

CASE NO.:
Appeal (Crl.) 435 of 1994
PETITIONER:
The State of Haryana
Vs.

RESPONDENT:
Sher Singh & Ors.
DATE OF JUDGMENT: 11/09/2002 BENCH:
S. Rajendra Babu & P.Venkatarama Reddi.
JUDGMENT:

J U D G M E N T

P. Venkatarama Reddi, J.

In this appeal filed by the State of Haryana with special leave, the verdict of the Punjab & Haryana High Court acquitting the respondents 1 to 9 of the charges under Section 302, I.P.C. read with S. 149 etc. and modifying the conviction and sentence of the 10th respondent Dalel Singh, is being assailed. The Additional Sessions Judge, Kurukshetra, convicted the 12 accused including the 10th respondent herein charged for the offences under Section 302, I.P.C. read with 149, Section 307 read with 149, Section 148 and Section 427, I.P.C. and they were sentenced to life imprisonment. They were charged for the murder of one Bhim Singh in the morning hours of 23rd July, 1983 in a fallow field near the village Serdha and for attempting to murder PWs 6, 11 and another who received injuries in the course of fight. Most of the accused respondents excepting respondents 5 and 6 are related to each other. The members of the prosecution party too are inter-related and they are also related to some of the accused.

According to the prosecution, Phool Singh (PW5), who is the cousin of the deceased Bhim Singh, was in possession of the disputed land at the time of occurrence, having taken the land as tenant for cultivation from Rameshwar, the father of the accused Kishan Chandd who filed the suit for pre-emption and got a decree in his favour. Rameshwar also executed an agreement of sale in favour of Phool Singh on 23.1.1981 and received part of the sale consideration. The accused armed with weapons viz., 'bhalas', 'jellis', 'gandasis' and 'lathis' came to the land to take forcible possession and the cattle brought by them were let loose in the fields resulting in damage of standing crop. Then, the deceased and four others namely, Phool Singh (PW 5), Zile Singh (PW 6), Diwan Singh (PW 11) and Ghuman Singh (not examined) reached the spot. When Bhim Singh, the deceased questioned their high-handed acts, four of the accused encircled him and started inflicting injuries with their weapons. PW 6 tried to rescue the deceased but he was also attacked by four of the accused who inflicted severe injuries and so also PW 11 Dewan Singh and Ghuman Singh were inflicted injuries by four other accused when they tried to intervene. Bhim Singh succumbed to the injuries on the spot. The 'bhala' blow given by Dalel Singh (10th respondent) on the chest of Bhim Singh proved fatal. Phool Singh (PW5) lodged the complaint with the police. The injured were examined and treated at the Civil Dispensary, Pundri. The Medical Officer (PW1) at Pundri referred PW 6 to Civil Hospital, Kaithal as he had received severe injuries. The other two received simple injuries. At the Civil Hospital, Kaithal, the Doctor who examined PW 4 found a wound on the left side of the abdomen and lower part of thorax from which omentum was coming out. In view of the gravity of his condition he was referred to Civil Hospital, Rohtak and from there, he was taken to and admitted in PGI, Chandigarh. PW 6 remained under treatment of Dr. J.D. Wig (PW 3) who performed a surgery to save his life. PW 6 ultimately recovered from the injuries. An autopsy done by PW 2 on the dead body of Bhim Singh revealed various injuries. The first injury noticed by him was lacerated wound 2" x 1" scalp deep above right eye-brow on the forehead. The most serious injury, which according to the Doctor was the immediate cause of

death, is injury no. 7.

According to PW 4, the death occurred due to shock and haemorrhage caused by the injuries to the vital organs as a result of injury No. 7 which was caused by a sharp weapon. The description of injury No.7 is as follows:

"a penetrating wound 2" x 1-1/2" in the second intercostals space on left side of chest running up side down and laterally and edges were clean cut. The underlying 3rd rib was fractured and the intercostals and pectoral muscles were torn. Blood coming out of the wound was collected in the muscles. Further dissection revealed that the wound was directed posteriorly upto the posterior abdominal wall injuring the structures viz. left lung, left-septum and right ventricle.

On the basis of the information furnished by the accused the weapons were discovered by the police officials in the presence of Panchas. The injured persons PWs 6 and 11, the informant P.W. 5 and one Gaje Singh (PW 12) who allegedly came to the scene of offence after the commencement of the incident are the eye-witnesses.

