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Court : Rajasthan

Decided On : Jul-11-1978

Reported in : 1978(11)WLN298

Judge : C. Honniah, C.J.

Appeal No. : S.B. Criminal (Jail) Appeal No. 205 of 1977

Appellant : Lal Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

C. Honniah, C.J.

1. The appellant has been convicted under Section 304 part I, Indian Penal Code, and sentenced to undergo rigorous imprisonment for seven years.

2. The facts proved or admitted are these : On the night of March 4, 1976 the appellant was sleeping in his field. Somewhere in the night he woke up due to some noise and found the deceased Lalsingh removing fodder belonging to him, and then going away with the fodder. Soon thereafter he accosted him and questioned him why he was doing such an act. In this behalf there was a quarrel and during the course of quarrel the appellant inflicted some injuries on the

deceased. Soon after the incident the appellant admitted having inflicted injuries on the deceased as he found him taking away his property in the night. The deceased also made a dying declaration to some witnesses, who came there hearing the cries.

3. When a person takes away the property of another by trespassing over his land, such act amounts to an offence of theft and criminal trespass, the person in whom the right of possession is vested may, while the trespass and the act of theft are in progress, turn the trespasser out of the land by force and may also resist the act of taking away of his property and if in so doing he inflicts such injuries on the trespasser or on the thief as are warranted by the situation, he commits no offence and his action will be covered by the principle of self defence.

4. In this case the appellant has rightly exceeded his right of self defence and, therefore the conviction is justified. So far as the sentence is concerned, I feel that the ends of justice will be met by reducing that sentence to the period already undergone. Sentence of fine is set aside. Accordingly, I direct that he shall be set at liberty forthwith. With this modification in sentence the appeal is dismissed.