

STATE OF U.P.

v.

PREETAM & ORS.

(Criminal Appeal No. 506 of 2006)

MARCH 31, 2011

[B.SUDERSHAN REDDY AND SURINDER SINGH  
NIJJAR, JJ.]

*Penal Code, 1860 – s. 302/149, s. 307/149 and s. 323/149 – Armed accused chased two persons and beat them to death – Trial court convicting the accused-respondents under the provisions of Penal Code – However, High Court acquitted all the respondents – Interference with – Held: Not called for – The cumulative effect of the infirmities in the prosecution case and the probabilities of the plea of self defence renders the prosecution case doubtful – Conclusions reached by the High Court cannot be said to be either perverse or based on no evidence – Thus, the High Court recorded plausible as well as probable conclusion – Respondents entitled to benefit of doubt.*

**According to the prosecution, respondent Nos. 1-5, armed with axes and lathis chased two persons and beat them to death. On hearing the voice of the victims, PW1 and his brother-PW2 reached the place of the incident and were also assaulted. They suffered simple injuries. Other witnesses also reached the place of occurrence. PW1 lodged an FIR the next day. The respondents also sustained minor injuries. The prosecution witnesses were examined. PW4 and PW5 were declared hostile. The trial court convicted the respondents under the provisions of the Penal Code and sentenced accordingly. The High Court set aside the order of conviction and acquitted all the respondents. Therefore, the appellant-State filed the instant appeal.**

## A Dismissing the appeal, the Court

HELD: 1.1 On a thorough re-examination of the evidence, the High Court discarded the evidence of each witness. The High Court disbelieved the prosecution story as projected through PW1. He had stated that 'G' and 'C' had engaged in a "marpeet" with 'P' at place 'DH'. Both sides had assaulted each other. 'G' and 'C' had run towards the village. They were followed upto the field of 'H' by the respondents and were assaulted. This alleged incident at place 'DH' was sought to be proved by PW3. However, the High Court disbelieved her evidence on the ground that she was unlikely to be present at the scene of the incident. Her name did not figure in the FIR. She had just supported her father and uncle entirely. She had improved her version; which did not even tally with the version given by the injured, when they were examined. Similarly, the High Court noticed the prosecution version that 'G' and 'C' have been assaulted by a number of persons. They were supposed to have been assaulted by three of the respondents, who were armed with axes. Others were using lathis. But the postmortem report shows that none of the deceased had suffered any injuries which could have been caused by lathis. Therefore, the High Court concluded that the ocular version has been contradicted by the medical evidence.

F [Para 15] [133-D-H]

1.2. The High Court noticed that there seems to be no plausible explanation about the delay in registration of the FIR. The conclusion reached by the High Court is that there was a delay of 17 hours between the alleged occurrence and the registration of the FIR. The only explanation given is that due to the fear of the respondents, the family of the complainants kept sitting near the dead body. They did not even call for a doctor or medical assistance. The High Court disbelieved the sequence of events leading to the registration of the FIR.

It is noticed that according to PW1, the Chowkidar of the village had arrived at the spot soon after the incident. Even his help was not taken for the registration of the FIR. Noticing the technical terminology used in the FIR, the High Court expressed the opinion that FIR was not scribed by the rustic villager 'PN'. It was scribed by a professional, PW 7. It is further noticed that even though PW3 was stated to be the only witness to prove as to how the fight originated and where, yet her name was not mentioned in the FIR. On the other hand, the two ladies, daughter of the informant and wife of 'B'-PW2, were withheld by the prosecution though according to the FIR, they had witnessed the incident that took place in the field of 'H'. The prosecution also withheld 'T'-PW 5 and 'J', whose names had also been mentioned in the FIR. The High Court, taking serious notice of the manipulations and modulations doubted the authenticity of the version given by PW3. It is noticed by the High Court that even the most independent and important witness in the chain, PW4, was in fact declared hostile by the prosecution. Similarly, the last witness namely, PW5, who completes the chain, was also declared hostile. It becomes evident that the prosecution version was not proved beyond reasonable doubt. [Para 16] [134-A-G]

