

SUPREME COURT OF INDIA

Jagmal

Vs.

State of Rajasthan

Crl.A.No.483 of 2013

(S.A.Bobde and L.Nageswara Rao,JJ.,)

20.02.2017

JUDGMENT

L.Nageswara Rao,J.,

1. By a judgment dated 06.01.2006 of the Additional Sessions Judge, Neem-Ka-Thana, District Sikar, the Appellants were convicted for an offence under Section 302/149 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC) and sentenced to undergo life imprisonment. They were also convicted under Section 452 IPC and sentenced to undergo five years' rigorous imprisonment. They were further convicted for an offence under Section 148 IPC and were sentenced to undergo two years' rigorous imprisonment. The Appeal filed by them was dismissed by the High Court of Rajasthan, aggrieved by which the Appellants have filed this Appeal.

2. Initially 12 persons were named in the First Information Report (FIR). After investigation 7 persons including the accused were charge-sheeted and tried. The Trial Court acquitted Gulabi Devi and Meva Devi. Lal Chand died during the pendency of trial. Along with the appeal filed by the Appellants, the revision filed against the acquittal of Gulabi Devi and Meva Devi were also taken up and dismissed. We are informed that one of the Appellants, Kana Ram died during the pendency of this Appeal. At present, we are concerned with the conviction and sentence of Appellants Jagmal, Arvind and Om Prakash.

3. Bihari Lal lodged a report at Police Station Patan, District Sikar, that his son Virendra and Lal Chand (accused who died during the pendency of trial) had an altercation during the course of the day on 19.02.2004. At about 05:30 pm, the accused armed with lathies, iron rods, axe forcibly entered into the house where Virendra, Vijendra, Patasi and Gita Devi were sitting and attacked them. The injured persons were taken to hospital at Neem-Ka-Thana. As the condition of Virendra and Vijendra was serious they were referred to SMS Hospital, Jaipur. Virendra succumbed on the same night. The post mortem was conducted on

20.02.2004. There were 11 injuries on the body of the deceased. The injured eye-witness PW-7 Gita Devi and PW-9 Smt. Patasi gave a graphic account of the assault by the accused persons and the injuries suffered by Virendra.

4. There is no doubt about the incident on 19.02.2004 as the accused claimed a right of private defence. There is also no doubt that Virendra died due to the attack by the accused. The ocular testimony of the eye-witnesses is corroborated by the medical evidence. We do not see any reason to take a view different from that of the Courts below that the Appellants had caused the death of Virendra.

5. The only point that remains to be considered is whether the accused have acted in their right of private defence. The right to private defence was taken by the Appellants before the Court below, in vain. The submission of Mr. Sushil Kumar Jain, learned Senior Counsel for the Appellants is that there was a free fight and Lal Chand was attacked by the complainant party and he snatched a stick and hit the deceased in self defence. The learned Senior Counsel relied upon the FIR lodged by the accused and the injury reports of the Appellants Jagmal (Exh.D-19), Arvind (Exh.D-20) and injury report of Lal Chand (Exh.D-21). The learned Senior Counsel also relied upon the suggestions put to the prosecution witnesses Gita Devi, Ram Chandra, Patasi Devi and Bihari Lal about the attack on Lal Chand. He submitted that the High Court erred in holding that there was no suggestion made to any of the prosecution witness regarding the attack on Lal Chand. He also contended that the High Court went wrong in rejecting the plea of right of private defence of the accused by relying on the statement of Lal Chand under Section 313 Cr. P.C. in which there was no mention of self defence.

6. We have considered the material on record carefully and we are of the opinion that there is substance in the submissions made by the learned Senior Counsel for the Appellants regarding the right to private defence for the following reasons:

“a) It is recorded in the judgment of the High Court that the Public Prosecutor argued that the deceased was beaten outside the house which was corroborated by the site plan.

b) The Investigating Officer stated in his evidence that there was a cross case lodged by Lal Chand in which a charge-sheet under Section 323, 324, 326 and 34 IPC was filed against Bahadur Mal and Vijay Singh @ Vijendra.

c) The injury reports of the accused persons Exh.D-18, D-19 and D-21 were filed.

d) Suggestions were made to prosecution witnesses Gita, Ram Chandra, Patasi and Bihari about the complainant party being aggressors.”

7. In view of the above facts and circumstances, we hold that the conviction of the Appellants under Section 302 is unsustainable. However, we are convinced that the accused

are guilty of causing the death of Virendra and they are liable for conviction for an offence punishable under Section 304 Part-I IPC. As we are informed that the Appellants have served a sentence of nearly 11 V2 years, we sentence them to the period already undergone. They may be set free, if they are not required in any other case. With the above modification in the conviction and sentence of the Appellants, the Appeal is disposed of.