(1989) 11 AHC CK 0078

Allahabad High Court (Lucknow Bench)

Case No: Criminal Appeal No. 502 of 1982

Dashrath and Others	APPELLANT
Vs	
The State	RESPONDENT

Date of Decision: Nov. 29, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 324, 34

Citation: (1990) 14 ACR 748

Hon'ble Judges: V. Kumar, J; B.L. Loomba, J

Bench: Division Bench

Advocate: G.K. Mahrotra, for the Appellant;

Final Decision: Dismissed

Judgement

B.L. Loomba, J.
This appeal is by four Appellants, namely, Dashrath, Salig Ram, Alakh Ram and Asrey, all real brothers, residents ot village Gudila, Police Station Utraula, district Gonda, against their conviction unuer Sections 302, read with Section 34, and u/s 324, read with Section 34, Indian Penal Code and the punishments awarded therefore by find Addl. Sessions Judge, Gonda, under his judgment and order dated 24-5-1982. Eacn one of them was awarded punishment to life imprisonment for having allegedly caused death of Barsati and one years rigorous imprisonment tor having caused injuries to Samai and Kunnan.

2. The occurrence relates to 11-12-1981 at about 12 noon at or near the field of Ragghu Kahar, within the area of village Govmdpur, Police Station Utraula. The victim of the occurrence was Barsati agea about 40 years and his elder brother Samai residents of the same village, namely, Gudila and Kuntan, brother-in-law (Sala) of Barsati. The prosecution case, briefly stated, is that Barsati had obtained sale deed in respect of portion ot a plot trom one Shyam Sunder about 3-4 years prior to the occurrence, while the other portion of the same plot was purchased by accused-Appellant Dashrath about

two years from before the date of this occurrence. Tnough the portions were separate but there was no clear and visible line or demarcation between the two portions of the plots. Both the parties had grown paddy crop in their respective portion of the plot. On the fateful day, Barsati, Samai, Kuntan and Smt. Chinka, wife of Barsati were at work in their portion of the plot reaping their paddy crop. At about noon, all the four accused-Appellants arrived at the field armed with Pharsa and lathis and asked Barsati as to how he was reaping the crop in the absence of demarcation of the plot and threatened that they shall not permit Barsati and others to reap the crop unless the plot was clearly demarcated on the spot. Barsati reacted that even though there was no formal line of demarcation the two portions were separate and having been shown and grown separately, he had right to reap the crop. After some discussion Barsati suggested that the matter be taken to the village panchayat for their verdict and this suggestion or proposal was accepted by Dashrath and his brothers. Thereupon, both the parties proceeded towards the village but in the way when they reached near the field of Ragghu Kahar situate witnin the area of village Govindpur there was some altercation between them and Dashrath exhorted nis brothers to attack Barsati and settle the matter once for all and thereupon all the four persons launched their attack with their respective weapons. As a result of the injuries received by Barsati he fell down and succumbed to his injuries on the spot. Somai and Kuntan who tried to intervene and save Barsati also received injuries in the attack by the four accused persons. On hearing the alarm several persons who were working in the fields around rushed to the spot. In the first information report Mahabad, Pancham Kurmi of village Chaukhara, Ram Yadav and Chaudhary Teli of village Gudila and Hanumanganj, Gaya, Mathura of Bilaspur challenged the accused persons who thereupon managed to escape.

3. The first information report of this occurrence was lodged by Smt. Chinka, widow of Barsati at 6.30 P.M. on the same day at Police Station Utraula situate at a distance of about 7 miles Irom the place of occurrence.

