

(2001) 09 RAJ CK 0057
In the Rajasthan High Court
Case No : Criminal Appeal No. 74 of 1987

Dalip Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 103, 307, 353, 97

Citation : (2000) 84 FLR 621 : (2003) 1 RLW 542 : (2002) 3 WLN 257

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : M.A. Bhurat, P.P., Sandeep Mehta, for the Appellant;

Final Decision : Allowed

Judgement

Garg, J.—This appeal has been preferred by the accused appellant against the judgment and order dated 13.2.87 passed by learned Additional Sessions Judge No. 2, Hanumangarh, in Sessions Case No. 41/85 whereby the learned Additional Sessions Judge No. 2, Hanumangarh While acquitting the accused Mehar Singh for offence u/s 307 read with Section 34"and Section 353 read with Section 34 IPC convicted present accused appellant for offence u/s 307 and 353 IPC and sentenced him as under:-

Offences

Sentence awarded

U/Se` . 307 IPC

2 years &6 months" RI and a fine of Rs.200/- in default to further undergo 1 month"s RI

U/Sec. 353 IPC

4 months" RI

Both the substantive sentences were ordered to run concurrently.

2. This appeal arises in the following circumstances :

(i) On 19.5.82 at about 2 p.m. P.W.2 Najar Singh gave an oral information to P.W.4 Richhpal Singh, SHO, Police Station Hanumangarh Junction stating that he purchased the disputed land from the accused appellant and his wife Surendra Kaur and "Likhatam" of purchasing that land was with him. It was further stated by him that from the court of Munsif Hanumangarh, stay order against the accused appellant was also issued and when he went to his field to irrigate the water, the accused appellant and his father Mehar Singh rushed towards him with a gun and, therefore, he had come to lodge the report. P.W.4 Richhpal Singh reduced that information into writing in Rojnamcha and the same is Ex.P/5 and after that he proceeded on spot. Further the case of the prosecution is that thereafter P.W.4 Richhpal Singh along with other police party and along with P.W.2 Najar Singh and his brother P.W.1 Guljar Singh reached the disputed field and seeing the police party, the accused appellant fired two shorts towards P.W.4 Richhpal Singh, but they did not hit him and anybody and thereafter P.W.4 Richhpal Singh made his identity disclosed to him and also warned him, but he further fired and thereafter since there was no alternative but to defend himself, in defence P.W.4 Richhpal Singh also fired shots on accused appellant and his father and he also ordered Bhoop Singh to fire and accused appellant fired 16 rounds and when the stock of his cartridge became nil, he was got arrested along with 12 bore gun.

3. P.W.4 Richhpal Singh chalked out regular FIR Ex.P/7 in the Police Station, Hanumangarh for offence under Sections 307 and 353/34 IPC against the accused appellant and his father Mehar Singh.

4. After usual investigation, a challan for said offences was presented against the accused appellant and one Mehar Singh in the Court of Magistrate from where the case was committed to the Court of Additional Sessions Judge, Hanumangarh.

5. That on 26.8.82, the learned Additional Sessions Judge framed charges for said offences against the accused appellant and one Mehar Singh who pleaded not guilty and claimed trial.

6. During trial, 5 witnesses have been produced by the prosecution and thereafter statement of accused u/s 313 Cr.P.C. was recorded and examined one witness in defence.

7. After the conclusion of the trial, the learned Additional Sessions Judge vide his judgment and order dated 13.2.87 while acquitting another accused Mehar Singh, convicted and sentenced the accused appellant as stated above.

8. Aggrieved from the said judgment, this appeal has been filed by the accused appellant.

9. In this appeal, following submissions have been made on behalf of the accused appellant:

(i) The question of possession which was very much material in this case has not been considered by the learned trial Judge and thus, since the land in question was in actual possession of the appellant, therefore, whatever has been done was done in exercise of right of private defence.

(ii) Apart from that, since fires were shot by both the party and did not hit anybody, therefore, in these circumstances, no case for offence u/s 307 IPC can be found to be proved against the accused appellant and hence, it has been prayed that the accused appellant be acquitted of the said charges.