1.3. Coming to the defence version, the High Court held that the incident might have initially happened at 'DH'. At that time, the parties had been separated. After sometime, the second incident occurred when the prosecution party tried to graze their cattle in the field of respondent No.2 forcibly. When he objected, they started beating him up. On the alarm being raised by 'KS', 'P' 'M' etc. came to the spot armed with axes. The High Court also disbelieved the version given by PW1 that two deceased had run towards their village. This version is disbelieved as the prosecution has failed to bring any

A evidence to show that H's field falls on the way to the village. [Para 17] [134-H; 135-A-B]

B 1.4. In such circumstances, the High Court has held that the respondents have established their plea of self defence. The High Court ultimately concluded that the cumulative effect of all the infirmities of the prosecution and the probabilities of the plea of self defence renders the case put forward by the prosecution doubtful. In such circumstances, the appeal of the respondents was allowed and they were acquitted. [Para 18] [135-C-D]

C 1.5. The conclusions reached by the High Court cannot be said to be either perverse or based on no evidence. The High Court has recorded plausible as well as probable conclusion. Therefore, the respondents were clearly entitled to the benefit of doubt and have been rightly acquitted. Thus there is no reason to interfere with the judgment of the High Court. [Paras 19 and 20] [135-D-F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 506 of 2006.

F From the Judgment & Order dated 23.3.2004 of the High Court of Judicature at Allahabad in Criminal Appeal No. 577 of 1981.

T.N. Singh, S.K. Dwivedi, Rajeev Dubey, Kamendra Mishra for the Appellant.

G Anis Ahmad Khan, Shoaib Ahmad Khan for the Respondents.

The Judgment of the Court was delivered by

H SURINDER SINGH NIJJAR, J. 1. The present appeal is directed by the State of U.P. against the final order and judgment dated 23rd March, 2004 passed by the High Court

of Judicature at Allahabad in Criminal Appeal No. 577 of 1981 whereby the High Court allowed the criminal appeal by setting aside the order of conviction recorded by the trial court against the respondents.

2. We may now briefly note the background facts, necessary for the adjudication of the present matter. It is the case of the prosecution that on 20th August, 1977 at around 3.30 p.m., Gulab and his nephew Chhatrapal were grazing their cattle in Dhadhai Haar. Preetam (hereinafter referred to as 'respondent No.1'), who is a collateral of the above two, came there and asked Chhatrapal and Gulab, as to why they were grazing their cattle in his field. Chhatrapal and Gulab told him that they were not grazing in his field. Respondent No. 1 then abused and started beating them. Chhatrapal and Gulab retaliated and started beating Preetam. On an alarm raised by respondent No. 1, his family members, who were present in the vicinity doing work in their fields, namely Dilli, Tutti, Mukundi, Karan Singh, Balli, Katti, Hari Singh, Baura, Thakurdas and Siya Brahims came running to his rescue. They were armed with *kulharis* and lathis.

3. Respondent No. 1, Karan Singh (hereinafter referred to as 'respondent No. 2') and Mukundi (hereinafter referred to as 'respondent No. 3') were armed with axes and Katti alias Hari Singh (hereinafter referred to as 'respondent No. 4') and Tutti alias Babu Lal (hereinafter referred to as 'respondent No. 5') were armed with lathis. On seeing them, Chhatrapal and Gulab, due to the fear of the respondents, ran towards the village Abadi. They were prevented from reaching their house by the respondents. They were encircled in the field of Hirwa, which was in the Thakur Baba Har. In the field, they were assaulted by respondent Nos. 1, 2 and 3 and seven other accused persons with axes and lathis. On hearing the voice of Chhatrapal and Gulab, informant (PW1) and his brother, Bahadur (PW2) rushed to save them. They were ploughing their fields in the near by ground. On reaching the spot of the incident,

- A they were also assaulted. Some other witnesses also arrived at the spot of occurrence on hearing the alarm raised by Punna, PW1 and Bahadur, PW2. They include his daughter Lachchi and Sunkiya, wife of his brother Bahadur. After the assault, the respondents ran away towards the village. Gulab and Chhatrapal were lying dead in a pool of blood in the field of Hirwa. They had suffered axe and lathi injuries. Due to rain and fear of the respondents, they did not go to the police station that day. The FIR was lodged on 21st August, 1977 at 8.30 a.m. by Punna, PW1. The distance between the police station and the place of occurrence was 5 miles.

