

Supreme Court of India

Ram Swarup And Ors. vs State Of Haryana on 14 July, 1993

Equivalent citations: 1993 CriLJ 3540, JT 1993 (4) SC 354, 1993 (3) SCALE 300, 1993 Supp (4) SCC 344

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Bench: K Singh, N Singh

JUDGMENT N.P. Singh, J.

1. Two appeals have been filed against the same judgment. Criminal Appeal No. 406 of 1990 has been filed on behalf of Ram Swamp, Pala Ram and Mela Ram; whereas Criminal Appeal No. 407 has been filed on behalf of Hari Ram, Brijlal and Prem. All the six accused persons had been put on trial for causing the death of Biru Ram and injuries on Ranjit Ram (PW 4), Dhrampal (PW 5), Ajmer Singh (PW 10), Joginder Singh (PW 11), Smt. Phoola Devi and others. The appellant Prem, is alleged to have given gandas blows on the head of Biru Ram, which proved fatal. So far the other five appellants are concerned, there is no allegation that they caused any injury on the person of Biru Ram (deceased).

2. It is an admitted position that Biru Ram (deceased) and the appellant Mela Ram were brothers. The prosecution witnesses Ranjit Ram, Dharampal, Ajmer Singh and Joginder Singh are the sons of Biru Ram (deceased). Smt. Phoola Devi is the widow of Biru Ram(deceased). Ram Avtar, who was also injured in the occurrence, is the son of Ranjit Ram and as such grandson of Biru Ram (deceased). On the side of the accused persons, Prem Chand, Brijlal and Hari Ram are the sons of Mela Ram. Only the remaining two persons, Ram Swarup and Pala Ram are not related to Mela Ram.

3. It appears that there was a dispute between Biru Ram (deceased) and his sons on the one side and accused Mela Ram and his sons on the other side, in connection with a wall, which had been constructed by the appellant Hari Ram in the house. The appellant Hari Ram had filed a suit and an order had been passed restraining the prosecution party from demolishing the wall aforesaid and from interfering with the possession of the courtyard.

4. The case of the prosecution is that on 11.12.1986. at about 7/8 A.M., Amar Singh (PW 9), was tethering his buffaloes in front of the house of the appellant Prem, which was protested by Prem, Hari Ram and Brij Lal. On this there was exchange of hot words between them. It is further the case of the prosecution that the appellants Mela Ram, Pala Ram and Ram Swarup also came there. Prem and Mela Ram were armed with geodesies , Hari Ram with an iron phowra, Brij Lal with Kulhari while Pala Rarn and Ram Swarup were armed with lathies. From the side of the prosecution, on hearing the raula, Ranjit (PW 4), Dhrampal (PW 5), Ajmer (PW 10), Joginder (PW 11) and Biru Ram (deceased) along with Smt. Phoola Devi and others reached the spot. Prem gave gandas blows on the head of Biru Ram, who fell down. Pala gave lathi blows on the back of PW 4 and others. The other accused persons assaulted prosecution witnesses aforesaid, including the. ladies of the family. After the occurrence, Biru Rarn, was shifted to the Civil Hospital, Mustafabad, where he succumbed to the injuries ai about 8.50 A.M., the same day.

5. During the medical examination of Biru Ram, an incised wound about 3 1/2" (sic)x 3/4" bone deep and a punctured wound about 1 1/2"x 1/2" muscle deep on the right occipital parietal region were found, which are alleged to have been caused by the appellant Prem with his gandasi. So far the other injured persons on the side of the prosecution are concerned, incised injuries and abrasions were found, details whereof have been mentioned in the judgment of the Trial Judge,

6. The defence of the appellants is that although the accused persons and the prosecution party were very close relations, but because of the family dispute, they were bitter enemies of each other. The feelings between the two parties were further surcharged due to the construction of a wall. A proceeding under Section 107 of the Cr. P.C. was initiated. In the suit the prosecution party was restrained from interfering with the possession of the courtyard and from demolishing the wall in question. According to the appellants on 11.12.1986 at about 7/8 A.M. the appellants Hari Ram, Mela Ram and Satya Devi (DW 1) were present in their house. At that time Biru Ram (deceased) along with Ranjit Ram, Joginder, Dharampai, Ajmer Singh, Amar Singh, Smt. Ghhoti, Smt. Phoola Devi and Ram Avtar came to their courtyard. At that time Biru Ram (deceased) was armed with a Ballam. The other prosecution witnesses were armed with gandasies and iron rods. They wanted to demolish the wall, which was resisted by the appellant Hari Ram, who told the complaint party that if they had any grievance regarding the construction of the wall then they should approach the Civil Court. But the prosecution party did not accede to his request and they commenced the attack. Ajmer gave gandasi blow on the right arm of Hari Ram. Amar Singh gave an iron rod blow on his left arm. Biru Ram and Ranjit Ram also assaulted the appellant Hari Ram and Mela Ram. Some of the prosecution witnesses gave a gandasi blow on the head of Smt. Satya (DW 1). The appellants picked up the weapons which were in the courtyard and used the same in their self defence, which caused injuries on the side of the prosecution.

