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**(2015) 02 RAJ CK 0022**  
**In the Rajasthan High Court**  
**Case No : Criminal Appeal No. 188/2013**

Ganpat and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 02-02-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 447

**Citation :** (2015) 02 RAJ CK 0022

**Hon'ble Judges :** Anupinder Singh Grewal, J.;Gopal Krishan Vyas, J.

**Bench :** Division Bench

**Advocate :** G.R. Punia, Senior Advocate and R.S. Choudhary, for the Appellant;  
Vishnu Kachhawaha, Public Prosecutor and C.S. Rathore, Advocates for the  
Respondent

**Final Decision :** Dismissed

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## Judgement

Gopal Krishan Vyas, J.—The State of Rajasthan has filed cr. leave to appeal and the complainant has filed cr. appeal against the judgment dated 22.1.2013 passed by the Addl. Sessions Judge, Deedwana, District Nagaur in Sessions Case No. 15/2007 whereby 8 accused including late Himata Ram S/o Deva Ram, died during trial, are acquitted from the charges leveled against them under Section 147, 148, 447 and 302/149 IPC.

2. As per the facts of the case, a written report was submitted by Ganpat Ram (PW-14) at Police Station Ladnu alleging therein that the respondents murdered his father Surja Ram when he made complaint about a land of way on 7.7.2007. The complainant specifically mentioned that his father Surja Ram went in the agricultural field and raised objection not to cultivate the land of way but accused party gathered and they inflicted injuries by Lathis and axe to his father and due to those injuries he died on spot. In the FIR it was also stated that after hearing cry of his father, his sister Sampu, mother Rameswhari, grand-mother Barji and other persons rushed to the place of occurrence and saw the incident. Upon

above complaint made by the complainant Ganpat Ram, the FIR No. 129/2007 was registered against the respondents at Police Station Ladnu and after regular investigation, the challan was filed against Himta Ram, Jetha Ram and Munni @ Mannudi in the court of Judicial Magistrate, First Class, Ladnu from where the matter was committed for trial in the court of Addl. Sessions Judge, Deedwana, District Nagaur.

3. The learned trial court after framing the charge under Sections 148, 447 and 302/149 IPC proceeded for trial and in the trial first of all statements of 17 prosecution witnesses were recorded and, thereafter, an application under Section 319 Cr.P.C. was filed by the complainant Ganpat Ram for taking cognizance against 3 more accused namely Nathu Ram, Godawari and Maju. The application filed by the complainant was rejected by the learned trial court vide order dated 3.12.2008 but against the said order SB Cr. Rev. Petition No. 1319/2008 was filed before this Court by the complainant Ganpat Ram in which the coordinate bench of this Court passed an order on 13.1.2011 whereby the Cr. Revision Petition was allowed and the order dated 3.12.2008 was quashed and the learned trial court was directed to pass fresh order for taking cognizance against Nathu, Maju and Godawari. In pursuance of aforesaid order, the cognizance was taken by the learned trial court against 3 more additional accused and, thereafter, the trial was commenced afresh. In the fresh trial, again statements of 16 witnesses were recorded and 41 documents were exhibited in the trial. Thereafter, the learned trial court finally heard the case and passed the impugned judgment dated 22.1.2013 whereby the learned trial court acquitted all the respondents from the charges leveled against them. The accused Himta Ram died during trial.

4. In above cr. leave to appeal filed by the State and appeal filed by the complainant the State and complainant are challenging the judgment impugned dated 22.1.2013 whereby the respondents were acquitted from the charges leveled against them for offence under Sections 148, 447 and 302/149 IPC.

5. The learned Public Prosecutor as well as the learned counsel for the complainant submit that the learned trial court has committed an error apparent on the face of record while disbelieving the testimony of eye witnesses because as per the statements made by the eye witnesses PW-1 Sampu, PW-2 Rameshwari and PW-14 Ganpat Ram the offence under Sections 148, 447 and 302/149 IPC is made out, but the learned trial court has disbelieved the statements of these eye witnesses without assigning any reason, therefore, the finding given by the learned trial court for acquittal suffers from patent illegality. While inviting the attention towards the first statement of PW-14 Ganpat Ram it is submitted that the said witness categorically said that accused persons cultivated the way in the night, therefore his father went there and raised objection not to cultivate the land of way and upon asking the respondents inflicted injuries by axe and Lathis. The specific allegation was leveled by PW-14 Ganpat Ram that injuries were caused by Himta Ram upon head of the deceased

Surja Ram and other respondent caused injuries by Lathis, which is evident from post mortem report and statement of PW-3 Dr. Lalit Kumar Sharma, therefore, when the prosecution has proved its case beyond reasonable doubt that respondents inflicted injuries by axe and Lathis then there was no occasion left with the learned trial court to acquit the respondents from the charges leveled against them. The prosecution has proved its case for the purpose of establishing intention and motive and also proved that injuries were caused by the weapon axe and Lathi by the respondents, therefore, only on the basis of some contradiction no person can be acquitted from the serious charge of murder but the learned trial court committed a serious error while acquitting the respondents from the charges leveled against them.

