

State of Rajasthan Vs. Bhera

State of Rajasthan Vs. Bhera

SooperKanoon Citation : sooperkanoon.com/759281

Court : Rajasthan

Decided On : Oct-14-1987

Reported in : 1988WLN(UC)11

Judge : S.S. Byas and; N.C. Sharma, JJ.

Appeal No. : D.B. Cr. Appeal No. 348 of 1977

Appellant : State of Rajasthan

Respondent : Bhera

Disposition : Appeal dismissed

Judgement :

S.S. Byas, J.

1. This is the State's appeal against the judgment of the learned Sessions Judge, Udaipur dated June 7, 1977 by which he acquitted the accused-respondent Bhera of the offence under Section 307, IPC.

2. Briefly stated the prosecution case is that at about 10 p.m. on 28th April, 1975, PW 2 Hurma and PW 4 Uda, who were first cousins were going to their house situated in Alsigarh, Police Station Nai, District Udaipur. When they happened to pass outside the house of the accused, his son Mathu forbade them from going on that way. The accused Bhera also came there and did not allow them to

proceed further. Hurma and Uda asserted their right to use that way The accused had a double barrel muzzle loading country-made gun with him. He fired two shots in quick succession. One shot hit Hurma and other shot hit Uda. Hurma fell down and became unconscious. PW 1 Kamia went to police station, Nai and verbally lodged report (Ex. P 1) of the occurrence at about 9 00 am. on 29th April, 1975. The police registered a case and proceeded with the investigation. The injuries of the victims were examined by PW 9 Dr. Dangi, the then Medical Jurist, General Hospital, Udaipur. Two simple injuries were found over the body of Uda and two simple injuries were found on the body of Hurma. The accused was arrested and a challan was filed against him in the Court of the Chief Judicial Magistrate, Udaipur, who in his turn committed the case for trial. The learned Sessions Judge framed a charge under Section 307, IPC against the accused to which he pleaded not guilty. In his statement under Section 313, Cr.PC, he came out with a counter version that PW 3 Hurma and PW 4 along with some more persons came to his house in the night on 28th April, 1975. He was at his shop. His son and son's wife cried aloud that they were assaulted and beaten. He went there with his loaded gun. When he reached there, one of those persons fired a shot at him which, however, did not hit him. In order to ward off further attempt of assault, he first fired in air and then fired one shot towards Hurma, Uda and their companions. In support of his case, the prosecution examined fifteen witnesses and filed some documents. In defence the accused examined his daughter-in-law Smt. Kogli. On the conclusion of the trial, the learned Sessions Judge after scrutinising the entire evidence and circumstances concluded that three shots were fired in all, two by the accused and one by a member of the complainant party. It was the member of the complainant party who had fired the first shot and it was only thereafter that the accused fired the shots in his defence. The accused was, therefore, acquitted. Aggrieved against this acquittal, the State has filed this appeal.

3. We have heard the learned Public Prosecutor and the learned amicus curiae. We have also gone through the case file carefully. It was argued by the learned Public Prosecutor that the Court below has wrongly held that there were three shots Since there were only two shots and either of the two shots was admittedly fired by the accused, he should have been convicted for the offence under Section 307 IPC. It was, on the other hand, contended by the learned amicus curaie that

PW 4 Uda who is one of the injured victims, admitted that three shots were fired by the accused. PW2 Raja also admitted that he had heard three shots being fired. The accused had a country-made double barrel muzzle loading gun. He could fire only two shots. The third shot could not be fired by him in quick succession, because the gun was a muzzle loading gun, and it must take some time to reload it with magazine. We have taken the respective submissions into consideration.

4. PW 2 Raja admitted in the examination in chief that he had heard three shots and he thereafter went to the place of incident. PW 4 Uda is one of the injured victims. He also stated that three shots were fired, all by the accused. We are unable to imagine that the three shots were fired by the accused. He had a double barrel muzzle loading gun with him. When two shots are fired by the two barrels of a muzzle loading gun, it takes times to reload it with magazine. Three shots in succession, therefore, cannot be fired by a person from a muzzle loading gun. As such the statement of PW 4 Uda that all the 3 shots were fired by the accused is palpably false and unfounded. The prosecution witnesses have not explained as to who fired the third shot. In these circumstances, the statement of the accused that one of the three shots was fired by one of the victims and their companions cannot be dismissed as unfounded or baseless. Admittedly there was bad blood between the accused and the injured victims. Cases and counter cases were pending against them. The story put forward in defence by the accused does not appear to be wrong and untrue. It appears that two injured and their companions went to the house of the accused. His son and daughter-in-law cried for help. The accused thereafter went to his house from his shop with a double barrel muzzle loading gun. One of the members of the complainant party fired a shot at him but luckily he escaped. It was only then that the accused fired two shots from his double barrel muzzle loading gun. He had the right to defend himself and the members of his family. There was a clear and imminent danger to his life and the lives of the members of his family. He, therefore, acted in his defence. His firing two shots in these circumstances being in his defence does not amount to an offence under Section 307, IPC. The accused was lightly acquitted by the learned Sessions Judge. We find no good and cogent reasons to interfere with the acquittal of the accused.

5. The appeal of the State is consequently dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com