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Court : Rajasthan

Decided On : Feb-11-1987

Reported in : 1987WLN(UC)246

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 615 of 1981

Appellant : ingi Ram

Respondent : State of Rajasthan

Judgement :

Ashok Kumar Mathur, J.

1. This is an appeal against the judgment of the learned Sessions Judge, Bikaer dated 10-11-1981 whereby he has convicted all the 13 accused appellants under 302, 325, 324, 148 and 147 IPC and sentenced them to life imprisonment, one year's rigorous imprisonment and fines. Aggrieved against the aforesaid judgment, the accused appellants preferred the present appeal.

2. The facts giving rise to this case are that on 3-2-1980 at about 11 a.m. a First Information Report Ex. P 10 was filed at police station, Nokha by PW 2 Kumbh Singh. It was stated there in that in viliage Sindhu accused Roopa Ram Nai and his six brother reside there and they have active animosity with them. About 4-5

days before their children and children of Roppa Ram Nai fought over water issue. On 2-2-1980 at 5.30 p.m. he along with his brother Deep Singh came from Bikaner by bus. When they alighted from their bus and were going to their house the luggage was taken away by the children and they were taking among themselves while going to their house, all the three brothers, he along with his brothers Deep Singh and Khiv Singh heard a commotion and they turned to see and they found that from the house of Had Kishan Nai, Roopa Ram, Ingiram, Chhikiram, Rati Ram, Hari Kishan and Roopa Ram's sons Bajrangram, Gneshrum, Ramlal and Chhiki Ram's sons Prahladram and Shankerlal and Ingiram's son Sunderlal and Dhanna Ram's sons Pooranram and Chandaram came surrounded them. Thereafter, they started beating to them. It is further alleged that Ingiram, Ratiram and Chhikiram were armed with Sailas, Bajrangram, Harikishan, Puranram were armed with Barchhis and rest of the accused persons were armed with lathis. All these accused persons jointly assaulted them. It is alleged that all the three brothers were assaulted with an intention to cause death and Puran Ram assaulted Khiv Singh on his head by Barchi, Ingi Ram and Chhiki Ram hit his brother Deep Singh with Saila as a result of Which both of them fell down on the ground. Shanker Lal beat him with lathi on his right hand as a result of which he received a fracture. Thereafter, all the remaining accused persons had beaten Deep Singh & Khiv Singh with lathis, Barchhi and Saila when they were lying on the ground. He cried for help and Bane Singh came there to rescue them. He also received injuries. Roopa Ram Bishnoi, Bhanwar Singh along with some more persons of the village Came to rescue them. Thereafter, all the accused persons returned to their house. He ran to look after his fallen brothers Khiv Singh and Deep Singh who were lying on the ground, they were unconscious and lying in a pool of blood. Thereafter a camel cart was brought and both the injured brothers were put in the cart for the Police Station but on the way both of them died. On the basis this First Information Report, a case under Sections 302, 325, 323, 147, 148 and 149, IPC was registered. The police completed the necessary investigation and after close of the investigation a challan was filed against all the 13 accused persons under the aforesaid sections and the accused were sent for trial before the learned Sessions Judge, Bikaner.

3. The prosecution examined as many as 10 witnesses and got a large number of documents exhibited. The defence also examined three witnesses and took the plea of right of private defence. The accused were also examined as it is alleged that three of them received injuries, i.e., Sunder Ram, Puran Ram and Ingi Ram. Learned Sessions Judge relied upon the testimony of 4 eye-witnesses, namely, PW 2 Banney Singh, PW 3 Khumbh Singh, both of them received injuries, PW 4 Rupa Ram and PW 5 Bhanwar Singh. The learned Sessions Judge came to the conclusion after close of the trial that the accused belaboured the deceased and negatived their plea of right of private defence. The learned Sessions Judge convicted all the accused persons as aforesaid.

4. Aggrieved against this, the accused appellants filed the present appeal.

5. We have heard Mr. Purohit and Mr. Doongar Singh, learned Counsel and also gone through the record. Learned Counsel for the appellants have tried to persuade us that the testimony of all the 4 eye witnesses is not reliable as there was an active animosity between the two parties, i.e., Kumbh Singh and family at one hand and the accused Roopa Ram and other members of his family on the other hand. On account of their active animosity the testimony of these four eye-witnesses is not reliable. It is also strenuously urged that the plea of right of private defence is fully established in the present case and the learned trial Judge has wrongly negatived the same.

