

PETITIONER:
PARAMJIT

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 11/05/2000

BENCH:
Doraswami Raju, G.B.Pattanaik, S.N.Variava

JUDGMENT:

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S. N. VARIAVA, J.

These two Criminal Appeals can be disposed of by this common Judgment. Both the Appeals are filed against a Judgment dated 11th September, 1997 of the Punjab & Haryana High Court. The High Court has convicted both the Appellants under Section 302 read with Section 34 I.P.C and sentenced them to undergo rigorous imprisonment for life. The High Court has enhanced the fine from Rs.500/- to Rs.2,000/- each and in default of payment thereof the Appellants are to undergo rigorous imprisonment of 6 months.

Briefly stated the facts are as follows: The case of the prosecution is that on the evening of 18th August, 1993, one Subhash and one Raj Pal, both residents of village Babail had a quarrel. On 19th August, 1993, as the said Subhash was returning from the fields, carrying a bundle of jowar, Raj Pal with two other persons intercepted him and gave him a beating. Subhash then complained to Ex-Sarpanch of the village, who in-turn complained to the father of the Raj Pal, one Bhalle Ram that his son should not behave in this manner. On 20th August, 1993 there was again a heated exchange between members of the family of these two persons and there was threat, by one Arjun Singh (from the group of the Appellants) that they would come with lathis. On 21st of August, 1993, there was again an exchange of word between family members of Raj Pal and the son of one of the accused by name Mahiya. During this exchange the family members of Raj Pal taunted the said Mahiya that they only give empty threats and did not carry them out.

It is the case of the prosecution that thereafter at 7 a.m. on 21st of August, 1993 while Raj Pal along with Fateh Singh, Ram Mehar and Ram Chander was sitting on a cot, spread outside the house of Ram Mehar, Paramjit (the Appellant in Crl. Appeal No.882/99) armed with a double barrel gun (belonging to his father), persons by names Nafe Singh, Molar, Randhir, Ram Singh (son of one Jailu), Arjun Singh, Rajinder and one Raj Kumar armed with lathis, Lachhman Singh, Bhalle Ram, Ram Singh (son of one Harbans) armed with jailies, Jaswant Singh armed with a gandasi and Mahinder Singh (the Appellant in Crl. Appeal No.883/99) armed with a double barrel gun came there. Mahinder fired

from his .12 bore double barrel gun and the shot hit Ram Chander. On hearing the shot certain other people came out from the house. At that time Paramjit fired two shots from his gun. Thereafter Mahinder Singh fired another shot from his gun. The shots hit one Balkar, Om Pati and Ram Chander on various parts of their bodies. It is the case of the prosecution that Jaswant Singh then gave a gandasi blow on the left arm of Raj Pal, and Molar gave a lathi blow on head, left arm and nose of Raj Pal. It is the case of the prosecution that several other injuries were caused to the other members of the complainant party. In the fight which took place Raj Pal and Ram Mehar caught hold of the gun of the Appellant herein and broke it into pieces. Some injuries were also caused to some of the accused. The accused then ran away from the scene carrying their weapons.

It is the case of the prosecution that Ram Chander was removed to the General Hospital at Panipat but he was declared dead on arrival.

The FIR in this respect was registered at 10.55 a.m. on the same day. Initially PW18, Sub Inspector Bhagat Singh recorded a report in the daily diary register and recorded the statement of PW 10 i.e. Ram Mehar. Thereafter PW 16 i.e. Sub Inspector Badan Singh, who was the SHO of Police Station Sadar Panipat, took up the investigation from ASI Bhagat Singh. He then made his way to village Babail and examined the place of the occurrence and lifted blood stained earth from two places and an empty shell of a .12 bore cartridge from the place of occurrence. He recorded the statements of various witnesses and then arrested Ram Singh (son of Jailu), Jaswant Singh, Randhir, Rajinder and Sanjay. On 30th August, 1993, Mahinder (Appellant in Crl. Appeal No. 883/99) was arrested. Pursuant to a disclosure statement made by him, a double barrel gun along with two fired cartridge cases still in the gun barrel was recovered. On 31st August, 1993, Mahiya, Nafe Singh and Ram Singh son of Harbans were arrested. As per their disclosure statements the weapons used by them were recovered. On 18th September, 1993, Arjun Singh, Bhalle Ram, Raj Kumar and Lachhman were arrested. A jaili each was recovered as per the disclosure statements made by Bhalle Ram and Lachhman. A lathi each was recovered as per the disclosure statements made by Arjun Singh and Raj Kumar. Paramjit Singh (Appellant in Crl. Appeal No. 882/99) was arrested on 28th September, 1993. A .12 bore double barrel gun was recovered on the basis of a disclosure statement made by him. Molar was arrested on 10th October, 1993. A lathi was recovered as per the disclosure statement made by him.

