

Devkarun and ors. Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/765013

Court : Rajasthan

Decided On : May-27-1998

Reported in : 1998CriLJ3883

Judge : Bhagwati Prasad and; Mohd. Yamin, JJ.

Acts : Probation of Offenders Act; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149, 300, 302, 307, 323, 447 and 452; ;Code of Criminal Procedure (CrPC) - Sections 107 and 313

Appeal No. : Crl. Appeal No. 454 of 1979

Appellant : Devkarun and ors.

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : Doongar Singh, Adv.

Judgement :

Bhagwati Prasad, J.

1. By this judgment we propose to dispose of two appeals, one filed by the accused appellants Bhagirath, Devkaran, Sangram and Ramkaran and the other appeal filed by the State Government against the accused persons Bhagirath,

Devkaran, Kana, Sangram and Ram Karan which arise out of the judgment dated 6-9-1979 passed by the learned Sessions Judge, Merta in Sessions Case No. 22/78. During the pendency of the appeals accused Bhagirath has expired on 27-2-1997 and, therefore, his appeal is held as abated. Therefore, the appeal of the three accused persons, namely, Devkaran, Sangram and Ram Karan and the State appeal against the four accused persons, i.e. Devkaran, Kana, Sangram and Ram Karan were heard and are being decided on merits.

2. Five accused persons were tried by the Court of learned Sessions Judge, Merta in Sessions Case No. 22/78 for various offences. Accused Bhagirath and Devkaran were tried for offences under Sections 147, 447, 323 and 302. Accused Sangram and Kana were tried for offences under Sections 147, 447, 452, 323, 302/149, I.P.C. and accused Ram Karan was tried for the same offences except under Section 452, I.P.C. The trial Court after trial came to the conclusion that the accused had a right of private defence of property and person and convicted the accused Bhagirath, Devkaran, Ram Karan and Sangram under Section 323, I.P.C. and sentenced to one year's rigorous imprisonment. Accused Sangram in addition to the above was also convicted under Section 452, I.P.C. and sentenced to two years rigorous imprisonment. Accused Kana was convicted under Sections 323 and 452 but he was given the benefit of Probation of Offenders Act.

3. The four accused appellants challenged their conviction by appeal. Accused Kana had not challenged the conviction. The State assailed the acquittal of all the accused persons and contended that their acquittal under Section 302, I.P.C. and 302 read with Section 149, I.P.C. was improper.

4. We have heard the learned Counsel for the accused and the learned Public Prosecutor and have gone through the record.

5. The trial Court settled few points for its consideration and held that in the incident Danna died and Jawana and Sugnai received injuries. However, it held that the prosecution could not establish that the complainants were in possession of Khastra No. 260. The fact that heap of wood, regarding which dispute arose, was settled by the complainant party, was also not held established. The accused were held involved in the incident but it was held that they had the right of private

defence of property and, therefore, they were convicted only under Section 323, I.P.C.

6. Ex. P. 20 F.I.R. was lodged by injured Jawana. According to this report Jawana alleged that at about 11 a.m. on 20-12-1977 the accused persons came and started separating the leaves from the heap of cut wood which was a khejadi produce. He tried to desist the accused persons. On his telling the accused persons not to indulge in the operation, the accused persons started indiscriminate beating to him. At that time while he was shouting for help, Dhanna intervened and wanted to rescue him, at that time Bhagirath gave a lathi blow on the head of Dhanna as a result of which he fell down and then Devkaran gave lathi blow on the head of Dhanna and thereafter others started giving beating to him. It was also stated in the first information report that while they were leaving they gave beating to his younger brother Narain and his wife Sugnai. It was also mentioned in the first information report that both the parties have a lis pending about the land. A case under Sections 147, 148, 149, 447, 452 and 307, I.P.C. was registered which was later on converted to Section 302, I.P.C. as Dhanna died. The matter was investigated and the accused persons were charge-sheeted. After trial the learned Sessions Judge convicted and sentenced the accused-appellants as aforesaid.

