

CASE NO.:
Appeal (crl.) 1245 of 1999

PETITIONER:
BALWAN SINGH

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 27/04/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

WITH S.L.P(Cr1) NO. 2091 of 1999

B.P.Singh, J.

The sole appellant before us Balwan Singh has been sentenced to undergo life imprisonment under Section 302 IPC and to six months imprisonment under Section 323/34 IPC by judgment and order of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.314-D of 1997 dated 20th August, 1998. The appellant A-1 along with Jai Singh A-2, Inder Singh A3 and Rakesh A-4 were put up for trial. The Sessions Judge, Sonapat by judgment and order dated 21/22 March, 1997 acquitted A4 Rakesh but found remaining accused guilty of the offences under Sections 302/34 and 323/34 IPC. The High Court in appeal affirmed the conviction of the appellant herein under Sections 302 and 323/34 IPC but acquitted A2 and A3 of the charge under Section 302/34 IPC and convicted them instead under Section 323 IPC for causing simple injuries to some of the witnesses. A2 was sentenced to undergo rigorous imprisonment for six months and A3 was released on probation. Therefore, the said A2 and A3 have not preferred appeals before this Court. A special leave petition has been preferred by the State of Haryana against the acquittal of A2 and A3 of the charges under Section 302/34 IPC.

The case of the prosecution is that on the 23rd May, 1992 PW5 Virender Singh, son of the deceased Ram Chander, a resident of village Nadipur Majra had gone to attend the marriage of a friend in village Juan. The barat party had left for village Juan at about 6 .00 A.M. A1 and A2 who are brothers also went to attend the same marriage on their motor cycle. He requested Balwan A1 to take the bridegroom on his motor cycle to the Chaupal of the village for the vidai ceremony. This infuriated A2 Jai Singh and it is alleged that he slapped PW5 which was followed by an altercation. While returning to their village A1 and A2 threatened PW5 and told him that they will teach him and his father a lesson after they returned to their village. The further case of the prosecution is that at about 7/7.30 P.M.when PW5 was going to his house in the village, he saw that A1 to A4 were giving injuries on the person of his father Ram Chander (deceased). They were armed with Jailis and lathis and were inflicting injuries on his father in front of the house of Chander Bhan Mahajan, a co-villager. He also noticed that his mother Omwati PW7, wife of the deceased, and Tek Ram PW8, a neighbour had come to the rescue of his father. He also rushed to the rescue of his father but when he was trying to do so, A1

aimed Jaili blow at him which injured him on his right shoulder while A3 struck him on his left eye and the right shoulder. A4 aimed a Jaili blow at him which injured the wrist of his left hand. Tek Ram PW8 was also given a blow on his head by A2. When they raised alarm, all the accused ran away. The further case of the prosecution is that injured Ram Chander was removed to the civil hospital at Gannaur but they were advised to take him to the MCH hospital at Rohtak. Instead of taking him to the hospital at Rohtak, they decided to take him to AIIMS at Delhi but the authorities at the AIIMS directed them to the Safdarjang hospital and from there they were directed to take them to Ganga Ram hospital, where he was brought at about 3/3.30 A.M. on 24.5.92 i.e. early in the morning following the evening of occurrence. A first information report was lodged by PW5 at the Ganga Ram hospital on 25.5.92 at about 8.00 A.M. It appears from the record that the police officer who had come to know about the occurrence went to the village to record the report but on being told that the injured had been removed to Gannaur, he went to Gannaur and thereafter ultimately found them at Delhi in the Ganga Ram hospital. The prosecution examined PW5, the informant, PW7 Omwati, wife of the deceased and PW8 Tek Ram, a neighbour to prove its case. It also relied on the medical evidence to prove that Ram Chander (deceased) had received serious injuries which were sufficient in the ordinary course to cause death. As earlier noticed, the trial court acquitted PW4 but found the remaining accused guilty of the offence under Section 302/34 IPC. On appeal, the High Court

acquitted A2 and A3 of the charge under Section 302/34 IPC but maintained the conviction of the appellant under Section 302 IPC. A1 to A3 were also found guilty under Section 323/34 IPC.

