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Court : Rajasthan

Decided On : Oct-17-1989

Reported in : 1990(1)WLN460

Judge : S.S. Byas, J.

Appeal No. : D.B. Criminal Appeal Nos. 420/87 and 403 of 1988

Appellant : NaraIn and ors.

Respondent : State of Rajasthan and ors.

Judgement :

S.S. Byas, J.

1. Since these two appeals--one against the conviction and the other against the acquittal--are directed against one and the same judgment of the learned Additional Sessions Judge No. 1, Kota dated 13-10-1987, they were beard together and are decided by a common judgment. In sessions case No. 49/81 on the file of the offences u/ss 148, 436/149, 302/149, [PC. On the conclusion of trial, nine of them viz. Narain, Phool Chand, Shri Narain, Madan Lal, Ram Ratan, Bhagirath, Shriram, Ram Gopal and Badri Lal were convicted and each was sentenced to imprisonment for life with a fine of Rs. 100/- under Section 302/149 and various terms of imprisonment under the other sections The remaining 16 accused viz. Ram Karan, Bhawani Ram s/o Heera Lal, Bhawani Ram s/o Balram,

Kalu, Kesu Ram, Chena Ram. Mangilal s/o Kanwar Lal, Ram Chandra s/o Ram Lal, Ram Chandra s/o Bala, Onkar, Bajranga, Gopal, Shobha Ram, Ram Chandra s/o Mangi Lal, Chaturbhuj and Mangi Lal s/o Nathu were acquitted of the said offences. In the respective appeals, those nine who have been convicted challenge their conviction while the State challenges the acquittal of those sixteen who were acquitted.

2. The incident is alleged to have taken place at about 4.00 p.m. on 2-4-1981 in village Salera Kala Police Station Chechat District Kota in which two persons Anand Ballabh aged about 20 years and Kanhaiya aged about 25 years were done to death and the dwelling house of the deceased Kanhaiya was set to fire.

3. Briefly stated, the prosecution case is that the 25 accused who were convicted or acquitted are residents of village Salera Kala. The deceased Kanhaiya was also resident of the same village. PW 2 Rukmani is the mother, PW 7 Annapurna is the widow of the deceased Kanhaiya. PW 3 Suresh Chand is the son of Kanhaiya's brother Phool Chand while PW 4 Munni Bai is the wife of his brother Ramesh Chandra. Paras Ram alias Parsia is also a brother of the deceased Kanhaiya. PW 5 Kastur Chand, PW 6 Shankar and the deceased Anand Ballabh are the residents of Chechat. The two deceased and Kastur Chand and Shankar were fast friends.

4. At about 5.30 p m. PW 3 Suresh Chand aged about 10/12 years appeared at Police Station, Chechat and verbally lodged report Ex, P. 3. It was stated therein that Narain, Phool Chand, Shriram, Badri, Rambaksh, Ram Ratan and 22-25 persons of Dhakar community came to the house of deceased Kanhaiya armed with lathies, Gandasies, axes and Jhapetas, The started pelting stones at his house and set fire to it. The house was soon in flames. The deceased Kanhaiya, Anand Ballabh and their friends Kastur Chand PW 5 and Shankar PW 6 who were inside rushed dot and took to heels for safety. Kanhaiya ran towards the quarter of one Heera Lal Meena and entered inside to save himself. The miscreants followed him and broke one slab of the roof. The door of the avarter was also broken by them. The miscreants thereafter struck blows to Kanhaiya with their weapons. Kanhaiya passed away instantaneously on the spot. Anand Ballabh, Shankar and

