

PETITIONER:
BHARTU & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 24/10/1996

BENCH:
G.N. RAY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.B. PATTANAIAK, J.

This appeal is directed against the conviction and sentence passed against the appellants by the Sessions Judge, Jind and upheld by the High Court in Criminal Appeal No. 494 of 1984. The five appellants stood charged under Section 148 IPC, 302/149 IPC, 324/149 IPC 323/149 IPC. The learned Sessions Judge convicted all of them for all the offences charged and sentenced them to imprisonment for life and to pay fine of Rs. 100/- or in default further rigorous imprisonment for one month for the offence under Section 302/149 IPC, one year R.I. for offence under Section 148 IPC, one year R.I. for offence under Section 323/149 IPC and six months R.I. for offence under Section 323/149 IPC with the further direction that the sentences would run concurrently. All of them preferred criminal appeal to the High Court against their conviction and sentence. The complainant filed a criminal revision which was registered as 1483 of 1984 praying for enhancement of sentence and grant of compensation to the complainant. The criminal appeal as well as the criminal revision was disposed of by the impugned judgment of the High Court dated 26th April, 1985. The criminal appeal filed by the appellants was dismissed and the criminal revision filed by the complainant was allowed to the extent that the amount of fine if released shall be paid to the heirs of the deceased. Thus, the present appeal.

The prosecution case in brief is that the Panchayat elections had been held in village Shambo on 25th June, 1983 and in the said elections the people belonging to the complainant party had voted for one Surjit Singh who had contested for the post of Sarpanch. Said Surjit Singh was, however, defeated and on that score the supporters of Jagat Ram had grudge against the complainant party. On 17th July, 1983 at 8.30 p.m. the marriage procession of one Ram Rattan son of appellant Mange was being taken around the village. Mnage was a partyman of Jagat Ram. When marriage procession was being lead by a group consisted of mostly womenfolk and the accused appellants. The accused were in a drunken state and were singing filthy songs. When the procession

reached the house of Gita Ram. some of the witnesses, namely, Tara Chand (P.W.8). Sita Ram (not examined), Narain Dutt (P.W.9), Ganga Bishan (P.W.10) requested the accused persons not to sing filthy songs. The deceased Ram Pal also requested the accused persons not to sing filthy songs and proceed with the marriage procession. Shortly after the altercation, the accused appellants armed with deadly weapons like gandasi. lathi. jaili attacked the complainant party. Appellant Manphal assaulted the deceased Ram Pal with gandasi and the blow fell on the left arm of the deceased appellant Bhartu attacked the deceased by giving a blow on his head by means of gandasi. Karta Ram, Bhira and Mange the three other appellants also assaulted the deceased with the weapons in their hands. Apart from assaulting the deceased, they also attacked different persons belonging to the complainant party who were consequently injured. On hearing about the incident several other villagers came running to the spot therefore, the accused persons left the place with the weapons in their hands. Injured Tara Chand, Ganga Bishan. Narain Dutt, Sita Ram and Ram Pal were removed to the hospital at Rajound where Ram Pal succumbed to the injuries. Tara Chand though initially was in a precarious condition but his condition was improved and at 1 a.m. the treating doctor certified him fit to make a statement and accordingly his statement was recorded by Sub-Inspector Bhup Singh and on the basis of the said statement formal F.I.R. (Ex P.EE) was drawn up. The Investigating Officer then made the inquest over the dead body of the deceased Ram Pal and sent his dead body for autopsy. The Investigating Officer then started investigation and on completion of investigation submitted a charge-sheet. The Magistrate committed the accused persons to the Court of Session and ultimately the learned Sessions Judge tried them. The defence of the accused persons was that it is the complainant party who took recourse to violence and misbehaved with the ladies going in procession in barat party and as a measure of self-defence the accused persons retaliated and in course of the incident Ram Pal died. The learned Sessions Judge on thorough scrutiny of the entire evidence on record and relying upon the ocular statement of the injured witnesses P.Ws.8, 9 and 10 came to the conclusion that the prosecution case has been established beyond doubt and accordingly convicted the appellants for different offences for which they stood charged. The learned Sessions Judge relying upon the evidence of Dr. Shyam Kalra (P.W.1) who had medically examined Ram Pal on 17th July, 1983 as well as the evidence of Dr. Surinder Kumar Mittal (P.W.6) who had conducted the autopsy over the dead body of deceased Ram Pal came to the conclusion that the death of deceased Ram Pal was homicidal in nature. The learned Sessions Judge also considered the plea of right of private defence as taken by the accused persons and negatived the same in view of the cogent evidence of three injured witnesses referred to earlier. One of the accused, namely, Manphul had taken a plea of alibi and examining the same the learned Sessions Judge discarded the said plea as the material on record did not support the aforesaid plea. The accused persons also had taken a plea that some of them had been injured in course of incident and the prosecution not having explained the injuries on the accused persons the entire prosecution case is liable to be discarded. The learned Sessions Judge considered the aforesaid plea but did not find any substance in the same on the ground that it has not been established that injuries on the accused persons were sustained in course of the incident and further that