The defence of the appellant and the other accused was that the occurrence did not take place in the manner alleged by the prosecution. Their case was that deceased Ram Chander was residing opposite the house of the Mehar Singh, elder brother of all the accused. Mehar Singh had young daughters living with him and Ram Chander deceased who was his neighbour, used to pass remarks against them, which annoyed him and his family members. Similar allegations were made against the informant PW5 and other sons of Ram Chander (deceased) who used to address his young daughters in abusive terms when they passed that way. At 7.30 P.M. on the date of occurrence while Jai Singh A2 was standing in the street in front of his house, Ram Chander (deceased) abused the daughters of Mehar Singh, his elder brother and an altercation followed. Hearing the noise, several persons came armed in support of Ram Chander (deceased) out of whom some were armed with Jailies and others were armed with lathis. One Joginder who was wielding a lathi assaulted Jai Singh A2 on his hand and head. He raised an alarm which attracted his younger brothers Balwan A1 and Inder Singh A3 to the place of occurrence. They were also assaulted with lathis and Jailies and sustained injuries. The injured were removed to the Government hospital at Sonapat. They were examined by PW6 who found serious injuries on their person and they also lodged a report with the police on 24.5.92 at 9.30 A.M. stating all these facts.

The testimony of PW6, the doctor who had examined the accused was recorded as a prosecution witness. Doctor Subodh Kumar PW6 stated that he had examined Inder Singh A3 on 23.5.92 at 11.07 P.M. and found the following injuries on his person:

1. Lacerated wound 5 cm x 1 cm x bone deep in left front to parietal region, fresh bleeding present. Advised X-ray skull. A.P. and lateral views.
2. Lacerated wound 7 cm x 1.5 cm, bone deep situated 2.5 cm posterior to injury No.1 fresh bleeding present. Advised X-ray skull. A.P. and lateral views.

3.Lacerated wound 6.5 cm x 1 cm, bone deep situated 2 cm posterior to injury No.2. Fresh bleeding present. Advised X-ray skull. A.P.and lateral views.
4.Lacerated wound 6 cm x 1.5 cm, bone deep situated in right frontal region. Fresh bleeding present. Advised X-ray skull. A.P.and lateral views.
5.Diffuse swelling left hand. Advised X-ray left hand A.P.and lateral views and Orthopedic Surgeon's opinion.
6.Complaining of pain in lower thoracic spine, tenderness present. Advised X-ray T6 to T12 spines A.P.and lateral views and Orthopedic Surgeon's opinion.
7.Lacerated wound 1/2 cm x 1/4 cm, over the dorsum of proximal interphalangeal joint of right index finger, skin deep. Fresh bleeding was present."

Similarly, he examined Balwan Singh A1 at 11.20 A.M.and found the following injuries on his person:

"1.Lacerated wound 3 cm x 1 cm x bone deep in frontal region. Fresh bleeding was present. Advised X-ray skull A.P.and lateral views and observation.
2.Right black eye present. Advised X-ray skull A.P.and lateral views.
3.Diffused swelling over right zygomatic prominence. Advised X-ray face A.P.and lateral views and Orthopedic Surgeon's opinion.
4.Abrasion 2.5 cm x 1 cm over lateral aspect of right arm at the junction of upper and middle third. Movements normal. Fresh bleeding was present.
5.Diffuse swelling right forearm. Advised X-ray left hand A.P.and lateral views and Orthopedic Surgeon's opinion."

He also examined A2 Jai Singh and found the following injuries on the person:

"1.Lacerated wound 3.5 cm x 1 cm x bone deep over occipital region. Advised X-ray skull A.P.and lateral view. Fresh bleeding was present.
2.Lacerated wound 1 cm x 1/2 cm x 1/2 cm over frontal region. Fresh bleeding was present. Advised X-ray skull A.P.and lateral views.
3.Diffuse swelling of right fore arm. Advised X-ray right fore arm. A.P.and lateral views and Orthopaedic Surgeon's opinion.
4.Abrasion 2 cm x 1 cm over left acromion process.
5.Complaining of pain left index finger. No external mark of injury seen."

The injuries found on the person of A1 to A3 would disclose that they were assaulting on a vital part of body, namely, their skull. The doctor did not express any opinion

about the nature of the injuries, awaiting X-ray report with regard to those injuries.

It was argued before us by counsel for the appellant that in the facts and circumstances of this case, the failure of the prosecution to explain the injuries on the person of the accused was fatal. He submitted that even the High Court did not find the evidence of the witnesses to be wholly reliable, and to some extent the findings recorded by the High Court are consistent with the case of the defence, rather than the case of the prosecution. He submits that in the facts and circumstances of this case, all the accused are entitled to an acquittal, and in any case, entitled to the benefit of doubt. The evidence on record probablises the defence of the accused, while the testimony of the prosecution witnesses stand discredited by reason of their failure to explain the injuries on the person of the accused.

