

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ROOP SINGH & OTHERS

DATE OF JUDGMENT 12/09/1995

BENCH:
AHMADI A.M. (CJ)
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AHMADI A.M. (CJ)
BHARUCHA S.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 215 JT 1995 (6) 479
1995 SCALE (5) 264

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Ahmadi, CJI

This appeal by the State of Uttar Pradesh is directed against the order of acquittal passed by the High Court on 19th May, 1991 in reversal of the order of conviction recorded by the Ist Additional Sessions Judge, Farukhabad by which the respondents were convicted under Sections 302/149, IPC, and were sentenced to suffer imprisonment for life. They were also convicted under Section 147, IPC, and were ordered to suffer rigorous imprisonment for one year. Both the sentences were to run concurrently. Briefly stated the facts are these:

On the morning of 23rd April, 1977, PW.3 Beti Devi had gone to ease herself when Bhanwarpal, since deceased, teased her which was noticed by the girl's uncle Rambir Singh who reprimanded the former. This led to a heated argument. Bhanwarpal left in a huff threatening to see him. On the same day at about 12.30 p.m. when Rambir Singh was near Gulu's 'Madhiya' (a shed with a roof but open on all sides) along with Deopal Singh and Babu Singh, the respondents along with Bhanwarpal came there armed with sticks and lathis and launched an assault on them. Deopal Singh and Babu Singh had knives which they wielded in self defence. But both of them were killed and Rambir Singh tried to run away but he too was chased and killed near a mango tree. Ganga Singh brother of Rambir Singh went to the police station and lodged his FIR at about 1.50 p.m. During investigation two knives were recovered from the place where the deceased Deopal Singh and Babu Singh were lying.

The defence version is that there was an altercation between Rambir Singh and Bhanwarpal around 10.00 a.m. at which the former was very angry. At about 12.30 p.m. Roop Singh and Bhanwarpal had gone to the village and feeling tired the latter sat in Gulu's 'Madhiya' to rest. While he

was resting there he was surrounded by Rambir Singh, Kedar Singh, Gyan Singh, Babu Singh and Deopal Singh and was stabbed to death. Because of the hue and cry raised by Bhanwarpal, since deceased, and Roop Singh, members of the public came there and attacked the assailants with lathis to rescue the victim. In the course of this attack lathi blows were sustained by the assailants resulting in loss of life. Thus, the respondents contend that the assault by the villagers was responsible for the death of Rambir Singh, Deopal Singh and Babu Singh whereas Bhanwarpal was killed by the last two. Find of knives from near the dead bodies of the said two persons is projected as corroborating the defence version. Bhanwarpal Singh had three incised and three penetrating stab wounds. Roop Singh lodged the FIR at 1.40 p.m.

There is no dispute that the incident happened in which in all four lives were lost. The medical evidence shows that Rambir Singh, Deopal Singh and Babu Singh died on account of lathi blows received by them whereas Bhanwarpal died of stab wounds. The find of blood and knives establishes the place of the incident. Both sides had lodged complaints with the police, the respondents' side at about 1.50 p.m. There is, therefore, no dispute that all the four met with homicidal deaths.

The prosecution examined four witnesses, namely PW.1 Ganga Singh brother of deceased Rambir Singh, PW.2 Usman Khan, PW.3 Beti Devi and PW.4 Gyan Singh as eye witnesses to the occurrence whereas the defence relied on the dying declaration of deceased Bhanwarpal Singh and the FIR lodged by Roop Singh wherein the case set up is that the three of the prosecution side were killed by the villagers and not the respondents. As stated earlier the trial court convicted the respondents but the High Court acquitted them holding that the respondents had caused the injuries in self-defence. Four defence-witnesses were also examined.

The time of the incident is not in dispute. As to the place of the incident there are two versions. The prosecution case is that they were assaulted outside Gulu's shed and it was in the course of the said attack that Deopal Singh and Babu Singh used their knives in self-defence. The respondent contend that the assault was launched by Deopal Singh and Babu Singh with knives when Bhanwarpal was sitting inside the shed and this fact they say is corroborated by the find of blood from that place. Unfortunately the blood soaked earth was not sent to the chemical analyst and the serologist with the result that it is difficult to say if it was of Bhanwarpal or as urged by the prosecution that it could be of Deopal Singh and Babu Singh who may have staggered into the shed. The High Court has accepted the defence version and disbelieved the prosecution story that the two had pulled out their knives after they were attacked.

