
(2010) 10 RAJ CK 0065
In the Rajasthan High Court
Case No : Criminal Appeal No. 199 of 1987

Vijay Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 307, 34

Citation : (2010) 10 RAJ CK 0065

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—Aggrieved by the judgment dated 12.05.1987 passed by the learned Additional Sessions Judge No. 1, Bharatpur, whereby he has convicted and sentenced the accused-appellants for offences under Sections 307, 307 read with Section 34 IPC, the appellants have challenged the same before this Court. The conviction and sentence of the appellants are as under:

Accused-appellants, Vijay Singh and Rajveer, were convicted u/s 307 read with Section 34 IPC and sentenced to 21/2 years of R.I. and were imposed with a fine of Rs. 500/-, and in default thereof to further undergo a term of 3 months of R.I.

Accused-appellant, Pratap, was convicted u/s 307 IPC and sentenced to 21/2 years of R.I. and was imposed with a fine of Rs. 500/-, in default thereof to further undergo a term of 3 months of R.I.

2. In brief, the facts of the case are that according to the prosecution, on 19.09.1984, Ram Gopal (PW-2) lodged a written report at Police Station Sear, wherein he claimed that the complainant and his family have an agricultural field in the village Hatheni. There was a litigation which was pending between the complainant and Maharaj Singh. About two months back the decision in the said litigation has been given in favour of the complainant party. Therefore, the complainant party has cultivated the field. Because of this, Maharaj Singh, Rajveer, Pratap, Vijay Singh, Man Singh and Shyambabu were bent on killing the

complainant party. On 18.09.1984, during the day time, the Officers of the Tehsil office came to auction the property belonging to Maharaj Singh's brother. The complainant's brother, Siyaram, signed the documents as an attesting witness. Because of this, the accused-persons had animosity against the complainant and his family members. Therefore, the accused-persons came to the house of the complainant at 11:00 PM, armed with lethal weapons. As soon as the accused-persons came, the complainant locked the door of his house from inside. Thereupon the accused-persons threatened that they would burn the tractor of the complainant which was being used in the jungle. Hearing this threat, Udaiveer, the complainant's son, and the complainant, both jumped from the roof and ran towards the field where the tractor was. The tractor was standing as far as a field. While Udaiveer was running, Pratap and Rajveer, who had "Katta" (country made pistol) and others who had "lathies", ran after Udaiveer. Despite the protest of the complainant, Pratap shot at Udaiveer. Consequently, Udaiveer fell. Taking him to be dead, the accused-persons ran away. One Saligram and Sushil Kumar, who were near the field, rushed to the rescue of the complainant. They brought his son, in a tractor, back to the village.

3. On the basis of written report, a FIR, FIR No. 235/1984, was chalked out for offences u/s 307, 147 and 149 IPC. In order to prove its case, the prosecution examined eight witnesses and submitted ten documents. The accused-appellants did not examine any witness on their behalf. After going through the oral and the documentary evidence, the learned trial court convicted and sentenced the accused-appellants as aforementioned. Hence, this appeal before this Court.

4. At the outset, it is relevant to point out that during the pendency of this appeal, the appellant No. 1, Vijay Singh, has expired. Therefore, the appeal, qua him, has abated.

5. Mr. Deepak Soni, the learned Counsel for the appellants, has vehemently contended that according to Udaiveer (PW-4), he was not in a position to identify as to who shot at him and who the assailants were. Moreover, Ram Gopal (PW-2) is an unreliable witness. Furthermore, the injuries as indicated in the injury report (Ex.-P.1.) do not make out a case for offence u/s 307 IPC. Therefore, the appellant No. 2, Rajveer, has wrongly been convicted for offence u/s 307 read with Section 34 IPC and the appellant No. 3, Pratap, has wrongly been convicted for offence u/s 307 IPC simplicitor.

6. On the other hand, Ms. Alka Bhatnagar, the learned Public Prosecutor, has strenuously argued that both Ram Gopal and Udaiveer have proven the case beyond a reasonable doubt. Moreover, the injury report (Ex.-P.1.) clearly shows that the injured was wounded by the use of a firearm. Therefore, the case clearly falls under the third illustration of Section 307 IPC. Hence, the offence u/s 307 IPC is clearly made out. Thus, she has supported the impugned judgment.

7. In rejoinder, Mr. Soni has contended that the appellant No. 2, Rajveer, has undergone a sentence of almost five months and the appellant No. 3, Pratap, has

undergone a sentence of almost two and half months. Secondly, both of them are young men, who have been leading a peaceful life for more than two decades. They have neither disturbed the even tempo of life, nor created any law and order problems. Therefore, their sentence should be reduced as undergone.

8. Heard the learned Counsel for the appellants as well as the learned Public Prosecutor, perused the impugned judgment, and scrutinized the record.

9. Ram Gopal (PW-1) in his testimony clearly reveals that the appellants had come armed with lethal weapons such as "Katta" (country made pistole). When Pratap and Rajveer were chasing Udaiveer, Pratap shot at Udaiveer. Udaiveer was injured in the back. His testimony is corroborated by the testimony of Udaiveer, who also claims that he was shot from the back. He further states in his testimony that he was not in a position to identify the assailant. However, the assailants have already been identified by Ram Gopal (PW-2) in his testimony. Moreover, the injury report (Ex-P.1.) clearly shows that Udaiveer had suffered injuries on both sides of the back, as well as on the back of his right arm. Therefore, the injury report also corroborates the testimonies of Ram Gopal and Udaiveer. Since the testimonies of both the witnesses have not been shattered, there is no reason for disbelieving the veracity of their testimonies. Thus, the prosecution has not only proven that an offence had been committed, but has also proven the author of the offence.

10. Section 307 is as under:

Section 307. Attempt to murder:

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

11. The latter part of Section 307 IPC clearly deals with causing of hurt while doing an act with the intention or knowledge which would have caused the death of the person.

12. Illustration (c) is as under:

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of this section.

13. Clearly the present case falls under illustration (c). For, Pratap had not only loaded "Katta", had not only fired at Udaiveer, but most importantly, he had hurt Udaiveer. The fact that "Katta" had been fired clearly shows that Pratap had the requisite knowledge, if not the intention, to cause the death of Udaiveer. Thus,

clearly an offence u/s 307 IP is made out. Therefore, the conviction for offence u/s 307 is, hereby, sustained.

14. However, coming to the point of sentence, according to the record, Rajveer has undergone a sentence of five months and Pratap has undergone a sentence of two and half months. Considering the fact that both the appellants were young at the time of the incident, considering the fact that they have settled peacefully into a life of a lawful citizen, considering the fact that there is nothing on record that they have ever indulged in any unlawful activities, or criminal activities, considering the short term of sentence awarded to them by the learned trial court, in the interest of justice, this Court deems it proper to reduce their sentence to as undergone.

15. Hence, this appeal is partly allowed and the sentence of the accused-appellants is reduced to the period already undergone by them. The appellants are on bail. They need not surrender and their bail bonds stand discharged.