

Dilip Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-23-1994

Reported in : 1994CriLJ2439; 1994(2)WLC525; 1994(1)WLN606

Judge : B.R. Arora, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304 and 323; Indian Arms Act - Sections 27; R.T.A. Act - Sections 188 and 212

Appeal No. : S.B. Criminal Appeal No. 255 of 1980

Appellant : Dilip Singh

Respondent : State of Rajasthan

Advocate for Def. : K.L. Thakur, Public Prosecutor

Advocate for Pet/Ap. : R.R. Vyas, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

B.R. Arora, J.

1. This appeal is directed against the judgment dated 6-5-1980, passed by the Sessions Judge, Sri Ganganagar, by which the learned Sessions Judge convicted

the appellant for the offence under Section 304, Part I, I.P.C. and sentenced him to undergo four years' rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine further to undergo six months' rigorous imprisonment. The appellant was also, convicted for the offence under Section 27 of the Indian Arms Act and was sentenced to undergo one year's rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine further to undergo two months' rigorous imprisonment. Both the substantive sentences were directed to run concurrently.

2. Appellant Dilip Singh, along with his sons Baldeo Singh and Makkan Singh, was tried for the offences under Sections 302 and 323 I.P.C. and Section 27 of the Indian Arms Act, for committing the murder of Arjun Singh by firing a gun-shot and inflicted injuries to Balveer Singh. The case of the prosecution is that Arjun Singh and Dilip Singh's father Parsa Singh owned thirty-four Bighas of irrigated agricultural land which was entered in the Revenue Record in the name of Parsa Singh. Parsa Singh had five sons and, therefore, 61/4 Bighas of land came to the share of Arjun Singh. Arjun Singh left the village to earn his livelihood ten to twelve years before the date of the incident and handed-over the land of his share to Dilip Singh. He returned after two-three years and demanded the possession over his land but Labh Singh refused to re-deliver the land to him. The Panchayat was convened but all the efforts resulted in vain. Ultimately, a suit for possession and partition relating to the land in dispute was filed by Arjun Singh in the Court of the Sub-Divisional Officer, Sri Karanpur, which was transferred to the Court of the Collector, Sri Ganganagar, after two years, which resulted in favour of Arjan Singh. On 11-6-1979, in the morning, PW 8 Balveer Singh, along with his father Arjun Singh, went to the field bearing Kila Numbers 15, 16, 19 and 23 and cultivated the land. In the evening, also, at about 4.30 p.m., they again went to the field and started cutting the weeds. In the evening, at about 6.00 p.m., Dilip Singh, armed with a gun came on a tractor along with his sons Baldeo Singh and Makkan Singh. Baldeo Singh was driving the tractor while Makkhan Singh was having a Kassiya in his hand. They started cultivating the land of Kila Number 16. Dilip Singh and Makkhan Singh were following the tractor. PW 8 Balveer Singh and Arjun Singh, both, tried to prevent them from cultivating the land and requested them not to cultivate the land as the land belongs to them and, therefore, they would cultivate

the land and would not permit them to cultivate the land. Thereafter Dilip Singh, in order to kill Balveer Singh, followed him. Balveer Singh took the shelter behind the tractor and thereafter Dilip Singh fired the gun towards Arjun Singh, which shot hit on his stomach and after receiving the fire-arm injury, Arjun Singh fell down and died instantaneously. Thereafter Balveer Singh caught hold of Dilip Singh and felled him down on the ground and on this Baldeo Singh came down from the tractor and inflicted injury on Balveer Singh by a Barchha which was warded-off by Balveer Singh by catching the Barchha and Balveer Singh felled Baldeo Singh down on the ground. Thereafter Makkhan Singh came with a Kassiya and inflicted two injuries with it on the head of Balveer Singh and when the Kassiya came-out from the handle, he inflicted the injuries with the handle of Kassiya to Balveer Singh. This incident was witnessed by Bacchan Singh (PW 10) and Harnam Singh (PW 13), but they did not come to their rescue and Balveer Singh, after getting himself rescued, went to B.S.F. Check-Post and informed the Incharge of the Check-Post about the incident, the Superintendent of Police, Sri Ganganagar was informed on telephone about the incident by the Incharge of the B.S.F. Check-Post, who, in his turn, informed the Station House Officer, Police Station, Sri Karanpur to go on the spot. Thereafter the police came at the scene of the occurrence and recorded the statements of PW 8 Balveer Singh (Ex. P. 10) and on the basis of this statement Ex. P. 10, the First Information Report was registered, the prosecution, in support of its case, examined fourteen witnesses. PW 3 Sunder Singh, PW 8 Balveer Singh, PW 10 Bacchan Singh, PW 12 Gurjeet Singh and PW 14 Harnam Singh are the five eye witnesses of the occurrence, PW 8 Balveer Singh went to the place of the incident with his father and, also received injuries in the incident while the remaining eye witnesses, namely, Sunder Singh, Bacchan Singh, Gurjeet Singh and Harnam Singh had seen the occurrence from the nearby fields where they were cultivating their fields. PW 3 Sunder Singh has not supported the prosecution case and was declared hostile. PW 1 Virendrapal was the Sub-Inspector, B.S.F., who, on the relevant date, was posted at Manziwala Check-Post of the B.S.F., where Balveer Singh went after the incident and narrated the incident to him. Virendrapal gave information to the Company Commander and the Company Commander directed him to depute one Guard near the dead body. PW 2 Mohammed Ram-jan was working as the Revenue

