

State of U.P. Vs. Ramesh and ors.

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Court : Allahabad

Decided On : Aug-23-1999

Reported in : 2000CriLJ1354

Judge : B.K. Sharma, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 161, 313 and 319; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 308, 324, 325, 504 and 506; Evidence Act - Sections 145

Appeal No. : Govt. Appeal No. 1428 of 1994

Appellant : State of U.P.

Respondent : Ramesh and ors.

Advocate for Def. : Apul Misra, Adv.

Advocate for Pet/Ap. : A.G.A.

Disposition : Appeal allowed

Judgement :

ORDER

B.K. Sharma, J.

1. This is a Government Appeal against the judgement and order dated 18-5-1994 passed by Sri R.S. Maurya, the then Assistant Sessions Judge, Jhansi in Sessions Trial No. 126 of 1991, under Sections 308/34 I.P.C. State v. Ramesh and Ors., Police Station Chirgaon, district Jhansi whereby he acquitted the accused-respondents Ramesh, Har Narain, Kripa Ram and Siya Sharan under Section 308/34 IPC.

2. The accused - respondents Ramesh, Har Narain and Kripa Ram were real brothers inter se. All the four accused - respondents, Brindavan injured and his brother Daya Ram informant were residents of Village 'Aupara', Police Station Chigaon, district Jhansi. Brindavan injured had purchased agricultural field of Lampu in the village.

3. The prosecution case was that on 21-8-1989 at about 10.00 A.M. when Brindavan injured was ploughing his agricultural field in the village, Ramesh, Har Narain, Kripa Ram and Siya Sharan accused-respondents came there and asked him as to why he purchased the agricultural field of the Lampu to which he replied that if he had purchased the field of Lampu, he had paid money for it; that at that time, Ramesh accused-respondent carried a Khuluwa while Har Narain and Kripa Ram accused-respondents carried lathis, that Ramesh, Har Narain and Kripa Ram accused-respondents started abusing him while Siya Sharan accused-respondent exhorted them to kill him whereupon Ramesh accused-respondent assaulted Brindavan injured with Khuluwa while Har Narain and Kripa Ram accused respondents assaulted him with lathis and inflicted various injuries on his body; that the occurrence was seen by his real brother DayaRam (P.W. 2); Chhotey Lal, Km. Meera daughter of Brindavan injured and Smt. Parvati wife of Daya Ram-informant; that Daya Ram informant took the injured Brindavan to the Police Station and lodged a written F.I.R. at the police station on the same day at 11.00 A.M. the distance of the police station being 5 Kms. from the place of occurrence; that on the basis of this report, a Chik report was prepared and a case was registered against all the accused - respondents for the offences under Sections 325/324/504/506 I.P.C.

4. Brindavan injured was sent from the police station to Primary Health Centre, Chirgoan where he was medically examined by Dr. V.K. Tandon (P.W. 5) on 21-8- 1989 at 2.30 P.M. He recorded the following injuries on his person:-

1. Incised wound 5 cm. X 5 cm. X bone deep on right side the head, 7cm. above the ear.
2. Contusion 7cm. X 8 cm. on back of right ear pinna.
3. Lacerated wound 1.5 cm. X 5 cm. bone deep just behind the lower part of right ear.
4. Constusion 6 cm. X 2 cm. on outer aspect of upper part of right arm.
5. Contusion 7 cm. X 4 cm. on back and middle of right forearm with suspected fracture under bone beneath
6. Contusion 6 cm. X 4 cm. on right side of the upper part of back.
7. Multiple contusion out lying each other in an area of 9 cm. X 8 cm. on outer aspect of right thigh.
8. Multiple contusion in an area of 12 cm. X 7 cm. on outer aspect of upper half of right leg with suspected fracture bone under beneath.
9. Lacerated wound 1.5 cm. x 5 cm. x bone deep on front and lower part of right leg with suspected fracture bones under beneath.
10. Contused swelling 7 cm. x 6 cm. on inner side of right ankle with suspected fracture.
11. Lacerated wound 2.5 cm. x 1 cm. x 6 bone deep on front and meadial side of midpart of left leg with Compound fracture of the bones under beneath. The fractured ends of bones are seen & palpated in the wound.
12. Contused swelling 8 cm. x 5 cm. on outer side of left ankle and lower part of leg. The suspected (sic) of bone under beneath.

