

Devi Lal and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-05-2010

Judge : N.P. Gupta and; C.M. Totla, JJ.

Appellant : Devi Lal and ors.

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.P. Gupta, J.

1. This appeal by the five accused persons Devilal, Lalchand, Rajiram, Mohanlal, and Utama Ram arises out of the judgment of the learned Additional Sessions Judge No. 2, Hanumangarh dt. 30.1.1987 passed in Sessions Case No. 70/1985 convicting and sentencing each of the accused appellant as under:

Under Section 148 IPC- Sentenced to one year's R.I. Under Section 302 r/w 149 IPC- Imprisonment for life and fine of Rs. 500/-; in default to undergo three months' R.I. Under Section 27 of the Arms Act- One year's R.I. And a fine of Rs. 200/- in default to undergo one month's R.I.

2. The appeal was admitted on 9.2.1987, and thereafter, after receipt of the record, the sentence awarded to the accused persons were also ordered to be

suspended.

3. However, as transpires from the marginal notings of the order-sheet dt. 26.4.1999, that the appellants No. 1 and 4 Devilal and Mohanlal respectively had expired. Thus, the present appeal survives only on behalf of Lalchand, Raji Ram, and Utma Ram. The necessary facts are, that on 20.9.1982 at about 8.30 A.M. P.W. 3 Jagdish lodged a first report Ex. P-4 at Police Station Hanumangarh Junction, alleging interalia that at about 6.45 in the morning that day the informant along with his brother Lalchand and one Balwant (deceased) being the brother in law of Lalchand were going to Dhanis of 32 LLW for the purpose of purchasing milching buffalo, when they reached in the Rohi, where their own land existed, one Red Jeep overtook them, and stopped a little ahead wherefrom 9 accused persons being Devilal, Utma Ram, Mohanlal, Raji Ram, Chanan Ram, Mani Ram, Chhotiya @ Jarnail Singh, Lalchand and Saudagar Singh alighted, and challenged them. Devilal gave out that they should not be spared now, and thereupon the accused persons started indiscriminately firing. However, informant and his brother Lalchand could escape, but Balwant Singh who was hiding in the Gwar was spotted, and was shot. After receiving gun shot injury the victim raised a cry, whereupon the informant and his brother went and found the victim badly injured. They carried him for some distance but he died. Thereupon a formal report Ex. P-5 was recorded, and registered for the offence under Section 302, 34 IPC, and 27 of the Arms Act, necessary investigation was conducted, and challan was filed in the Court of Magistrate concerned, wherefrom the case was committed, and was ultimately tried by the learned trial court.

4. The learned trial court framed charges against the accused Mani Ram, Saudagar Singh, and Chhotiya @ Jarnail Singh for the offence under Section 147 and 302 read with Section 149 IPC, and charged all other accused persons for the offence under Sections 148, and 302 read with Section 149 IPC, while all the accused persons were also charged for the offence under Section 27 of the Arms Act. During trial the prosecution examined six witnesses, and tendered in evidence numerous documents while the defence did not examine any witness, however, tendered few documents in evidence. In statement under Section 313 Cr.P.C. the accused persons took a stand of denial. The accused Lalchand took the stand,

that Jagdish and his brother Lalchand want to snatch away his land which is of his ownership, and possession, and where he is living with his family by erecting a Dhani, and by involving him in a case he wants to illegally grab the land, and that the land is his ancestral one; while the other accused persons took the stand of having been falsely implicated on account of somehow being related with Lalchand, or being working on the field of Lalchand etc. The accused Devilal also pleaded, that informant Jagdish is an educated person, who with the collusion of the police authorities wants to implicate the entire family and grab the land. Learned trial court after completing the trial, by the impugned judgment acquitted four accused persons, being Chanan Ram on the ground of his having not inflicted any injury, and also acquitted Mani Ram, Chhotiya @ Jarnail Singh, and Saudagar Singh on the ground that they did not in any manner take part in the incident. Thus, qua these four persons it is found that it is not established beyond doubt that they formed unlawful assembly, or committed rioting, while the other five accused persons were found guilty for the offences as mentioned above, and were sentenced as above.

