

Buta Singh vs The State Of Punjab on 26 March, 1991

Equivalent citations: AIR1991SC1316, 1991CRILJ1464, 1991(1)SCALE597, (1991)2SCC612, AIR 1991 SUPREME COURT 1316, 1991 (2) SCC 612, 1991 AIR SCW 1022, 1991 SCC(CRI) 494, (1991) 5 JT 366 (SC), 1991 CRILR(SC MAH GUJ) 384, (1991) 2 CRIMES 46, (1991) MAD LJ(CRI) 547, (1991) 3 RECCRIR 91, (1991) 2 CRILC 562, (1992) 29 ALLCRIC 98, (1991) 2 CHANDCRIC 87

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Bench: A.M. Ahmadi, K. Ramaswamy

ORDER

A.M. Ahmadi, J.

1. The appellant, Buta Singh, has been convicted by both the courts below for causing the death of one Balbir Singh. The facts leading to this appeal, briefly stated, are as under.

2. The incident in question occurred on 22nd June, 1975 at about 1.30 p.m. in the field at a short distance from the field of the appellant. On that date the deceased, his father PW 7 - Surjan Singh, and his brother PW 8 - Buta Singh had gone to the field with a tractor driven by DW 1 - Dileep Singh for tilling the land. The 'Dera' of the appellant Buta Singh was near a tubewell belonging to one Dileep Singh from which the appellant was also drawing water as and when required. It is the prosecution case that when the deceased and his companions went to the land in question that afternoon the appellant, his wife Gurbachan Kaur and his minor son Gurdev Singh came to the site. They raised a 'lalkara' not be spare Balbir Singh as he was trying to establish his possession over the land. So saying the appellant Buta Singh launched an attack by inflicting two blows with his spear on the chest of Balbir Singh whereupon the victim fell down. Even thereafter, the appellant and his companions inflicted injuries on different parts of his body while he was on the ground. PW 7 - Surjan Singh and PW 8 - Buta Singh tried to intervene but they too were belaboured by the appellant and his companions. The two prosecution witnesses who were armed with a kirpan and a sota, respectively, inflicted injuries on the three assailants with a view to protecting their persons. After the appellant went away from the scene of occurrence the injured Balbir Singh was removed in a cart but he died on his way to Subhanpur. PW 7 then went to Kapurthala and lodged the First Information Report which was recorded by PW 9 - Sub-Inspector Balmukund at about 5.00 p.m. The investigation was then taken up, the alleged assailants were arrested on 22nd June, 1975, they were sent for medical examination and thereafter they were tried and convicted under Sections 302, 324 and 323 read with Section 34, IPC.

3. The Trial Court accepted the prosecution evidence and convicted the appellant under Section 302, IPC and sentenced him to suffer rigorous imprisonment for life. He was also convicted under Sections 324 and 323 read with Section 34, IPC and was sentenced to suffer rigorous imprisonment for 9 months and 6 months respectively. The substantive sentences were ordered to run concurrently. The other two accused were convicted under Sections 324 and 323 read with Section 34, IPC but were released on probation on their executing a bond in the sum of Rs.2,000/-. The appellant Buta Singh alone preferred an appeal, being Criminal Appeal No. 134/76, to the High Court, The High Court on reappreciation of the evidence of the prosecution witnesses affirmed the conviction and sentence awarded to him by the Trial Court and consequently dismissed his appeal. It is against this concurrent order of conviction and sentence that Buta Singh has preferred this appeal under Article 136 of the Constitution.

4. The prosecution case centers round the testimony of PWs 7 and 8. Before we proceed to consider their testimony it is necessary to state that both the courts below came to the conclusion that the First Information Report could not have been lodged at 5.00 p.m. and that the time has been deliberately advanced. They came to the conclusion that there was no explanation for the delay in the lodging of the First Information Report and in sending a copy thereof to the Judicial Magistrate, Kapurthala. They found that the Special Report reached the Judicial Magistrate at about 6.00 p.m. on the next day, that is, 23rd June, 1975. The High Court concluded in the following words:

From all these undisputed facts, the trial court was quite right in drawing the inference that the First Information Report had not come into existence at the time shown by the prosecution and obviously the time must have been taken in introducing some concoction in the prosecution story.

