

(2006) 09 RAJ CK 0054
In the Rajasthan High Court

Rama @ Ram Lal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 100, 101, 102, 103, 104
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2007) 1 RLW 512

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellants, nine in number, along with three co-accused were indicted before the learned Additional Sessions Judge (Fast Track) No. 1, Bundi, who while acquitting co-accused, convicted and sentenced the appellants as under:

Rama @ Ram Lal:

Under Section 302 IPC:

To suffer imprisonment for life and Fine of Rs. 5000/-, in default to further suffer simple imprisonment for six months.

Under Section 326/149 IPC:

To suffer rigorous imprisonment for four years and fine of Rs. 2000/- in default to further suffer simple imprisonment for two months.

Under Section 324/149 IPC:

To suffer rigorous imprisonment for one year. u/s 323/149 IPC:

To suffer simple imprisonment for three months.

Heera Lal, Sheoji, Rameshwar @ Ramu, Panna Lal, Prem Shankar @ Prema, Ram Ratan @ Ratan @ Ratan Lal, Moti Lal @ Moti, Dhuli Lal @ Dhuliya:

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 5000/-, in default to further suffer rigorous imprisonment for six months.

Under Section 326/149 IPC:

Each to suffer rigorous imprisonment for four years and fine of Rs. 2000/- in default to further suffer simple imprisonment for two months.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year.

Under Section 323/149 IPC:

Each to suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

The aforequoted findings have been impugned in the instant appeals.

2. As per prosecution story informant Sohan Lal (PW. 15), who was admitted to Government Hospital Bundi on October 25, 1999, in his parcha bayan (Ex. P. 26) stated that around 12 Noon on the said day the accused inflicted injuries with axes and lathis on the person of Kalyan who died on the spot. In the course of incident he (Sohan Lal) and Bholu also sustained injuries. The incident occurred because the appellants intended to commit trespass over Charagah (pasture) land and Kalyan forbade them from doing the said act. On the basis of aforesaid parcha bayan, a case under Sections 147, 148, 149, 302, 326, 324 and 307 IPC and Section 3 SC/ST (PA) Act was registered and investigation commenced. Dead body of Kalyan was subjected to autopsy, other necessary memos were drawn, statements of witnesses were recorded, the accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Bundi. Charges under Sections 302, 302/149, 307/149, 323/149, 324, 324/149, 120B, 147 and 148 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 22 witnesses. In the explanation u/s 313 Cr.P.C, the accused claimed innocence and pleaded right of private defence. Seven witnesses in support of defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated hereinabove.

3. We have heard rival submissions and perused material on record.

4. Death of Kalyan was concededly homicidal in nature. As per post mortem report (Ex. P. 22) following ante mortem injuries were found on the dead body:

Incised wound 6 x 1 1/2 x 3" curve shaped on parito frontal area of scalp in central part vertical in direction. Head and parital side margin sharp and clear cut edge.

Frontal and parietal bone also cut underneath the wound. Bony margin also sharp edge other side part of cut bone become and easily left up and bony pieces move easily. Brain matter exposed and lacerated blood stain present on the margin of wound.

In the opinion of Dr. T.C. Mahawar (PW. 3) the cause of death was coma due to intra cranial hemorrhage and injury to brain.

5. Other members of complainant party also sustained injuries in the course of incident.

Bholu (PW. 17) vide injury report (Ex. P. 19) sustained following injuries:

1. Bruise (Red) 10 x 3 cm on Rt. arm
2. Lacerated wound 3 x 1/2 x 1/2 cm on left side frontal region of scalp simple.

Following injuries were found on the person of Lakha (PW. 9) vide injury report (Ex. P. 20):

1. Lacerated wound 1/2 x 1/4 x 1/4 cm on middle of Rt. leg simple
2. Incised wound 8 x 1 x 2 cm on left infra scapula region of chest.
3. Incised wound 5x1/2x1/2 cm on fronto parietal region of Rt. side scalp.

Sohan (PW. 15) vide injury report (Ex. P. 21) received following injuries:

1. Lacerated wound 1 1/2x1/2x1/2 cm on Rt. parietal region of scalp, simple
2. Abrasion 7 x 1/10 cm on Rt. deltoid region of arm. simple
3. Lacerated wound 1 1/2 x 1/2 x 1/3 cm on Rt. lower third part of forearm, simple
4. Bruise 2 x 1cm on left arm simple

6. At this juncture injuries sustained by the accused party may also be noticed. Accused Sheoji vide injury report (Ex. D. 1A) received following injuries:

1. Abrasion 1/10 x 1/10 cm on proximal part of right hand
2. Lacerated wound 1 x 1/2 x 1/4 cm on left middle part of leg.
3. C/o pain on back.

