

Mangu and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-07-1998

Reported in : 1999CriLJ1541

Judge : Amaresh Ku. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 307, 323, 325, 436, 452, 458 and 460; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Crl. Appeal No. 274 of 1980

Appellant : Mangu and ors.

Respondent : State of Rajasthan

Advocate for Def. : Chendra Lekha, Public Prosecutor

Advocate for Pet/Ap. : T.S. Champawat, Adv.

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the appellants and the learned Public Prosecutor.
2. This appeal is directed against the judgment dated 23rd June, 1980 passed by the Additional District Judge, Bhilwara in session case No. 28/78 (66 of 1978)

State v. Roopa. By the aforesaid judgment, appellants Mangu, Banshi, Nanu, Roopa, Dhoola, Bheru, Mohan, Nanu s/o Moda, Nanu s/o Rama and Gheesa alias Gheesalal were convicted Under Sections 147, 323, 325/149, 436/149, IPC. Appellant Mangu, Banshi, Nanu, Roopa, Dhoola were also convicted Under Section 452, IPC and accused Bheru, Mohan, Nanu Ahir, Nanu Raigar and Gheesa were also convicted Under Section 452/149, IPC. The sentences imposed on the appellants for various offences were as given below :-

(1) For the offence Under Section 147, IPC :-

Rigorous imprisonment for year and a fine of Rs. 100/- and further rigorous imprisonment for one month for default in payment of fine.

(2) For the offence Under Section 323 :-

Rigorous imprisonment for one year and a fine of Rs. 100/- and further rigorous imprisonment for one month for default in payment of fine.

(3) For offence Under Section 452, 452 read with 149, IPC :-

Rigorous imprisonment for two years and a fine of Rs. 100/- and further rigorous imprisonment for one month for default in payment of fine.

(4) For offence Under Section 325/149, IPC :-

Rigorous imprisonment for three years and a fine of Rs. 100/- and further rigorous imprisonment for one month for default in payment of fine.

(5) For offence Under Section 436/149, IPC :-

Rigorous imprisonment for seven years and a fine of Rs. 200/- and further rigorous imprisonment for two months for default in payment of fine.

3. Appellants Mangu alias Mangilal, Nanu s/o Durga and Gheesa alias Gheesa Lal s/o Ram Lal died during the pendency of the appeal.

4. The facts of the case so far as they are relevant for the purpose of disposal of this appeal may be summarised as below :-

5. On 21st August, 1978 at about 4 a.m. Bhawaria Kalbelia made an oral first information report about the incident, which had occurred at 11 p.m. of the night intervening 20th and 21st August, 1978. According to allegations made by Bhanwaria Kalbelia in the FIR (Ex. P/48), on 20th August, 1978 during day time, Rupa, Dhula, Mohan and Mangu Naik told Rupa Kalbelia that he had damaged their crop by means of his donkeys. Thereafter, altercation took place between above named persons and Rupa Kalbelia. On the night intervening 20 and 21st August, 1978 when the complainant and other residents of his Dhani were sleeping in side their houses, at about 11 p.m. the sound of drums was heard. The complainant and other residents of the Dhani however remained inside their houses. After sometime 60 to 70 persons belonging to village Takhatpura reached the Dhani of the complainant, they surrounded the Dhani and started breaking the doors of the houses and after effecting their entry in the houses they started causing injuries to men, women and children who were in the houses. As a result, the residents of the Dhani raised hue and cry. The complainant and one Madhu tried to save themselves by hiding themselves behind the fencing of the field of Heera Naik and while they were hiding themselves behind the fencing, they saw that the offenders set fire to the residential houses/huts belonging to the complainant and other residents of the Dhani. In the FIR, it was further stated that in the] light of flames, the complainant recognised Mangia, Banshia, Nania, Roopa, Modu, Ratna, Bheru Dhula, Mohan all Naiks by caste, Dhanna,; Anju, Bhawana, Udailal, all Ahirs by caste, Deva Chatra by caste Gadaria, Nanda Khati, Sukha, Nanu by caste Raigar, Lalu Ram Kumhar, Sri Kishan Balai, and Gheesa Brahmin. It was also stated that other assailants could be recognised if they appeared before the complainant. It was also mentioned in the FIR Ex. P/48 that after causing injuries to the residents of Dhani and setting fire to their houses, the offenders retired from the scene of occurrence.

6. After the incident when the complainant came out of the hiding, he saw that Rupa, Pratap, Rama, Kaniram, Gendi, Bhagirath, Jamni, Dali, Barji, Hagami, Indura, Suhagi, Hapuri and Nathu had injuries on their forehead, hand, legs, stomach and shoulders and the condition of Rama, Rupa, Pratap was so serious that they appeared to be near their end. It was alleged in the FIR that the offenders, made an attack after arming themselves with lathis and axes with a

view to kill the residents of the Dhani and that they had destroyed the goods belonging to the residents of Dhani by setting fire to the houses.

7. On the basis of the FIR (Ex. P/48), lodged by Bhawaria Kalbelia, the police registered a case Under Sections 147, 148, 149, 307, 436, 452, 458 and 460, IPC and commenced investigation. During investigation, site of incident was inspected and necessary documents were prepared. Some of the offenders were arrested and some recoveries were also made in pursuance of the information given by the some accused persons. The injuries of the victims were got medically examined. The statements Under Section 161, Cr. P.C. were recorded and after investigation, the police submitted a charge sheet in the Court of Additional Munsif and Judicial Magistrate, Bhilwara. The case was committed to the Court of Additional Sessions Judge, Bhilwara by the Munsif and Judicial Magistrate vide order dated 26th October, 1978.