7. At the trial P. W. 1 Sugnai deposed that the deceased Dhanna was elder brother of her husband Narain. Injured Jawana is another brother of Dhanna, both of them were bachelors. Both Jawana and Dhanna used to live with Narain and his wife P.W. 1 Sugnai. Bhagirath was the other brother who was accused in the case. At that time while she was engaged in the house hold chores in her Dhani and Jawana Ram was also busy in agricultural operations, at that time the accused persons came and started removing the leaves from the cut wood of Khejadi known as 'Loong'. At that time Jawana Ram asked them that they should not do it because it is not their right to get the leaves. On this the accused asserted that they would carry on the operation. Ram Karan had a Jei in his land and the other accused persons had lathis in their hands. Jawana Ram was given beating by these persons. He cried for help. At that time Dhanna had come after attending the call of nature and had a lota in his hand. He threw the lota and tried to intervene to save Jawana. At that time the accused said that we have dealt with Jawana and

now we will handle you as well. They left Jawana and started beating Dhanna. Bhagirath gave a lathi blow on the head of Dhanna and other accused persons also started giving beating to Dhanna. After that accused Sangram and Kana also stopped her, when the witness was proceeding towards the village from the Bada, and gave beating. Bajrangsingh, Prithvisingh, Birma Ram and Indra Singh etc. also came on the spot and then Jawana, Dhanna and Sugnai were taken to the Degana Hospital. Blood was oozing from the head of Dhanna, his both legs were broken and his right hand was also broken. Dhanna could not be treated at Degana and, therefore, he was taken to Ajmer Hospital but in the way he died.

8. P.W. 2 Bajrang Singh was also examined as an eye-witness and he gave an account of the incident. He deposed that the accused Bhagirath, Dhanna and Jawana are brothers. On the fateful day while he was in the field and looking after his gram crop he saw that Jawana was desisting the accused Bhagirath and his sons from not carrying the operations of separating the leaves. The accused were armed with Jeji and lathis. At that time Jawana Ram was given beating by the accused persons. When Jawana Ram shouted Dhanna who had gone to attend the call of nature and had Lota in his hand threw away the Lota and asked the accused persons as to why they are beating him? Then the accused started beating to Dhanna Ram. This witness had stated that the field where the beating took place was seen by him in possession of the injured Jawanaram who used to cultivate it. In his cross-examination he has said that he is not aware of the demarcation numbers of the field and he cannot say as to which number of field was in possession of a particular person but he can tell that as to which field was cultivated by which person.

9. P.W. 3 Prithvi Singh was an eye-witness but he did not support the prosecution.

10. P.W. 4 Sagram is a relation of both the parties. He says that he attended on the injured and took the injured to the Degana hospital and from Degana he took Dhanna Ram in a taxi to Ajmer but he succumbed to his injuries on the way. He deposed that Dhanna Ram on being asked informed him that the accused persons, namely, Bhagirath, Devkaran, Ramkaran, Sangram and Kana had given him beating.

11. P.W. 5 is the Constable Hari Singh who accompanied Dhanna Ram while he was taken from Degana to Ajmer but he succumbed to his injuries on the way.
12. P.W. 6 is Birma Ram. He did not support the prosecution and was declared hostile.
13. P.W. 7 Chhotu Ram is an officer of the Police who conducted part of the investigation.
14. P.W. 8 Mansingh is the Motbir of the recovery.
15. P.W. 9 Jawana Rani is the injured. He has supported the prosecution story given in the first information report. He has alleged that accused Bhagirath is his real brother and the other accused persons are his sons and all the brothers got their holdings separated ten years ago. On the fateful day, the accused Ramkaran was engaged in the operation of separating the leaves from the wood and the other accused persons were with him. When this witness asked as to why they are indulging in the operation of separating the leaves belonging to him, the accused did not desist. When he approached accused they gave beating to him. Ramkaran gave a Jei blow on his shoulder and ors. also started giving beating to him. At that time when he started shouting, deceased Dhanna, who was returning after attending the call of nature, threw his lota and came to rescue him. When he said that firstly you are disturbing his wood in getting the leaves separated and then you are giving beating to him. At this the accused left him and started giving beating to Dhanna Ram. Ramkaran had a Jei and the other accused persons had lathis. Firstly Bhagirath and Devkaran gave beating to Dhanna and then other accused persons also joined them. After giving beating to Jawana Ram and Dhanna Ram the accused persons went to the Dhani where they gave beating to Sugnai. He lodged the Report Ex.P.3 at Police Station, Degana. He, Sugnai and Dhanna Ram were taken to the Degana Hospital. Looking to the serious condition of Dhanna, he was advised to be taken to the Ajmer Hospital, but he succumbed to his injuries on way. Before this incident a report was lodged by him as Ex.P. 12 in the Court of Sub-Divisional Magistrate, Merta for initiating proceedings under Section 107, Cr.P.C. against the accused persons because the accused persons were out and out to create nuisance and cultivate his field and he expressed that