Kastur Chand were also chased by the miscreants but what happened to them is not known to him (informant). The incident was seen by his grand mother (Rukmi), aunts Smt. Munna PW 8 and Annapurna PW 7. The Police, registered a case Under Sections 302, 436, 148 etc of the Penal Code and proceeded with the investigation. The Station House Officer B.D. Tyagi PW 9 immediately deputed Police Constables Ushweshar PW 14, Arjun Singh PW 15 and Badri Prasad to reach the spot. When they retched there they found the house of Kanhaiya burning. The Investigating Officer arrived oh the spot next day and prepared the site plans of the places whore the dead bodies of Kanhaiya and Anand Ballabh were found. He also prepared the site plan of the house of deceased Kanhaiya which be found burnt. The dead body of Kanhaiya was found in the quarter of Heera Lal Meena. The dead body of Anand Ballabh was found at some distance. The Investigating Officer prepared the inquests of the dead bodies. The post mortem examination of the dead bodies was conducted by PW 10 Dr. R.K. Jain, the then Medical Officer Incharge, Government Hospital, Chechat, The post mortem reports prepared by him are Ex. P 91 and Ex. Pi 92. Id his Opinion, the death of Anand Ballabh and Kanhaiya had occurred due to head injury and haemorrhage. He noticed 6 injuries on the dead body of Anand Ballabh and 7 injuries on the dead body of Kanhaiya. All the twenty five culprits who were subsequently put to trial were arrested and in consequence of the informations furnished by them, some weapons viz. Jhapetas, lathies; Gandasies and axes were recovered. On the completion of the investigation, the Police filed a crime report against the 25 accused in the Court of the Munsif and Judicial Magistrate. Ramganjmandi who in his turn committed the case for trial to the Court of Sessions. The caste came for trial before the learned Additional Sessions Judge who framed charges Under Sections 148, 436/149 and 302/149 IPC against all of them to which they pleaded not guilty and faced the trial. The defence taken by accused Narain is that toe deceased Kanhaiya and Anand Ballabh and PWs. Kastur Chand and Shankar were fast friends. The deceased Kanhaiya was a trouble-shooter and a known rascle in the area. He was a police history-sheeter. Many criminal cases were pending against these four persons in Police and courts. At about 4.00 p.m. on the day of incident, these four persons Kanhaiya, Anand Ballabh. Shankar and Kastur Chand went to the well of accused Narain and

set fire to the stacks of the threshed crop of wheat, Ganwar etc. lying in the threshing floor. They also set fire to his bullock carts and barn They further damaged the motor pump engine fitted at his well, They then set fire to ibis (accused Narain) house. When there was a big fire, many residents of the nearby villages collected to over-power these four miscreants. The villagers so collected struck blows to Kanhaiya and Anand Ballabh to prevent them from setting fire to the threshing floors and houses of the other persons. Kanhaiya and the Anand Ballabh thus sustained injuries and died on the spot on account of the beating given to them by those persons He lodged report Ex. D-6 of the incident at Police Station. Chechat at about 2.00 a.m. on 3-4-1981. The Police registered a case aid filed a chargesheet against the surviving culprits Shankar and Kastur Chand. In support of its case, the prosecution examined 15 witnesses and filed as many as 92 documents. In defence, the accused examined three witnesses and also filed some documents. On the conclusion of trial, the learned Additional Sessions Judge held the charges duly proved against the nine accused. They consequently convicted and sentenced as mentioned at the very outlet. He found no incriminating evidence to connect the remaining 16 accused with the commission of the crimes. These sixteen accused were, therefore, acquitted of the offences they were charged with, Hence these two appeals, one against the conviction and the other against the acquittal.

5. We have heard the learned Counsel for the parties and the learned Public Prosecutor. We have also gone through the case file carefully.

6. We shall first take the appeal of the nine convicted accused.

7. In assailing the convictioin Mr. Mehrish launched a full scale talk on the impugned judgment and contended that and conviction was wholly had and unsustainable. Lengthy arguments were addressed by him. For the sake of convenience, the contentions raised by him may be categorized as under.

