

Rajendra Prasad and Another

Vs

State of Bihar

Criminal Appeals Nos. 477-78 of 1986

(A. P. Sen, B. C. Ray JJ)

12.09.1986

ORDER

1. Notice in these two special leave petitions was confined to the question of sentence only. Special leave granted. Arguments heard.
2. The appellants are two brothers and the landlords of a house. They have both been convicted by the Third Additional Sessions Judge, Arrah for having committed an offence punishable under Section 307 read with Section 34 of the Indian Penal Code. The learned Sessions Judge and the High Court have accepted the testimony of Ms. Janki Devi, PW 4, her grandson Rajesh, PW 3 and the two neighbours Bhagirath Mistri, PW 1 and Rajendra Mahato, PW 2 who reached the spot on hearing the alarm and have found that the prosecution has established the charge beyond all reasonable doubt. The testimony of the prosecution witnesses shows that on the morning in question while the complainant was warming herself in the angan of her house and her grandson was playing nearby, the appellants started abusing her from their Kotha and threatened that she would be shot if she did not vacate the house. On her refusal they opened five rounds of fire from their guns. The complainant Smt. Janki Devi fled from the place and hid herself in a marai but her grandson Rajesh sustained a gunshot injury on his left thigh.
3. In mitigation of sentence Smt. Gyan Sudha Misra, learned counsel for the appellants at first urged that the appellants were in possession of the house in dispute and the members of the family of the complainant-tenant Smt. Janki Devi, PW 4 came to forcibly dispossess them. On seeing the crowd, the learned counsel asserts, the appellants had no other alternative but to open fire. There is no substance in the contention. The appellants in their defence had taken that plea but the learned Sessions Judge as well as the High Court have held that they have failed to substantiate it. On the contrary, the finding of the courts below based on the testimony of Smt. Janki Devi and her grandson Rajesh is that on the morning in question the appellants started showering abuses on the complainant Smt. Janki Devi and threatened that if she did not vacate the house she would be shot. On her refusal, they opened five rounds of fire from their guns. The complainant fled away from the place and hid herself in a marai but as a result of the firing her grandson Rajesh sustained a gunshot injury on his left thigh.
4. The learned counsel then contended that the appellants are old men and having a feeling of remorse and were prepared to pay adequate compensation. She further said that the incident is of the year 1976 and it would be harsh to send them back to jail after ten years. It was also said that Rajesh, PW 3 only suffered a pellet shot. We are not much impressed with this submission as well. Such trigger-happy persons like the appellants who without any lawful justification tried to take forcible possession to throw out their tenants by use of fire-arms must suffer the necessary

consequences. There was really no ground for remission of substantive sentence of imprisonment.

5. However, taking the totality of the circumstances, particularly looking to the fact that the appellants are old men who acted in the heat of the moment and the incident was of the year 1976 and the appellants have been on bail for the last ten years, we think, it would meet with the ends of justice if we alter the sentence of imprisonment. We accordingly remit part of the substantive sentence and direct that instead of rigorous imprisonment for three years, the appellants shall undergo rigorous imprisonment for a period of one and a half years and pay fine of Rs. 2500 i.e. Rs. 5000 in all, or in default undergo rigorous imprisonment for a period of one and a half years. The amount of fine if recovered shall be paid to be complainant Smt. Janki Devi, PW 4 and her grandson Rajesh, PW 3 by way of compensation. The amount shall be deposited by the appellants in the Court of the Sessions Judge, Arrah within one month from today.

6. Subject to the modification in sentence, the appeals fail and are dismissed.

</html