

Jharmal and Others

Vs

State of Haryana

Criminal Appeal No. 123 of 1994

(G. N. Ray, K. Jayachandra Reddy JJ)

22.02.1994

JUDGMENT

JAYACHANDRA REDDY, J. –

1. Special leave granted limited to the question of nature of offence and the sentence to be awarded and the question is whether the accused exceeded the right of private defence.
2. There are three appellants. They along with six others were tried for offences punishable under Sections 147, 148, 302/149 and 323/149 IPC. The trial court acquitted four persons and convicted the three appellants along with two others namely Badel and Chav Khan, who died subsequently. The appeal by these three appellants was dismissed by the High Court. Hence the present appeal.
3. All the accused, the material witnesses and the deceased belong to Village Siraswa in Gurgaon District. On April 16, 1989 at about 11.30 a.m. bullocks belonging to the complainant party entered into the wheat fields of Kamal accused and started grazing there. Risal and Abdul, two of the appellants herein felt offended as the cut wheat crop was being eaten by the bullocks. Therefore they started beating the animals. Udey Singh, brother of Jai Singh, informant came running and asked the accused not to beat the bullocks. They left the bullocks and threatened to beat Udey Singh who ran to his father Asru, the deceased and complained. Then Asru, the deceased followed by Jai Singh, PW 5, Anwar, PW 6 and Jam Khan and Dalmer reached the place and they found the two appellants taking away the bullocks. The prosecution party protested and the accused apprehended danger and raised a lalkara to teach the complainant a lesson whereupon, according to the prosecution, the accused party reached there with arms and a quarrel took place which led to a fight during which both sides received injuries. After the fight, the injured deceased was taken to the hospital on a camel cart but he died on the way. His son Jai Singh, PW 5 gave a report to the police and S.I., PW 7 registered the crime, took up the investigation, held the inquest and sent the dead body for post-mortem. The doctor, PW 1, who conducted the post-mortem, found a punctured wound on the left scapular region and an incised wound on the scalp with swelling. On internal examination he found the fracture of the skull bones. He opined that the death was due to shock and haemorrhage due to this injury. The doctor also examined witnesses including Jai Singh, PW 5 and Anwar, PW 6. The accused had also a number of injuries on them. According to the prosecution witnesses, out of the three appellants, Risal attempted to give a farsa blow to the deceased but he saved himself by turning back and Abdul gave a farsa blow on the head of the deceased and the two other accused Badel and Chav Khan also dealt blows on the deceased and when the witnesses intervened they were also beaten up. On the side of the accused, Chav Khan who died subsequently, received five injuries including an incised wound on the hand. Risal, one of the appellants herein, received four injuries including a lacerated injury on the head. Badel, another accused received two

injuries including a lacerated injury on the head. Before the High Court, it was, however, contended that the persecution party was the aggressor because its bullocks entered the field of the accused and started eating cut wheat crop and thereafter the complainant side along with the deceased and others came and attacked them. The trial court and the High Court held that the right of self-defence put forward by the accused is not probable and that a large number of injuries on the side of the complainant party suggest that they were attacked by the accused and therefore the accused actually participated in the assault pursuant to a prearranged plan and therefore they had no right of self-defence.

4. We have examined the evidence along with the evidence. It is not in dispute that the accused also received a large number of injuries. It is well settled that the accused need not prove the plea of self-defence beyond all reasonable doubt but if by preponderance of probabilities their plea becomes plausible then they have to be given that benefit. In the instant case, the plea put forward by the accused appears to be plausible. However, by inflicting some incised injuries on the deceased they seem to have exceeded the same.

5. In the result the conviction of the appellants under Sections 302/149 IPC is altered to one under Section 304 Part I IPC and each of them is sentenced to undergo seven years' RI. The other convictions and sentences, are, however, confirmed. The sentences shall run concurrently. Accordingly, the appeals are partly allowed to the extent indicated above.

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