(1) The evidence of the eye-winesses that they saw the appellants landing blows to the victims Kanhaiya and Anand Ballabh and causing their deaths thereby is wholly unreliable and not credit worthy; and

(2) Even if it is assumed that they appellants took to violence and killed the two deceasd persons, they were protected by a right of defence of property. The two deceased along with PW-5 Kastur Chand and PW-6 Shankar set fire to the house of Gopal Dhakar and the appellant Narain They thereafter went to the well of appellant Narain and set fire, to the stacks of threshed crops, bullock carts and barn lying in the threshing ground. They thereafter damaged the wafer pumping set fitted on his well The residents of the nearby villagge collected and they landed blows to the two victims in order to prevent them from burning the stacks of the crops of the other persons. There was, therefore, no question of the nine appellants of forming an unlawful assembly. The assembly can by no means taken to be unlawful. The appellants were, therefore, protected Under Section 96 IPC and their act did opt amount to any offence. The Court below was not justified in summarily rejecting their plea of private defence of property.

8. In was on the other hand contended by the learned Public Prosecutor and the team of the learned Counsel for the coplainant that even if it is assumed that the deceased and PW-5 Kastur Chand and PW-6 Shankar set fire to the houses, crops, bullock carts and barn etc. or damaged the water pumping sets, the appellants had no right of private defence of property. The two victims Kanhaiya and Anand Ballabh on seeing the mob took the heels and the appellants were, therefore, not justified to phase them and beat them to death. We have taken the respective submissions into consideration

9. The genesis of the incident has not been truly and correctly spelt out by the six eye-witnesses viz P.W-2 Rukmani, PW-3 Suresh Chand, PW-4 Munni Bai, PW-5 Kastur Chand, PW-6 Shanker and PW.7 Annapurna. How ever we have got the evidence of PW-1 Kajod and the police statements Ex. D-3 of PW-5 Kastur Chand and Ex. D-4 of PW-6 Shankar with which they were confronted during trial. We have also got the statement of PW-1 Kajod who though turned hostile to the prosecution has given the genesis of the occurrence. We have then the FIR Ex. D-6 lodged by appellant Narain on which a case was registered against the two deceased and PW-5 Kastur Chand and PW-6 Shankar Under Section 436, 307 etc. of the Penal Code. We have also the cite plans Ex. D-7, Ex. D-8, Ex. D-9 Ex. D-10, Ex.D-11, Ex.D-12, Ex.D-13 and the photos Ex.D-14 to Ex.D-17. We have

also the testimony of the Investigating Officer PW-9 B.D. Tyagi to assist us to find out the genesis of the incident.

10. PW 1 Kajod is a resident of village Salera where the incident took place. He stated that in the fore noon of the day of incident appellant Narain was taking his bullocks to his well. The deceased Kanhaiya asked him to come to him. Narain did not stop and went to his well. Kanhaiya and three persons including him (witness) went to the well of Narain where Kanhaiya and Narain picked uy quarrel and grappled with each other. Kanhaiya came back to his house and Narain also went to his house, After some time. Kanhaiya's brother Paras Ram alias Parsia went with a Lathi to Narain who was again on his well. Paras Ram was beaten by accused Narain. The witness stated that he had some persons including the deceased Kanhaiya took Paras Ram in a bullock cart to Police Station, Chechat. The deceased Kanhaiya stayed back on the bank of the river. The deceased Kanhaiya collected his friends Kastur Chand (PW-5), Shankar (PW-6) and the deceased Anand Ballabh from Chechat. The deceased Kanhaiya took a tin of kerosene with him. These four persons also forced him (witness) to accompany them. Alt the five then went to the house of accused Narain, sprinkled kerosene there on the shutters and set fire to it.

11. PW-5 Kastur Chand and PW-6 Shankar stated in their Police statements Ex.D-3 and Ex.D-4 that in the noon on the day of incident the deceased Kanhaiya came to their town Chechat and took them along with Anand Ballabh to his village Salera. They also took Jhapetas (sharp edged weapons), lathies and a tin of kerosene. They reached the house of accused Narain and poured kerosene on the shutters. Thereafter the deceased Kanhiya set fire to the house of accused Narain. They also broke the roof of the house of accused Narain. They also set fire to the hut and the entire house-hold articles of accused Narain. The party thereafter went to the well of accused Narain. They damaged and smashed the water pumping set fitted in the well, They set fire to two bullock carts lying there. They then set fire in the threshing floor of accused Narain where the threshed crops were stacked. Many persons of the village including the convicted appellants asked Kanhaiya to extinguish the fire. Kanhaiya refused to budge down and extinguish the fire. It was thereafter that the mob become violent and started landing blows to the deceased

Kanhaiya and Anand Ballabh. The four miscreants viz. the two deceased and PW-5 Kastur Chand and PW-6 Shankar ran in different directions to save themselves.