the injuries in question were so minor or simple injuries that the prosecution is not obliged to explain the same. With these conclusions the Sessions Judge having convicted and sentenced the accused appellants as already stated, they had moved an appeal to the High Court. Before the High Court the counsel appearing for the appellant did not challenge the conclusion of the Sessions Judge with regard to the homicidal death of deceased Ram Pal. In view of clinching evidence of the three injured witnesses who have given a detailed narration of the incident and not being able to impeach the testimony by way of cross examination, the counsel for the appellants instead of attacking the evidence, raised contentions to create doubt about the prosecution case as a whole on the ground of delay in lodging the F.I.R. and non examination of two other injured witnesses and non-explanation of the injuries found on accused Bhartu and Mange. The learned counsel for the appellant also raised the plea of self-defence but the High Court on reappreciation of the entire evidence negated all the contentions raised and affirmed the conviction and sentence passed by the learned Sessions Judge.

Mr. Kapil Sibal, learned Senior counsel appearing for the appellants mainly raised the following contentions in assailing the judgments of the learned Sessions Judge and the judgment of the High Court:

1) The entire prosecution story is unbelievable as no person in marriage procession of his, own son would behave in a manner as alleged by the prosecution and, on the other hand in the facts and circumstances of the case the plea suggested by the defence appears to be more plausible.

2) Admittedly, three of the accused persons having sustained injuries and no explanation having been offered by the prosecution, the entire genesis of the prosecution case falls through and the accused are entitled to be acquitted on that ground.

3) The prosecution witnesses having attributed that accused Manphul gave a blow with gandasi which fell on the left arm of deceased Ram Pal and the medical evidence being contrary to the ocular statement in as much as no injuries are found on the left arm of the deceased, accused Manphul is entitled to benefit of doubt.

4) Surjit Singh having brought deceased Ram Pal and injured Sita Ram, Narain Dutt, Ganga Bishan and Tara Chand in his tractor trolley to the hospital at Rajound had sufficient opportunity to vitiate the minds of these persons and to rope in several innocent persons as accused assailants and that is why the F.I.R. version belatedly made does not depict the true picture.

The learned counsel appearing for the respondent on the other hand connected that the entire prosecution evidence

having been duly scrutinised by the Sessions judge and learned Sessions Judge having come to the conclusion that the prosecution case has been proved beyond reasonable doubt and further in appeal the High Court having reappreciated the entire evidence on record and having affirmed the conclusion of the Sessions Judge, this Court will not interfere with the same in exercise of power under Article 136 of the constitution. The learned counsel for the State also submitted that non explanation of any injury on the accused irrespective of the nature of injury cannot be held to be fatal to the prosecution case. He also resisted the contention of Mr. Sibal that the medical evidence does not confirm to the prosecution evidence regarding the manner of assault on the deceased by Manphul.

