Supreme Court of India
Mitthulal And Anr. vs The State Of Madhya Pradesh on 11 November, 1974
Equivalent citations: AIR 1975 SC 149, 1975 CriLJ 236, (1975) 3 SCC 529, 1974 (6) UJ 777 SC
Author: Bhagwati
Bench: P Bhagwati, Y Chandrachud
JUDGMENT Bhagwati, J.

1. This appeal, by special leave, as directed against an order passed by the High Court of Madhya Pradesh confirming the conviction and sentence of the appellants. The appellants with four others were prosecuted for offences under Section 326 read with Section 34 and Section 325 read with Section 34 of the Indian Penal Code The case against the appellants and the other accused was as follows : One Ganpat was in the possession of a field called V Buliyawala where Arhar crop was standing On 16th February, 1968 in the afternoon at about 4 p.m. Ganpat on reaching his filed found that the cattle of the accused were grazing in his field Ganpat rounded up the cattle in order to take them to the cattle pound, whereupon an abercation took place between Ganpat and the accused, appellant No. 2, who was armed with a Lohangi, gave a blow causing fracture on the left hand of Ganpat Barjnath another accused, also gave lathi blow to Ganpat. Ganpat thereupon fell down and semisunconscious, but at that stage his son Rajdhar came along to the field Rajdhar on arrival was attacked by appellant No 1 with a farsi and an injury was caused to him on his left hand Appellant No 2 also gave a below on the right hand of Rajdhar with his Lohangi Rajdber ran for safety but he was pursued and ultimately he fell down unconscious. On regaining consciousness Rajdhar went home and found that in the meantime his father Ganpat had also came back. Both Ganpat and RaJdhar thereafter went to the Ashok Nagar Police Station and lodged the first information report in regard to this incident at 8 15 p.m.

2. The version of the appellants and the other accused was, however, different. Their case was that at about 3 p.m. On 16th February, 1968 the cattle of Ganpat and Laljiram were grazing in the field of appellant No. 2 When appellant No 2 tried to take the cattle to the cattle pound. Ganpat and Lalji objected and took away the cattle from the possession of appellant No. 2 by force. Thereafter Ganpat, Rajdhar and some others went to the house of the accused Komal and gave him blows with spears, field, lohangi and sticks and then belaboured Raghunath & accused Kalloo Ram who met them on the way, and lastly attacked Jagannath Prasad, Bold v. Prasad and the appellants with spears, farsis, stick and lohangi. It appears that in the course of this incident some minor injuries were caused to Ganpat and Rajdhar but that was in exercise of the right to private defence and no offence, was therefore, committed by the accused. In fact a first information report in regard to this incident was lodged by one Jwala Prasad with Ashok Nagar Police Station at 8 p.m.

3. On the basis of these two first information reports cross-cases were filed by the police. One was a case against the appellants and the other four accused out of which the present appeal arises. The other was a case against Ganpant, Rajdhar and others. Both cases were tried separately and each was decided on the basis of the evidence recorded in it In the former case, with which we are concerned, the other four accused were acquitted but the appellants were found guilty, appellant No 1 under Section 326 and appellant No 2 under Sections 325 and 323, and sentenced to suffer rigorous imprisonment for three years for the offence under Section 326, two years for the offence

under Section 325 and three months for the offence under Section 323, the last two sentences against appellant No. 2 being directed to run concurrently. The appellants, being aggrieved by the order of conviction and sentence passed against them, preferred an appeal to the High Court of Madhya Pradesh but a Division Bench of the High Court dismissed the appeal and confirmed the conviction and sentence of the appellants. This decision of the High Court is impugned in the present appeal brought with special leave obtained from this Court.

