

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1946 of 2009

Yogendra @ Yogesh & Ors.

...Appellants

Versus

State of Rajasthan

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 3.12.2007, passed by the High Court of Rajasthan (Jaipur Bench), in Criminal Appeal No.583 of 2003, by way of which the High Court has affirmed the judgment and order dated 8.4.2003, passed by the learned Additional District and Sessions (Fast Track) Judge No.1, Bharatpur, so far as the appellants are concerned. The Trial Court therein, had convicted 9 accused, including the present 5 appellants as under:-

Sita Ram and Ramveer, under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). Yogendra @ Yogesh, Rattan Singh, Kalwa, Ranveer, Ghambhir Singh, Paras Ram and Balla under Section 302/149 IPC. They have been awarded the sentence of life imprisonment and a fine of Rs.1,000/- each has been imposed on them. In default of payment of such fine, they have been directed to suffer further Simple Imprisonment for a period of 2 months. All of them have further been convicted under Section 148 IPC, and punishments of 7 years' RI, alongwith a fine of Rs.1,000/- each, has been imposed on them, and in default, they have been directed to suffer further SI for 1 month under Section 307/149 IPC. The appellants Sita Ram, Ranveer and Yogendra have further been convicted under Section 3/25 of the Arms Act, 1959, and have been awarded the sentence of 3 years' RI, alongwith a fine of Rs.1,000/- each, and in default of payment of such fine, they must further suffer SI for a period of 1 month. However, the substantive sentences were ordered to run concurrently.

2. The High Court has modified the judgment and order of the Trial Court, dismissing the appeal of some of the appellants and convicting Sita Ram, Ranveer, Yogendra, Ramveer and Balla. Sita

Ram and Ramveer have been convicted under Section 302/149 IPC, instead of Section 302 IPC, and the sentences awarded to them have remained the same. Their conviction under Section 307/149 IPC and under Section 3/25 of the Arms Act have remained intact. Conviction and sentence of Yogendra, Ranveer and Balla under Section 302/149 IPC and 307/149 IPC, and of Ranveer and Yogendra under Section 3/25 Arms Act have remained intact. However, they have been acquitted of the charge under Section 148 IPC. The appeals of the other accused persons, namely, Ratan Singh, Kalwa, Ghambhir Singh and Paras Ram were allowed.

3. Facts and circumstances giving rise to this appeal are that:-

A. That Karan Singh and Kewal Singh of the same village had purchased some land in village Ajan from Shodan Singh and Raghubir Singh in the year 1979. Since then they have been cultivating the said land. On 18.10.1999, a written report Ex.P-1 was lodged by Shodan Singh (PW.1), at the Police Station Udyog Nagar, Bharatpur, alleging that 7-8 days prior to the incident, Karan Singh and others had sown some mustard on the said land. On 18.10.1999 at about 12 noon, the complainant party was informed by Shiv Singh, that the mustard that had been sown by them was being removed by the appellants

alongwith others, with the help of a tractor. On receiving the said information, the complainant party, i.e. Karan Singh, Kewal Singh, Badan Singh, and a few other family members had proceeded to the place of incident. They had seen the accused persons destroying the mustard that had been sown by them. The accused persons had been fully armed with lathis, kattas, and farsas. One of them had been armed with a gun. When the complainant party had tried to stop the accused, Ratan Singh had instigated the other accused persons to assault the complainant party, and thus, the assault began. On hearing the hue and cry raised as a result of the same, Vijay Pal and few others had reached the place of occurrence. Shodan Singh (PW.1), informant, had also witnessed the incident, as he had been coming back from his fields at the relevant time. Some people from the complainant's side had received firearm injuries. Some of them had also received injuries from lathis and farsas. The accused had then fled away from the scene after injuring 15 people. The injured persons had been taken to the hospital. Veer Pal and Satyendra had suffered grievous injuries. They had been referred to Jaipur, and a case was registered against the accused under Sections 147, 148, 149, 323, 341, 447 and 307 IPC, and investigation commenced in this respect.

B. During the course of the investigation, Veer Pal succumbed to his injuries and therefore, Section 302 IPC was also added. His dead body was subjected to an autopsy, and necessary memos had been prepared. Statements of witnesses were recorded. The accused persons were arrested, and on completion of the investigation, a chargesheet had been filed. Upon conclusion of the trial, the Trial Court had convicted the appellants alongwith several others, as has been mentioned hereinabove, vide judgment and order dated 8.4.2003.

