

Oma Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : Nov-27-2014

Appellant : Oma Ram

Respondent : State

Judgement :

D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: D.B.CRIMINAL APPEAL NO.530/2007 Mangi Lal versus State of Rajasthan AND D.B.CRIMINAL APPEAL NO.392/2007 Oma Ram versus State of Rajasthan Date of Judgment :: 27th November, 2014 PRESENT HON'BLE MR JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE ATUL KUMAR JAIN Mr.Dhirendra Singh].Mr.Surednra Surana]., for the appellants.

Mr.JPS Choudhary, Public Prosecutor.

Mr.B.R.Bishnoi, for the complainant.

Mr.C.S.Ojha, Public Prosecutor.

<><><> BY THE COURT: (PER HON'BLE Mr.JUSTICE G.K.VYAS) Both above appeals are filed under Section 374(2) Cr.P.C.by the appellants against the judgment dated 17.5.2007 passed by the Sessions Judge, Balotra in Sessions

Case No.34/2005 whereby present appellants Mangi Lal and Oma Ram alongwith Pukhraj who died during pendency of appeals were convicted and following punishment was awarded for the offence of the murder to them: 1.

Mangi Lal: Under section 302 IPC Life imprisonment with fine for Rs.5000/- and in default of payment of D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 2 fine, further undergo two months simple imprisonment.

Under Section 3/25(1)(a) Arms Act Two years Simple imprisonment with fine of Rs.2000/- and in default of payment of fine, further undergo two months' simple imprisonment.

Under Section 27 Arms Act Two years Simple imprisonment with fine of Rs.2000/- and in default of payment of fine, further undergo two months' simple imprisonment.

2.

Oma Ram Under Section 302/34 IPC Life imprisonment with fine of Rs.5000/- and in default of payment of fine, further undergo Two months' simple imprisonment.

[All the sentences were ordered to run concurrently].As per the brief facts of the case one Dashrath Singh, SHO, Police Station, Kalyanpur lodged a verbal report on 1.8.2005 at 3.30 a.m.in the Police Station, Kalyanpur stating therein that on 1.8.2005 in the night at about 12.45 a.m.the police party arranged Nakabandi.

near Shivnagari Choraha to stop the transportation of illicit liquor.

At that time, one jeep came from D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 3 Kuchha Rasta.

and police party gave signal from touch light and hand to stop the jeep but the driver of the jeep did not stop the jeep and run away towards village Paraliya by breaking the barrier of Naka.

The police party chased that jeep and noted the jeep number to be RJ191C-1635.

In the jeep one person was sitting on the front seat near driver and on the rear seat, one person was sitting, in all 3 persons including the driver were found sitting in the jeep.

In the night about 1.30 a.m.on the Kuchha.

way leading towards Chicharli from Godawas Khurd, some sheeps and goats sitting in the Bada.

near fencing of agricultural field of Anna Ram started hither and thither by the reflection of jeeps light.

The owner of sheep and goats Bhinya Ram shouted and due to narrow way the driver of the jeep stopped the jeep and police party tried to stop the persons but jeep driver and other two persons sitting tried to run away from the spot.

The person sitting near the driver was having gun and a article like bag run away towards agricultural field of Anna Ram where Bajra.

crop was standing.

The two other persons were caught by Khet Singh other member of police party and as per the allegation in the FIR they shouted and asked the third person Mangi Lal that you are having gun so what you are seeing, shout them.

The Constable Ganga Ram was chasing the third person who was running towards the agricultural field of Anna Ram.

Chimna Ram, ASI also chased him with the help of jeep light, saw that the person who was running, fired with gun upon the chest of Ganga Ram, Constable and due to said fire arm injury, Ganga Ram fell down but Chimna Ram, ASI rushed to Ganga D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 4 Ram to take care of him but due to fire arm injury upon chest, Ganga Ram, Constable died on spot and the person, who fired run away in the dark.

As per the allegation of prosecution, Chimna Ram, ASI identified the person, who fired by gun upon Constable Ganga Ram.

The other two persons, who were caught by the police party disclosed his name as Oma Ram S/o Pratap Ram Bheel (jeep driver) and Purkha Ram S/o Rawata Ram Bheel, resident of Chicharli.

They also informed that person who escaped from the spot was Mangi Lal S/o Rawta Ram, resident of Chicharli.