In order to appreciate the contention raised by Mr. Sibal, the learned senior counsel appearing for the appellants. we have ourselves scrutinised the entire evidence on record and we find no substance in any of the contentions raised. As has been stated earlier the rival factions had grudge against the other on account of Panchayat election in which one party had supported the defeated candidate and other party had supported the elected candidate. On the fateful day while the marriage procession was being taken out in village, it is alleged by the prosecution that the procession was being lead by the accused appellants who were drunk and were using abusing words and when they were requested not to indulge in the same. they came out with deadly weapons in their hands and started assaulting the prosecution witnesses and in course of such assault the deceased Ram Pal belonging to the prosecution party succumbed to the injuries. The prosecution case as depicted through P.Ws.8, 9, and 10 who themselves were also injured in course of such assault by the accused persons appears to us to be wholly convincing and the evidence of these witnesses corroborate one another. Nothing has been elicited in their cross-examination to impeach their testimony. We are not in a position to accept the submission of Mr. Sibal that the prosecution story on the face of it is unbelievable. On the other hand, after going through the evidence we are of the considered opinion that the prosecution case has been vividly described by the three injured witnesses and the said evidence has rightly been accepted by the learned Sessions Judge as well as by the High Court. We find nothing in their evidence to take a contrary view. The first submission of Mr. Sibal accordingly stands rejected.

coming to the question as to non-explanation of the injuries on the accused persons it appears that they were examined by Dr. Kalra on 22nd July, 1983 at 7.30 a.m. though the occurrence took place on 17th July, 1983 at 8.30 p.m. Accused Karta Ram had an injury to the extent of 1 cm x 4 cm on the left side of the face and bruise with slight abrasion on the left thumb and another abrasion on the back of the left elbow. Accused Mange had a bruise of 6 cm x 1 cm on the right shoulder and another bruise measuring 5 cm x 1.2 cm on the right shoulder, accused Bhartu had abrasion of 1 cm x 1 cm on the left knee joint and another bruise of 4 cm x 2 cm on the left arm and swelling on dorsum of right hand. These injuries are in fact such minor and small injuries that the prosecution is not obliged to explain the same and non-explanation by the prosecution cannot be held to be fatal to the prosecution case. Further the injured having been examined only after 5 days of the occurrence, it is difficult to hold that these injuries had been inflicted in course of the incident. In such circumstances non-

explanation of aforesaid injuries on the three of the accused persons cannot be held to be fatal to the case. Mr. Sibal's contention therefore, cannot be accepted. So far as accused Manphul is concerned, we also do not find any force in the contention of Mr. Sibal that the medical evidence is contrary to the oral evidence. It has been found by the Doctor that the deceased Ram Pal had as many as seven injuries with one injury on front of left arm measuring 7 cm x 3 cm. Thus, it is not possible for us to hold that there is total absence of injuries on the left arm of the deceased and, therefore, Manphul cannot be held to be one of the assailants of the deceased. That apart as has been stated earlier the three injured witnesses P.Ws.8, 9 and 10 have given a very succinct version of assault by each one of the accused appellants with different weapons of offence in their hands on deceased Ram Pal and there is nothing in their evidence in cross examination to discard the same consequently, we are not in a position to give any benefit of doubt to accused Man Phul as contended by Mr. Sibal, the learned Senior counsel appearing for the appellants. So far as the contention regarding opportunity of Surjit Singh to vitiate the minds of the injured persons which ultimately resulted in the delayed F.I.R. and inclusion of innocent persons as accused persons and as assailants, we do not find any force in the said contention. The medical evidence clearly indicates that injured Tara Chand was brought to the hospital in a precarious condition and was not even fit to make a statement initially. It is only after some treatment been given when he was found to be in a fit condition his statement was recorded and that statement was treated by the Investigating Officer as F.I.R. In this fact situation question of Surjit Singh influencing the minds of the injured persons and falsely roping in some of the accused persons as assailants does not arise. It is no doubt true that the injured persons were brought to the hospital at Rajound by Surjit Singh but that ipso facto does not establish any inducement by Surjit Singh which resulted in roping in innocent persons nor in the facts and circumstances it can be said that there has been any initial delay in lodging the F.I.R. so as to create any doubt in the minds of the Court. That apart the evidence of three injured witnesses P.Ws.8, 9 and 10 having not been shaken in any manner, the conclusion is irresistible that the prosecution case has been proved beyond doubt. We, therefore, do not find any substance in the said contention of Mr. Sibal. In our opinion, the entire prosecution case has been proved beyond reasonable doubt as against the appellants and, therefore, the conviction and sentences awarded against them does not merit any interference by this Court. The appeal accordingly is dismissed. The conviction and sentences passed against them are affirmed. The appellants having been released on bail by this Court, their bail bond stands cancelled and they are directed to surrender for further serving the remaining part of the sentence and if they fail to surrender, steps be taken for their arrest.