5. Injury Nos. 1,5,8,9,10 and 12 were kept under observation. In the opinion of the doctor, injury No. 1 was grievous. Injury No. 1 was caused by some sharp edged weapon while the rest injuries were caused by blunt and hard object. The duration of injuries was fresh. The doctor advised the X-ray of skull, right leg, right ankle, left leg and left ankle. The X-ray was done by Dr. Praveen Kumar Jain (P.W. 3) who found fracture of shaft tibia and fibula. Fracture of frontal bone involving right frontal sinus was also seen. He also found fracture of malleolus and fracture of fibula.

6. The Investigating Officer submitted charge sheet only against Ramesh, Har Narain and Kripa Ram accused respondents and the magistrate committed these three accused-respondents to the Court of Sessions. In the case of fourth accused-respondent Siya Sharan, he was summoned by the court of Sessions under Section 319 Cr.P.C. on the application of the learned Public Prosecutor and then all the four accused - respondents were charged and tried together for the offence under Section 308/34 I.P.C.

7. At the trial, ocular testimony was given by Brindavan injured (P.W. 1), Daya Ram informant (P.W. 2) and Chhotey Lal (P.W. 4). The rest of the evidence was formal in nature. The accused denied the charge levelled against them, They did not lead any evidence in defence.

8. The learned trial judge rejected the entire prosecution case and consequently acquitted all the four accused - respondents. Being aggrieved by the same, the State of U.P. has preferred this appeal.

9. I have heard parties' counsel and have also gone through the record. The learned A.G.A. had made scathing attack on the Judgment of acquittal passed by the learned Assistant Sessions Judge. He has assailed the lopsided approach of the learned Assistant Sessions Judge in appreciation of the prosecution evidence and the circumstances of the case. He has also pointed out to the various observations made by the learned Assistant Sessions Judge which were contrary to the material on record and also against law.

10. The first point argued is that instead of taking up in the first instance the testimony of injured Brindavan about the occurrence, which is a broad day light occurrence and considering the corroboration coming to it by the medical evidence and the motive and the fact that the defence did not dispute the date, time and place of occurrence and of taking note of the circumstances coming in his cross examination from the side of the defence indicating the admission of the presence of at least Ramesh accused respondent on the spot at the time of occurrence and also of taking note of the fact that the number, nature and location of injuries of the injured were such that the assailants must have been several and further instead of seeing whether the presence of informant DayaRam (P.W. 2) at the scene of occurrence was believable and whether his testimony corroborated the evidence of injured and whether the F.I.R. rendered any corroboration to his testimony at the trial, the learned Assistant Sessions Judge started with a criticism of the evidence of Chhotey Lal (P.W. 4) and after stating that Chhotey Lal's testimony did not corroborate that any one beyond Ramesh accused-respondent has done Marpit with Brindavan injured; that Chhotey Lal (P.W. 4) was not a local witness; that there is contradiction about his reaching at the spot whether he was coming towards the scene of occurrence or was sitting at Lampu's land observed that explanation advanced by Brindavan injured about his knowledge of the presence of Chhotey Lal (P.W. 4) does not appear reasonable which were all untenable and wrongly stating against fact that Brindavan had earlier given an affidavit against the accused wrongly and illegally concluded that these circumstances prove that in reality he (Chhote Lal P.W. 4) was not at all present at the spot and then observing that the prosecution did not examine the daughter of injured and the wife of Daya Ram informant wrongfully and without any justification discarded the prosecution case altogether. He has also argued that the learned Assistant Sessions Judge has given practically no reason why the testimony of informant should not be belived at the trial atleast against accused-respondents Ramesh, Har Narain and Kripa Ram who actively participated in assulting the injured in the occurrence. He has also argued that the learned Assistant Sessions Judge had not considered the circumstance that while Ramesh accused-respondent admitted his presence at the spot, he did not claim to have received a single injury on his body in the occurrence which indicated that the occurrence was one sided. He also claimed

that the version given by Ramesh accused-respondent was not discussed by the learned Assistant Session Judge in the judgment.