4. The investigation proceeded in usual fashion. Ras Behari Singh PW 6 was the Investigating Officer. The first information report as per statement was lodged in his presence. He went to the village in the same night but because of darkness he did not do anything worthwhile during the night. The next morning he prepared the inquest report, sealed the dead body and despatched the same for postmortem. Thereafter he inspected the place of occurrence, prepared the site-plan and took samples of blood stained and simple earth. He did not find any formal line of demarcation between the plot in question. However, he found signs of paddy crop having been cut the previous day. The statement of injured Somai was recorded on 13-12-1981 and that of Kuntan on 14-12-1981. The accused persons had surrendered before the court. Charge-sheet was submitted against the accused persons on 17-12-1981.

5. Postmortem examination on the body of the deceased was carried out on 13-12-1981 at 3 P.M. by Dr. Radha Raman. Age of the deceased according to the postmortem report was about 40 years. Rigor Mortis was found present in the lower limbs, having been

passed off the upper ones. These anti-mortem, injuries were found on the person of the deceased :

(1) Incised wound 4 cms x 15 cm, 5 cms above the centre on upper border of sternum,

(2) Incised wound 1.5 cm x 1 cm on left lateral side of neck, 5 cms from the labula on right ear muscle deep, and,

(3) Lacerated wound at the back of the head in the ocipital region 14 cms x 4 cms, 3 cms from the ear on left side extending at the back of the head 10 cms from the right ear.

6. On internal examination scalp, skull bones were found broken, trachea found damaged, large vessels on the left side were also found damaged. Bones were found fractured under, injury No. 3. Lacerated wound and brain matter was commg out. Stomach contained some solid food. The probable time of death was staied to be one and half days in the postmortem examination report. As would appear from the record, formal proof of the postmortem examination report was dispensed with and, as such, it was read and considered in evidence at the trial without the doctor having been examined by the prosecution.

7. The direct evidence led by the prosecution to prove its case it that of Smt. Chinka PW 1, widow of deceased who is complainant in the case, Somal and Kuntan the two injured persons PWs 2 and 3 respectively and one independent person, namely, Pancham PW 4. All these four persons claimed to be eye witnesses of the occurrence.

8. The defence set up at the trial, as per the statements of the accused persons u/s 313 of the Code of Criminal Procedure, was one of denial. It was admitted that portion of the plot in question was purchased by Barsati from Shyam Sunder about 3-4 years prior to the occurrence while the other portion was purchased by accused Dashrath about two years prior to the time of occurrence. This was also admitted that there was no Mend or any clear visible line of demarcation between the two portions of the plot. The allegations about the occurrence were, however, denied. The suggestion made was that Barsati and his companions wanted to take unlawful possession over the portion of the plot beloiiging to accused Dashrath and that the deceased and the injured were the assailants and that was the real basis and cause underlying the Marpit. In the cross-examination of Somai and Kuntan PWs 2 and 3, it was suggested that the deceased and the injured had gone prepared to take possession over the plot and in the process the Marpit took place. As regards Kuntan PW 3, the question put was that both parties had come prepared for taking possession over the other part of the plot and that the accused persons acted in self defence and in order to protect their land.

9. It may be useful to give down the question and answers put to accused-Appellants Dashrath u/s 313 of the Code of Procedure.

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10. The other accused persons were also subjected to these very questions and the contents of their reply are more or less in the same terms.

11. A perusal of memorandum of appeal filed on behalf of the Appellants would also reveal that this was the admitted position that the accused party and deceased Barsati were purchasers of the land of a common plot from one Shyam Sunder without specification and demarcation of the portions individually sold out to them and there was no demarcation in the plot and the plea raised is that both the parties had share in every part of the land and the deceased party had no right to harvest the crop and that gave rise to the dispute. It has also been pleaded that there was no positive evidence adduced by the prosecution to show which party had shown that portion of the land and the accused persons had a right of private defenee and at the worst they exceeded their right of private defence in causing injuries which resulted in the death of Barsati.

