the Allahabad High Court
Case No : Govt. Cri. Appeal No. 1837 of 1989

State of U.P.

APPELLANT

Vs

Haripal Singh and Others

RESPONDENT

Date of Decision : 23-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294, 313
Penal Code, 1860 (IPC) — Section 302, 307, 34, 99

Citation : (2000) CriLJ 3023

Hon'ble Judges : R.R.K. Trivedi, J; M.C. Jain, J

Bench : Division Bench

Advocate : A.G.A, for the Appellant; P.K. Singh, S.R. Singh, P.N. Mishra and Apul Misra, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Four accused persons, namely, Hari Pal Singh, Raghubar Singh, Daya Ram and Natthu Lal were tried in Sessions Trial No. 153 of 1986 by Special Judge/ Additional Sessions Judge, Pilibhit for the offences punishable u/s 302 I.P.C. read with Sections 34 I.P.C. and 307, I.P.C. read with Section 34 I.P.C. He acquitted all of them by judgment and order dated 24-5-1989. Aggrieved thereby the State preferred this appeal which was earlier dismissed by this Court on 22-5-1992. The State then filed SLP before the Supreme Court. SLP was dismissed by the Supreme Court against the accused-opposite parties Daya Ram and Natthu Lal by order dated 11-10-1993. However, as against the remaining two accused-opposite parties Hari Pal Singh and Raghubar Singh the order of this Court dated 22-5-1992 dismissing the appeal filed by the State against acquittal was set aside by the Apex Court in Criminal Appeal 62 of 1996 by order dated 15-1-1996 and the matter was sent back to this Court with the direction to restore the appeal, rehear and dispose of the same. It is in the above background that the appeal of the State against the accused-opposite parties Hari Pal Singh and Raghubar Singh as sailing their acquittal has been resorted and heard. The same is being decided by this judgment.

2. The relevant facts may be stated briefly. The accused-opposite parties Hari Pal Singh and Raghubar Singh are brothers being sons of Dwarka Singh, resident of village Bhagwantpur, P.S. Bisalpur, District Pilibhit. The genesis of the prosecution case was the written first information report Ex. Ka-1 lodged at Police Station, Bisalpur by PW1 Chhote Lal on 6-12-1985 at 1.05 p.m. The incident took place on that day at about 12.30 p.m. in Mohalla Durga Prasad in Quasba and P.S. Bisalpur, District Pilibhit. Rampa Devi-mother of PW1 Chhote Lal informant had died and her bier with funeral procession was being carried at about 12.30 p.m. on the fateful day to the cremation ground the way of which allegedly passed through Harit Kranti Vidya Mandir. The first information report stated that about a week ago, Baldeo Prasad had died and his dead body was also carried to the cremation ground through the same way. The accused-opposite party Hari Pal Singh was the Manager and the accused-opposite party Raghubar Singh was a teacher of that school. The remaining two accused Daya Ram and Natthu Lal were also teachers of the school. As soon as the informant with the funeral procession entered the gate of the school with the bier containing the dead body, the accused-opposite parties prevented them from passing through that way. When the informant and the persons accompanying him pleaded for carrying the bier through that way as that had earlier been settled to be the way for carrying the dead bodies to the cremation ground, citing example of the dead body of Baldeo Prasad also, the accused did not budge and yield. Instead, they became aggressive. The accused Daya Ram and Natthu Lal kept on guard to prevent the funeral procession from carrying the bier through that way and the accused-opposite parties Hari Pal Singh and Raghubar Singh went inside their house and reappeared with guns. Daya Ram and Natthu Lal exhorted them whereupon they opened fire from their guns. A number of persons included in the funeral procession sustained injuries.

3. The injured were Babu Lal, Brij Lal, Krishan son of Gaya Ram, Krishna Pal - son of Malloo, Jagdish, Shyam Babu, Roshan Lal, Om Prakash, Sunil, Saran Lal, Bihari Lal, Asharfi, Johnson, Kundan Lal, Daya Ram son of Sita Ram, Naresh and Puran Lal.

4. The first information report further mentioned that the injured and other persons included in the funeral procession had kept surrounded the accused persons when the informant had gone to lodge the first information report. On lodging of such F.I.R. a case was registered and investigation followed. The injured Babu Lal died of the gunshot injuries sustained by him while being taken to Pilibhit Hospital. All the injured were medically examined. All of them had sustained gunshot injuries. The dead body of the deceased Babu Lal was subjected to post-mortem which was conducted on 7-12-1985 at 10 a.m. by Dr. M. P. Singh in District Hospital, Pilibhit. The deceased was about 25 years of age and about 3/4 days had passed since he died. He had received several gunshot injuries and had died due to shock and haemorrhage resulting therefrom.

