

Chandan Lal and others

Vs

State of Rajasthan

Criminal Appeal No.254 of 1980

(Kuldip Singh, R.M. Sahai JJ)

29.11.1991

JUDGEMENT

R. M. SAHAI, J.:-

1. The only short question in this appeal is, if the High Court was justified in reversing the order of acquittal passed by the trial judge and convicting the appellants under Section 304-1 read with Section 34 IPC as they had exceeded their right of private defence.
2. Both the Sessions Judge and the High Court found that the occurrence dated 25th June, 1972 in which two persons died, took place in a field which belonged to the appellants. It has further been found that the complainant in a civil suit filed in 1971 had obtained an injunction against the appellants which had been vacated on June 1972. Despite this the complainant party in disregard of the order passed by the competent court went on the field and sowed maize on the date of occurrence. Thereafter on coming to know that the accused had gone on the field the complainant party reached there armed with weapons which resulted in the incident. The trial judge further found that the appellants had both the right of private defence of property as well as person. As the complainant had gone there armed and, therefore, if in course of the incident that took place on that date two persons died they could not be convicted under Section 302. It was also found that the complainant party was armed with sharp weapon but in order to nullify the plea of private defence the FIR was changed. In appeal the High Court did not enter into the controversy as to whether the FIR was changed or not nor it examined if the complainant party was given beating even after the deceased had fallen down. But it allowed the appeal only as a matter of law because the death on the side of complainant was of two persons and the injuries on the accused side were lesser in number.
3. We have heard learned counsel for parties at length. We do not propose to decide the question of law on which the leave was granted nor we consider it necessary to declare any law on the right of private defence either of property or person. But we agree with the learned counsel for appellant that in the facts and circumstances of the case the High Court should have attached greater weight to appreciation of evidence by the trial judge. The finding of the trial judge that there was no evidence of inflicting any injury after the deceased had fallen down was not set aside by the High Court. The death of the deceased was caused due to head injury. Even one of the accused had head injury. The learned counsel urged that in those circumstances the accused could at most have been convicted under S. 304-1 of IPC. The incident is of 1972., The appellant had been acquitted by the trial judge in October, 1972..The High Court allowed the appeal and convicted the appellant in January 1980. The appeal was admitted in this court on 8th April, 1980 and appellants were granted bail
4. In these circumstances we modify the order of the High Court and convict the appellants under

Section 304-11 read with Section 34 IPC and sentence them to the period already undergone. The appellants are further directed to pay a fine of Rs. 3,000/-each. The amount shall be deposited within six months. In case of default the appellants shall serve out the entire period of sentence imposed by the High Court. On deposit of fine the bail bonds shall stand discharged.

Order accordingly.

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