
(1990) 08 RAJ CK 0033
In the Rajasthan High Court
Case No : Criminal Appeal No. 592 of 1979

Bhik Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-08-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1990) 2 RLW 18 : (1990) 2 WLN 178

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Judgement

B.R. Arora, J.—This appeal arises out of the judgment dated 7th of December, 1979, passed by Sessions Judge, Balotra by which the learned Sessions Judge convicted accused Bhik Singh Under Sections 325, 147, 447 and 323 IPC, and awarded a sentence of 3 years rigorous imprisonment and a fine of Rs. 700/- and in default of payment of fine to further undergo one year's rigorous imprisonment u/s 325 IPC. A sentence of three months rigorous imprisonment and a fine of Rs. 100/- and in default of payment of fine, further 15 days' rigorous imprisonment Under Sections 147 IPC and a fine of Rs. 100/- and in default of payment of fine to undergo 15 days' rigorous imprisonment u/s 447 IPC and a sentence of three years' rigorous imprisonment and a fine of Rs. 200/- was awarded Under Sections 323 IPC. The other accused-appellant Jugatsingh, Amarsingh, Kheemsingh and Jagsirtgh were convicted Under Sections 325/149, 147, 447 and 323 IP and were sentenced to 2 years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to further undergo six month's rigorous imprisonment and a fine of Rs. 100/- and in default of payment of fine to further undergo 15 days rigorous imprisonment u/s 147 IPC, a sentence of one month's rigorous imprisonment and a fine of Rs. 10/- Under Section 447 IPC and a Sentence of 3 months rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine To further undergo 2 month's rigorous imprisonment u/s 323 IPC. All the sentences we. Torun concurrently.

2. The incident which led to the prosecution of the present appellants along with two other accused Revatsingh and Neemsingh took place on 7th of August, 1978, in the field of Ugamsingh. The case of the prosecution is that on 7th of August, 1978 Ugamsingh alongwith Annaram Bishnoi, went to cultivate his field in Khasra No. 153. He engaged Anna Ram along with his tractor to plough the field. When Annaram was ploughing the field accused Arnarsingh, Jugatsingb, Bbiksingh, Jugsingh, Kheem Singh and Neeemsingb bycasts Rajput resident of Atmaram along with Revatsingh came into the field, by forming an unlawful assembly with an intention to kill Ugam singh. they were armed with barrow (Dbei), Kheem Singh and Jugaf Singh were armed with, harrow, while others were armed with lathies. They came into the field and started beating Ugamsingh, Ugamsingh raised an alarm, upon which Ungarsingh came and tried to intervene and he also received injuries. Ugamsingh was assaulted by Bhik Singh, Neemsingh Jugat-singh, Khimsingh, Jugsingh, Revatsingh and Amar Singh, when these accused persons were giving beating to to Ugamsingh Anna Ram took away his tractor and left the place of the incident Dungarsingh was also assaulted by these accused persons, and while intervening he also received injuries. Dungar-singh received as many as 7 injuries on his person and injury No. 1 received by him was grievous in nature in nature. Umedsingh received as many as 13 injuries. The report of the incident was lodged by Kanwarraj Singh P.W. 1 before the Superintendent of police which was sent to the Police Station, Ramsar where it was registered. After necessary investigation, the challan of the case was was presented by the Police in the court of Judicial Magistrate Banner, from there the case was committed to the Court of-Sessions Judge, Balotra came Barmer and the learned Sessions Judge, Balotra, tried the present appellants alongwith Revatsingh and Neemsingh Under Sections 307, 147, 148, 447, 323 and 325/149 IPC. The prosecution in support of its case, examined 9 witnesses, while the accused examined 3 witnesses in support of their defence The learned Sessions Judge also acquitted the present appellants u/s 307/149 IPC, but convicted all the appellants as mentioned above.

