Sabal Singh And Ors. vs State Of Rajasthan on 28 August, 1978

Equivalent citations: AIR1978SC1538, 1978CRILJ1610, (1978)4SCC448, 1979(11)UJ115(SC), AIR 1978 SUPREME COURT 1538, (1978) 3 SCC 141, 1978 SCC (CRI) 364, 1978 SC CRI R 216

Author: R.S. Sarkaria

Bench: O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. Special Leave to appeal limited to the question of sentence has been granted to the three appellants who have been convicted for the murders of four persons and sentenced to death.

2. Sabal Singh, appellant who have his age as 65-70 years is the father, and the other two appellants, Ugam Singh and Prem Singh are his sons.

3. At first flush, on seeing only the number of persons who lost their lives at the hands of the appellants, our instinctive reaction was to reject summarily at the threshould, all arguments sought to be advanced for commutation of the death sentence awarded to the appellants. But after hearing fully the Counsel on both sides and taking into consideration all the circumstances of the case, we have reached the conclusion that the death sentence of each of the appellant should be commuted to imprisonment for life. Some of these circumstances, among others, may briefly be indicated :-

(i) Background of the Case One Smt. Bhanwari Bai, an issueless widow, was an allottee of two Murabhao of land, bearing survey Nos. 32 and 33, in Chak No. 9. She died in 1972. Thereupon, a dispute arose about the cultivation and possession of that land. Sabal Singh, appellant claimed that he was the nearest heir of Bhanwari Bai deceased, who was residing with him at the time of her death. Sheodhan Singh, Ridmal Singh and Jatan Singh deceased laid a rival claim to that land inter alia on the ground that they were in possession of that land even during the lifetime of the widow, and were getting it cultivated on share-basis through P. Ws. Panta Singh and Hajura Singh. The deceased persons used to reside in a (dhani) farm hut, situated in the disputed land, to supervise its cultivation, as the land is situated at a far offdistance from the habitation of the village.

(ii) The plea of the appellants at the trial was one of private defence of property and person. The case sought to be made put by the defence, was that the appellants were

in established possession of the disputed land since January 21, 1975, to the exclusion of the deceased persons; that on March 8, 1975, the deceased persons along with others, came drunk and fully armed to the filed to evict the appellants and carry away the crop by force. The deceased attacked Prem Singh and Ugam Singh who, in self defence, wielded their lathis and caused injuries to the deceased. Sabel Singh's plea was that as he was not present at the time of and place of occurrence and that he learnt it from his sons later, and then lodged unsuccessfully attempted to a counter F.I.R. on the basis of this derivative information, with the police.

4. In connection with this plea of private defence, the undisputed facts and circumstances set out below raise in inference that in all probability, the appellants were in actual possession of the land in dispute from January 21, 1975 upto the time of occurrence on March 8, 1975 :-

(a) Ridmal deceased made a report (Ex. P. 6) at Police Station Vijay Nagar alleging that the appellants (before us) alongwith other persons, came armed and threatened that the informanent and his man should leave the Dhani and the field otherwise they would kill them. It is also mentioned in that report that the appellant then forcibly occupied the Dhani and drove away under pain of death, Banta Singh and Hajura Singh, the cultivators of the informant from the field. In consequence of this report a case under Section 447, 448, 504 read with Section 148 was registered against the appellants and others.

(b) There is no evidence that thereafter, the appellants were ever evicted from the Dhani and the field. Indeed, P.W. 8, Banta Singh candidly admitted that after January 1, 1975 till the occurrence the deceased Sheodan Singh never came to the Dhani i.e. the field.

(c) On March 5, 1975, Sheodan Singh deceased made a petition (Ex. P. 50) under Section 145 Cr. PC in the Court of Sub-Divisional Magistrate, Raisingh Nagar against the appellants, alleging a dispute between the parties over possession of the land, likely to result in a breach of the peace.

(d) The Magistrate thereafter, in those proceedings passed an order to attach the land and crop thereon. Such attachment was done on March 8, 1975, i.e. on the day proceeding the occurrence. The Tehasildar (P. W. 17) was appointed the Receiver in respect of the attached property.

(e) There is no evidence that in pursuance of the Magistrate's order, the Receiver evicted the appellants from the Dhani and the field or he appointed any of the deceased or the accused or anybody else as his manager, or sapurdder of the cryling or standing in the field.

(f) It was the prosecution case, itself, that on March 9, 1975 when the deceased persons followed by Banta Singh and Hajura Singh, reached the disputed field to

share the Gowar crop, the appellants were already there and started the assault.

