Bhaiya Bahadur Singh vs State Of Madhya Pradesh on 9 July, 1996

Equivalent citations: 1996 SCC (5) 174, JT 1996 (6) 182, AIR 1996 SUPREME COURT 3373, 1996 AIR SCW 2789, 1996 SCC(CRI) 890, 1996 (5) SCC 174, 1996 UP CRIR 620, 1996 CRILR(SC MAH GUJ) 474, (1996) 6 JT 182 (SC), 1996 CRILR(SC&MP) 474, 1996 (6) JT 182, (1996) 3 CRIMES 25, (1996) 2 ALLCRILR 661, (1996) 2 EASTCRIC 402, (1997) 2 RECCRIR 803, (1996) 20 ALLCRIR 667, (1996) 33 ALLCRIC 592, (1996) 3 CHANDCRIC 93, (1996) SC CR R 805

Author: M.M. Punchhi

Bench: M.M. Punchhi

PETITIONER:
BHAIYA BAHADUR SINGH

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 09/07/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
1996 SCC (5) 174 JT 1996 (6) 182
1996 SCALE (5)68

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Punchhi. J The only point arising herein is whether the appellant has been successful in establishing his right of self defence, mainly of person and to some extent of property,

probabilising with his innocence; and assuming in the alternative that he had established such right, did he exceed it.

The sole appellant Bhaiya Bahadur Singh, aged about twenty five, was a teacher in a government high school, employed a couple of months prior to the occurrence. He was a resident of village Majhigawan whereat his family owned agricultural lands, His agricultural. field known as gadva field adjoined the agricultural field of the victim's family, known as latha field. These were divided by a Mand (demarcation line) which undisputably was higher by about 2- l/2 feet or more from the ground level and was by itself a strip of 10 to 15 feet wide, as described by the prosecution witnesses in hands, used as a passage by the parties. In order to cultivate the gadva land, the appellant's side had to bring their tractor from the village on to the perpendicular boundary line of the victim's land and then to turn to get on to the strip of land afore-referred to and having covered some distance thereon, to get to the gadva field. Within the corner of these two right-angled boundaries lay the latha field of the victim's party.

As is the prosecution case, about two weeks prior to the occurrence the victim party had seeded a portion of that field by wheat covering that corner, and the seed had sprouted. The appellant's tractor, was suspected on the day of the occurrence to have damaged a portion of that field in trampling over a good bit of it alongside the boundaries and in particular at the corner. Shortly before the occurrence, i.e., on 22-12-1983 at about 4.30 p.m. the appellant was seen to have brought his driver-driven tractor to his gadva field whereat his two labourers were already present one of whom was Bashistha, PW 1 and the other the latter's brother Rafaddi. The victim's party were present in their field since morning seeding it with wheat. Vishwanath, PW 17,one of the members of the victim's party, while carrying on such work invited attention and required of Bashistha PW.1 to convey to Samay Raj Singh, the father of the appellant, to direct his driver not to trample upon the sprouted wheat crop of the victim's party. Hearing this, as is the case, the appellant went to his house in the village, which is about 1-1/2 furlong away, and brought back a licensed single barrel gun, belonging to a member of his family, whereafter in a quarrelsome wood, using abusive language he fired and with one shot injured two members of the victim's party, namely, Mathura, PW 15 and Ghanshyam, PW 16 and with the second shot, killed Gokaran, another member. The prosecution thus set up a simple straight case of murder and attempt to murder on two counts, besides offence under section 25 (1)

(a) of the Arms Act. It has been successful in proving its case beyond doubt in the courts below. The appellant has been convicted and suitably sentenced details of which are available in the judgment under appeal.

