

SUPREME COURT OF INDIA

Hema Ram

Vs.

State of Rajasthan

(K.T. Thomas and D.P. Mohapatra JJ.)

15.02.2000

ORDER

1. There are six convicted persons including a lady (wife of one of the convicted persons by name Sharwan). Those were all convicted for various offences under Section 302 read with Section 149 of the Indian Penal Code. All of them were sentenced to imprisonment for life for the aforesaid principal count and to lesser terms of imprisonment for lesser offences. They appealed to the High Court but a Division Bench of the Rajasthan High Court confirmed the conviction and sentence and dismissed their appeals. Among the convicted persons Hema Ram was arrayed as A-1 in the trial Court and he and other convicted persons jointly filed an appeal by special leave in this Court.

2. The incident which gave rise to the prosecution case took place at about 10.00 a.m. on 6-7-1982. The prosecution version regarding the occurrence can be summarised thus:

3. Hema Ram the first appellant is the father of Sharwan (fourth appellant) and Gopa Ram (Second appellant) and Achlu Ram (third appellant) are his brothers. Fifth appellant Narain is the son of second appellant, Gopa Ram. As pointed out above, the sixth appellant, Smt. Kamla is wife of Sharwan (fourth appellant). They had an agricultural field at Raidhanu in Distt. Nagaur. The deceased Bhiya Ram and his kith and kins were at loggerheads with the appellants on account of skirmishes which took place sometimes prior to the date of occurrence in this case. On 6-7-1982 Bhiya Ram, the deceased and his brother Dungar Ram (PW-6) proceeded to the agricultural field situated beyond the agricultural land of the appellants. But as they reached near the agricultural land of the appellants, they were attacked by Hema Ram with a spade. The first blow was dealt with on PW-6 Dungar Ram. Seeing this his brother Bhiya Ram intervened to rescue his brother. Then Hema Ram gave a blow on Bhiya Ram with the same spade. Hearing the commotion three sons of the deceased and one son of PW-6 reached the spot with lathis, but the appellants attacked them also.

4. Bhiya Ram who sustained a serious head injury, later succumbed to his injuries. F.I.R. was lodged by PW-11, Ummeda Ram, one of the sons of the deceased at 3.00 p.m. on the same day. Two hours thereafter, another F.I.R. was lodged with the same Police Station by second appellant, Gopa Ram who put forth a rival version of the incident. Both the cases were got investigated into by PW-17 who referred the case based on the F.I.R. lodged by the second appellant Gopa Ram, and charge-sheeted the case based on the first F.I.R.

5. In support of the prosecution version, PW-3 Mega Ram, PW-4 Kheraj (son of the deceased), PW-

5 Moola Ram, PW-6 Doongar Ram, PW-7 Sohan Lal, PW-8 Surja Ram, PW-9 Jaga Ram, PW-11 Ummeda Ram were examined as eye-witnesses.

6. In support of the defence version, a number of witnesses were examined as defence witnesses. It is advantageous at this stage to indicate the defence version as could be noticed from the evidence of DW-1 Joga Ram who claimed to be an eye-witness. This is his version:

7. While A-1, Hema Ram was doing agricultural operations in his field, the deceased and PW-6 trespassed upon his field armed with lathis and launched an attack on him. In the meanwhile, PW-4, PW-5, PW-9 and PW-11 also reached the same place. Noticing it, some of the appellants also reached the field who were carrying water. This was followed by a fight between both sides.

8. On the side of the deceased, apart from the serious injuries sustained by the deceased, five more persons received injuries including serious injuries such as fracture and lacerated injuries on the head. It is pertinent to point out at this stage that on the side of the accused four persons sustained injuries including serious injuries like fracture and lacerated injuries on the head. The fracture sustained by the fourth accused Sharwan was on the frontal bone, the lacerated wound sustained by Hema Ram was also on the frontal bone while A-3 Achlu also had lacerated wound on the forehead as well as on the parietal region of his head. Fifth appellant Narain has also lacerated wound on the head.