The prosecution case, as spelt out from the evidences of PWs 5, 6, 11 and 12, was believed by the Trial Court. The learned Sessions Judge recorded the finding that the accused formed themselves into an unlawful assembly with the common object of taking forcible possession of the land by attacking, if necessary the members of prosecution party, if they offered resistance. The learned Sessions Judge held that Phool Singh (PW 5) was in possession of the land in question, he having taken over the possession from Kishan Chand (accused) a few months earlier to the incident. In coming to this finding, the Sessions Judge inter alia relied on the FIR (Ex. P U) lodged by Kishan Chand on 25.4.1983. The learned Judge did not accept the plea that the accused acted in exercise of right of private defence of property. On this aspect, the learned Trial Judge observed that even assuming that the accused Kishan Chand was in possession of the land on the date of the incident i.e. 23.7.1983 and Bhim Singh and other members of prosecution party, had gone to the land to enter into possession and plough it, there was no justification to cause the death of Bhim Singh in the alleged exercise of the right of private defence because the accused could not have had reasonable apprehension of death or grievous hurt. He further observed that the circumstances of the case did not indicate that the accused were justified even in causing hurt to PW 6 and others.

The High Court did not agree with the trial court's findings as regards possession of the land. The High Court was of the view that the deceased and his partisans went to the field to take possession thereof forcibly and in order to ward off their attempts and to save the property from their onslaughts, the accused had to defend themselves. However, as there could be no apprehension of death or grievous injury from the deceased and his party, there was no justification in killing Bhim Singh. Therefore, the High Court concluded that the accused Dalel Singh (respondent No. 10 in this appeal) who gave the fatal blow to Bhim Singh with a deadly weapon exceeded his right of self-defence and hence liable to be punished under Section 304 Part I instead of Section 302. The High Court observed that the accused were within their rights to inflict injuries on the complainant party short of causing death in exercise of the right of private defence of property. It is contended before us by the learned counsel appearing for the appellant State that the High Court is not justified in reversing the finding of the trial court with regard to the possession of the land. In this appeal against acquittal under Art. 136 we cannot disturb the finding of the fact reached by the High Court unless it is perverse or the material evidence is over looked

or an erroneous legal approach is adopted. We find no such infirmity in the finding of the High Court though, perhaps, a different view is possible. The High Court took into account the pre-emption decree obtained by the father of the accused Kishan Chand on 23.1.1981, the entries in Khasra Gidrawari (Ex. D.T. 1-4) coupled with the evidence of Patwari, the temporary injunction order obtained in the suit filed by Kishan Chand against the deceased Bhim Singh on 30.10.1982 and the order of the Additional Sessions Judge dated 11.3.1985 in the Revision filed by Kishan Chand against an order of Executive Magistrate under Section 145 Cr.P.C. The learned Judges of the High Court further observed that Phool Singh (PW 5), though applied for correction of entries in Khasra Girdawari on 17.1.1983, the entry in so far as field No. 17/2 of Rectangle No. 80 where the occurrence took place was not challenged. Coming to the material relied on by the prosecution, the High Court considered each one of them, namely, Nehri Girdawari entries (Ex. PSS) and the FIR lodged by Kishan Chand on 25.4.1983 (Ex. P U) wherein he is alleged to have stated that the deceased and Phool Singh forcibly occupied the land in dispute. Either for want of proof or for other reasons given by the High Court, no weight was given to this documentary evidence. Stress was laid by the learned counsel for the appellant on the FIR (Ex. P U) said to have been given by Kishan Chand. Apart from the fact that the Police Officer who recorded the FIR was not examined, the High Court observed that there was no admission by Kishan Chand regarding possession of the deceased Bhim Singh or Phool Singh (PW 5). The complaint was to the effect that the deceased and Phool Singh, in contravention of the order of SDM, had stealthily harvested the wheat crop raised by him. Thus, the High Court discussed all the aspects having bearing on the question of possession. We cannot upset that finding of the High Court merely because a different view such as the one taken by the trial Court could be taken.