The plea of the appellant on the other hand was that while he was coming to his field on his tractor driven by his driver, he was stopped by two members of the victim's party, namely, Vishwanath, PW 17 and his brother Gokaran, deceased and latter given injuries by means of a lathi and ballam (spear) respectively, whereas two others namely Mathura, PW 15 and Ghanshyam, PW 16 menacingly had aimed lathi blows on him but could not strike. Thus in order to defend himself he had fired from his gun in exercise of right of private defence of person as well as to stop damage being done to his tractor, as the victim party had with their weapons aimed blows at the tractor too

causing it damage. According to the appellant, after the occurrence, he went to the police station to lodge first information report but nobody listened to him there. When arrested on the next day at about 3 p.m. On 23-12-1983, he was found to be having five simple injuries on his person which were verified the following day on medical examination et about 2 p.m. on 24- 12-1983. The description of injuries is given below:

(i) Contusion 1" x 1/2" Irregular.

Bluish and swollen over the center part of the back.

(ii) Lacerated wound 3 cm x 1/4 cm x 1/4 cm over left scapular region.

Margins were clean cut and well defined.

(iii) Contusion 2" x 1/2" over the back of scalp. Bluish and swollen.

(iv) Incised wound 3 cm x 1/4 x 1/4 cm over the back of left leg 3"

below the left knee, placed horizontally.

(v) Two contusions with abrasions 2" x 1" over the front of right and left arm.

The tractor was recovered on 25-12-1?83 which bore testimony Of some damage done to it in denting a mudguard and breakage of the back light glass.

The point thus for consideration is : Is the defence of the appellant probable? Prior thereto is the question whether the prosecution has been able to prove guilt of the appellant beyond doubt. The court of session as well as the High Court have rejected the plea of self defence. Rather the High Court has gone into that question and demolished it, holding the appellant guilty of the offence.

Let us detail the matter. The case set up by the prosecution is that the latha field situated in village Majhigawan belonged to three brothers, i.e., Vishwanath, Gokaran and Baijnath. They were resident of the adjoining village Samre about 2-1/2 kilometers away. The field required wheat seed being drilled in the soil. For the purpose, on the morning of the day of occurrence, two pairs of bullocks were brought to the field by the victim's party. Budhsen, P.W.10, and Mathura, PW 15 were there to perform the jobs of ploughmen, Ghanshyam, PW 16 tied up with Mathura, PW 15 and the deceased Gokaran with Budhsen, PW 10 to drill the seed behind the ploughs. Vishwanath, PW 17 was there to supplement the supply of seed, whenever necessary. In the pre-lunch session, they had worked regularly uptil 1.00 pm and after two hours rest had recommenced their operations. The appellant then came to his own gadva field bringing his tractor driven by his driver, Devi Deen. Beforehand his two labourers, i.e. Bashistha, PW 1 and his brother named Rafaddi. PW were already there working in that field. It is then that Vishwanath, PW 17 talked to Bashistha PW.1 to convey to Samay Raj Singh, the father of the appellant that the driver of the tractor when coming to the gadva field should take care not to trample upon the wheat newly sown by the victim's party.

On hearing such protest, it is said that the appellant went to his village to his house and brought a single barrel 12 bore gun at about 4.30 pm and then using wild abusive language, shouted at the victim's party that who was the person who could stop his tractor. At that time one Avdhesh, DW.1 of the village of the appellant, was statedly at some distance grazing his cattle. His good offices were solicited by the victims to pacify the appellant, as avowedly he was a man commanding some respect in his village. He was in the process of coming forward. The appellant, within the view of all, fired a gun shot towards Vishwanath, PW.17, but missed him, hitting Mathura, PW 15 and Ghanshyam, PW 16 instead, the two engaged at one plough. The pellets hit the chest and belly of the former as well as latter. On re-loading the gun the appellant fired the second shot, hitting Gokaran deceased, bullet whereof passed through and through his shoulder and trunk stopping close to the other arm. Gokaran died at the spot. The matter was reported at 7.30 pm the same day at police station Baikunthpur by Vishwanath PW 17.