This observation shows that the prosecution story was suspect from the threshold. Similarly it was found that although in the First Information Report accused Gurmukh Singh was stated to have been armed with a Sua, the story was changed at the trial stage and it was alleged by the prosecution witnesses that he was armed with a Barchi. So, also both the courts found that the evidence regarding the role played by accused Gurdev Singh and his mother Gurbachan Kaur was not satisfactory. Lastly, it was observed that there was delay in forwarding the papers concerning the deceased to the hospital which delay had remained unexplained. It would appear from the above findings recorded by both the courts below that the prosecution version regarding the incident must be taken with a pinch of salt.

5. We next find that the prosecution made an endeavour to shift the place of occurrence. According to the evidence by the two prosecution witnesses PWs 7 and 8 the incident occurred in the field the title in respect of which was disputed. True it is that the High Court came to the conclusion that the said land was allotted to PW 7 by the Government prior to the occurrence and was in his actual possession, although, no document evidencing allotment was placed on record. Be that as it may, the evidence of PW 4 - Bhimsen Patwari disclosed that the land in question was entered in the name of the custodian. He also stated that entries in the Revenue Record were corrected and the land was lying banjar. The High Court, however, came to the conclusion that the said witness had corrected

the entries as he desired to help the accused. Be that as it may, the fact remains that according to the prosecution, the incident in question occurred when the deceased and his companions went to till that land with DW 1 - Dileep Singh, the tractor driver. While they were there, the prosecution case runs, the appellant, his wife and son went there armed with deadly weapons and assaulted them. Therefore, according to the prosecution version, the incident occurred in that field itself.

6. The defence version was that the appellant was at his 'dera' a few yards away from the tubewell when he saw the deceased and his companions attempting to till the land. He, therefore, sent his child, accused Gurdev Singh aged about 13 years, to warn the tractor driver that the land was disputed and he should not till the same. On the tractor driver refusing to till the land, the boy was chased to the 'dera' and the deceased and his companions attacked the appellant, his wife and son. As a result thereof, the appellant and his wife also picked up weapons in self defence and caused injuries to the prosecution witnesses as well as the deceased. This version was sought to be proved through the evidence of DW 1 - Dileep Singh. His evidence shows that he had told PWs 7 and 8 that he would not till the land, if it was banjar. He corroborates the defence version. On finding the land banjar and disputed, he returned the earnest money and refused to till the land, which perhaps angered the deceased who was armed with a Takwa (Axe). PW 7 was armed with a Bachi while PW 8 was armed with a Dang. There were two others, Meeta and Karnail, but they were empty handed. He deposed that these persons went towards the 'dera' of the appellant Buta Singh, they fell out while he kept standing by the side of the tractor. Thus according to the defence the incident occurred near the appellant's 'dera' and not in the field.

7. DW 1, though named as a prosecution witness, was dropped without proper explanation. He was perhaps the only independent witness. He was cross-examined by the learned Public Prosecutor, but nothing could be brought out in his cross-examination to doubt his testimony. The evidence of this witness stands corroborated by the find of blood near the 'dera' of the appellant. The recovery memo shows that blood stained earth was picked up from near the tubewell of appellant Buta Singh. This is also clear from the evidence of PW 9 - Bal Mukund, the Investigating Officer, who admitted that blood stained earth was collected from a distance of about four or five karams (approximately 15-20 feet) from the tubewell. Therefore, the find of blood near the tubewell supports the defence version and the evidence of DW 1. No blood was found from the field where the occurrence is stated by the prosecution to have occurred. If the incident had taken place there, some traces of the incident would certainly have been found from the field. The prosecution has not explained the presence of blood near the tubewell of the appellant and the absence thereof in the field. The defence version, therefore, finds corroboration from this objective evidence also. Therefore, apart from the evidence of DW 1, the find of blood from near the tubewell is a factor which the prosecution was obliged to explain more so because it corroborates the defence version. If the defence version has to be rejected, this factor which weighs in favour of the defence ought to have been explained as an innocuous circumstance not affecting the genesis of the prosecution case. The High Court deals with this aspect of the matter as under:

The mere fact that blood stained earth was recovered from near the tubewell of the accused and not from the land in dispute is not enough to throw any doubt on the prosecution version or shake the testimony of the eye-witnesses.