As per the prosecution story, the two persons arrested on spot informed that they were going for hunting deer with the gun but due to apprehension of arrest at check post by the police, they ran away by breaking the barrier of check post (Nakabandi). In the FIR it is also mentioned that the gun which was in possession of the person was unlicensed and whole incident was seen by Bhinya Ram S/o Anna Ram Jat, resident of Godawas Khurd.

On above information, the FIR no.45/2005 was registered at Police Station Kalyanpur, District Barmer against the accused appellants for the offence under Section 302/34 IPC and after registration of the FIR the investigation was commenced by the investigating officer.

After completion of investigation the police filed charge- sheet against 6 persons namely Mangi Lal and Oma Ram (present appellants) and Pukhram, Mehardeen, Chawandram and MiSr.Ram.

The challan against Mehardeen, Chawandram and MiSr.Ram was filed for the offence under Section 212 IPC but D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 5 after trial, they were acquitted from the charges framed against them and 3 persons namely Mangi Lal, Pukhraj and Oma Ram were convicted by the Sessions Judge, Balotra vide judgment dated 17.5.2007.

The accused appellant Mangi Lal filed D.B.Cr.

Appeal No.530/2007 accused appellant Oma Ram and Pukhraj filed D.B.Cr.

Appeal No.392/2007 against the impugned judgment.

During the pendency of Cr.

Appeal No.392/2007, the appellant Pukhraj died, therefore, the coordinate Bench of this Court passed an order on 19.8.2013 whereby the appeal of Pukhraj @ Purkha Ram was ordered to be abated.

In this judgment we are deciding the case of the accused appellants Mangi Lal and Oma Ram only.

In the trial after filing challan the learned trial court framed charges under Section 302 IPC and for offence under Section 3/25(1)(A) of the Arms Act and for offence under Section 27 of the Arms Act against accused appellant Mangi Lal and framed charges against accused appellant Oma Ram for the offence under Section 302/34 IPC.

After framing charge, the prosecution examined as many as 27 prosecution witnesses to prove the prosecution case namely PW-1 Chimna Ram, PW-2 Purna Ram, PW-3 Dr.

Rama Ram Suthar, PW-4 Bema Ram, PW-5 Bhinya Ram, PW-6 Dhala Ram, PW-7 Gena Ram, PW-8 Sawla Ram, PW-9 Pratap Ram, PW- 10 Chandra Veer Singh, PW-11 Dr.

Dharmendra Suthar, PW-12 Bargat Khan, PW-13 Mohan Ram, PW-14 Buddhi Prakash Chhangani, PW-15 Habbas, PW-16 Ali Khan, PW-17 Roopa Ram, PW18- Leel Singh, PW-19 Ramdhan, PW-20 Virendra Singh, PW- D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 6 21 Bhanwar Singh, PW-22 Rajendra Singh, PW-23 Bhanwar Lal, PW-24 Peera Khan, PW-25 Habib Khan, PW-26 Dashrath Singh and PW-27 Chhug Singh.

A number of documents were exhibited.

Thereafter, statements of accused appellants were recorded under Section 313 Cr.P.C.and in defence statement of DW-1 Chimna Ram, ASI were recorded.

The learned trial court, after hearing both the parties convicted the accused appellant for the offences aforesaid vide judgment dated 17.5.2007 in Sessions Case No.34/2005, while relying upon the evidence of eye witnesses PW-1 Chimna

Ram, PW-2 Purna Ram, PW-5 Bhinya Ram, PW-13 Mohan Ram and PW-26 Dashrath Singh held accused appellants guilty for an offence under Section 302 and 302/34 IPC and offence under the Arms Act respectively.

In D.B.Cr.

Appeal No.530/2007 filed by accused appellant Mangi Lal it is argued by the learned counsel for the appellant Mr.Dhirendra Singh that even by accepting the case as it is and relying upon the evidence of the eye witnesses, the offence committed by the appellant does not travel beyond an offence under Section 304 Part I of IPC, because on the day of occurrence although the accused appellant Mangi Lal was armed with gun but that gun was for hunting and as per the evidence on record all the accused appellants were traveling in Jeep for hunting deer and there was no pre-meditation or intention to kill the police official.

In fact, the occurrence took place in spur of moment and accused party was not having any enmity with the deceased, the gunshot injury was inflicted on the spur of D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 7 moment when Ganga Ram, Constable was chasing to arrest the accused appellant Mangi Lal.

As per prosecution story also occurrence took place in night where accused party crossed the barrier and refused to stop the vehicle.