8. Charges Under Sections 147, 436, 452, 307, 325, 323, 325/149 and 307/149 were framed against 54 accused persons, who pleaded not guilty to the charges. Accused Jai Ram expired before the charges were framed, and therefore, the proceedings against him were dropped by the learned Additional Sessions Judge.

9. During trial, the prosecution examined Roopnath P.W.I, Rama P.W. 2, Gedi P.W. 3, Suhagi P.W. 4, Nathi P.W. 5, Kani Ram P.W. 6, Dr. Yashpal Singh P.W. 7, Dr. G. S. Chaplot P.W. 8, Dr. C. L. Sharda P.W. 9, Madhu P.W. 10, Barji P.W.I 1, Mangu P.W. 12, Pratap P.W. 13, Dali P.W. 14, Mahendra Singh P.W. 15, Bhanwaria P.W. 16, Jamni P.W. 17, Kalu P.W. 18, Hagami P.W. 19, and Bhopal Singh P.W. 20 in support of the prosecution case.

10. As many as 70 documents were produced by the prosecution in evidence. 14 documents were exhibited during the examination of the prosecution witnesses. They are in the nature of the statements recorded by the police Under Section 161, Cr. P.C.

11. Accused persons were examined Under Section 313, Cr. P.C. They denied the circumstances appearing against them and pleaded not guilty.

12. The learned Additional Sessions Judge formulated as many as 9 questions as given below :-

(1) whether Rama, Rupa, Pratap, Kaniram, Suhagi, Nathi, Jamni, Sohna, Gendi, Hindu, Dali, Barji and Hagami received injuries on the night intervening 20th and 21st August, 1978.

(2) whether the houses of Rupa, Pratap, Rama, Kani Ram, Suhagi, Nathu, Jamni, Sohna, Gendi, Hindu, Dali, Barji and Hagami were set to fire on the night intervening 20th and 21st August, 1978.

(3) whether the accused persons, committed the criminal trespass in the residential houses of Kalbelias after having made preparation to cause hurt to them.

(4) whether the accused persons inflicted simple and grievous injuries to Rupa, Rama, Pratap, Kani Ram, Suhagi, Nathu, Jamni, Sohna, Gendi, Hindu, Dali, Barji and Hagami by giving them beating.

(5) whether the accused persons caused harm to Kalbelias by setting fire their huts.

(6) whether the accused persons were members constituting an unlawful assembly on the night intervening 20th and 21st August, 1978.

(7) whether the accused persons inflicted injuries to Rama and other persons with the intention or knowledge that their death was likely to be caused by the injuries inflicted to them.

(8) what offence or offences have been committed by the accused persons.

(9) the punishment to be inflicted on the accused persons.

13. After considering the evidence produced by the prosecution, the statement of the accused and the arguments of the parties, the learned Additional Sessions Judge held that it was proved by the prosecution that on the night intervening 20th and 21st August, 78, Rupa, Pratap, Kani Ram, Rama, Dali, Barji, Hagami, Suhagi,

Nathu, Jamni, Gendi, Hindu, Sohna had received several injuries on the bodies and that Pratap, Rama, Kani Ram, Jamni, Gendi, Dali, Sohna and Hindu had also received one grievous injuries on their bodies. Regarding the injuries to Kalu, the learned Additional Sessions Judge held that even though, the Medico Legal Report of the injuries of Kalu was not produced by the prosecution, there was other evidence to prove that he had received injuries on his body. Question No. 1 was thus decided for the prosecution.

14. Regarding question No. 2 the learned Additional Sessions Judge held that there was sufficient evidence to prove that on the night intervening 20th and 21st August, 1978, the houses of the Kalbelias were set to fire. The question No. 2 was also decided for the prosecution.

15. Questions No. 3,4,5 and 6 were decided by the learned Additional Sessions Judge together. After considering the evidence produced by the prosecution and taking into consideration the statement of the accused and arguments of the parties, the learned Additional Sessions Judge held that: (i) that it was proved by prosecution that Mangu Naik, Rupa Naik, Dhula Naik, Banshi Naik, Nanu Naik, Bheru Naik, Mohan Naik, Nanu Ahir, Nanu Raigar and Gheesa and some other unknown persons had constituted an unlawful assembly and in prosecution of the common object to cause injuries to Kalbelias and to set fire their houses, they went to the houses of the Kalbelias. (ii) that it was proved by the prosecution that accused Mangu Naik, Banshi Naik, Nanu Naik, Roopa Naik and Dhula Naik committed criminal house tress pass by entering into the houses of Kalbelias, after having made preparation to cause hurt, (iii) that it was proved by the prosecution that the accused Mangu Naik, Roopa Naik, Dhula Naik, Banshi Naik, Nanu Naik, Bheru Naik, Mohan Naik, Nanu Ahir, Nani Raigar Gheesa and some unknown persons inflicted simple and grievous injuries to the Kalbelias. (iv) accused Gheesa had set fire to the huts of Kalbelias.