12. Injuries of Kuntan PW 3, were examined by Dr. L.R. Bureshi, Medical Officer, P.H.C. Utraula on 11-12-1981 at 10-30 P.M. One incised wound over left side af scalp 7 cm x 1 cm x muscle deep and swelling over dorsum on right palm were found to have been caused to him. Injury No. 1, according to the opinion of the doctor, as stated in the injury report, was by some sharp object while the second by a hard and blunt object. Duration was stated to be 12 hours. Injuries of other injured Somai PW 2, were examined at 1045 P.M. on the same day. He was found to have received 7 lacerated wounds and swelling. Duration of his injuries was also described to be within 12 hours. Formal proof of these injury reports was also dispensed with and, as such, the doctor concerned was not examined by the prosecution at the trial.

13. For what is stated above, it is clear that this was the undisputed position that the dispute between the parties was as to the demarcation of the plot. According to the prosecution story both the parties had sown and grown paddy crop in their respective part of the plot and even though there was no line of demarcation formed and set out in the plot, the extent of the part of the plot belonging to either party was well known and visible and clear at the spot. Further, there does not appear any doubt that the dispute between the parties as to the demarcation of the plot in question was the cause and basis of this occurrence in which injuries were caused to three persons; Barsati succumbed to his injuries at the spot.

14. It does not further appear in doubt that Barsati was subjected to attack and was done to death near the field of Ragghu Kahar at the spot where lot of blood was found by the Investigating Officer at the time of his spot inspection. Injured Somai and Kuntan appear to have received injuries when they tried to intervene and save Barsati.

15. Question next arises is whether the prosecution succeeded in proving that the attack was launched by the four accused-Appellants or any one or more of them which resulted in the death of Barsati and injuries to Somai and Kuntan. Learned Sessions Judge accepted that testimony of four witnesses of fact, namely, Smt. Chinka wife of deceased

Barsati PW 1, Somai, Kuntan and Pancham (PWs 2, 3 and 4) respectively.

16. As has already been mentioned that at the trial an alternate plea in the form of suggestion taken was that it is the deceased and his companions who were real agressors and the accused persons had acted in self defence and at worst they can be said to have exceeded their right of self defence. In the memorandum of appeal also this plea appears to have been taken but the Learned Counsel for the Appellants has argued nothing as regards this plea.

17. Learned Counsel for the Appellants has assailed the testimony of all the four witnesses of fact. The contention raised is that Smt. Chinka (PW 1) and Pancham (PW 4) were not at all present at the spot and in any case their presence is highly doubtful. The Statements of the other two witnesses, namely, Somai and Kuntan have been challenged mainly on the ground that their testimony lacks consistency as to the manner of attack and the weapons allegedly carried and used by the assailants. Veracity is also attacked on the ground that the prosecution story is not consistent with the medical evidence. In nut shall the contention raised is that in view of the inconsistent nature of the prosecution evidence the entire case of the prosecution lacks credibility and merits rejection entitling the Appellants to the benefit of doubt.

18. The two injured persons, namely, Somai and Kuntan are the most natural witnesses of the occurrence. That they received injuries at the occurrence, about which they have spoken, appears free from any reasonable doubt. There is no reason why the two witnesses have come forward to make out an entirely false case and implicate the accused persons while leaving their true assailants PW 1 Smt. Chinka, wife of the deceased is also a natural witness. It is not uncommon that ladies in villages accompany the men-folk to the fields for reaping the crop. Ras Behari Singh, S.I. (PW 6) who was Investigating Officer stated that he had seen the field in question, there was no line of demarcation to separate the two parts of the field He saw that paddy crop was cut from the field and some paddy which had been cut was found lying at the spot. In cross-examination he stated that the crop in the two portions was not of uniform size; In one portion the crop was lower in height than the other.

