

## **Har Prasad And Ors. vs The State Of Madhya Pradesh on 6 April, 1971**

**Equivalent citations: AIR1971SC1450, 1971CRILJ1135, (1971)3SCC455, AIR 1971 SUPREME COURT 1450**

**Author: C.A. Vaidialingam**

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

### **JUDGMENT**

C.A. Vaidialingam, J.

1. This appeal, by special leave, by the six appellants is directed against the judgment and order dated May 3, 1967 of the Madhya Pradesh High Court in Criminal Appeal No. 374 of 1964 confirming their conviction for offences under Sections 148, 452, 302 read with Sections 149 and 307 read with Section 149, I.P.C. as well as the sentences imposed for those offences. In view of the sentence of imprisonment for life passed for the offence under Section 302 read with Section 149, the sentences in respect of other offences have been directed to run concurrently.

2. In all fourteen accused, including the appellants were tried by the learned Sessions Judge, the allegations being that all of them formed themselves into an unlawful assembly with the common object of intentionally murdering with dangerous weapons two persons Balmukund and his son Ram Gopal, and of attempting to murder Lal Singh, P.W. 1, son of Balmukund and that they in prosecution of the common object caused the death of the above two persons and also attempted to murder Lal Singh. There were also certain other offences alleged under the Indian Arms Act.

3. The case of the prosecution was as follows: Ram Gopal and Lal Singh were sons of Balmukund. Balmukund and Ram Gopal were notorious gundas who constituted a grave menace to the people of Jaisinagar. The first and the second appellants are brothers; appellants Nos. 4, 5 and 6 are also brothers. All the fourteen accused, including the appellants armed with dangerous weapons like Farsa, guns and Katarnas, on the night of October 30, 1963 formed themselves into an unlawful assembly and came in a body to Commit the murder of Lal Singh, Balmukund and Ram Gopal. Lal Singh was sitting in the house of Imrat Joshi and when he was just starting to go to his house, he was obstructed by some of the accused including the appellants Nos. 2, 4, 5 and 6. They were armed with deadly weapons and the second appellant in particular was armed with a pistol. On seeing the said accused approaching him menacingly, Lal Singh raised an alarm and shouted for his brother Ram Gopal to come to his assistance. Ram Gopal, who was at that time sitting in the house of Hari Krishna P.W. 5 immediately came rushing to the place where Lal Singh was. At that time the

appellants Nos. 1 and 2 fired gun shots. Ram Gopal and Lal. Singh ran into the house of P.W. 5 to take shelter. But all the fourteen accused followed them and attempted to break open the front door of the house of P.W. 5. In the meanwhile some of the accused had gained entrance through the back of the house and all the accused began to attack Lal Singh, Ram Gopal and Balmukund. Appellants Nos. 1 and 2 had pistols, appellant No. 5 had a Farsa and the others had Katarnas in their hands. The first and the second appellants fired their guns towards Ram Gopal and when he fell down, he was given severe blows with Katarnas by some of the other accused including the appellants Nos. 3 and 6. As a result of the injuries sustained, Ram Gopal died on the spot.

4. Lal Singh, who was hiding within the house of P.W. 5 and watching the attack made on his brother, was seen by the accused and he was dealt blows by Katarnas by some of the accused including the 6th appellant. He was also shot at by the first and second appellants and he sustained a gun shot wound in his right thigh.

5. The report of the incident was made by P.W. 2, a neighbour on the same night on the basis that he heard some altercation and the noise of gun firing and that Ram Gopal was crying for help. This report admittedly did not contain any details regarding the incident relating to the attack as P.W. 2 was not an eye witness. The post-mortem certificate issued by P.W. 19 regarding Ram Gopal shows that he had received as many as five injuries. According to the doctor the death was caused due to shock and haemorrhage as a result of severe cutting of large blood vessels. The doctor had also stated that the injuries Nos. 1 and 5 were sufficient in the ordinary course of nature to cause death either individually or collectively. It must be noted that no injury due to gun shot has been spoken to by P.W. 19 regarding Ram Gopal.

6. The post-mortem certificate regarding Balmukund showed that he had received three incised wounds and gun shot injury. One of the injuries had cut the occipital bone and brain. According to the doctor the injury to the occipital bone and brain and the gun shot injury were sufficient in the ordinary course of nature to cause death either individually or collectively.