they would use force in this process. This report was lodged in the Court of Sub-Divisional Magistrate, Merta on 17-6-1977. In his cross-examination this witness has admitted that the dispute was going on in between the parties regarding the field. But he asserted that he was in cultivatory possession. There were cross cases pending between the parties. A partition suit was also instituted in the Court of sub-Divisional Magistrate, Merta.

16. P.W. 10 Sardul Khan is the carrier of articles to S. P. Office.

17. P.W. 11 is the Doctor who examined the injureds and the deceased. The injuries found on the person of Jawana Ram are as follows:

1. Abrasion 1/4' x 1/4' with swelling 2' x 2' on the postero-lateral part of the left elbow joint.
2. Lacerated wound 1/2' x 1/6' x 1/8' with swelling 3' x 2' on the back of left shoulder 2 1/2' from left acromio clavicular joint on back.
3. Bruise 7' x 1 1/22' transverse on the back in the middle at the level of 1st and 2nd thorasic spine.
4. Bruise 14' 11/2' with swelling 16' x 3' oblique extending from left lumber region upward to right scapular region on back.
5. Bruise 6' x 1 1/2' on the left side of back extending from left in frascapular region downward and outward to posterior axillary line at the level of 8th intra-costal space.
6. Bruise 4' x 1/2' oblique on left side of back at the level of 7th and 8th ribs.
7. Bruise 6' x 1' horizontal on left shoulder downwards to 7th rib.
8. Bruise 5' x 1' transverse on the left side back on the 11th and 12th ribs.
9. Bruise 7' x 1' oblique extending from 10th rib of the posterior axillary line downwards to upper border of right iliac crest back.
10. Abrasion 1/2' x 1/2' on the lateral side of middle of right upper arm.

11. Eye-left Bruise with swelling of both upper and lower lids of left eye.

Abrasion $1/4'$ x $1/6'$ on the middle of lower lid with swelling $2'$ x $2'$ on the maxillary region.

Sub-conjunctival haemorrhage present.

Old corneal opacity present in middle.

No injury to lens and Iris.

18. On the person of Sugnai the following injuries were found by the doctor :

1. Bruise $3/4'$ x $1/2'$ transverse on the centre of back of chest at the level of 4th thoracic spine.

2. Bruise $1'$ x $1/2'$ on the right side of chest at 8th rib in mid axillary line with swelling of $2'$ x $1'$.

3. Bruise $1'$ x $1'$ on the outside of middle of right upper arm with swelling of $2'$ x $1 1/2'$.

4. Bruise of $3'$ x $1 1/2'$ on the Antero-lateral aspect of middle of left thigh.

5. Swelling of $1'$ x $1'$ on the left side of intra-scapular region on back.

6. Bruise $1 1/2'$ x $3/4'$ transverse on the right lower lid with swelling of $2'$ x $2'$ on the right side.

19. On post mortem the external injuries found on the person of Dhanna Ram were :

1. Lacerated wound $2'$ x $1/4'$ x $1/4'$ on the middle of right parietal region.

2. Lacerated wound $1 1/2'$ x $1/2'$ x $1/3'$ with swelling of $3'$ x $1'$ on the left side of skull on temporo-parietal region $2'$ above the upper border of left ear.