5. It is also relevant to mention here that DBBL gun of the accused-opposite

party Hari Pal Singh and SBBL gun of accused-opposite party Raghubar Singh had been seized by the Investigating Officer from them on 6-12-1985 itself. 8 empty cartridges had also been found by him at the spot which he had taken in possession. They were sent for scientific examination by comparison with the DBBL and SBBL guns recovered from the accused-opposite parties. The report of the Ballistic Expert is Ex.Ka-33 which shows that three of them had been shot from DBBL gun recovered from accused-opposite party Hari Pal Singh and the other three from SBBL gun recovered from accused-opposite party Raghubar Singh. Marks were not sufficient on the remaining two empty cartridges for comparison. Thus, it was established that several rounds of shots had been fired from the DBBL and SBBL guns recovered from the accused-opposite parties Hari Pal Singh and Raghubar Singh.

6. After conclusion of investigation, the police booked all the four accused-Hari Pal Singh, Raghubar Singh, Daya Ram and Natthu Lal to face trial.

7. The accused persons denied the prosecution story. The defence advanced by the accused-opposite party Hari Pal Singh in his statement u/s 313, Cr. P.C. was that in drunken state the Scheduled Caste persons entered the school premises with bier as a result of which the children in the school were frightened. When he presented the processionists accompanying the bier, they started hurling brick-bats, used lathis and even opened fire towards his house. It was then that in defence some shots were fired from the side of his house also. According to him, the school students Amar Nath, Chandra Sen, Rakesh Kumar, Kaushal Kumar, Pankaj Kumar and few others sustained injuries. He and other accused-opposite parties Daya Ram and Natthu Lal also sustained injuries. The statements of the other three accused u/s 313, Cr. P.C. were to the effect that the Scheduled Caste persons had got instituted a false case to make out a defence.

8. In support of its case, the prosecution examined 18 witnesses besides relying on documentary evidence. The accused also examined four defence witnesses to prove that the students Kaushal Kumar, Rakesh, Pankaj Kumar, Amar Nath, Chandra Sen and Sanjeev sustained some injuries. DW1 Dharm Pal, Jan Swasthya Rakshak and DW2 Satya Pal, Jan Swasthya Rakshak were examined in this regard. DW3 Banwari Lal was examined to support the defence version as pleaded by the accused-opposite party Hari Pal Singh in his statement u/s 313, Cr. P.C. D.W.4 Dr. J. K. Sharma was Jail Doctor in District Jail, Pilibhit and he proved the injury reports Ex. Kha3, Kha-4 and Kha 5 of the accused Daya Ram, Natthu Lal and Hari Pal Singh respectively. He examined them on 8-12-1985 at 10.30 a.m., 11 a.m. and 11.20 a.m. respectively. All of them sustained a few contusions. Hari Pal Singh sustained an abrasion also besides two contusions. The injuries were about two days old.

9. The case and the evidence of the prosecution did not find favour with the learned trial Judge who held that the incident did not appear to have occurred in the manner alleged by the prosecution. Rather the possibility was there of the defence version being correct. He, therefore, afforded the benefit of doubt to the

accused and acquitted all of them.

10. We have heard learned A.G.A. in support of this appeal and Sri P.N. Misra learned Counsel for the accused-opposite parties. We have also carefully gone through the evidence and material on record. The learned A.G.A. has urged that the prosecution evidence proved to the hilt that the present two accused-opposite parties had opened fire on the members of the funeral procession when they were exercising their legal and legitimate right to carry the dead body by the only available way through the school and they, therefore, committed the offences for which they were tried. The shots fired by them injured as many as 17 persons out of whom, Babu Lal had died. On the other hand, the only submission of the learned Counsel for accused-opposite parties is that the members of the funeral procession were committing criminal trespass over the school with use of force and as such right of private defence of person and property had accrued to the accused-opposite parties which under the given circumstances could legitimately extend to the causing of death. On this premise he reasoned that they did not commit any offence within the ambit of law. It has also been urged that there is no explanation whatsoever from the side of the prosecution in respect of injuries sustained by several students and the accused Hari Pal Singh, Daya Ram and Natthu Lal.

