
(2005) 05 AHC CK 0230

In the Allahabad High Court

Case No : Government Appeal No. 3004 of 1982

State of U.P.

APPELLANT

Vs

Virendra Singh Kurmi, Bachchi Lal and Ashwani Kumar

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2005) 05 AHC CK 0230

Hon'ble Judges : M.C. Jain, J;M. Chaudhary, J

Bench : Division Bench

**Advocate : Jitendra Kumar, A.G.A. and K.P. Shukla, A.G.A, for the Appellant;
U.C. Misra, V.C. Katiyar and Dharendra Singh, for the Respondent**

Final Decision : Dismissed

Judgement

M.C. Jain, J.—In Sessions Trial No. 536 of 1981, the accused respondents Virendra Singh, Bachchi Lal and Bachchi Lal's son Ashwani Kumar were acquitted on 27.8.1982 by Sri R.C. Awasthy, the then Sessions Judge, Fatehpur of the charges under Sections 302, 302/34 and 307/34 I.P.C. The State has preferred this appeal thereagainst.

2. The relevant facts may be stated shortly. The incident occurred on 6.6.1981 at about 11 A.M. in village Jaam, P.S. Dhata, District Fatehpur and the report was lodged the same day at 2 P.M. by Kunwar Bahadur Singh PW 4. The deceased was Kunwar Bahadur's son Mohan Lal and Sohan Lal- another son of Kunwar Bahadur sustained injuries. About seven biswas land of Kunwar Bahadur was encroached in the chak of accused Bachchilal's father Mahabir. About 1? months before the incident, the lekhpal and other respectable persons of the village had got the same delivered to Sohanlal PW 2 who had sown Moong in it. A day before the present incident the three accused persons allegedly got the crop of Moong grazed by their cattle. Sohanlal and Mohanlal thereupon went to the field and asked the accused persons not to do so. They were threatened by the accused who challenged that they would see as to who could cultivate the land.

3. On the fateful day and time, Mohanlal, Sohanlal PW 2 and their father Kunwar Bahadur PW 4 were carrying mud from a pond situate in the north of the place of occurrence to the vacant land near their house. When they were on one of such trips and had reached the public passage in front of the sitting room of Girja Shankar, the three accused persons armed with lathis reached there. Virendra Singh instigated the other accused and he himself gave an iron mounted lathi blow to Mohanlal. Ashwari Kumar and Bachchilal also gave one lathi blow each to Sohanlal. As a result, both Mohanlal and Sohanlal fell down. On the cries of their father Kunwar Bahadur, Sohanlal's niece Kamla Devi PW 3, Brij Mohan, Din Bandhu etc. reached the place of occurrence. On being challenged, the accused went away towards their homes. As a result of the injuries sustained by him, Mohanlal died at the spot. Kunwar Bahadur dictated a report of the occurrence to Maikulal and took the same to Police Outpost Dhata along with the dead body of Mohanlal on a bullock cart and handed over the report there. From there, Sohanlal, who had accompanied his father, was sent to P.H.C. Dhata where his injuries were examined.

4. Sohanlal was examined at P.H.C. Dhata the same day at 3 P.M. by Dr Mehtab Singh PW 1. He found the following injuries on his person:

1. A lacerated wound 5 cm x ? cm x scalp deep over middle and slightly right side of head 12 cm away from the root of right ear along with reddish contused margin and bleeding clot.

2. A lacerated wound 4 cm x 1/2 cm x scalp deep over front and right part of head 11 cm away from root of right ear along with contused margin and bleeding clot.

5. Both the injuries were caused by blunt object and were fresh. They were kept under observation and he was referred to District Hospital, Fatehpur for clinical treatment and X-ray of head.

6. The post-mortem over the dead body of the deceased Mohan Lal was conducted on 7.6.1981 at 3 P.M. by Dr V.K. Tripathi. The deceased was aged about 32 years and about one day had passed since he died. The following ante-mortem injury was found on his person:

1. Lacerated wound 2" x 1/2" x scalp deep on the upper part of head 5" above base of nose. Underneath frontal, both parietal and both, temporal bones fractured. This fracture extended to the base of skull.

7. On internal examination, the fracture of frontal and both parietal and temporal bones had been found. There was also fracture of anterior cranial fossa. The cause of death was shock and haemorrhage as a result of ante-mortem injuries.

8. The investigation was conducted by Lal Singh Chandel PW 5.

9. Apart from the formal witnesses, Sohanlal PW 2, Kamla Devi PW 3 and Kunwar Bahadur PW 4 were examined as eyewitnesses.