16. Question No. 7 was decided against the prosecution.

17. The decision on question No. 8 was to the effect that the prosecution had proved that ten accused persons had taken part in the alleged incident. They had committed the offences Under Sections 147, 323, 325/149, 452/452 read with

Section 149 and 436/436 read with 149 of the Indian Penal Code. As a result of his findings on questions No. 1 to 9, only 10 accused persons out of 54 persons who were tried on the charges mentioned above, were found guilty of various offences. 44 accused persons namely, Amra, Udai Lal, Udai s/o Khema, Udai s/o Deva, Kanhaiya Lal Gopi, Chatra, Chagna, Choga Devi, Deva s/o Choga, Deva s/o Ratta, Deva s/o Laxman, Dhanna Ahir, Dhanna Gadari, Nand Ram Ahir, Nanda Naik, Nathu Ahir, Anru Ahir, Varda Gadoria, Balu Kumhar, Vaina Sutha, Bhawani Shanker Suthar, Bhagwana s/o Hari Ahir, Bhawana s/o Dala, Bheru Ahir, Bheru Raigar, Mona s/o Lali Ahir, Magna Raigar, Maharam Raigar, Mangu Ahir, Mangu s/o Deva Ahir, Mangilal s/o Onkar Ahir, Megha Naik, Ratanlal Naik, Ratta Raigar, Rata Ahir, Lal Kumhar, Lalu Ahir, Sukha Raigar, Seva Naik, Seva Raigar, Hajari Ahir, and Hari Kishan Balai were acquitted of all the charges framed against them.

18. Accused Mangu Naik, Rupa Naik, Dhula Naik, Banshi Naik, Nanu Naik, Bheru Naik, Mohan Naik, Nanu Ahir, Nanu Raigar and Gheesa were convicted and sentenced for various offences as mentioned earlier in this judgment.

19. The learned counsel for the appellants has submitted that alleged incident occurred at about 11 p.m. When the complainant and other residents of the Dhani of Kalbelias were sleeping inside their houses. It was, therefore, not possible for the complainant and other witnesses to have identified the assailants who took part in the incident and therefore, the evidence of the prosecution witnesses is open to grave doubts. Regarding the offence Under Section 436, IPC, the learned counsel for the appellants has submitted that only one accused Gheesa is alleged to have set fire to the huts by pouring kerosene and igniting the same and the evidence produced by the prosecution in this behalf is not trustworthy. It is also submitted by him that the story that Gheesa was carrying kerosene in a tin was concocted at a latter stage as there is no mention of it in the FIR (Ex. P/48) and the statements recorded by the police Under Section 161, Cr. P.C. Regarding the offence Under Section 147 and the liability of the accused persons Under Section 149, IPC, the learned counsel for the appellants has submitted that when as many as 44 persons have been acquitted of the charges leveled against them and the prosecution witnesses have been found to have made improvement in their

statements, and therefore, it cannot be said that the prosecution has proved beyond reasonable doubt that the accused appellants had constituted an unlawful assembly with the object of causing hurt to the Kalbelias and setting fire to their houses. It is also submitted by the learned counsel for the appellants that the motive behind the alleged incident is far from being sufficient, because a simple altercation between the two parties regarding the damages caused by the donkeys belonging to Kalbelias, cannot be said to be of such a nature as to have moved the accused appellants to commit the offences by constituting an unlawful assembly with the common object of causing hurt indiscriminately to all the Kalbelias and to endanger their lives and properties by setting fire to their houses.

20. On the other hand, the learned Public Prosecutor has supported the judgment delivered by the learned Additional Sessions Judge and prayed for the dismissal of the appeal.

21. I have carefully considered the arguments of the parties and the evidence produced by the prosecution and the statements of the accused recorded Under Section 313, Cr. P.C. Out of 20 prosecution witnesses, Roopnath P. W. 1, Rama P. W. 2, Gendi P.W. 3, Suhagi P.W. 4, Nathi P.W. 5, Kani Ram P.W. 6, Madhu P.W. 10, Barji P.W. 11, Mangu P.W. 12, Pratap P.W. 13, Smt. Dali P.W. 14, Bhanwaria P.W. 16, Jamni P.W. 17, Kalu P.W. 18 and Hagami P.W. 19 are the residents of Takhatpura in which the incident took place in the Dhani of Kalbelias. All of them are eye witnesses of the occurrence. Except Mangu P.W. 12, all other eye witnesses have deposed as to what they saw and heard after they woke up when the alleged offence was being committed by the assailants. Dr. Yashpal Singh P.W. 7, Dr. G. S. Chaplot P.W. 8 and Dr. C. L. Sharma P. 8 have been produced by the prosecution to prove the injuries of the victims. Mahendra Singh P.W. 15 is the Station House Officer of the Police Station, Hamirgarh, who after recording the FIR (Ex. P/ 48) at the instance of Bhanwaria P.W. 16, proceeded to the spot and conducted the investigation. Bhopal Singh P.W. 20 was posted as Dy. S. P. He visited the site of inspection and in his presence, the site plan and the investigation note Ex. P/61 were prepared.

