

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 342-343 OF 2005

BHERA SINGH & ORS. Appellant (s)

VERSUS

STATE OF RAJASTHAN Respondent(s)
(With appln(s) for bail

WITH APPEAL(CRL) NO. 344 of 2005
(With appln. for exem. from filing O.T. and with office report)

Date: 12/04/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Mr. Anand, Adv.
Ms. Rajshree N.Reddy, Adv.
Dr. Sushil Balwada,Adv.

Mr. Imtiaz Ahmed, Adv.
MS. Naghma Imtiaz, Adv.
Mr. Milind Kumar Adv.

For Respondent(s) Dr. Manish Singhvi, AAG,
Ms. Pragati Neekhara,Adv.

UPON hearing counsel the Court made the following
O R D E R

CRIMINAL APPEAL NO(s). 342-343 OF 2005:

The appeals are allowed in terms of the signed order

CRIMINAL APPEAL NO(s). 344 OF 2005:

The appeal is dismissed in terms of the signed order.
(Shashi Sareen) (Veena Khera)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEALS No. 342-343 OF 2005

BHERA SINGH & ORS. ... Appellant(s)

Versus

STATE OF RAJASTHAN ... Respondent(s)

WITH

O R D E R

These appeals by special leave arise out of a common judgment and order dated 10th December, 2003 passed by the High Court of judicature for Rajasthan at Jodhpur whereby conviction of the appellants in the Criminal Appeals No. 342-343 of 2005 for offences punishable under Section 302 read with Sections 149 and 147 Indian Penal Code and the sentence of imprisonment for life awarded under Section 302 IPC and one year awarded under Section 147 of the IPC with a fine of Rs. 5000/- has been upheld. In default of payment of fine, the appellants have been directed to undergo a further imprisonment for a period of one year each.

Criminal Appeal No. 344 of 2005 filed by the State of Rajasthan assails the very same judgment and order insofar as the High Court has acquitted the respondents in the said appeal of all the charges framed against them. Briefly stated the prosecution case is as under:

At about 4.30 p.m. on 20.3.1994, a complaint was lodged by one Sab Singh later examined as PW1 at the trial, before the police station, Khamnor, District Rajasmand, Rajasthan on the basis whereof FIR No. 39/94 for offences punishable under Sections 147, 148, 149, 302, 120-B, 323, 307 IPC was registered against 13 accused persons named in the complaint including the appellants in Criminal Appeals No. 342-343 of 2005. The complaint, inter alia, stated that there was a dispute between Nathu Singh on the one hand and Kan Singh (accused No. 1) who has since died, on the other with regard to a certain piece of land belonging to

Nathu Singh. A Panchayat was held in regard to the said dispute on 19th March, 1994 which was attended by village panchas apart from the disputants. Since the settlement talks failed Kan Singh and others got annoyed with Nathu Singh and his sons and threatened them with dire consequences.

On 20.03.1994 at about 11 a.m. Pan Singh, Vardi Singh and Bhoor Singh, all sons of Nathu Singh were according to the complaint going to their agricultural field where the accused named in the FIR attacked and beat them with sticks and stones. Pan Singh and Vardi Singh sustained injuries in the incident and succumbed to the same. Bhoor Singh, who happened to be the only eye-witness to the incident survived and ran away from the place of incident to narrate the same to Sab Singh, who in turn, rushed to the police station to lodge the complaint.

On receipt of the above report the police started the necessary investigation, conducted an inquest, arranged for the post-mortem examination of the dead bodies, recorded the statement of the witnesses concerned and eventually filed a charge sheet against all the 13 persons named in the FIR for offences punishable under Sections 144, 148, 302, 120B, 323 and 307 IPC. In due course the accused were committed to face trial before the Sessions Judge, Rajsmad where they pleaded not guilty and claimed a trial.

At the trial, the prosecution examined as many as 15 witnesses to prove its case whereas the defence examined only two witnesses in their defence. Out of those who were examined by the prosecution, PWs. 5, 6, 7 and 8 were declared hostile as they did not support the prosecution case. PW1 Sab Singh, however, proved the first information furnished by him to the police. PW2 Bhoor Singh, who happened to be the sole eye witness, supported the prosecution version. PW3 Rattan

Lal, a witness to the site plan; PW4 Teka a witness to inquest, PW8 Nathu Singh, father of the deceased, PW11 Dr. Anil Kumar who conducted the post-mortem and examined the accused Kan Singh and Shankar Singh for their injuries and issued certificates were all examined at the trial. PW12 Devi Lal witness of the seizure; PW13 - Kalu Singh and PW14- Bhanwar Singh were also examined as witnesses to prove the seizure of lathis and the conduct of the inquest etc. At the conclusion of the trial, learned Sessions Judge, Rajsamand came to the following broad conclusions:

(i) PW2 Bhoor Singh had received injuries in the incident which were confirmed by PW11 Dr.