3. Lacerated wound $1 1/2'$ x $1/3'$ x $1 1/2'$ with projected fractured piece of left tibia bone in front of left leg. $1 1/2'$ below the tibial tuberosity, (compound comminuted

fracture), with swelling around wound of 4' x 3'.

4. Lacerated wound 1' x 1/2' x 1/4' on the front of lower one third of left leg.

5. Lacerated wound 1 1/2' x 1/2' x 2' deep on the upper 1/3 of front of right leg with compound comminuted fracture of tibia 1' from the tibial tuberosity.

6. Abrasion 1' x 1' with swelling 2' x 1' on the outer side of middle of right upper arm with closed simple fracture of right humerus bone in middle.

7. Abrasion with swelling 1' x 1/2' with swelling of 2' x 1' on the front of middle of left fore-arm.

8. Abrasion of 2' x 1/2' on the left side of lower part of chest in mid clavicular line at the level of 9th rib.

9. Bruise 1' x 1/2' on the front of middle of right fore-arm with swelling of 2' x 1'.

Five fractures were found on the person of Dhanna Ram which read as under :--

' 1. Fissured fracture of left temporo-parietal region of skull.

2. Fracture of base of skull in left anterior cranial fossa.

3. Compound comminuted fracture of left tibia and fibula bones.

4. Compound comminuted fracture of right tibia bone.

5. Simple closed fracture of right humerus.

20. The Doctor opined that the injury No. 2 was individually sufficient in the ordinary course of nature to cause death. Cumulatively all the injuries were sufficient in the ordinary course of nature to cause the death.

21. P.W. 12 is a police official who states that he had presented the charge-sheet against the accused persons under Sections 147, 148, 149, 302, 452 and 323, I.P.C.

22. P.W. Bis the Investigating Officer.

23. P.W. 14 is the Patwari who has said that Khasra No. 260 was the place where he conducted the girdawari operations. He had shown Jawana Ram's crop in Khasra No. 260 and he had given receipts of Bigodi which are Ex.P. 39 to P.44. In his cross-examination he has said that after Sam vat Year 2033 the name of Kashtkar has been stopped from being entered in the Girdawari by the orders of the State Government. In Samvat Year 2032 Bhagirath and Jawana have been entered to have jointly cultivated this Khasra. In SamVat Year 2033 it is Jawana. This is also entered in the Girdawari that there is a dispute regarding the land. The learned Sessions Judge has not found proved that the complainants alone were in possession of the Khasra No. 260. He has also not found proved that the complainants have succeeded in proving that they were the owners of the heap of wood which was sought to be operated by the accused persons. But the learned Sessions Judge has categorically found that the injured eye-witnesses are believable qua their injuries. He has further found that the accused had right of private defence of property but they have exceeded it, therefore, they have been convicted under Section 323, I.P.C. and Section 34 or 149, I.P.C. was not invoked in the facts and circumstances of the case.

24. Learned counsel for the accused-appellants urged that when it was not established that it was the complainants who were the owners of the heap of wood then the accused appellants had an absolute right and they could defend their property and the encroachers were liable to be done away and the learned Sessions Judge was right in holding that the accused appellants had the right of private defence of property and, therefore, their conviction under Section 323, I.P.C. is also bad.

25. Learned Public Prosecutor arguing the State appeal has contended that the learned Sessions Judge is palpably wrong in assuming that there was any right of private defence of property available to the accused.

26. The statement of the accused Ram Karan recorded under Section 313, Cr. P.C. is to the effect that he had collected the wood in his field and from that heap of wood accused persons were separating the leaves. Dhanna armed with a Kassi and Jawana armed with lathi came there and they started beating his father

Bhagirath. In defence he wielded Jeli. Sugnai intervened. The stand of the accused Ram Karan is that the accused Sangram, Kana and Dev Karan were not present on the scene of occurrence. Further case of the this accused is that four or five months before the incident the complainant Jawana and ors. had tried to forcibly occupy the field regarding which cases were instituted. Copies of proceedings of such cases have been produced as Ex.D.10 and Ex.D. 11.