22. The learned Additional Sessions Judge has carefully considered the evidence produced by the prosecution. So far as the evidence of Dr. Yashpal Singh P.W. 7, Dr. G. S. Chaplot P.W. 8 and Dr. C. L. Sharma P.W. 9 is concerned, the learned counsel for the appellants has not been able to point out any reason for doubting or discarding the evidence of these witnesses. I am, therefore, of the opinion that the learned Additional Sessions Judge was justified in placing reliance on the statements of Dr. Yashpal Singh P.W. 7, Dr. G. S. Chaplot P.W. 8 and Dr. C. L. Sharma P.W. 9, who have proved the injuries of the victims.

23. Dr. Yashpal Singh P.W. 7 had conducted the medical examination of Smt. - Suhagi w/o Rupa Kalbelia and Smt. Nathi on request of the police. He found three simple injuries on the body of Smt. Suhagi and prepared the M.L.R. Ex. P/1. On examination of Smt. Nathi, he found four injuries and out of which injury No. 4 was burn injury in the nature of verticle on proximal phalynx of index, middle and little finger. He prepared the M.L.R. (Ex. P/2).

24. Dr. G. S. Chaplot P.W. 8 conducted the medico legal examination of Indu, Mst. Dali, Sohan, Kani Ram, Mst. Jamni, Mst. Gandhi, Roopa, Pratap and Rama. At the time of examination, other members of the medical Board namely, Dr. Chaturvedi and Dr. R. R. Singh were also present. As many as 15 injuries were found on the body of Pratap. Out of these injuries, injury Nos. 3,11,14 and 15 were of grievous nature. The nature of injury No. 13 could not be ascertained. Other injuries were simple. The duration of injuries were about 10 days. The Skigrams were also prepared. The M.L.R. (Ex. P/7) contains the injuries of Pratap. Rama was found having 14 injuries which are mentioned in M.L.R. (Ex. P/ 4). Out of these 14 injuries, injury No. 14 was grievous one. Roopa was found having as many as 9 injuries, which are mentioned in M.L.R. (Ex. P/5). Out of these 9 injuries, injury No. 9 was grievous. Kani Ram was found having 7 injuries, put of which injury No. 7 was grievous and all these injuries are mentioned in M.L.R. (Ex. PAS). Jamni was having 5 injuries, out of which injury No. 5 was grievous one. These injuries are mentioned in M.L.R. (Ex. P/7). Gandhi was found having 3 injuries, which are mentioned in M.L.R. (Ex.P/8). Out of these injuries, injury No. 3 was grievous. Dali was found having 2 injuries, out of which injury No. 2 was grievous. These injuries are mentioned in M.L.R. (Ex. P/9). Sohan was found having 2 injuries, out of which

injury No. 2 was grievous. These injuries are mentioned in M.L.R. (Ex. P/10). Indu had a fracture on the right upper extremity. This injury was grievous and these injuries are mentioned in M.L.R. (Ex. P/11). According to Dr. G. S. Chaplot, the M.L.R. was signed by him as well as two other doctors, who constituted the Board.

25. Dr. C. L. Sharda conducted the medical examination of some victims. On examining the injuries of Pratap s/o Dheera, he found 16 injuries on his body, which were of 24 hours duration. These injuries are mentioned in M.L.R. (Ex. P/ 12). The injuries of Barji was also examined by this witness. He found 3 injuries on his body and prepared the M.L.R. Ex. P/19. Ex. P/13 is the finding on the X-ray report and Ex. P/14 to Ex. P/18 are X-ray plates. On examination of the injuries of Rama, this witness found as many as 12 injuries on his body, which are mentioned in M.L.R. (Ex. P/20). Some injuries of this victim were X-rayed and Ex. P/21 and 22 were prepared and the X-ray report shows that one of the injuries of this victim was grievous. Roopa was also examined by this witness. He was found to be possessing as many as 12 injuries, which are mentioned in M.L.R. (Ex. P/24). The examination of Kani Ram revealed that he had as many as 17 injuries on his body, which are mentioned in M.L.R. (Ex. P/27). Some of the injuries of this victim were X-rayed and Ex. P. 28 to P. 30 were prepared and on the basis of the X-ray, report (Ex. P/30) was prepared which revealed that injury No. 11 was grievous. As many as 13 injuries, which are mentioned in M.L.R. (Ex. P/ 32) were found on the body of Jamni. Some injuries of this victim were X-rayed and Ex. P/33 was prepared and the report X-ray examination is Ex. P/34, which shows that the injury No. 1 was a grievous one. The medico legal examination of Gendi shows that she had 6 injuries, which are mentioned in M.L.R. (Ex. P/35) and on X-ray examination, report Ex. P/36-A was prepared and on the basis of X-ray examination, injury No. 1 was found to be grievous. On examination of Pali, 3 injuries were found on her person, which are mentioned in M.L.R. (Ex. P/37). X-ray Examination of the injury was conducted and X-ray plates Ex. P/38 was prepared and on the basis of examination of Ex. P/38, report (Ex/ P/39) was given, which shows that injury No. 2 was grievous. Sohan was found having one simple injury on his body, which was X-rayed and X-ray report (Ex. P/40) was prepared, which shows that injury No. 1 was grievous one. These injuries are mentioned in M.L.R. (Ex. P/42). Indu s/o Roopa was also found having one injury and on X-ray examination it was found to

be grievous in nature. This injury is mentioned in M.L.R. (Ex. P/43) and the X-ray report is (Ex/ P/45). Hagami was found having as many as 6 injuries, which are mentioned in Report Ex. P/46) and they were simple in nature.