Clerk in the Office of the Sub-Divisional Officer, Sri Karanpur, who stated that a Revenue Dispute under Sections 188 and 212 of the R.T. A. Act was pending between Arjun Singh and Labh Singh with respect to the land in dispute. PW 4 Dr. M. P. Agrawal was the Medical Officer Incharge, Primary Health Centre, Sri Karanpur, who conducted the autopsy on the dead body of Arjun Singh and, also, examined the injuries found on the person of Balveer Singh, Dilip Singh and Baldeo Singh. Balveer Singh had six injuries while Dilip Singh had four injuries by blunt weapon and Baldeo Singh had two injuries - one abrasion and one incised wound. PW 5 Sri Nand Singh was the Patwari of the area, who has stated that the land falls in the Patwar Circle where he was posted and the land was jointly entered in the names of Labh Singh, Arjun Singh, Harnam Singh, Ishar Singh and Khan Singh (sons of Parsa Singh) and six Bighas sixteen Bishwas out of this land of Kila Numbers 15, 16, 17, 23, 24 and 25 and sixteen Biswas of Kila Number 20 are the land belonging to Arjun Singh, but the crop on these lands were that of Dilip Singh, which is clear from the Girdawari and the possession over the land was in the name of Labh Singh and on the relevant date the land remained in the possession of Labh Singh. PW 6 Rehmat Ali was the Constable, who took the sealed articles for F.S.L. Examination to the State Forensic Science Laboratory, Jaipur. PW 7 Baldeo Singh, F.C., was posted at Police Station, Sri Karanpur, on 11-6-1979, who went to the place of the incident along with the Investigating Officer and the Investigating Officer recorded the statements of Balveer Singh (PW 8), which was handed-over to this witness for registering the case at the Police Station, which he took and delivered at the Police Station, on the basis of which the FIR No. 52 was recorded. PW 9 Smt. Bhirawa Bai is the mother of PW 8 Balveer Singh and widow of deceased Arjun Singh, who has stated that in the morning, her husband and son went to the field to clear-out the weeds. In the evening, Dilip Singh, who was armed with a gun, Makkhan Singh, who was sitting on the driver's seat on the tractor and Baldeo Singh, who was armed with a Kassiya went on the tractor towards her field. At that time Dilip Singh had stated that both the father and the son be put to death. She went to the field in the evening and saw her husband dead in the field. PW 11 Mukhtiar Singh is a Motbir witness, in whose presence the articles were seized and various Memos were prepared by the Investigating Officer. PW 13 Rameshwar Singh, A.S.I., is the

Investigating Officer, who conducted the investigation, arrested the accused and presented the challan. The learned Sessions Judge, after trial, came to the conclusion that the land in question was in the possession of Labh Singh and the complainant party committed criminal trespass over the land and in the right of private defence of property the accused persons inflicted injuries to Balveer Singh and Arjun Singh but they exceeded their right of private defence while causing death of Arjun Singh. He, therefore, acquitted all the accused of the offences under Sections 302/34 and 323/34 I.P.C. but convicted appellant Dilip Singh for the offence under Section 304, Part I, I.P.C. as, according to the learned Sessions Judge, he alone exceeded in exercise of his right of private defence of property. The accused-appellant was, also, convicted for the offence under Section 27 of the Indian Arms Act and was sentenced for both these offences, as stated at the very out-set. It is against this judgment dated 6-5-1980, convicting and sentencing the accused-appellant that he has preferred this appeal.