We are afraid that the find of blood from near the tubewell is an important circumstance which the High Court could not have brushed aside so lightly.

8. We may now consider the evidence regarding the injuries to the appellant and his wife. Indisputably the appellant and his wife sustained injuries. This is clear from the evidence of PW - 2 Dr. Manjit Singh. His evidence shows that the appellant had two sharp edged punctured wounds on the back and the chest and two abrasions on the left fore-arm and on the front of the chest. His wife, Gurbachan Kaur, had a scalp deep incised wound on the left parietal region, two sharp punctured wounds on the right thigh and the right gluteal region, a swelling around the ankle joint and an abrasion on the left shoulder joint. The prosecution, witnesses have tried to explain these injuries by stating that they had received the same when they tried to block PWs 7 and 8 from going to the rescue of the deceased. It is their case that when they found the appellant and his wife attacking them, they hit back with their weapons and caused the injuries in question. The defence version is that when the assault was launched they received these injuries, they fought back and caused injuries to the deceased as well as PWs-7 and 8 but unfortunately the deceased succumbed to his injuries. In other words, according to them, they caused the injuries in exercise of their right of private defence. The High Court, however, has taken the view that the injuries were caused to the appellant and his wife by the prosecution witnesses in exercise of their right of private defence. But here again if it is found that the incident occurred near the appellant's 'dera' and the tubewell and not in the field as deposed by the prosecution witnesses, the substratum of the prosecution case would stand knocked out. As pointed out earlier the find of the blood and the deposition of DW-1 support the defence case. The reason for shifting the place of occurrence is obvious. If the incident occurred there and not in the disputed field, it would show that the prosecution party was the aggressor and not the appellant and his wife. It also does not stand to reason that the appellant would go to the disputed field with his wife and a 13 year boy to quarrel with men who were armed with deadly weapons. It is difficult to believe that he would expose his wife and son to the risk of being attacked. The defence version, therefore, seems to be probable. If that be so, the prosecution party had no right of self defence. Then the appellant and his wife could claim that benefit.

9. From the above state of evidence, it appears that the defence version regarding the incident is a probable one and is supported by the find of blood from near the tubewell which is adjacent to the 'dera' of the appellant. When two versions are before the Court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained. As stated earlier, the prosecution has not explained how blood was found from near the tubewell and no blood was found from the spot v here according to them the incident occurred. In addition to this, the factum regarding the delay in lodging of the First Information Report and the suspicion that it was delayed with a view to concocting the prosecution case and further the delay in forwarding the special report to the Magistrate as well as the case papers to the hospital shows that the investigation was not above board. In these circumstances, we think that the approach adopted by the courts below cannot be justified.

10. Mr. Behl, learned Counsel for the State, however, vehemently argued that the appellant had exceeded his right of private defence. We do not think so. Both the appellant and his wife were attacked. They had sustained injuries. In the course of assault on them they caused injuries to the

deceased and the prosecution witnesses. It is true that the High Court has come to the conclusion that all the injuries caused to the deceased were caused by the appellant Buta Singh. However, that is not the prosecution case. Besides, even if it were so, having regard to the nature of the incident, it is difficult to say that he exceeded the right of private defence for the obvious reason that he could not have weighed in golden scales in the heat of the moment the number of injuries required to disarm his assailants who were armed with lethal weapons. We are, therefore, of the opinion that the submission of the learned Counsel for the State cannot be accepted in the facts and circumstances of this case.

11. From the facts discussed above it appears that the deceased and his companions had gone to the disputed land with DW-1 to have it tilled. When the appellant's son frustrated their effort, they were annoyed and enraged. They, therefore, went to the 'dera' of the appellant and launched an attack. The appellant and his wife fought to repel the attack and in the course of the incident both sides sustained injuries. The appellant and his wife were clearly defending themselves and hence they had a right of private defence. This version surfaces as a more probable one in the facts and circumstances of the case. At any rate the appellant is entitled to the benefit of doubt.

12. In the result, the appeal succeeds. The conviction of the appellant is set aside. Consequently, the sentence awarded on all the three courts is also set aside. The appellant is acquitted of all the charges levelled against him. His bail bonds shall stand cancelled.