4. On the prosecution side, apart from the two deceased, Punna, PW1 suffered only blunt object injuries. Bahadur, PW2 had suffered an incised wound 2 cm x 5 cm muscle deep at the border of the right mandibular angle 4 cm, below right ear. These injuries were medically examined by PW6, Dr. R.S. Mishra on 21st August, 1977 between 10.30 and 11.30 a.m. He had proved the injury reports of Punna and Bahadur. A perusal of his statement shows that none of the injuries were grievous in nature. No X-Ray report or any other supplementary reports were placed on record. The injuries were apparently simple.

5. The postmortem examination on the body of the two deceased, Gulab and Chhatrapal was conducted by PW8, Dr. V.D. Mishra. In his report, he stated that there were three incised wounds on the body of Chhatrapal, two of them being on head, one covered right side face, lower part of the right ear and part of neck and the other on the left side of head 12 cm above the left ear. In both the injuries underlying bones were cut. The third injury was on buttock. In the opinion of the doctor, cause of death was due to shock and hemorrhage as a result of injuries No. 1 and 2.

6. The postmortem examination of deceased Gulab took place at 2.45 p.m. on 22nd August, 1977 and was conducted by PW8, Dr. V.D. Mishra. Three incised wounds were also

found in the body of Gulab, one on the upper side of head 10 cm above from left ear, underlying bone was found cut and the second and third incised wounds were on the left side head. The third injury was 2 cm above injury No. 2. The doctor then stated that all three injuries were on his skull. The cause of death was shock and hemorrhage due to the above injuries.

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7. The prosecution in support of its case examined five eye witnesses. PW1, Punna and PW2 Bahadur both were injured witnesses. PW3, Kumari Pramod was daughter of PW2. The fourth witness was Kunwar, PW4, he was declared hostile by the prosecution. PW5, Thakur Das alias Munna too turned hostile and did not support the prosecution case. The other witnesses are PW7, Ram Swaroop, the scribe of the report, PW6, Dr. R.S. Mishra, who examined the injuries of the prosecution witnesses and PW8, Dr. V.D. Mishra who performed the autopsy of dead bodies.

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D

8. On the other hand, respondents also sustained minor injuries. The injuries suffered by them were of blunt object. Preetam Singh, respondent No. 1 suffered two lacerated wounds, one on the left elbow joint and the other on the left side of the segital suture. Other injuries were on the left ring finger at the level of second phalangial joint and on the left shoulder joint. Hari Singh, respondent No. 4 had suffered only an abrasion on the first phalanx of the right thumb. Karan Singh, respondent No. 2 had a contusion vertically on the left side of the back and another contusion horizontally at the level of the inferior angle of the left scapula, abrasion circular in the radius of .5 cm on the outer aspect of the left shoulder joint, contusion at the outer aspect of the left shoulder joint and lateral wound, bone deep, on the right parietal protuberance. Injury No. 5 was on the vitalo part of his person. Mukundi, respondent No. 3 had three contusions, on the right shoulder joint, right side of mid neck and dorsal surface of the right palm. Babu Lal, respondent No. 5 suffered one lacerated wound and a contusion. The lacerated wound was skin deep at the level of the left temporo mandibular

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A joint and contusion with swelling on the dorsal surface of the first phalanx of left thumb. All the injured respondents were examined on the same night, i.e., 20th August, 1977 between 9.00 p.m. and 10.15 p.m. All these injuries were suffered from a blunt object.

B 9. Subsequently, the charge sheet was filed by the investigation officer, Bhagwan Singh, PW9 and respondents were put on trial. The trial court vide its judgment dated 24th February, 1981 convicted all the respondents as follows:

C " ORDER

D Accused Preetam, Karan, Mukundi, Katti alias Hari Singh and Tutti alias Babu Lal are held guilty of the offence punishable under Section 302 read with Section 149 IPC for committing murder of Gulab and Chhatrapal. Accused Preetam and Mukundi are further held guilty of the offence punishable under Section 307 IPC. Accused Karan Singh, Tutti and Katti are further held guilty of the offence punishable under Section 307 read with Section 149 IPC.

