

State Of U.P. vs Ram Niranjan Singh on 16 April, 1971

Equivalent citations: AIR1971SC1432, 1971CRILJ1125, (1972)3SCC66, 1971(III)UJ590(SC), AIR 1971 SUPREME COURT 1432, 1971 UJ (SC) 590

Author: C.A. Vaidialingam

Bench: A.N. Ray, C.A. Vaidialingam

JUDGMENT

C.A. Vaidialingam, J.

1. In this appeal, by special leave, by the State of Uttar Pradesh, the question that arises for consideration is whether the acquittal, by the High Court, of the respondent for the offence Under Section 302 I.P.C. is correct.

2. The respondent is a lawyer and was residing at the material time in Mohalla Dunkinganj in a three storeyed house. He and his family occupied first and the second floors in that house though they had to use the water tap and the latrine on the ground floor. The ground floor rooms had been let out to several persons including Smt; Keshar, P.W. 24. She was living in the rooms for over six years was paying rent to the respondent. But the respondent was taking steps to evict her and had also asked her to vacate the rooms. P.W. 24 appears to have represented about this to several people in the locality including Murder. On the evening of December 6, 1965 the respondent again asked P.W. 24 to vacate the rooms and actually threw out her household articles on the road. At that time Murder came to that place and protested against the conduct of the respondent in throwing out the articles of P.W. 24. An altercation ensued between the respondent and Murder, but an adjoining shop-keeper Ram Prasad, P.W. 4, intervened and separated them, as a result of which P.W. 24 took back the articles to her house.

3. According to the prosecution, on December 7, 1965 at about 8 A.M. the respondent sent his nephew Babbu, D.W. 1, to bring Murder. When Murder came near the house of the respondent, the latter immediately shot him with a single barrel breach loading gun, Ex. 2. On being hit by the gun shot Murder instantly fell down and died on the spot. On hearing the news about he shooting incident, the neighbours including one Sri Ram, who was a friend of Murder and Bhola Nath (P.W. 8) came near the house of the accused. Sri Ram began to abuse the accused for killing an innocent person. On this the accused fired with the same gun another shot at Sri Ram, who fell down dead. One of the pellets from the gun shot hit Bhola Nath who sustained an injury and ran away crying that he had been injured by the accused. Several people came to the scene and infuriated at the conduct of the accused began to throw stones and empty bottles towards his room. The police, who had been informed by P.W. 3 by telephone that shooting was taking place in the area, immediately

arrived on the scene headed by the Sub-Inspector, P.W. 25. On seeing the police party, the crowd stopped pelting stones and throwing empty bottles towards the house of the respondent. The accused was arrested with the gun & taken to the police station. His wife and child were also taken away by the police party so that no harm may be caused to them by the crowd which had assembled there.

4. P.W. 3, who had sustained an injury was examined by the doctor P.W. 2 and he has issued the wound certificate Ex Ka-4. The injury has been described as follows:

An abrasion $1\frac{1}{2} \times 1\frac{1}{4}$ " together with traumatic swelling $1\frac{1}{4} \times 3\frac{3}{4}$ " located below the antero-superior iliac spine and in front of the upper part of the left thigh.

The doctor has stated that the injury might have been caused by friction against a hard object, which could have been the gun shot. But he has nevertheless stated that the injury was simple.

5. P.W. 14 performed the post-mortem on the bodies of Murder and Sri Ram. The post-mortem certificates in respect of Murder and Sri Ram are Exs. Ka. 19 and 20 respectively. With reference to Murder, it stated that he had received a circular gun shot injury $1\frac{1}{2}$ " in diameter and that there was no burning or charring around the wound. It is further noted that on internal examination the right 6th and 7th ribs of Murder on the anterior side for about 2" were found almost wholly absent, and the missing pieces were found embedded in lungs and liver. According to the doctor death was caused by haemorrhage due to injury sustained by the gun shot. The doctor has further opined that the gun must have been fired from a distance of more than 4 feet and possibly six feet from the deceased.

6. On the body of Sri Ram, the doctor found the injuries noted in Ex, ka 20. The injuries were on the left side of the chest and on the right scapular region. According to the doctor death had been caused due to the injuries caused by the gun shot. It is the opinion of the doctor that the injuries must have been sustained by Sri Ram from the gun shot from a distance of more than four feet.

7. It is not necessary to give details about the nature of the injuries described on the bodies of the two deceased as well as the injury found on P.W. 3 because the accused has admitted shooting with the gun both Murder and Sri Ram and he has further stated that Bhola Nath sustained an injury when he fired at Sri Ram.

