

PETITIONER:
ROHTAS & ANR.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 02/05/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

JU D G M E N T
M.K. Mukherjee.J.

Rohtas and his father Ram Mehar, the two appellants before us, and three others were placed on trial before the 3rd Additional Sessions Judge, Meerut to answer common charges under Sections 148, 302/149 and 307/149 IPC. Against Ram Mehar an alternative charge under Section 302 IPC was also framed. The trial ended in conviction of Rohtas under Section 302 and 307/34 IPC and acquittal of the other three. As the appeal filed against their convictions was dismissed by the High Court the appellants have preferred this appeal after obtaining special leave.

2. Briefly stated the prosecution case is as under:

(a) In the year 1981 Mangat Singh (P.W.2) was the agent of Northern Railways for Fakharpur (Halt) Railway Station and he was authorised to sell railway tickets to passengers alighting there and collect station and check passengers alighting there and collect their tickets. On April 22, 1981 at or about 1.45 P.M when a passenger train came from Shahdara and stopped at the station Rohtas, who is a Sepoy in Railway Protection Force, detained in mufti. Shiv Charan (the deceased) a brother of Mangat Singh, demanded ticket from Rohtas he abused him saying how could he dare to ask for ticket from him. To this Mangat retorted and then Rohtas left the place in a huff. A few minutes later Rohtas came back with Ram Mehar and three others (since acquitted). While both the appellants were armed with ballams (spears) the others had lathis with them. Rohtas struck a blow on the right arm of Mangat and Ram Mehar on the right of stomach of Shiv Charan with their respective ballams as a consequence whereof the latter fell down. The other accused assaulted them with their lathis. The two brothers then raised alarm and some villagers reached the spot. In the meantime, the accused persons fled away.

(b) Sita Ram (P.W.1), another brother of Mangat and Shiv Charan, then took the two injured to the hospital but on the way Shiv Charan succumbed to his injuries. Sita Ram then went to Khehra Police Station and lodged a report about the incident. On that information a case was registered and Sub-Inspector Yogender Pal Singh (P.W.8) took up investigation.

He first went to the Government hospital and held inquest on the dead body of Shiv Charan. He then recorded the statement of Mangat Singh and thereafter left for Fakharpur Railway Station. There he prepared a site plan and took possession of a dhoti and kurta of Mangat which were blood stained. He also collected some blood stained earth from the spot. On completion of investigation the police submitted charge-sheet and, in due course, the case was committed to the Court of Session.

3. The appellants pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated out of enmity. In his examination under Section 313 Cr.P.C. Ram Mehar stated that on April 22, 1981 at or about 10 A.M. while he was working in his field, Rajinder, a nephew of Sita Ram, trespassed there and released his cattle. He (Ram Mehar) abused and slapped Rajinder and removed him and his cattle from his field. In the afternoon when he was on his way back to the field after railway gate Sita Ram, Mangat, Shiv Charan and Rajinder attacked him with it. Ram Mehar also gave a written statement to the above effect. The plea of the other appellant, namely, Rohtas was that at the time of the incident he was at Safdar Jung Hospital, New Delhi for getting medical treatment.

4. In support of its case the prosecution examined nine witnesses of whom Sita (P.W.1), Mangat Singh (P.W.2) and Balbir Singh (P.W.6) figured as eye witnesses. The other witnesses were Dr. Tilak Raj Sharma (P.W.3), who held autopsy on the dead body of Shiv Charan. Dr. Arun Kumar Saxena (P.W.9), who examined Mangat and appellant Ram Mehar; Yogendra Pal Sharma (P.W.8) and Shahbuddin Chaudhary (P.W.9) and Hari Singh (P.W.5) two formal witnesses. The defence in its turn examined two witnesses, namely, namely, Horam Singh (D.W.1) and Mahinder Narain Sharma (D.W.2) to prove the alibi of Rohtas and Pratap Singh (since acquitted) respectively. Besides, the defence exhibited the first information report lodged at its instance. After the witnesses and the accused were examined the trial Judge inspected the site of incident and prepared an inspection note which is on record.