26. The statements of these prosecutions witnesses namely, Dr. Yashpal Singh P. W. 7, Dr. G. S. Chaplot P.W. 8 and Dr. C. L. Sharda P.W. 9 could not be shaken in the cross-examination and their statements clearly show that the persons, who were medically examined by them, had several injuries on their bodies, some of which were grievous and others were simple. The learned Additional Sessions Judge has therefore, rightly placed reliance on the testimony of these three doctors and decided the question No. 1 correctly. The learned counsel for the appellants has not been able to point out any reason for disbelieving the evidence of these witnesses regarding the injuries found on the bodies of persons who were medically examined.

27. So far as the identification of the assailants is concerned, the learned Additional Sessions Judge has considered the case of each accused separately with reference to the evidence produced against him. Out of 54 accused persons who were tried, 44 accused persons have been acquitted. Only 10 persons were convicted and sentenced.

28. Out of those 10 persons, 3 who were convicted and sentenced accused persons, namely Manu Naik, Nanu Naik and Gheesa Brahmin died during the pendency of the appeal. It is therefore, not necessary to consider their cases in this appeal. The fine imposed on them is almost negligible.

29. In view of the above fact, the case of Banshi Naik, Roopa Naik, Dhula Naik, Bheru Naik, Mohan Naik, Nanu Raigar and Nanu Ahir deserve to be considered.

30. While considering the case of Banshi Naik (appellant No. 2), the learned Additional Sessions Judge has considered the statements of Roop Nath P.W. 1, Mst. Gendi PW. 3, Mst. Suhagi P.W. 4, Nathi P.W. 5, Madhu P.W. 10, Bhanwaria P.W. 16, Kalu P.W. 18 and Hagami P.W. 19.

31. Roop Nath P.W. 1 has stated in his examination in Court that Banshi was standing outside his house and he had in his hand with which he inflicted a blow on the left leg of the witnesses. The learned Additional Sessions Judge has observed that there is no reason to discard the evidence of this witness. Mst. Gendi P.W. 2 has stated that Banshi dragged her out of the house, but this statement of Mst. Gendi has been doubted by the learned Additional Sessions Judge on the ground that in the police statement (Ex. D/3) she did not name Banshi as one of those persons, who were dragged her out of the house. Jamni P.W. 17 has stated that that several persons were standing outside her house and Banshi was also one of them. It is also stated by her that Banshi hurled a lathi blow on her leg. The learned Additional Sessions Judge has no reason to discard the evidence of this witness. Kalu P.W. 18 and Hagami P.W. 19 have stated that Banshi had entered in their house with other persons. The learned Additional Sessions Judge has found no reason to doubt that evidence of Kalu P.W. 18 and Hagami P.W. 19 so far as presence of Banshi is concerned. Bhanwaria P.W. 16 and Madhu P.W. 10 have also given evidence, which shows that Banshi was present at the spot. The learned Additional Sessions Judge has given cogent and satisfactory reasons for placing reliance on the above named witnesses except Mst. Gendi (P.W. 3). The learned counsel for the appellants has not been able to point out any reason for interfering with the findings given by the learned Additional Sessions Judge. I, therefore, hold that the presence of Banshi on the spot at the time of alleged incident has been proved beyond reasonable doubt.

32. While considering the case of Roopa (appellant No. 4), the learned Additional Sessions Judge has considered the evidence of Roop Nath P.W. 1, Suhagi P.W. 4, Kani Ram P.W. 6, Madhu P.W. 10, Barji P.W. 11, Pratap P.W. 13, Bhanwaria P.W. 16, Jarnni P.W. 17 and Kalu P.W. 18. Roop Nath P.W. 1 has given evidence to the effect that Roopa caught him by hand and took him outside of the house and there he was given a beating by Roopa and some other persons. Roop Nath has further stated that Roop Nath had inflicted a farsi blow on his left side of the chest. This portion of the statement of Roop Nath was doubted by the learned Additional Sessions Judge on the ground that in the police statement Ex. D/I, Roop Nath did not mention the Roopa had a farsi in his hand. Thus, the learned Additional Sessions Judge held that Roop Nath made some improvement in his

statement by stating that Roopa had a farsi in his hand with which he tried to inflict injuries. But the remaining portion of the statement of Roop Nath has been held by the learned Additional Sessions Judge to be correct. Kani Ram P.W. 6 has also stated that Roopa had dragged him outside the house and gave him a beating with lathi. The learned Additional Sessions Judge has observed that there is no reason to discard the evidence of this witness. Kani Ram P.W. 6 has further stated that Roopa inflicted a barchi blow on his thigh. But, this statement has been doubted by the learned Sessions Judge on the ground that in his police statement (Ex. D/6), the witness did not mention that Roopa had inflicted any 'Barchhi blow' on his body. The remaining portion of the witness has been relied upon by the learned Additional Sessions Judge.

33. Barji (PW.11) has stated that on hearing the cry, she went outside her house and saw that Roopa was standing with some other persons and that Roopa inflicted injury on her body. The learned Additional Sessions Judge observed that there is no reason to discard the evidence of this witness.