9. The trial Court and the High Court placed reliance on the evidence of prosecution witnesses and rejected the defence evidence and found that the appellants have attacked the deceased and his party by forming themselves into an unlawful assembly at the place of occurrence.

10. The Division Bench of the High Court mainly believed the testimony of PW-11 Ummeda Ram who gave the First Information Report on the same day. The High Court found his testimony reliable and the evidence of the remaining eye-witnesses was found to be substantially supporting the prosecution version. So PW-8 Surja Ram did not see the occurrence from the beginning, his testimony was also relied upon by the High Court on the premise that it would corroborate the version of the prosecution story.

11. The plea adopted by the accused, as could be understood from the defence evidence, is one of right of private defence. Prosecution cannot escape from the fact that four accused persons were inflicted with serious injuries by the party belonging to the deceased at the same place and at the same time when the prosecution occurrence had happened. If the version of the defence is true, then they are entitled to the right of private defence. It is, therefore, decisive and crucial in this case to determine whether the appellants were the aggressors. If they were the aggressors, then they cannot escape from the conviction, for, the Injuries they received could only be the result of the self defence exercised by the deceased and his party. On the other hand if the deceased and his party were the aggressors, that is enough to pass a verdict of acquittal in favour of the accused, for, there is no scope to consider in the conspectus of this case that the accused had exceeded the right of private defence. That is because one of the accused sustained fracture on his frontal bone and hence the apprehension of death or grievous hurt is a matter of definite premise.

12. As to the possibility of either faction launching the first attack on the other faction looms large as both sides were at loggerheads for long. There is a tilting circumstance in favour of the accused, in that, the one episode described in the F.I.R. as the preceding event is what was attributed to Hema

Ram. It is alleged that he caused extensive damage to the crops raised by PW-6 Doongar Ram in his field through grazing of the cattle unleashed by him. This is stated to be the penultimate event in the series of events which took place as between both sides. If that is so, there is strong possibility of the deceased party looking for an opportunity to retaliate.

13. We may point out that neither the trial Court nor the High Court has posed the most crucial question in this case as to whether the accused party was the aggressor and hence it is pertinent now for us to scrutinise, at least from the broad features of the case, to see whether the accused would not have been the aggressors.

14. One of the most clinching circumstances in favour of the accused in the above endeavour is the possibility of the incident taken place inside the property of Hema Ram. PW-17, the Investigating Officer said that the place of occurrence was the spot where he found blood. In his evidence he clearly stated that blood was found inside the field of Hema Ram. If that be so, the occurrence would have taken place inside the place, i.e., field. In this context it is well to remember that prosecution has no contention that during the course of the occurrence the deceased and his party succeeded in pushing the accused persons into the field of Hema Ram. The corollary is this:

15. The blood was found inside the field of Hema Ram. The commencement of incident would have been at that spot itself. The further corollary thereafter is, the deceased and his followers would have stepped into the field of Hema Ram. It is admitted by the prosecution witnesses that the followers of the deceased were armed with lathis. If so, the very entry of those persons with lathis, in or upon the field of Hema Ram, would amount to criminal trespass as defined under Section 441 of the Indian Penal Code. In such a situation, Hema Ram and his men would have the initial right of private defence to repel that aggression.

16. The broad features enumerated above would show, in a substantial degree, that the aggressors in this case would have been the deceased and his party. If that be so, the appellants had the right of private defence to start with. There is no reason to think that there was any stage when the right of private defence would have abated to lower level as to make the further onslaughts launched by them on the deceased party as exceeding the limit of private defence fixed in the Indian Penal Code.

17. In the result we allow this appeal, set aside the conviction and sentence passed on the appellants. We acquit them. We direct that the appellants be released from jail forthwith unless they are required in any other case. We are told that the sixth appellant, Smt. Kamala is on bail. Hence her bail bonds will stand discharged.