

RAM KUMAR AND ANR. ETC.

A

v.

STATE OF HARYANA

FEBRUARY 19, 1998

[G.T. NANAVATI AND V.N. KHARE, JJ.]

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Indian Penal Code, 1860—Ss 302, 307 and 324 read with Section 34—Murder—Digging of khal by accused brothers—Protest by deceased and PWs—Fire shots causing death—Conviction and sentence by Trial Court placing reliance on evidence of PW7 and PW8—Evidence of PW 10 discarded—Confirmation by High Court—On appeal, Held, prosecution failed to establish beyond reasonable doubt the guilt of the accused—PWs not reliable witnesses and cannot be accepted without independent corroboration—Evidence of PW 10 wrongly discarded—Accused fired shots probably in self defence after being injured—Conviction and sentence set aside.

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The appellants were prosecuted for an offence under Section 302, 307 and 324 read with Section 34 IPC.

The prosecution case was that the appellants namely R, RK, H & S who were brothers went into the field of complainants 'B', PW 7 and 8 and deceased 'M' and started digging a 'Khal'. The complainants protested the digging and a quarrel broke out. Appellant 'R' attacked 'B' with an axe and injured his left arm. Appellant 'H' fired two shots hitting 'M' and PW 8. 'B' raised alarm and 'MP' and 'T' came running to their rescue. Thereupon the appellants ran away. 'M' succumbed to his injuries and on the basis of statement of 'B' criminal case was registered and chargesheets were filed against the appellants.

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The prosecution examined PW 7, PW 8 and also PW 10, the patwari who deposed about the work done by him regarding the khal. Appellants R and RK in their defence admitted their presence at the place of incident and claimed right to private defence. The trial Court relying on the evidence of PW 7 and PW 8 and disbelieving the defence version, convicted the appellants which was confirmed by High Court. Appellants aggrieved by their conviction, preferred the present appeals.

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A The contention of appellants was that (i) the Courts below have not properly appreciated the evidence of PW 10 and discarded his evidence by misreading the documents on record which clearly showed that an order for demarcation was passed by Naib Tehsildar, (ii) PW 7 and PW 8 have not truly deposed about the manner in which the incident had happened and, therefore, their evidence ought not to have been accepted without independent corroboration.

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Allowing the appeals, this Court

C HELD : 1.1. The prosecution has failed to establish beyond reasonable doubt that the appellants were guilty of the offences for which they were tried. Thus, the appellants were acquitted of all the charges levelled against them. [1026-C]

D 1.2. PWs 7 & 8 protested against digging of the 'khal' and the incident took place at that time. The appellants had obtained an order for demarcation and the patwari had done the demarcation. The High Court failed to appreciate that the appellants had no reason to take the law in their hands and attack deceased 'M' and PWs 7 & 8. 'M' and PWs 7 & 8 did not like the appellants digging the 'khal' on the portion of land in between their fields and, therefore, it was more likely that they had started the assault. According to PWs 7 and 8 they had not caused injuries to 'R' and 'RK' and that they were inflicted by 'MP' and 'T' after either of them would have dared to go near the appellants after deceased and they were injured. It is not believable that knowing that one of them had a revolver and he had already injured two persons by firing the same. Neither PW 7 in his complaint nor PW 8 in his police statement had mentioned about the injuries caused to the appellants 'R' & 'RK' during the incident. It appears that appellant 'R' and 'RK' were injured before the two shots were fired and very probably in self defence. The defence version thus appears to be more probable than the version of PWs 7 and 8. [1025-E-H]

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G 1.3. P.Ws 7 & 8 have not described the incident truly by suppressing the part played by them in assaulting 'R' and 'RK', and as they have also changed the place the incident in order to make out a case of aggression by the appellants they cannot be regarded as reliable witnesses and their evidence cannot be accepted without independent corroboration. 'MP' and 'T', who were independent witnesses, were dropped as unnecessary witnesses.

