

## **Raja Bhaiya vs State Of M.P on 9 September, 1993**

**Equivalent citations: 1993 AIR 2567, 1994 SCC SUPL. (1) 487**

**Author: G.N. Ray**

**Bench: G.N. Ray**

PETITIONER:

RAJA BHAIYA

Vs.

RESPONDENT:

STATE OF M.P.

DATE OF JUDGMENT 09/09/1993

BENCH:

RAY, G.N. (J)

BENCH:

RAY, G.N. (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1993 AIR 2567

1994 SCC Supl. (1) 487

JT 1993 (5) 234

1993 SCALE (3) 685

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by G.N. RAY, J.- This appeal is directed against the judgment passed by the Division Bench of the Madhya Pradesh High Court in Criminal Appeal No. 699 of 1974 and Criminal Appeal No. 1036 of 1975 both disposed of by a common judgment dated March 11, 1980. Both the said appeal Nos. 699 of 1974 and 1036 of 1975 were preferred against the judgment dated August 30, 1974 passed + From the Judgment and Order dated March 11, 1980 of the Madhya Pradesh High Court in Criminal Appeal No. 1036 of by the learned Additional Sessions Judge, Narsinghpur in Sessions Trial No. 20 of 1974. The appellant, Raja Bhaiya, along with three other accused, namely, Arjun Singh, Hakku alias Hanumat Singh and Jeewan were sent for trial under Sections 302 and 302 read with Section 34 IPC for causing murder of Ramrup of Village

Baghodi. The learned Additional Sessions Judge acquitted Arjun Singh, Hakku and Jeewan but convicted Raja Bhaiya under Section 304 Part I IPC and sentenced him to suffer rigorous imprisonment for seven years for causing death of Ramrup.

2. Against the said judgment of the learned Additional Sessions Judge, the State of Madhya Pradesh preferred an appeal in the Madhya Pradesh High Court at Jabalpur in Criminal Appeal No. 1036 of 1975 inter alia challenging the acquittal of the three accused persons and also challenging the acquittal of Raja Bhaiya under Section 302. Raja Bhaiya also challenged his conviction under Section 304 Part I IPC in Criminal Appeal No. 699 of 1974 in the High Court of Madhya Pradesh. As aforesaid, both the said appeals were heard together and were disposed of by a common Judgment dated March 11, 1980. The High Court dismissed Criminal Appeal No. 1036 of 1975 by upholding the acquittal of the said three accused persons but set aside the conviction and sentence of the appellant, Raja Bhaiya, under Section 304 Part I IPC and the High Court convicted Raja Bhaiya under Section 302 IPC and sentenced him to suffer imprisonment for life. With the aforesaid modification of the conviction and the sentence both the appeals were disposed of.

3. The prosecution case in short is that Raja Bhaiya, the appellant, and the other co-accused were residents of Village Dangidhana in the District Narsinghpur and the deceased Ramrup was residing in the village Baghodi which was about 2 furlongs away from Dangidhana. Halkesingh, PW 1, Himmatsingh, PW 2 and Tikaram, PW 4, are the sons of the deceased and they had been residing with their father. About a week before the incident, Himmatsingh is said to have beaten Tawalsingh DW 2, servant of Raja Bhaiya. On the morning of March 1, 1974, Raja Bhaiya caught hold of Lachu Patel, a friend of Himmatsingh and beat him up in his house and Jeewan was sent to the house of the deceased, Ramrup, to call Himmatsingh but Himmatsingh had refused to come. Raja Bhaiya being enraged took a double barrel gun with him and being accompanied by Arjunsingh armed with an axe, Hakku and other accused being armed with a muzzle loading gun and the accused Jeewan armed with a lathi proceeded towards the house of the deceased. Halkesingh was present in the village Dangidhana at that time and coming to know that Raja Bhaiya was proceeding to his house he rushed to his village and informed his brother Himmatsingh about the developments. On reaching his house, Halkesingh met his father and also Himmatsingh in the Parchhi of their house and told them that Raja Bhaiya and his companions were coming to beat Himmatsingh. By that time, Raja Bhaiya and his companions arrived at the house of the deceased. Himmatsingh started retreating inside his house and their father, the deceased Ramrup came out and asked them as to why they had come. Immediately Raja Bhaiya fired his gun hitting the deceased on his right chest who fell down on the ground. Halkesingh thereafter rushed towards Raja Bhaiya in order to stop him from committing further mischief. To scare him away Raja Bhaiya fired another shot in the air. Halkesingh then caught hold of his gun and a scuffle ensued. He was also joined by his two brothers, Himmatsingh and Tikaram, and they all tried to snatch the gun. In that scuffle Arjun assaulted Halkesingh with his axe on the head while Jeewan assaulted Himmatsingh and Tikaram with his lathi. In the melee the accused persons managed to escape. Raja Bhaiya thereafter went to the police station with a motor cycle and lodged a report Ex. P-17. He was sent for medical examination of his injuries. Halkesingh also proceeded to Police Station, Narsinghpur which was 12 kilometres away and he was also sent for medical examination by the police. The police took up investigation and the police officer, Mr Shukla, visited the spot and found the dead body of the deceased lying in the