34. Pratap (P.W. 13) has given evidence to the effect that when he went outside the house, Roopa started giving him beating and then he tried to escape by entering inside the house of Gendi, but, Roopa and his companions dragged him out of the house of Gendi and inflicted injuries on his body. Pratap has doubted that Roopa inflicted injury on his cheek with the axe. But, this part of the statement has not been relied upon by the learned Additional Sessions Judge. The remaining statement of this witness has been found to be true.

35. Jamni (P.W. 17) gave evidence to the effect that Roopa entered in her house and dragged her out of the house and she was given a beating by several persons. The learned Additional Sessions Judge has doubted that part of the statement in which the witness has stated that 'Roopa entered in her house' as the portion was not mentioned in the police statement, but the remaining portion of her statement was held to be reliable.

36. Kalu (P.W. 18) gave evidence to the effect that Roopa had entered in his house and inflicted injury on his back. The learned Additional Sessions Judge has found no good reason to doubt the statement of this witness.

37. Madhu (PW 10) and Bhanwaria (PW 16) have also given evidence to show that Roopa was present on the scene of occurrence at the time of incident and he had inflicted injuries. The reasons given by the learned Additional Sessions Judge for placing reliance on the prosecution witnesses named above to the extent indicated by the learned Additional Sessions Judge do not appear to be suffering from any legal or other infirmity. I fully agree with the findings that the presence of Roopa at the scene of occurrence and his participation in the alleged assault is fully established. However, it may be observed that a reference to the statement recorded by the police Under Section 161, Cr. P.C. when there was no contradiction, in regard to the portion of the statement, which was relied upon by the learned Additional Sessions Judge was completely unnecessary.

38. While considering the case of Dhula (appellant No. 5), the learned Additional Sessions Judge has taken into consideration the evidence of Roop Nath (PW 1), Rama (PW 2), Gendi (PW 3), Suhagi (PW 4), Madhu (PW 10), Barji (PW 11), Dali (PW 14), Bhanwaria (PW 16), Jamni (PW 17), Kalu (PW 18) and Hagami (PW 19). In this statement Roop Nath (PW 1), he has deposed that Dhoola was standing outside his house with other persons and he had inflicted an injury with Jaila. The learned Additional Sessions Judge has observed that there is no reason to discard his evidence.

39. Rama (PW 2) has stated that Dhoola was standing outside his house with other persons and that he had inflicted an injury with the lathi. The later portion of the statement of this witness has been disbelieved by the learned Addl. Sessions Judge on the ground that in his police statement (Ex. D/2), the witness did not state that Dhoola had inflicted any injury on his particular portion of the body. However, the learned Additional Sessions Judge has believed the statement of the witness so far as the presence and participation of the accused in the alleged crime is concerned.

40. Gendi (PW. 3) has given statement to the effect that Dhoola was among those, who entered her house and dragged her out of the house and gave her beating. The statement of Gendi could not be shaken in the cross-examination and the learned Additional Sessions Judge has rightly relied upon her statement.

41. Kani Ram (PW 6) gave statement to the effect that several persons including Dhoola gave him beating outside his house and in the absence of any reasons for doubt, his statement, the learned Additional Sessions Judge has rightly placed reliance on his statement.

42. Barji (PW 11) has stated that Dhoola was standing with other persons in front of his house and he had inflicted a bhala injury on her husband Rama. Later part of the statement of Barji disbelieved by the learned Additional Sessions Judge on the ground that Rama did not receive any injury with the sharp edged weapon i.e. Bhala and that according to the statement of Rama, Dhoola was armed with lathi. However, the learned Additional Sessions Judge has believed the statement of Barji so far as the presence as well as participation of Dhoola in the alleged incident is concerned.

43. Pratap (PW 13) has given statement to the effect that he was beaten in front of his house by Dhoola and several other persons.

44. Mst. Jamni (PW 11) has given statement to the effect that Dhoola entered in her house and dragged her out of the house and gave beating to her. The learned Additional Sessions Judge has found the statement of Pratap (PW 13) and Dali (PW 14) to be true, but the statement of Jamni (PW 17) has' been disbelieved so far as the alleged entry of Dhoola in her house is concerned. However, the remaining portion of the statement of Jamni (PW 17) has been relied upon by the learned Addl. Sessions Judge.

45. Kalu (PW 18) has given statement to the effect that Dhoola had entered his house and gave him beating with lathis.

46. Hagami (PW 19) gave evidence to the effect that Dhoola entered in his house. Kalu and Hagami both lived in the same house and therefore, the learned Addl. Sessions Judge has found their evidence reliable.

47. Madhu (PW 10) and Bhanwaria (PW 16) gave evidence to the effect that Dhoola was present at the spot. The reasons given by the learned Additional Sessions Judge for placing reliance on the statements of the above mentioned

witnesses to the extent mentioned above do not suffer from any unreasonableness.

48. On a careful consideration of the statement of the witnesses and the reasons given by the learned Addl. Sessions Judge, I find myself in agreement with the conclusions arrived at by the learned Addl. Sessions Judge as to the presence and participation of Dhoola in the alleged incident.

49. While considering the case of Bheru (appellant No. 6), the learned Additional Sessions Judge has taken into consideration the evidence of Roop Nath (PW 1), Rama (PW 2), Gendi (PW 3), Madhu (PW 10), Dali (PW 14), Bhanwaria (PW 16) and Jamni (PW 17).