5. Arguing the appeal, assailing the impugned judgment good amount of criticism was advanced against the evidence of informant P.W. 3 Jagdish, and P.W. 4 Lalchand, for that purpose the site plan, and site inspection note Ex. P-6 and Ex. P-6A were also pressed into service. Then, Ex. P-13 was also relied upon to show, that from the person of the deceased one empty of 8 mm bore was recovered. Reliance was placed on the statement of I.O. P.W. 5 Richhpal Singh, and it was contended that as a matter of fact the land is ancestral land of Lalchand appellant which the prosecution party wanted to grab, on account of the fact, that they claim to have got executed a sale deed from Lalchand's grand mother Santo, though Lalchand is living on the land with his family, having erected a Dhani. It was contended that in the earlier evening the prosecution party came in a body, armed with firearm, and to create an atmosphere of terror in the area, firing was done, rather it was the prosecution party who had come on the fateful day in a body armed with deadly weapons, including firearms, to somehow or the other dispossess Lalchand, and for that purpose it was the prosecution party who opened indiscriminate firing, and unfortunately in that process one of the fire hit their own man Balwant, and Jagdish taking advantage of the unfortunate death of

Balwant, on account of already existing dispute has cooked up the incident, in another attempt of snatching the land from the appellant. It was also submitted that for the incident of earlier evening F.I.R. was also lodged, whereupon as admitted by the Investigating Officer P.W.5, a challan was filed. It was also contended that on account of the registered sale deed being fake or forged, in that regard also the prosecution was launched, and thus it is clear, that it was the prosecution party, who somehow or the other wanted to grab the land, and unfortunate incident has been foisted on the appellants. Learned Public Prosecutor, on the other hand, supported the impugned judgment, and submitted that the case rests on the testimony of the two eye witnesses P.W. 3 and P.W.4, and there is no reason to disbelieve their statements. Regarding the deposition by the Investigating Officer P.W. 5 during cross examination, it was contended to be only hearsay, and being not admissible in evidence. It was also submitted that the evidence of P.W. 3 and P.W. 4 is plain and simple, when they were going to purchase buffalo, there was no occasion for the accused to go armed with any weapon, and they were waylaid by the accused persons unawares, and the accused persons opened firing, wherein the deceased had died. Thus, there is no reasonable ground to interfere with the impugned order of conviction. We have heard learned Counsel, have considered their submissions, and have gone through the record closely and carefully. Since the prosecution relies upon, and rests its case mainly on the evidence of P.W. 3 and 4, we may gainfully recapitulate their evidence in order to see as to whether it would be safe for us to rely upon them to find the three accused appellants guilty for capital offence.

6. Jagdish informant P.W. 3 has deposed, that the three persons were going to purchase milching buffalo in the Dhani of 32 LLW, and when they reached near the land purchased by them, at about 7 A.M. a red colour jeep overtook them, and stopped a little ahead, wherefrom nine named accused persons alighted. He has described that the accused Devilal was armed with 12 bore gun, while the accused Lalchand, Mohanlal and Rajiram were armed with pistol, and Utama was having a Pakki Gun, Chanan Ram was having Gandasi, and the remaining three accused persons were empty handed. He further deposed that immediately on alighting the accused persons challenged, and Devilal told that they should not be spared today, and the accused persons opened indiscriminate fire, the witness and his