Anil Kumar in his deposition. The injuries sustained by this witness according to the trial court, established his presence on the spot and made him a competent witness.

(ii) The recovery of sticks/lathis at the instance of the accused were not relevant as the sticks were said to be lying at the place of incident. The recovery was at any rate immaterial as the sticks did not have any blood stains on them. The alleged recovery did not therefore lend any support to the prosecution case.

(iii) The circumstantial evidence did not establish that the accused had agreed/conspired to commit any unlawful act so as to hold them guilty of the offence punishable under Section 120B IPC.

(iv) The prosecution had failed to prove that the accused persons had any intention or knowledge to kill PW2 Bhoor Singh. The charge of attempt to murder PW2 Bhoor Singh punishable under Section 307 IPC was not, therefore,

established against the accused persons.

(v) The prosecution had failed to prove the charge under Section 148 IPC framed against the accused but the charge under Section 147 IPC had been established beyond a reasonable doubt.

(vi) In the absence of any evidence, it was not possible to draw any conclusion as to which accused had given the fatal blows to deceased Vardi Singh and Pan Singh with the help of sticks and or stones. The charge of murder framed against the accused persons under Section 302 IPC was not, therefore, established against the accused persons.

(vii) The prosecution had all the same established that the accused persons had a common intention of killing Vardi Singh and Pan Singh by causing injuries to them. Hence, they were liable to be convicted under Section 302 IPC read with Section 149 IPC.

On the above findings, the trial court acquitted all the accused persons of the charges under Sections 120-B, 148, 307, 302, IPC. The trial court also acquitted all the accused persons except Shankar Singh s/o Omkar Singh of the charge under Section 323 IPC. The trial court, however, convicted all the 13 accused persons under Sections 302/149 and 147 IPC and sentenced them to imprisonment and fine as already set out above. Accused Shankar Singh was also awarded sentence of six months' rigorous imprisonment for the offence punishable under Section 323 IPC.

Aggrieved by the conviction and sentence awarded to them the accused preferred Criminal Appeals No. 556 of 1997, 438 of 1997 and 454 of 1997 before the High Court of Judicature for Rajasthan at Jodhpur. The High Court has by the impugned judgment and order in the

present appeals acquitted the respondents in Criminal Appeal No. 344 of 2005 while convicting the remaining four who are the appellants before us in Criminal Appeals No. 342-343 of 2005. Accused Kan Singh having passed away during the pendency of the appeal before the High Court, the appeal filed by him was dismissed as having abated. The High Court on a reappraisal of the evidence adduced at the trial came to the following conclusions:

(i) The statement of PW2 Bhoor Singh was highly doubtful insofar as the involvement of 13 accused persons with a common intention to assault or kill the victims was concerned.

(ii) Notwithstanding the fact that Sab Singh, the first informant is said to have left for reporting the incident to the police immediately after the incident, the First Information Report was delayed by about 5 hours. This delay raised the possibility of deliberate implication of persons other than those actually responsible for the commission of the crime especially when the relations between the two parties were embittered by the dispute pending between them.

(iii) The incident is alleged to have taken place on 20.3.1994 at about 11 a.m. while police reached on the spot at 12.30 p.m. That being so, there was no explanation for the delay in recording the 'Parcha Bayan' which probalised the case of over implication or false involvement of innocent persons. This also required a cautious approach to be adopted in evaluating the statement of PW2 Bhoor Singh, the sole eye-witness to the occurrence.

(iv) While the statement of PW2, Bhoor Singh could not be accepted in toto, the same could also

not be rejected in toto.

(v) The prosecution had not been able to establish the true genesis of the incident.

(vi) The multiple injuries on the head and the body of the deceased persons established the intention of the assailants to cause death of Vardi Singh and Pan Singh by giving them a thrashing with lathis and stones. In the course of the incident accused Kan Singh and Shankar Singh had also received some minor injuries.

The High Court, accordingly, acquitted eight of the accused persons while dismissing the appeal filed by Kan Singh as having abated and upholding the conviction and sentence awarded to the appellants in Criminal Appeals No. 556, 438 and 454 of 1997. The present appeals assail the correctness of the said judgment and order as noticed above.

