

[**REPORTABLE**]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 82-83 OF 2005

Raghubir Singh

.....Appellant

Vs.

State of Rajasthan & Ors.

.....Respondents

WITH

CRIMINAL APPEAL NO.778 OF 2005

J U D G M E N T

HARJIT SINGH BEDI, J.

1. This judgment will dispose of Criminal Appeal Nos. 82-83 and 778 of 2005. The facts have been taken from Criminal Appeal No. 778 of 2005.

2. As per the prosecution story, PW Prabhu Koli and his brothers had mortgaged 5 bighas of land comprising Khasra No. 250 to PW-1 Raghuveer Singh several years earlier to the incident. At about 2 p.m. on the 7th August 1997, Raghuveer Singh alongwith Chhotey Lal, Rajendra, Munshi and Girdhari were in the process of ploughing the land when the accused, Kallu, Kamru, Taiyab and Rahmat reached that place on two

tractors and also

2

started ploughing the same land. Raghuveer Singh protested at this intrusion on which they attempted to run him over with their tractors. In the meanwhile, Asuddin, Mehboob, Mauj, Sohan Lal and Kamru armed with Farsis, Tanchias, Dantis and lathis attacked them and whereas Mauj and Asuddin inflicted blows with a Danti and Tanchia on the head of Girdhari, Kallu and Rahmat ran over him with their tractors, and when Raghuveer Singh attempted to intervene in favour of Girdhari, Asuddin, Taiyab and Kamruddin also caused blows to him with their weapons. Girdhari died on the spot whereas Chhotey Lal, Lallu, Rajendra and Munshi sustained serious injuries. Raghuveer Singh thereafter went to the Police Station and submitted a written report at 5.30 p.m. the same afternoon and on its basis a First Information Report was drawn up. On the completion of the investigation, the accused were charged under various provisions of the Indian Penal Code, they being inter-alia Sections 302 and 302/149, 307 and 307/149. The prosecution in support of its case relied on the evidence of 17 witnesses in all, the primary witnesses

being PW-1

3

Raghuveer Singh, the first informant, PW-2 Rajendra Kumar, PW-3 Chhotey Lal, PW-4 Munshi Ram, PW-5 Lallu Ram, PW-6, Suresh Kumar and PW-7 Than Singh. The prosecution also relied on the statement of PW-14 Dr. Sanjay Gupta, who had conducted the autopsy on the dead body and had found 5 injuries thereon and also examined five of the witnesses aforementioned i.e. Raghuveer Singh, Rajendra Kumar, Chhotey Lal, Munshi and Lallu and found several injuries on their persons, some of them grievous in nature whereas from the side of the accused Taiyab, Kallu, Rahmat, Asuddin and Kamru were found to have been injured, though with simple injuries. In their statements recorded under Section 313 of the Cr.P.C. the accused denied their involvement simplicitor. They did not lead any evidence in defence. The trial court relying on the aforesaid eye witnesses' account and the medical evidence convicted 7 of the 9 accused under Sections 302, 302/149, 307 and 307/149 etc. of the IPC and sentenced them to various terms of imprisonment under those provisions. The trial court, however, acquitted Mehboob Khan

and Taiyab. The 7

4

accused who had been convicted by the trial court challenged their conviction by filing DB Criminal Appeal No. 796 of 1998 whereas the complainant PW Raghuvver Singh assailed the acquittal of Mehboob Khan and Taiyab Khan by filing D.B. Criminal Revision No. 188 of 1999. During the pendency of the appeal in the High Court, Rahmat passed away and the proceedings against him were disposed of as having abated. The High Court on a reconsideration of the evidence came to the conclusion that the land on which the incident had happened did not belong to Prabhu but in fact belonged to the Forest Department and was adjacent to the fields of accused Mauj Khan and Rahmat and that the complainant party had, on the fateful day, gone for the first time to cultivate the said land, although Patwari had advised them not to do so. The court also found that the accused appeared to be in possession of the said land and finding that the complainant party had trespassed into it and had started ploughing had lodged a protest on which a free fight had ensued and persons from both sides had received injuries on which an FIR had