The guns and the cartridges were sent to the Forensic Science Laboratory at Madhuban. According to the report given by the Laboratory and supported by the evidence of PW 5, i.e. Dr. L.A. Kumar, the Deputy Director of the Laboratory, the gun recovered from Paramjit Singh was in a broken condition but could be made serviceable after repairs and the gun recovered from Mahinder Singh was serviceable. The Report and evidence proved that the fired cartridge case had been fired from these two guns and that the pellets recovered from the dead-body of Ram Chander and the person of Balkar Singh were Shot Gun Pellets, which could have been fired from these guns.

All the above named persons, who were arrested, were

committed to the Session's Court. As they pleaded not guilty, they were brought to trial.

The prosecution examined 18 witnesses. In their statement under Section 313 of the Code of Criminal Procedure Code, Mahinder Singh denied that he was present at the spot and claimed that because of his good relations with the family of Molar he had been falsely implicated. On the other hand Paramjit Singh admitted the incidents but claimed that it was the group of Ram Mehar who were causing injuries to Molar and others and that he merely intervened to save those persons. He claimed that he fired the shots to save himself and his companions. He admitted that his gun was broken to pieces.

The defence also examined three witnesses, who were doctors to show that some of the Accused had also received injuries.

The Sessions Judge considered the evidence in detail and convicted all the Accused for offences under Section 148 of the Indian Penal Code as well as Sections 302, 307, 326, 325, 324, 323 read with Section 149 of the Indian Penal Code. Mahinder and Paramjit were also convicted for offences punishable under Section 27 of the Arms Act, 1959. All the Accused were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- each. In default of payment of fine, they were to undergo rigorous imprisonment for six months.

All the Accused filed Criminal Appeal No. 66-DB of 1996 in the High Court of Punjab & Haryana. By the impugned Judgment dated 11th September, 1997, the High Court came to the conclusion that the incident was in the nature of a free fight and that each of the accused was only liable for their individual act. On this basis the High Court held that the prosecution had not proved the case, beyond reasonable doubt in respect of Bhalla Ram and acquitted him of all charges. The High Court also held that the prosecution had not proved, in respect of all accused, other than the Appellants, the charge under Section 302/307 read with Section 149 I.P.C. and allowed their appeal to that extent. In respect of Sanjay, Randhir, Ram Singh (son of Jailu), Nafe Singh, Rajinder Singh, Mahiya, Arjun, Lachhman and Molar, the High Court upheld their conviction under Section 323 I.P.C. but sentenced them to period of imprisonment already undergone. The fine was increased to Rs.1000/- each and in default of payment thereof each was directed to undergo further RI for three months. The High Court convicted Jaswant Singh for an offence under Section 326 I.P.C. and sentenced him to the period of imprisonment already undergone. The fine was enhanced to Rs.1000/-. In default thereof he was directed to undergo further RI for 3 months. The High Court convicted Ram Singh (son of Harbans) for an offence under Section 325 I.P.C. and sentenced him to the period of imprisonment already undergone. The fine was enhanced to Rs.1000/- and in default thereof he was to undergo further RI for 3 months.