7. The Trial Court as well as the High Court have referred to the different injuries found on the person of the appellants and Smt. Satya Devi (DW 1). The Trial Court, however, has observed:-

Now the question to be seen is as to which party was the aggressor. According to P.W. 3 Dr. Kuldeep Seth, the complainant party had suffered 20 injuries on their persons out of which 7 injuries were grievous. P.W. 4 Ranjit had three injuries on his person out of which two were incised wounds. P.W. 5 Dharampal had two injuries on his person which were incised wounds, P.W. 9 Amar Singh had four injuries on his person, out of which two injuries were grievous and the other two were simple. P.W. 10 Ajmer Singh had one grievous injury on his person, which was in the head towards right side, P.W. 11 Joginder had 4 injuries on his person which were simple in nature, Smt. Phoola had two incised wounds simple in nature on her person while Smt. Chhoti had one incised wound in the head which was grievous in nature. Ram Avtar had one incised wound in the head simple in nature while Biru Ram had two injuries on his person according to P.W. 3 Dr. Kuldeep Seth--Accused Mela Ram had six injuries on his person while accused Hari Ram had three injuries on his person, according to P.W. 3 Dr. Kuldeep Seth. Further according to him, Smt. Satya D.W.1 had four injuries on her person, out of which injury No. 2 was relating to pain in the middle or right back while injuries Nos. 1 and 3 were blunt injuries on the left fore arm back and on right knee joint and injury No. 4 was incised wound on the middle of scalp muscle deep. Therefore, the number of injuries on the persons of Mela Ram, Hari Ram and Smt. Satya Devi D.W.1 is 13. The number of injuries on the

persons of the complainant party is more than the persons of Mela Ram and Hari Ram accused and Smt. Satya Devi D.W.1. The nature of the injuries on the persons of complainant party is more serious than that of Hari Ram, Mela Ram accused and D.W.1 Satya Devi. The nature and the number of injuries on the persons of the complainant party suggest that the accused were the aggressors.

8. It was rightly urged on behalf of the appellants that this is not the correct approach for judging in cases of bilateral clash as to which party is the aggressor. This question cannot be determined on basis of the number of injuries found on the side of the complainant or the accused person. For purpose of recording a finding as to whether the prosecution party or the accused party was the aggressor, all the evidence adduced on behalf of the parties and relevant circumstances have to be taken into consideration. It need not be pointed out that in such cases it cannot be urged that there are two parallel versions of the occurrence before the Court. The real onus is on the prosecution party to prove its case, including the manner of occurrence beyond all reasonable doubts; the accused has only to raise a doubt in the mind of the Court or to satisfy the Court that the defence version disclosed by the accused was a probable version of the occurrence.

9. However, in the facts of the present case, the prosecution party itself has disclosed in respect of injuries caused on the accused persons during the course of the occurrence and as to how those injuries were caused. The Trial Court as well as the High Court have accepted the prosecution version of the occurrence. On behalf of the appellants nothing was pointed out, on the basis of which, this Court can come to the conclusion that the prosecution case has not been proved beyond all reasonable doubt or that the defence version of the occurrence ought to have been accepted. The learned counsel, however, submitted that even if the findings recorded by the Trial Court as well as by the High Court are accepted, except appellant Prem, others cannot be held guilty, for causing the death of Biru Ram. According to the learned counsel, the other five appellants, had neither shared any common intention nor the common object to cause the death of Biru Ram. From the evidence of the prosecution witnesses and the circumstances of the case it is apparent that none of the appellants had any intention to kill any particular person on the side of the prosecution party. Both the parties were itching for a confrontation and a clash. In a sense, prosecution party and appellants came to a clash and had a free fight. In this background, it will not be safe to record a finding that the appellants had any common object to commit the murder of Biru Ram; they had only common object to cause grievous hurt to the members of the prosecution party. This is apparent from the fact that only Prem gave gandasi blows on toe head of Biru Ram, none of the remaining five appellants are alleged to have given any blow to him from the weapons held by them. If they had also shared common object to cause the murder of Biru Ram, then in normal course, it was expected that they would have also attacked Biru Ram, instead of causing incised injuries and abrasions on the other members of the prosecution party.

10. Accordingly, the conviction and sentence, under Section 302 read with Section 149 of the Penal Code, of the appellants, Hari Ram, Brij Lal, Ram Swarup, Pala Ram and Mela Ram are set aside. Their conviction and sentence under Section 326 read with Section 149 of the Penal Code by the Trial Court, which have been affirmed by the High Court are upheld. On the materials on the record, their convictions under different Sections including 325 read with 149, 324 read with 149 and under

Section 148 of the Penal Code are also affirmed. In the result their appeals are allowed in part to the extent indicated above.

11. So far the appellant Prem is concerned, his conviction and sentence under Section 302 does not require any interference because on the materials on record, it has been established on behalf of the prosecution that he gave gandasi blows on the head of Biru Ram, which proved fatal. Accordingly, his appeal fails and is dismissed.