5. On consideration of the evidence the trial Judge accepted the prosecution version of the incident in preference to that of the defence and also the plea of alibi raised by Rohtas. Accordingly he convicted the two appellants in the manner mentioned earlier but giving the other three accused the benefit of doubt acquitted them. In appeal, the High Court concurred with all the findings recorded by the trial Court and affirmed the conviction of the two appellants.

6. Mr. Lalit, appearing for the appellants, firstly submitted that the testimonies of the eye witnesses that the incident took place on the railway platform stood completely belied as no blood was found there; and, on the contrary, the presence of blood outside the platform fully corroborated the defence version. In repelling this contention the High Court discussed the evidence of the eye witnesses in the light of the site plan (Ext. KA 13) prepared by the Investigating Officer (P.W.8) wherein the place where blood was found was shown and observed that when Mangat was sorting the tickets attack was made on him and Shiv Charan on the platform itself and the latter down at a distance of 35 feet from the platform while proceeding towards west, writhing in pain. We have for ourselves looked into the evidence on record on this aspect of the matter and find no justifiable reason to interfere with the view

expressed by the High Court.

7. Mr. Lalit then submitted that having regard to the testimony of Dr. Arun Kumar Saxena (P.W.9) who examined Ram Mehar on the morning of April 23, 1981 and found as many as seven injuries on his person and the fact that no satisfactory explanation was forthcoming from the prosecution as to how those injuries were caused, the defence version that Ram Mehar was first attacked by complainant party and that he assaulted Shiv Charan in exercise of his right of private defence stood established. From the judgment of the High Court we find that this contention was also raised before the High Court and it negated the same with the following observations:

"According to the Doctor, there were 7 injuries on the body of Ram Mehar. His medical examination was done on 23.4.1981 at 7 A.M. In this way, we see that this medical examination has been got done with sufficient delay. Moreover, if we see the medical examination, all those injuries were simple. So far the question of explanation is concerned. Sita Ramin his statement stated that they also defended themselves. In his cross examination this witness has stated that they also defended themselves. In his cross examination this witness has stated that Mangat taking out the Ballam which has struck in his arm used the same against the accused persons in his defence. Mangat Singh has also stated in his statement that in my defence I snatched the Ballam of Rohtash and in my defence I used the same in all the four sides. P.W.6 Balbir Singh has also given almost the same statement. The statement of these 3 witnesses given on his point, can not be discarded only on this ground that nothing has been mentioned in this regard in the F.I.R. As we have seen that the injuries of Ram Mehar were so simple that it may be that no one could have noticed them. Therefore, in our opinion, the explanation given by the prosecution in respect of the injuries of Ram Mehar is believable."

Since the above finding of the High Court is also based on proper appreciation of evidence we do not find any substance in the contention of Mr. Lalit.

8. Mr. Lalit lastly contended that in any view of the matter the conviction of the appellants under Section 302 & 302/34 IPC for causing the death of Shiv Charan, could, under the circumstances, be justified for only one blow was inflicted upon him and no further attempt was made to assault him. This apart, Mr. Lalit submitted that when considered in the light of the surrounding facts and circumstances it could not be said that the appellants intended to kill Shiv Charan. We do not find any substance

in this contention also. Once the evidence of the three eye witnesses is accepted as true -as has been rightly accepted by the learned Courts below on a detailed and proper discussion of their evidence - there is no escape from the conclusion that the two appellants came fully prepared with spears to attack Mangat as he had dared to ask for ticket from Rohtas and attacked the two brothers with spears. The blow that was inflicted on the chest of Shiv Charan pierced his Lungs and heart and resulted in profuse bleeding, Mangat Singh also sustained two incised wounds one on the right arm and the other on the right side of the chest. Considering all these facts and circumstances we have no hesitation in concluding that the appellants intended to commit the murders of both the brothers but fortunately Mangat survived.

9. On the conclusions as above we do not find any merit in this appeal and it is accordingly dismissed. The appellants, who are on bail, will now surrender to their bonds to serve out their sentences.