12. Lest we may not be misunderstood, it is made clear by us that we are not using the Police statements Ex. D-2 and Ex.D-3 as substantive piece of evidence. We are merely making a reference to them as to what was the earliest version of the incident given by PW-5 Kastur Chand and PW-6 Shankar during investigation.

13. Accused Narain lodged report Ex D 6 at Police Station, Chechat around 2.00 a. m. stating all these facts therein that the two deceased Kanhaiya and Anand Ballabh and the PWs. Kastur Chand (PW-5) and Shankar (PW-6) set fire to his house, threshing floor, bullock carts, barn, stacks of threshed crops etc. and destroyed his water pumping sets fitted in his well. Accused Narain examined himself as a witness in defence. He is DW-3. The same facts were narrated by him in his statement as a witness in defence.

14. The Investigating Officer B.D. Tyagi (PW-9) in his cross examination admitted that on the report of accused Narain a counter case was registered and he made investigation therein. He visited the site and prepared the site plans and inspection memos Ex.D-7 to Ex D-13. There site plans and site inspection notes Ex.D-7 to Ex.D-13 prepared by the I.O., Tyagi (PW-9) clearly reveal that the house, hut, threshing floor, stacks of threshed crops of wheet, Gawar etc. barn were found burnt and the water pumping set completely damaged and destroyed.

15. It would also be pertinent to mention here that PW-5 Kastur Chand and PW-6 Shankar were confronting during trial with their statements Ex.D-3 and Ex D-4 in which they stated as to how the incident took place. Finding the position inconvenient and finding their stand taken during trial unsustainable, they took the easy resort of denial that they did not state before Police as mentioned in Ex.D-3 and Ex.D-4. These two witnesses were in embrassing situation when they were confronted with their earlier statements Ex.D-3 and Ex.D-4 By denying that they gave the statements Ex.D-3 and Ex.D-4, these two witnesses Kastur Chand and Shankar only made a desparate but vain bid to hide the skeletons in their cup board because they themselves, were the miscreants along with the two deceased in inviting the whole trouble.

16. We may, therefore, summarise the genesis of the incident thus that a scuffle took police between the appellant Narain and deceased Kanhaiya's brother Paras Ram. Paras Ram sustained injuries in this scuffle. He was taken to Police Station, Chechat by the deceased Kanhaiya and some other persons. The deceased Kanhaiya himself did not go to the Police Station, Chechat. He collected his trusted lieutenants PW-5 Kastur Chand, PW-6 Shankar and the deceased Anand Ballabh. All these four were close friends and various criminal cases were pending against them in courts and Police as stated by the I.O, Tyagi (PW9), in his cross-examination. They were thus close to each other. All these four came together from Chechat to village Salera, took a kerosene tin with them, armed with themselves with lathies and Jhapetas and went to the house and well of accused Narain. It appears that on account of accused Narain's giving blows to the deceased Kanhaiya's brother Paras Ram, the deceased Kanhaiya got enraged and infuriated He could not control his patience and emotions. He wanted to teach a lesson to the accused Narain. It was why he collected his lieutenants, took the kerosene and arms and went to the house and well of the accused Narain. After reaching there, these four persons i.e. to say the two deceased and the two PWs Kastur Chand and Shankar set fire to the house, hut, threshing floor, stacks of threshed crops, bullock carts, barn etc. and destroyed the water pumping set of accused Narain.

17. It would he useful hereto mention that the other eye witnesses viz. PW-2 Rukmani, PW-3 Suresh Chand, PW-4 Munni Bai, PW-7 Annapurna did not state as to how the incident had started and what was the genesis of the occurrence. They merely stated that they saw the deceased Kanhaiya running and the appellants along with a mob chasing him.

