

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. CRIMINAL APPEAL NO.5/2018

1. Bhairo Singh S/o Ramsalli aged about 42 years, by caste-Gurjar R/o Lapawali, Police Station-Todabheem presently R/O Dhani Lapawali Tan Koleswar Khurd, Police Station-Kolwa, District-Dausa (Raj.)

2. RamRaj S/o JodhaRam aged about 44 years, by caste-Gurjar R/o Moodiya, Police Station-Balghat, District Karauli (Raj.)

(Accused are presently confined in J/C in Sub-Jail-Hindauncity)

-----Accused-Appellants

Versus

State of Rajasthan through P.P.

-----Respondent

For Appellant(s) : Mr. Manoj Avasthi

For Respondent(s) : Mr. Aladeen Khan - PP

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

HON'BLE MR. JUSTICE DINESH CHANDRA SOMANI

Judgment

29/08/2018

By this criminal appeal, a challenge is made to the order dated 14th November, 2017 passed by learned Additional Sessions Judge, Bandikui, Dausa, in Session Case BT No.11/2006, convicting and sentencing accused-appellants-Bhairon Singh and Ramraj S/o Jodharam as under:-

"Accused-appellant No.1-Bhairon Singh for offence:

U/s.148 IPC – Three years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month's rigorous imprisonment.

U/s.302 IPC – Life imprisonment with fine of Rs.5000/-, in default to pay fine, to further undergo three months rigorous imprisonment.

U/s.307/149 IPC – Ten years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s.324/149 IPC – Three years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s.323 IPC – One year's Rigorous Imprisonment with fine of Rs.500/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s. 3/25 Arms Act – One years' rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

Accused appellant No.2–Ramraj S/o Jodharam for offence:

U/s.148 IPC – Three years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s.302/149 IPC – Life imprisonment with fine of Rs.5000/-, in default to pay fine, to further undergo three month rigorous imprisonment.

U/s.307/149 IPC – Ten years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s.324 IPC – Three years rigorous imprisonment with fine of Rs.1000/-, in default to pay fine, to further undergo one month rigorous imprisonment.

U/s.323 IPC – One year's Rigorous Imprisonment with fine of Rs.500/-, in default to pay fine, to further undergo one month rigorous imprisonment.

All the sentences are ordered to run concurrently."

BRIEF FACTS OF THE CASE:

An FIR was registered at the instance of complainant-Prem Singh on 24th September, 2003. It was stated that in the morning, he heard the sound of firearm in the agricultural field. At that time, his brother-Subedar and bhabhi-Resham were cutting the crop of millet. He rushed to the field and found that accused-Bheru Singh, Samay Singh, Ramraj S/o Ramsalli, Ramraj of Mudiya and Kapoor Gurjar were running behind brother-Subedar and bhabhi-Resham along with firearm. They opened fire where Subedar received gunshot injuries and died on the spot. His bhabhi-Resham sustained injuries from firearm and to save them, Mallaram, Urmila and Phoolbai also sustained injuries. The accused ran away from the spot with the threatening that they will kill others also.

The Police registered the case for offences under Sections 147, 148, 149, 323, 307 and 302 IPC. After investigation, the Police initially filed a charge sheet against Samay Singh and Ramraj S/o Ramsalli and thereupon filed a supplementary charge sheet against accused-Bhairon Singh, Ram Raj and Kapoor for offences under Sections 147, 148, 149, 323, 324, 307 and 302 IPC apart from Section 3/25 of the Arms Act. The trial was conducted separately for the three accused named above. The trial court framed charges against the accused for offences under Sections 148, 302, alternatively 302/149, 307, alternatively 307/149, 324, alternatively 324/149, 323, alternatively 323/149 and only against Bhairon Singh under Section 3/25 of the Arms Act also. The accused denied charges and claimed trial. The

prosecution produced 21 witnesses and exhibited 44 documents to prove their case. The accused-appellants did not produce evidence in defence, however, their statements were recorded under Section 313 Cr.P.C. The trial court found evidence to prove case beyond doubt thus convicted and sentenced them for the offences as mentioned earlier.