also been 5

registered against the complainant party by Kallu accused. The court accordingly concluded that in this view of the matter, the provisions of Sections 147, 148 and 149 could not be attracted and each of the accused was to be held liable and responsible for his individual act. The High Court accordingly examined the role of each of the accused and observed that though Kallu had been charged under Section 302 of the IPC for having caused the fatal injury on the left side of the back of Girdhari with the cultivator by running over him he did not have the intention to cause death and as such he would be liable under Section 304 Part II of the IPC. The court accordingly modified the conviction and sentence of the accused as under:

- (i) “Appeal of appellant Rahmuddin is allowed and he is acquitted of the charges under Section 302/149, 447, 147,325/149,324/149 and 323/149 IPC. He is on bail, he need not surrender and his bail bonds stand discharged.
- (ii) As appellant Rahmat Khan died during the pendency of the appeal, proceedings against him stand dropped.
- (iii) Appeal of appellants Kallu, Asuddin, Sohan Lal, Kamruddin and Mauj Khan stands partly allowed. Conviction of appellant Kallu under Section

**Cri. Appeal Nos.82-
83/2005**

6

302,447,148,325/149,324/149 and 323/159 is set aside, instead he is convicted under Section 304 Part II IPC. As he had been in confinement for a period of more than six years, ends of justice would be met in sentencing him to the period already undergone by him in confinement, Kallu, who is in jail, shall be set at liberty forthwith if not required in any other case.

- (iv) Conviction of appellants Sohan Lal, Mauj Khan and Asuddin under Section 302/149,447,148,325/149 and 323/149 stands set aside and they are acquitted of the said charges. Their conviction under Section 324 IPC is however confirmed and they are sentenced to the period already undergone by them in confinement. Sohan Lal and Mauj Khan are on bail, they need not surrender and their bail bonds stand discharged. Appellant Asuddin, who is in jail, shall be set at liberty forthwith, if not required in any other case.
- (v) Conviction of appellant Kamruddin under Sections 302/149,447,148,324/149 and 323/149 is set aside and he is acquitted of the said charges. His conviction under Section 325 IPC however stands confirmed and he is sentenced to the period already undergone by him in confinement. He is on bail, he need not surrender and his bail bonds stand discharged.
- (vi) D.B.Criminal Revision No.188/1999 being devoid of merit stands dismissed.
- (vii) The impugned judgment of the learned trial judge stands modified as indicated above.”

3. The acquittal of Mehboob Khan and Taiyab Khan was, however, maintained on the plea that the ocular testimony was not corroborated by the medical evidence. It is in this

situation the

7

present set of appeals has been filed by the State as well as by PW-1 Raghuveer Singh.

4. We have heard Dr. Manish Singhvi, the learned Additional Advocate General for the State of Rajasthan, Ms. Aneetha Shenoy, the learned counsel for Raghuveer Singh, as also Ms. Vibha Dutta Makhija the learned amicus for the accused respondents. The learned counsel for the appellants have raised several arguments before us. It has first been pointed out that there was ample evidence to show that the incident had happened in the field of Prabhu which had been mortgaged with Raghuveer Singh and the accused were therefore the aggressors as they had trespassed into that field and the finding of a free fight was erroneous, more particularly as the prosecution case rested on the statements of a large number of seriously injured eye witnesses. It has been emphasized that a free fight postulated that both sides had come to do battle, as held by this Court in **Gajanand & Ors. vs. State of U.P.** AIR 1954 SC 695 and **Bhanwar Singh & Ors. vs. State of M.P.** (2008) 16 SCC 657 and in the light of

