

Ram Kumar and ors. Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Aug-20-1993

Reported in : 1994CriLJ1458

Judge : S.S. Grewal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 323, 324, 325 and 326;
Code of Criminal Procedure (CrPC) - Sections 357

Appeal No. : Criminal Revision No. 1112 of 1986

Appellant : Ram Kumar and ors.

Respondent : State of Haryana

Advocate for Def. : P.S. Sullar, AAG

Advocate for Pet/Ap. : C.R. Dahiya, Adv.

Judgement :

ORDER

S.S. Grewal, J.

1. Ram Kumar, Ram Sarup and Ram Chander sons of Mehar Chand, Ram Sarup and Phul Singh sons of Megha Ram, Chander Bhan, Sheo Narain and Rameshwar sons of Nathu Ram, Net Ram son of Pat Ram and Bagrawat son of

Nanak, resident of village Bhattu Kalan, Dist. Hisar were tried and convicted under Sections 148/326/325/ 324/323 read with Section 149 of the Indian Penal Code. All of them were sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 100/-. In default of payment of fine each of them was ordered to undergo further rigorous imprisonment for one month under Section 326 read with Section 149 of the Indian Penal Code. They were further sentenced to undergo rigorous imprisonment for four months each under Section 325/149, I.P.C, and to undergo rigorous imprisonment for three months each under Sections 324/323/149, I.P.C. All the substantive sentences were, however, ordered to run concurrently vide order dated 12-9-1985 passed by the Sub-Divisional Judicial Magistrate, Fatehabad. The appeal filed against the order of conviction and sentence by the petitioners was dismissed by the Sessions Judge, Hisar, vide order dated 25-8-1986. Aggrieved against the orders of the Courts below, the aforesaid petitioners have filed the present revision petition.

2. Facts of the prosecution case, in brief, are that on 24th of September, 1981, at about 8 a.m. Moola P.W. 3, his wife Teji P.W. 4, their grand-daughter Raj Bala P.W. 5 along with Subhash P.W.7 and Om Parkash P.W. 9 their grand-sons, were picking cotton in their fields while Har Lal P.W. was hoeing his nearby field. At that time, Sheo Narain and Ram Kumar accused armed with Kulharis (axes), Ram Sarup accused armed with a Gandasi and rest of the accused armed with lathis along with Hari Singh (since acquitted) came there and started digging a water course across the field of Moola P.W. The latter asked the accused to desist from digging as no water course had been sanctioned in his field. The accused party did not pay any heed. They challenged the complainant Moola that in assertion of their right that they would dig out Khal through his field. Moola P.W. came forward in order to stop the accused from digging the water course. At that time Sheo Narain accused opened the attack and gave a blow with the axe on the head of Moola. Teji P.W. tried to rescue Moola, Ram Kumar accused gave a Kulhari blow on her head. Raj Bala P.W. tried to intervene in order to save her grand-parents, Ram Sarup accused gave a Gandasi blow on her right ear. The alarm raised by the said injured as well as by Subhash and Om Parkash PWs., attracted Har Lal P.W. from his nearby field to the spot. Before the latter could intervene the accused armed with Lathis gave blows to Moola Teji Raj Bala as well as to

Subhash and Om Parkash P.Ws. After causing injuries all the accused fled away towards the village along with their respective weapons. Moola left for the Police Station to lodge the report. On the way, he met HC Chet Ram who recorded his statement, and, on its basis formal first information report was recorded at the Police Station. The injured P.Ws. were admitted in the hospital where they were medically examined. After completion of the investigation all the aforesaid accused, except Hari Singh were challaned. Hari Singh accused who was shown in column No. II as also summoned by the trial Court to stand his trial along with his other Co-accused. The accused were tried and the present petitioners were convicted and sentenced by the Courts below as indicated above.