8. The accused was charged Under Section 302 I.P.C. for causing the death of Murder and Sri Ram by shooting them with a fire arm. He was also charged with the offence Under Section 307 I.P.C. for causing injuries to Bhola Nath P.W. 3 with such intention or knowledge that if the shooting had caused the death of Bhola Nath he would have been guilty of murder.

9. Regarding the incident, the prosecution mainly relied on the evidence of P.Ws. 1, 3, 4, 5, 12, 15 and 24. P.Ws. 1, 4 and 24 speak to the quarrel that took place between the respondent and Murder in consequence of the articles of P.W. 24 being thrown out of her room. According to these witnesses, on the evening of December 6, 1965 the respondent in a high handed manner threw out

the articles of P.W. 24 on the road with a view to making her vacate the rooms. At that time Murder, who came there protested against the action of the respondent. The respondent remarked that Murder had no business to interfere in his affairs and that if he continues to interfere the consequence will have to be borne. Murder replied that whatever happens will be faced by him. The accused asked Murder to get away. At that time P.W. 4 intervened and advised Murder to go away.

10. P.Ws. 1 and 4 speak to the shooting by the accused on both Murder and Sri Ram. According to their evidence, they saw in the morning of December 7, 1965 at about 9 or 9.30 A.M. both Murder and Babbu D.W. 1 coming together to the house of the accused. On seeing Murder coming, the accused came armed with the gun and advanced towards Murder abusing him in vulgar language. After coming near Murder he fired his gun at Murder and the latter fell down dead. After Murder had fallen down, the accused reloaded his gun. In the mean while Sri Ram accompanied by P.Ws. 3, 15 and Ors. came to the place on hearing about the shooting at Murder. Sri Ram seeing the dead body of Murder, abused the accused for killing an innocent man. At this the respondent rebuked Sri Ram and asked him to get away on pain of being shot. As Sri Ram persisted in abusing the respondent, the latter fired the gun at Sri Ram, who fell down dead. Bhola Nath also received an injury and was crying that he had been shot by the accused. Both these witnesses have admitted that after the shooting incident several people assembled at the place and getting excited started pelting stones and throwing empty bottles in the direction of the house of the respondent. No doubt they have denied that both Sri Ram and Murder came together with a number of people and threatened to kill the respondent and the members of his family and it was in such a situation that the accused fired in self-defence.

11. P.W. 5 speaks to having seen the shooting of Murder and so far as that shooting is concerned, his evidence is similar to that of P Ws 1 and 4. On seeing the said shooting he informed the police by telephone that shooting was taking place in that area. He has not spoken to anything about the shooting of Sri Ram.

12. P.W. 16, who was at time an M.L.A. speaks to having heard the sound of a gun shot and when he came to the place he found Murder already lying dead. He further deposed that Sri Ram came there and abused the respondent for having shot dead Murder for no purpose. The respondent shot at Sri Ram and killed him. P.W. 3 Bhola Nath has deposed to the effect that he was on his way to fetch his father's sister on the morning of December 7, 1965 when he heard the sound of a gun shot coming from the direction of the house of the respondent. He met Sri Kam who was then near about that place and both of them went near the house of the respondent and saw the corpse of Murder lying near the house of the respondent. When Sri Ram started abusing the accused the latter fired at Sri Ram and killed him. In that shot which was fired, he also sustained an injury and ran away from that place due to the pain and fear.

13. P.W. 12 is the father of Murder. He has deposed that on the morning of December 7, 1965. Babbu D.W. 1, nephew of the respondent, came and called his son Murder saying that he was wanted by his uncle, the respondent. Both Murder and Babbu left the house and within 20 or 25 minutes the witness was informed by a stranger that Murder had been shot dead by Vakil Saheb. On hearing this he ran towards the house of the accused and saw the dead body of Murder and also of Sri Ram lying

dead.

14. P.W 24 has spoken to the persistent attempts made by the respondent to turn her out of the room. She has also spoken about the incident on the evening of December 6, 1965 and the quarrel that took place between Murder and the respondent. Regarding the shooting of Murder and Sri Ram, she has given the same evidence as that of P.Ws. 1 and 4. She has denied the suggestion that she was having an old husband and she was living in illicit intimacy with Murder. She has further denied that on the morning of Dec 7, 1965, the wife of the respondent seeing Murder sitting close to P.W. 24 in her room remarked that Murder had converted the house into a Sarabkhana and a Bhatiar-khana and in view of this a quarrel ensued between the respondent and Murder was pushed out of the house by the respondent and his nephew D.W. 1. She has further denied that Murder on being so humiliated left the house threatening the respondent with dire consequence and that shortly thereafter Murder returned with Sri Ram, P.W. 15 and very many other people and began to throw stones and empty bottles towards the room where the respondent was sitting. She has also denied the suggestion that there was an attempt by Murder to kill the respondent with a knife when the accused opened fire against Murder. She has also denied the further suggestion that Sri Ram led to crowd into the house of the respondent for the purpose of killing the respondent and the other members of his family and when so advancing there was very heavy pelting of stones and that in order to save his life as well as the lives of the members of his family, the respondent opened fire against Sri Ram