3. The learned Counsel for the appellants has submitted that the witnesses are not reliable witnesses and there are material contradictions in their statements. The counsel for the appellants has also submitted that the accused party was in possession over the field in question for the last 4-5 years and therefore, they have a right to defend their possession and the complainant party was an aggressor. The last submission made by the counsel for the appellants is that even if this Court comes to the conclusion that offence has been made out then in that circumstances as the incident relates to the year 1978 and more than 12 years have elapsed, no useful purpose will be served in sending the accused persons behind the bars now. The learned Public Prosecutor, on the other band, has supported the judgment of the learned lower court.

4. I have looked into the statements of P.W. 3 Ugami Singh, P.W. 5 Doongarsingh P.W. 6 Bboorsingh, P.W. 7 Girdharsiogh, P.W. 8 Dr. Biharilal and P.W. 9 Annaram. P.W. 3 Ugamsingh and P.W. 5 Doongarsingb are the injured eyewitnesses of the

occurrence, while P.W. 6 Bboorsingh and P.W. 7 Girdhari Singh came on the scene of occurrence during the course of the incident. P.W. 9 Annaram was the tractor owner who had come to plough to the field of the complainant party and who was there in the field when the quarrel started, but during the course of the incident he left the scene of the occurrence. P.W. 8 is Dr. Biharilal who examined the injuries of PW 3 Ugamsingh and P.W. 5 Doongarsingh. All these witnesses have been cross-examined by the counsel for the accused at length, but nothing could be elicited from their evidence from which it could be gathered that they are not speaking truth. P.W. 3 Ugamsingh and P.W. 5 Doongar Singh are the injured eyewitnesses of the occurrence. P.W. 3 Ugamsingh received as many as 13 injuries while Doongarsingh received 7 injuries. The incident took place in the field of Ugamsingh & his presence on the scene of the occurrence cannot be doubted. Similar is the case with P.W. 5 Doongar Singh who came thereafter hearing the cries of P.W. 3 Ugamsingh and tried to intervene and received the injuries. The presence of P.W. 6 Bboorsingh and P.W. 7 Girdharisingh, who came at the scene of the occurrence when the incident was going on also appears to be reliable. The presence of P.W. 9 Annaram who was engaged by P.W. 3 Ugamsingh who came there to plough the field also appears to be most probable. From the evidence of these witnesses it is clear that these witnesses were present there and they had seen the occurrence and the learned lower court has not committed any illegality in placing reliance over the testimony of these witnesses. To prove the injuries on the person of the injured P.W. 8 Dr. Biharilal has been produced who examined these witnesses, then they were brought to the hospital. According to P.W. 8 Dr. Biharilal Choudhary, P.W. 5 Doongarsingh received so as many as three injuries out of which injury No. 1 was found grievous.

5. So far as the question of right of private defence available to the accused is concerned, I am of the opinion that it was not available to them. The incident took place in the field of Ugamsingh when he tried to cultivate his field with the help of Annaram P.W. 9 and the person, who is owner of the field has got a right to cultivate his field. If the field was not cultivated for a period of 3 to 4 years and the accused party was grazing their cattle in the field of Ugamsingh, then that will not give any right to the accused party to obstruct the owner of the field to plough his field. In this view of the matter, the accused party has no right even to enter into the fields of the complainant party, and to obstruct them in cultivating the field. No right of private defence is thus available to the appellant.

6. Now coming to the point of sentence. It is an admitted fact that the incident took place on 7th of August, 1978. More than 12 years have elapsed. The offence proved against the appellant is only u/s 325, 147, 447, 323 and 324/149 and 325/149 IPC and the accused remained behind the bars for about a month. No useful purpose will be served in sending the accused appellants behind the bars again after 12 years of the incident. In this view of the matter, I uphold the conviction of the appellant, but reduce the substance sentence to that of already undergone and impose a fine of Rs. 3000/- each and in default of payment of

fine to undergo one years" rigorous imprisonment.

7. Consequently, the appeal is allowed in part, the conviction of the appellant is maintained but the sentence is reduced to already undergone and a fine of Rs. 300/ each and in default of payment of fine each accused shall under go three months rigorous imprisonment. In case the fine is deposited then out of Rs. 15,000/-, Rs. 7500/- may be given to injured Ugamsingh and Rs. 7500/- may be given to Doongarsing. Three months time is allowed to the appellants to deposit the fine.