Accused Rameshwar vide injury report (Ex.D. 2A) received following injuries:

1. Abrasion 1 x 1 cm on left lower third part of forearm.
2. Lacerated wound 3 x 1/2 x 1/4 cm on left side frontal region of scalp

3. Bruise 1 x 1 cm on Rt. knee

On X-ray vide X-ray report (Ex. D. 3A) fracture of lower third part of radius bone was found and the injury was found to be grievous in nature.

7. The prosecution case is primarily founded on the testimony of Net Ram (PW. 1), Bholu (PW. 17), Lakha (PW. 9) and Sohan Lal (PW. 15). Having closely scanned the evidence of these witnesses we find that in his cross examination Net Ram (PW. 1) stated that incident was over much prior to the arrival of Rama Kumhar at the scene of occurrence. He further stated that although the persons belonging to village Khunetia (accused party) used to plough the disputed land, the villagers of Sinti (complainant party) intended to oust them. He further deposed thus:

;g lgh gS fd nksuksa rjQ ls ekjihV gks jgh Fkh fdllus fdlds nh Fkh eq>s /;ku ugha gSA

Lakha (PW. 9) in his deposition stated that on reaching the place of incident he saw that deceased when forbade the appellants from grazing pasture land, he was beaten to death by the appellants. In his cross examination, he however admitted that the pasture land was in the possession of the appellants but after the incident the wife of deceased took over its possession. Relevant part of his statement reads as under:

bl >xM+s dk ghjkyky us Hkh gekjs fo:) eqdnek ntZ dj;k gks rks eq>s irk ugha gS ;g dguk xyr gS fd geus jkesoj czkge.k o ;ksth ds lkFk ekjihV dh gksA ;g dguk xyr gS fd gekjs fo:) eqdnek ntZ gqv k gks mlesa iqfyl us gels iwNr kN dh gksA ;g eq>s irk ugha gS fd bl ?kVuk ds 15&20 fnu igys [kqusfV;k ds czkge.k o dqEgkjksa esa cwUnh vkdj iqfyl dks f?kdk;r dh gks fd xkao esa pkjkxkg tehu fti ij gekjk o"kksZa ls dCtk gS mls flUr xkao ds eh.kk gekjs lkFk ekjihV djds csn[ky djuk pkgrs gS] fti ij iqfyl tkap djus xkao esa xbZ gks rks eq>s irk ugha

Evidence of Sohan Lal and Lakha gets corroboration from the testimony of Net Ram (PW. 1) and Bholu (PW. 17).

8. Since the incident occurred because of the land dispute, it was incumbent on the Investigating Officer to summon Patwari of the Circle to the scene of the crime for drawing map as required by Rule 6.13 of the Rajasthan Police Rules, 1965 (for short 1965 Rules), but Rajkumar Gupta, Investigating Officer (PW. 21) appears to have conducted investigation casually. He did not make any attempt to associate Patwari with the investigation. He did not know as to who was in possession of the land on the date of incident. He however admitted that the accused got registered cross case against the complainant party. His cross examination reads as under:

;g lgh gS fd ?kVuk LFky tgka dk uD?kk cuk;k ogka ij >kM ugha Fkk LFky gkadk gqv k FkkA uD?kk ekSdk esa bl ckr dk vadu ugha gS fd ?kVuk LFky dk [ksr fdrus ch?kk dk gSA gydk iVokjh }kjk is?k fd;s x;s fjdkMZ o mlds c;ku esa mldk jdck vafdr gS tks djhc 27 ch?kk 6 fcLok dk iVokjh }kjk crk;k x;k gSA ?kVuk LFky dh