11. We have given our anxious consideration to the arguments advanced at the Bar and the solitary point of self-defence urged by the learned Counsel for the accused-opposite parties, we find that all the injured of the prosecution side had been examined as PW2 to PW17. All of them were declared hostile. They only spoke about the happening of the incident but their testimonial assertions were worthless to fix the culpability on the heads of the accused-opposite parties or to prove that actually the incident occurred in the manner alleged by the prosecution. One Sukh Lal was also examined as PW18 as an eye-witness, but he too was declared hostile. What we have observed about PW2 to 17 equally applies to his testimony too. The case solely rests on the testimony of PW1 Chhote Lal who is the informant but uninjured. It appears that the prosecution did not examine the formal witnesses including the Doctors and Investigating Officer for the reason that the genuineness of the prosecution documents was formally admitted by the defence side u/s 294, Cr. P.C.

12. Indeed, the presence of PW1 Chhote Lal at the spot at the time of the incident cannot be doubted because it was his mother Rampa Devi who had died and whose bier with funeral procession was being taken to the cremation ground when the incident occurred. He being the son of the deceased must have been one of the members of the funeral procession. The revenue papers on record show that plot No. 174.1 was recorded as Marghat (cremation ground). Plot No. 643 measuring 1.19 acres was recorded in the name of the accused-opposite parties and others. It was an Abadi plot.

13. It deserves mention that the legal position is well settled that the right of private defence need not be specifically pleaded. It may be apparent or may be

gleaned from the own evidence of the prosecution and the circumstances emerging therefrom. On going through the testimony of PW1 Chhote Lal, we find that certain revelations have come to be made by him which are of clinching nature. He admitted that he and others made an application to the Sub-Divisional Magistrate, Bisalpm to earmark the way to reach the cremation ground. Sri Sarvesh Mishra, Sub-Divisional Magistrate, Bisalpur had come to the village in this regard and had made an inspection. He also admitted that during investigation he had made the statement that after visiting the spot the Sub-Divisional Magistrate had directed that the way to the cremation ground was to be through the grove. It also came down from him that the cremation ground was situated in the northern side of the Harit Kranti Vidya Mandir through the precincts of which he and the processionists wanted to carry the bier. He further admitted that there was a grove in the east of the cremation ground and thereafter there was a plot. In the further east of the plot there was a Pagdandi (footpath) running north-south. It also came to be admitted by him that there was no obstruction in the form of a wall etc. for reaching the grove through the said Pagdandi. Thus, it comes out that the grove could be reached through the Pagdandi and the cremation ground could then be reached through the grove. It becomes crystal clear from his own statement that alternative way was available for reaching the cremation ground through the grove existing in the eastern side of the same (cremation ground) and that was the way which was to be used for reaching the cremation ground as per the direction given by the Sub-Divisional Magistrate after inspection of the spot. In this view of the matter, the prosecution case falls to the ground that the cremation ground could be reached only by passing through the precincts of the school.

14. We also wish to point out that the prosecution miserably failed to prove that the dead bodies had always been carried to the cremation ground by using the precincts of the school as the way. To say in legal words, there was no easementary right to carry the dead bodies through the precincts of the school. Even if it is accepted that a few days back the dead body of Baldeo Prasad had been carried through the said way (precincts of the school), it cannot and does not mean that any unfettered right had accrued in favour of all and sundry to carry the dead bodies through that way. The dead body of Baldeo Prasad could have been carried through that way either in the absence of the accused-opposite parties or with their consent. But in any view of the matter, that instance could not inhere any right in the persons on the prosecution side to insist to carry the dead body of PW1 Chhote Lal's mother Rampa Devi also through the same way.

15. It is an admitted position that the genesis of the trouble was the insistence of PW1 Chhote Lal and other members of the funeral procession to carry the bier through the precincts of the school. What he stated in paragraph No. 24 of his statement may be extracted : "JAB MULJIMAN NE ARTHI SCHOOL KE BHITAR JAANE SE ROKA TAB HAM-ME SE KUCHH NE VIRODH KIYA. US SAMAY ARTHI SADAK PAR THI. VIRODH SADAK PAR HI KIYA GAYA THA...". So what the

prosecution side threatened to do was the criminal trespass over the school precincts by insisting to carry the dead body through the school precincts. As we mentioned above, they had no such legal right. A right of private defence, therefore, accrued to the accused-opposite parties to prevent such criminal trespass over the school precincts. The members of the funeral procession of the prosecution side outnumbered the persons on the side of the accused-opposite parties. There was no time to have recourse to the authorities either. Under such circumstances, the accused-opposite parties could use force by even resorting to firing to prevent the criminal trespass threatened by the persons on the prosecution side. A mere reasonable apprehension is enough to put the right of private defence into operation. The Apex Court held in the case of *Puran Singh v. State of Punjab* AIR 1975 SC 1671 : 1975 CriLJ 1479 that the right of private defence of property or person, where there is real apprehension that the aggressor might cause death or grievous hurt to the victim, could extend to the causing of death also and it is not necessary that death or grievous hurt should actually be caused before right could be exercised.