Jaiparkash Sub Inspector, PW 18 set the investigation into motion. On reaching the spot he prepared inquest of the dead body of the deceased. He did not recover therefrom or at any place close-by any weapon much less any ballam, The tractor was recovered by him later on 25-12-1983 which showed dent on the mudguard and a broken back light. The appellant was not available in the village. He arrested the appellant the following day at about 3 p.m. and found on his person five simple injuries. He was got medically examined from Dr. R.D. Sharma, PW 11, the following day on 24-12-1983 at 2 pm. As a result of his discovery statement the weapon of offence was recovered.

On the basis of the injuries found on the person of the appellant he set up a plea of right of private defence of person as well as property at the trial. According to him he had gone to the police station to have his version recorded but nobody paid any heed to him . P.W.18 dented such suggestion. The appellant on his own did not go to any hospital for medical examination in order to establish that he had received injuries at or about the same time when the occurrence took place. His plea as set up has broadly been referred to earlier. From the prosecution side the statement of Bashistha, PW.1, is to a certain, extent supportive thereof. This witness was the labourer engaged by the appellant and belongs to his village. Likewise Avdhesh, DW 1 is supporting his case. This witness too was his co-villager and belongs to his own community.

The High Court rejected the plea of self defence set up by the appellant having come to the conclusion that the injuries found on the appellant were self suffered in order to spin a defence version. Secondly the High court on the basis of the medical evidence came to the conclusion that there were fired two shots but the appellant had owned only one, keeping the second one unaccounted. The High Court disbelieved the evidence of Bashistha, PW.1 and Avdhesh, DW.1 supporting the defence version. The High Court believed the prosecution version as believed by the trial court.

When an accused person sets up a plea of self defence, the onus to establish that plea lies on him. It is well established that the accused is not required to prove that plea beyond reasonable doubt but has merely to show it as probable. The onus to probablise the defence version, from the salient facts and circumstances appearing in the prosecution case, or otherwise set up by the accused in the form of defence evidence, is always on him. Now here the appellant's positive case is that on the day of the

occurrence his driver driven tractor carrying a cultivator was being taken to the gadva field and he was sitting on the wooden plank placed behind the driver's seat between the two mudguards of the tractor. His sun was hanging alongside on an iron rod fitted on the tractor. He was then stopped by Vishwanath, PW 17, armed with a lathi, and Gokaran, deceased, armed with a ballam, and blamed for having trampled the wheat field by means of the tractor. According to him ignoring the same he wanted to move ahead and asked his driver to do so, but those people started hitting him as well as causing damage to the tractor, with the result that he had to jump off the tractor carrying his gun and wanted to run away. Thereafter not only the aforesaid two persons followed him but two others, i.e. Mathura and Ghanshyam armed with sticks also moved towards him menacingly but they could not strike him. It is at this juncture he claims that he fired from his gun. He felt shy however in mentioning the number of gun shots fired by him. But his silence on that aspect can safely be taken that he had owned that both the fires were made by him. It is on that basis that we can proceed further to examine his defence.

Dr. R.D. Sharma, PW.11 found five injuries on the person of the appellant. In his opinion, Injuries Nos. 1, 3 and 5 were caused by some hard and blunt object. Injuries Nos.2 and 4 could be caused by some sharp cutting weapon. according to him these injuries were simple in nature and could be caused within 24 hours of his examination, which took place at about 2 p.m. on 24-12-1983, putting back the occurrence to be at about the same time on 23-12-1983 whereas the occurrence had taken place a day earlier on 22- 12-1983 at 4.30 pm. To say the least, the Doctor was extremely casual in his observation. Later at the trial he revisedly opined that those were caused within 48 hours. On 21-1-1984 , when asked, he opined that such simple injuries could have been self inflicted. When cross-examined at the trial, he stated that he could not say whether the injuries on the appellant were self-inflicted definitely. He then added that it was likely that somebody may have inflicted those injuries on the person of the appellant. Again he took a somer-sault to say that looking at the injuries of the appellant the possibility of self infliction was ruled out. He missed as well the distinction between a pellet and a bullet. He described the bullet found close to the exit wound of the deceased to be a pellet instead of bullet and owned that the word pellet had wrongly been written in the post mortem report. In such state of medical evidence the best that can be derived for the appellant was that the injuries on his person not may have been self inflicted but may have been self suffered. Of course the appellant would have us believe that they were not self suffered even, and suffered during the occurrence for which the prosecution had not rendered any explanation. The superficial nature of the injuries by itself, in our opinion, was the explanation.