E The Preetam, Karan, Mukundi, Katti and Tutti are also held guilty of the offence punishable under Section 323 read with Section 149 IPC. In view of above, I award no sentence under Section 148 and 147 IPC.

F Accused Baura alias Drigpal, Siyaram, Thakkoo alias Thakurdas and Balli alias Baladin are held not guilty of the offences with which they stand charged and are acquitted. Their bail bonds are discharged.

G Accused Dillipat is dead and the case against him abates.

Sd/  
(B.N. Misra)  
Addl. Sessions Judge,  
Hamirpur,  
24.02.1981

H



SENTENCE

A

I have heard the learned counsel for accused Preetam, Karan, Mukundi, Katti alias Hari Singh and Tutti alias Babu Lal on the questions of sentence.

I have found all these five accused guilty of the offence punishable under Section 302 read with Section 149 IPC. The only punishment provided for this offence is death sentence or imprisonment for life. Hence, I award these five accused a sentence of imprisonment for life. These accused shall undergo imprisonment for life for the offence punishable under Section 302 read with Section 149 IPC.

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I further award sentence of seven years R.I. to accused Preetam and Mukundi under Section 307 IPC and two years R.I. to accused Karan Singh, Tutti and Katti under Section 307 read with Section 149 IPC.

D

I further award sentence of six months R.I. to accused Preetam, Karan Singh, Mukundi, Katti and Tutti under Section 323 read with Section 149 IPC.

E

All the sentences shall run concurrently.

All the five accused be taken into custody to serve out the sentences awarded to them. The bail bonds are cancelled.

F

Sd/  
(B.N. Misra)  
Addl. Sessions Judge,  
Hamirpur,  
24.02.1981"

10. The High Court, in appeal, vide its judgment and order dated 23rd March, 2004 set aside the order of conviction recorded by the trial court and acquitted all the respondents. Hence the present appeal is filed by the State before us.

G

11. We have heard the learned counsel for both parties.

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- A The learned counsel appearing on behalf of State, Mr. T.N. Singh submits that the High Court was not correct in holding that respondents did not exceed the right of private defence. The injuries suffered by respondents are not at all proportionate and reasonable as compared to the injuries sustained by the deceased. He further submits that evidence of PW1 and PW2 clearly show that they had only 'painas' in their hands when they had come to rescue of the two deceased.

- C 12. Learned counsel further submits that the High Court was not right in holding that prosecution had suppressed the genesis of the crime. The fact that two persons lost their lives and two got injured clearly shows that the respondents even if they acted in self defence, exceeded it. The High Court also did not give any valid reasons for such assumptions. The injuries suffered by respondents were simple in nature and were inflicted by some blunt object whereas on the other hand, they had mercilessly attacked and killed two innocent persons with axes. The evidence of PW1 shows that the respondents were the aggressors and hence cannot take the plea of self defence. From his deposition, it is also clear that two deceased were chased by the respondents and were beaten to death and, therefore, right of private defence does not arise at all.

- F 13. On the other hand, Mr. Anis Ahmad Khan, learned counsel appearing on behalf of the respondents submits that the FIR itself lays the foundation of self defence. PW1 has categorically stated in the FIR that the Chhatrapal and Gulab had first beaten Preetam, i.e., respondent No.1 and on the alarm raised by him, other respondents had come to save him.

- G 14. He further submits that in fact there is no credible evidence to show as to how the original fight had started between Gulab and Chhatrapal on the one side and Preetam on the other. According to the learned counsel, the High Court has correctly discarded the evidence of the prosecution witnesses as the witnesses have successively made H improvements in the prosecution version. According to the

learned counsel, the place of occurrence is not the one suggested by the prosecution, but was the field belonging to the respondents. The witnesses examined by the prosecution had been working in their own field, a long distance away, which would have made it impossible for them to witness the incident. He further submits that the prosecution has miserably failed to explain the injuries suffered by the respondents. Learned counsel further submitted that the prosecution had deliberately introduced a false witness namely Kumari Pramod, PW3. She had been brought in merely to support the version given by her father Bahadur, PW2.