19. As is the prosecution case, the inception of dispute was at the field in question. The accused persons arrived well armed, when the deceased and the injured were reaping the crop. The accused persons asked the deceased to not to proceed with the cutting of the crop and the field should be clearly demarcated. The deceased replied that even though there was no formal line of demarcation the two portions had been sown and grown separately and there was no scope for raising the dispute. Eventually, the suggestion of the deceased was accepted that the matter be taken to have it settled through village panchayat. Thereupon they had started for the village. Smt. Chinka, Somai and Kunran are consistent on this part of the story. There is hardly any worthwhile cross-examination on this part of the story. There appears no reason to disbelieve the three witnesses on this part of the prosecution story, namely, that the deceased and the

witnesses were reaping the crop when the accused persons arrived and raised the dispute and eventually the two parties started for the village and it is on the way that there was some altercation between the deceased and the accused persons and accused-Appellant Dashrath exhorted the other accused to finish Barsati and settle the score.

20. The fourth witness of fact Pancham (PW 4) appears an independent person. No suggestion worth the name has been made in cross-examination to show that he had any enmity with any of the accused persons or was on inimical terms with them or that he was in any way connected with the deceased and his family members. This witness has, as such, to be accepted as an independent witness. His testimony relates to the factual occurrence as he along with others is said to have arrived when alarm of the occurrence was raised. He has described the manner of attack. According to him when he reached on hearing the alarm he saw that accused Dashrath was armed with Kudal while Asrey with knife and Alakh Ram and Salig Ram with lathis and all the four had attacked the deceased and were causing injuries with their respective weapons. Barsatiï¿½s brother-in-law Kuntan tried to intervene and he too received injuries. Barsatiï¿½s brother (Somai) also received injuries. According to this witness the wife of Barsati was also present at the spot when the accused persons attacked and caused injuries to the deceased and the other two persons.

21. All the four witnesses of fact stated the time of occurrence to be around 12 Oï¿½clock in the day. Learned Counsel for the Appellants with reference to the contents of the postmortem examination report has tried to challenge the very time of occurrence. As is stated in the postmortem examination report, the postmortem examination was done on 13-12-1981 at about 3 P.M. i e. roughly about 51 hours after the occurrence Probable time of death stated in the postmortem examination report is one and half days i e. 36 hours According to the Learned Counsel for the Appellants this discrepancy on a vital question of time of occurrence is enough to raise a serious doubt about the veracity of the prosecution case itself As is already mentioned formal proof of the postmortem examination report was dispensed with and this report was accordingly read in evidence without the doctor having been brought in the witness box. No doubt, discrepancy about the time of the occurrence is an important factor but in the totality of facts it is not serious enough to lead to the conclusion that the occurrence bad not taken place at the time alleged by the prosecution. After all what is mentioned by the doctor is only the probable time of death and this was only his opinion which could neither be categorical nor of any conclusive character. True that the prosecution ought to have examined the doctor to ask him whether the deceased as per the condition of the body could have died around 12 O, clock on 11-12-1981. However, this opinion of the doctor cannot be accepted as of conclusive nature so as to demolish the prosecution case is its essentials. As against the opinion of one doctor who conducted the postmortem examination and recorded the probable time of death of the deceased there is opinion of another doctor who examined the injuries of Somai and Kuntan between 10-30 and 10-45 P.M. on 11-12-1981 recorded

that the duration of injuries was about within 12 hours. This means that the injuries to the two injured persons could have been caused around 12 Oï¿½clock in the day on 11-12-1981. There is consistency in the statements of all the four witnesses and that also appears to be an undeniable position that the deceased and the two persons received injuries at the same occurrence. In this way, there being divergance of opinion between the two doctors, the opinion recorded in the postmortem examination report about the probable duration of death lost its value and importance. As such, it is difficult to say that there is any serious inconsistency in the medical evidence and the statements of the prosecution witnesses about the time of death.