In respect of Mahinder and Paramjit, the High Court held that it proved beyond a reasonable doubt that these two persons had fired the guns and that this had resulted in the death of Ram Chander. These two Appellants were thus convicted under Section 302 read with Section 34 of the Indian penal Code and sentenced to undergo rigorous

imprisonment for life. The fine was enhanced from Rs. 500/- to Rs. 2000/-. In default of payment they were to undergo rigorous imprisonment for six months each.

Paramjit and Mahinder have filed these Criminal Appeals against their conviction by the High Court. The State of Haryana had filed S.L.P. (Crl.) No. 277 of 1999 against the portion of the impugned Judgment whereby all the other Accused were acquitted of offences under Section 302/307 read with Section 149 I.P.C.. However, that S.L.P. stood dismissed on 19th March, 1999 as Counsel for the State of Haryana was not present. No Application has been made to have that S.L.P. restored. None of the other parties have appealed against the judgment of the High Court.

On behalf of both the Appellants it was submitted that these Appellants had acted in self defence. It was submitted that both the Courts below had ignored the fact that many of the Accused had also received serious injuries. It was submitted that this clearly showed that it was the other party which were the aggressors and that the Appellants were merely defending themselves. It was submitted that prosecution had failed to examine these injured persons or to examine any independent witnesses. Reliance was placed in the case of Baddi Venkata Narasayya and Ors. vs. State of A.P., (1998) 2 S.C.C. 329. In this case it was held that in cases of free fights the prosecution case against each accused must be supported by at least two witnesses. Based on this it was submitted that the prosecution had not been able to pin-point any case against these two Appellants. It was submitted that the case of the prosecution against these two Appellants is not supported by evidence of two independent witnesses.

Reliance was also placed upon the case of Gajanand and Ors. vs. State of Uttar Pradesh, A.I.R. 1954 S.C. 695, and it was submitted that if the Court held that this was not a case of free fight, then this was a case where the Appellants were merely exercising their right of self-defence.

On behalf of Mahinder it was further submitted that from the site of incident only one cartridge was found. It was submitted that even according to the prosecution more than three shots had been fired. It was submitted that it had not been shown that Mahinder had any common intention to murder or take part in an unlawful assembly.

On the other hand, Counsel for the State of Haryana has supported the reasonings and the findings given by the High Court.

We have considered the submissions of the parties. We have also read the evidence. In our view both the Courts below are right in holding that, on the earlier days, there had been altercations between Subhash and Raj Pal and between their family members. In our view both the Courts below have correctly concluded that the chain of events were proved. In our view it is also proved that on the morning of 21st August, 1993, the Appellants, along with all the other named persons, had gone outside the house of Ram Maher where Raj Pal and the deceased Ram Chander was sitting on a cot. In our view the venue of the incident is proved. In our view it is proved that both Paramjit and Mahinder were armed with double barrel guns. This shows that these

persons were the aggressors. The evidence of a number of witnesses shows that these two persons had fired their double barrel guns and that the pellets from both these guns had hit Ram Chander. The evidence proves that Ram Chander had died as a result of these gun shot wounds. In case of a double barrel gun, it is impossible to make out which pellet has been fired from which gun. The evidence of the ballistic expert showed that the injury suffered by Ram Chander and the pellets removed from his body could have been fired from these double barrel guns. Coupled with this is the fact that there has been recovery of the guns as per the disclosure statement made by Paramjit and Mahinder. Also it is not even the case of the Appellants that, apart from them, any other person/persons had guns. As the group of the Appellants were the aggressors, both the Courts below have correctly held that the injuries received by some of the Accused were by reason of the other group acting in self defence. We also find that the presence of Mahinder during the incident is proved beyond a reasonable doubt. Also there is no substance in the submission that independent witnesses were not examined. The prosecution only needs to lead evidence sufficient to prove its case. In this case the prosecution has led trustworthy evidence of eye witnesses. Both the courts below have accepted the evidence of these witnesses and we see no reason to take a different view. The prosecution has thus proved all necessary facts. In view of these facts having been proved beyond a reasonable doubt we find no infirmity in the reasoning of the High Court in the impugned Judgment.

We thus see no reason to interfere. Accordingly the Appeals stand dismissed.