

**SUPREME COURT OF INDIA**

Nanak Ram

Vs.

State of Rajasthan

Crl.A.No.1985 of 2010

(T.S. Thakur and C. Nagappan JJ.)

26.02.2014

**JUDGMENT**

**C. NAGAPPAN, J.**

1. This judgment shall dispose of three appeals in Criminal appeal Nos.1985 of 2010 filed by the appellant Nanak Ram/Accused and Criminal Appeal No.342 of 2011 filed by appellants/Accused Mohan Ram and Surja Ram against their conviction and sentence, and Criminal Appeal Nos. 1991 of 2010, 1990 of 2010 and Criminal Appeal No.1992 of 2010 filed by the State of Rajasthan for the enhancement of the sentence against the above mentioned accused, respectively.

2. The case of the prosecution in brief is as follows : PW 7 Shera Ram is the younger brother of deceased Shivji Ram and they had obtained land from Gram Panchayat towards the western side of the village and obtained Pattas for the said land. Accused Bhera Ram and accused Chuna Ram are real brothers while accused Surja Ram and accused Mohan Ram are sons of accused Sadula Ram. Accused Bhera Ram and Sadula Ram told Shivji Ram and Shera Ram that they will not allow them to take the land and will snatch it from them. Two months prior to occurrence Shivji Ram and Shera Ram erected fencing around their land whereupon the accused Bhera Ram and other accused were seriously annoyed over the same. On the occurrence day i.e. on 29.5.1983 at 10.30 a.m. Shivji Ram and both his younger brothers were repairing/re-erecting the fencing in their land, accused persons Bhera Ram, Sadula Ram and his sons Mohan Ram and Surja Ram, Gordhan Ram, Nanak Ram and Chuna Ram, all duly armed entered into Bara from south side and started dismantling the fence. Shivji Ram and his brothers

questioned the same by saying that they have obtained Patta from the Panchayat. Thereupon Bhera Ram and Surja Ram simultaneously inflicted Barchhi blow on the head of Shivji Ram, as a result of which he fell down and all the accused attacked him with their weapons. Shera Ram intervened and accused Mohan Ram inflicted Barchhi blow which landed on the left side of his head and accused Chuna Ram inflicted the jei blow on his right leg. Then all the accused started beating whereupon his sister Dhuri came running and fell upon Shera Ram in order to protect him. PW 11 Balu Ram and PW 2 Mangi Lal who were present at the occurrence place were threatened by the accused and they got frightened and saw the occurrence standing by the side of the road. After that all the accused went away. Shivji Ram died on the spot.

3. Some unknown person gave a telephonic information about the occurrence to the Police Station Nokha on 29.5.1983 and after making Exh.P-54 entry in the Roznamcha PW 13 Attar Ali Khan went to the occurrence place and found Shivji Ram lying dead and Shera Ram with injuries and he recorded Exh.P9 statement of Shera Ram, sent him to Nokha Hospital for treatment. He forwarded Exh.P9 statement to the Police Station for registering the case and Exh. P55 FIR came to be registered. He conducted inquest on the body of Shivji Ram and prepared Exh.P5 'inquest report'. He prepared Exh.P3 site plan and Exh.P45 site inspection note. He seized blood stained earth and ordinary earth under Exh. P33 and also seized jeis used by the accused Chuna Ram, Nanak Ram from the occurrence place and the blood stained wooden jei under Exh. P34. He also seized the footwear of Shivji Ram viz. Exh.P35 and sent the body for post mortem.

4. Dr. Moti Lal Mishra (PW 9) conducted the autopsy on the body of Shivji Ram and found the following 9 injuries:

- i) An incised wound of 6-½" x ½" and deep upto brain on the head,
- ii) a punctured wound of 1 x ½ x ½ cm on the left knee joint deep to the bone;
- iii) multiple contusion of 1 cm each incised on the left elbow joint;
- iv) an abrasion 1 x ½ cm on the left ring finger dorsally;
- v) a contusion of 4 x 2 cm on the lower half of the left leg anteriorly;

- vi) swelling 2 x 2 cm on the left leg near the 5th injury;
- vii) a contusion of 1 x 1 cm on the right thigh
- viii) an abrasion 3 x 1 cm on the right knee joint near the ankle joint; and
- ix) an abrasion on the right middle finger dorsally.

He issued Exh. P 33 Post Mortem report by expressing opinion that the death has occurred due to destruction of all the elements of brain and shock due to excessive bleeding.