(g) The prosecution case was that Ridmal Singh and Sheodan Singh deceased used to get the disputed land cultivated on share basis through P. Ws. Banta Singh and Hajura Singh. The understanding between the deceased and the cultivators was that the letter would give half the produce to the former. There is no evidence that the deceased also constructed their labour implements or capital in meeting the cost of cultivation. This mean that Banta Singh and ajura Singh, were in actual cultivating possession in the statute of tenants. But in the Khasra Girdawari entries (P. 1 and and P. 2) relating to the relevant period, Banta Singh or Hajura Singh are not shown in possession of the land in any capcity, whatever;

5. The above circumstances clearly show that forcible occupation of Dhani and the land by the appellants could not be viewed as the learned judges of the High Court have done a single or sporadic act of trespass by the accused. They came with a determination to stay and did stay, and continue in effective phycisal possession of the disputed land with crops thereon till the occurrence on March 8, 1975.

6. The circumstances mentioned below establish by inference a strong possibility verging on probability about the existence of the fact that the deceased persons went in a body to the field, armed and printed with liquer, with a determination to remove the Gowar crop by force from the possession and control of the accused :-

(a) The investigating officer found on the scene of occurrence, near the dead bodies, several weapons, namely, Jei (Article 6), as a Sale Blade (Article 6) a lathi, one kukari and one sword.

(b) No evidence has been brought on the record to show that these weapons belonged to the accused or had been used by them in assaulting the deceased persons. On the contrary, at the trial, the eyewitness Banta Singh, Hajura Singh and Amar Singh categorically stated that the accused had belaboured the deceased persons with lathis only. It was no body's case that the accused used more than one weapon in assaulting the deceased. Consistently with the same story, the investigating police officer had recovered one lathi from each of the three accused. The lathis said to have been recovered from Prem Singh and Ugam Singh were found stained with blood but not the one recovered from Sabal Singh.

(c) The appellants had also received injuries. The medical witness who had examined the accused appellants on 16 3-1975, found three injuries on Ugam Singh and seven on Prem Singh. The injuries were simple and were caused with a blunt object. In the opinion of the medical witness, these injuries were 6 to 8 days old at the time of their examination. This means, they could have been received by the accused in the course of the occurrence on the 9th March, 1975.

The High Court has discounted this conclusion mainly on the ground that the accused did not gel their injuries examined soon after the occurrence. With respect, we are unable to agree with this reasoning. It was manifest that these two accused were reluctant to get their injuries examined because of the fear that it was an incriminating circumstance indicating their participation in the crime. Even after their arrest, the accused were examined by the Doctor at the instance of the police.

The learned Judges of the High Court have held contrary to the story narrated at the trial by the eye-witnesses,-that the Sole and Jei found as the spot had been used by the appellants in inflict injuries on the deceased, and in the process, they seem to have to used the F.I.R. as if it were a substantive piece of evidence. The High Court was clearly in error in making out or reconstructing a new case, which was not set up by the prosecution at the trial.

(d) on post-mortem examination, Alcohol was found in the stomachs of the deceased persons; (Ridmal Singh, Sheodan Singh and Jaten Singh). This shows the deceased persons had come to the spot after having pruned themselves with liquor.

(e) Since it was the positive case of the prosecution at the trial, that the accused had belaboured the deceased, only with la this, and not with any of the blunt and sharp weapons found at the scene of occurrence, the only reasonable inference is that these weapons viz., Jai, sale blade, lathi, sword, kukeri were used by persons other than the appellants. So far as the blunt weapons (Jei and lathis) which were found at the spot are concerned, the greater possibility is that they were used by the deceased persons in inflicting injuries on Prem Singh and Ugarn Singh, appellants because all the injuries on the latter were caused with blunt weapons. As regard the sharp weapon (sword), it is might have been used in causing the incised injuries to the deceased by some person other than these three appellants, who, according to the prosecution, had used lathis only in the assault. This means the possibility of the participation of one more person armed with a sharpedged weapons, in addition to the three appellants, in the assault upon the deceased, cannot altogether be ruled out.

7. In sum, the circumstances catalogued above, probablies, the existence of these facts :-

> (i) The accused were in actual, effective possession of the disputed land and the crops standing or lying therein.
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> (ii) The deceased persons were not unarmed. They were drunk at the time of occurrence.
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> (iii) The deceased party went to the field with a determination to remove the Gowars crop from the possession or control of the accused.
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> (iv) The occurrence was not a one-sided affair there was some fight, in the course of which, blows were exchanged and both sides received injuries. But the injuries inflicted by the accused party on the deceased persons both in severity and number were for greater that those received by the accused party.

8. In view of these, facts, it can be said that the accused had a right to defend their possession and property. But the force used by them was recklessly excessive, and as such, they were rightly not given the benefit of exception II to Section 300 IPC Nevertheless, the circumstances showing that the appellants had a right of private defence of property, which they exceeded, could be taken into consideration in extention of the extreme penalty.

9. Accordingly, we allow this appeal and while maintaining the conviction of the appellants, commute the capital sentence of each of them to imprisonment for life.