

Sunder Singh

Vs

State of Rajasthan

Criminal Appeal No. 103 of 1987

(M.M. Dutt, K. Jagannatha Shetty JJ)

04.02.1988

ORDER

1. This appeal by special leave is directed against the judgment of the Rajasthan High Court at Jaipur Bench, affirming the conviction and sentence under Section 302 IPC as against the appellant.
2. According to the prosecution there was a dispute in regard to the right to draw water from the well 'Maliwala' situated in Village Dhani Beroj. The complainant and the appellant along with his three sons and several others had undisputed right to draw water in turn from the same well. There were in all 16 sharers to draw water. On October 2, 1982 there was a bitter quarrel between the complainant and accused as to the right to draw water. The complainant was asserting that it was his turn whereas the appellant and his sons were asserting that it was their turn. It was alleged further by the prosecution that the accused came there in the early part of the day and switched off the motor telling the complainant that they would be operating the tubewell in that night to irrigate their land. The complainant, however, did not agree. When that dispute was going on, the appellant with his gun fired at the deceased. Sheo Narain, who succumbed to the injury sustained.
3. This was the broad spectrum of the prosecution case which resulted in the trial and the conviction of the father and his three sons. The trial Court acquitted one of the sons, Mahendra. On appeal, the High Court acquitted the other two sons.
4. The father who is now aged 76 is before us in this appeal. The primary question for consideration is whether the act of the accused constitutes an offence under Section 302 IPC or under Section 304 Part I, IPC. We have given our anxious consideration to the material on record. It is not in dispute that there was a dispute as to the turn by which the water pump should be operated between the parties. It was not a premeditated or preplanned fight. The prosecution has not established by evidence that it was the turn to draw water by the complainant. Nor is there clear evidence that it was the turn of the appellant. Each was asserting that it was his turn and not of the other. In this circumstance, it would not be wrong to assume that the appellant in the exercise of his right got enraged and tried to prevent the mischief by the deceased. It seems to us that the action of the accused could reasonably be brought under Section 304 Part I, IPC.
5. We accordingly allow the appeal in part and alter the conviction from Section 302 to Section 304 Part I, IPC. He has already undergone enough imprisonment. In view of his advanced age, we sentence him to the period already undergone.

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