ARGUMENTS OF THE ACCUSED SIDE:

Learned counsel for appellants submits that all the prosecution witnesses are family members of the complainant party thus they were interested witnesses. The trial court should not have relied on their statements. It is also stated that the land on which incidence is said to have taken place was cultivated by the accused party. The complainant party came on the spot to grab the land and for that, started beating the accused party. The accused party had also received injuries and, accordingly, a cross case was registered against the complainant party. On investigation, a charge sheet was filed against the complainant party for offence under Section 326 IPC. The accused-appellants did not cause offence, rather, they exercised their self-defence thus a case for offence under Section 302 is not made out.

It was also stated that information about incidence was given on telephone at the first instance by complainant-Prem Singh where none of the accused was named. The FIR should have been registered by the Police on it but it was registered later on a story given with afterthought so as to implicate the accused. The trial court has ignored the aforesaid. No explanation about delay in lodging FIR has been given. The presence of eye-witnesses is also

doubtful. PW9-Prem Singh in his statement stated that before he along with mother and sister reached to the spot, all the accused ran away thus they cannot be said to be eye-witnesses to the occurrence. PW19-Karan Singh did not support the prosecution case, rather, he was declared hostile thus no eye-witness was produced to support prosecution case. The other witnesses produced by the prosecution have given contradictory story thus should not have been relied by the trial court. It is moreso when the complainant party was aggressor. The trial court ignored the statements of the witnesses who had admitted that possession of the land was with the accused. The aforesaid was even admitted by complainant's mother-Dhanni. A prayer is, accordingly, made to acquit accused-Bhairon Singh and Ram Raj S/o Jodharam.

Learned Public Prosecutor has contested the appeal. It is submitted that the prosecution could prove their case beyond doubt. Not only that they have produced eye-witnesses but placed the documents to support their case. PW9-Prem Singh stated about incidence where Samay Singh and Bhairon Singh opened fire on deceased-Subedar, who died on the spot. The said witness named the accused while lodging FIR and it was without delay. PW1-Resham has also supported the prosecution case. She was with deceased-Subedar in the agricultural field. She named Samay Singh for opening fire on the deceased and another person named by her is Bhairon Singh. Ram Raj S/o Ramsalli opened fire on her and other accused also participated in the occurrence thus Section 149 IPC was added. PW5-Phool Bai has also named Samay Singh and Bheru Singh for opening fire on deceased-Subedar. She has

also stated that accused-Ram Raj S/o Jodha Ram attacked on her husband by using a "Dhariya".

PW4-Mallaram has made allegations against Samay Singh and Bheru Singh for opening fire on the deceased. Ram Raj S/o Jodha Ram gave a blow on his head by a "Dharia". PW6-Tikam has also supported the prosecution case. He has named Bhairon Singh for opening fire on the deceased. PW18-Ram Prasad named Bhairon Singh for opening fire on the deceased and Resham. Ramraj S/o Jodha Ram attacked on Mallaram with a "Dhariya". In view of the above, the prosecution story has been supported by the eye-witnesses. PW3-Phool Chand has named Bhairon Singh and Ramraj S/o Ramsalli amongst other accused, who fired on the deceased and injured-Resham and Urmila.

PW2-Urmila has named Bhairon Singh, Ramraj S/o Ramsalli, Samay Singh for opening fire on the deceased and injured-Resham. She has also stated that someone had also opened fire on her. Kapoor and Ramraj S/o Jodha Ram were having a "Dhariya". PW19-Karan Singh was declared hostile. PW-17-Ram Kishan has named Bheru Singh and Samay Singh for opening fire on the deceased and Ram Raj S/o Jodha Ram for attacking Mallaram with a "Dhariya".