the fact that the

8

accused were the aggressors the finding of the High Court was completely misplaced. It has also been submitted by the learned counsel that even assuming that there was a free fight Asuddin, Mauj Khan, Kallu and Rahmat accused were, in any case, liable for the offence under Section 302 of the IPC as they had caused injuries to the deceased Girdhari. Ms. Makhija, the learned counsel for the accused has, however, supported the judgment of the High Court and has raised a preliminary argument that the High Court's interference in such matters was required to be minimal and if the High Court had taken a view which was possible on the evidence, interference should not be made. In this connection, the learned counsel has relied on **State of U.P. vs. Banne** (2009) 4 SCC 271. She has also submitted that the witnesses had suppressed the factum of the injuries on the person of the accused, which meant that the genesis of the incident was uncertain and an adverse inference was to be drawn on the prosecution's case. On facts it has been urged that the observation of the Trial Court that the incident had happened

in the field

9

belonging to Prabhu was wrong as there was no evidence to suggest that it had been mortgaged with Raghuveer and it was for that reason that during the course of the evidence Raghuveer Singh had claimed himself to be a lessee on the land and not a mortgagee which was a clear departure from his earlier statement. It has also been emphasized that the above submissions coupled with the fact that the dead body had not been recovered from the spot but had been found in the house of the deceased and that no plough or blood had been picked up from the place of incident clearly revealed that the incident had not happened in the field in question. It has also been submitted that the story projected by PW-1 that Kallu had first knocked Girdhari over with his tractor and then using the lift of his tractor had raised the cultivator and then dropped it on his body had not figured in his statement recorded under Section 161 of the Cr.P.C. and had come up for the first time in court and thus could not be relied upon. It has finally been submitted that PW-3 Chottey Lal, one of the injured witnesses, and the Investigating Officer PW-17

Samayadeen had 10

admitted in their evidence that the dispute between the parties with regard to the land had resulted in a sudden fight between the two groups and as such the observation of the High Court was fully justified on the evidence.

5. We first take up Ms. Makhija's preliminary submission about the scope of interference by this Court in an appeal filed under Article 136 of the Constitution. As already indicated, the learned counsel has relied on Banne's case (supra). After reviewing a large number of judgments of this Court, it has been observed in paragraph 25 thereof that if the view taken by the High Court was plausible or possible, it would not be proper for the Supreme Court to interfere with an order of acquittal. It has been observed thus:

"Following are some of the circumstances in which perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:

- (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;
- (ii) The High Court's conclusion are contrary to evidence and documents on record;

Cri. Appeal Nos.82-
83/2005

11

- (iii)(iii)The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice.
- (iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;
- (v) This Court must always give proper weight and consideration to the findings of the High Court.
- (vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A perusal of the aforesaid quote in a manner reduces the scope for interference by this Court. We, therefore, have to see as to whether this Court should interfere on the basis of the parameters laid down above. It has firstly to be borne in mind that the injuries on the accused had not been explained as the prosecution witness did not utter a single word as to how they had been suffered by them. In this view of the matter, the defence can legitimately raise a suspicion that the genesis of the incident was shrouded in mystery and the prosecution had suppressed a part of the proceeding. It is true, as contended by Dr. Manish Singhvi, that each and every injury on an accused is not required to be

explained and 12

more particularly where all the injuries caused to the accused are simple in nature (as in the present case) and the facts of the case have to be assessed on the nature of probabilities. Examining the incident in the light of the above, we find that the injuries in the present case were required to be explained as there is a serious dispute as to the possession of the land in which the incident had happened, more particularly as Raghuveer Singh himself was uncertain as to the nature of the possession as per the statements on record and the Patwari had also warned the complainant party not to trespass into the land. Undoubtedly, there are a large number of injured witnesses, some of them grievously hurt, to support the prosecution case, but in the light of the finding of the High Court that there was uncertainty about the possession, this fact by itself cannot preclude the accused from claiming that no case was made out against them. It has also to be noticed that PW-3 Chottey Lal, one of the injured witnesses, had admitted in his cross examination that the quarrel had taken place suddenly and that the rival groups were both saying that