4. It is apparent from a bare reading of the judgment of the High Court that it suffers from a serious infirmity and it is impossible to sustain it. The High Court has based its conclusion not only on the evidence recorded in the case against the appellants and the four other accused but also taken into account the evidence recorded in the cross case against Ganpat, Rajdhar and others. This is what the High Court has stated in so many terms in paragraph 7 of the judgment :

The two cases Cr.A.No. 188 and Cr. A. 202 of 1968 have to be read together and then alone the real position can be understood. The witnesses in one case are undoubtedly accused in the other It is by going through the evidence in both the cases that we can come to the real story The Nandwanshis claim that the fight took place in the field belonging to them and, therefore, they had a right of private defence, whereas the other party similarly claim that the fight took place in their field and they had a right of private defence. Curiously enough both claim that the origin of the trouble is the grazing of the cattle If we read with both the cases together with the statement of the accused in one case and the version of the witnesses of the prosecution witnesses in the other along with the statement of the accused and the version of the prosecution witnesses in the other we can come to the true story. Independently considered a particular case, it creates some confusion. If both the cases are read together there leaves no room for doubt that the incident happened in the following manner.... After going through the evidence of both the cases I have come to the conclusion that the conviction in both the case are in order.

This was clearly impermissible to the High Court. It is difficulty to comprehend as to how the High Court could decide the appeal before it by taking into accounts evidence recorded in another case, even though it might be what is loosely called a cross case. It is elementary that etch c se must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at the decision Even in civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other. Much more so in criminal cases would this be impermissible it is doubtful whether the evidence in one criminal case can be treated as evidence in the other, even with the consent of the accused. But here there was clearly no consent of the appellants to treat the evidence recorded in the cross case against Ganpat and Rajdhar as evidence in the case against them The High Court was, therefore, clearly in error in taking into consideration the evidence recorded in the cross-case against Ganpat and Rajdhar. The High Court ought to have decided the appeal before it only on the basis of the evidence recorded in the pretent case and ought not to have allowed itself to be influenced by the evidence recorded in the cross-case against Ganpat and Rajdar. It is regrettable that the High Court should have fallen into such an obvious error. The judgment of the High Court must, therefore, be set aside and we must proceed to consider whether, on the evidence recorded in the present case without locking into the evidence recorded in other cross-case the conviction and sentence recorded against the appellants

can be sustained.

5. The evidence in support of the prosecution led in the present case consists of four eve-witnesses, namely, Ganpat (P.W. 1), Rajdhar (P.W. 2), Hartum Singh (P.W. 4) and Laljiram (P W. 5). So far as the evidence of Hartum Singh (P.W. 4) and Laljiram (P.W. 5) is concerned, we do not think we can place any reliance upon it, as the names of Hartum Singh (P W. 4) and Laljiram (P.W. 5) were not mentioned in the first information report lodged by Ganpat and Rajdhar Ganpat (P.W. 1) also did not state in his evidence that Hartum Singh (P.W. 4) and Laljiram (P W 5) were present at the time when he was attacked by the appellants and four other accused. It was only Rajdhar (P W. 2) who mentioned their names in his evidence, but even his statement was halting one and all that he said was that he had seen them at some distance and not that they were near enough to the scene of the incident to be able to witness it In fact both according to Ganpat (P W. 1) and Rajdhar (P.W. 2) the two persons who were supposed to have witnessed the incident were different. They were Bhagwan Singh and Marjat Singh. But surprisingly enough, neither of them was examined as a witness. The prosecution case must, therefore, rest almost entirely on the evidence of Ganpat (P.W. 1) and Rajdhar (P W. 2). Can this evidence be regarded as sufficient to sustain the conviction of the appellants ? We do not think so.