[1026-B]

H 1.4. The version of PWs 7 & 8 and that the incident had happened in

their filed is falsified by the site map and the evidence of the Investigating officer and the Pench witness. The site plan and the evidence of the said two witnesses establishes that the fields of PWs 7 and 8 and deceased 'M' are on the north of the khal and on the south of the khal are the fields of 'C' and 'CR'. The khal was already in existence near the filed of 'CR'. It was to be dug up further towards west and then towards north. The northern portion of the khal was between the two fields of deceased 'M' and PWs 7 & 8. The blood stains were found not in the field of PWs 7 & 8 but in the field of 'C' which was to the south of the khal. It further appears that after having dug the khal along the northern boundary of the field of 'CR' they started digging the khal in between the lands of deceased 'M' and PWs 7 & 8 which portion PWs 7 and 8 were claiming as a part of their filed. It was not necessary for the appellants to go on the lands of deceased 'M' and PWs 7 & 8 for the purpose of digging the khal. Thus the site plan prepared by the Investigating Officer and find of blood in the field of 'C' make it clear that the incident had taken place not in the field of the complainant as deposed by them but in field of 'C'. [1022-H; 1023-A-C]

2.1. Both the High Court and Trial Court erred in disbelieving the evidence of PW 10. The evidence of PW 10 proves beyond doubt that certain lands were earmarked as 'khal' and he had demarcated the land. In support the application of appellant 'R' and order passed by Naib Tehsildar for demarcation marked as Exh. PN/2 were produced. He has also produced the site plan showing the area earmarked as khal in the Revenue records. Both these documents were brought on record by the prosecution during the examination-in-Chief of PW 10, and therefore it is difficult to appreciate how the courts below could reach the conclusion that what PW 10 had deposed was not true. The High Court Misread the document Exh. PN/2 when it observed that the said application did not show that an order was passed thereon by the Naib Tehsildar and, therefore, the finding recorded on that basis that it was not open to PW 10, patwari to demarcate the lands stands vitiated. [1023-D-H; 1024-A]

2.2. The evidence of PW 10 was also disbelieved on the ground that as no procedure under Section 24 of the Haryana Canal and Drainage Act, 1974 was followed the Patwari could not have lawfully demarcated the land and, therefore, Patwari was not right when he stated that he had done the work of demarcation. The evidence discloses that there was no khal in existence earlier and only the portion over which the proposed khal was to be constructed was earmarked by fixing stones. The evidence of PW 10

A discloses that consolidation took place in that village in 1962-63 and at that time the land which was earmarked as khal was assigned a separate number and the area that land was also mentioned in the Shajra. In support of that he of had stated he had produced the extract from Shajra (Exh. -DF/2) wherein the khal portion is described as Khasra No. 167 and the area of khal as 20 killas and 14 marlas. The existing khal was only up to be filed of 'CR'. Thus the area which was earmarked for khal was really to be dug up as a khal and it was not a case of alteration or destruction, etc. of the existing khal which was to be repaired. Thus Section 24 had no application and the evidence of PW 10 was wrongly discarded. [1024-B-E]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 58 of 1988 Etc.

From the Judgment and Order dated 22.7.87 of the Punjab & Haryana High Court in CrI. A. No. 80-DD of 1986.

D R.K. Jain, Sushil Kumar, Ajay Bhalla, Ms. Ranjana Narayan and K.K. Gupta for the Appellants.

Prem Malhotra and Ajay Sivatch for the Respondent.

The Judgment of the Court was delivered by

E NANAVATI, J. These two appeals by the four convicted accused are directed against the judgment and order passed by the High Court of Punjab and Haryana in Criminal Appeal No 80-DB of 1986. The High Court confirmed their conviction under Sections 302, 307 and 324 all read with Section 34 IPC.