With regard to the condition of the entrance and exit wounds of the deceased, Dr. Sharma, PW 11, described that tattoing was present around the entrance wound, and smell of gun powder was obvious on the wound which was through and through. The exit wound was found bleeding with dark smoking blood. This condition was suggestive of the fact that the appellant had fired at the victim from a very short range. Contrarily no such tattoing was present on the pellet injuries on Mathura and Ghanshyam, PW which showed that these had been fired at from a distances much longer than compared to the deceased.

The appellant would have us believe that all the five injuries were caused to him while he was sitting on the tractor and he had to jump off the tractor with his gun whereafter when being followed he

fired from his gun. This plea of the appellant ipso facto does not give him the right of private defence of person as well as the property. The damage to the tractors whatever, had been done. It sounds improbable that having a gun in his hands fully loaded, three men even armed with lathis and one man armed with a spear would dare go chasing close to him once he was seen in a charging position preparatory to firing. The two sticks in the hands of Mathura and Ghanshyam, PWs could hardly be called lethal weapons because prosecution witnesses have positively stated that these sticks were merely meant to drive the oxen. There was no reason for Vishwanath, PW 17 and the deceased to be carrying any lathi and ballam respectively to the fields on the day of occurrence and to such distance, as there was no reason to apprehend any trouble whatsoever. Both parties had never quarreled before. Neither weapon was found at the spot when the investigating officer conducted the inquest and further investigation. He was at the spot by the night itself. Additionally after the appellant had jumped off the tractor along with his gun, no injury was allegedly caused to him by the victim party. The right of private defence, if any, (but not holding so) ended the moment the appellant successfully jumped off the tractor and got at a safe distance from the victims, young and sprightly as he was He himself being in a dominating position, could have had no cause to fire at the victims causing injuries, dangerous in nature, to Mathura and Ghanshyam, PWs and then to have re-loaded his gun with a powerful cartridge containing a bullet, driving it through the body of the deceased, from a close range. The deceased could. in no event, have dared to go near the appellant when already a fire had been shot by him hitting Mathura and Ghanshyam, PWs. He would in the normal circumstances be running away from the appellant obeying the instinct of self-preservation. As stated no had even exhorted his brother at that juncture to run away, lest they be killed. The defence version therefore does not probablise or preponderate. The version and circumstances pleaded by the prosecution are striking and convincing. It appears that the appellant consciously and deliberately fired the two shots successfully; the second one after re-loading the gun. He fully intended the consequences of his acts, i.e. the injuries to PWs 15 and 16 and the instant death of the deceased. We hold so.

There was no previous ill-will between the parties of any sort, Agriculturists having fields cornering path-ways bear the brunt of trampling of crops by turning vehicles, in its stride. As it is routine to trample corners so is the routine to lodge protests, not much meant. The appellant need not have felt provoked with a small incident like this and to have gone home to bring the gun for mis-use. He had no need to carry it to begin with, more so when he was not its license holder. Yet his over-bearing attitude and hot headedness brought about the results he achieved within minutes. Countermanding death penalty or life sentence with self suffering some injuries from a friendly hand, was some attempt though, but futile in sum. Thus in our view, the appellant has miserably failed in that regard. The courts below have inferred that he had taken such step on legal advice. That may be so, for he made himself scarce for a day after the occurrence. The prosecution has thus fully proved its case to the hilt. Besides two courts below have concurrently found the prosecution case reliable and the defence version not worthy of credence on the test of probabilities. We have no reason to differ.

As a result this appeal fails and is hereby dismissed.