

Bhima And Ors. vs State Of Haryana on 20 November, 1968

Equivalent citations: (1969)1SCC64, AIRONLINE 1968 SC 21

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

Grover, J.

1. This is an appeal by special leave from a judgment of the Punjab and Haryana High Court. The appellants were tried under Section 302, 325 and 323 read with Section 34 of the Indian Penal Code by the Additional Sessions Judge, Rohtak for having injured Phusa on January 29, 1966, at about 8 or 8-30 A.M. and when his brother Har Narain intervened he was attacked and he ultimately died on January 31, 1966. In the incident Mst. Kalawati, wife of Ram Sarup, a brother of Phusa who is alleged to have been attacked by the appellants also received some injuries one of which was grievous and the other simple. Phusa and Ram Sarup had simple injuries. Out of the appellants Bhima had a contusion mark on the upper corner of the forehead, of a simple nature. Kishna appellant who is stated to be 18 years old at the time of the incident and who is son of Bhima had a simple injury. Sohan appellant who is the brother of Bhima had three injuries which were simple. Sampat's sister's son of Bhima and Sohan who was also quite young, his age being between 17 to 20 years, sustained injuries which were simple.

2. According to the case of the prosecution one Smt. Misro had filed a complaint against the appellants under Section 504 of the Penal Code in which Phusa P.W. 1 helped her and had accompanied her to court on several occasions. The appellants were discharged in that case on January 28, 1966. It was alleged that the appellants nursed a grudge against Phusa. On January 29, 1966 as he was going from his nauhra to his house and was passing in front of the house of Chhajju P.W. the four appellants came there from the side of Chander's house armed with lathis. Phusa raised an alarm whereupon Bhima gave lathi blow on his left leg. Kishan followed him by inflicting an injury on his hand. Another blow was given to Phusa on his back. Chhajju, Huka, Chand Gorkhi P.Ws. arrived on the scene. Ram Sarup inquired from the appellants why Phusa was being beaten. Thereupon he was attacked by the appellants and was given 5-6 stick blows. Similarly when Har Narain tried to intervene he was attacked. Bhima and Kishna gave one blow each on his head and after he fell down Kishan gave another blow on his head. Har Narain, as already stated, died on January 31, 1966 after he had been removed to the Civil Hospital at Newari.

3. The appellants set up the plea that the injuries which had been caused to the members of the complainant's party were inflicted in exercise of the right of self-defence. Smt. Kalawati had only been accidentally hit. The learned Additional Sessions Judge found that Ram Sarup and Kalawati P.W. had one serious injury on their persons which had been caused by a blunt weapon and

therefore an offence under Section 325 of the Code had been committed in respect of them. Phusa had three simple injuries on him person caused by a blunt weapon. Therefore, an offence under Section 323 of the Code had been established qua his injuries. As all the four accused persons had common intention, they were liable to be punished under Section 325 and 323 read with Section 34 of the Indian Penal Code. As regards the offence in respect of Har Narain deceased the learned Judge was of the view that Har Narain had been given on lathi blow each on his head by Kishna and Bhima. He held that in view of the entire circumstances the appellants were guilty of an offence under Section 304 Part I read with Section 34 of the Penal Code in respect of the injuries caused to Har Narain. In the result, he found that all the four accused persons were guilty under Section 304 Part I, 325 and 323 read with Section 34 of the Penal Code. Kishna and Bhima had administered the lathi blows which caused the death of Har Narain. Both of them were sentenced to rigorous imprisonment for a period of seven years and a fine of Rs. 1,000/- each under Section 304 Part I read with Section 34. In default of payment of fine they were to undergo rigorous imprisonment for a further period of six months. Sohan and Rampat were sentenced to undergo rigorous imprisonment for a period of four years and to a fine of Rs. 500/- each under Section 304 Part I read with Section 34 of the Indian Penal Code. In default of payment of fine they were to suffer further rigorous imprisonment for four months. All the accused persons were sentenced to undergo rigorous imprisonment for a period of one year and to a fine of Rs. 100/- each under Section 325/34 Indian Penal Code. In default of payment of fine they were to suffer further rigorous imprisonment for three months. For the offence under Section 323 read with Section 34, a sentence of six months was imposed. All the sentences were to run concurrently.

4. The appellants filed an appeal to the High Court which was disposed of by Bedi J. on December 16, 1966. The operative part of his judgment may be reproduced because the order of this Court granting special leave was limited to the question of law; whether Section 325 can be applied in this case read with Section 34 of the Indian Penal Code :-

"The learned Counsel for the appellants did not challenge the conviction of the appellants but raised two points for my consideration. He submitted, firstly that there was no material on the basis of which we could say that Ram Pat and Sohan had the common intention to kill Har Narain and, therefore, their conviction under Section 304 Part I, read with Section 34, of the Code could not be sustained. I feel that there is some force in the above argument. Har Narain came to the scene when the assault on Phusa was in progress. It is true that meeting of the minds of the accused can take place even at the spur of the moment, but there should be some substance on the basis of which one could come to that conclusion. The learned Additional Sessions Judge although was of the view that there was no such material, yet on extraneous circumstances he applied Section 34 to Ram Pat and Sohan. I am, therefore, of the opinion that their conviction and sentence under Section 304, para I, read with Section 34, of the Code, has to be set aside-see in this connection, Pandurang v. State of Hyderabad, .