As per the argument of learned counsel for the appellant the gun shot was fired without any intention to kill but only in self defence by the appellant Mangi Lal, therefore, it is obvious that the entire incident took place for the reason that the police party was chasing the jeep in which the accused appellant was travelling.

The crux of the argument of the learned counsel for the appellant is that as per prosecution evidence it is a case of culpable homicide not amounting to murder, therefore, does not fall under Section 302 IPC.

In support of his arguments, he has relied upon the judgment of the Hon'ble Supreme Court reported in 2008 Cr.L.J.2957 (SC) Dayanand versus State of Haryana and the judgment of the Hon'ble Supreme Court in the case of Lichhman Singh versus State of Harayana reported in 2006 (10) SCC524 and the judgment

reported in AIR 2009 SC944: Om Prakash versus State of UP and submitted that the accused appellant Mangi Lal has wrongly been convicted for the offence under Section 302 IPC instead of Section 304 Part I IPC, therefore, the conviction and sentence awarded to the appellant Mangi Lal for the offence under Section 302 IPC may be set aside and it may be converted into the offence under Section 304 Part I IPC because as per the evidence, the alleged offence committed by the appellant does not travel beyond the offence under Section 304 Part I IPC.

D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 8 The learned counsel for the appellant Oma Ram vehemently argued that the police has falsely implicated the accused appellant in this incident and prosecuted him for offence under Section 302/34 IPC because upon assessment of prosecution evidence no offence is committed by the accused appellant Oma Ram, which is punishable under Section 302 read with Section 34 of IPC but the learned trial court committed gross error to accept the prosecution story to the extent of insisting Mangi Lal main accused to fire upon Ganga Ram, Constable, who was chasing accused Mangi Lal.

The learned counsel for the appellant accused Oma Ram vehemently argued that upon perusal of statements of eye witnesses it will reveal that there are many mistakes of language and major contradictions in the statements.

All the accused appellants are belonging to Bheel community, therefore, there was no question for them to speaking in Hindi.

In the evidence of eye witnesses with regard to allegation that accused appellant Oma Ram insisted or abated the accused appellant Mangi Lal @ Mangiya to fire upon Ganga Ram is not trustworthy but the learned trial court completely failed to consider the major contradiction in the statement, so also, not check the veracity of the statement, so also, wrongly believed the testimony of 5 eye witnesses of police party, therefore, the conviction for offence under Section 302/34 IPC is not sustainable in law.

The learned counsel for the appellant further argued that as per the prosecution case the appellant is guilty for offence under Section 302 IPC read with Section 34

IPC but the learned D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 9 trial court has failed to look into the law properly about Section 34 IPC because as per Section 34 IPC there must be common intention of all the persons to commit offence, but in this case, the gun fire injury was caused by Mangi Lal when deceased Ganga Ram was chasing the accused Mangi Lal that too at the distance of 150 meters. It is vehemently argued by the learned counsel for the appellant Oma Ram that as per the prosecution story when alleged jeep was stopped and accused Mangi Lal fired, run away, then two other accused also tried to run away from the place of occurrence but they were caught hold by the police personnels and in the custody of police they shouted at Mangi Lal and as per the allegation of prosecution Mangi Lal fired upon Ganga Ram.

We have perused the testimony of eye witnesses and upon assessment of the statements of all the prosecution witnesses namely PW-1 Chimna Ram, PW-4 Bema Ram, PW-5 Bhinya Ram, PW-13 Mohan Ram and PW-26 Dashrath Singh it is revealed that all the witnesses are police personnels, therefore, with intention to falsely implicate the appellant while framing concocted story which is totally doubtful because it is beyond imagination that a person who is in custody of police personnel can provoke or shout to cause gunshot injury to the police personnels.

Therefore, the prosecution story is totally false and far from truth.

The learned counsel for the appellant invited our attention towards the fact that in the Naksha Mauka (Ex.4) it is abundantly clear that mark A.

where accused appellant Oma and Pukhraj were sitting after arrest is near about 150 meters where it is not possible to hear any voice because the place is far D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 10 away from the place where the accused Mangi Lal fired from gun upon Ganga Ram, Constable, therefore, the prosecution story with regard to shouting and asking Mangi Lal to use the gun to cause injury is totally unbelievable.

All the eye witnesses are police officials and except in framing story, therefore, only to create evidence against appellant Oma Ram, they made allegation that during custody, Oma Ram and Pukhraj shouted and insisted Mangi Lal @ Mangia

accused appellant to inflict fire injury to the Constable Ganga Ram.