11. The law regarding the government appeals against orders of acquittal is well settled. While the High Court would not be justified in substituting its own view for the view of the trial Court, if two views are reasonably possible about the evidence and circumstances, it (the High Court) has full powers to reappraise the evidence and interfere with the order of acquittal in case the appraisal of the evidence made by the trial Court is manifestly perverse, erroneous and unreasonable and there are glaring infirmities in the judgment of the trial court resulting in gross miscarriage of justice. The present is one such a case where there is no option for the High Court than to interfere with the order of acquittal in regard to Ramesh, Har Narain and Kripa Ram accused respondents even while it could not like to interfere with the acquittal of Siya Sharan accused - respondent to whom the role of exhortation alone was assigned.

12. The appreciation of evidence at a criminal trial is required to be done on the broad probabilities of the case. The evidence of a witness cannot be thrown away because of few discrepancies here and there or some omissions. If the story is probable coming in natural flow and finds support from the surrounding circumstances, there is no reason to discard it. In the present case, the date, time and place of occurrence is amply established by the prosecution evidence on record. It is also not disputed by the defence. It was a broad day light occurrence which took place at the field of Brindavan injured which he was ploughing. The field of Ramesh accused-respondent adjoined it towards north. The injury report in respect of injured Brindavan indicates that he was given repeated assaults and inflicted incised wound in his head and numerous blunt weapon injuries on his right arm, right side of back, right thigh; left leg and ankle, left leg and right ankle which resulted in fracture of his frontal bone; fracture of medial malleolus and fracture of fibula in his right leg and fracture of shaft tibia and fibula in the left leg. It showed clearly that it was not a case of hit and run and further that it cannot be believed for a moment that all these injuries were inflicted on his body by just one assailant, particularly when the defence has itself tried to bring on record the existence of a Khuluwa in hands of Brindavan injured at the time of occurrence.

Obviously, the occurrence was a onesided affair in which the injured was surrounded and assaulted by a plurality of assailants.

13. The injuries of the injured are a hall mark of his presence at the spot and in a broad day light occurrence, it cannot be belived that he would spare the real assailants and instead falsely implicate others. Furthermore, the medical evidence about the same is fully consistent with his testimony at the trail. He has given the genesis of the occurrence. He testified that the accused persons came and asked him as to why he had purchased the field of Lampu whereupon he replied that if he had purchased the field of Lampu, he had paid hard cash for it. He further testified that on this, the accused-respondents started abusing him followed by assault on his person by Ramesh, Har Narain and Kripa Ram accused-respondents which resulted in the injuries on his person. Even though Brindavan injured did not testify in so many words at the trial that he purchased the field of Lampu. The narration given by him at the trial involves and implies this fact and there is not a word in his cross-examination by the defence that he did not purchase the agricultural field of Lampu. In fact, the defence itself elicited from him in his cross-examination that the field in which he was ploughing on the date of occurrence adjoins the agricultural field of Ramesh accused-respondent. The site plan shows the plot of Nathu Ram, father of these 3 accused situated in the northern boundary of plot of Brindavan injured. It was quite likely that the accused respondents 1 to 3, who were real brothers inter se, were annoyed by the purchase of the adjoining field by Brindavan injured. The site plan shows the plot of Lampur to the south of this field. In the cross-examination, not a word was suggested by the defence that the accused-person had no grievance in the matter of the said purchase. There is thus no reason why the genesis of the occurrence, as testified to by the injured, should not be believed.

14. The testimony of Brindavan injured was corroborated by the testimony of Daya Ram informant (P.W. 2), who was also present in the vicinity. He was real brother of injured Brindavan but for that reason, the testimony of Daya Ram informant (P.W. 2) cannot be discarded. He has stated that he was grazing his cattle. His presence at the spot at the time of occurrence was quite natural. He has testified about the entire occurrence, including the exchange of retorts between the injured

and the assailants. He refuted the suggestion that he has not seen the occurrence and was giving false testimony. He has lodged the F.I.R. with reasonable promptitude at 11.00 A.M. at the police station which was 5 Kms. away from the place of occurrence. He was not suggested in his cross-examination that F.I.R. was actually lodged belatedly but was made ante timed. He was also not suggested that the F.I.R. had been lodged with consultation of the police. The Investigating Officer was also not suggested that the F.I.R. was scribed with the consultations of police or it had been ante timed. The F.I.R. is a material document in this case which goes to corroborate the testimony of its maker, namely Daya Ram (P.W. 2) and the testimony of Daya Ram in its turn goes to corroborate the testimony of injured Brindavan(P.W. 1) at the trial.