10. On the contrary, the learned P.P. has opposed the submissions made by the learned counsel for the appellant and submits that the judgment and orders passed by the learned trial Judge are based on proper appreciation of evidence and do not call for interference.

11. I have heard both and perused the record of the case.

12. So far as the fact that in whose possession the dispute land was on the date of alleged incident is concerned, even from the evidence of P.W.1 Guljar Singh and P.W.2 Najar Singh, this fact stands proved in favour of accused appellant. P.W.2 Najar Singh has frankly admitted that he filed civil suit against the accused appellant and his wife in the Court of Munsif and from where he got a stay, but, thereafter that stay was vacated and he also filed appeal against that order, but his appeal was also rejected. Thus, from the statement of P.W.2 Najar Singh, the fact that he lost civil case in respect of possession over disputed land is very much proved. D.W.1 Naresh Soni, Patwari has been produced in defence by the accused appellant in lower Court. He clearly admits that the disputed land was in the khatedari of accused appellant and on the site, the crop of "Gwar" was being sowed by Dalip Singh and the crop belonged to the accused appellant. Thus, from the statement of D.W.1 Naresh Singh it is very well established that the land in question was in actual possession of the accused appellant on the date of occurrence.

13. From the statements of P.W.1 Guljar Singh and P.W.2 Najar Singh, it is further clear that they went first to the field and seeing the accused appellant and his father, they returned and lodged the report Ex.P/5 and thereafter P.W.4 Richhpal Singh along with his police party reached the spot where fires from both the sides were shot. P.W.4 Richhpal Singh has further admitted that fires which were made by the policy party did not hit any body and, similarly the fires which were made by the accused appellant did not hit anybody and from both sides fires were shot. From the statement on P.W.4 Richhpal Singh, it is also clear that he himself fired 14 shots and Bhoop Singh, HC, fired 11 shots and accused appellant Dalip Singh fired near about 16 shots.

14. Since the land in question was in possession of the accused appellant, therefore, in my considered opinion, he had right at that time to protect his possession and thus right of private defence of property was available to him. In this respect following observations of Hon'ble Supreme Court in the case of

Jaideo v. State of Punjab (1) dealing with right of private defence of property are worth quoting:

"In appreciating the validity of the appellants' argument, it would be necessary to recall the basic assumptions underlying the law of self-defence. In a well-ordered civilised society, it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the function of the State to afford protection to such persons and their properties. This however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State Machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury, which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose, the exercise of the right of private defence must never be vindictive or malicious."

15. In the present case, the accused appellant had right of private defence to protect his property and if fires were shot which did not hit anybody, it will also reveal that he had not exceeded his right of private defence. The fires which were shot by the accused appellant were lesser in number in comparison to those which were shot by the police party, therefore, in all respects, what was done by the accused appellant was done within limit of right of private defence and thus, offence u/s 307 IPC cannot be said to have been proved against him.

16. Apart from that, our own High Court in the case of State of Rajasthan v. Sadiq and Ors. (2) has observed as under:

"When the shots could not be effective from the either side, then the question of commission of offence u/s 307 IPC does not arise. What can be said is that from both the sides, there were exchange of shots and the accused party must have opened the firing only with a view to scare away the police party and not with the intention that the shots may be effective on the police party. Viewed from this angle, as well, in our opinion, offence u/s 307 IPC cannot be said to be made out. Thus, in any view of the matter, as considered above, the order of acquittal of the accused - respondents, call for no interference in this appeal."

17. From above observations, since in the present case shots were made from both the sides, but all were ineffective, offence u/s 307 IPC cannot be said to have been proved. From this point of view also, the accused appellant is entitled to acquittal findings of learned trial Judge are liable to be set aside and the appeal of the accused appellant is liable to be allowed.

18. The result of the above discussion is that:

The appeal filed by the accused appellant is allowed and the judgment and order dated 13.2.87 passed by the learned Additional Sessions Judge No. 2, Hanumangarh are set aside and the accused appellant is acquitted of the charges framed against him.

Since the accused appellant is on bail, he need not surrender. His bail bonds are hereby cancelled.