6. The learned Public Prosecutor and the learned counsel for the complainant argued that the finding with regard to private defense and right to save property is also highly erroneous because neither the deceased went to the field to attack upon them nor any encroachment was made by him, so also, the deceased not having any weapon with him, but the learned trial court committed an error while acquitting the respondents from the charges leveled against them. Arguments of learned counsel for the complainant and learned Public Prosecutor is that the learned trial court has failed to consider the evidence of eye witness PW-7 Pusa Ram who has categorically stated in his statement that respondents caused injuries by Lathis and other weapon, therefore, there is no reason to disbelieve the testimony of PW-7 Pusa Ram who has supported the prosecution story, but the learned trial court has committed an error of law, therefore, the judgment impugned deserves to be quashed.

7. Lastly, it is argued that the learned trial court has failed to consider the evidence of PW-1 Sampu and PW-2 Rameshwari who were the eye witnesses of the case and they specifically stated in their statements that respondents unlawfully assembled in the field and made attack upon the deceased Surja Ram, who went in the agricultural field to raise objection not to cultivate the land of way, therefore, on the basis of evidence on record, it can be said that prosecution has proved its case beyond reasonable doubts, but the learned trial court without considering the evidence as well as without considering the intention with Section 96 right to private defence, out-rightly acquitted the respondents only on the ground of right to save property and private defense and, therefore, the judgment impugned deserves to be quashed.

8. After hearing the learned counsel for the complainant and learned Public Prosecutor, we have minutely scanned the evidence and the judgment impugned.

9. As per the first statement of eye witnesses recorded in the trial, the injuries were caused by late Sh. Himata Ram by axe, one of the accused who died during trial and in all 3 injuries were inflicted by him by sharp edged weapon, which is PW-2 Rameshwari in her first statement said that Similarly, PW-15 Ganpat Ram, the author of the FIR stated in his statement that

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10. Meaning thereby, in the statement of all the witnesses there is specific allegation for inflicting injuries by sharp edged weapon upon the head of deceased.

11. After perusing the statements of eye witnesses, we have perused the post mortem report (Ex. P/1) in which following opinion was given by the Medical Board which is cause of death:

"In our opinion, the cause of death seems to be Intra Cranial hemorrhage following Head injury leading to cardiopulmonary failure of the deceased." 12. We have also perused the details of injuries mentioned in the post mortem report and found that no post mortem wound was found upon the body of deceased Surja Ram and Dr. Lalit Kumar Sharma stated in his statement that injury No. 1 in the back side of skull having dimension of 2" x 1 cm but as per the statement of said witness no incised wound was found upon the body of the deceased. The PW-3 Dr. Lalit Kumar Sharma specifically said that injury No. 1 was caused by blunt weapon and the said injury was cause of death. After recording above statements, when cognizance was taken by the learned trial court against 3 additional accused, the learned trial court again recorded statement of all these witnesses and the statement of PW-1 Sampu was recorded on 19.8.2011 again. No specific allegation was leveled by the said witness, but it is said that

13. In the second statement of PW-2 Rameshwari she gave following statements:

14. Similarly, PW-14 Ganpat Ram, author of the FIR stated in his statement that

15. We have perused the cross-examination of these witnesses and perused the finding given by the learned trial court. The learned trial court after taking into consideration the entire facts of the case and evidence gave finding that as per the statement of PW-2 Rameshwari, the incident took place in the land of accused Jetha Ram and Himata Ram. The learned trial court while relying upon the statements of PW-1 Sampu and PW-2 Rameshwari, wife of the deceased held that the land in question where the complainant party was raising voice was belonging to the accused party and they were in possession of the land in question and further held that as per the statement of PW-2 Rameshwari, wife of late Surja Ram and site plan (Ex. P/5) clearly shows that so called occurrence took place in the agricultural field of the accused party. Meaning thereby, the learned trial court held that there was no question of offence under Section 149 IPC because incident took place in the land of accused party. Therefore, it cannot be held that it is a case of unlawful assembly under Section 148 IPC. While considering the post mortem report the learned trial court opined that cause of death was injury upon the back side of skull and that injury was assigned by Himta Ram who died during trial.

16. In our opinion, the finding of learned trial court for not accepting the

prosecution case for offence under Section 302/149, 148 and 447 IPC cannot be disturbed for the reason that prosecution has miserably failed to establish that the incident took place in the agricultural field of respondents, therefore, if incident took place in the agricultural field of accused party they the same took place due to right of private defense. In view of the above fact, the prosecution has failed to establish its case by leading reliable and trustworthy evidence. The learned trial court has rightly disbelieved the testimony of all the witnesses because the prosecution has failed to establish its case, not only with regard to the injuries caused by the respondents but also to prove the fact that incident took place in their agricultural land in which complainant party was having any right to raise objection.

17. In view of the above, the cr. leave to appeal as well as the cr. appeal filed by the complainant are hereby dismissed.