6. We have gone through the statements of all the four eye-witnesses and we are of the opinion that the testimony of these four eye-witnesses can not be shattered only on account of their enmity, or inter-relationship or on account of minor omission or contradictions. Learned Counsel has laid a great stress that there is a serious variation in the testimony of these witnesses regarding the part played by each of the accused and the injuries caused by the accused persons on various parts of the bodies of the victims. We have gone through the testimony of all the four eye-witnesses and we are of the opinion that small variation is natural when 13 persons have surrounded three persons and belaboured them, it is very difficult to pin point the particular part played by each accused. Thus, such a small variation is bound to appear in the natural witnesses. So far as PW 2 Banney

Singh and PW 3 Khumbh Singh are concerned, their presence at the scene of occurrence cannot be doubted as both of them have received injuries and they were examined by the Doctor on 3-2-1980.

7. Learned Counsel has tried to show from medical evidence that the injuries received by these witnesses were not out of this incident, on the basis of the testimony of the Doctor. But we are not impressed by this argument. The Doctor has only deposed the approximate time of the injuries. Thus, the presence of these two witnesses on the scene of occurrence is beyond doubt. PW 3 Khumbh Singh is a person who has filed the First Information Report and he has disclosed the whole incident. He has also mentioned the presence of Banney Singh, Roopa Ram and Bhanwar Singh in the First Information Report. The incident took place on 2-2-1980 at 5.30 p.m. and the First Information Report was filed on 3-2-1980 at 11.00 a.m. at Police Station, Nokha which is said to be 14 miles away. Thus, looking from all the angles, it appears that the testimony of these four eye-witnesses is reliable and trust worthy. Thus, we are of the opinion that the learned Sessions Judge has rightly relied upon the testimony of these witnesses, for holding the accused persons guilty.

8. The next question is that what offence is made out. In this connection both the learned Counsel have strenuously urged that looking to the nature of injuries and the manner in which the whole incident has taken place the accused persons cannot be held guilty under Section 302 IPC. We find substance in this argument of the learned Counsel. It is no gain saying that all the 13 accused persons had participated in belabouring the deceased Khivsingh and Deepsingh and Kumbhsingh. But whether they really intended to cause death of these persons or not. It cannot be lost sight of the fact that in the rural set up when there was an active animosity between these two warring families, the intention of the accused persons who came suddenly from their house when the victims were passing before their houses armed with whatever weapons available to them was to belabour them. In this baek-ground, it cannot be said that they really intended to cause such bodily injury so as to cause death. In the back-ground of the given circumstances, it appears that on account of the earlier incident which took place 4-5 days before, the accused only intended to chastise the victims instead of

causing them such bodily injuries so as to cause death. We have also gone through the injuries found on the body of both the victims. Deceased Khiv Singh received about 22 injuries and he has not received any incised wound but mostly lacerated wounds, abrasions or echymoris. The cause of death in the opinion of the Doctor was shock as a result of fractures of ribs and leg bones which led to pericirculatory circulation and that caused the death of the deceased. Similarly, deceased Deep Singh received as many as 19 injuries, out of them Injuries Nos 3.5 and 16 were incised wounds and Injury No. 18 was punctured wound. In the opinion of the Doctor, the cause of death was haemorrhage and shock as a result of these injuries. Thus, we are of the opinion that in facts and circumstances of the present case the accused persons had no intention to cause such bodily injury which they knew is likely to cause death and the intention was to cause the bodily injury to chastise the victims. Thus, in these circumstances, we are of the opinion that the offence will not travel beyond Section 304, Part-II, IPC read with Section 149, IPC. The conviction of the accused appellants is converted from Section 302, IPC read with Section 149, IPC to Section 304, Part-II read with Section 149, IPC. All the accused except Rooparam, Shankerlal and Chandaram are sentenced to 8 years rigorous imprisonment with a fine of Rs 1,000/- each and in default of payment of fine to further undergo two years rigorous imprisonment. Out of the amount of fine so realised Rs. 5,000/- should be paid to the widows or dependents of each of the victims. The conviction and sentences of these accused persons under Section 148, 325 and 324 are maintained with the fine. However, the substantive sentences shall run concurrently.

9. Now remains accused Rooparam, Shankerlal and Chandaram. They are said to be armed with Lathis. Accused Rooparam was said to be 60 years of age at the time of trial and both of the accused Shanker Ram and Chandram were below 21 years of age. Chandram was said to be 16-17 years of age where as Shankerlal was said to be 15 years of age at the time of trial. We think that Shankerlal and Chandram were children below 21 years of age & accused Rooparam was 60 years of age at the time of trial and they are on bail. Therefore, instead of convicting & sentencing them to jail we are of the opinion that all the three accused appellants should be given benefit of probation and instead of awarding them any sentence they are released on probation of good conduct and be of

good behaviour and maintain peace for a period of 2 years. They shall furnish a bond in the sum of Rs.5,000/- each with two sureties of sum of Rs. 2,500/- each to the satisfaction of the learned Sessions Judge, Bikaner within two months to receive the sentence as and when called upon to do so. All the above three accused appellants are on bail they need not surrender.

10. In the result, the appeal is disposed of accordingly.

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