15. The Police Officer, P.W. 25 has spoken to the fact that brick bats and stones and broken pieces of broken glass bottles were seen on the road, in the verandah of the house of the respondent as well as near his room and on the roof of the house.

16. The plea of the accused was as follows : He denied the incident spoken to by the witnesses stated to have taken place on the evening of Dec 6, 1965. Regarding the incident on the morning of December 7, 1965, he admitted firing two shots, the first of which killed Murder and of the second killing Sri Ram and he claimed that he had shot them to save not only his life but also the lives of his wife and child, as Murder was armed with a knife and was advancing for the purpose of killing him. Sri Ram also was shouting that the respondent and the members of his family should be killed. The big crowd was very heavily throwing stones towards his residential room and the crowd itself was advancing headed by Murder and Sri Ram. Bhola Nath was also with Murder and Sri Ram aggressively threatening the respondent and pelting stones. It was under those circumstances that he had to open fire and the moment the police party came he voluntarily gave the gun to the police officer and requested him to give protection not only to him but also to his wife and child. According, they were all taken by the police officer to the police station. Therefore, he pleaded that what he did was by way of private defence and that he was not guilty. He had also examined his nephew Babbu, D W 1 to speak to the fact that the respondent never asked him to go and bring Murder on the morning of December 7, 1965 and also to speak to the further fact that when the crowd was threateningly advancing towards his house led by Murder and Sri Ram and pelting stones, the respondent asked D.W. 1 to go and fetch the police. D.W. 2's evidence is not very material.

17. The learned Sessions Judge noted the discrepancies in the evidence of P.Ws. 1, 4 and 24 regarding the incident on the evening of December 6, 1965, but nevertheless held that something of the sort spoken to by the prosecution must have occurred on the evening between Murder and respondent and that the said incident ultimately led to the gun play on the next morning. Regarding the shooting of Murder and Sri Ram on the morning of December 7, 1965 the learned Sessions Judge after considering the prosecution version and the defence plea, is of the opinion that the story of the prosecution is by and large a correct one. The learned Sessions Judge accepted the evidence of P.W. 12 that on the said morning D.W. 1 came and took Murder on the ground that the respondent wanted to see him and that both of them left towards the house of the respondent. The learned Judge rejected the plea of the respondent that there was an attempt by Murder and Sri Ram led by a big mob to kill the respondent and the members of his family. The learned Judge notes that the Superintendent of Police and the District Magistrate, who visited the scene and had noticed much quantity of brick bats and glass pieces lying on the roof of the verandah, on the floor and in the room of the respondent, but merely brushed aside this consideration on the ground that it is not necessary to be taken into account to do justice in the case. The learned Judge has divided the incident which took place on December 7, 1965 into two parts. According to the learned Judge, Murder was shot in the first instance by the respondent when his nephew Babbu brought him. The learned Judge has accepted the evidence of P.Ws. 1, 4 and 12 that Murder came to the house of the respondent on having been informed by D W. 1 that his uncle wants to meet him. Murder came to meet the respondent, when the latter shot him dead. When Murder was shot, under those circumstances, the respondent had no right of private defence and it was a cold blooded murder. The second part of the incident, according to the learned Judge, was when Sri Ram came on the hearing about the shooting of Murder and started abusing the respondent and throwing stones along with several other people. After having exhausted the throwing of one heap of stones Sri Ram was actually picking up stones from another heap to be hurled against the respondent and his family members, and it was then that the respondent shot dead Sri Ram. The death of Sri Ram, under those circumstances, by the respondent was perfectly justified and it was only in the exercise of his right of private defence to save his life and the lives of the members of his family. Therefore, the respondent was not guilty of murder of Sri Ram Under Section 302 IPG though he shot him with the intention of killing him. Similarly, as Bholanath was also aggressive like Sri Ram and got injured by the shot fired by the respondent against Sri Ram in exercise of his right of private defence the respondent is not guilty of any offence Under Section 307 IPC.

