

## **Bhagirath vs State Of Madhya Pradesh on 8 September, 1975**

**Equivalent citations: AIR1976SC975, 1976CRILJ706, (1976)1SCC20, 1975(7)UJ780(SC), AIR 1976 SUPREME COURT 975, 1976 (1) SCC 114, 1976 2 SCJ 66, 1976 SCC(CRI) 38, (1976) 1 SCC 20, 1976 ALLCRIC 1, 1976 CRI APP R (SC) 337, 1977 (1) SCR 519, 1975 UJ (SC) 780, 1976 MADLJ(CRI) 380, 1976 3 CRI LT 418, 1975 CRI APP R (SC) 366, 1975 SCC(CRI) 742, 1975 BBCJ 733, 1975 CURLJ 674**

**Author: R.S. Sarkaria**

**Bench: P.N. Bhagwati, R.S. Sarkaria**

### **JUDGMENT**

R.S. Sarkaria, J.

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court. It arises out of these facts:

2. Three persons, named. Gopal, Bhagirath and Manohar were tried by the Additional Sessions Judge, Indore on charges under Sub-section 307, 307/34, Penal Code for the attempted murder of their co-villager, Kashiram. There was also a charge under Section 324 against Gopal for causing hurt to Devisingh. (PW 2). The trial judge convicted Bhagirath appellant under Section 307. Penal Code and sentenced him to three years rigorous imprisonment. Gopal and Manohar were acquitted. Bhagirath's appeal was dismissed by the High Court, his conviction was maintained but the sentence was reduced to two years rigorous imprisonment. Hence this appeal by him.

3. The prosecution story ran as under:

4. Bhagirath appellant and Gopal, the acquitted accused, are real brothera. On March 30, 1969, Kashiram (PW 1) returned to his village Sanavdiya at about 6 p.m. He went into his house and bolted it from inside. Immediately thereafter the appellant and the two acquitted accused, armed with weapons, raided the house, hammered at the entrance door, broke it open, pulled cut Kashiram and forcibly took him to a distance of 80 feet. There, Bhagirath and Gopal struck one spear blow each on the left flank of Kashiram, while Manohar gave him a farsi blow. The blade of the spear of one of the assailants got detached from its wooden handle and was left embedded in the wouuld of Kashiram. Devisingh (PW 2) tried to intercede but Gopal dealt him a blow, too. The assailants then ran away. Devisingh (PW 2) went to the Police Station, Khudel and lodged the First Information Report (Ex. P-1).

5. Sub-Inspector Shankarrao Chouhan came to the village for investigation. There, the appellant, also, handed over a written complaint to the Sub-Inspector accusing that Kashiram, Devisingh and others had assaulted them. On this report, another case was registered against P. Ws. Kashiram, Devisingh and two others.

6. The prosecution examined eight eye-witnesses. P. Ws. 2, 5, 7 and 9 are the sister's son, wife, brother's wife and brother respectively of Kashiram, while P. Ws. 8 and 14 are his nephews. Smt. Keshar (PW 6) is the daughter-in-law of Kashiram's brother. All the eye-witnesses were thus closely related to Kashiram.

7. At the trial all the witnesses with one voice reiterated the story that has been set out at the commencement of this judgment.

8. All the three accused in their examination under Section 342, Cr. PC denied the prosecution case. The appellant set up a counter-story. According to the defence, Kashiram is a notorious bully and a desperate character. On the day of occurrence, at about 6 P.M. he alighted from a Tampo near the Hotel in village Snavadiya. Brandishing an open knife, he started abusing the villagers in general who were languishing near the Hotel. Some of his relations and friends bodily carried away Kashiram and locked him inside his house so that he may not cause harm to anybody. Kashiram was however in rage and in a bellicose mood. He attempted to break open the locked door with a sword from inside. Ultimately Kashiram succeeded in coming out by scaling the wall. Sword in hand, he charged at Bhagirath and caused the latter a serious injury on the face. Kashiram caused another injury to Bhagirath. A third blow attempted by Kashiram landed on the ground with the result that his sword broke into two. While Bhagirath and Kashiram were scuffling, Devisingh, Puriya Narayan and Mukand armed with sword and spears came there and assaulted the appellant.