In view of the above, prosecution could prove their case beyond doubt. The argument of learned counsel for appellants about self-defence is not made out. The accused have failed to make out a case where they could have used firearm in self-defence. In any case, their argument for self-defence proves use of firearm by them. PW13-Sarbo has also supported prosecution case and named Bheru Singh, Samay Singh and Ramraj S/o

Ramsalli for opening fire on the deceased as well as on injured-Resham and Urmila. PW10-Dr. Ramesh Vijay has given cause of death, which is out of gunshot injury. The deceased sustained six injuries, out of which, five are from firearm. One was on the thigh and second on the upper portion of the abdomen near spinal area. The third injury was at the left ventricular of the heart and fourth & fifth was on the chest. Sixth injury was incised wound on the hand. Injured-Resham and Urmila have also received gunshot injuries. Those injuries were sustained from the distance of 20-25 feet. A prayer is, accordingly, made to dismiss the appeal. Injured-Malla Ram has received injury from sharp-edged weapon.

We have considered the rival submissions made by learned counsel for the parties and perused the record.

It is a case where after investigation, the Police initially filed charge sheet against Samay Singh and Ram Raj S/o Ramsalli @ Ramsahai. The trial against them proceeded separately followed by the order of conviction dated 9th March, 2013. A separate appeal against the said order was filed by those two accused.

In the instant case, a separate charge sheet was filed against Bhairon Singh, Ramraj S/o Jodha Ram and Kapoor Gurjar for offences under 147, 148, 149, 323, 324, 307 and 302 IPC apart from Section 3/25 of the Arms Act. The trial court framed charges for offences under Sections 148, 302, alternatively 302/149, 307, alternatively 307/149, 324, alternatively 324/149, 323, alternatively 323/149 against all the accused and also under Section 3/25 of the Arms Act against Bhairon Singh. When charges were not accepted, trial commenced. The prosecution produced 21 witnesses and exhibited 44 documents.

PW9-Prem Singh has named Samay Singh and Bhairon Singh for opening fire on his brother Subedar, who died on the spot. The allegation against Ram Raj S/o Jodha Ram is for opening fire on his bhabhi on whom even Kapoor had also opened fire. Resham and Urmila received injuries out of the firearm. The said witness has exhibited documents i.e. P2 to 5, P12, 14 to 18. His statement could not be demolished in the cross-examination, whereas, his presence has been doubted by the accused. He has stated that he reached at the place of occurrence within 2-3 minutes and saw the occurrence. P12 exhibited by the said witness gives same story, as given in statement.

Another material witness is PW1-Resham, who herself has received injuries. She has shown presence of the accused at the place of occurrence. Samay Singh and Bhairon Singh opened fire on deceased-Subedar, whereas, allegation against Ram Raj S/o Jodha Ram is for causing injury by a "Dhariya" and at the same time for opening fire on her causing injury on her chest. The cause of incidence has also been given by PW1-Resham. The medical report of Resham and FSL report of her clothes shows firearm injuries and as a consequence of it, holes in the clothes out of pellets. Her presence cannot be doubted being an injured witness. She has corroborated the story given by other witness for causing firearm injury by Samay Singh and Bhairon Singh to the deceased and Ram Raj to others including herself. The medical report (Exhibit-P20) corroborates the statement of PW1-Resham so as PW10-Dr. Ramesh Vijay, who has supported the medical report showing eight gunshot injuries to injured-Resham, out of which, 1 to 4 were grievous in nature. The statement of PW1-Resham has

been corroborated by other witnesses and documents produced by the prosecution.

PW2-Urmila has also corroborated the story given by PW1-Resham. She has also received gunshot injuries as is coming out from Exhibit-P22 and supported by PW10-Dr. Ramesh Vijay. PW2-Urmila had received four gunshot injuries, out of which, injury no.2 was found grievous.