F The prosecution case was that on 28.5.1985 at about 11.00 A.M. the four appellants, who are brothers, went to the field of complainant Babu Ram and deceased Multan Singh and Khushi Ram and started digging a 'khal'. Multan Singh, Babu Ram and Khushi Ram protested by saying that they should not dig the land till proper demarcation in that behalf was done by the competent authority. In spite of their protest the four appellants continued to dig. Again Multan Singh protested and at that state appellant Ram Kumar attacked Babu Ram with an axe and caused an injury on his left arm. Raj Kumar also gave an axe blow to him. One blow was given by appellant Suresh Kumar to Babu Ram. Appellant Hukum Singh fired two shots from his revolver. One shot hit Multan Singh and the other hit Khushi Ram. It was also the prosecution case that on hearing shouts raised by Babu Ram, Mahavir Prasad

and Tara Chand came there running to the rescue of Multan Singh, Babu Ram and Khushi Ram. Thereupon the four appellants ran away from that place. As a result of the injuries caused to him Multan Singh died on 7.6.1985. A statement of Babu Ram was recorded in the hospital and a criminal case was registered on the basis of that complaint. All the four appellants were then charge-sheeted and tried for the offences stated above.

The prosecution had examined Babu Ram (PW-3) and Khushi Ram (PW-8) to prove its case. It also examined Hari Ram Patwari (PW-10) who deposed about the work done by him regarding the khal. In their defence appellant Raj Kumar and Ram Kumar admitted their presence at the place of incident and claimed right of private defence. Their version was that two days prior to the date of incident Hari Ram Patwari had completed demarcation work of the Khal and, therefore, they had started digging the khal on 27th and had continued to do so on 28th also. While they were digging Multan Singh, Khushi Ram and Babu Ram had come there and attacked them with weapons like gandasas and sticks. Ram Kumar fired shots from his revolver and that had caused injuries to Multan Singh and Khushi Ram. They also examined one Pale Ram as a defence witness. Appellant Hukum Singh and Suresh Kumar denied their presence at the time and place of the incident

The learned trial Judge disbelieved the defence version and also disbelieved Hari Ram Patwari (PW-10) and relying upon the evidence of Babu Ram and Khushi Ram (PWs-7 & 8) convicted the appellants. The High Court agreed with the finding recorded by the trial court and confirmed their conviction.

The learned counsel for the appellants submitted that both the courts below have not properly appreciated the evidence of Hari Ram Patwari, who was a prosecution witness and who had produced documentary evidence in support what he had deposed. It was submitted that the courts below also committed an error of law in holding that the procedure prescribed by Section 24 of the Haryana Canal and Drainage Act, 1974 was not followed and that indicated that Hari Ram Patwari was not telling the truth when he deposed that he had demarcated the khal on 26.5.1985 two days prior to the date of the incident. They also submitted that his evidence was discarded as a result of misreading the documents which have come on record and which clearly show that an order for demarcation was already passed by the Naib Tehsildar and that after completing that work he had made a compliance report also.

A They also submitted that Babu Ram (PW-7) and Khushi Ram (PW-8) have not truly deposed about the manner in which the incident had happened and, therefore, their evidence ought not to have been accepted without any independent corroboration, particularly when they were the accused in a cross case and had completely failed to explain the apparent injuries on the person of Ram Kumar. On the other hand it was submitted by the learned counsel, appearing for the State that the High Court has correctly appreciated the evidence of the prosecution witnesses and the findings recorded by it are based upon the evidence on record.

C What Babu Ram (PW-7) and Khushi Ram (PW-8) have stated before the court was that on 28.5.1978 at about 11.00 A.M., when they were working in their field all the four appellants came there and started digging the khal. Therefore, they along with Multan Singh went near them and told them not to do so. As they continued digging the khal through their field, they tried to stop them by telling them not to dig the khal till demarcation was done.

D At that time appellant Ram Kumar, who was having an axe, Hukum Singh, who was having a revolver and Raj Kumar and Suresh, who were having Kassi, attacked them. Babu Ram was injured by Ram Kumar, Raj Kumar and Suresh. As Multan Singh and Khushi Ram moved forward for rescuing their brother, appellant Hukum Singh fired a shot which hit Mulan Singh. Thereafter he fired another shot at Khushi Ram and injured him on his neck. They have also

E deposed that appellants Ram Kumar, Raj Kumar and Suresh had caused injuries to Khushi Ram also. Hearing their cries Mahabir Prasad and Tara Chand came there with sticks and attacked the appellants and rescued them. The learned counsel drew our attention to the complaint filed by Babu Ram (PW-7) which does not contain any reference to the injuries caused to