15. We have considered the submissions made by the learned counsel. On a thorough reexamination of the evidence, the High Court discarded the evidence of each witness. The High Court disbelieved the prosecution story as projected through PW1, Punna. He had stated that Gulab and Chhatrapal had engaged in a "*marpeel*" with Preetam in Dhadhai Haar. Both sides had assaulted each other. Gulab and Chhatrapal had run towards the village. They were followed up to the field of Hirwa by the respondents and were assaulted. This alleged incident in Dhadhai Haar was sought to be proved by PW3, Kumari Pramod. However, the High Court disbelieved her evidence on the ground that she was unlikely to be present at the scene of the incident. Her name did not figure in the FIR. She had just supported her father and uncle entirely. She had improved her version; which did not even tally with the version given by the injured, when they were examined. Similarly, the High Court noticed the prosecution version that Gulab and Chhatrapal have been assaulted by a number of persons. They were supposed to have been assaulted by three of the respondents, who were armed with axes. Others were using *lathis*. But the postmortem report shows that none of the deceased had suffered any injuries which could have been caused by *lathis*. The High Court, therefore, concluded that the ocular version has been contradicted by the medical evidence.

A 16. The High Court, thereafter, notices that there seems to be no plausible explanation about the delay in registration of the FIR. The conclusion reached by the High Court is that there was a delay of 17 hours between the alleged occurrence and the registration of the FIR. The only explanation given is that due to the fear of the respondents, the family of the complainants kept sitting near the dead body. They did not even call for a doctor or medical assistance. The High Court disbelieved the sequence of events leading to the registration of the FIR. It is noticed that according to PW1, the Chowkidar of the village had arrived at the spot soon after the incident. Even his help was not taken for the registration of the FIR. Noticing the technical terminology used in the FIR, the High Court has expressed the opinion that it has not been scribed by the rustic villager Punna. It was scribed by a professional, Ram Swaroop, PW7. It is further noticed that even though PW3 was stated to be the only witness to prove as to how the "*marpeet*" (fight) originated and where, yet her name was not mentioned in the FIR. On the other hand, the two ladies (daughter of the informant and wife of Bahadur, PW2) were withheld by the prosecution though according to the FIR, they had witnessed the incident that took place in the field of Hirwa. The prosecution also withheld Thakur Baba and Jageshwar, whose names had also been mentioned in the FIR. The High Court, taking serious notice of the manipulations and modulations doubted the authenticity of the version given by PW3. It is noticed by the High Court that even the most independent and important witness in the chain, PW4, Kunwar was in fact declared hostile by the prosecution. Similarly, the last witness namely, Thakur Das, PW5, who completes the chain, was also declared hostile. From the above, it becomes evident that the prosecution version was not proved beyond reasonable doubt.

17. Coming to the defence version, the High Court has held that the incident might have initially happened at Dhadhai Haar. At that time, the parties had been separated. After sometime, the second incident occurred when the prosecution party tried

to graze their cattle in the field of Karan Singh, respondent No.2 A  
forcibly. When he objected, they started beating him up. On the  
alarm being raised by Karan Singh, Preetam, Mukundi etc.  
came to the spot armed with axes. The High Court also  
disbelieved the version given by PW1 that two deceased had  
run towards their village. This version is disbelieved as the B  
prosecution has failed to bring any evidence to show that  
Hirwa's field falls on the way to the village.

18. In such circumstances, the High Court has held that the  
respondents have established their plea of self defence. The C  
High Court ultimately concluded that the cumulative effect of all  
the infirmities of the prosecution and the probabilities of the plea  
of self defence renders the case put forward by the prosecution  
doubtful. In such circumstances, the appeal of the respondents  
was allowed and they were acquitted. D

19. We are of the considered opinion that the conclusions  
reached by the High Court can not be said to be either perverse  
or based on no evidence. The High Court has recorded  
plausible as well as probable conclusion. The respondents  
were, therefore, clearly entitled to the benefit of doubt and have E  
been rightly acquitted.

20. In this view of the matter, we find no reason to interfere  
with the judgment of the High Court. The appeal is, therefore,  
dismissed. F

N.J. Appeal dismissed.