

Surta and Others

Vs

State of Haryana.

Criminal Appeal No. 225 of 1970

(A. N. Ray, C. A. Vaidialingam JJ)

12.02.1971

JUDGMENT

RAY, J. -

1. This appeal is by special leave against the judgment, dated October 21, 1970, of the High Court of Punjab and Haryana convicting the nine appellants, Surta, Ram Sarup, Birkha, Jagram, Mangal, Juggal, Mannu, Lakhi and Sisram, under Section 148 of the Indian Penal Code and sentencing them to six months rigorous imprisonment and also convicting them under Section 339/149 of the Indian Penal Code and sentencing them to rigorous imprisonment for one year. The other two appellants were awarded a sentence of imprisonment till the rising of the Court and a fine Rs. 50/- under Section 148 of the Indian Penal Code and in default of payment of fine to undergo rigorous imprisonment for one month each. They were further sentenced to pay a fine of Rs. 100/- under Section 333/149 of the Indian Penal Code and in default of payment to undergo rigorous imprisonment for two months each.

2. The appeal by special leave was limited to the question of sentence only.

3. On July 30, 1966, Mangal Singh, Assistant Sub-Inspector accompanied by four constables left Police Station, Rewari, for patrol duty sometime after 8 p.m. One Piare Lal lodged a report with Mangal Singh that two of his cows were missing. Mangal Singh and his constables reached village Jatuwas in the company of Piare Lal. Piare Lal pointed out the two cows. Mangal Singh called Kurra who was Lamberdar. Three other persons came along with Kurra. Mangal Singh informed those three persons the two cows belonged to Piare Lal and were alleged to be stolen property. These persons refused to hand over the cows. When efforts of Mangal Singh failed to persuade the villagers to hand over the cows he ordered the constables to untie the cows for taking them away. At this Kurra and the three other persons, Chhelu, Ram Rikh and Partap assaulted Mangal Singh. The four constables intervened. The villagers rushed to the spot and fell upon Mangal Singh and the constables. In order to defend himself Mangal Singh fired from his service revolver which injured one of the villagers. Mangal Singh received some injuries on his arm and his revolver fell from his hand. The four constables and Piare Lal ran away from the spot. After some time the Sub-Inspector of Rewari Police Station learning that a Police Officer was lying injured reached the place and found Mangal Singh. The Police Officer recorded the statements of Mangal Singh and of the constables. Mangal Singh was sent to the hospital at Rewari for medical examination. The Sub-Inspector Ripudaman Singh carried on the investigation. He arrested 22 persons and recovered the service revolver from the person of Surta.

4. The defence version was that crops of the accused were damaged by stray cattle. They made a

complaint to the Deputy Commissioner. The accused had been told to detain the stray cattle so that they could be removed. The accused rounded up the cattle and informed the officers at Delhi to send a truck for taking away the cattle. Before the cattle could be taken away the Police Party arrived. The accused informed the Police Party that the cattle could not be taken away. This infuriated Mangal Singh who started firing. The defence further stated that they caused injuries in the exercise of private defence of person as otherwise Mangal Singh would have killed some of them.

5. The High Court found that when the four constables went forward to untie the cattle the villagers attacked Mangal Singh and other constables and it was at this stage that the pistol was used. The accused did not have the right to stop the Police Party from untying the cattle. It was also found by the High Court that the accused did not have the right of private defence and force was used to restrain them from interfering with the Police Party taking possession of the cows.

6. Before the High Court it was submitted on behalf of the appellants that the sentence was severe. The High Court held that the sentence was not at all excessive and in fact the Sessions Judge erred on the side of leniency. Counsel on behalf of the appellants submitted that the accused spent about 3 months in prison before being enlarged on bail and in the facts and circumstances of the case that sentence should suffice.

7. This Court interferes with sentence only when it is established that the sentence is harsh or unjust on the facts and circumstances of the case. Sometimes consideration of age has also occasioned interference. There are instances of interference in sentence of fine in cases of violation of statutory offences. In the present case, the Sessions Court and the High Court both considered the question of sentences. There is nothing on record to suggest that the sentence passed is unjust or harsh.

8. The appeal is therefore dismissed. The accused will surrender if on bail and serve out the sentence.

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