The next argument was that admittedly three injuries were found on the person of Har Narain but only one out of them was grievous. Under the circumstances, Bhima

and Kishna could only be convicted under Section 323/34 for those injuries. But this argument does not appear to be correct. There is no doubt that these two appellants had the common intention to cause at least grievous injuries or had the knowledge that it was likely that grievous injury would be caused. Under the circumstances, I feel that it would be appropriate to alter their conviction from Section 304 Part I/34 to Section 325/34 of the Penal Code so far as causing injuries to Har Narain is concerned. Consequently I reduce their sentence of imprisonment to three years' rigorous imprisonment but maintain the fine of Rs. 1000/- already imposed on them.

The result is that Ram Pat and Sohan are acquitted of the charge under Section 304 Part I/34, and the conviction of Bhima and Kishna from the above charge is altered to the one under Section 325/34 with the sentence indicated above. The conviction and sentence of all the four appellants under Section 325 and 323, read with Section 34 for causing injuries to Phusa and Kalawati, are maintained and so also the direction of the trial Judge regarding payment of fine to the widow of Har Narain and Mst. Kalawati".

5. Learned Counsel for the appellants has raised three points before us : (1) whether the High Court having found that there was no common intention to kill Har Narain and having acquitted Sohan and Ram Pat appellants of the charge under Section 304 Part I read with Section 34 could convict Bhima and Kishna appellant under Section 325 read with Section 34 of the Indian Penal Code, (2) whether the High Court was right in applying Section 34 for convicting the appellants under Section 325 for the injury caused to Kalawati when it had been established that it was appellant No. 2, Sohan who had caused that injury, (3) whether the High Court was right in applying Section 34 for convicting all the appellants under Section 325 for causing a grievous injury to Ram Sarup who came to the scene during the course of the scuffle.

6. As regards the first point it has been established by the prosecution that Bhima and Krishna both gave blows with lathis on the head of Har Narayan. Although originally the concerted attack was on Phusa alone who sustained simple injuries, the common intention on the part of Bhima and Krishna to inflict grievous injuries on Har Narayan can be inferred from their actual acts, namely, of aiming the blows on the head of Har Narayan. The High Court therefore rightly convicted them under Section 302 read with Section 34, Indian Penal Code, so far as the injuries to Har Narayan were concerned. On the second point, as regards the injuries to Kalawati, it is difficult to apply Section 34 because she just came to the scene of occurrence when the blows were being exchanged. In that situation only Sohan appellant, who is stated to have caused a grievous injury to her could be held guilty of an offence under Section 325. Others therefore must be acquitted of the offence of causing grievous injury to Kalawati. On the third point, according to the evidence of Phusa P.W. 2 when Ram Sarup came along with Har Narayan, Phusa was being beaten by the appellants, and all the appellants gave blows to Ram Sarup which were five or six in number. There is no material from which it can be inferred that at the time the lathi blows were inflicted on Ram Sarup the common intention of the appellants was to inflict a grievous injury on him. Appellants also received injuries which would show that blows were mutually exchanged between members of both parties. As it has not been proved who had inflicted the grievous injury on Ram Sarup, none of the appellants can be

convicted under Section 325 of the Indian Penal Code for causing that injury. The result would be as follows :

(1) The conviction of all the appellants is upheld under Section 323 of the Indian penal Code read with Section 34 for causing simple injuries to Phusa.

(2) The conviction of Sohan appellant under Section 325 is upheld for causing a grievous injury to Kalawati.

(3) The conviction of Bhima and Kishna is upheld under Section 325 read with Section 34 for having caused the grievous injury to Har Narayan which ultimately led to his death. The conviction and sentences of the appellants in respect of all the other charges is hereby set aside.

7. The sentence imposed by the High Court on Bhima under Section 325 read with Section 34 for causing injuries to Har Narayan is maintained as also the sentence for the offence under Section 325 read with Section 34 (the sentences of imprisonment to be concurrent). Krishna though found guilty under Sections 325 and 323 read with Section 34 for causing injuries to Har Narayan and Phusa respectively had already undergone more than a year's imprisonment before he was released on bail. He was very young on the date of the occurrence (17 or 18 years old). In his case the sentence which he has already undergone would be quite adequate as he, in all likelihood, must have acted under the influence of his father and it is so reduced. The sentence of fine imposed on him is set aside. He is on bail and his bail bounds are discharged. The sentences imposed on Sohan under Section 325 for causing grievous injury to Kalawati as also for the offence under Section 323 read with Section 34 for causing injuries to Phusa are maintained, the sentences to be concurrent. The sentence imposed on Rampat for the offence under Section 323 read with Section 34 is reduced to one already undergone because he was also comparatively young and appeared to have acted under the influence of his elders. He was released on bail and his bail bonds are discharged. Bhima and Sohan who were released on bail shall surrender to their bail bonds. The fine if realised, from Bhima and Sohan shall be paid to Kalawati--the widow of Har Narayan.

8. The appeal shall stand disposal of accordingly.