F appellants Raj Kumar and Ram Kumar during the incident. It clearly appears that a belated attempt was made by PWs-7 & 8 while giving evidence to explain injuries on the persons of appellants Raj Kumar and Ram Kumar, as neither PW-7 in his complaint nor PW-8 in his police statement had stated that injuries were caused to those appellants also. It is also significant to note

G that though Mehtab Singh and Tara Chand were cited as witnesses they were not examined and were dropped as unnecessary witnesses. The version of PWs-7 & 8 that the incident had happened in their field is falsified by the site map and the evidence of the Investigating Officer and the panch witness. The site plan and the evidence of the said two witnesses establishes that the

H fields of PWs-7 & 8 and Multan Singh are on the north of the khal and on

the south of the khal are the fields of Chiranji Lal and Chelu Ram. The Khal was already in existence near the field of Chelu Ram. It was to be dug up further towards west and then towards north. The northern portion of the khal was between the two fields of Multan Singh and PWs-7 & 8. The blood stains were found not in the field of PWs-7 & 8 but in the field of Chiranji Lal which was to the south of the khal. It further appears that after having dug the khal along the northern boundary of the field of Chelu Ram on 27th they started digging the khal in between the lands of Multan Singh and PWs-7 & 8 which portion PWs-7 & 8 were claiming as a part of their field. It was not necessary for the appellants to go on the lands of Multan Singh and PWs-7 & 8 for the purpose of digging the khal. Thus the site plan prepared by the Investigating Officer and find of blood in the field of Chiranji Lal make it clear that the incident had taken place not in the field of the complainant as deposed by them but in the field of Chiranji Lal.

PW-7 & 8 also stand contradicted by the evidence of PW-10, Hari Ram, who was the patwari of that area and whose evidence has been disbelieved by both the courts below. Hari Ram Patwari had stated that the existing khal was up to the field of Chelu Ram and as shown in the official record prepared after the consolidation proceedings were held in that area the khal was to pass through the land in between the fields of Dhani Ram, i.e., father of Multan Singh and PWs-7 & 8 on the north and the fields of Chelu Ram on the south. From near the end of the boundary of Chiranji Lal's field it had to take a turn towards the north by passing through that portion of land on either side of which were the fields of Dhani Ram and his sons. He has further stated that an application was received by the Naib Tehsildar from Ram Kumar for demarcating the aforesaid lands earmarked as a khal and that on 29.1.1985 the Naib Tehsildar had passed an order for demarcation and had sent the papers to the Kanungo who had then forwarded those papers to him on 15.2.1985. In support of his say he produced a copy of that application and the order passed thereon, marked as Exh.-PN/2. That order discloses that the khal was 'shamlat' and the land earmarked for it was entered in the official records as panchayat land. He also produced the site plan showing the area earmarked as khal in the revenue records. Both these documents were brought on record by the prosecution during the examination-in-chief of this witness; and, therefore, it is difficult to appreciate how the courts below could reach the conclusion that what the Patwari had deposed was not true. The High Court misread the document Exh.-PN/2 when it observed that the said

- A application did not show that an order was passed thereon by the Naib Tehsildar and, therefore, the finding recorded on that basis that it was not open to PW-10, Patwari, to demarcate the land stands vitiated. Exh.PN/2 contains the order passed by the Naib Tehsildar on 29.1.1985 and it also contains a direction to the Patwari of Halqa (PW-10) to comply with the same.
- B The evidence of Patwari was also disbelieved on the ground that as no procedure under Section 24 of the Haryana Canal and Drainage Act, 1974 was followed the Patwari could not have lawfully demarcated the land and, therefore, Patwari was not right when he stated that he had done the work of demarcation on 26.5.1985. The evidence discloses that there was no khal in existence
- C earlier and only the portion over which the proposed khal was to be constructed was earmarked by fixing stones. The evidence of PW-10 discloses that consolidation took place in that village in 1962-63 and at that time the land which was earmarked as khal was assigned a separate number and the area of that land was also mentioned in the Shajra. In support of what he had stated he had produced the extract from Shajra (Exh.-DF/2) wherein the khal
- D portion is described as khasra No. 167 and the area of khal as 20 killas and 14 marlas. The existing khal was only up to the field of Chelu Ram. Thus the area which was earmarked for khal was really to be dug up as a khal and it was not a case of alteration or destruction, etc., of the existing khal which was to be repaired. Thus Section 24 had no application and the evidence of PW-10
- E was wrongly discarded.