brother Lalchand could escape, while the deceased was hiding in Gwar, who was shot by the accused persons, on hearing hue and cry of the injured they reached near Balwant, and when they were carrying him to village, on the way he succumbed to the injuries. Then Lalchand was left to look after the corpse, and the witness went to police station to lodge the first information report. He has proved Ex. P-4 and P-5. It is also deposed that there existed a dispute between the prosecution side, on the one hand, and Lalchand, the accused party on the other hand, and on account of that enmity the incident has been caused. In cross examination he has admitted that he is ex-student of Rampuriya College, and had also admitted to have left attending college for the last one year, and despite leaving college he is continuously living in Bikaner in a rented room, and claims to be having bachelor degree in commerce. According to him earlier they had 46 bighas of land in 29 LLW. Then, he has stated that he did not give out orally to the S.H.O., rather gave it in writing which writing was scribed by him sitting outside. Then, he was confronted with his police statement Ex. D-2 regarding omission about existence of Dhani of the informant on the land in question, but he could not give out any reason for the omission. Then, he was confronted with the portion A to B wherein it is mentioned that accused Lalchand is living by erecting Dhani. The witness deposed to have not given out this portion. Then he has maintained that immediately after alighting from the jeep, the accused persons fired indiscriminately, and killed Balwant by indiscriminately showering firearm injuries. It may be noticed here, that there is only one firearm injury on the body of the deceased. Then, he has stated that the I.O. came at the place of incident at about 10 A.M., and he also went in the jeep of S.H.O. though for going to police station he claims to have gone by bus, and was carrying ticket when he reached the police station, but then took a U turn, and stated that the conductor had taken away the ticket and torn it in the way. He has also stated that there was no blood available at the place where Balwant was killed. He had gone to fetch photographer but the photos of the place of incident could not be taken because Additional S.P. had refused. Then, he has admitted that in the Dhani mentioned above now the accused Lalchand lives forcibly, though he had not initiated any legal action for dispossessing Lalchand. He has deposed that the victim was carried by them to a distance of 6-7 Bighas but then both the brothers who carried

him did not get any blood stains, nor any blood fell on the route. Then, he has also stated that the place where Balwant was killed, Gwar was sown by them. However, subsequently the accused persons took possession of that land, for which also no legal action was initiated. He has maintained that he did not narrate the incident to the Panch or Sarpanch of the village which is at a distance of 4 1/2 Murabba, nor did he take anybody with him, though he narrated the incident to his Uncle. Then, he was cross examined to test his reliability about the place where the victim was lying, by asking about the crops standing in the neighbouring fields, to which he deposed ignorance. He has also gone to the extent of stating that he does not recollect as to whether there was any blood or not when they removed the victim from the place where he was lying. Then, he has stated that the jeep stopped at a distance of 3/4 Kilo (probably Bigha), and immediately after alighting there from they opened fire. The way was Kacha, and the witness was on foot. They put the dead body in the field of Jotram, the distance from the place where the dead body was kept and they heard the cry was 6 to 7 kilas. Then, he has stated that he did not show the place where the jeep was standing, nor the marks of tyre of the jeep to the I.O., but he has denied the suggestion about there being no tyre marks of the jeep at that place, or the story of accused persons coming in a jeep being a concoction. He has then stated that his signatures were not obtained by the police on any paper. He has denied the suggestion about his having told to Jot Ram s/o Ram Pratap about their having gone on the land of Lalchand to forcibly take the possession, and in that process the fire shot by their own person hit the victim. The witness has deposed that he did not meet Jot Ram. He has deposed ignorance about Jot Ram having been examined from prosecution, and to have been listed as a witness. Similar suggestion was made about the witness to have narrated to Bharmal, which too has been denied by stating that he did not meet Bharmal, and has also deposed ignorance about Bharmal being kept as a witness of prosecution. Similar is the situation about his having told to Hajari s/o Dana Ram Jat. He has denied the suggestion about one jeep full of persons having come to take possession of the land of the accused Lalchand on 19.9.1982, or those persons have shot air fire to create an atmosphere of fear. He has denied the suggestion about Balwant being armed with 18 MM gun. He has also denied the suggestion about his having told Khajan