50. Roop Nath (PW 1) has given evidence to the effect that he went outside his house and saw that Bheru was standing with some other persons and similar statements were made by Madhu (PW 10) and Bhanwaria (PW 16). According to Madhu (PW 10) and Bhanwaria (PW 16). According to Madhu (PW 10), Bheru had a stick with him and Bhanwaria has also stated that Bhanwaria was armed with stick. Rama (PW 2) and Pratap (PW 13) have also stated that they saw Bheru at the spot and that several persons had beaten them and Bheru was amongst them. Dali (PW 14) has also stated that Bheru had inflicted injury on her head and Jamni has also stated that she has recognised Bheru at the spot. The learned Additional Sessions Judge has found the evidence of the above named witnesses to be true and held that it has been proved that Bheru was present at the spot and he was possessing either a lathi or something like an axe and that had inflicted injuries on Dali. The reasons given by the learned Additional Sessions Judge for placing reliance on the above mentioned witnesses to the extent mentioned above do not suffer from any unreasonableness. The learned Addl. Sessions Judge held that the findings given by the above named witnesses regarding presence and participation of Bheru in the alleged incident is correct;

51. While considering the case of Mohan (PW 7), the learned Additional Sessions Judge considered the statements of Roop Nath (PW 1), Rama (PW 2) Suhagi (PW 4), Nathi (PW 5), Madhu (PW 10), Barji (PW 11), Bhanwaria (PW 16) and Kalu (PW 18).

52. Roop Nath (PW 1) has given evidence to the effect that when he came out of the house he saw that Mohan was standing in front of his house along with other persons and Mohan inflicted a lathi blow on his head. Barji (PW 11) has also given evidence to the effect that Mohan had inflicted an injury on his body. Kalu (PW 18) has stated that Mohan entered her house and inflicted injuries on him with lathi. The learned Addl. Sessions Judge has held that the statement of these witnesses are reliable and he has therefore, held that presence and participation of Mohan Naik in the alleged occurrence is proved beyond reasonable doubt. It is true that in her police statement, Rama (PW 2) did not attribute any particular injury to Mohan, but he had stated that Mohan had inflicted injury. I, therefore, find no reason to discard the evidence of Rama (PW 2). In my opinion, the reasons given by the learned Addl. Sessions Judge for placing reliance on the statements of the prosecution witnesses named above cannot be said to be unreasonableness, and therefore, the finding that Mohan was present at the spot and he participated in the alleged incident deserves to be held as correct.

53. While considering the case of Nanu Ahir (appellant No. 8), the learned Additional Sessions Judge has considered the evidence of Roop Nath (PW 1), Gendi (PW 3), Suhagi (PW 4), Pratap (PW 14), Bhanwaria (PW 16). Roop Nath (PW 1) has given evidence to the effect that when he went outside the house, he was given a beating by Nanu and others and that Nanu had inflicted a blow on him with lathi. This statement of the witness has been found to be true by the learned Additional Sessions Judge. Gendi (PW 3) has deposed that Nanu and other persons dragged her from beneath a cot and Nanu inflicted an axe blow on her right arm. The learned Additional Sessions Judge has disbelieved first portion of the statement of this witness, but the remaining portion of the statement was found to be reliable. Pratap (PW 13) gave evidence to the effect that Nanu had dragged him and gave him a beating, It appears that there is a contradiction in the statement given by this witness in the Court and before the police, because in the Court he named the assailant as Nanu Ahir while in the statement made to the police, he described his name as Nanu Raigar. The learned Additional Sessions Judge has pointed out that the statement made by this witness in the Court was subjected to cross-examination, and therefore, his statement that Nanu Ahir had dragged him out of the house and gave beating is not open to doubt. Bhanwaria

(PW 16) has given statement to the effect that he had seen Nanu Ahir standing with the lathi and the name of this accused is also mentioned in the FIR. The reasons given by the learned Addl. Sessions Judge for placing reliance on the evidence of the prosecution witnesses named above appear to be proper and after considering the evidence given by the witnesses named above and the finding of the learned Addl. Sessions Judge, I do not find any good reason to interfere with the findings of the learned Addl. Sessions Judge. The presence and participation of Nanu in the alleged incident is fully established.

54. While considering the case of Nanu Raigar (Appellant No. 9), the learned Addl. Sessions Judge has considered the evidence of Roop Nath (PW 1), Suhagi (PW 4), Madhu (PW 10) and Bhanwaria (PW 16). Roop Nath (PW 1) has stated that when he went outside the house, he was beaten by Nanu Raigar with other persons. The learned Addl. Sessions Judge has found this statement to be reliable. Madhu (PW 10) and Bhanwaria (PW 16) have given statement to the effect that they had seen Nanu standing at the spot with lathi in his hand. The name of is witness is also mentioned in the FIR (Ex. P/48). After considering the statement of these witness and reasons given by the learned Addl. Sessions Judge, I find myself in agreement with the conclusion arrived at by the learned Addl. Sessions Judge that the presence and participation of this accused is fully established.