3. It is contended by the learned counsel for the appellant that the complainant-party was the aggressor and they came armed with Kassiya on the land in dispute. As per the prosecution case itself, in the morning, the members of the complainant party cultivated the land which was not in their cultivatory possession and again, in the evening, they trespassed over the land armed with Kassiya and inflicted injuries to the accused-persons and the accused-party inflicted injuries to the members of the complainant party in their right of private defence of person and property and never exceeded in their right of private defence of person and the property as only one fire was made by accused-appellant Dilip Singh and there was no repetition of any fire-shot and, therefore, the appellant deserves to be acquitted. Learned counsel for the appellant has, also submitted that the sentence, passed by the learned trial Court, are excessive. The appellant is aged about seventy-five years and, therefore, the substantive sentence should be reduced to the period of imprisonment already undergone by him during investigation and trial and no useful purpose will be served in again sending him to jail. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned trial Judge]

4. I have considered the submissions made by the learned counsel for the parties and have gone through the record of the case.

5. The time, place and death of Arjun Singh in the field by a gun-shot fired by accused-appellant Dilip Singh, are not in disputes. Arjun Singh met the death by a gunshot which was made by appellant Dilip Singh in the evening of 11-6-1979, in the agricultural field which was owned by him, but was being cultivated by the appellant. According to the prosecution, the possession over the land was taken by Arjun Singh from appellant Dilip Singh and in the morning on that day, he and Balveer Singh had cultivated the land while according to the defence version, the land in question was sold by Arjun Singh to accused-appellant Dilip Singh about ten to twelve years before the date of the incident when Arjun Singh left the village for earning his livelihood and on the fateful day, Dilip Singh, along with his sons, was cultivating the land and at that time Arjun Singh and Balveer Singh went there, obstructed in the cultivation and inflicted injuries to the accused-party and in their right of private defence of property and person, Dilip Singh made a fire, which resulted in the death of Arjun Singh. Even from the evidence, produced by the prosecution, it has been clearly established that on the relevant day the possession over the land in question was with the accused-appellant Dilip Singh. PW 2 Mohammed Ramjan the Revenue Clerk in the Court of the Sub-Divisional Magistrate, Sri Karanpur has specifically stated that a litigation under Sections 188 and 212 of the R.T. A. Act with respect to this very land is pending between Arjun Singh and Labh Singh and the possession over the land was never ordered to be delivered to Arjun Singh from Labh Singh - the father of appellant Dilip Singh. PW 3 Sunder Singh has, also admitted the possession of Labh Singh on the land in question on the relevant day. PW 5 Nand Singh - the Patwari of the area - has, also, stated that the possession over the land was with Labh Singh - the father of appellant Dilip Singh. From the statement of these witnesses the possession over the land in question is established to be with the accused-party and they were cultivating the land and the complainant party committed a criminal trespass over the land in question and raised the dispute. They were not armed with any deadly weapon but were having Kassiyas, which are agricultural implements used in the day to day agriculture work. The complainant party entered in the field in question along with Kassiya and tried to take forcible possession over the land in dispute.

The complainant party was not armed with such deadly weapons which may have given some apprehension of their death in the mind of the accused-party. It is, no doubt, true that the accused persons are entitled to throw-out the trespassers from the field which is being cultivated by them but looking to the facts and circumstances of the case, there was no apprehension of death of the accused being caused by the complainant party and they, therefore, exceeded their right of private defence of person and property by using the gun which had a deadly effect in causing the death of Arjun Singh, who, at the relevant time, was not having the Kassiya with him because the Kassiya was found lying at a considerable distance from his dead body. As it was a single barrel gun, the appellant could not open the second fire as by that time, PW 8 Balveer Singh, by inflicting injury, felled him down on the ground. Dilip Singh, therefore, clearly exceeded in his right of private defence of property in committing the murder of Arjun Singh. The learned trial Court has considered the evidence in the right perspective and did not commit any error in coming to the conclusion that appellant Dilip Singh exceeded his right of private defence of property. The appellant has, therefore, rightly been convicted by the learned Sessions Judge for the offence under Section 304, Part I, I.P.C. Likewise, from the evidence, produced by the prosecution, the offence under Section 27 of the Indian Arms Act, also, stands proved against the appellant and the learned Sessions Judge has not committed any illegality in convicting the appellant for the offence under Section 27 of the Indian Arms Act.

6. The next question, which requires consideration in the present case is: what should be the appropriate sentence which can be imposed upon the accused-appellant. The learned trial Court awarded the sentence of four years rigorous imprisonment and a fine of Rs. 1000/- for the offence under Section 304 Part I, I.P.C. and one year's imprisonment and a fine of Rs. 200/-. An old man, who was the owner of the land, has been murdered by his own brother and a lenient punishment in such a crime will have a serious distortion because it will have no effect on potential offender. The sentence, awarded by the learned Sessions Judge in the present case, cannot be said to be, in any way, excessive looking to the nature of the crime and the way in which it was committed and the appellant has been awarded the sentence what he actually deserves. No interference in the matter of sentence is called-for.

7. In the result, I do not find any merit in this appeal and the same is hereby dismissed.

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