10. The accused pleaded not guilty. Virendra Singh denied his presence at the spot and ascribed his false implication to enmity. Bachchilal contended that he had gone to see his field and found that its Mend was demolished by Mohanlal deceased and Sohanlal. On coming back, he met them under the bungalow of Sohanlal and questioned them for demolishing the Mend. They asked him to wait and started assaulting him with lathis. He made his defence. In the meantime, Ashwani Kumar came at the spot with a spade and in defence (of Bachchilal) struck Sohanlal from the wrong Side of the spade. Ashwani Kumar contended that he was digging mud in the pond. He stood by such defence. The accused also examined Dr J.S. Rai as DW 1 to prove the injury report of Bachchilal. The following injuries were found on his person on 7.6.1981 at 7.35 P.M.:

1. Contusion 3 1/4" x 1" bluish brown colour back of upper right chest oblique.
2. Contusion 2 1/4 " x 3/4" bluish brown colour right side of forehead oblique.
3. Contusion 1 3/4" X 3" bluish brown colour on outer and middle of left arm oblique.
4. Contusion 1 1/4" X 3/4" bluish brown colour on upper outer part of right forearm.

11. The injuries were simple, caused by blunt weapon and were about 1 to 3 days old.

12. Three other witnesses were also examined in defence. (sic) Khan DW 2 was Record Keeper of Police Office who produced an application of Bachchi Lal said to have been sent by him to S.P. on 8.6.1981 and Rama Kant DW 3 proved it (Ext.Kha-2). Desh Raj DW 4 was examined to prove the defence version of the incident.

13. We have heard Sri K.P. Shukla, learned A.G.A. from the side of the State and Sri U.C. Mishra, learned counsel for the accused respondents. We have also perused the record which has been summoned before us. The submission from the side of the State is that one person was dead on the side of the prosecution and another sustained injuries and that the testimony of the eyewitnesses including that of injured has been disbelieved by the court below for no cogent reason. On the other hand, the learned counsel for the accused respondents has argued that the prosecution presented a distorted version of the incident, concealing even the genesis of the incident and prosecution evidence was was not at all reliable. According to him, the prosecution side was the aggressor. He, thus, justified the acquittal recorded by the trial court.

14. We have scrutinized the evidence on record to cross check the findings of the trial judge in the light of the arguments advanced from the side of the State and the accused respondents. On meticulous examination of the evidence we find that the view taken by the trial court is reasonable one, not calling for any interference in appeal. The following discussion would render it abundantly clear.

15. To begin with, we should say that broadly speaking the motive is not material when there is direct eyewitness account, particularly when the incident is admitted to both the parties. But in the instant case, the motive assigned by the prosecution for the happening is intimately interwoven with it and probe into it leaves the impression that the prosecution has presented a distorted picture to twist the reality so as to suit its purpose. The prosecution side had allegedly sown Moong crop in their field which was allegedly got grazed by the cattle of the accused persons a day before the incident. Mohan Lal and Sohan Lal had allegedly gone to the field of the accused to question them in this regard, but they had threatened them (Mohan Lal and Sohan Lal) that they would see as to who would cultivate the land. Sohan Lal PW 2 and his father Kunwar Bahadur PW 4 made varied statements. Kunwar Bahadur stated that it was only ten days before the incident that his sons had told him about their chak being short in area and that the measurement had taken place about eight days thereafter. That would mean, the measurement had taken place only two days before the incident. Kunwar Bahadur PW 4 also stated that after measurement the accused did not leave the disputed land and it remained Parti. On the other hand, Sohan Lal PW 2 stated that it was 1? months before the incident that Lekhpal and other respectable villagers had got the land measured and had got delivered seven biswas land to them on which they sowed the crop of Moong. In the face of such varying statements of these two witnesses, sowing of the crop of Moong by the prosecution side itself could not be believed. They were also not uniform as to the presence of the accused persons at the time of alleged measurement.

16. According to Sohan Lal PW 2, the accused were present at that time. On the other hand, his father Kunwar Bahadur PW 4, the accused, though called, did not come at the time of measurement. The trial judge, in our opinion, rightly inferred that it rendered the defence story more probable that without knowledge of the accused persons, Mohan Lal and Sohan Lal had shifted Mend dividing their chak from that of the accused persons and had included seven biswas disputed land in their chak. When the accused side discovered it and protested about the same to Mohan Lal and Sohan Lal they (Mohan Lal and Sohan Lal) started assaulting Bachchi Lal accused who wielded his lathi in defence and on hearing his cries his son Ashwani Kumar present at the pond digging mud reached there and in defence of his father struck Mohan Lal with the wrong side of the spade carried by him.

17. It also deserves mention that Ext. Kha-3 is the copy of the proceeding initiated by Kunwar Bahadur PW 4 in the Court of Naib Tehsildar, Khaga (Case No. 37 of 1981 u/s 28 of the Land Revenue Act) on 18.8.1981 (subsequent to the present incident) against Mahabir father of Bachchilal accused and others. There is no mention in it regarding any measurement by the lekhpal and delivery of seven biswas land to the prosecution side by him (lekhpal) and other respectable persons of the village earlier to the present incident. Though Sohan Lal stated that he had instituted proceeding against the accused persons regarding the disputed area before the occurrence in question, but there is no

document to prove the same. Instead, the proceeding had been instituted by his father Kunwar Bahadur subsequent to the present incident as we have related here.