C. Aggrieved, they preferred Criminal Appeal No. 583 of 2003 which was disposed of vide impugned judgment dated 3.12.2007, which acquitted a few people, but the conviction of the appellants with certain modifications was upheld, as has been referred to hereinabove.

Hence, this appeal.

4. Shri Altaf Hussain, learned counsel appearing for the appellants has submitted, that the Trial Court had convicted 9 persons, out of which, 4 have been acquitted by the High Court, though they had also earlier been convicted on the basis of the same evidence. Hence, in light of the same, the conviction of the appellants can also not be sustained, owing to the fact that if the High Court has disbelieved

certain evidence with respect to 4 of the acquitted accused, the same could not have been relied upon by it, so far as the appellants are concerned. There are material discrepancies and contradictions in the evidence of the witnesses. The same should not therefore, have been relied upon. The judgments of the courts below are liable to be set aside.

5. Per contra, Shri Ram Naresh Yadav, learned counsel for the State has opposed the appeal, contending that the High Court has re-appreciated the entire evidence on record, and has thereafter come to the conclusion that the present appellants had been responsible for causing the death of one person, and for causing grievous injuries to fourteen others. Most of the injured persons have appeared as witnesses, and their presence cannot be doubted. There may be a possibility of false implication of some of the accused in the present case, but the evidence of the injured witnesses deserves to be accepted. It is not possible that such injured persons, in a case where there has been loss of life, would spare the real culprit, and falsely implicate anyone. Thus, the appeal lacks merit and is liable to be dismissed.

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

7. The Trial Court has examined the evidence on record very intricately, and after properly appreciating the same, has convicted all 9 accused. The High Court, after re-appreciating the evidence has given 4 accused persons the benefit of doubt, in view of the fact that they had not been in possession of any arms. Both the courts below have rejected the theory of self-defence, and have held the appellants to be aggressors. The courts have found that the presence of the present appellants at the place of occurrence stands fully established beyond any reasonable doubt. They had in fact been present at the place of the incident, and had been armed with a gun and kattas. The complainant party had in contrast, been entirely unarmed, and they had remained outside the land in dispute and had simply requested the appellants and others to not destroy the mustard crops that had been sown by them. Even otherwise, the absence of any injury made on the part of any of the assailants except Ghambhir Singh (acquitted accused), renders false, the defence's version. There was no question raised regarding how so many injuries could have been caused to so many persons. In the instant case, complainant Shodan Singh (PW.1),

and all other injured witnesses have deposed consistently, as regards the involvement of the present appellants. They have also deposed that the appellants had been heavily armed with weapons, and had caused injuries to the deceased, as well as to the witnesses.

8. The post-mortem on the body of Veer Pal, had been conducted on 19.10.1999, and the following ante-mortem injuries had been found on his body:-

- (i) Multiple punctured lacerated wound $\frac{1}{4} \times \frac{1}{4}$ cm oval to round shape on (Rt) side lower neck to shoulder and upper part of anterior and frontal medial (Rt) side of chest.
- (ii) Punctured lacerated wound has entered (Rt.) side peritoneum to (Rt.) liver lobe.

In the opinion of the Doctor, the cause of death was shock hemorrhage, caused as a result of ante-mortem injuries to the lung and liver, which was sufficient to cause death in the ordinary course of nature. Duration of injuries was fresh before death, by projectile firearm weapon gun shot injury.

So far as the other injured persons are concerned, it is evident from the record and the evidence provided by the doctors, that Padam Singh had two injuries on his person. Satish Kumar also had various

wounds caused by trampling. Radhey Shyam had suffered two injuries. Maharaj Singh had on his person, four injuries which had been caused by a fire arm. Injury Nos. 1 & 4 were found to have been caused by a blunt weapon. Chander Hans had two injuries on his person. Bachcho Singh also had two injuries. Similarly, Raj Kumar had two injuries, and Vijaypal also had two injuries. Kewal Singh had suffered two injuries by a fire arm. Pushpender had also suffered grievous injuries caused by a fire arm. Karan Singh had four injuries on his person, out of which two injuries were found to be grievous. Satyendra had only one injury on his person. The said injuries have all been proved by doctor B.L. Meena (PW.18), and it has also been deposed by various doctors, that such injuries were caused by fire arm, lathis, sticks and farsas, thus collaborating the deposition of Dr. Suman Dutta (PW.24).