PW.3 Beti Devi is the young girl who was teased by Bhanwarpal in the morning and her uncle Rambir Singh had reprimanded the former which led to a heated exchange. That was the immediate cause for the subsequent incident in the afternoon. PW.1 Ganga Singh lodged the FIR wherein reference was made to the morning incident. The prosecution case is that in the afternoon when the three deceased persons and PW.1 were returning after purchasing medicine from Gursahaiganj they were attacked by the respondents near Gulu's shed in Ismailpur. There is no dispute that the police station being one and a half miles from the place of occurrence, there was no delay in the lodging of the complaint, the respondents side lodged it ten minutes before

the prosecution side. Therefore, if any weight is to be given to the prompt lodging of the FIR we do not think that either side can claim to score over the other.

The immediate cause for the incident is not in doubt. PW.3 Beti Devi has proved it and is corroborated by the FIR lodged by PW.1 Ganga Singh. In a village such an incident in which a young lady of 20 or 22 is involved is taken seriously. Therefore, it is quite possible that her uncle Rambir Singh had not taken the behavior of Bhanwarpal kindly. He must have lost his temper. While he may be justifiably annoyed with Bhanwarpal, if he had crossed his limits it is quite possible that the latter may have felt insulted. This much for the morning incident.

The learned Additional Sessions Judge accepted the prosecution version regarding the incident and rejected the defence as improbable. According to him, the plea of self-defence is not borne out from evidence, direct as well as circumstantial. The morning incident may have annoyed Rambir Singh, but so far as he is concerned, it had come to an end because if he wanted to do any harm to Bhanwarpal Singh, he had the opportunity to do so in the morning itself when the latter was alone. The greater possibility was that Bhanwarpal Singh felt insulted and annoyed and carried a desire for revenge. It is, therefore, possible that he and his companions, having come to know that Rambir Singh and others had gone to purchase medicine and would pass by that way on return, waited for them and when they passed by, the assault was launched. The story that after Bhanwarpal Singh was fatally injured, third persons, namely, villagers who had nothing to do with the dispute intervened causing the death of all the three persons is difficult to accept. Even if villagers were to intervene, they would intervene for the limited purpose of separating the feuding sides, not to kill members of one side; they would not show such animosity as to chase Rambir Singh and kill him. In any case, according to the learned Judge, there was absolutely no justification for chasing and killing Rambir Singh even if one were to assume that villagers had attacked Deopal Singh and Babu Singh. Lastly, he noticed that if there was any ring of truth in the defence version, it is difficult to appreciate why PW.1 Ganga Singh would allow the real culprits of his close relatives to escape while naming the assailants.

The High Court on the other hand refused to place reliance on the prosecution witnesses and found a ring of truth in the defence version for the two reasons, (i) blood was found in Gulu's 'Madhiya' and (ii) two knives were lying near about the dead bodies of Deopal Singh and Babu Singh. The High Court doubted the prosecution version that the assault was launched by the defence side and Deopal Singh and Babu Singh had used the knives which they were carrying in self-defence. In taking this view, it noted that if the prosecution version was correct, the two deceased would have had no opportunity to take out their knives from their waist as even that fraction of a movement would have been sufficient for the assailants to finish them. That is why it was inclined to think that the two deceased persons who happened to be the sons-in-law of the complainant must have launched the assault. It is only then that they would have been able to cause as many injuries as they did on the person of Bhanwarpal Singh. It also thought that the defence version that he was attacked by as many as 4 persons with knives was probable having regard to the number of stab injuries sustained by him. In this connection, reference has been made to the evidence of the defence witness Dr. S. C. Dubey. The other facet highlighted by the High Court is that

if the prosecution version was correct, it is difficult to understand why only one person received knife injuries when the two sons-in-law of PW.1 were being attacked by as many as 7 persons with lathis and sticks. It is difficult to believe that only one person would receive the knife injuries and all others would go scot-free. On this line of reasoning the High Court came to the conclusion that the defence version was more probable and accepted the theory of self-defence propounded by the accused. The High Court, therefore, reversed the conviction and acquitted the accused.