PW5-Phool Bai has also corroborated the statements of PW1-Resham, PW2-Urmila, PW9-Prem Singh and PW11-Ramavtar Yadav. She has, however, made allegation of causing injury to the deceased by a "Dhariya" by Ram Raj S/o Jodha Ram. The injury report of PW5-Phool Bai is ExhibitP-19 and supported by PW1-Dr. Ramesh Vijay. PW2-Urmila and PW4-Mallaram have made allegations against Bhairon Singh and Samay Singh for opening fire on the deceased and Ram Raj fired on injured-Resham and Kapoor for opening fire. Ram Raj S/o Jodha Ram is said to have caused injury by a "Dhariya". It is necessary to clarify that there are two accused, one is Ram Raj S/o Ramsalli Ram and another is Ram Raj S/o Jodha Ram. The allegation against Ram Raj S/o Jodha Ram is for giving a blow by a "Dhariya" to the deceased. Mallaram has also received injuries given in Exhibit-P21. He had received three injuries out of sharp-edged weapon. In view of the above, prosecution case has been supported by the eye-witnesses and other injured witness present on the spot. The FSL report supports the statement of injured and eye-witness.

The prosecution even proved recovery of weapons at the instance of the accused under Section 27 of the Evidence Act. A "Dhariya" was recovered from accused-Ram Raj S/o Jodha Ram,

whereas, 12 Bor Gun was recovered from accused-Bhairon Singh. The articles were kept in "Malkhana" and produced during trial. PW21-Gopal Lal has supported the prosecution case, who has otherwise recovered and sealed the weapons. PW3-Phool Chand is an eye-witness and stated that Bhairon Singh, Ram Raj S/o Ramsalli, Samay Singh and Ram Raj S/o Jodha Ram were available at the place of occurrence and have caused firearm injuries to deceased-Subedar and to injured. When PW4-Malla Ram and PW5-Phool Bai came at the place of occurrence to save the deceased and injured, they also sustained injuries.

The prosecution could produce sanction for case under Section 3/25 of the Arms Act thus prosecution could produce the evidence to prove their case beyond doubt. In this regard, PW13-Sarbo has also supported the prosecution case. PW18-Ramprasad has stated about the incidence and named all the accused for their participation with use of firearm as well as a "Dhariya" in the hands of Ramraj S/o Jodha Ram. One witness, PW19-Karan Singh was declared hostile but PW20-Ram Kishore has supported recovery of clothes of the deceased and the injured. The post-mortem report confirms gunshot injuries to the deceased. As per medical report, two injured-Resham and Urmila received injuries from firearm. The deceased had received one injury out of sharp-edged weapon caused by Ram Raj S/o Jodha Ram.

In view of the above, we find that prosecution could prove their case beyond doubt and accused could not come out with defence either while recording their statements under Section 313 Cr.P.C. or otherwise. In view of the above, argument of learned counsel for appellants that statements of the witnesses should not

have been relied by the trial court being interested witnesses, cannot be accepted. The statement of injured witnesses and eye-witness cannot be discarded only on that ground. It is moreso when their statements are corroborated by the medical report and post-mortem report apart from FSL. The statement of PW10-Dr. Ramesh Vijay and even FSL report were produced during trial.

A case for self-defence is not made out because case against the complainant party was registered only for offence under Section 326 IPC and for the aforesaid, one cannot give multiple gunshot injuries in defence and otherwise they were not expected to remain prepared with deadly weapons thus a case of self-defence is not made out.

Another argument of learned counsel for appellants is about non-registration of case on information received on telephone. The material on record show registration of the case when Police reached at the place of occurrence on receipt of information on telephone. The information about death of person out of incidence alone was given on the telephone. Accordingly, we do not find any substance in any of the arguments raised by learned counsel for appellants. We find that accused caused incidence with common object thus accused-appellants were rightly convicted with the aid of Section 149 IPC.

Accordingly, finding no substance in the criminal appeal, it is dismissed.

(DINESH CHANDRA SOMANI),J

(M.N. BHANDARI),J