15. The learned Assistant Sessions Judge has accepted the contention of the defence that the non-examination of the daughter of Brindavan injured and wife of Daya Ram informant (P.W. 2) by the prosecution at the trial was fatal for the prosecution case in the absence of the satisfactory explanation for the omission. It seems that the learned Assistant Sessions Judge was bent upon acquitting the accused-persons and, therefore, approached the case with a wrong angle and supported it by whatever argument was advanced before him for that purpose. It is settled law that the law did not required plurality of witnesses.

16. Even the sole testimony of the injured, if credible, may be sufficient to establish the charge. Moreover, it would have been purposeless to examine the daughter of Brindavan injured (P.W. 1) and wife of Daya Ram informant (P.W. 2) at the trial. The testimony of each one of whom could be subjected to the same criticism that they were interested witnesses. The prosecution was not at all required to multiply the ocular testimony at the trial unnecessarily. The learned Assistant Sessions Judge has given the benefit of the discrepancy arising about the place where the informant Daya Ram was at the time of occurrence on the basis of a different spot of his presence being shown in the site plan prepared by the Investigating Officer. The point shown by the Investigating Officer could only be a part of the statement of informant recorded by him under Section 161, Cr.P.C. In order to constitute a contradiction under Section 145 of the Indian Evidence Act, the previous contradictory statement had to be proved. This the defence did not do. The

defence did not elicit from the Investigating Officer in his cross examination that the site plan was prepared by him at the pointing out of informant Daya Ram. That being so, anything shown by him (the I.O.) in the site plan purporting to be a statement given to him (the Investigating Officer), cannot be used to contradict him at the trial when the Investigating Officer did not even say in his cross-examination that he has shown the place of the informant on the scene of occurrence on the basis of his informants statement given to him under Section 161, Cr.P.C. So the learned Assistant Sessions Judge went wrong in observing that it was a contradiction which made the place of his presence at the spot suspicious. It may be mentioned here that in his judgment, the learned Assistant Sessions Judge stated that the Investigating Officer has given the statement at the trial that 'VADI AUR USKI PATNI DWARA GHATNA KO ' B' Asthan Se Dekhna Batya Gaya Hai'. The Investigating Officer did not testify anywhere that Daya Ram informant (P.W. 2) has told him that he had seen the occurrence from point ' B ' as shown in the site plan. The Investigating Officer has stated in his testimony that 'Vadi Aur Uski Patni Dwara Ghatna Dekhne Ka Asthan ' B ' Se Darshaya Hai'. It mean that by point' B ' he has shown the place from which the informant and his wife had seen the scene of occurrence. This is different from saying that the informant told him showing to him at the spot the point from where he saw the place of occurrence and that the point shown to him by the informant was shown by him in the site plan by letter ' B '.

17. Regarding Chhotey Lal (P.W. 4), it has been said in the judgment that the prosecution could not say as to how the parentage of Chhotey Lal (P.W. 4), who was a resident of another place, can be known to the informant so as to give in the written F.I.R.. Chhotey Lal (P.W. 4) was, of course, a resident of village Chirgaon, another village but it was not asked from the informant Daya Ram (P.W. 2) anywhere in his cross-examination as to whether he knew the parentage of Chhotey Lal (P.W. 4). Chhotey Lal also did not say that his parentage was not known to informant. The learned Assistant Sessions Judge has referred to the statement elicited from the injured in his cross-examination that he had learnt the name of the father of Chhotey Lal (P.W. 4) in the 'haat' of Chirgaon while purchasing a bullock about four years before the date of his evidence in court and without enough justification treating it to be a doubtful statement even held that it