In view of above, it is argued that it is a case of false implication of the accused-appellant Oma Ram in the incident, as such the appellant Oma Ram is entitled to be acquitted from the charges leveled against him under Section 304/34 IPC.

Per contra, the learned Public Prosecutor vehemently argued that it is a case in which the police official was murdered when he was performing his official duty, therefore, it is a case of serious nature in which no lenient view can be taken or to interfere in the finding given by the learned trial court to convict the accused appellant for the offences under Section 302 and 302/34 IPC.

The learned Public Prosecutor Sh.

J.P.S.Choudhary vehemently argued that even if at the time of sitting in the jeep there was no intention to murder but it is the duty of every citizen in the mid-night to give his clear identity when police is making any inquiry while asking to stop the vehicle but here in this case, admittedly, while breaking the check post, the accused party ran away in the jeep and upon chasing they stopped the D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 11 vehicle when way become narrow and in the night out of 3 accused one accused appellant Mangi Lal @ Mangia having gun with him and inflicted the fire arm injury to the constable Ganga Ram, who was performing its police duty.

Therefore, if at the time of performing duty gunshot injury will be caused by the fire arm then intention can be gathered from the act that intention to kill arose on spot when occurrence took place.

As per the argument of learned Public Prosecutor the grounds submitted by the appellants for not committing offence under Section 302 or 302/34 IPC are not sustainable in law.

More so, it is a case in which the learned trial court has rightly arrived at the finding that the police official was murdered by using fire arm when he was performing his public duty, therefore, no interference is called for.

While inviting our attention towards the statements of eye witnesses PW-1 Chimna Ram, PW-2 Purna Ram, PW-5 Bhinya Ram, PW-13 Mohan Ram and PW-26 Dashrath Singh it is submitted that at the time of recording statement it is possible that some different words are used by the witnesses but it cannot be ruled out that due to contradiction in language the evidence of eye witnesses are not trustworthy.

Moreso, it is the duty of the Court to ascertain the correctness of fact by reading the statements as a whole.

All the eye witnesses categorically said that accused appellant Oma Ram and Pukhraj shouted and asked the accused appellant Mangi Lal that you are having gun so what you are seeing, shoot police persons.

With regard to argument of learned counsel for the appellant Mangi Lal that D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 12 there was no intention right from inception to kill Ganga Ram, therefore, it is a case of murder it is submitted that there is complete fallacy in the argument because anything can be done at the time of incident took place and here in this case, admittedly, the vehicle - jeep in which accused appellants were sitting and run away was not stopped when police party instructed them to stop the vehicle in the night at about 12.45 a.m.and, thereafter the police party chased them and jeep of accused appellants was stopped for the reason that some animals like sheep and goats come in the way and the way became narrow and all the accused appellants fell down from the vehicle and tried to run away but two persons Oma Ram and Pukhraj were caught by the police party and 3rd person accused appellant Mangi Lal ran away from the place of occurrence.

Later on, inflicted gunshot injury to Ganga Ram, Constable when he tried to caught him.

Meaning thereby, it is a case in which intention to kill took place when police party tried to caught all the accused appellants when they try to run away from the spot.

In view of above argument it is prayed that no lenient view is to be taken to reverse the findings of conviction therefore, both the appeals may be dismissed.

After hearing the learned counsel for the parties, we have scanned the entire evidence of the case.

The accused appellant Mangi Lal has been convicted for offence under Section 302 IPC and for offence under Section 3/25 and 27 of the Arms Act.

The learned counsel for the appellant Mangi Lal submitted that as per the evidence on record, the case does not travel beyond D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 13 offence under Section 304 Part I IPC even if the entire evidence is accepted because as per the prosecution case all the accused party gathered for hunting and gun was lying with the accused appellant Mangi Lal, who was sitting in the jeep No.RJ19-1C- 1635 but they were not knowing that police party has arranged Nakabandi.

near Shivnagari Choraha but all of sudden, they reached Shivnagari Choraha where the police party gave signal to stop but due to apprehension of arrest they run away and, thereafter, the police party chased them in the vehicle of police, thereafter, when the jeep reached in the agricultural field of Anna Ram, some sheep and goats of Bhinya Ram shouted and due to narrow way the jeep was stopped and all the 3 accused tried to run away from the spot, but police party reached there and caught two accused namely Oma Ram and Pukhraj and appellant Mangi Lal ran away with the gun and at about 150 meters away from spot and due to scuffle between Ganga Ram, Constable and accused Mangi Lal, gunshot injury was caused but there was no intention to kill, the incident took place in spur of moment, therefore, it cannot be said that there was pre- meditation or intention to kill Ganga Ram, Police Constable because there was not enmity between the appellant Mangi Lal and Ganga Ram.