courtyard of his house. He also found bloodstains on the ground and one broken chip (Article A), the butt of the gun and a pair of plastic shoes (Articles B & B-S), one leather shoe (Article C) and two empty cartridges (Articles D-1 and D-2) and made a seizure list. The dead body was sent for postmortem examination. The police arrested the accused persons and also seized two guns, one double barrel gun with the broken butt and another muzzle loading gun from Shankersingh, father of Raja Bhaiya on the same night as per seizure memo Ex. P- 11. The police seized a lathi from Jeewan. On the next day he sent Himmatsingh and Tikaram for medical examination of their injuries. The guns, the empty cartridges and pellets removed from the body of the deceased were also sent for examination to the ballistic expert.

4. The appellant, Raja Bhaiya, pleaded that he had sent his servants Narayan and Tawalsingh DW 1 and DW 2 to ask Himmatsingh to meet him. After sending such message, he had been to his field along with another servant Chaitu. As usual, he carried his gun with him. After some time, Tawalsingh came running and informed Raja Bhaiya that Halkesingh and Himmatsingh had wrongfully confined Narayan and had been beating him. Immediately he proceeded towards the house of the deceased. As soon as he reached there, Halkesingh, Himmatsingh, Tikaram and the deceased Ramrup rushed towards him to snatch his gun. Himmatsingh was armed with an axe while the others were armed with lathis. As the said persons had been wielding their weapons, Raja Bhaiya in self-defence to protect himself held his gun in both the hands. One axe blow of Himmatsingh fell on the gun and the gun accidentally went off. He then ran away from the spot and went to the police station and lodged a report. He had also received injuries during the scuffle. The defence of the other accused was that they were not present on the spot and they had been falsely implicated because Arjun was the brother of Raja Bhaiya and the other two accused persons, namely, Hakku and Jeewan, were his friends. As a matter of fact, three witnesses were also examined, namely, Narayan DW 1, Tawalsingh DW 2 and Dr Jaiswal DW 3.

5. The learned Additional Sessions Judge after considering the evidences adduced on behalf of the parties and also considering other materials on record inter alia came to the finding that on the morning of March 1, 1974, Raja Bhaiya sent someone to the house of the deceased to call Himmatsingh but Himmatsingh had refused to come. The learned Additional Sessions Judge came to the finding that it was not correct that the respondent Jeewan was sent to fetch Himmatsingh and it was also not correct that Narayan was assaulted by Himmatsingh. The learned Additional Sessions Judge inter alia came to the finding that the Raja Bhaiya armed with double barrel gun and Arjun armed with an axe, Jeewan with lathi and Hakku unarmed proceeded towards the village of the deceased. At the house of the deceased, some altercation ensued between the parties and then Raja Bhaiya fired his gun hitting the deceased on his chest and he fell down dead on the ground. Thereafter, there was a scuffle between the parties in which the gun of Raja Bhaiya was damaged and Halkesingh, Tikaram and Himmatsingh received injuries. The learned Additional Sessions Judge came to the finding that the gun of Raja Bhaiya did not go off accidentally because of blows falling on the butt of the gun as sought to be alleged by the defence. The learned Additional Sessions Judge however was of the view that the injuries found on Raja Bhaiya and the damage caused to his gun had not been properly explained by the prosecution and it appeared that there was a mutual fight between Raja Bhaiya on one hand and the deceased and Halkesingh, Himmatsingh and Tikaram on the other, and in such mutual fight injuries were received on both sides and the gun of

Raja Bhaiya was damaged. The learned Additional Sessions Judge, relying on the decision of this Court in *Jumman v. State of Punjab* convicted Raja Bhaiya alone under Section 304 Part I IPC and sentenced him to suffer rigorous imprisonment for 7 years and acquitted other persons but he categorically came to the finding that Raja Bhaiya had no right of self-defence for firing the gun and hitting the deceased.