5. PW 9 Dr. Moti Lal Mishra examined Shera Ram in the Nokha hospital and found the following 11 injuries on him:

- i) One crushed wound of 4 x 3 cm bone deep on lower half of the left leg interiorly;
- ii) One crushed wound of 1cm x .5x.5 cm on middle 1/3 of the right leg laterally;
- iii) Contusion of 15 x 1.5 cm on the lower portion of glatal region;
- iv) An abrasion 3 x ½ cm on the right scapula;
- v) One crushed wound of 6 x 1 x 1.5 cm on the left side of the head, 7 cm above the left ear,
- vi) An abrasion 1cm x 1 cm on the back side of the head;
- vii) Swelling 4 x 3 cm on the right palm;
- viii) An abrasion 1 x ½ cm on the left thumb laterally;
- ix) A contusion of 6 x 1 cm on the middle half of the right thigh medially;
- x) A contusion of 3 x 1 cm on the right thigh 2 cm above the ninth injury and

xi) Contusion two in number, one of 4 x 1 cm and another of 3 x 1 cm on the upper half of the right gluteal.

He opined that all the above injuries were simple in nature and issued Exh. P 32 Injury Report.

6. After completing investigation challan was filed in the Court of Munsif-cum-Judicial Magistrate Nokha against all the accused persons. Accused Nanak Ram was absconding. The other accused persons namely Bhera Ram, Sadula Ram, Chuna Ram, Surja Ram, Mohan Ram and Gordhan Ram were tried in Sessions Case No.63 of 1983 for the alleged offences under Section 302, 307, 323 and 324 all read with Section 149 IPC and also the offence under Section 147 and 148 IPC. The prosecution examined 13 witnesses and tendered in evidence 59 documents. The learned Sessions Judge convicted accused Bhera Ram and Surja Ram for the offences under Section 302 read with section 149 IPC and sentenced them each to undergo imprisonment for life. He also convicted accused persons Sadula Ram, Mohan Ram and Gordhan Ram for the offences under Section 304 Part II read with Section 149 IPC and sentenced them each to undergo five years rigorous imprisonment. Besides he convicted accused persons namely Surja Ram, Bhera Ram, Gordhan Ram and Mohan Ram for the offence under Section 148 IPC and sentenced them each to undergo six months rigorous imprisonment. He also convicted Sadula Ram for the offence under Section 147 IPC and sentenced him to undergo 3 months rigorous imprisonment. In addition he convicted accused persons Surja Ram, Bhera Ram, Mohan Ram, Sadula Ram and Gordhan Ram for the offence under Sections 323 and 324 read with Section 149 IPC and sentenced them each to undergo 6 months rigorous imprisonment and directed all the sentences to run concurrently. However, he acquitted accused Chuna Ram of the charges.

7. All the five convicted accused persons preferred appeal in Appeal No.428 of 1984 on the file of High Court of Judicature of Rajasthan, at Jodhpur, challenging their conviction and sentences. The State of Rajasthan challenged the complete acquittal of Chuna Ram and the acquittal of accused persons Sadula Ram, Mohan Ram and Gordhan Ram for the offences under Section 302 read with 149 IPC, in Appeal No.106 of 1985. During the pendency of the appeals four accused persons namely Sadula Ram, Gordhan Ram, Bhera Ram and Chuna Ram died, with the result the appeal preferred against them in Appeal No. 106 of 1985 abated and the said appeal continued only as against the accused Mohan Ram. Like wise Appeal No.428 of 1984 preferred by the accused persons Bhera Ram, Sadula Ram,

Gordhan Ram also stood abated and it continued on behalf of accused Surja Ram and Mohan Ram only.

8. The High Court of Rajasthan partly allowed the appeal in Appeal No.428 of 1984 filed by the accused Surja Ram by setting aside his conviction for the offence under Section 302 read with Section 149 IPC and instead convicted him under Section 304 Part II read with Section 149 IPC and sentenced him to undergo 5 years rigorous imprisonment and the other conviction and sentences imposed on him were maintained. At the same time it dismissed the appeal in Appeal No.428 of 1984 preferred by accused Mohan Ram, by confirming the conviction and sentence imposed on him. The High Court also dismissed the Appeal No.106 of 1985 preferred by the State of Rajasthan against accused Mohan Ram.

9. The accused Nanak Ram on being apprehended was tried in Sessions Case No.24 of 1985 and the learned Sessions Judge, Bikaner convicted him for the offence under Section 302 read with Section 149 IPC and sentenced him to undergo life imprisonment. He also convicted him for the offence under Section 148 IPC and sentenced him to undergo six months rigorous imprisonment and further convicted him for the offence under Section 324 read with Section 149 IPC and sentenced him to undergo one year rigorous imprisonment and in addition he convicted him for the offence under Section 323 read with Section 149 IPC and sentenced him to undergo three months rigorous imprisonment and further he convicted him for the offence under Section 447 IPC and sentenced him to undergo two months rigorous imprisonment and directed all sentences to run concurrently. Challenging the conviction and sentence Nanak Ram preferred appeal in Criminal Appeal No.314 of 1990 on the file of High Court of Judicature at Rajasthan at Jodhpur and the High Court partly allowed the appeal by setting aside the conviction under Section 302 read with Section 149 IPC and instead convicted him for offence under Section 304 Part II read with Section 149 IPC and sentenced him to undergo five years rigorous imprisonment and maintained all the other convictions and sentences imposed by the Sessions Court.