27. Accused Bhagirath has also taken the same stand that in the field possessed by him while he was separating the leaves from the heap of wood at that time Dhanna and Jawana assaulted him and his son intervened. He was also given beating. He wielded Jeli in defence. Sugnai also intervened.

28. 3 accused persons Dev Karan, Kana and Sangram pleaded alibi.

29. From the statement of the Doctor P. W. 11 the injuries of accused Bhagirath can be seen. They are as under :

1. Lacerated wound 2' x 1/6' x 1/4' with swelling of 3' x 1' on the left side of parietal region in middle 4 1/2' from the left ear.
2. Abrasion 1/2' x 1/2' on the left medial malleolus on left leg.
3. Bruise 2' x 3/4' on the lower 1/4 of front of right fore-arm transverse.
4. Swelling of 3' x 2' with tenderness on the back in middle at the level of L2 and L3 lumbar spines.

These all injuries are simple. They are by blunt weapon. Ram Karan was also examined by the doctor and injuries found on the person of Ram Karan are as under :--

1. Scratch 2' x 1/10' with swelling 2' x 1' oblique on the right zygomatico-temporal region 1/2 from the outer angle of right thigh.
2. Scratch 3' x 1/10' on the right side of abdomen 3' from the anterior superior iliac spine posteriorly.

3. Abrasion 3/4' x 1/8' on the front of left knee oblique.

4. Abrasion 1' x 1/10' oblique on right side of chest 4' from sterno-clavicular joint in anterior axillary line.

30. According to the Doctor the injuries of both the accused persons could be caused by lathi and blunt side of a Kassi. These injuries if looked into would only show that none of them could be caused by the right side of a Kassi. They are simple scratches, abrasions or lacerated wound and they do not establish the defence set up by the accused. At any rate, these injuries could be caused when Jawana Ram and these accused persons initially came in conflict but as soon as Jawana Ram was humbled by the accused persons then the question of right of private defence ceased to exist. The way the deceased Dhanna had been given beating whereby both legs have been fractured and his head is full of fractures and almost all the head bones have been broken. This cannot be termed to be a case of right of private defence as in turn of those simple injuries to Bhagirath and Ram Karan they had already caused injuries to Jawana. Dhanna Ram was only an intervener and an intervener who has been deposed to be unarmed by the eye-witnesses has been mercilessly dealt with by the accused persons and the eye-witnesses have been held to be believable by the trial Court then these circumstances clearly indicate that this was not a case of right of private defence but is a case of intentional assault on the deceased Dhanna Ram. Firstly it cannot be said that there was any right of private defence of property available to the accused appellant as Jawana Ram has already reported against them vide Ex.P. 12. There was a dispute regarding the cultivatory rights of 6 1/2 bighas of land of Khasra No. 260 but such dispute could not be resolved by the accused persons by taking the law in their own hands. The accused persons have taken the law in their own hands and earlier caused injuries to Jawana Ram and when Dhanna intervened he was also mercilessly beaten by the accused persons and such merciless beating cannot be saved under any one of the exceptions of Section 300, I.P.C. Therefore, the offence under Section 302, I.P.C. is clearly made out against the accused persons.

31. Learned trial Court after discussing the evidence has found that the complainants have not been able to establish that they were in possession of Khasra No. 260. In this regard, the learned trial Court has discussed the oral evidence of Patwari Bhanwar Lal P.W. 14 and certain documents. He has also not relied upon the prosecution witnesses P.W. 9 Jawana, P.W. 1 Sugnai and P.W. 2 Bajrang Singh. However, the learned trial Court held that the reason for fight was not the possession of the land Khasra No. 260. The dispute arose in relation to the heap of wood. In this regard the learned Sessions Judge considered the evidence of Sugnai, Jawana Ram and Bajrang Singh and held that from their evidence it is not established that the heap of wood was collected by the complainants.