3. The learned Counsel for the parties were heard.

4. The medical evidence reveals that Moola P.W. received six injuries including an incised wound over the right parietal region and suffered five injuries with blunt weapons mostly on arms and legs. Injuries on the left shoulder and left ankle were found to be grievous. Teji P.W. too suffered six injuries on her person including an incised wound on the occipital region whereas rest of the injuries were mostly contusions, on various parts of her body. Four injuries were found on the person of Raj Bala P.W. including an incised wound on her right pinna cutting cartilage through and through, which was declared to be grievous, whereas, the rest of the injuries were found to be caused by blunt weapons. Subhash P.W. received nine injuries, whereas, Om Parkash received three injuries.

5. Testimony of Moola, Teji, Raj Bala, Subhash and Om Parkash P.Ws., stamped witnesses is worthy of credence. No infirmity worth the name has been pointed out in their testimony regarding the manner in which the said injured received injuries at the hands of the accused. Their testimony finds ample corroboration from the medical evidence on the record referred to above. The defence plea taken up by Bagrawat, Charier Bhan and Ram Sarup that they tried to restore the demolished Khal from which they were to irrigate their land on the next day, were way laid by the complainant party or that the aforesaid three accused acted in exercise of their right of private defence of their person. and property does not seem natural, probable or convincing.

6. It is the admitted case of the parties that the accused party had gone inside the field of Moola in the order to restore the water course which had already been demolished, Mere fact that before demolition of the said water course accused Ram Sarup etc. used to irrigate from this Khal sometime would not necessarily lead to the inference that the accused had any legal or vested right to take the Khal forcibly through the field of Moola P.W., who was perfectly justified in asking the accused party to desist from digging the Khal through his field. The complainant party received as many as 29 injuries whereas Bagrawat accused suffered three injuries including two injuries on his middle finger. Injuries on the middle finger could also be self suffered according to the opinion of Dr. B. S. Beniwal, P.W. 6. In view of the number nature and extent of injuries on both sides mere non-explanation of the injuries on the person of Bagrawat accused per se could not be sufficient to disbelieve the ocular account in this case. I find support in my view from the authority of the apex Court in Bankey Lal v. State of U.P., : 1971 CriLJ1540 . Since all the accused who had gone together inside the field of the complainant party and inflicted 29 injuries to the complainant party including two of their women folk, after the complainant asked the accused not to dig water course and the entire occurrence took place inside the field of the complainant and also taking into consideration the number, nature and extent of injuries received by five members of the complainant party and one of the accused namely, Bagrawat, I am of the considered view that no right of self defence of either person or property had accrued to the accused party which was the actual aggressor, and not the complainant party which was the actual aggrassor, and, not the complainant party, I have thus not the least hesitation in rejecting the defence plea set up by the accused in this case.

7. Lastly, it was submitted that there was no previous enmity between the parties and that the accused underwent agony of trial for about four years in the trial Court and their appeal remained pending before the Sessions Judge, Hisar for one year and their revision was pending in this Court for the last about seven years a lenient view may be taken.

8. Taking into consideration the overall circumstances of the case, the fact that there was no previous enmity between the parties, whose fields are situated

nearby, and the fact that the accused underwent agony of trial and other proceedings for the last 12 years, in my opinion, the ends of justice would be fully met, if the substantive sentences of imprisonment awarded to the petitioners is reduced to that already undergone. I order accordingly. However, the sentence of fine imposed by the trial Court under Section 326/149 of the Indian Penal Code against the petitioners is enhanced from Rs. 100/- to Rs. 1000/- each. In default of payment of fine the defaulting petitioners shall undergo further rigorous imprisonment for one month. Out of the fine, if realised, the entire amount shall be paid as compensation to Moola Teji, Raj Bala, Subhash and Om Parkash injured in equal shares under Section 357 of the Code of Criminal Procedure. The fine so imposed shall be deposited in the trial Court by the petitioners within two months from today. In case the said fine is deposited the learned trial Court would summon the aforesaid five injured and pay them the compensation as ordered earlier.

9. Except with this modification in the sentence awarded to the petitioners by the courts below, I do not find any merit in this revision petition and the same is hereby dismissed.