s/o Janduram about their having gone to take possession of the land of accused Lalchand, and in that process Balwant had died by their own fire. He has also denied the suggestion about having given out at 9 P.M. on 19.9.1982 in presence of Balwant Singh and Raji Ram that they have to take possession of the land of the accused Lalchand even at the cost of committing murder. He has also denied suggestion about his having told Bhagiram to have gone to take possession of the land of accused Lalchand, in which process Balwant having died by their own fire. Then, he has stated that his father has a licensed gun which gun is lying in the Police Station, Hanumangarh Junction, which was deposited there by the accused Lalchand by snatching it. He has admitted that there is litigation going on with the accused Lalchand, whose father was Bhaniram, whose father was Hariram, who had come from Pakistan, and in whose favour 15 bighas of land was allotted as non- claimant. He has deposed ignorance about Santo having initiated any litigation against his brother Lalchand with respect to land in question. He has also deposed ignorance about their being any stay orders from Rehabilitation and A.D.M. Ganganagar prohibiting Santo from selling the land. Santo is alleged to have died. He has admitted that the accused Lalchand had initiated litigation against this witness, and his brothers Lalchand and Brijendra and father Ramkaran for getting forged sale deed registered. He has stated that a murder case was got registered by Utma Ram against the witness, his brother, and father after eight days of the registration of the sale deed. Then, he has admitted that they did not go to any Dhani to see buffalo, Chanan did not inflict any injury to Balwant, and the other three accused persons who were empty handed also did not cause any injury, nor did they hold Balwant. However, he has maintained that firing at Balwant continued for 5 to 6 minutes. He has maintained that there was no blood at the place where from the deceased was lifted, or where he was put. He has admitted that there was no exit wound of the fire injury. He has deposed ignorance about any bullet or pallets having been found on the spot. Then, he has deposed that no prosecution is pending against the witness, and his father for firing at Balwant. He did not see 8 MM cartridge in the pocket of the victim. Then, he has denied the suggestion about the incident having occurred at 3 A.M. in the night, and in order to save himself from the prosecution, and to grab the land, this false case has been cooked up. This is the entire evidence of Jagdish, P.W. 3.

Coming to the evidence of P.W. 4 Lalchand. He has also deposed the happening of the incident as deposed by Jagdish, and has proved site plan Ex. P-6, the site inspection note Ex. P-6A, and other memos including seizure memo of Gandasi and shoe recovered from near the dead body being Ex. P-11. He has also proved the memo of recovery of empties from the spot, being Ex. P-12 and P-13. In cross examination he has deposed that five persons were armed with gun and pistol, and all the five fired for 10 to 15 minutes, and had showered firearm injuries at Balwant, therefore, Balwant died. According to him one Kila measures 30 paces. He has maintained that immediately on alighting the accused persons opened indiscriminate firing, he had shown the site to the I.O., and had shown the place where they heard the cries of the victim, and they returned. However, there were no foot marks, the I.O. had enquired from the Patwari about the land, and Patwari gave out the land to be in the name of Santo, there was no blood at any other place except the place where the dead body was put, no marks were found of pallets or of bullets where Balwant fell down. They did not see Balwant receiving firearm injury. He has maintained that at Dhani children of Lalchand or his family members were not there, nor any residential articles were lying there. He did not see any cattle tethered either. However, he has maintained that Dhani was erected about two months before the incident. He had admitted that nobody of their side lives in Dhani. He claims to have been paying irrigation charges but he did not give the receipts to the Investigating Officer, he did not see 8 MM empty in the pocket of the victim, he has then stated that he does not know as to any memo was prepared about seizure of that empty. However, he appended his signatures at whatever place the I.O. desired. Gandasi seized was of victim. He had maintained that the accused armed with Gandasi, so also the accused persons who were empty handed, did not cause any injury to Balwant, he has deposed ignorance as to after how many days registration of sale deed Santo died. He has also deposed ignorance about the appellant Utma Ram having lodged any prosecution against the witness, and his brother Brijendra and father Ramkaran for killing Santo. Then, he has denied the suggestion about the prosecution persons having gone to village Subhanwala at 9 P.M. on 19.9.1982 and to have shot two fires there to create terror in presence of Sadula Ram and Ramlal. He has denied the suggestion about having collected many persons in the village, and to have

given out that they would be taking back possession of the land from the accused Lalchand, or to have told to Bharmal s/o Dhana Ram that at 3 A.M. in the night Balwant died by their own shot. Similar is the version about Jot Ram s/o Rampratap, Ghagiram, Daluram etc. He has also maintained that he and his brother did not receive any blood stains in the process of carrying the victim. He has denied the suggestion about the land being allotted to accused Lalchand in Government record, he was confronted with his police statement Ex. D-5 about omission to depose Devilal having challenged. This is the evidence of Lalchand.

