

SUPREME COURT OF INDIA

Ayodhya Ram Alias Ayodhya Prasad ...

Vs.

State of Bihar

(G Pattanaik and A Misra JJ.)

07.01.1999

ORDER

1. These five appellants, one of whom has already died during the pendency of this appeal, have been convicted under Section 302/149, I.P.C. for having killed one person and they have also been convicted under Section 307/149, I.P.C. for having injured PW 6 and PW 7 by firing at them indiscriminately.
2. Mr. Sanyal, learned Counsel appearing for the appellants states that appellant No. 1 is dead and in support of the said submissions files an affidavit of the lawyer who was appearing for the appellants No. 1 in the Courts below. The said affidavit be placed on record. The appeal stands abated in respect of appellant No. 1.
3. The case in a nutshell is that on 6-3-1976 in early hours of morning while the prosecution party were present on the field these accused persons armed with guns and rifles arrived at the scene of occurrence and started indiscriminate firing at the members present on the land and as a result of such firing one person died and two others were injured. It transpires that the accused persons claimed to be the landlord of the land in question whereas members of the prosecution party were claiming to be bataidars over the land and that on account of tension and law and order problem an Executive Magistrate was posted there with police force. Learned Sessions Judge as well as the High Court on appreciating the evidence of the two injured eye-witnesses PW 6 and PW 7 as well as PW 8 who had lodged the FIR accepted their testimony and convicted the appellants of the offence as already stated.
4. Mr. Sanyal, learned Senior Counsel appearing for the appellants however submitted that it was a case of free fight as both parties have fired at each other and therefore the Courts below were not justified in convicting the appellants by taking recourse to the provisions of Section 149, I.P.C.

Alternatively, he submitted that the accused persons were within their right in exercise of the right of private defence either of person or property and the Courts below committed an error in not considering the said plea and focussing the attention on the same.

5. Lastly, he submitted that admittedly the accused persons also suffered certain injuries which were caused by gun shots and no explanation having been offered by the prosecution in respect of those injuries, the entire prosecution case must be discarded.

6. We have considered the materials on record which were placed before us in support of each of the aforesaid submissions but we are unable to accept any one of them. So far as the case of free fight is concerned Mr. Sanyal brought to our notice the report of the Executive Magistrate which might have helped him had the Magistrate in his evidence in cross-examination not stated that by the time he reached the scene of occurrence with the force there was none in the field. Therefore, the Magistrate cannot be held to be a witness to the occurrence and whatever statement he made in the report cannot be accepted. So far as the plea of right of private defence either of property or person is concerned, we are not shown any materials to establish such a plea except the fact that some of the accused persons were also injured. In a case like this where a Magistrate with the force was posted at the place of occurrence even if the accused persons had any claim of right to the property which was being occupied by the prosecution party, the accused were obliged to approach the Magistrate and the police force and not to take the law on their own hands. That apart the landlord who claimed to be the owner of the property was also not present on the spot and his plea of alibi has already been accepted. In such circumstances, it is difficult to concede the case of right of private defence of property or person to the accused persons. On the other hand, the sequence of events as narrated by the three eye-witnesses, namely, PW 6, PW 7 and PW 8, if taken into account, such a plea by the accused persons cannot be sustained and therefore the Courts below were fully justified in not accepting the plea of right of private defence of property or person.

7. So far as the injuries on the accused persons are concerned and no explanation of the same was given by the prosecution, no doubt that some of the accused persons have been found to have been injured but the injuries were of such nature that the Courts below came to the conclusion that the prosecution was not obliged to explain those injuries. It is too well-settled that the prosecution is not bound to explain each and every injury on the accused persons irrespective of the nature of the injury and in respect of some minor injury on the accused, if no explanation is offered by the prosecution, the prosecution would not fail on that score. Mr. Sanyal in course of his arguments had also raised a contention regarding the delay in lodging the first information report. But on a careful examination of the record available, we find that the said report has been given immediately after the occurrence and has been delay in dispatching the first information report from the outpost to the police station, which is of no consequence.

8. In the aforesaid circumstances and in view of the cogent and positive evidence of PW 6, PW 7 and PW 8, we do not find any merits in this appeal and the same is accordingly dismissed.