cast a doubt on the prosecution case about the nomination of Chhotey Lal (P.W. 4) along with his parentage as a witness in the F.I.R. by the informant. Merely because something has come in the testimony of Brindavan injured on the point it cannot be said that the informant also did not know the name of Chhotey Lals father. It was not a case where the F.I.R. was lodged by the injured himself. Therefore, ever assuming that the injured did not have prior acquaintance with Chhotey Lal (P.W. 4) and only knew his name, it does not mean that the informant also did not know his parentage. It has been elicited from the injured in his cross-examination that his sister's son Hari Ram also lived in village Chirgaon where Chhotey Lal (P.W. 4). lives. The defence has raised the argument that Chhotey Lal (P.W. 4) was an interested witness as the son of the sister of the injured also lived in his village but then if it were so, there could be no occasion to raise the argument that the parentage of Chhotey Lal (P.W. 4) was not known to the informant Daya Ram (P.W. 2) or to the injured Vrindavan P.W. 1 but the learned Assistant Sessions Judge has rejected the prosecution case on both counts. He has rejected it because the prosecution has failed to show as to how the parentage of Chhotey Lal (P.W. 4) was inserted in the F.I.R. even though he (Chhotey Lal P.W. 4) did not belong to the same village and also rejected testimony of Chhoteylal (P.W. 4) on the ground that he was an interested witness because the injured's sister's son Hari Ram also lived in the village of Chhotey Lal (P.W. 4). The two arguments could not be advanced together. If there was association between the nephew of the injured and the witness then there could not be ignorance about the parentage of the witness with whom the association was being assumed or held. If Hari Ram, son of the sister of injured also lived in village Chirgaon and Chhotey Lal (P.W. 4) belonged to village Chirgaon, it does not necessarily mean that Chhotey (P.W. 4) was named as a witness in the F.I.R. on account of any association or link between him and Hari Ram. Chhotey Lal (P.W. 4) was not suggested any such link or asocation. Reliance was place by the defence on the statement by the injured at the trial that Chhotey Lal was coming from the side of the field of Lampu. He was contradicted with his statement recorded by the Investigating Officer in the case diary that Chhotey Lal (P.W. 4) was siting in an adjoining field, he denied to have given this statement to him. Nothing revolves on this contradiction particularly because the investigating officer

appears to be rather inclined towards the accused persons and so introduced material in the case diary tending to go in the favour as we shall see a little later.

18. Chhotey Lal(P.W. 4) is, of course, a chance witness but his presence at the spot cannot be doubted. He testified that he had gone to take Ghee from Lampu and his wife had come to the field for scraping fodder. In day time this was quite probable and his nomination in the F.I.R. tends to corroborate his presence at the spot. It is significant that he was nowhere suggested by the defence in cross-examination that he was not present at the spot at the time of occurrence. That being so, it was wholly wrong on the part of the learned Assistant Sessions Judge to hold that this witness was not present at the spot at the time of occurrence. The learned Asistant Sessions Judge has made a reference to the affidavit given by this witness as if he had stated therein that he had not seen the occurrence. The fact is that in the sole affidavit of this witness which is on record, he has rather affirmed having seen the occurrence; that all that he has denied in it is the presence of Siya Sharan accused-respondent at the time of occurrence.

19. Chhotey Lal (P.W. 4) has testified on 11th October, 1993 in his examination-in-chief to the assault by Ramesh accused-respondent on the injured Brindavan by Khuluwa and by Hari Narain and Kripa Ram acused-respondent at him by lathis and that at the time of beating, Daya Ram and his wife came to the spot; that when his cross-examination was made on another date 24-3-1994 he stated that he cannot recognize Kripa Ram and Hari Narain acused-respondents and that he saw only Ramesh accused-respondent doing Marpit and that he did not see any other person. Obviously, he had been won over in the meantime.

20. The observation of the learned Assistant Sessions Judge that since Chhotey Lal (P.W. 4) did not corroborate that any one beyond Ramesh acused-respondent did Marpit with Brindavan injured, the prosecution story has not been corroborated by the testimony of Chhotey Lal (P.W. 4) cannot be accepted. It is not always that a prosecution witness supports the prosecution ease on all points and all facts. The Courts exist to evaluate the ocular evidence and are free to believe that part of the testimony of a witness which it finds to be truthful one that can be safely relied upon and the Court is equally free to reject the other part of the testimony if