As pointed out earlier, there is no dispute in regard to the morning incident. Bhanwarpal Singh had made certain indecent and suggestive gestures when PW.3 Beti Devi had gone out to ease herself. Being a young lady of 20 or 22 years, Rambir Singh justifiably lost his temper when he noticed the misdemeanour of Bhanwarpal Singh. He reprimanded the delinquent whereupon he left in a huff. As rightly pointed out by the trial court if Rambir Singh wanted to physically assault Bhanwarpal Singh, he had the reason and opportunity to do so at that very point of time and would not have allowed Bhanwarpal Singh to leave the place unharmed. Therefore, so far as Rambir Singh is concerned, he took the morning incident as closed. But as rightly pointed out by the trial court the possibility of Bhanwarpal Singh smarting under the morning insult could not be ruled out. Secondly, the High Court does not deal with the probability of the defence version from the point as to why villagers who had no axe to grind launched a fatal attack on all the three persons and should show such venom as to chase Rambir Singh who was running away from the scene of occurrence and kill him under a mango tree. The High Court is totally silent on this aspect of the case. The theory that all the four persons on the prosecution side were armed with knives is also not corroborated since only two knives were found lying near the dead bodies of Deopal Singh and Babu Singh. No other knife was found from or near the scene of occurrence or on the person of Rambir Singh. PW.1 Ganga Singh was not named as one of the assailants in the cross complaint lodged by Roop Singh. This aspect of the case has also been over-ruled by the High Court. The situation which then emerges is that after the morning incident Bhanwarpal Singh felt insulted and smarting under that insult he was perhaps keen to take revenge. He must have learnt that the members of the prosecution party had gone to purchase medicine and would be returning via Gulu's shed. It is, therefore, quite probable that he and the other respondents were waiting for them to return. It is an established fact that both Deopal Singh and Babu Singh were carrying knives. The find of blood from Gulu's shed is one feature which must be kept in mind. But at the same time, it must be remembered that the Investigating Officer had not bothered to send the blood stained earth which he claims to have recovered therefrom to the Chemical Analyser and Serologist for report. Even the blood groups of Deopal Singh and Babu Singh was not secured by scientific analysis. The clothes of Bhanwarpal Singh must also have been drenched with blood, but no attempt was made to ascertain his blood group and match it with the blood group of the blood found in blood stained earth. The Investigating Officer was, therefore, rather casual in his approach though this was a case of triple murder and fatal serious injuries were caused to Bhanwarpal Singh who died a few days later in the hospital. The High Court placed reliance on the dying declaration of Bhanwarpal Singh recorded by the Medical Officer but did not

deal with the reasons which weighed with the trial court in rejecting that piece of evidence. We are afraid that even the approach of the High Court leaves much to be desired. If we consider it probable that it was Bhanwarpal Singh who felt insulted and had reason to take revenge, it is difficult to proceed on the premise that the attack was launched by the prosecution side. At the same time it is intriguing how only Bhanwarpal Singh received all the stab wounds from Deopal Singh and Babu Singh. As we have pointed out earlier, the deceased Bhanwarpal Singh had three incised wounds, first on the back of the left fore-arm, second on the right side of the epigastric region and third on the outer side of the second injury, while he had three penetrating wounds on the abdominal side. When he was admitted to the hospital at about 1.30 p.m. his condition was poor and his pulse rate was low. This is clear from the evidence of DW.4 Dr. S. C. Dubey. DW.1 Dr. K. K. Aggarwal had conducted the post-mortem on the dead body of Bhanwarpal Singh after he passed away on 29th April, 1977 i.e. 6 days after the incident. His evidence shows that he had noticed certain stitched wounds at the places noticed by Dr. S.C. Dubey. No other member of the defence side sustained any stab injuries. This would go to reveal that the initial attack or fight was between Bhanwarpal Singh on the one hand and Deopal Singh and Babu Singh on the other hand. It would be seen that while the attack was launched by Bhanwarpal Singh, the other two got the better of him and inflicted knife injuries on him. Immediately thereafter the other members of Bhanwarpal's party launched the attack with lathis and sticks on Deopal Singh and Babu Singh. The evidence of Dr. Bansal shows that Deopal Singh had four lacerated wounds, first, on the back of the head over the left side which was scalp deep; second, on the left elbow, third, on the left side of the thigh and the fourth, over the left front of the left leg. He also had a contusion over the left side of the neck, possibly a continuation of the first mentioned lacerated wound. There was an abrasion also on the left side of the fore-head and an abraded contusion over the right fore-arm. This would show that lathi blows were showered on him and the most serious blow fell on the left side at the back of the head. So far as Babu Singh is concerned, he had three laceration, the first over back of the head which was scalp deep, the second over the right of the head and the third over the left side of the head. He had multiple abrasion over the right shoulder and deltoid region, an abraded contusion on the back of the right fore-arm, an abrasion on the right leg, swelling over the neck and multiple contusions all over the back. This would go to show that lathi blows were showered on him and he was ultimately strangled to death. This would give an indication of the nature of assault on these two persons. In the course of such an assault by several lathi wielding assailants, the High Court is right in suspecting why only Bhanwarpal Singh received knife injuries. It would, therefore, seem that the more probable version is that although Bhanwarpal Singh may have initiated the assault, the other two got the better of him, stabbed him and only thereafter the others assaulted him to free him from their clutches. To that extent it can be said that they acted in self-defence. But when Rambir Singh saw his two companions being killed in this ruthless manner he got scared and tried to run away from the scene of occurrence. There is no evidence worth the name to show that he was armed with a knife or any other weapon. No one has tried to question the correctness of the prosecution evidence that his body was