16. We may also profitably refer to a Division Bench decision of this Court in the case of *Ram Autar and Others Vs. State*, . The facts of that case were that the members of the complainant's party armed with lathis and accompanied with bullocks and plough were going with avowed object of upturning the crop which had previously been sown by the opposite party. There was no doubt about their intention and their act, if completed would have amounted to mischief and criminal trespass. There was no time of having recourse to lawful authority as the Police Station was far away. It was found that the restriction imposed by Section 99, I.P.C. did not come into play and the opposite party had a right to protect their property. The mere circumstance that the property was situated at a distance of 6-7 Furlongs from the place at which the parties met, did not prevent the right of the opposite parties from coming into existence. It was held that even if the person claiming the right of defence of property happened to be placed at some distance from the property, he could exercise that right provided he found that the damage to property would accrue if the right was not exercised. We respectively agree with the principle enunciated in the said case that all that is required to give rise to the right of private defence of property is that a reasonable apprehension of danger to the property should commence. It has always to be found out in particular circumstances of each case whether in those circumstances the person who claimed the benefit of right of private defence had reasonable apprehension of danger to the property. If the question is answered in the affirmative, the right exists; and it is not necessary that the offence or an attempt should actually have been committed. The persons who exercise the right of private defence of property do a perfectly legitimate act. In case any one of them exceeds that right and gives a blow which causes death, then that is his individual act and he alone would be liable for the consequence thereof. If there is no evidence whatsoever to fix the identity of the individual who delivered that blow, the result would be that no one of those persons could

be convicted.

17. On application of the above principle to the facts of the present case, certain decisive and speaking facts deserve to be taken note of. It admits of no doubt that the persons on the prosecution side outnumbered the accused-opposite parties and they threatened to commit criminal trespass over the precincts of the school belonging to the opposite parties by insisting to carry the bier to the cremation ground through the school precincts. The Police Station was one kilometer away and there was no time for having recourse to lawful authorities. The members of the funeral procession who outnumbered the accused-opposite parties would have necessarily committed the criminal trespass in case accused-opposite parties had decided to first go to the Police Station in the hope of securing police aid, leaving the funeral procession there. Under such circumstances, the accused-opposite parties were well within their right of private defence of property to have used fire-arms and opening shots. Of course, they could use only as much force as was necessary to repel the danger. Any harm short of causing death of anyone on the side of the prosecution could be inflicted by them in the right of exercise of private defence of property. In this case, however, death of one Babu Lal was caused by the firing resorted to by the accused-opposite parties and theoretically, it may be said that right of private defence was exceeded in the present case. But we find that there is no evidence whatsoever to fix the identity out of the two accused-opposite parties as to whose shots hit Babu Lal resulting in his death. We have carefully gone through the statement of PW1 Chhote Lal and find that his testimony is not at all helpful in fixing the identity out of the two accused-opposite parties who may be held responsible for causing the death of Babu Lal. As we said the accused-opposite parties were well within their right to cause any injury to the persons on the prosecution side short of causing death. To that extent there could be no question of finding anyone of them to be guilty, having regard to the facts and circumstances of the present case. Of course, the death of one member of the funeral procession, namely, Babu Lal occurred due to firing resorted to by accused-opposite parties but this weakness looms large in the prosecution case that it is not possible to identify as to who of the two accused-opposite parties caused the fatal shot(s) to the deceased resulting in his death. For want of such specific evidence, none of them can be held to be guilty of any offence.

18. In view of the above discussion and reasoning relating to the different relevant aspects of the case we come to the conclusion that the accused-opposite parties Hari Pal Singh and Raghubar Singh cannot be held to have committed any offence within the ambit of law. Their acquittal by the lower court is justified for the reasons given by us hereinabove. We, therefore, dismiss this appeal. The accused-opposite parties are on bail. They need not surrender. Their personal bonds and bail bonds are hereby cancelled and sureties discharged.

19. Let a copy of this judgment along with record of the case be immediately sent to the Court below.