7. Then, in order to appreciate the site plan and site inspection note we may recapitulate briefly the evidence of I.O. He has stated that site plan Ex. P-6 and site inspection note Ex. 6A were prepared, one shoe and Barchhi were taken from the spot vide Ex. P11, and pieces of Dats of cartridge were recovered from the spot, and were sealed vide Ex. P-12, clothes of victim, another shoe and one empty cartridge recovered from the pocket of the victim were taken into possession vide Ex. P-13, and were seized. In cross examination he has stated, that the eye witnesses had shown him to be standing at the place marked 'E' in Ex. P-6, and the place mark 'A' where the dead body was found wherefrom blood stained earth was taken, distance between the place marked 'A' to 'E' is 11 Kilas, and there was no trail of blood, there was one Kotha in the field, where the ladies of the family of the accused Lalchand were there, he has deposed that the portion C to D in Ex. 6A has been mentioned on the basis of his observation. Then, he has also stated that 8 MM empty, recovered from the pocket of the victim, was of 8 MM rifle, Gandasi recovered was reported to be belonging to the deceased. Then, some questions answer form statement was recorded, wherein he has deposed that the witness Ramlal, Sadularam, and Balwant Singh had given out that the prosecution party collected the people in the night for taking possession of the land of the accused Lalchand, and for that purpose firing was done in village Subhanwala, and fear psychosis was created. He has also stated that Jot Ram had disclosed that the prosecution party had gone to take possession of the field of Lalchand, in which process their own person received gun shot injury. This was disclosed to this witness by Jagdish. Similar narrations were reported to have been done by various other witnesses. He has admitted to have put a note in the police diary about the incident being relating to 3 A.M. in the night. Then, he has

also admitted that he submitted a challan in the Court against Jagdish, Lalchand the complainant and Ramkaran for having fired on the field of accused Lalchand.

8. This challan is regarding the incident taking place in the night intervening 19th and 20th September, 1982 at 3 A.M. In this background a look at Ex. P-3 shows that the land of Kila No. 2, 3, 8, 9, 12, 13, 18, 19, 22, and 23 of Stone No. 35/220 so also land of Kila No. 21 to 25 of Stone No. 35/219 is in the name and possession of Santo, Lalchand (accused). Then, a look at Ex. P-6 and 6A shows that these lands are situated north to south, and in further south there is a way east to west. Point A is towards the far east, while point C, D, E, F etc. are towards west. Then, point F is marked at innumerable places in Kilas No. 16, 17, 18, 19, 22, 23, 24 and 25 as the places wherefrom empties were recovered. Point D is in the southern side of Kila No. 22, while point C is in the north western side of Kila No. 24. Dhani is shown in Kila No. 13 which is in the north side. With this, as appears from Ex. P-6A that, according to prosecution, the informant and two others were travelling from east to west, and at point B they are said to have been overtaken while at point A dead body of the deceased is said to be lying. Then, C is the place where the jeep is said to have stopped. Obviously C is in the north west of Kila No. 24, and Kila No. 24 is a Kacha field. Admittedly no firearm, or any other symptoms of any jeep having come there have been found.

9. Then, D is the place where the victim is said to have been shot, say to have received injuries. As noticed above this D is in the south portion of Kila No. 22. Obviously, in between point C to D there is a full Kila No. 23, and some portion of Kila No. 22 and 24 also. This Kila No. 22 and 23 are shown to be in possession of accused Lalchand. It is admitted by P.W. 4 that the way shown in the map A to B is not a through and through way rather stops ahead.

10. In the background of the above situation, the things are required to be comprehended, as to whether the incident did at all occur in the manner in which the Court is asked by P.W. 3 and 4 to believe. The first thing that occurs is, that there was no occasion for the three persons of the prosecution side to go from east to west, and more particularly at point D. Then, in absence of anything on record, it is too much to believe, or assume, that the accused persons did have the