10. Challenging their convictions and sentences imposed by the High Court on them accused Nanak Ram, Mohan Ram and Surja Ram preferred Criminal Appeal referred to above and the State of Rajasthan also filed appeals against the above accused seeking for enhancement of the sentences imposed on them. All these appeals were heard together and are being disposed of by this common judgment.

11. Mr. Mahabir Singh, learned senior counsel appearing for the appellants contended that the occurrence took place about 30 years ago and accused persons went to the occurrence place only to remove the fence put up by Shivji Ram and his brothers and when it was resisted a free fight followed which was accidental and there was no intention to kill and only one blow on the head of Shivji Ram was fatal and the other injuries were only minor injuries, and the Courts below have failed to appreciate that there are material improvements and infirmities in the prosecution case and the presence of eye witnesses is highly doubtful and the conviction of appellants is wholly unwarranted and liable to be set aside. The alternative plea of the learned counsel for the appellants was that the appellants have undergone three years of their sentence and they be granted the benefit of probation under the provision of Section 360 of Code of Criminal Procedure as well as under Section 4 of the Probation of Offenders Act, 1958, and in support of the submission he relied on the decision of this Court in *State of Karnataka vs. Muddappa* (1999) 5 SCC 732 and *Eliamma and Another vs. State of Karnataka* (2009) 11 SCC 42.

12. Per contra Ms. Sonia Mathur, learned counsel appearing for the State of Rajasthan strenuously contended that Shivji Ram and his brothers are the Patta holders of the land and lease deeds have been executed by the Panchayat in their favour and the accused persons having failed in their legal proceedings had decided to attack the brothers and take forcible possession of the land and in pursuance of the said common object all the seven accused persons duly armed forcibly entered the land and inflicted injuries on Shivji Ram with barchhi and jei resulting in instantaneous death and also inflicted injuries on his younger brother Shera Ram and the alteration made by the High Court on the conviction from Section 302 IPC read with Section 149 IPC to one under Section 304 Part II IPC read with Section 149 IPC is erroneous and legally unsustainable. In support of her submissions she relied on the decisions of this Court in *Mahesh Balmiki alias Munna vs. State of M.P.* (2000)1 SCC 319 and *Arun Nivalaji More vs. State of Maharashtra* (2006) 12 SCC 613.

13. The prosecution has examined PW 7 Shera Ram, PW 2, Mandi Lal, PW6 Dhuri and PW11 Balu Ram as having witnessed the occurrence. PW7 Shera Ram and PW 11 Balu Ram are the younger brothers of deceased Shivji Ram and PW6 Dhuri is their sister. PW 7 Shera Ram was also injured during the occurrence and according to him on the occurrence day namely on 29.5.1983 at 10.30 a.m. Shivji Ram and both his brothers were repairing/re-erecting the fencing in their Patta Land and accused persons Bhera Ram, Sadula Ram and his sons Mohan Ram and

Surja Ram, Gordhan Ram, Nanak Ram and Chuna Ram armed with weapons entered into Bara from south side and started dismantling the fence and they questioned the same by saying that they have obtained Patta from Panchayat and at that time Bhera Ram and Surja Ram inflicted Barchhi blow on the head of Shivji Ram as a result of which he fell down and all the accused attacked him with their weapons and when he intervened accused Mohan Ram inflicted barchhi blow on the left side of his head and accused Chuna Ram inflicted jei blow on his right leg and other accused also started beating him whereupon his sister Dhuri came running and fell upon him in order to protect him and the accused persons also threatened PW 11 Balu Ram and PW2 Mangi Lal and being frightened they stood by the side of the road and saw the occurrence and Shivji Ram died on the spot. PW7 Shera Ram sustained as many as 11 injuries on his person as a result of the attack made by all the accused on him at the time of occurrence. PW 11 Balu Ram was involved in the fencing of the land along with his brothers and his presence in the occurrence place cannot be doubted. PW 2 Mangi Lal happened to be with Shivji Ram in his land and he has witnessed the occurrence. He is an independent witness. On seeing the attack made by the accused on her brothers PW 6 Dhuri came running and tried to protect Shera Ram by falling upon him. The testimonies of PW2 Mangi Lal, PW6 Dhuri, PW11 Balu Ram are natural cogent and in all material particulars corroborated the testimony of PW7 Shera Ram. Accepting their testimonies it is clear that during the occurrence all the seven accused as members of unlawful assembly have inflicted injuries with their weapons on deceased Shivji Ram and PW 7 Shera Ram.