18. We persistently asked the Public Prosecutor and the learned Counsel for the complainant to suggest any other genesis of the occurrence. They did not and perhaps could not suggest any genesis other than that referred to above by us in view of the over whelming, oral and documentary evidence discussed by us.

19. A reference in this connection may also be made to the detailed map filed by the prosecution but not got exhibited by them. This map gives a graphic

description as to what was found there.

20. Having ascertained the genesis of the occurrence, we shall next examine the contention of Mr. Mehrish as to whether the nine appellants along with the sixteen acquitted accused and other persons of the village constituted an unlawfull assembly. The main plank of Mr. Mehrish is that the two deceased along with PW-5 Kastur Chand and PW-6 Shankar invited the trouble by first setting fire to the house and the properties of accused Narain. These persons-appellants or acquitted accused or the other residents of the village could not be said to have constituted an unlawful assembly because what they did was to defend there own property. The contention is not ineffective. It has much substance.

21. Section 96 IPC speaks that nothing is an offence which is done in the exercise of the right of private defence, Section 97 IPC speaks about the right of private defence of the body and property. Clause Secondly of Section 97 lays down that every person has a right to defend, the property whether movable or immovable of himself or of any other person against any act which is an offence falling under the definition of mischief. Of course, the right is to be exercised within the prescribed parametres. The parametres are contained in Section 99. Section 103 IPC enacts as to when the right of private defence of property extends to causing death. This section permits the death of the wrong-doer if the offence, the committing of which or the attempting to commit which relates to the offence of mischief by fire to any building used as a human dwelling. Clause Thirdly mentions mischief by fire as one of the offences enumerated therein as permitting a person to the causing the death of a wrong doer.

22. Section 141 IPC defines an unlawful assembly. An assembly of five or more persons becomes as unlawful assembly if the common object of the persons composing that assembly is one or more of these mentioned in Section 141 IPC. If the common object of the assembly is not one of those jive enumerated in Section 141 IPC it cannot be designated as unlawful. The exercise of the right of private defence whether of person or property is not covered by any of the objects enumerated in Section 141 IPC. The right of private defence is a right recognised in Section 96 IPC. Thus, the exercise of the right of private defence is not an

offence defined anywhere in the Penal Code. An assemby of persons, whatever be their number, acting in the exercise of the right of private defence whether of person or property, cannot be said to commit an offence, In State of Bihar v. Nathu and Ors. : 1970 CriLJ5 , it was observed in para 8:

Section 141 must be read with Sections 96 to 106 dealing with the right of private defence. Under Section 96 nothing is an offence which is done in the exercise of right of private defence...The assembly could not be designated as an unlawful assembly if its object was to defend property by the use of force within the limit prescribed by law.

23. As stated earlier, the right of private defence of person or property is to be exercised subject to the restrictions mentioned in Section 99 IPC Section 99 thus prescribes the parametres within which the right of private defence is to be exercised. One of the restrictions mentioned in Section 99 is that the right of private defence is no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. At times, it happens that one of the members of the assembly exercising right of private defence causes more harm than is necessary to avert the evil. In such a case if one of the members exceeds that right, all the members of the assembly will not be guilty for the commissions of that offence. Only that particular member of the assembly who exceeds this right will be guilty for the offence committed by him.

24. In Mansia and Ors. v. State of Rajasthan [1963 (1) Cr. LJ 712], one of the members of the party exceeded the right of private defence. The learned Judges held that only that person can be convicted and punished for the individual act which be himself had done in excess of the right of private defence. The other members of the accused party cannot be constructively held liable Under Section 149, IPC, if any of them exceeded that right of private defence.

25. In Panni and Ors. v. State of Rajasthan (1978(III) R.Cr.C 219), one of the learned Judges of this Court took the view that Section 34 or 149, IPC is not applicable in the case of exceeding the right of private defence. Only that person who has exceeded the right is punishable for his individual act.

26. Cases, again come up where it is not known as to which of the members exceeded the right of private defence. In such a case, none of the accused can be held guilty of the offence committed.