One more aspect noticed by the High Court in doubting the prosecution story is that no evidence has been let in to prove the allegation that crop was damaged by the cattle allegedly let loose by the accused. On this aspect the High Court observed that the Sub-inspector of police (PW 15) did not positively state that he found any damaged crop when he inspected the site of occurrence and he did not produce the photographs which were said to have been taken at the spot. The High Court commented that no reliance can be placed on the letter sent to the Tehsildar nearly two months after the incident requesting him to assess the damage to crop. Moreover, according to the Investigating Officer, PW 15, the ploughs and yokes were lying in the field in which 'Chari' crop not fully grown was standing. He further stated that he seized the four ploughs and yokes as per the memo (Ex. BDD). It remains unexplained as to why so many ploughs were brought to the fields when there were standing crops thereon. This is another circumstance which casts a doubt on the truth of the prosecution case.

The finding of the High Court in favour of the accused as regards the possession of field where the incident took place led to the logical conclusion that the deceased and party came to the spot to enter into the field forcibly and the accused exercised their right of private defence to safeguard the property. In our view, the judgment of the High Court cannot be faulted excepting in so far as the acquittal of Sher Singh (Respondent No.1) is concerned.

As far as Sher Singh (Respondent No.1) is concerned, we are of the view that he clearly exceeded the right of private defence and there was no justification in inflicting grievous injuries to PW 6. The fourth clause of Section 99, I.P.C. lays down the extent to which the right of private defence is available. It says :-

"The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence."

The manner in which PW 6 was attacked and the injuries caused to him by Sher Singh with a dangerous weapon ('bhala') would reveal that the accused Sher Singh had clearly exceeded the right available to him. According to PW 6, five accused, namely, Jai Karan, Sadhu, Sher Singh, Ratna and Kishan Chand encircled him and Sher Singh thrust the 'bhala' into his abdomen on the left side near the waist. Though he stated that Jai Karan and Sadhu inflicted injuries with 'gandasi' on his head, such a statement was not made to the police when he was examined under Section 161 Cr.P.C. As regards the part played by others, viz., Kishan Chand and Ratna, PW 6 stated that the lathi blow given by the former had struck his left hand and the jeli blows inflicted by Ratna landed on his arms. The injuries caused by these two accused were, however, simple in nature. Hence, the inference that they exceeded the right of private defence cannot follow. Coming back to the attack by Sher Singh on PW 6, according to PW 3, Dr. J.D. Wig, Assistant Professor, Department of Surgery, PGI, Chandigarh, when PW 6 was admitted on 24.7.1983 and even on the next day, his condition was so critical that he was not fit to give a statement. He found a lacerated stab wound 3cm. X 2cm. in the left side of the chest in auxiliary line. Multiple lacerated wounds were also found on his scalp. Trachea was displaced to the right. He performed a surgical operation known as 'Laporotomy' on 24.7.1983 in order to save his life. P.W.3 stated that stab wounds on the chest would have been inflicted by a sharp edged weapon. The patient was discharged from the hospital on 24.8.1983 as seen from the in-patient record filed as Ex.PL. Puss was being drained out from the chest periodically. Number of post-surgical complications are discernible from the case-sheet. As late as on 20.8.1983, while giving clearance for the discharge of the patient, it was noticed that the puss was still present and chest tube drainage was recommended. Thus, he suffered a grievous hurt within the meaning of Clause Eighthly of Section 320 on account of stab injuries inflicted by Sher Singh with 'bhala'. Such a brutal attack on PW 6 could have been avoided by Sher Singh, especially when P.W.6 was unarmed and the other accused, at least two of them, had simultaneously started attacking him - may be, to resist his further advance towards the fields.

A conspectus of the facts would lead to the inevitable conclusion that the accused Sher Singh clearly exceeded his right of private defence and caused much more harm than necessary. He cannot, therefore, claim immunity under the garb of Section 97 IPC. The right of private defence under Section 97 IPC is expressly subject to the restriction contained in Section 99 which has been set out above. Therefore, we are of the view that Sher Singh, respondent No. 1, is liable to be punished under Section 326 read with S. 322, I.P.C. Accordingly, he is convicted under Section 326 IPC and sentenced to undergo RI for a period of five years and to pay a fine of Rs. 500/- and in default of payment of fine, he shall undergo SI for a further period of three months. The period of detention already undergone either before or after conviction shall be set off against the sentence of imprisonment now imposed.

The appeal is thus allowed insofar as Sher Singh, Respondent no.1 is concerned. As regards other respondents, the appeal stands dismissed.