7. Regarding Lal Singh P.W. 1, Dr. Dutta, P.W. 26, has given wound certificate wherein he has stated that he suffered three injuries. According to the doctor injury No. 2 was likely to cause death and collectively all the three injuries were such that in the ordinary course of nature death may be caused. Ex. P. 78 is the certificate issued by the doctor regarding the injuries found, on Lal Singh. P.W. 26 has not noted any injury on the thigh of Lal Singh. But the doctor in his evidence has stated that as the condition of Lal Singh when he was brought to the hospital was very precarious and intravenous saline injection could not be given, the said injection was given by piercing a needle into his thigh. But the doctor has not referred to any gun shot injury on the thigh in the certificate Ex. P. 78.

8. The prosecution relied on the evidence of Lal Singh, P.W. 1, Benibai P.W. 3 and her husband Hari Krishna P.W. 5. But the main case of the prosecution was sought to be rested on the evidence of P.W. 1.

9. All the accused pleaded not guilty and they also set up a defence of alibi. This plea of alibi has been concurrently disbelieved by both the Sessions Judge and the High Court.

10. The learned Sessions Judge after a very exhaustive consideration of the evidence has held that the prosecution has not been able to establish that any of the accused was responsible for the death of Balmukund. There is no controversy that Balmukund met with his death due to Injuries received at or about the time when his son Ram Gopal was murdered and P.W. 1 injured. As the evidence relating to the attack by the accused on Balmukund was that of a solitary witness P.W. 4 and as that witness had given contradictory statements, the learned Sessions Judge felt it unsafe to act on that evidence. Therefore, none of the accused has been convicted for the murder of Balmukund. Out of the fourteen accused, the learned Sessions Judge felt considerable doubt regarding the part played by four among them and accordingly acquitted those accused. Ultimately the above six appellants and two others Butti and Babulal were convicted for the offences under Sections 148, 452, 302 read with Section 149 and 307 read with Section 149, I.P.C. But so far as two other accused Purshottam and Balmukund were concerned, the learned Sessions Judge convicted them of an offence under Section 201, I.P.C. and sentenced them to five years rigorous imprisonment. The learned Sessions Judge in spite of there being contradictions in the evidence of R W. 1 accepted that evidence as true regarding the material facts connected with the incident. In fact the learned Judge has felt that as some of the prosecution witnesses were not prepared to stand by the statements made before the committing Court, their evidence before the Sessions Court will have to be treated with great caution. The statements given before the committal Court by P. Ws. 3 and 5 were treated as substantive evidence under Section 288, Cr.P.C.

11. The ten accused who had been convicted including the appellants, challenged their conviction before the High Court. The High Court has acquitted Babulal and Butti giving them the benefit of doubt. Similarly with regard to Purushottam and Balmukund, the High Court while confirming their conviction reduced the sentence to the period already undergone. So far as the appellants are concerned, their conviction, as well as the sentences have been upheld, though, the High Court acquitted the first appellant of the offence under Section 25B of the Indian Arms Act. for which also he was convicted by the Sessions Judge.

12. Mr. Sadhu Singh, learned Counsel for the appellants who appeared as amicus curiae urged that Babulal and Butti had also been convicted by the Sessions Judge for the same offences as the appellants and on the same evidence. But the High Court did not accept the prosecution evidence so far as those two accused were concerned and had acquitted them. Therefore, the case against the appellants also should have been dealt with and treated in the same manner and the High Court has acted erroneously in convicting the appellants alone. The counsel further urged that the conviction of the appellant is almost exclusively based upon the sole testimony of P.W. 1, whose evidence is full of contradictions and inconsistencies on material particulars and as such it was very unsafe to act on such evidence. The counsel quite naturally urged that out of the fourteen accused, four have been acquitted by the trial Court and two by the High Court and in respect of the two others sentence has been reduced. As the evidence against all the accused was common and as the same has not been acted upon so far as the accused who have been acquitted are concerned, the appellants also should get the benefit of doubt in the circumstances.

13. On the other Mr. I. N. Shroff, learned Counsel for the State pointed out the findings of the Sessions Court as well as the High Court wherein the ,so called contradictions in the evidence of P.W. 1 have been duly noted. He further pointed out that according to the two Courts those contradictions were only on minor matters without affecting the truth of the evidence of P.W. 1 on material particulars. He further pointed out that P.W. 1 sustained very serious injuries and his presence on the spot at the time of the incident could not be doubted. The benefit of doubt, the counsel pointed out, has been given by the High Court to Babulal and Butti because no overt act had been attributed to them either by Lal Singh or P.W. 5 at the earliest occasion. The counsel further pointed out that both the learned Sessions Judge and the High Court have rejected the false plea of alibi set up by the appellants. In these circumstances, Mr. Shroff urged that the conviction of the appellants as well as the sentences passed are both justified.

