

BHAGWAN SAHAI AND ANR.

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 416 of 2016)

JUNE 03, 2016

**[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]**

*Penal Code, 1860: ss. 308/34, 323, 324 – Previous enmity – Prosecution case is that two brothers (appellants) alongwith female family members formed an unlawful assembly and armed with lethal weapons caused injuries to few persons – In the incident, father of the appellants died and one of the appellant received injuries – Trial court gave a finding that there was a free fight between both the parties and therefore convicted the accused for their individual liability – High Court held that since both the parties had withheld the origin and genesis of the occurrence and since it cannot be determined as to which party was the aggressor, the case has to be decided against the accused persons treating it as a case of free fight between the parties – On appeal. Held: Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants – Appellants are, therefore, acquitted of all the charges.*

**Allowing the appeal, the Court**

**HELD:** The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-bye in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case. [Para 8] [537-A-C]

- A *Lakshmi Singh and others v. State of Bihar* 1976 (4)  
SCC 394 – referred to.

Case Law Reference

1976 (4) SCC 394 referred to Para 7

- B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 416 of 2016.

From the Judgment and Order dated 14.01.2016 of the High Court of Rajasthan at Jaipur in DBCRA No. 1235 of 2011.

- C Manish Kumar, Ansar Ahmad Chaudhary, Advs. for the Appellant.  
Ms. Ruchi Kohli, Adv. for the Respondent.

The Judgment of the Court was delivered by

- D **SHIVA KIRTI SINGH, J.** 1. Both the appellants have assailed  
the impugned judgment of the High Court of Judicature for Rajasthan at  
Jaipur Bench whereby Criminal Appeal No. 1235 of 2011 was disposed  
of by the impugned judgment and order dated 14.1.2016. The High  
Court set aside the conviction of the appellants under Sections 307 and  
307/34 of the IPC respectively but found them guilty under section 308/  
34 of the IPC. The High Court also set aside appellant's conviction  
E under Section 326 and 326/34 IPC respectively in view of their being  
found guilty under Section 308/34 of the IPC but maintained the conviction  
under Sections 323 and 324 of the IPC. For the offences under Section  
308/34 IPC the appellants were inflicted with punishment of two years  
rigorous imprisonment alongwith a fine of Rs.500/- with a default clause.  
F For offences under Sections 323 and 324 of the IPC, the lesser sentence  
awarded by the trial court were maintained.

- G 2. In order to appreciate the submissions advanced on behalf of  
the appellants that even if the allegations against them were to be accepted  
as true, they are entitled to acquittal on the plea of right of private defence  
of person, it is necessary to notice the prosecution case, the injuries on  
appellant No.1 and his parents, including his father who received serious  
injuries that proved fatal and whether the prosecution have been able to  
offer any explanation for the injuries on the side of the accused.

- H 3. According to the prosecution case, two appellants who are  
brothers alongwith female family members, Guddi Devi, Seema and Gulab  
Devi formed an unlawful assembly in their village on 4.5.2008 at 10.00

a.m. Armed with lethal weapons they went near the “Bada” of Jagram and caused injuries to Sajana Devi with blunt weapon, simple injury to Jagram and his wife Malli Devi with blunt as well as incised weapon and also caused simple as well as grievous injuries to Kailash Chand with blunt and incised weapon. According to prosecution the offences under Sections 147, 148, 323, 324, 326 and 327 read with Section 149 of the IPC were committed by the accused persons on account of old enmity between the parties. A B

4. The defence of the accused persons is denial of the occurrence in the manner alleged. According to the accused persons, the prosecution case is false. They examined Dr. Suresh Chand Meena and Bhagwan Sahai Meena as PW1 and PW2 and also proved documentary evidence-exhibits D1 to D11. The defence witnesses were examined to support the contention that the members of the prosecution party had beaten one Kanchan, father of the appellants and as a result he subsequently died. These injuries were proved by Dr. Suresh Chand Meena who also proved injuries of Gulab Devi and others. C D

5. The Trial Court noticed the defence case but failed to discuss the same. The defence witnesses were neither commented upon nor there was any comment upon the defence exhibits and injuries sustained on their side. E

6. The High Court in the impugned judgment has taken a mechanical note of the defence witnesses 1 and 2 and thereafter has given the following observations while noticing the injuries of Kanchan, and of the appellant Bhagwan Sahai Meena and his mother Gulab Devi:- F

“Appellants were tried in case arising out of cross version. It is to be noted that in the occurrence, Kanchan father of both the appellants had died. Appellant Bhagwan Sahai, his mother Gulab Devi acquitted accused, Seema acquitted accused and appellant Satish had suffered injuries alongwith Jalli Devi. In respect of cross case, a separate appeal has been filed bearing D.B. Criminal Appeal No.1255/2011. The trial court had given a finding that there was a free fight between both the parties and therefore, had convicted the accused for their individual liability. G

In the occurrence, Kanchan Lal father of the appellants had received following injuries:- H

A “1. Lacerated wound with bleeding 6 cm x 1 cm bone deep on left parietal region of scalp.

2. Lacerated wound with bleeding 2 cm x ½ cm on occipital region of scalp.”

B Bhagwan Sahai appellant also received two injuries and the same were noted in the injury report as under:-

“1. Lacerated wound 3 cm x ½ cm x ½ cm on palmar aspect of base of left thumb.

C 2. Lacerated wound 1½ cm x ½ cm x ½ cm on right parietal region of scalp.”

Gulab Devi mother of both the appellants had also received two injuries and same are noted as under:-

“1. Lacerated wound with bleeding 1 cm x ½ cm x ½ cm on forehead.

D 2. Bruise (reddish) 10 cm x 2 cm over right shoulder.”

E 7. The High Court has also noted that both the sides had taken a plea that the land in question where the occurrence had taken place is in their possession. One of the injured Malli Devi-PW6 also deposed, as noted by the High Court, that the parties were having dispute with the accused over land. The High Court has also noted the Judgment of this Court in the case of **Lakshmi Singh and others v. State of Bihar**<sup>1</sup> which was relied upon by the counsel for the accused persons in support of private defence and for acquittal on the ground of non-explanation of death and injuries on the side of the accused. The High Court drew correct inferences from the aforesaid judgment but proceeded to convict the appellants on the misconceived ground that since both the parties had withheld the origin and genesis of the occurrence and since it cannot be determined as to which party was the aggressor, the case had to be decided against the accused persons treating it as a case of free fight between the parties.

G 8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant

H <sup>1</sup> 1976 (4) SCC 394

benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-bye in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case.

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9. Therefore, we have no hesitation in allowing the appeal and acquitting the appellants of all the charges. We order accordingly. They shall be released from jail custody forthwith, if not required in any other case. The appeal is allowed.

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Devika Gujral

Appeal allowed.