55. For the reasons above, it must be held that the findings given by the learned Addl. Sessions Judge that the accused appellants Banshi, Roopa, Dhoola, Bheru, Mohan, Nanu s/o Moha Aheer, Nanu s/o Rama Raigar were present at the spot and they took part in the incident is correct. Their 'participation in the alleged incident, involving the constitution of an unlawful assembly with the common object of committing criminal house trespass after having made a preparation for causing injuries and to cause simple and grievous hurt is also proved beyond reasonable doubt. I, therefore, come to the conclusion that the charges under Sections 147, 323, 452, 325/149 have been I proved beyond reasonable doubt against Banshi, Roopa and Dhoola and the charges under Sections 147, 323, 452/149 and 325/149 have been proved beyond reasonable doubt against the accused appellants Bheru, Mohan, Nanu Ahir and Nanu Raigar.

56. So far as offences under Section 436/149 IPC is concerned, the evidence of the prosecution shows that it was the appellant No. 10 Gheesa, who was possessing a tin of kerosine in his hand and he was responsible for setting fire to the huts. There is no evidence on record to show that the [Other accused persons knew that Gheesa Lal was possessing a tin of kerosene and that he intended]to set fire to the huts of the victims. Further, there]is no evidence to show that at the time of constituting the unlawful assembly, i.e. at the time of starting towards the Dhani of the victims, the accused shared the common object of setting fire to the huts of the victims. I, therefore, hold that in the absence of evidence to show that Gheesa set fire huts of the victims in furtherance of the common object of accused persons, no-one can be punished under Section 436/149 IPC. Gheesa has already died and therefore, it is not necessary to give a finding whether he had or had not set fire to the huts. Consequently, all the surviving appellants Banshi, Roopa, Dhoola, Bheru, Mohan, Nanu Ahir and Nanu Raigar deserve to be acquitted of the charges under Section 436/149 IPC. The appeal to that extent deserves to be partly allowed.

57. The learned counsel for the appellants has further submitted that the incident took place in 1978 and almost 20 years have passed. The cause of incident was a simple altercation about the loss caused to the crop by donkeys belonging to the Kalbelias and in ordinary course, such an incident should been forgotten after it was over and there is no previous record of commission of offence by the appellants and therefore, it would be proper not to send the appellants to Jail for the offences which have proved against them.

58. There appears to be some force in this submission. The offence was committed about 20 years ago on the night of 20th and 21st August, 1978. Some of them were as old as 60 years. All the accused persons, by now attend the old age and they must be more than 60 to 65 years. In the absence of any record of previous conviction and having regarded all the facts and circumstances of the case, it does not appear to be proper to send them to Jail. The offences of which they have been found guilty or punishable under Sections 147, 323, 452 and 325/149 IPC and having regard to all the facts and circumstances of the case, the ends of justice would be met if the sentences imposed on the surviving appellants

are reduced to the sentences already undergone and to fine, which may be increased so that the victims may be properly compensated for the hurt and damages caused to them.

59. For the reasons mentioned above, the appeal is partly allowed. The surviving appellants namely, Banshi Naik, Roopa Naik, Dhoola Naik, Bheru Naik, Mohan Naik, Nanu Raigar and Nanu Ahir are hereby acquitted of the charge under Section 436 read with 149 of the Indian Penal Code. Their conviction under Sections 147, 323, 452/452 read with 149 and 325 read with 149 of the Indian Penal Code as ordered by the learned Additional Sessions Judge is hereby maintained. The sentences imposed by the learned Additional Sessions Judge on the above named accused appellants are hereby modified in the manner given below :-

60. The sentences of rigorous imprisonment imposed on the above named appellants are hereby reduced to imprisonment already undergone by them. The fine imposed by the learned Additional Sessions Judge are however increased.

61. The fine imposed on each of the surviving appellants under Section 147 of the Indian Penal Code is hereby increased to Rs. 1,000/- and for default in payment of fine, the defaulting appellant shall undergo simple imprisonment for three months.

62. The fine imposed on each of the appellants under Section 323 of the Indian Penal Code is hereby increased to Rs. 1,000/- and for default in payment of fine, the defaulting appellant shall undergo simple imprisonment for three months.

63. The fine imposed on each of the appellants under Section 452/452 read with 149 of the Indian Penal Code is hereby increased to Rs. 3,000/- and for default in payment of fine, the defaulting appellant shall undergo simple imprisonment for six months.

64. The fine imposed on each of the appellants under Section 325 read with 149 of the Indian Penal Code is hereby increased to Rs. 5,000/- and for default in payment of fine, the defaulting appellant shall undergo rigorous imprisonment for six months.

65. The accused appellants named above are hereby directed to deposit the amount of fine within a period of 60 days in the Court of the learned Additional District Judge, Bhilwara, failing which their attendance shall be enforced by issued of a warrant of arrest and when they are arrested, they shall be committed to Jail to serve out the sentences imposed on them for default in payment of fine.

66. Out of the amount of fine, which is ordered to be paid by the appellants Roopa, Pratap, Kani Ram, Rama Dali, Barji, Kalu, Hagami, Suhagi, Nathu, Jamni, Gendi, Hindu and Sohna shall be paid Rs. 2,000/- per head by way of compensation for the simple injuries caused to them. Pratap, Rama Kani Ram, Jamni, Gendi, Dali, Sohna, and Hindu shall be further paid Rs. 4,000/- per head as compensation for the grievous injury/injuries caused to them.

67. The appeal is disposed of accordingly.

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