27. In State of Bihar v. Nathu, and Ors. (supra), it could not be ascertained as to wbtoh member of the assembly while exercising the right of private defence exceeded h and inflcted the fatal wounds to the deceased. Their Lordships held that none of the accused could be convicted with the aid of Section 34 or 149 IPC.

28 The legal position thus boils down to this:

(1) an assembly, what ever mm be its numerical strength while exercising the right of private defence of person or property is not an unlawful assembly;

(2) the right of private defence is to be exercised within the prescribed parametres contained in Section 99 IPC and one of the parametres is that no harm than necessary should be inflicted;

(3) if one of the members of such an assembly acts in excess of this right of private defence and caused more harm than is necessary, it is only he who can be convicted and punished for his individual act of committing that particular offence; and

(4) if it cannot be ascertained as to who out of the members of the assembly acted in excess of the right and caused more harm than necessary, none of the members of the assembly can be convicted. Section 34 or 149 IPC has no applicability.

29. We shall now turn to the facts of the case. The genesis of the occurrence has discussed above is that the two deceased victims Kanhaiya and Anand Ballabh and the two eye witnesses PW 5 Kastur Chand and PW 6 Shanker went together armed with lethal weapons and taking kerosene tin with them. They set fire to the threshed crops and barn lying in the threshing floor of accused Narain. They set fire to his bullock carts. They thereafter damaged and destroyed the water pumping set fitted in his well. They then went to the house of accused Narain and set fire to his house and the house of one Gopal Dhanker. These circumstances

strongly suggest that many persons of the village collected on seeing the threshing floors, and houses etc. ablaze. They thereafter used violence and inflicted, injuries to the two deceased victims Kanhaiya, and Anand Ballabh. The convicted appellants must be among those persons so collected to over power and: desist the for culprits from further setting fire and causing damage.

30. We are unable to accept the contention of the learned Public Prosecutor that the violance against two deceased persons was used first by the convicted appellants and the acquitted accused. In case violence-was first used against the two deceased Kanhaiya and Anand Ballabh, they were certainly not in a position to set fire to the houses thereshing floors etc. and to destroy and damage the water pumping set. We are, therefore, of the considered opinion that the four miscreants viz. Kanhaiya and Anand Ballabh, Kastur Chand and Shankar first committed the mischief by fire etc. It was only thereafter that force was used against them to desist and prevent them from committing acts of mischief etc.

31. It cannot be expected that on seeing the two deceased and their companions Kastur Chand and Shanker setting fire to the dwelling house, threshed crops, bullock carts etc, of accused Narian, the mob and the members of the mob including the convicted appellants would merely wrung their hands in despair and adopt stoic resignation and stand silently.

32. PW 5 Kastur Chand and PW 6 Shankar were the constant companions of the deceased victims. Their evidence given during trial is directly in conflict with their statements Ex. D-3 and Ex. D-4 recorded during trial. What they stated during trial has not been stated by them in their Policy statements Ex. D-3 and Ex. D-4, Likewise what has been stated by them in their Police statements Ex. D-3 and Ex, D-4 has not been stated by them during trial. No reliance can be placed on such a witness who gives conflicting and contradictory versions one after the other.

33. PW 2 Rukmani, PW 3 Suresh Chand, PW 4 Munni Bai and PW 7 Annapurna have also not given a true account of the incident. They did not state as to how the incident originated. When the pointed question was asked to them as to whether they had seen the threshing floors, houses etc. of accused Narain in flames, they denied to have seen so. We may state that the threshing floors and the houses of

accussed Narain were burning in the broad day light. The burning could not have escaped the attention of these four witnesses. The natural inference is, therefore that they have purposely denied to have seen the houses, threshing floors etc. of accused Narain burning. No reliance should be placed of a such witness who suppress the truth and gives out a turncated and lop-sided version of the incident.