tehu ljdkjh flok;pd Fkh ftl le; ?kVuk LFky dk uD?kk cukus x;k ml le; esjs lkFk iVokjh ekStwn ugha FkkA ;g lgh gS fd ?kVuk dsoy pkjxkg Hkwfe ij gh gqbZ Fkh uD?k ekSdk esa vafdr ch (x) lh (x) xksyk n?kkZ;k x;k gS ogka ch LFkku ij erd dY;k.k ds tqrs iMs Fks o lh LFkku ij yk[kk ds LkkFk gqbZ ekjihV dk [kwu iM+k gqvk Fkk ;g lgh gS fd eSaus vuqla/kku ds nkSjku iVokjh ls ?kVuk ogh izkIr ugha dhA bldk dksbZ dkj.k ugha crk ldrkA eSusa bl ckjs eSa iVokjh ls tkudkj ugha izkIr dh fd ?kVuk LFky ij fdldk dCtk FkkA eSaus bl ckcr rrh?k ugha dh fd ?kVuk LFky dh tehu fdlds dCts esa Fkh?eSa ;g ugha crk ldrk fd [kljk fxjnkojh esa dsoy Qly dk gh vadu gksrk gS bl ckjs esa iVokjh gh crk ldrk gSA ;g eq>s irk ugha fd [kljk ifjorZu?khy esa dCtsnkjh dk uke vafdr gksrk gksA ;g lgh gS fd iVokjh ds c;kuksa eSa ;g vadu gS fd 27 ch?kk 6 fcLok tehu ij flUrh o [kwufV;k ds vknfe;ksa us dCtk dj gkad j[kk gSA ?kVuk ds fnu bl fooknxzLr xM+s dh txg ij fdl O;fDr dk dCtk Fkk bl ckcr esjs }kjk rrh?k ugha dh xbZ D;ksafd iVokjh us vius c;kuksa esa mDr Hkwfe ljdkjh pkjxkg Hkwfe gS crk;k Fkk dCts ds laca/k esa enu ehuk ls blfy, rrh?k ugha dh D;ksafd ljdkjh fjdkMZ esa mDr tehu dks flok; pd Hkwfe crk;k x;k gSA bl ckjs esa eSaus dksbZ rrh?k ugha dh fd enu yky dk [ksr ckMk ctjaxyky] edku ctjax yky edku Hkksyw edku erd dY;k.k dk fdl izdkj dh Hkwfe esa cuk gqvk gSA bl laca/k esa eSa ugha dg ldrk fd budk edku pkjxkg Hkwfe esa gksA ;g lgh gS fd eqdnek uEcj 403@99 Fkkuk Inj ls iwoZ eqyfteku }kjk bldk dzksl eqdnek uEcj 403@99 Fkkuk Inj esa ntZ djok;k x;k Fkk eqdnek uEcj 403@99 Fkkuk Inj ds eqdnesa dh rQrhk dk;eh ds oDr ,,lvkbZ- ioZr flag ds lqiqnZ dh xbZ FkhA eqdnek uEcj 403@99 esa xokgku ds c;ku ioZr flag ,oa esjs }kjk fy;s x;s gks rks eqs ;ku ugha ;g lgh gS fd ?kVuk LFky dh tehu tks uDkk ekSdk ih&14 esa , ls iznfkZr gS] fd iSekbk iVokjh ls ugha djokbZ xbZA ;g lgh gS fd bl pkjxg Hkwfe ds laca/k esa [kwufV;k o flUrh ds yksxksa esa vkil esa fookn FkkA

9. The appellants examined Mahaveer Prasad, Patwari (DW.I), who deposed that on the date of incident mustard crop was standing on the land and the land was possessed by accused Rameshwar.

10. Factual situation emerges from the material on record may be deduced thus:

(i) Land in dispute was in possession of appellant Rameshwar and at the time of incident crop of mustard was standing over it.

(ii) Deceased Kalyan along with other members of complainant party made attempt to oust Rameshwar and other persons from the land in dispute.

(iii) Both the parties sustained injuries. Injuries sustained by the accused party were not explained by the prosecution witnesses.

(iv) Investigating Officer did not make attempt to know as to who was in possession of the land at the time of incident.

(v) Cross case was registered against the complainant party.

11. In appreciating the validity of the arguments advanced on behalf of the appellants it would be necessary to recall the basic assumptions underlying the law of self defence.

12. Their Lordships of the Supreme Court in *Munshi Ram v. Delhi Administration* AIR 1968 SC 702 propounded in para 14 thus:

It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in due course of law he is entitled to defend his possession even against the rightful owner. But stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period and acquiesced in by the true owner.

13. In *Jai Dev Vs. The State of Punjab*, Hon^{ble} Supreme Court held as under:

...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.