6. The Division Bench of Madhya Pradesh High Court at Jabalpur concurred with most of the findings recorded by the learned Additional Sessions Judge but the High Court was of the view that the finding of the learned Additional Sessions Judge that although there was a mutual fight between the parties it was not established that Raja Bhaiya was an aggressor, was not correct. The High Court *inter alia* came to the finding that the evidence on record would go to prove without any doubt that Raja Bhaiya fully armed with the loaded gun accompanied by the other three accused variously armed went to the house of the deceased to settle the account with Himmatsingh. The High Court *inter alia* came to the finding that on reaching the house of Himmatsingh, Raja Bhaiya found Ramrup, Halkesingh and Himmatsingh. Raja Bhaiya fired his gun hitting the deceased on the chest. Such incident of firing by Raja Bhaiya and causing the death of the deceased had been proved by the evidences of eye- witnesses namely Halkesingh, Himmatsingh, Tikaram and Dabbalsingh. The High Court had noted that although Halkesingh, Himmatsingh, Tikaram were sons of Ramrup and their relations with Raja Bhaiya were strained and there had been an incident about eight days prior to the said murderous assault where Himmatsingh had beaten the servant of Raja Bhaiya, the evidences of the said eyewitnesses were not to be disbelieved or discarded. The High Court held that the said strained relationship and the incident of beating Tawalsingh was the motive for retaliation by Raja Bhaiya. The Division Bench of the High Court held that the eyewitnesses from the prosecution side had been cross- examined at length but nothing turned out to doubt their version. They were natural witnesses and their presence and veracity could not be doubted. The High Court also noted that another eyewitness Dabbalsingh PW 3 was a close neighbour of the deceased and though he was of the same caste as that of the deceased, he was an independent witness. The High Court also held that the first information report lodged by Halkesingh was amply corroborated by the prosecution 1 AIR 1957 SC 469 : 1957 Cri LJ 586 witnesses and there was no delay in lodging the first information report. According to the finding of the High Court, Raja Bhaiya was clearly aggressor being armed with a D.B.B.L. gun and accompanied by three accused persons variously armed and he voluntarily caused the death of Ramrup by firing from his double barrel gun. After indicating reasons, the High Court came to the finding that the case sought to be made out by Raja Bhaiya that the gun went off accidentally when the butt of the gun was hit by axe blow was not to be accepted. The High Court was of the view that the learned Additional Sessions Judge having recorded a finding that Raja Bhaiya deliberately fired his gun, the other finding made by him that there was a mutual fight and it was not known how the fight had started was contradictory and such finding was otherwise incorrect and against the weight of the evidence. In that view of the matter, the High Court allowed the appeal preferred by the State of Madhya Pradesh, namely, Criminal Appeal No. 1036 of 1975 in part and conviction and sentence of Raja Bhaiya under Section 304 Part I IPC was set aside and he was convicted to suffer imprisonment for life under Section 302 IPC. The said appeal against the other three accused was dismissed by the High Court. Consequently, the appeal of Raja Bhaiya being Criminal Appeal No. 699 of 1974 was dismissed by the High Court.

7. At the hearing of this appeal, the learned counsel for the appellant has contended that in the facts of the case although Raja Bhaiya had justification to fire on the deceased and his sons by way of right of self-defence but he had not fired the gun in such exercise of right of self-defence but the gun went off accidentally. The learned counsel has contended that it has been proved beyond doubt that the butt of the gun was not only badly damaged but the part of its butt was separated. If such a severe blow is given on a loaded gun, there is no manner of doubt that the gun would go off automatically. The learned counsel has also contended that there had been a melee at the house of the deceased and the appellant Raja Bhaiya had suffered some injuries which had been noted by the doctor. If there was a free fight and Raja Bhaiya and his companions were attacked by the deceased and his sons in the house of the deceased, Raja Bhaiya in order to save himself had a right to fire his gun and in that case even if the deceased had died being hit by the gunshot of Raja Bhaiya, Raja Bhaiya has to be acquitted because he had not intentionally caused the death of Ramrup and the firing in any event, had to be resorted to by way of self-defence. He has further submitted that in the instant case, Raja Bhaiya pleaded that he had not fired his gun even by way of self-defence although he could justify such firing on the score of right to self-defence. Raja Bhaiya's case was that he held the gun in his hands. Since the gun was loaded and the butt of it was severely hit by an axe blow, the loaded gun went off. Such case in the facts and circumstances of the case, should have been accepted by the learned Additional Sessions Judge and also by the High Court. The learned counsel has contended that the learned Additional Sessions Judge has not accepted the prosecution case that there was no free fight between the parties. The learned Additional Sessions Judge has come to the finding that there was a free fight and in the melee persons on both the sides including Raja Bhaiya had received injuries but unfortunately the learned Additional Sessions Judge on misappreciation of the facts of the case did not accept the defence case that the gun went off accidentally. The learned counsel has contended that the High Court has erroneously held that Raja Bhaiya was aggressor and there was no free fight before Ramrup was killed by the gunshot injury caused by Raja Bhaiya. It has been contended by the learned counsel for the appellant that the pattern of pellet injuries on the dead body established that such injuries were 6" horizontal and 3" vertical thereby indicating that the gun was not in a normal position but in a slanting position. If Raja Bhaiya had deliberately fired the gun aiming at the chest in the manner as stated by the prosecution witnesses, such pattern would not have been formed. Injuries, therefore, clearly indicate that the gun went off accidentally. The learned counsel has also contended that apart from the gunshot injuries three abrasions were noted on the person of the deceased. Such abrasions cannot be logically explained by the prosecution and the defence case that there was a melee and free fight between the parties in which deceased had participated and sustained injuries gets amply corroborated by the existence of abrasions on the body of the deceased. It has also been contended by the learned counsel that admittedly the village of the deceased and the village of Raja Bhaiya are separated by some distance and in day time, it is not reasonably expected that Raja Bhaiya being armed with double barrel gun and being accompanied by three other persons variously armed should come all the way to the house of the deceased to teach a lesson to Himmatsingh. If Raja Bhaiya had any intention to revenge the assault made on his servant, he could have settled his account in a different manner. The learned counsel has contended that the defence case that on being informed that one of his servants who had been sent to call Himmatsingh was detained and assaulted, he rushed to the house of the deceased with his gun which he used to carry usually, appears to be quite probable and natural and the courts below should have accepted such case. It has also been contended by the learned counsel that there