32. As regards the injuries on the person of the accused the finding of the learned Sessions Judge is that for that the accused had got no right of private defence of person because the injuries sustained by the accused are very minor and are not serious and they could come in a quarrel which had occurred by any means and, therefore, the right of private defence of person was not available. However, the learned Sessions Judge was of the opinion that since the complainants have not been able to prove that the heap of wood was collected by them, therefore, the accused got a right of private defence of property.

33. As regards the injuries of the deceased and the injured witnesses, the learned Sessions Judge has observed that the accused are responsible for those injuries but injury No. 2 which according to the doctor was the injury which could individually be sufficient in the ordinary course of nature to cause death of Dhanna Ram was caused by which accused is not clear. The learned Sessions Judge felt that since the accused had the right of private defence of property and the author of the injury No. 2 is not ascertainable in that back ground Section 34 or Section 149, I.P.C. cannot be pressed into service and the accused can only at best be liable for their individual act and held the accused guilty under Section 323, I.P.C.

34. We have heard the learned Counsel for the accused and the learned Public Prosecutor for the State.

35. The first and foremost thing which is clear from the evidence and findings of the learned Sessions Judge is that Dhanna died due to the injuries sustained by

him in the incident. Now what is to be seen is that whether the finding of right of private defence of property is available to the accused and subsequent conclusions of the learned Sessions Judge that the accused are guilty of offence punishable under Section 323, I.P.C. are sustainable or not.

36. The learned Sessions Judge while discussing the question of possession of Khasra has discussed the evidence of Sugnai, Jawana and Bajrang Singh. He has also discussed the evidence of Patwari Bhanwar Lal and has also relied upon certain documents. The learned Sessions Judge has not cared to look into the evidence of the Investigating Officer. The Investigating Officer P.W. 13 Inder Singh in his examination in chief has stated that he inspected the scene of occurrence and drew Ex.P.9 site inspection memo and has said in no uncertain terms that the occurrence had taken place in that portion of Khasra No. 260 which falls in the share of the complainants. If the statement of the Investigating Officer is looked into then it would be clear that the defence has not been able to demolish his statement and if the statements of P.W. 9 Jawana Ram, P.W. 2 Bajrang Singh are seen then it is clear that they have definitely stated in their statements that the place where the heap of wood was situated was the place where the complainants were in possession.

37. The statements of the witnesses are to the effect that the heap of wood was in the portion of the complainants. Ex.P.9 proved by the Investigating Officer clearly mentions that spot where the occurrence took place was the place in possession of complainants. The reasons given by the learned trial Court for not finding it established that the heap of wood was in the land in possession of the complainant, are not sustainable. The learned Sessions Judge has said that Sugnai had named 3 persons having seen Jawana Ram collecting the wood and these three persons have not supported the case. One Prithvi Singh had turned hostile and another witness Sunda Ram has not been produced and P.W. 2 Bajrang Singh has not stated anything in this regard. But that was not all. Sugnai stands supported by the Investigating Office and so is Jawana Ram. Jawana Ram's evidence has been discarded by the learned Sessions Judge on a simple count that he has not been able to state as to how many days, before he collected the wood. This was too feeble a ground to disbelieve an injured eye-witness who

was otherwise believed by the learned Sessions Judge.

38. Another reason pressed into service by the learned Sessions Judge to discard the evidence of the prosecution in relation to the factum of possession is the testimony of D.W. 1 Bhanwer Lal. In fact, D.W. 1 Bhanwer Lal has stated nothing either to support the defence or to demolish the prosecution because he only says that Ram Karan and Dev Karan were cutting the wood in Khasra No. 260, but he has not stated a word whether the collected wood was the same wood or not. Therefore, in his testimony there was not a word about the ownership of the wood. Therefore, his evidence too cannot be pressed into service.

