

Hemji Vs. State of Rajasthan

Hemji Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/769496

Court : Rajasthan

Decided On : Sep-24-1985

Reported in : 1985WLN(UC)433

Judge : Kanta Bhatnagar and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Criminal Appeal No. 497 of 1981

Appellant : Hemji

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kanta Bhatnagar, J.

1. This Appeal is directed against the judgment dated July 10, 1981 passed by the learned Sessions Judge, Banswara by which appellant Hemji was convicted under Section 302, IPC and sentenced to imprisonment for life with a fine of Rs. 250/-, in default of the payment of fine to further undergo two month's rigorous imprisonment.

2. The case related to an incident said to have taken place on October 9, 1979 in a field (survey) 2087 village Binjaliyapara) which the complainant party as well as the accused-party claimed to be their's. Fifteen persons including appellant Hemji,

who faced the trial, were cutting paddy crop in that disputed field. Punja, Kana, Teja, Kaliya, Sukha and others went to that field claiming it to be their's on the ground that they had purchased the field from the Motiya for Rs. 6000/- two years prior to the incident. The quarrel ensued. Both the parties got injured. One Ranga of the accused-side caused injury with an arrow to one Teja. Appellant Hemji caused axe-blow on the head of Teja which proved fatal for him. After discussing the evidence on record, the learned Sessions Judge held that Hemji, Ranga etc. were in possession of the disputed field under their own right and the complainant party was aggressor. According to the learned Judge, the right of private defence to person and property had accrued to the accused-party. In view of that finding, the learned Sessions Judge acquitted 14 accused. Regarding Hemji, the learned Judge opined that when Ranga had already used arrow and by that injury Teja had fallen down, there was no necessity for Hemji to use the axe. His case, therefore was distinguished from the rest of the accused and he was held guilty for the murder of Teja and sentenced as stated earlier.

3. Mr. R.K. Soni, learned counsel appearing for the appellant strenuously contended that when the learned Sessions Judge had concluded that the disputed field was in lawful possession of Hemji and others and the accused-party had right to defend their property and persons, there was no question of Hemji being guilty of the charge of murder. Learned counsel vehemently contended that when Hemji himself was injured and the learned Sessions Judge has given a categorical finding that the Investigating Officer got the injuries of the accused-party examined, infliction of an axe-blow by Hemji to Teja should not be said to be with intention to cause his murder and, therefore, his case should not have been distinguished from that of the remaining accused.

4. The pertinent question in this appeal is : whether Hemji's causing injury to Teja can provide him right of private defence to person and property and his case should be in line with the other accused acquitted by the learned Sessions Judge? The learned Sessions Judge has discharged in detail the rival contentions of the parties regarding their claim over the disputed field and has come to a definite conclusion that at the time of the incident, Kana and the complainant-party were not in possession of the disputed field. The learned trial Judge has carefully

examined the facts and circumstances of the case and also the investigation conducted in the case. Referring to the statements of Dr. Prakash (PW 13) and the Investigating Officer Sukh Lal (PW 24), the learned Judge came to the conclusion, that the investigation in the case was not fair. He has opined that Hemji, Veerji, Mana, Velji, Ranga and Baddi had sustained injuries in the incident. The injuries sustained by Veerji and Baddi were dangerous to life, PW 24 Sukh Lal the Investigating Officer has admitted that fact. Dr. Prakash Chandra has also admitted that he had examined the aforesaid injured persons at the instance of the police. If the Investigating Officer finds a number of accused persons injured gets them medically examined, the Doctor gives a definite opinion regarding their injuries, the injuries of two of the injured accused were found to be dangerous to life, it was incumbent upon the Investigating Officer to register a cross-case Even if that was not done, it was the duty of the prosecution to explain those injuries. Be it as it may, from the prosecution evidence itself, as discussed above, it has on record that six persons including appellant Hemji got injured in that incident when they were in their field in their possession. The complainant-party, being considered aggressor by the trial Judge, the right of private defence to person and property had accrued to the accused-party. The only point on which the learned Sessions Judge distinguished the case of Hemji from the rest of the accused is that when after the arrow-shot by Ranga, Teja had fallen down, there was no necessity for Hemji to cause axe-injury to Teja. When the accused-party was being beaten by the aggressor complainant party, the victim Teja being amongst them and actively participating in giving a beating to the accused-party, it should not be expected of Hemji to wait and see what his other companions were doing. When his companions were severely injured by the aggressor complainant-party, how could it be expected of Hemji to weigh in golden-scale the seriousness of the injuries he was likely to cause to the complainant-party. Simply because Teja had fallen down, it cannot be said that the danger was over. In these circumstances, if Hemji used the axe and inflicted one blow on Teja, he cannot be said to have exceeded the right of private defence to person and property. The case of Hemji in our opinion is quite in line with the co-accused who have been acquitted by the trial Judge. We do not find ourselves in agreement with the learned trial Judge that Hemji's case is distinguishable from that of the other acquitted accused. We,

therefore, find no justification in the conviction of Hemji for the charge of murder of Teja.

5. Consequently, the appeal of accused Hemji is allowed. His conviction and sentence are set-aside and he is acquitted of the charge of murder of Teja. He is in jail. He shall be set-forth to liberty if not required in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com