was no reason to kill Ramrup with whom there was no enmity and such extraordinary case of killing the deceased without any motive and provocation should not have been accepted by the courts below. The learned counsel has submitted that in any event, when there was no intention of the appellant Raja Bhaiya to kill the deceased, then even if Ramrup had in fact died because of the gunshot injuries caused by Raja Bhaiya, this Court must hold that such killing was not at all intended. Hence, at the most, the conviction under Section 304 Part I may be made.

8. Such contentions of the learned counsel for the appellant have however been disputed by the learned counsel for the State, and our attention has been drawn to the reasoning given by the High Court in discarding the defence case and accepting the case made out by the prosecution that Raja Bhaiya had deliberately fired his gun thereby killing the deceased on the spot. The learned counsel for the State has contended that it is a case of outright murder without any provocation at the time of firing and the conviction and sentence under Section 302 IPC as imposed by the High Court are fully justified and no interference is called for.

9. After giving our anxious consideration to the facts and circumstances of the case and the materials on record, it appears to us that the incident on March 1, 1974 at the house of the deceased Ramrup had taken place in two distinct phases. In the first phase, Raja Bhaiya armed with double barrel gun and being accompanied by other persons variously armed came to the house of the deceased to settle his account with Himmatsingh because of (sic) his servant a few days ago, and despite being called to his house, he had refused to come. It transpires from the evidence that when the unfortunate deceased tried to intervene presumably with a view to persuade Raja Bhaiya not to take resort to any revenge, Raja Bhaiya fired the gun at Ramrup thereby hitting the deceased on the chest and causing his instantaneous death. It was only thereafter the sons of the deceased tried to snatch the gun and attacked Raja Bhaiya and his companions. At that time, there was a scuffle between the parties and it is quite likely that in such scuffle, the butt of the gun was damaged by an axe blow. The ballistic expert, Mr Nigam, PW 19, has clearly stated that as soon as the gun was loaded it became automatically locked and the gun could not be fired unless the safety lock was moved forward. He has categorically stated that the axe blow on the butt could not move the safety lock forward so that the gun would go off. We agree with the finding made by the High Court that unless the safety lock of the gun was moved forward the gun could not go off automatically even if the butt was hit and damaged as alleged by the defence. It also appears to us that the abrasions found on the person of the deceased can be clearly explained. Such injuries were caused by falling down on the ground on being hit by the gunshot. Dr Misra has stated that when a person is hit on the chest, there is a tendency to fall forward unless he had been kneeling backward. It is therefore quite apparent that the injuries by way of abrasions were caused due to fall and it is the medical evidence that such abrasions could be caused by one fall itself. The High Court, in our view, has rightly held that at the time of inquest, the dead body was found not with its head towards the ground but the head was found facing upward because it is quite likely that inmates of the deceased immediately tried to attend the deceased in order to give aids and offer water etc. From the evidence of the ballistic expert it is quite evident that the deceased was fired from a distance of about 18 ft. There were no scorching marks on the body of the deceased thereby indicating that the gun was not fired from a close distance. The said fact of the gun being fired from such a distance rules out the case of participation of the deceased in the scuffle for which a case of firing on the score of

self-defence can be justified. We fully agree with the views expressed by the High Court by giving very cogent reasons for the findings made by it. We, therefore, find no reason to interfere in this appeal and the appeal is therefore dismissed. It appears that the appellant Raja Bhaiya is on bail in terms of the order of this Court dated September 25, 1980. The appellant should therefore be taken into custody so as to serve out the sentence imposed by the High Court.