in its opinion it was not truthful or was a result of manipulation. In this case even while this witness tried to exclude Har Narain, and Kripa Ram accused-respondents he did not go to the extent of saying that even Ramesh accused-respondent was also not present. He did not say anywhere that he did not see the occurrence. We have noted that the testimony of Brindavan injured (P.W. 1) and Daya Ram informant (P.W. 2) is variously corroborated against: the accused-respondents Ramesh, Har Narain and Kripa Ram and it is immaterial that Chhotey Lal (P.W. 4) swerved a little in his cross-examination and tried to exclude Har Narain and Kripa Ram accused-respondents. I may mention here that neither Har Narain nor Kripa Ram accused-respondents set up any alibi at the trial at any stage and that no specific suggestion was made to the injured (P.W. 1) and informant (P.W. 2) that Har Narain and Kripa Ram accused-respondents were not present at the spot. It has been argued that the learned Assistant Sessions Judge rightly discarded the prosecution case because the prosecution did not declare Chhotey Lal (P.W. 4) hostile even though he denied the presence of Har Narain and Kripa Ram accused-respondents. In my view the testimony having come during the cross-examination and the witness having already narrated the entire occurrence faithfully and truly in his examination-in-chief including participation of the accused-respondents, the failure of prosecution to declare him hostile and cross-examine him did not go against the prosecution. The Indian Evidence Act, nowhere uses the term hostile witness. It is only by practice that this term has come into use. The prosecution could, of course, seek and be permitted to cross-examine its own witness if he appeared to have turned hostile. If the prosecution did not declare the witness hostile, it did not mean that the prosecution accepted all that he said in his testimony. The prosecution could rely on a part of his testimony and may not rely on the rest. Moreover, the Court is always free to look into the evidence of such a witness and accept that part of his testimony which it finds truthful being consistent with the other prosecution evidence and the surrounding circumstances and the probabilities inherent in the situation and reject the rest which it considered untrue and unreliable.

21. Regarding the conclusion that the fact of occurrence becomes doubtful because there is a contradiction that the Khuluwa, from which the injuries were caused to Brindavan injured was in his own hand or Ramesh accused-respondent

had brought it. I have no option than to say that the approach of the learned Assistant Sessions Judge has been perverse and his observations are against fact. The fact is that the prosecution story throughout was that Ramesh accused-respondent was armed with a Khuluwa at the time of occurrence and had used it and inflicted injuries to the injured Brindavan with it. There is absolutely nothing in the prosecution story or the prosecution evidence to the effect that Ramesh accused-respondent snatched any Khuluwa from Brindavan injured and used it. The defence did elicit from Brindavan injured (P.W. 1) in his cross-examination that he (Brindavan) was having a Khuluwa in his hand at the time of occurrence but it never meant that the prosecution case was that Ramesh accused-respondent snatched it from him and assaulted at him with it. The defence also did not make any suggestion at the trial in the cross-examination of even a single prosecution witness that Ramesh accused-respondent snatched any Khuluwa from the injured and used it for assaulting at the injured. Yet the learned Assistant Sessions Judge stated in his judgment that there is a contradiction whether the Khuluwa with which injuries are said to have been inflicted on Brindavan injured was in the hand of Brindavan or it has been brought by accused-respondent Ramesh with him. The learned Assistant Sessions Judge has invented this argument to reject the prosecution case and let off the accused-respondents. If it was elicited from Brindavan injured that he was carrying Khuluwa at the time of occurrence and Daya Ram informant (P.W. 2) had stated in his cross-examination that Brindavan injured carried with him a Laguda (Hakni), it was wholly immaterial in this case because it was neither the defence case nor the prosecution case that Ramesh accused-respondent picked up any weapon from Brindavan injured and assaulted him with the same. There was no such suggestion made to any prosecution witness in their cross-examination nor any such claim made by the accused-respondents in their statements under 313, Cr.P.C. nor they had any such oral evidence in defence. It is shocking that the learned Assistant Sessions Judge went to the length of inventing and placing on record the contradiction on the fact whether the Khuluwa, which is said to have been used by Ramesh accused-respondent in assaulting Brindavan injured, was in the hands of Brindavan injured or had been brought by Ramesh accused-respondent with him and stated that it is such an important contradiction that it makes the factum of

occurrence itself doubtful. It is wholly unsafe to leave the scales of justice in the hands of such an unscrupulous judicial officer.