39. The findings of the learned Sessions Judge are without considering the evidence of the Investigating Officer, as also on misreading of the evidence of D.W. 1 Bhanwer Lal and, therefore, the findings of the learned Sessions Judge regarding ownership of the heap of wood are not sustainable.

40. Once the finding of the learned Sessions Judge regarding the ownership of the heap of wood is held not maintainable then the finding of the learned Sessions Judge that the accused had a right of private defence of property, cannot be held established and, therefore, the advantage which the accused had been given has to be subtracted. If the case of right of private defence of property is subtracted from consideration then the finding of the learned Sessions Judge that the accused persons were liable for causing simple injuries to the deceased cannot be sustained. The injured witnesses have proved the prosecution case. They have been held to be believable witnesses qua their injuries. In this background it can be said that it was the accused persons alone who were responsible for causing the injuries which had resulted in the death of Dhanna Ram.

41. With the finding that the accused had no right of private defence of property, if the finding of the learned trial Court is clubbed that the accused were responsible for causing the injuries to the deceased and the injured, it has to be seen as to what offences are made out against the accused persons. The witnesses have clearly deposed that the two accused persons Dev Karan and Bhagirath were the persons responsible for causing the injuries on the head of the deceased. The injuries were caused by these accused persons on the head of the deceased.

These two accused were the persons charged under Section 302, I.P.C. simpliciter. The other accused persons were charged under Section 302 read with Section 149, I.P.C. The Doctor has opined that injury No. 2 individually and all the other injuries cumulatively were sufficient in the ordinary course of nature to cause death of the deceased. In this view of the matter, Ram Karan and Bhagirath can be held guilty under Section 302, I.P.C. and Kana, Sangrain and Ram Karan who had shared the common object along with Bhagirath to kill deceased Dhanna, can, therefore, be held guilty under Section 302 read with Section 149, I.P.C. as they were charged by the learned trial Court. These accused persons have been found to have caused injuries to Sugnai and Jawana Ram also. The injuries sustained by the injured persons are simple in nature. Therefore, the accused persons are held guilty under Section 323, I.P.C. According to the allegation of Sugnai she was assaulted when she was in Dhani. Therefore, the accused persons are also guilty of offence of trespass and guilty under Section 452, I.P.C. But we cannot convict all of them under Section 452, I.P.C. because it is only Kana and Sangram against whom charge under Section 452, I.P.C. was levelled and against none of the other accused persons. The heap of wood has been held to be belonging to the complainant and situated on that land which belonged to the complainant. Therefore, the accused persons are also guilty under Section 447, I.P.C. so also under Section 147, I.P.C. because they have indulged into rioting.

42. In the result, the appeal of the State succeeds and the accused persons are convicted and sentenced as follows:--

1. Dev Karan ;

He is convicted for offence under Section 302, I.P.C. and sentence to life imprisonment with a fine of Rs. 500/- and in default to undergo rigorous imprisonment for one year.

2. Kana

3. Sangram

4. Ram Karan

They are convicted under Section 302/149, I.P.C. and sentenced to life imprisonment with a fine of Rs. 500/- and in default to undergo rigorous imprisonment for one year.

43. Conviction of Kana and Sangram under Section 452, I.P.C. is maintained. Sentence of Sangram for two years rigorous imprisonment is maintained but so far as Kana is concerned, we have sentenced him for life imprisonment under Section 302/149, I.P.C. no separate sentence is required to be passed under Sections 452 and 323, I.P.C.

44. All the accused persons are convicted under Section 447, I.P.C. and sentenced to six months rigorous imprisonment.

45. They are also convicted for offence under Section 147, I.P.C. and sentenced to six months rigorous imprisonment each.

46. Their conviction and sentence under Section 323, I.P.C. are maintained.

47. All the sentences shall run concurrently.

48. The accused persons are directed to surrender before the learned trial Judge who shall take them in custody and send them to Jail to undergo the sentence passed as above.

49. Consequently, the D.B. Criminal Appeal No. 454/79 filed by the accused appellants challenging their conviction under Section 323, I.P.C. is dismissed as the accused persons have been convicted as aforesaid.