14. We have been taken through the material evidence, oral and documentary, as also the reasons given by both the learned Sessions Judge and the High Court for accepting the case of the prosecution so far as the appellants are concerned. We are satisfied that the judgment of the High Court calls for no interference.

15. It was not disputed either before the trial Court or the High Court that Earn Gopal met with homicidal death on the night of October 30, 1963 and that Lal Singh P.W. 1 also suffered serious injuries at or about the same time. It has also not been disputed that Ram Gopal met with his death in the house of P.W. 5 and that Lal Singh also sustained the injuries in that house If that is so, it becomes clear that the presence of P. Ws. 1 and 5 at the time when the attack is stated to have taken place is quite probable and true. Added to this P.W. 1 has sustained very serious injuries and he had been treated by the doctor, to whose reports we have already made a reference. It is no doubt true that P.W. 1 has referred to his sustaining gun shot injuries and his brother also being fired by the first and second appellants, who are stated to have been armed with pistols. The post-mortem certificate regarding Ram Gopal and the wound certificate issued to P.W. 1 do not refer to any gun shot injuries. The attempt of the appellants has been to ask the Court that in view of these circumstances, the evidence of P.W. 1 is false. We are not impressed with this contention. This aspect has been adverted to by the High Court. Admittedly Balmukund had gun shot injuries, though there is no-specific evidence as to who caused those injuries. So it is clear that during this incident guns have been used. Therefore, in view of the large number of accused involved in the occurrence, it is quite natural for P.W. 1 to get a bit confused. But gun shots were heard during this incident as is clear from the evidence of P.W. 2, who gave the First information Report.

16. Certain inconsistencies in the statements made by P.W. 1 in Ex. P. 101 and in his evidence before the Sessions Court were pressed before us. Those aspects have been considered by both the Courts and they have come to the conclusion that though there are some discrepancies, they are not such as to affect the truth of the witness regarding the material facts relating to the incident. We do not propose to cover the ground over again excepting to say that we are in agreement with the views expressed by the High Court.

17. The evidence relating to the actual incident and as spoken to by P.W. 1 has been very closely analysed by the High Court and we aspect as correct the approach made in that regard.

18. Regarding the acquittal by the High Court of Babulal and Butti, it is necessary to clear the ground. Though they were also charged with some offences as the appellants and convicted by the Sessions Judge, the High Court has acquitted them. The High Court has not disbelieved the evidence of P. Ws. 1 and 5 regarding these two accused. Babulal has been acquitted by the High Court on the ground that P.W. 1 did not refer to any part having been played by him nor to any injury having been inflicted by him to Ram Gopal or to the witness. Similarly, P.W. 5 before the committing Court had omitted to mention Butti as one of those whom he could identify. It is in view of these circumstances that the High Court has given the benefit of doubt to Babulal and Butti and acquitted them. The position, so far as the appellants are concerned, is entirely different. The evidence against them by the witnesses has been substantially consistent and the High Court found no infirmity in that evidence.

19. We have gone through the reasons given by the learned Sessions Judge for acquitting four accused. We find that the case of those acquitted accused stands on a different footing from that of the appellants. Therefore, the reasons given by the trial Court for acquitting those four accused will not assist the appellants in any manner. Similarly, even the reduction of sentence by the High Court regarding the two accused Purushottam and Balmukund, it will be noted that the High Court has upheld as right their conviction by the learned Sessions Judge for an offence under Section 201. I.P.C. The learned Sessions Judge had convicted them to undergo rigorous imprisonment for five years. But the High Court was of the view that the reduction of sentence to the period already undergone will meet the ends of justice. This circumstance again is of no assistance so far as the appellants are concerned.

20. A criticism was made that the trial Court should not have treated as substantive evidence under Section 288, Criminal P. C. the statements made in the committing Court of P. Ws. 3 and 5. This contention need not detain us long. The High Court having due regard to the principles laid down by this Court in *Shranappa Mutyappa Halke v. State of Maharashtra* has correctly held that the Sessions Judge acted properly in invoking Section 288, Criminal P. C. and we entirely agree with the reasons given by the High Court.

21. To conclude we are in agreement with the decision of the High Court so far as the appellants are concerned.

22. The appeal fails and is dismissed.