14. In *Horam and Others Vs. Rex*, Division Bench of Allahabad High Court observed as under:

where a trespasser enters upon the land of another, the person in whom the rightful possession is vested, while the trespasser is in the process of acquiring possession, may turn the trespasser out of the land by force and it in doing so, he inflicts such injuries on the trespasser as are warranted by the situation, he commits no offence. His action would be covered by the principle of private defence embodied in Section 96 to 105 IPC.

15. Similar view was taken in *Sangapa v. State* ILR (1955) Hyd. 406, wherein it was held that if some body enters on the land of a person who does not acquiesce in the trespass he would still retain possession of the land and as the possessor of the land, is entitled to that possession. If he brings friends with him and with force of arms resists those who are trespassing on the land, who are also armed, he and his friends would not be guilty of forming themselves into an unlawful assembly, for those who defend their possession are not members of an unlawful assembly.

16. Their Lordships of Supreme Court in *Puran Singh and Others Vs. The State of Punjab*, found the trespassers entitled to exercise right of private defence. It was indicated as under:

The nature of possession which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

- (i) the trespasser must be in actual physical possession of the property over a sufficiently long period;
- (ii) the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;
- (iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and
- (iv) One of the usual tests to determine the quality of settled possession, in the case of culturable land would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

17. In *Wassan Singh Vs. State of Punjab*, the Apex Court held as under:

While judging the nature of apprehension which an accused can reasonably entertain in such circumstances requiring him to act on the spur of moment when he finds himself assaulted, by number of persons, it is difficult to judge the action of the accused from the cool atmosphere of the courtroom. Such situations have to be judged in the light of what happens on the spur of the moment on the spot and keeping in view the normal course of human conduct as to how a person would react under such circumstances in a sudden manner with and instinct of self preservation. Such situations have to be judged from the subjective point of view of the accused concerned who is confronted with such a situation on the spot and cannot be subjected to any microscopic and pedantic scrutiny.

18. Sections 100 and 103 IPC lay down the circumstances in which even the killing of a person is justifiable. The combined effect of these two sections is to authorise the killing of a person in the following cases:

If the offender threatens-

- (i) the causing of death or grievous hurt,
- (ii) rape and unnatural offence,
- (iii) kidnapping, abduction and wrongful confinement,
- (iv) house-breaking by night or robbery, and
- (v) arson.

The right commences with the reasons apprehension of danger to person or property. In either case it extends to the causing of death in the five foregoing

cases.

It ends with the cessation of apprehension of danger or the recovery of the property or the obtaining of assistance of the public authorities or the escape of the offender.

19. In the case on hand as already noticed appellant Rameshwar was in settled possession of pasture land in capacity of trespasser and he had sown crop of mustard which was standing on the date of incident. The incident did occur because the deceased and other members of complainant party wanted to destroy the crop and take forcible possession of the land. In such a situation the appellants had a right of private defence. The said right commenced with the reasonable apprehension of danger to person and property. The deceased and the complainant party came armed with the object to oust Rameshwar from the land and Rameshwar brought companions with him and with force of arms resisted the deceased and other members of complainant party who wanted to destroy mustard crop and to take forcible possession of land. In such a situation the appellants could not be held guilty of forming themselves into an unlawful assembly. Appellant Rameshwar sustained lacerated wound on left side frontal region of scalp and had a fracture of lower third part of radius bone. It is thus found established that the offenders threatened to cause grievous hurt and circumstances laid down by Section 100 and 103 IPC got attracted. So far as allegations against appellant Rama @ Ram Lal are concerned, his presence at the time of incident, is ruled out by informant Sohan Lal (PW. 15).

20. Learned trial Judge did not properly appreciate the evidence adduced by the parties and in our opinion committed illegality in convicting and sentencing the appellants.

21. For these reasons, we allow the appeals and set aside the impugned finding of conviction and sentence.

We acquit the appellant Rama @ Ram Lal of the charges under Sections 148, 323/149, 324/149, 326/149 and 302 IPC. Appellant Rama @ Ram Lal, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

The appeals of appellants Heera Lal, Sheoji, Rameshwar @ Ramu, Panna Lal, Prem Shanker @ Prema, Ram Ratan @ Ratan @ Ratan Lal, Moti Lal @ Moti, Dhuli Lal @ Dhuliya are allowed and they stand acquitted of the charges under Sections 148, 323/149, 324/149, 326/149 and 302/149 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.