18. The learned Judge in consequence acquitted the respondent of the charge of murder Under Section 302 IPC of killing Sri Ram and he also acquitted him of the offence Under Section 307 IPC for the injury caused to Bhola Nath P.W. 3. But so far as the offence of causing the death of Murder was concerned, the learned Sessions Judge convicted the respondent Under Section 302 IPC and sentenced him to death.

19. There was no appeal by the State against the acquittal of the respondent of the offence of murder Under Section 302 IPC regarding the death of Sri Ram nor against his acquittal Under Section 307 IPC for the injury caused to Bhola Nath.

20. The respondent filed criminal appeal No. 57 of 1967 before the High Court challenging his conviction and the sentence of death for causing the death of Murder. The High Court by its judgment under appeal has upheld the plea of self-defence even in respect of the death caused to Murder and acquitted the respondent. In coming to this conclusion the High Court has held that the finding of the learned Sessions Judge that the incident of December 7, 1965 took place in two distinct parts erroneous. On the other hand the High Court has felt considerable doubt regarding the incident spoken to by the witnesses as having taken place on the evening of December 6, 1965. In fact the High Court has held that the evidence of P.Ws. 1, 4 and 24 cannot be accepted because they spoke about that incident for the first time only in the Sessions Court and they spoke nothing about the same when they were examined in the committing Court. The High Court has accepted the defence version that there was a quarrel between the accused-respondent and the deceased Murder on the morning of December 7, 1965, in view of the observations made by the respondent's wife that Murder was converting the house into a Sarabkhana and Bhatiarkhana. The High Court has also held that as a result of this quarrel Murder was pushed out of the house by the respondent and his nephew D.W. 1 and that Murder along with Sri Ram and Bhola Nath and several others came in a body hurling abuses against the respondent and threatening to kill him and the members of his family. The High Court has also found that there was very heavy stone throwing and throwing of empty bottles by Sri Ram, Murder and other members of the crowd and they were advancing into the house of the respondent menacingly and uttering cries that he and the members of his family should be killed. When Murder was advancing towards the respondent armed with a knife and followed by Sri Ram and the crowd, the respondent fired against Murder as he apprehended danger to his life as well as to the lives of the members of his family. The shooting of Murder, under those circumstances, according to the High Court was in exercise of the right of private-defence by the respondent. The High Court has held that the shooting of Murder and Sri Ram and causing injury to Bhola Nath were parts of one and the same incident and there was absolutely no justification for dividing it into two parts as was done by the learned Sessions Judge. The High Court has not believed the evidence of P.W. 12, the father of Murder that on the morning of the occurrence, his son was sent for by the respondent through his nephew D.W. 1 and that Murder left the house to meet the respondent along with D.W. 1. This means that the High Court was not prepared to accept the evidence of P.Ws. 1, 4 and 24 that Murder came to the house of the respondent accompanied by Babbu D.W. 1 and that he was straightaway shot. Similarly, the High Court has not accepted the prosecution evidence that Murder had no part in throwing of stones against the respondent and that he did not attempt to attack the respondent with the dagger. On this reasoning the High Court, differing from the Sessions Judge, acquitted the respondent of the offence of causing the death of Murder.

21. On behalf of the State Mr. O.P. Rana, learned Counsel, has very strenuously attacked the judgment of the High Court on the ground that the High Court has not considered the evidence of the prosecution witnesses, who have clearly deposed the circumstances under which Murder was shot dead by the respondent. He quite naturally relied upon the reasons given by the learned Sessions Judge for holding the respondent guilty under this head and contended that the High Court has not in any way held that the finding of the trial Court in this regard is fallacious. He particularly emphasised that the incident took place not as pleaded by the respondent but as spoken to by the prosecution witnesses. According to him Murder was sent for by the respondent to him on the

morning of December 7, 1965 through his nephew D.W 1 and that Murder came unsuspectingly near the house of the respondent when he was shot dead by the respondent who had already armed himself" with the gun to kill Murder. The Counsel urged that the accused had no right of private defence. Under those circumstances, the order of acquittal passed by the High Court is erroneous.

22. Mr. Nuruddin Ahmed, learned Counsel for the respondent, has relied on that part of the judgment of the learned Sessions Judge for acquitting the accused for causing the death of Sri Ram and also for causing injury to Bhola Nath. Those circumstances, the Counsel pointed out, existed even when the respondent shot Murder, who was aggressively proceeding armed with a dagger to attack the respondent. Therefore, the Counsel urged that the High Court has considered the entire evidence and came to the conclusion that the respondent is not guilty.