22. Another point raised by the Learned Counsel for the Appellants is about the weapons. While there is consistency that accused-Appellants Asrey was having knife, Alakh and Salig Ram were armed with lathis, there is some inconsistency about the weapon of accused-Appellant Dashrath. In the first information report Smt. Chinka bad stated that accused persons were armed with (Phawra), lathis and knife, in her oral statement she stated that accused-Appellant Dashrath was having Kudal and it is Dashrath who had cut the throat of the deceased with his Kudal. Somai and Kuntal also stated about Dashrath carrying Kudal; The fourth witness, namely, Pancham also stated that Dashrath was having Kudal. In our view this discrepancy is also not very material. So as to cause a serious doubt about veracity of the prosecution evidence. It is to be noticed that no clarification was sought from Smt. Chinka in her cross-examination. She ought to have been confronted with what had been stated by her in the first information report in which there was no mention of Kudal and instead Phawra was mentioned. In different parts of the country side the weapons may be named and described differently. Learned Counsel for the Appellant strenuously argued and it appears rightly that Kudal generally speaking a sharped pointed weapon but if the blade is broad it could have been described as Phawra. In any case, the misdescription of the weapon in the first information by an illiterate lady may hardly be of any real consequence when no question was put to her and thereby no opportunity was allowed to her to explain the discrepancy. We are afraid, the Appellants are not entitled to any advantage in relation to this discrepancy in the absence of the witness having been questioned on this point in her cross-examination.

23. Learned Counsel next argued that the description of the manner of attack is lacking in the statements of the four witnesses and this again raises a reasonable doubt about the veracity of all the four accused-Appellants. It is also submitted that in the facts and circumstances of the case, it is difficult to infer that there was a premeditated attack and at best only such accused could be convicted who according to the evidence are proved to have caused individual injuries. It is contended that neither Somai nor Kuntan stated as to who caused injuries to them. From perusal of the testimony of all the witnesses, it appears that each one of them stated that accused-Appellant Dashrath had exhorted the others for an attack to the deceased person and then all the four-accused-Appellants attacked and caused injuries to deceased. The deceased had received two incised wounds and one lacerated wound. These injuries and the injuries to the injured ones

could have been caused by some sharp weapon and lathis and over all the evidence of the witnesses of fact cannot be said to be inconsistent with the medical evidence. True that the witnesses have not given very precise account of the manner of the attack and as to whose blow caused particular injury but this, in our view, is not of such serious consequence as to raise a probable doubt about the very presence of the witnesses at the spot and their ability to see the occurrence. Two of them were themselves victims of the attack and the other fwo are also natural witnesses. The contention of tne Learned Counsel for the Appellants that Shrimati Chinko was not present, to our mind, does not carry any weight. She has said about her presence also at the place of occurrence where attack was launched. Pancham PW 4 has also so stated. Otherwise too it is natural that he followed her husband, brother and brother-in-law when the entire party left for the village. All the witnesses have stated that one bone of the deceased was cut and detached and fell there while this does not gather support from the medical evidence or the testimony of the Investigation Officer, but as we view this is an exaggerated account. Even a truthful witness may tend to exaggerate facts in his zeal to state the facts which he had seen. This is not an unknown position with some illiterate village folk. Failure to state the precise manner of attack and about the particular injuries caused by particular accused may be accountable to the ability to see, notice and retain the impressions of the occurrence which takes place in fleeting moments.

24. The testimony of all the ocular witnesses has been read over to us and we find that ail the four witnesses are consistent on the main and essential features of the prosecution case, about the cause and inception of the occurrence, how it proceeded, exhortation by Appellant Dashrath followed by assault by all the four resulting in death of Barsati and injuries to the two (witnesses). FIR was lodged promptly. The witnesses are natural and their testimony quite believable. The learned Sessions Judge, in our view, rightly believed their statements. The prosecution case was rightly accepted to have been proved beyond reasonable doubt. The appeal lacks merit both as regards the conviction of the four accused-Appellants and the punishment awarded for the offences proved against them.

25. The appeal is, accordingly, dismissed. The Appellants are on bail and shall be required to surrender to their bail bonds. They shall be taken into custody to serve out the sentence awarded to ;them. The C J.M. concerned will report compliance within six weeks.