After considering the above argument, we are of the opinion that such argument deserves to be rejected solely on the ground that police party was performing its public duty in the night and at that time gave signal from torch light and hand to stop the vehicle but the jeep driver did not stop the vehicle and D.B.CRIMINAL

APPEAL Nos.530/2007 And 392/2007 14 run away.

The incident took at about 12.45 a.m.in the night, therefore, it was felt necessary by the police party to ascertain their identity but all the appellants run away from the Nakabandi without stopping the vehicle.

The police party cashed the vehicle of the appellant in which the appellant Mangi Lal was sitting but as per the prosecution story, after 40-50 kms in the agricultural field of Anna Ram the vehicle was stopped due to narrow way and in that situation, the accused appellant again tried to run away from the spot and out of 3 persons sitting in the vehicle, 2 were caught by the police party but 3rd Mangi Lal, appellant run away but Constable Ganga Ram tried to run behind him and tried to caught him but the appellant used his gun and targeted the injury upon the body of the government official.

This situation, loudly speaks the intention to kill arises at the spur of moment for the reason that the injury was caused upon the chest, not upon the leg of deceased Ganga Ram.

All the eye witnesses PW- 1 Chimna Ram, PW-2 Purna Ram, PW-5 Bhinya Ram, PW-13 Mohan Ram and PW-26 Dashrath Singh categorically said in their statements before the Court on oath that Constable Ganga Ram died due to gunshot injury inflicted by the accused appellant.

In view of the above, we are unable to accept the defence argument of the learned counsel for the appellant that the case is not travelled beyond offence under Section 304 Part I IPC.

More so, it is a case of offence under Section 302 IPC, therefore, the finding given by the learned trial court with regard to committing offence under Section 302 IPC by the accused appellant Mangi Lal @ Mangia does not require any interference.

D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 15 It is also worthwhile to mention here that the learned counsel for the appellant Mangi Lal is not disputing the occurrence but raised the limited argument to alter the offence under Section 304 Part I IPC from Section 302 IPC, therefore, other evidence is not required to

be discussed for the purpose of maintaining the conviction of accused appellant Mangi Lal.

As per the peculiar evidence on record, the judgments cited by the learned counsel for the appellant are not applicable upon the facts of this case because it is not a case of culpable homicide not amounting to murder.

More so, all the ingredient of murder enumerated under Section 300 IPC are in existence in this case.

Therefore, the principle laid down in those cases to convert the offence under Section 304 Part I IPC from 302 IPC is not applicable upon the facts.

This Court cannot lost sight of the fact that the government servant when performing his official duty cannot be murdered in a way which is existing in this case.

Therefore, it is a case of offence under Section 302 IPC and not under Section 304 Part I IPC.

Therefore, the appeal of Mangi Lal deserves to be dismissed.

We have examined the case of accused Oma Ram and perused the statement of eye witnesses PW-1 Chimna Ram, PW- 5 Bhinya Ram and PW-13 Mohan Ram, driver of the police vehicle No.RJ04-University-0138 and PW-26 Dashrath Singh, SHO.

Although these witnesses stated in their statement before the Court that accused appellant Oma Ram and Pukraj shouted when they were caught by the police party and asked the accused appellant Mangi Lal to inflict the gun shot injury upon D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 16 the police party, but we are of the opinion that when Oma Ram accused appellant and Pukhraj who died during the pendency of appeal were caught by the police, then there was no occasion for them to ask accused appellant Mangi Lal to use gun and to fire upon the police party.

As per the prosecution case, gun shot injury was received by Constable Gang Ram at the distance of 150 meters from the place where Oma Ram and Pukhraj were alleged to be caught by the police party.

It is also required to observe that incident took place in the night and the entire investigation of the case has been conducted by the police in which police party is complainant for the alleged offence in which Constable Ganga Ram was alleged to be murdered due to gun shot injury inflicted by Mangi Lal.

