

## Bishna Ram etc. Vs State of Haryana

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** April 27, 2006

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 307, 34

**Citation:** (2006) 3 RCR(Criminal) 772

**Hon'ble Judges:** T.P.S. Mann, J

**Bench:** Single Bench

**Advocate:** Sudhir Nehra and Mr. R.S. Minhas, for the Appellant; K.S. Godara, D.A.G., Haryana, for the Respondent

**Final Decision:** Dismissed

### Judgement

T.P.S. Mann , J.

On 28.1.1991 at 11.15 a.m. when Bishna Ram-appellant and Nathu Ram-injured were present at the time of a meeting

of the Panchayat, there was a scuffle between them. Bishna Ram asked his nephew Bhani Ram alias Jagdish to bring gun. When he reached the

gate of the school, Hari Singh- appellant held Nathu Ram-injured from his neck. In the meantime Bhani Ram also returned to the spot with a

double barrel 12 bore gun. Bishna Ram took the gun and fired at Nathu Ram hitting him on back, just below the neck.

2. Afterwards an FIR was registered u/s 307/323 34 IPC against the three appellants on the statement of Nathu Ram. After the presentation of the

challan and commitment of the case, the case was taken up for trial by learned Additional Sessions Judge, Hisar.

3. Dr. D.L. Bansal, PW-2 had medically examined Nathu Ram-injured. Dr. S.P. Mimami, PW-1 had radiologically examined Nathu Ram and

found multiple radio opaque metallic foreign bodies in the area of chest of Nathu Ram. Nathu Ram- injured appeared as PW-6 and gave details of

the prosecution case. Ram Kumar, PW-7 and Gurdial Dass, PW-8 corroborated the version given by Nathu Ram. S.I. Om Parkash, PW-9 was

the one who investigated the case.

4. Statements of the accused were recorded u/s 313 Cr. P.C. where they denied the correctness of the prosecution case Bishna Ram-appellant

gave another version. According to him, Nathu Ram lodged a false complaint against him. The Block Development & Panchayat Officer had called

a meeting of the Panchayat on the day of occurrence in which only Panchayat members were allowed. Nathu Ram wanted to forcibly enter the

meeting room. He was asked by the Block Development & Panchayat Officer to go out. Nathu Ram started abusing Bishna Ram and caught him

by his neck. Nathu Ram took Bishna Ram outside the room in the verandah. His supporters who were present near the gate of the school in large

number started throwing brick bats. Nathu Ram gave fist and slap blows to Bishna Ram. His nephew Bhani Ram came from the side and seeing

him under attack fired a shot in the air with his licensed gun to save him. The shot accidentally hit Nathu Ram.

5. In defence, accused Bishna Ram examined Jagdish as DW-1 and Ram Kumar as DW-2. Learned trial Court accepted the prosecution case

and concluded that it was Bishna Ram, who had fired at Nathu Ram. The other two accused were held vicariously liable for the acts committed by

Bishna Ram. They were sentenced to undergo RI for 7 years and to pay a fine of Rs. 2,000/- each. In default of payment of fine, the defaulting

convict was directed to undergo further RI for a period of three months. If fine was realized, an amount of Rs. 5,000/- was to be paid to Nathu

Ram-complainant as compensation.

6. Hence, the present appeal.

7. During the pendency of the appeal in this Court, Criminal Misc. No. 19557 of 2003 was made on behalf of Hari Singh-appellant seeking

permission thereof to place on record the affidavit dated 17.2.2003 executed by Nathu Ram- complainant. With the intervention of the relatives,

compromise had been effected between him and the three appellants. The misunderstanding between him and the appellants were peacefully

settled without any coercion or undue influence.

8. Mr. Sudhir Nehra and Mr. R.S. Minhas representing the appellants submitted that as the matter between the complainant and the appellants has

since been resolved amicably, benefit of the same as permissible under the law be extended to the appellants. Mr. K.S. Godara, learned DAG,

appearing for the State of Haryana has contended that the offence committed by the accused was not compoundable and no benefit of the

compromise arrived at between the parties should be extended to the appellants.

9. I have gone through the record of the case and heard the arguments addressed by the counsel representing the respective parties.

10. From the testimony of Nathu Ram PW-6, Ram Kumar PW-7 and Gurdial Das PW-8 it is clearly established that the three appellants were

responsible for the present case. While Hari Singh held Nathu Ram from his neck Bhani Ram brought double barren gun, which was thereafter

taken over by Bishna Ram, who fired the same hitting Nathu Ram injured on back of his chest below neck. The intention of the accused in firing

and that too at a vital portion of Nathu Ram established that the offence made out was u/s 307 IPC. As such the appellants have been rightly found

guilty by the learned trial Court.

11. Coming to the quantum of sentence, both the parties belong to the same village. The matter between them has been settled amicably as is clear

from the affidavit dated 17.2.2003 executed by Nathu Ram injured. The appellants were convicted on 10.1.1994 and were granted bail on

28.3.1994 when this Court admitted them to the said concession. Apart from that Bishna Ram-appellant remained in jail for a period about 1-1/2

month as under trial whereas the other two appellants had spent a period of about 15 days. Bishna Ram- appellant is reported to be about 75

years of age. The appellant Bhani alias Jagdish also suffered as he lost his leg. The occurrence of the present case had taken place in the year

1991. There is no material available with the prosecution to show that after having been released on bail by this Hon"ble Court any of the

appellants misused the concession.

12. The appellants faced the agony of the present case for a period of 15 years. Purpose of criminal law is to bring discipline in the society and

promote peace and harmony besides giving an opportunity to a criminal to reform himself. The Apex Court in Karamjit Singh Vs. State (Delhi

Admn.), opined as under :-

Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to

realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and

repent for his action and make himself acceptable to the society as useful social being. In determining the question of proper punishment in a

criminal case, the Court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the

matter of punishment in the case. An act of balancing is, what is needed in such case; a balance between the interest of the individual and the

concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same

time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within

the parameters of the law attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful

member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence

in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such

a situation has to be avoided, again within the permissible limits of law.

Keeping in view the facts and circumstances of the case and also in view of the fact that the appellants have faced the agony of trial and appeal for

more than 15 years and that an amicable settlement has been arrived at between the parties, I feel that the sentences imposed upon the appellants

by the trial Court be reduced to the one already undergone by them. However, each of the appellants shall pay an additional amount of Rs.

8,000/- as fine over and above the fine imposed by the learned trial Court. The entire amount of fine amounting to Rs. 10,000/- in the case of each

of the appellants shall be deposited within a period of three months from the date of preparation of the copy of this order. On the realising of the

said amount of fine, a sum of Rs. 25,000/- be released to Nathu Ram complainant by issuing notice to him and on proper identification. In case,

said Nathu Ram is not alive, the said amount be released in favour of his legal heirs. In the event of the additional fine being imposed by this Court

is not deposited within the specified period, the sentence of imprisonment imposed by the trial Court shall be restored and the appeal shall be

deemed to have been dismissed. The appeal is disposed of in the manner indicated.

Order accordingly.