9. The courts below have rejected as false, this part of the prosecution story that Kashiram was pulled out from his house, and taken to a distance of 16 paces in the lane and there assaulted by the three accused.

10. In this connection, the learned trial Judge said:

Both pieces of the door clearly show that violence was put on it from inside and not outside. The edges of the holes were inverted showing that the weapon had been thrust from inside and not from outside. The defence version therefore, is supported that Kashiram was shut by his friends and his associates in his house when he acted like a bully after his arrival from Indore.

11. On this point the learned Judge of the High Court observed:

Kashiram's statement that he was pulled out from his house is equally false. If the assailants, including the appellant, were armed and he came out, nothing could have prevented the assailants from making an assault on him then and there. They would not drag him to a distance of about 80 feet and then assault him.

It was concluded:

The prosecution witnesses have deliberately concealed to disclose the circumstances which preceded the infliction of injuries to Kashiram.

12. Further, both the courts found that the prosecution version, that Bhagirath and Gopal caused one injury each with their spear to Kashiram, stood falsified by the medical evidence according to which there was only one injury on Bhagirath which could be caused with a spear.

13. Notwithstanding their finding that to a material extent the prosecution story was false, the courts below have worked out the conclusion that this was a case of free fight in the course of which, Kashiram and Devisingh on one side, and Bhagirath and Manohar accused on the other, received injuries. In reaching this conclusion, the courts were influenced by the fact that the accused had also not come out with the whole truth. For suppression of truth, the High Court censured both the sides thus:

It is, therefore, evident that while making their statements at the trial, not only the prosecution witnesses but the appellant also were anxious to avoid their responsibility for the injuries which were received by the rival party.

14. It appears to us that the approach of (he courts below in reconstructing a story different from the one responded by the prosecution and then convicting the appellant on that basis was clearly erroneous. It was never the prosecution case that there was a fight or pitched battle between two parties According to the prosecution, the occurrence was only a one-sided affair that P. W. Kashiram was forcibly pulled out and taken from his house by three accused to a distance of 80 feet, and there assaulted. In the F. I. R., Devisingh made no mention whatever of the injuries received by the accused side At the trial also, the prosecution witnesses brazenly refused to concede that the appellant or his companion Manohar had received any injury at the time occurrence. Contrary to what these prosecution witnesses had stated, the courts have come to the conclusion that these injuries, three of which were incised wounds, were received by the accused side, in the course of a free fight at the hands of the complainant party.

15. It is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court, on its own make out a new case for the prosecution and convict the accused on that basis.

16. Assuming for the sake of argument that this was a case of free fight, then also it could not be said with any stretch of imagination, that the appellant was the author of the solitary injury received by Kashiram. Dr Harish Chander (PW 4) found only one stab wound-which in his opinion could be caused with a spear-on the left chest of Kashiram. According to Devisingh the star witness of the prosecution the broken blades of both the spears wielded by Bhagirath and Gopal had been left embedded in each of the stab wounds inflicted by them on Kashiram, and the witness had pulled out both the blades from the wounds and kept them at his house. Thereafter he handed over one of

those blades to the police. Assuming that Devisingh's version to the extent that he found one broken spear blade embedded in the solitary wound found on Kashiram was not untrue, the question that still remained to be determined was, whether this blade was of the spear alleged to have been used by the appellant. A negative answer to this question is available from the testimony of Balmukand (PW 14), himself. In examination-in-chief, itself, this witness stated: "Gopal had used a blow with a spear which had struck Kashiram on the left side of his abdomen. ... So the blade remained inside and the stick came out of the blade and remained in the hands of Gopal.... Devisingh had taken out the blade of the spear from the body of Kashiram.

17. If PW Balmukand were to be believed this solitary wound to Kashi Ram was caused by Gopal, the acquitted accused and not appellant.

18. Thus from wider angle the matter may be looked at, the prosecution had miserably failed to make out a case against the appellant. Then the substratum of the evidence given by the eye-witnesses examined by the prosecution was found to be false, the only prudent course, in the circumstances of this case, left to the Court was to throw out the prosecution case in its entirety against all the accused.

19. For the forgoing reasons, we allow this appeal, set aside the conviction of the appellant and acquit him.