- PW-10 has further stated in his evidence that he had demarcated the land which was recorded as 'khal' and had prepared a report (EXH.DF) in that behalf on the back of that application. He had also made a noting to that fact
- F in the Rojnamcha Waqiyati. An extract from it was produced by him and it was marked as Exh. -DF/1. In view of this documentary evidence it was not proper to discard his evidence on the ground that he was not a Patwari connected with the Canal Department and therefore it was doubtful if he had really demarcated the land. It was nobody's case that only Patwari of the Canal Department could have done the work of demarcation. He was the Patwari of
- G village Halqa and he was directed by the Naib Tehsildar to comply with his order for demarcation. His evidence was also doubted on the ground that while doing the demarcation work he had not kept Dhani Ram and his sons or the Sarpanch of the village present. As deposed by him he had taken signatures of all those who were present on the spot. The report discloses
- H that at that time one Balak Ram, who was a member of the Panchayat, was

present. Ram Kishan, Jeet Singh, Fateh Singh and Pale Ram were also present. All of them had signed the said report. No rules or directions required the demarcation work to be done in presence of the concerned Sarpanch and owners of the lands touching the 'khal'. This part of his evidence has been overlooked by the High Court. A

The evidence of PW-10 proves beyond doubt that certain lands were earmarked as 'khal' since 1962-63 when the consolidation proceedings were completed. The lands which were to be converted into khal were declared as panchayat land and a separate khasra No. 167 was given to them. Proper entries were made in that behalf in the revenue records. The report made by him on 26.5.1985 contains a statement that on that day "first of all, the killa lines of these killas, were fixed by taking measurements from stones 'Servari' and thereafter the demarcation of two karams wide *khal* was done from the east of killa No. 30/13/1, 13/2-14-15 and Kham Burjis were got fixed". The site plan also shows existence of boundary stones. Though PWs-7 & 8 were not present when the demarcation was done and for that reason even if it is assumed that they did not know that any demarcation was done on 26th, it is not possible to believe that they had not noticed the boundary stone which were on the lands since before 26-5-1985. What was done on 26th was to draw the parallel lines two Karmas wide in between those boundary stones. B C D

PWs-7 & 8 protested against digging of the 'khal' and the incident took place at that time. The appellants had obtained an order for demarcation and the Patwari had done the demarcation. The High Court failed to appreciate that the appellants had no reason to take the law in their hands and attack Multan Singh and PWs-7 & 8. Multan Singh and PWs-7 & 8 did not like the appellants digging the 'khal' on the portion of land in between their fields and, therefore, it was more likely that they had started the assault. The defence version thus appears to be more probable than the version of PWs-7 & 8. E F

According to PWs-7 & 8 they had not caused injuries to Ram Kumar and Raj Kumar and that they were inflicted by Mehtab Singh and Tara Chand after Multan Singh and PWs-7 & 8 were injured. It is not believable that either of them would have dared to go near the appellants after knowing that one of them had a revolver and he had already injured two persons by firing the same. Mehtab Singh and Tara Chand were not examined as witnesses. It appears that Ram Kumar and Raj Kumar were injured before the two shots H

A were fired and very probably in self defence.

B As we find that PWs-7 & 8 have not described the incident truly by suppressing the part played by them in assaulting Raj Kumar and Ram Kumar, and as they have also changed the place of incident in order to make out a case of aggression by the appellants they cannot be regarded as reliable witnesses and their evidence cannot be accepted without independent corroboration. Mehtab Singh and Tara Chand, who were independent witness, were dropped as unnecessary witnesses. On re-appreciation of the evidence we hold that the prosecution has failed to establish beyond reasonable doubt that the appellants were guilty of the offences for which they were tried.

C We, therefore, allow these appeals, set aside the conviction of the appellants and acquit them of all the charges levelled against them. Their bail bonds are cancelled.

S.V.K.I.

Appeals allowed.