23. We are not impressed with the contention of Mr Rana, learned Counsel for the appellant, that the High Court has not considered the material evidence in the case when it differed from the conclusions arrived at by the learned Sessions Judge in respect of the shooting of Murder. We have in the earlier part of the judgment referred rather exhaustively to the nature of the evidence adduced by the prosecution, the plea of the accused as well as the findings of the learned Sessions Judge and the High Court. In our opinion, the learned Sessions Judge was not justified on the evidence, in proceeding on the basis that the incident took place on the morning of December 7, 1965 in two parts. In this connection it may be noted that even if the evidence of P.Ws. 1, 4 and 24 is accepted, it is clear that in the incident which is stated to have happened on the evening of December 6, 1965, the accused and Murder have parted swearing vengeance against each other. This aspect, which has been missed by the learned Sessions Judge does assume considerable importance in considering whether Murder would have quietly walked into the house of the respondent like a lamb on the morning of December 7, 1965 as urged by the prosecution. The attempt of the prosecution to divide the incident into two parts one relating Murder and the other relating to Sri Ram is only to deprive the respondent of any possible right of private defence that he may plead. Even according to the prosecution version in respect of shooting of Sri Ram, that was done when the latter was withdrawing after merely abusing the respondent for killing Murder, That case has miserably failed. It is clear from the findings of the learned Sessions Judge that Sri Ram was actively participating in throwing stones and endangering the lives of the respondent and the members of his family. In fact the respondent has been given a clean acquittal by recognising his right of private-defence regarding the shooting of Sri Ram. We will assume that an incident as spoken by P.Ws. 1, 4 and 24 did take place on the evening of December 6, 1965 We have already referred to the nature of the incident spoken to by them. P.Ws 1 and 4 are very categorical in their statements that when Murder intervened on behalf of P.W. 24, the respondent resented the same and found fault with Murder for interfering in his affairs, and Murder replied that he is prepared to face any consequence. P.W 4 has gone further and stated that he separated the respondent and Murder and advised the latter to go away When such an incident has happened and when the respondent and Murder have parted on very unfriendly terms is it likely that the accused-respondent on the morning of December 7, 1965 would send his nephew to ask Murder to come and meet him? And is it probable that Murder would quietly agree to come and meet the respondent on his being so called? In our opinion, it is highly improbable that Murder would have been either sent for or that the latter would have quietly come to meet the accused when a bitter incident had taken place on the previous evening. If the

respondent would not have sent for Murder and the latter would not have come of his own accord on the morning of December 7, 1965, the circumstances under which the shooting took place assumes a different shape and must have happened only in the circumstances pleaded by the respondent. It is beyond imagination that the respondent would have been quietly waiting to shoot dead Murder when he walks in his house on being requested to come and meet him.

24. Though P.W. 24 has denied that there was any quarrel on 7-12-65 between Murder and the respondent, in view of the statement made by the wife of the respondent, the High Court was perfectly justified in not believing her evidence. It is in evidence of the police officers and the Superintendent of Police and District Magistrate that when they visited the scene there was a large quantity of brick bats and glass pieces on the street, near the verandah and inside the room of the respondent and on the roof of the house This circumstance though taken into account by the learned Sessions Judge for holding the respondent not guilty so far as the death of Sri Ram is concerned, has been brushed aside when the case against the respondent regarding Murder's death was being considered The learned Judge was not justified in ignoring this very vital circumstance which corroborates the plea of the respondent that there was very heavy stone throwing and throwing of empty bottles by the crowd headed by Murder and Sri Ram In fact, even the prosecution witnesses admitted that there was heavy stone throwing and throwing of empty bottles towards the room of the respondent, but they have stated that this took place only after Murder was killed.

25. The learned Sessions Judge has disbelieved the evidence that Sri Ram was shot deliberately by the respondent when Sri Ram was quietly attempting to go away from that place after abusing the respondent for killing Murder. On the other hand the learned Sessions Judge has held that Sri Ram was actively participating in throwing of stones and hurling of empty bottles and was also threatening that the respondent and the members of his family should be killed. The Court has further found that Sri Ram had exhausted throwing of one pile of stones. It was when he was again picking up stones from another heap to be hurled against the respondent then he was shot by the respondent. If once it is held that the incident relating to the death of Murder and Sri Ram was an integrated one and cannot be divided into parts, it follows that the same right of private-defence that the respondent had for causing the death of Sri Ram was available to him even in respect of Murder. While holding that the respondent has acted in private-defence when he shot dead Sri Ram, the learned Judge was not justified under more or less the same circumstances, in not recognising the right of private defence in the respondent regarding Murder. The High Court quite rightly corrected this serious error in the judgment of the learned Sessions Judge.

26. To conclude the High Court was right in acquitting the respondent of the offence Under Section 302 IPC for causing the death of Murder.

The appeal is dismissed.