34. The two deceased and PW 5 Kastur Chand and PW 6 Shankar committed the mischief by fire. They set fire not only to the threshing floors bullock carts etc. but also to the building of accused Narain which was used as a human dwelling and for the custody of property. As such the assembly of which the nine convicted appellants were members had a right of private defence of property extending to the causing of the death of the miscreants. Clause Thirdly of Section 103 IPC granted the members of the assembly to exercise such a right extending to the causing of death.

35. The post mortem examination reports of the two deceased victims show that they didden account of the hand injuries. The post mortem examination report Ex. P. 92 of the deceased Kanhaiya shows that he had received only one injury on the head The eye witnesses have not stated as to who caused this head injury to the deceased Kanhaiya. Even if it is held that one of the members of the assembly acted in excess of the right of private defence by causing the fatal injury to Kanhaiya, none can be convicted because there no evidence to show as to which member of the assembly caused this fatal blow to Kanhaiya [vide AIR 1970 SC 27 (supra)]

36. As regards the other deceased Anand Ballabh, he received six injuries in all It cannot be again ascertained as to who out of the members of the assembly caused the head injury to Anand Ballabh. As such for the reasons diseased above, none of the appellants can be convicted Under Section 302 read with 149 IPC.

37. We may also refer to the evidence of the eye witnesses about the killing of Anand Ballabh. None of them stated that they had seen any of the convicted appellants striking blows to him. They except PW 6 Shankar stated that many persons ran after the deceased Anand Ballabh when he took to heels. They did not state as to who inflicted injuries to him. PW 6 Shankar of course stated that it

was accused Phool Chand who struck a blow of Gandasi on the head of Anand Ballabh. But he did not state so in his Police statement Ex. D-4. As such also, it cannot be ascertained as to who caused the fatal blow to the deceased Anand Ballabh.

38. For the reasons stated above, we are unable to maintain the conviction of the nine appellants Under Sections 148 and 302/149, IPC for causing the deaths of Kanhaiya and Anand Ballabh.

39. The nine appellants have also been convicted Under Section 436/149 IPC. The appellants were of course entitled to use fore against the deceased victims to desist and prevent them from causing any further damage and destruction. The evidence of the eye witnesses cannot be discarded that the appellants had set fire to the house of the deceased Kanhaiya and his brother Ramesh Chandra. The right of private defence is one of the defence and not of punishment or retaliation. The appellants were no doubt entitled to use force against the deceased victims. But certainly they were not entitled to set fire to the dwelling houses of the deceased Kanhaiya and his brother Ramesh Chandra. Their act of setting fire to the houses of the deceased Kanhaiya and his brother cannot be protected under any provision of the Penal Code. The right of private defence does not extend to set fire to the dwelling houses. This act of setting fire committed by the appellants cannot, be excused. Their conviction under Section 436/149 IPC is perfectly justified and calls for no interference.

40. We shall next take up the appeal of the State directed against the acquittal of the sixteen persons We may state in brief that on account of the acquittal of the nine convicted persons, the appeal of the State against the acquittal of the sixteen persons must be dismissed on the parity of the reasons discussed above by us. So far the offence under Section 436/149 IPC is concerned, there is no evidence to show that these sixteen acquitted persons had a hand in setting fire to the houses of Kanhaiya and Ramesh Chandra. An acquittal is to be interferred with only on substantial and compelling reasons. We find no such substantial and compelling reasons which may pursuade us to set aside the acquittal of the sixteen persons from the offence under Section 436/149 IPC. The appeal of the

State thus fails.

41. In the result,

(1) The appeal of the nine accused (1) Narain; (2) Phool Chand; (3) Shiv Narain; (4) Madan Lal; (5) Ram Ratan; (6) Bhagirath; (7) Shriram; (8) Ram Gopal; and (9) Badri Lal is partly allowed. Their conviction under Sections 148 and 302/149 IPC and the V, sentences awarded to them thereunder are set-aside. They are acquitted of the said offences. How ever, their conviction and sentences under Sec. 436/149 are maintained.

(2) The appeal filed by the State against the acquittal of the sixteen persons is here by dismissed.

42. The two appeals shall stand accordingly disposed of.

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