We have heard learned counsel for the parties at considerable length and perused the record. We have also been taken through the relevant portions of the evidence adduced before the trial court. Certain important features of the case need to be noticed at this stage.

(a) The incident in question was said to have taken place on 20.3.1994 at 11.30 a.m. According to the findings recorded by the trial court, the police reached the spot at 12.30 p.m.. If that were so, there is no explanation as to why the registration of the FIR was delayed till 4.30 p.m.

(b) The FIR was not dispatched to the jurisdictional Magistrate forthwith. There is evidence to show that the FIR was dispatched from the Police Station only on 21.03.1994 at 10.00 a.m. Even so the FIR was received by the jurisdictional Magistrate on 24th March, 1994.

There is thus a significant delay in dispatching the FIR and the receipt of the copy of the FIR by the jurisdictional Magistrate. In the absence of any explanation much less a cogent and acceptable one, this delay raises suspicion above the veracity of the prosecution version.

(c) In the First Information Report lodged by Sab Singh, no specific role is assigned to any of the accused persons. All that is stated is that there was an incident of beating (Maar peet).

(d) Even according to the statement of PW2 Bhoor Singh the star witness for the prosecution, the accused were unarmed at the beginning of the incident. They were said to be sitting some where close to the place from where the deceased and Bhoor Singh were walking on their way to their fields. It was only after they saw the three brothers that the accused are alleged to have got agitated and started pelting stones and attacking the deceased with lathis/ sticks. There is, therefore, no element of any pre concert or pre meditation among the accused persons. Indeed the trial court has acquitted the accused persons of the charge of conspiracy under Section 120B IPC.

Both the courts, have on a careful appreciation of evidence, come to the conclusion that the prosecution had not disclosed the true genesis of the incident which led to the death of two persons involved in the incident. If that finding is correct as indeed we find it to be so, the prosecution case suffers from the major lacunae. The genesis of the incident that led to the fight between the parties and

resultant death of two of the persons who got involved in the occurrence would hold the key to the question whether the appellants indeed had the intention to commit the murder of the deceased.

The statement of PW2 Bhoor Singh has been found to be unreliable insofar the involvement of the other accused persons are concerned. Even assuming that Bhoor Singh's presence could not be disputed as he himself was injured in the incident, his deposition has to be carefully approached and cautiously evaluated.

All the three accused persons had also received injuries which were examined and certified by the doctor concerned. There is no explanation offered by the prosecution for the said injuries.

In the totality of the above circumstances, we are of the view that the High Court was justified in holding that the prosecution had failed to prove its case against the eight persons whom the High Court has acquitted by the judgment under appeal. We see no compelling reason to take a different view in the appeal filed by the State against the said order of acquittal.

Insofar as appellants in Criminal Appeals No. 342-343 of 2005 are concerned we are of the view that the prosecution case taken at its face value falls short of making out a clear case of murder punishable under Section 302 IPC. In our view, even when we believe the testimony of PW2 Bhoor Singh, the culminative effect of the circumstances that have been indicated above and those found by the trial court as also the High Court makes out a case of culpable homicide not amounting to murder punishable under Section 304 Part-I IPC.

We are told by Mr. S. Gurukrishnakumar, learned Standing counsel for Rajasthan that the appellant Bhera

Singh has already undergone actual imprisonment for a period of ten years. Accused Ambav Singh has undergone actual imprisonment for 14 years while appellant Narayan Singh has suffered incarceration for nearly 19 years by now. Accused Shankar Singh has also similarly undergone imprisonment for a period 16 years. In the circumstances and keeping in view the facts and circumstances of the case as also the period already undergone by the appellants we are of the view that interest of justice would be sufficiently sub-served if we alter the conviction of the appellants- Bhera Singh, Ambav Singh, Shankar Singh and Narayan Singh from Section 302 IPC to Section 304 Part-I read with Section 149 IPC, Section 147 of the IPC and sentence them to the period already undergone by them.

We accordingly dismiss the Criminal Appeal No. 344 of 2005 and allow Criminal Appeals No. 342-343 of 2005, alter the conviction of appellants Bhera Singh, Ambav Singh, Shankar Singh and Narayan Singh to an offence punishable under Section 304 Part-I IPC and sentence them to the period already undergone. The appellants shall be forthwith set free unless required in any other case.

.....J.
(T.S.THAKUR)

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

New Delhi,
APRIL 12, 2012