22. Before this Court, the learned counsel for the accused-respondents has tried to raise a plea of the right of private defence of persons for Ramesh accused-respondent but this plea cannot be sustained even for a moment. On this plea, it would be useful to notice that when the case was at the stage of investigation, the Investigating Officer tried to introduce in the statement of the injured Brindavan (P.W.I) under Section 161, Cr.P.C. germs of a plea of self-defence of property in the following words :-

Maine Ramesh Ki Taraf Apne Khet Men Hi Hal Chalaya To Ramesh Ne Kha Ki Hamare Khet Ki Taraf Hal Mat Chalao Tab Maine Kaha Ki Tumahre Ket Me Hal Nahi Chala Raha Hun Apne Khet Me Chala Raha Hun. Isi Bat Par Ham Dono Mein Vad-Vibad Ho Gaya.

Brindavan injured (P.W.I) denied on oath having given any such statement to the Investigating Officer. At the fag-end of his cross-examination, the defence suggestion, which was made to Brindavan injured in the last pragraph was that when he purchased the plot of Lampu, then it was included in the plot of Ramesh acused-respondent and demarcation had not taken place and that Ramesh accused-respondent had told him that he (Brindavan injured) had encroached upon his (Ramesh accused-respondent's) plot and that he (Brindavan injured) was ploughing in that encroached land and that Ramesh accused-respondent had told him that he (Brindavan injured) is ploughing his (Ramesh accused-Respondent's) plot and forbade him (Brindavan injured) from ploughing in his (Ramesh accused-respondent's) plot and that thereupon he (Brindavan injured) beat him (Ramesh accused-respondent) and that he and Ramesh accused-respondent had grappled with each other. Brindavan injured refuted all these suggestions. At its best, the same be noted in his own words:-.Aisa Nahin Hai Ki Maine Khet Jab Kharida To Wan Ramesh Ke Khet Me Bhi Tha, Hadbandi Nahi Hui Thi, Yah Kahna Galat Hai Ki Ramesh Ne Kaha Ho Ki Main Uska Khet Dabaya Hun Aurn Main Usme Hal Chala Rahah Hun. Yah Kahna Galat Hai Ki Ramesh Ne Mujhse Kaha Ho Ki Turn Mere Khet Ke Bakhar Bahr Ho Aur Usne Muje Khet Bakharne Se Mana Kiya Ho

Aur Maine Use Mara Ho. Yah Bhi Galat Hai Ki Main Wa Ramesh Donon Guttham Guttha Ho Gaye They.

Here, it may be also noted that this witness was also suggested by the defence that his head injury came on fall by Hal. Even then there was no explanation suggested to Brindavan injured in his cross-examination as to how he received the other blunt weapon injuries on his body. These suggestions rather go a long way to substantiate the motive set up by the prosecution, namely the annoyance which accused-respondent Ramesh felt by the purchase of field of Lampu by Brindavan injured and its case that Ramesh accused appellant had asked him as to why he had purchased the field of Lampu and that on his reply that if he had purchased, he had paid money for it, Ramesh, Har Narain and Kripa Ram accused-respondents started assaulting him with their respective weapons and injured him.

23. Daya Ram informant (P.W. 2) has suggested that the partition of plot had not taken place at the spot and Brindavan injured was ploughing in the portion belonging to Ramesh accused-respondent. The informant refuted this suggestion.

24. Chhotey Lal (P.W. 4) was made to say by the defence in his cross-examination 'Ramesh (acused-respondent) Ne Apne Khet Me Hal Chalane Se Brindavan Ko Roka Brindavan Nahi Mana Aur Dono Guttam Guttha Ho Gaye. Maine Wahan Marpit Karte Ramesh Ko Dekha. Aur Kisi Aadmi Ko Nahi Dekha Tha.' So in these suggestions the right of private defence of property was taken up by the defence. However, when it came to the stage of statement under Section 313, Cr.P.C., Ramesh accused-respondent categorically stated in reply to the question No. 5 relating to the inflicting injury on the body of Brindavan injured by him and his companions. 'Malum Nahi. Chote Maine Nahi Pahuchai.' He has given the same reply to question No. 6 which was about the X-ray of Brindavan injured. He claimed that the witness has given the evidence against him due to enmity and in reply to the question as to why he was prosecuted, he said 'Brindavan Mera Khet Jot Raha Tha Maine Mana Kiya Usne Jhagra Kiya.' Har Narain and Kripa Ram, accused-respondents, both made a denial of the occurrence and their participation in the same and did not give any counter version of the occurrence at all.