information about P.W. 3, P.W. 4, and the victim being going on this way, so as to come armed with firearms in a jeep, and to waylay them say overtake them, and cause the incident. Admittedly there is a dispute between the parties about the land. According to Ex. P-3 the land is recorded in the name of Lalchand's grand mother Santo. According to the prosecution party, they purchased the land from Santo by registered sale deed, and as appears from collective reading of the statements of P.W. 3 and P.W. 4, that after about 8 days of the registration of the sale deed Santo came to be murdered, and the appellant being Utma Ram had lodged prosecution against P.W. 4, his another brother and father for murder of Santo, apart from the fact that other prosecutions were also launched about registry being forged one. Of course, the date of the sale deed has not come on record, but then this sequence of things does show, that the land was in possession of Lalchand at the time of incident. In this background a look at Ex. P-6 and Ex. P-12 together again show, that empty cartridges have been recovered from the Kilas No. 16, 17, 18, 19, 22, 23, 24, and 25. If the accused were nine in number, and on the victim side there were only three persons, the accused had already alighted from the jeep, and had opened fire seeing which P.W. 3 and 4 had run away, only deceased Balwant Singh was there, there could not be any occasion for the firing being done from so many places, so as to scatter the empties in as many as 8 kilas. Moreso when the deceased is said to have received injury in Kila No. 22 at point D, which is south west extreme corner of all the 8 Kilas.

11. This coupled with the fact that whether place B or at any other place in Kilas No. 16, 17, 18, 19, or 22, 23, 24, and 25 no marks, whether of blood, or of human feet or of firing have been found except recovery of empties. The blood stained earth is also said to have been collected only from point A where the dead body was put. Then, it is also required to be considered, that according to Ex.-1 the deceased had received bleeding injury, gun shot wound of entry in the epigastrium mid line upper part slightly right side, and he died due to severe haemorrhage resulting into death, but then according to P.W. 3 and P.W. 4 despite their carrying the victim they did not receive any blood stains on their clothes, nor any blood fell from the place D to A.

12. In this background it does cast a serious doubt on the reliability of the version of P.W. 3 and P.W. 4 about the manner of happening of the incident.

13. In our view, the story projected during cross examination, and deposed by I.O. P.W. 5 in the cross examination, does appear to be more probable, as regarding the incident of the night even challan had been filed. It is very well probable that since land was recorded in the name of the accused Lalchand, who was not prepared to give up the land, his grand mother Santo had already been murdered, there was serious controversy about the genuineness of the sale deed, the prosecution persons must be feeling strong enough to capture possession from the accused Lalchand by force, including using of firearm, it is also well high possible, that in this process they may have come at the dead of the night i.e. 3 A.M., and opened indiscriminate fire, resulting into scattering of empties in as many as 8 Kilas upto Dhani situated in Kila No. 13, and in that process of indiscriminate firing, some shot might have unfortunately hit Balwant, and then prosecution might have thought it a good opportunity to avail, to achieve their intentions of taking over possession of land from the accused Lalchand.

14. It is significant to note, that despite the weapons being recovered from the accused persons, purportedly on the information, and at the instance of the accused under Section 27 of the Evidence Act, and despite good number of empties, say about a dozen, having been recovered from the spot, none of them i.e. whether weapon or empties were sent for ballistic examination, even to lend the assurance about the empties being fired by the weapons recovered from the accused persons, much less about serviceability of the weapons recovered from the accused persons. Significantly further neither the weapons nor the empties have even been produced in the court, much less identified. We are constrained to repeat, that if the incident were to take place in the manner alleged by the prosecution, there was no occasion for the accused persons to so fire, as to scatter the empties in as many as 8 Kilas. Then, according to P.W. 3 and P.W. 4 the firing continued for 5 to 6 minutes or 10 to 15 minutes continuously, and indiscriminately, on the victim, while as appears from Ex. P-1, that the victim had received only one entry wound, that too with no blackening, which obviously shows that it was not a close ranged fire, but the shot appears to have been fired

from good distance.

15. Since the learned trial court has taken the matter in a lopsided manner, rather as if it was a civil case, and the learned Judge was judging as to whether the defence has been able to prove its story, or the prosecution has proved it, and then has proceeded with conjectures in favour of the prosecution, to seek assurance to reliability of the statements of P.W. 3 and P.W. 4, which in our view is not a correct approach. This is for the prosecution to prove its case beyond any reasonable manner of doubt, and the accused, at best, is only required to reasonably probablise the theory propounded by him, and is not required to prove it.

16. All said and done, in any case, from the entire scanning of the record, we do not find ourselves to be safe, in believing the two witnesses P.W. 3 and 4, to find the accused persons guilty for the capital offence.

17. Resultantly the appeal is allowed. The impugned judgment is set aside, and all the accused persons are acquitted of all the charges. They are on bail, they need not surrender, their bail bonds stand cancelled.

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