found almost a furlong away from the place of occurrence under a mango tree. If that is so, the evidence of the prosecution witnesses that after he ran away from the scene of occurrence, the respondents chased him, overtook him and thereafter killed him appears credible. The find of the body from under the mango tree is strong corroborative evidence in favour of the prosecution version as regards the killing of Rambir Singh. There was no question of any self-defence because Rambir Singh was running away and the defence party had nothing to fear from him. In fact it was their venom which led them to chase him and kill him. He was a helpless unarmed person. This aspect of the prosecution case is difficult to doubt even though there may be some lurking doubt in regard to the correctness of the genesis of the incident near Gulu's shed. There is also considerable force in the trial court's reasoning that while it may be understandable that the complainant may involve false persons, it is not possible to believe that he would allow the real culprits to escape. Therefore, the theory that the villagers had launched an attack on both Deopal Singh and Babu Singh and later on Rambir Singh, is difficult to believe. It is, therefore, difficult to believe the defence version that the assault was launched by villagers. It is here that the defence version collapses. Therefore, even if we were to give the benefit of doubt in regard to the killing of Deopal Singh and Babu Singh because the prosecution version is suspect, there is no question of any doubt or any right of self-defence so far as the killing of Rambir Singh is concerned. It must also be realised that besides, PW.1 we have the evidence of an independent witness PW.2 Usman Khan who largely supports and corroborates the evidence of PW.1 Ganga Singh. The evidence of this witness was sought to be brushed aside on the ground that he was a chance witness and that he belonged to another village and had no particular reason to be present at the scene of occurrence. In the first place it is necessary to notice the fact that his name finds mention in the first information report promptly lodged by PW.1 Ganga Singh. Secondly, it is difficult to imagine how the name of this witness would come to the mind of the complainant and how he would be assured that the witness would support him when he had no time to manipulate. PW.2 Usman Khan has given a cogent reason for his presence near the scene of occurrence. He had gone to see the operator of the tubewell at Ismailpur and was near the public road when he saw the occurrence at some distance therefrom. There is no reason why PW.2 Usman Khan would stick his neck out if he had not seen the incident. Nothing has been brought on record to show that he was in any manner close to the prosecution side or inimical to the defence. The defence tried to lead evidence to negative his presence through the evidence of DW.2 Sukhwashi Lal and DW.3 Kailash Singh. But the trial court rightly pointed out in paragraphs 24 and 25 of the judgment that their evidence did not negative the presence of Usman Khan on the public road, a little away from the place of occurrence. If that be so, the evidence of Usman Khan, a wholly independent witness, lends sufficient corroboration to the prosecution version that after Rambir Singh fled away from the scene of occurrence, he was chased, overtaken and killed by respondents. As pointed out earlier so far as the killing of Rambir Singh is concerned his assailants can have no right of self-defence.

For the above reasons we are of the opinion that the High Court was wrong in reversing the order of conviction and sentence recorded by the Additional Sessions Judge, Farukhabad. We, therefore, set aside the order of acquittal

recorded by the High Court and restore the order of the learned trial Judge. The respondents will surrender and serve out their sentence. Warrants for their arrest to issue by the trial court. Appeal is allowed accordingly.

JUDIS