25. The three accused-respondents; viz; Ramesh, Har Narain and Kripa Ram did not lead any oral or documentary evidence in their defence. The defence did not file any documents to show that Ramesh accused-respondent was co-sharer with Lampu or that any partition or demarcation proceedings were pending. It was also not claimed that any plot of Lampu, was in actual physical possession of the accused-respondents. It was also not claimed by the accused-respondent that they assaulted and injured Brindavan because he had encroached upon their land. Nor was there any plea taken by them at the trial that Brindavan assaulted or threatened to assault them and apprehending danger to themselves they assaulted Brindavan and injured him. It cannot be said that the accused-respondents had a right of private defence of person or property available to them which they may be said to have exercised. In my opinion, these accused-respondents cannot get any benefit out of the admissions extracted from Chotey Lal (P.W. 4) in his cross-examination deviating from what he had himself stated on oath in his examination in-chief on an earlier date. This part of his testimony is not true and is rejected.

26. It will be useful to refer to the topography of the spot as given in the site plan Ext. Ka-6 prepared by the investigating Officer Edal Singh (P. 6) which has been duly proved by him at the trial about which no cross-examination was made from the side of defence. It shows a plot of informant Daya Ram long from east to west and to its south plot of Lampu was shown adjoining. To the west of this plot of informant, there was his other plots and to the north and also to the east of the main plot of the informant, there were plots of Nathu Ram (father of Ramesh, Har Narain and Kripa Ram accused-respondents). The site plan also shows a point A in the centre of the main plot of the informant about which the site plan says that there earth was found dug. These factual observations of the Investigating Officer are admissible in evidence as part of his testimony. The site plan showed that there was no occasion for the plot of Lampu overlapping the plot of the three accused-respondents aforesaid or of then being it (sic). Even if we take that this plot of informant as shown in the site plan was itself the plot purchased from Lampu then also there was no indication that any Mewad was broken or damaged or demolished by the injured on the date of occurrence and so right of private defence of property could be referred.

27. On an appraisal of the evidence on record, the only inference is that the accused-respondent Ramesh assaulted Brindavan injured with Khuluwa and Har Narain and Krip Ram-accused respondents assaulted him with lathis and intentionally inflicted the various simple and grievous injuries found on his body in medical examination. Consedering the number, location and nature of the injuries inflicted on the injured, it cannot be doubted that in any case these injuries were inflicted with the intention of causing such bodily injuries as were likely to cause death or with the intention that they were likely by such act to cause death and the victim having survived the offence under Section 308 read with Section 34, I.P.C. must be held to have been committed by each one of them.

28. Coming to the question of sentence, the learned counsel for the accused-respondents has prayed that in case they are found guilty, since they have remained in jail for some time as an under-trial, they may be imposed some fine only. Firstly the duration pointed out in the case of Ramesh is about a month and a few days and in the case of Krip Ram, it is just a few days and about Har Narain none could be pointed out. Secondly it is not a case in which a lenient view should be taken. The accused-respondents were liable for conviction and consequently the time gap between the occurrence and today is wholly immaterial. The accused cannot be granted any relief in the matter of sentence due to this time gap. The scales of justice have to be kept even and a wrongful acquittal of these three accused respondents made by the Additional Sessions Judge going out of his way must be set aside and adequate sentence must be awarded. In my view, a sentence of rigorous imprisonment for a period of three years and a fine of Rs. 2000/- each would be adequate.

29. For the reasons aforesaid, the government appeal is allowed, as against the accused-respondents Ramesh, Har Narain and Kripa Ram. Their acquittal is set aside and they are found guilty of the offence under Section 308 read with Section 34, I.P.C. and are sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2000/- each and in default of payment of fine, to undergo simple imprisonment for a period of one month. They are on bail from this Court. Their bail is cancelled. Let them be taken into custody and sent to jail for serving out their sentence acording to law. The government appeal is,

however, dismissed as regards Siya Sharan accused-respondent and his acquittal for the offences under Sections 308/34 I.P.C. is maintained.

30. Let a copy of this judgement be sent to the Sessions Judge concerned to get the accused-respondents Ramesh, Har Narain and Kripa Ram arrested and consigned to the District Jail concerned to serve out their sentence according to law.

31. List this appeal before this bench on 7-9-1999 at 1.30 P.M. in chambers for orders along with the compliance report of the Sessions Judge concerned.

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