18. Secondly, no independent witness was examined by the prosecution. It was not a case where there was no other witness. The FIR itself mentioned the names of two other witnesses, namely, Brij Mohan and Deen Bandhu. The scribe of the FIR was one Maiku Lal. None of them was examined. Anyway, to come to the point, only partisan and interested witnesses were examined by the prosecution. Sohan Lal PW 2 is the real brother of the deceased Mohan Lal, Kamla Devi PW 3 is the daughter of another brother of Sohan Lal and Kunwar Bahadur is the father of the deceased Mohan Lal and Sohan Lal. It did not mean that their testimony could be thrown away, but the same inquired to be scrutinized more cautiously. Sohan Lal PW 2 stated that the above named witnesses were not prepared to state the truth due to the fear of the accused persons. There was nothing to show that the accused had any criminal antecedents and they were such bullies that none could come forward to depose against them. After all one Desh Raj DW 4 resident of the same village had been examined by the accused respondents in support of their version of the incident. It could not be shown that he was linked with the accused side or had any enmity with the prosecution side. Only a vague suggestion was made to him that he was deposing in favour of the accused because he was their Khandani. He refuted this suggestion.

19. As per Sohan Lal PW 2 when he, Mohan Lal and Kunwar Bahadur were going on one of the trips towards the pond to bring mud and had reached in front of the Baithaka of Girja Shankar, the three accused armed with lathis reached there and on the instigation of one of them Virendra Singh, he himself (Virendra Singh) gave a lathi blow to Mohan Lal. He (Sohan Lal) was given one lathi blow each by Bachchi Lal and Ashwani Kumar. It sounds to be unnatural that Kunwar Bahadur was not assaulted at all, though he was the khata-holder. Ordinarily, they would not have left Kunwar Bahadur. Only three lathi blows were allegedly given by the accused persons, one to Mohan Lal deceased and two, to Sohan Lal. Naturally, it would have hardly allowed time to Kamla PW 3 to reach the place of occurrence from her house on hearing commotion. Further, her statement indicated as if Kunwar Bahadur was not engaged in the act of carrying mud from the pond along with his sons and he, too, had reached the place of occurrence on there being a commotion. On a careful scrutiny, reliance could not be placed on the testimony of the eyewitnesses.

20. On another premise also, this part of the prosecution evidence fails to inspire judicial confidence that Mohan Lal, Sohan Lal and Kunwar Bahadur were engaged in the act of carrying mud from the pond. No mud or slush was found on the hands of deceased Mohan Lal. Investigating Officer did not note that there was any mud or slush on the dead body. There was no such note in the post-mortem report either. Sohan Lal PW 2 tried to get out of the difficult situation by saying

that on each trip starting from the pond, they used to wash off their hands and feet. It was illogical. Washing of hands and feet would have logically been done by them only on accomplishing the job of carrying mud from the pond. Further, Sohan Lal PW 2 stated that they had made cloth paddings on their heads to carry mud basket. The Investigating Officer did not recover any cloth padding or basket from the spot which could lend credence to the prosecution case as put forth by eyewitnesses.

21. The defence has proved the injuries of Bachchi Lal accused which were claimed to have been sustained in the same incident and an eyewitness, namely, Desh Raj PW 4 was examined in support of defence version of the incident. The version of the incident as projected by the accused is not also acceptable on its face value. They did not lodge any regular FIR at the police station regarding their version of the incident. Instead, Bachchi Lal professed to send a typed report to Superintendent of Police, Fatehpur on 8.6.1981 (Ext.Kha-2). The medical examination of Bachchi Lal was also got done by himself the following day of the incident. But the defence is not expected to prove its version in the manner required from the prosecution. The trial judge has rightly observed that the question of proving the version alleged by the defence arises only after the prosecution has discharged its burden proving the assault in the manner alleged by it. If the prosecution has itself failed to prove its case, it is immaterial that the defence has also not been able to establish its defence.

22. On cumulative consideration, the conclusion drawn by the trial judge was justified that the prosecution has not come up with clean hands and true story as to how the incident took place and what was the background. The defence case was also rightly disbelieved, but it (defence) was not supposed to prove its case to the hilt as is required from the prosecution. Pristine rule is that the burden of proof is on the prosecution to prove the guilt of the accused. The accused could be convicted only when on the evidence produced in court, a definite conclusion beyond doubt could be reached that they had committed the complained offence. It was not possible to convict them on mere possibility. The Court was also not supposed to speculate as to what had really happened. If both the parties come to the court with untrue facts and conceal the real truth, they have to blame themselves and they cannot expect the court to arrive at any definite conclusion on the basis of unreliable evidence produced either for or against either of the parties. The burden which rested on the prosecution to establish its case beyond reasonable doubt was not neutralised or shifted because the accused pleaded the right of private defence. The prosecution could not take advantage of the weakness of the defence.

23. In view of the above discussion, the acquittal recorded by the trial court is sustainable and we are inclined to dismiss the appeal. It is accordingly dismissed.

24. Judgment be certified to the lower court.