14. Shivji Ram died of homicidal violence is established by the medical evidence adduced in the case. PW9 Dr. Moti Lal Mishra conducted autopsy on the body of Shivji Ram and found on the head an incised wound of 6½” x ½” deep upto brain and on internal examination the destruction of the elements of the brain. He also found eight other injuries on the other parts of the body. He issued Ex. P33 post mortem report and expressed opinion that the death has occurred due to destruction of the elements of brain and shock due to excessive bleeding. In the oral testimony PW9 Dr. Moti Lal Mishra has categorically stated that injury No.1 found on the head was itself sufficient to cause death. There is no doubt that Shivji Ram died of injuries sustained during the occurrence. It is further relevant to note that PW9 Dr. Moti Lal Mishra examined PW7 Shera Ram immediately after the occurrence in Nokha hospital and found 11 injuries on him. Ex.P.32 is the injury report issued by him mentioning the injuries. According to him all the injuries are simple in nature.

15. Telephonic information about the occurrence was given to Nokha Police Station by some unknown person on 29.5.1983 itself and PW13 Attar Ali Khan after making Exh.P54 entry in the Roznamcha, immediately went to the occurrence place and found Shivji Ram lying dead and Shera Ram with injuries. He recorded Exh.P9 statement of Shera Ram and sent him to Nokha hospital for treatment and forwarded the statement to the Police Station for registering the case Exh.P55 is the First Information Report. He also seized jeis used by the accused from the occurrence place under Exh.P34 Mazhar. There is no delay in registering case and there is no flaw in the investigation.

16. It is true that the accused party had land dispute with the victim party. The Collector ordered conversion of subject land into abadi and on the applications made by Shivji Ram and his two brothers, Pattas were issued as evident from P12, P16, P17, P20, P21 and P24. Accused Bhera Ram preferred appeals against the grant of Patta to Panchayat Samiti at the first instance and they came to be dismissed and the revision preferred before the Collector was pending. PW8 Sarpanch Dhura Ram and PW5 record keeper Hanuman Das have stated so. Thus the evidence shows that the accused party was desirous to get the subject land to themselves and were taking legal steps to achieve it. On coming to know of the fencing put by Shivji Ram and his brothers they were annoyed and went there to remove the fencing. While they were dismantling the fencing, Shivji Ram and his brothers came there and objected to it by saying that they have obtained Patta and a sudden quarrel erupted.

17. A fight suddenly takes place for which both parties are more or less to be blamed and it is a combat whether with or without weapons. It may be that one of them starts it, but if the other had not aggravated it by his own conduct, it would not have taken the serious turn it did. Heat of passion requires that there must be no time for the passions to cool down and in this case the parties have worked themselves into a fury on account of the verbal altercation in the beginning. Out of the 9 injuries, only injury no.1 was held to be of grievous nature, which was sufficient in the ordinary course of nature to cause death of the deceased. The assaults were made at random. Even the previous altercations were verbal and not physical. The earlier disputes over land do not appear to have assumed the characteristics of physical combat. This goes to show that in the heat of passion upon a sudden quarrel the accused persons had caused injuries on the deceased. That being so the Exception 4 to Section 300 IPC is applicable. The fact situation bears great similarity to that in Ghapoo Yadav & Ors. vs. State of M.P. (2003) 3 SCC 528.

18. Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the first part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. The conviction of the appellants/accused under Section 304 Part II read with Section 149 IPC by the High Court is liable to be set aside.

19. We are of the considered view that imposition of 7 years rigorous imprisonment on each of the appellants for the conviction under Section 304 Part I IPC would meet the ends of justice. We sustain the other conviction and sentences imposed on the appellants. We are also of the view that the appellants are not entitled for release on probation.

20. In the result Criminal Appeal No.1990 of 2010, 1991 of 2010 and 1992 of 2010 preferred by the State of Rajasthan against the accused persons Nanak Ram, Mohan Ram and Surja Ram are partly allowed and their conviction for the offence under Section 304 Part II IPC read with Section 149 IPC and the sentences of 5 years rigorous imprisonment each are set aside and instead they are convicted for the offence under Section 304 Part I read with Section 149 IPC and sentenced to undergo seven years rigorous imprisonment each. All other convictions and sentences imposed on them by the High Court are maintained. Criminal Appeal No.1985 of 2010 and 342 of 2011 are dismissed.