So far as the argument of learned counsel for the appellant that Oma Ram belongs to Bheel community therefore, there was no question to speak Hindi Language as stated by the witnesses, we are of the opinion that this argument is not important for the purpose of deciding the appeal of Oma Ram.

More so, for Oma Ram the assessment is to be made on the basis of entire evidence and his role in the incident.

Upon consideration of entire facts and the fact that Oma Ram and Pukhraj were convicted for offence under Section 302/34 IPC, in our view, it has to be seen from the evidence whether the ingredient of Section 34 IPC are in existence in this case or not to convict the accused appellant Oma Ram for alleged offence under Section 302/34 IPC.

For aforesaid purpose, fiRs.of all the language of Section 34 of the IPC is D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 17 required to be seen which reads as under: - 34.

Acts done by several persons in furtherance of common intention.-When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

.

As per the basic principle of law, Section 34 has been enacted on the principle of joint liability for the doing of a criminal act.

The section is only a rule of evidence and does not create a substantive offence.

The distinctive feature of the section is the element of participation in action.

The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime.

As per the verdict of the Hon'ble Supreme Court in the case of *Ragbir Chand & Ors. versus State of Punjab* reported in 2013 (12) SCC294 the Hon'ble Supreme Court categorically held that Section 34 intends to meet a case in which it is not possible to distinguish between the criminal acts of the individual members of a party, who act in furtherance of the common intention of all the members of the party.

The para no.57 of the judgment is as under: - 57.

Section 34 intends to meet a case in D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 18 which it is not possible to distinguish between the criminal acts of the individual members of a party, who act in furtherance of the common intention of all the members of the party or it is not possible to prove exactly what part was played by each of them.

In the absence of common intention, the criminal liability of a member of the group might differ according to the mode of the individual's participation in the act.

Common intention means that each member of the group is aware of the act to be committed.

.

In the present case, upon assessment of evidence it is abundantly clear that there was no intention to kill when the accused party leave the place for hunting so also in the alleged vehicle neither liquor nor any contraband was recovered.

The only illegal act was committed by the accused appellant that they did not stop the vehicle and run away while breaking check post.

Obviously, Oma Ram was not having any gun nor inflicted any injury but upon allegation of using some word for inflicting injury to the police party the prosecution allege charge of Section 34 IPC but those words are said to be used in custody of police, while shouting at the place of occurrence, therefore, the act cannot be an act in furtherance of common intention of the accused appellant.

As per the prosecution case itself, appellant Oma Ram and Pukhraj were caught when jeep of the accused appellant was stopped and Mangi Lal run away from the place of occurrence and at the distance of 150 D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 19 meterRs.some other incident took place whereby the accused appellant Mangi Lal used the gun and inflicted gun shot injury to the deceased Ganga Ram, Constable, therefore, looking to the distance also it can be said safely that after arrest by the police party the act of shouting was in furtherance of common intention to kill, therefore, we are of the opinion that the finding with regard to offence under Section 302/34 IPC against the accused appellant Oma Ram is not sustainable in law.

Upon consideration of the evidence on record it is apparent that appellant did not inflict any injury nor there was any intention at the inception when they leave the place for hunting therefore, it cannot be said that speaking some word in custody of the police by the appellant Oma Ram is an act in furtherance of common intention.

The principle laid down by the Hon'ble Supreme Court in the case of Raghbir Chand (supra) for commission of offence completely apply in the present case and upon assessment of evidence, it is obvious that accused appellant Oma Ram has wrongly been convicted for offence under Section 302/34 IPC.

In view of the above, the conviction and sentence awarded to accused appellant Oma Ram for committing offence under Section 302/34 IPC is not in consonance with law.

D.B.CRIMINAL APPEAL Nos.530/2007 And 392/2007 20 Consequently, both the appeals are hereby decided with the following ordeRs.1.

The DB Cr.

Appeal No.530/2007 filed by the accused appellant Mangi Lal is hereby dismissed.

2.

The D.B.Cr.

Appeal No.392/2007 filed by accused appellant Oma Ram is hereby allowed and the sentence awarded against the accused appellant Oma Ram by the learned trial court for offence under Section 302 read with Section 34 IPC is hereby quashed and set aside.

The accused appellant Oma Ram is on bail granted by this Court vide order dated 19.7.2007, therefore, his bail bonds are hereby discharged.

3.

A copy of this order be sent to the Central Jail, Jodhpur for information.

(ATUL KUMAR JAIN).J.

(GOPAL KRISHAN VYAS).J.

cpgoyal/-

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