they would sow the

13

land. This plea is also supported by the evidence of PW-17 Samaydeen, the investigating officer, who also admitted that as per the Patwari, the fight had taken place on the land possessed freshly and belonging to Gauga and Dallu and that the land was under the possession of the complainant party. This statement is at variance with the evidence of the other witness particularly PW-1 Raghuvver Singh as he stated that they had been in possession of the land in question for almost 20 years. There is also a doubt as to the site of the incident. The dead body and the cultivator were recovered from the house of PW-1, and PW-17 admitted that no blood stained earth had been lifted from the site. The judgment in Bhanwar Singh's case (supra) cannot be made applicable as it deals only with the scope of an offence under Section 149 of the IPC. In the light of the facts that have been enumerated above, it would be seen that the observations of the High Court that both sides had come to do battle appears to be justified as this is an assessment on an appreciation of the evidence which cannot be said to be palpably wrong so as to invite the

intervention of this

14

Court. The observation in Gajanand's case (supra) that in order to bring the matter within a free fight both sides have to come armed and prepared to do battle must be applied in the present case with the result that each accused would be liable for his individual act.

6. With this background, we now go to the alternative argument made by the learned counsel for the appellants i.e. even accepting the case to be one of a free fight, the four accused respondents i.e. Kallu, Asuddin, Mauj and Rahmat ought to have been convicted under Section 302 of the IPC for having caused the murder of Girdhari. It will be seen that the allegation projected against Kallu was that he was the tractor driver who had first knocked Girdhari over, had then driven the tractor over him, lifted the cultivator and then dropped it on his person killing him instantaneously whereas the other three had also caused injuries to Girdhari with their weapons. We have gone through the evidence on this score very carefully. The injuries found on the dead body are reproduced hereinunder:

Cri. Appeal Nos.82-
83/2005

“1. Perforating injury on back 15
on left side L-L (toom) region deep upto peritoneal cavity
size 12 x 5 cm x deep upto peritoneum also fracture of
9m 10 & 11th rib on posterior side.

2. Abrasion: 4 x 2 cm left side to the injury No.1.

3. Incised wound 5 x 1.5 cm Margins regular on right
parieto frontal region transversely.

4. Incised wound 5 x 1.5 cm on center of head between
both parietal bone longitudinally, margins regular.

5. Lacerated wound: 2 x 1 cm X 0.5 cm in middle of left
medical side.

The injuries were ante mortem in nature and cause of
death was haemorrhage & shock due to injury to spleen
& left kidney by injury No.1.”

The injury with the cultivator is injury No.1 which is the fatal injury and has been attributed by the witnesses to Kallu. Ms. Makhija has, however, argued that the story that the cultivator had first been lifted and then dropped on Girdhari could not be believed as Raghuveer Singh had not mentioned this fact in his evidence although the other witnesses had done so and as such, this story was improbable. Even assuming, however, that the cultivator had not been lifted and then dropped yet we find that injury No.1 had been caused with a cultivator is clear from the medical evidence and the extent and gravity of the injury shows that Kallu had the intention to cause Girdhari's

death. It is also

16

clear from the evidence that injury No.1 was sufficient to cause death in the normal course of nature. The injuries attributed to the other three accused mentioned herein above were simple in nature and can, by no stretch of imagination, be said to have been the cause of death. In the light of the fact that we are dealing with a case of a free fight, Asuddin, Mauj and Rahmat must be made responsible for their respective injuries and Rahmat had, as a matter of fact, died while the matter was in the High Court. We are, therefore, of the opinion that in so far as Kallu respondent is concerned, his conviction under Section 304 Part II of the IPC even on the findings recorded by the High Court, was erroneous. We, accordingly, allow these appeals to the extent that Kallu is held guilty under Section 302 of the IPC for having caused the murder of Girdhari and we restore the judgment of the Trial Court to this limited extent. In so far as the other accused are concerned, the appeals are dismissed.

7. The fee of the Amicus Curiae is fixed at Rs.7,000/- in each appeal.

Cri. Appeal Nos.82-
83/2005

17

.....**J.**
(HARJIT SINGH BEDI)

.....**J.**
(GYAN SUDHA MISRA)

29TH AUGUST, 2011
NEW DELHI.