6. In the first place, it may be noted that only one injury was received by Ganpat (P. W 1) and two injuries by Rajdhar (P.W. 2) and all these injuries were comparatively minor injuries. On the other hand, on the side of the accused, several persons were injured. The first appellant had one injury. The second appellant had three injuries out of which one was a stab wound : accused Komal had found injuries out of which one was an incised wound on the parietal bone, another a stab wound on the left side of the abdomen and the third an incised wound on the index finger : accused Kalloo had also four injuries out of which one was an incised wound on the dorsum of the left hand, another was an incised wound on the left knee, the third was a linear cut on the left thigh and the fourth was an incised wound on the right scapula : Jagan nath Prasad had three injuries, out of which two were incised wounds : Baldev Prasad had one incised wound on the side of the parietal region and Raghunath had two injuries, one of which was a stab wound 2" right of 11th dorwal spine. Thus, the number of persons injured on the side of the accused was seven and many of the injuries received by them were stab wounds and incised wounds, some of them on vital parts of the body. The prosecution witnesses, including Ganpat (P.W. 1) and Rajdhar (P W 2), fared to explain how these injuries were received by the accused and other persons on their side. Having regard to the nature and multiplicity of injuries received on the side of the accused, as compared to one or two minor injuries received by Ganpat (P W. 1) and Rajdhar (P.W. 2), it is quite probeable that Ganpat (P.W. 1) and Rajdhar (P.W. 2) were the aggressors and the appellants and the other accused acted in exercise of the right of private defence as contended by them.

7. The evidence of Ganpat (P W 1) does not at all inspire confidence. The story narrated by him is extremely improbable. Us stated in his examination-in-chief that when he tried to round up the cattle of the accused grazing in his field for the purpose of taking them to the cattle pound, he was beaten by the appellants and accused Rajnath and when he was about to fall semi-unconscious, he saw Brijdhar coming to the field But thereafter he did not know what had happened and it was only when he came home alter recovering consciousness that he saw that Rajdhar had also received i.

jury with farsa. This story was, however, departed in material particulars in his cross examination. There he stated that he had seen the first appellant giving farsa blow to Rajdhar and it was only thereafter that he became unconscious. He was also confronted with various statements made by him before the police which were contradictory of the evidence given by him before the Court It is not necessary 10 refer to these contradictions in detail Suffice it to State that some of them were material and Ganpat (P W. 1) was not in a position to explain them. The evidence of Ganpat (P W. 1) cannot, therefore, be regarded as worthy of credence.

8. The evidence of Rajdhar (P W. 2) is also no better. He completely contradicted Ganpat when he said in his examination-in chief that both he and Ganpat began to round up the cattle. He added that when Ganpat and he tried to round up the cattle, the first appellant gave a farsa blow on his neck and he tried to ward off the blow by raising his left band and the result was that his left hand was injured and two middle fingers of his left hand became quite useless and thereafter the second appellant also gave a blow with Lohangi on his right hand. He ran for safety but the accused pursued him and he ultimately fell down and then accused Komal, Kalloo, Gopi and Barjnath gave lathi blows to him whereupon he became unconscious. Now, it is difficult to believe that any lathi blows were given to this witness by accused Komal, Kalloo, Gopi and Barjnath after he fell down in the field. The medical evidence does not show that any injuries were received by this witness in addition to one blunt injury on the right shoulder, and one incised wound on the dorsum of the left hand. It is also difficult to accept the version of this witness that merely on receiving two injuries, one on the right shoulder and the other on the dorsum of the left hand, he became unconscious. With regard to Bhagwan Singh and Marjat Singh, he first stated that he did not see them, but when he was constrained to admit that they were there. He was also confronted with the statements made by him before the police and he was not able to explain the contradictions between those statements and the evidence given by him before the Court. He was also asked as to why he did not mention in the evidence given by him before the committing Court that accused Komal, Kalloo and Gopi had beaten him but he could not offer any explanation. H s evidence also therefore, does not inspire confidence and no conviction can be founded upon it.

9. We must, therefore, hold that there is no reliable evidence to support the conviction of the appellants and the prosecution must be held to have failed to establish the offences charged against the appellants. We accordingly acquit the appellants. The bail bonds executed by them will stand cancelled.