Counsel for the State drew our attention to the defence of Omwati PW7 wife of the deceased and sought to argue that in her deposition an explanation has been offered for the injuries caused to the accused. She deposed that when she apprehended danger to her husband she had handed over a lathi to him and that he wielded his lathi to defend himself. She deposed that she had seen her husband exchanging blows with the members of the defence party. The deposition of PW5 is not acceptable for two reasons. Firstly, this was not stated by her when she

was examined under Section 161 Cr.P.C. She has not stated in her statement recorded in the course of investigation that she had seen her husband exchanging blows with the members of the defence party. Secondly, it is highly improbable that the deceased Ram Chander all by himself could have caused so many injuries to A1 to A3. Obviously, therefore, the explanation offered by Omwati PW7 is in the nature of an after-thought.

As to the place of occurrence, there is considerable dispute. According to the prosecution, the occurrence took place in the gali in front of the house of Chander Bhan Mahajan. It is there that Ram Chander(deceased) was assaulted by the accused. It is admitted by PW5 that from the place of occurrence as pointed out by him no blood was recovered for chemical examination nor was any earth sample taken for the purpose. That by itself may not be of very great significance, but what is mattered is the fact that even the High Court found that this part of the prosecution case is not true. The High Court found that the place of occurrence must have been the lane in front of the house of the deceased. That is precisely the defence case also. In effect the High Court has accepted the place of occurrence as alleged by the defence, rather than the place of occurrence as pointed out by PW5 in the course of her deposition. We can, therefore, proceed on the basis that the occurrence took place in front of the house of the Ram Chander where he was assaulted. That is consistently the defence case, since house of Mehar Singh, brother of deceased is opposite the house of Ram Chander(deceased).

The question then arises whether the failure of the prosecution to explain the injuries suffered by the accused is not fatal to the case of the prosecution. It is true that in all cases failure of the prosecution to explain injuries to accused may not be fatal, and that the consequence of to explain such injuries depends upon the facts and circumstances of the case, the nature of the occurrence and the nature of the injuries suffered by the accused.

In this case we find that the injuries suffered by A1 to A3 are numerous. We can say that the injuries were serious because any of the injuries on the skull could have proved fatal. Fortunately, that did not happen. The High Court noticing the evidence took the view that though the prosecution had not explained the injuries on the accused persons and may not have come out with a correct version of the occurrence, this could be said to be a case of a free fight and, therefore, right of private defence was not available to any of the participants and each one must be held responsible for his own conduct and action. We do not find ourselves in agreement with this view. The mere fact that the accused are also found to have sustained serious injuries unexplained by the prosecution does not necessarily give rise to an inference that there must have been a free fight. In the instant case, we find that there is ample evidence on record to establish that the occurrence took place in a different manner altogether in which the accused were also injured. They were promptly examined by the doctor who was examined as PW6, and they had also lodged a first information report stating relevant facts and alleging that it was the prosecution party which was the aggressor. From the facts of the case it becomes apparent

that the prosecution has not disclosed the true genesis of the occurrence. The motive suggested by the prosecution does not appeal to us, because if there was an altercation between A1 and A2 in village Juan when a request was made by PW5 to A1 to take the groom on his motor cycle to the Choupal, there appears to be no reason why the accused would have assaulted his father after returning to the village, particularly, when PW5 was not with his father. The motive as alleged by the prosecution does not appeal to us because it does not appear to be natural that for the conduct of his son at a different place, the appellant would return to the village and kill his father. Having regard to the place of occurrence as found by the High Court, the defence of the accused is probablised. It is well settled that while the prosecution has to prove its case beyond reasonable doubt, the defence has only to produce evidence or show material on record which probablise its defence.

Having regard to the facts of the case and the findings of the High Court, we are satisfied that the case of the prosecution is not proved beyond reasonable doubt. The prosecution has not disclosed the true genesis of the occurrence. On the other hand, the evidence discloses that the occurrence took place in a different manner and at a different place in which three members of the defence party also suffered serious injuries. In these circumstances, the appellant and the other co-accused were at least entitled to the benefit of doubt.

We, therefore, allow the appeal, set aside the judgment and order of the High Court impugned and acquit the appellant of all the charges levelled against him. The special leave petition preferred by the State is dismissed.

The bail bonds furnished by the appellant are discharged.