9. The argument advanced by Shri Altaf Hussain, learned counsel for the appellants, stating that the evidence which has been disbelieved in respect of certain accused, cannot be enough to convict the present appellants, has no force.

This Court, in **Ranjit Singh & Ors. v. State of Madhya Pradesh**, AIR 2011 SC 255, has dealt with a similar issue. The Court

herein, considered its earlier judgments in **Balaka Singh v. State of Punjab**, AIR 1975 SC 1962; **Ugar Ahir & Ors., v. State of Bihar**, AIR 1965 SC 277; and **Nathu Singh Yadav v. State of Madhya Pradesh**, AIR 2003 SC 4451, and has referred to the doctrine, "*falsus in uno, falsus in omnibus*" and held, that the same has no application in India. The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded.

10. The courts below have examined the evidence and have appreciated the same in correct perspective. The Trial Court, after appreciating the medical evidence and the injuries etc. on the persons of the injured witnesses, has come to the following conclusions:

"In this case there are a total 14 injured persons of whom Veerpal has died due to injuries and the injured Padma could not be examined due to his death and Kewal could not be examined due to his mental incapacity. In the remaining injured persons PW.1 Shodan (complainant), PW.5 Satish, PW.7 Maharaj Singh, PW.10 Bachcho Singh, PW.12 Radhey Shyam, PW.15 Pushpender, PW.16 Satyendra and PW.19 Karan Singh have received injuries due to fire arm and PW.2

Raj Kumar, PW.4 Chander Hans and PW.11 Vijay Pal have received injuries by the impact of blunt weapon. Padma and Kewal who respectively expired and lost mental balance could not be examined and they have received fire arm injury. In the head of injured Karan Singh and in the finger of his hand grievous injury has been caused by the impact of a blunt weapon. From the statement of Karan Singh it is clear that Paras Ram gave lathi blow on his head and Ghambhir gave farsa blow on his head and caused injuries thereon and one blow of the farsa is stated to have landed on his finger also. Both the injuries in the head and the hand are grievous. Firstly the medical examination of Karan Singh was conducted by Dr. B.L. Meena (PW.18) and found 4 injuries on his person but after that Karan Singh was treated in the SMS Hospital and from the statement of PW.35 Dr. Vivekanand Goswami it is clear that on the person of Karan Singh there were six injuries instead of four and he had grievous injury on his head and there was a punctured wound on the middle finger of his left hand. This injury was also found to be grievous. On the right hand of Karan Singh there were three tramplng wounds of fire arms.”

11. The High Court has re-appreciated the evidence on record and considered the case taking into account the gravity of the injuries, as well as the death of Veerpal, and has come to a conclusion as under:

“From the evidence of Shodan Singh (PW.1), Raj Kumar (PW.2), Chandra Hans (PW.4), Satish Chand (PW.5), Shiv Singh (PW.6), Maharaj Singh (PW.7), Foren Singh (PW.8), Bachcho Singh (PW.10), Vijay Pal (PW.11), Radhey Shyam (PW.12), Pushpendra (PW.15), Satyendra Singh (PW.16) and Karan Singh (PW.19), the fact situation that emerges may be summarized thus:

- i) *As per site plan (Ex.P-9) mustard crop, standing on the land in dispute was destroyed by the tractor.*
- ii) *As many as 14 member of the complainant party sustained injuries. Veerpal died as a result of injuries received by him.*
- iii) *Member of complainant party had gone to the land in question unarmed and asked the accused party not to disturb mustard crop whereas accused party had gone with lethal weapons.*
- iv) *There is chequered history of litigation between the complainant party and the accused party.*
- v) *Accused Sita Ram and Ranveer had guns whereas accused Ranveer, Yogendra and Balla had kattas (country made pistols) and they indiscriminately opened fire at the members of complainant party.*
- vi) *According to Prahlad Singh I.O. (PW.29) cross case bearing FIR No.254/99 under sections 447, 323, 341, 147 and 148 IPC was registered against the members of accused party. Ghambhir Singh (appellant) sustained simple injuries that were incorporated in injury report (Ex.D.15)."*

12. The High Court, after re-appreciating the evidence on record, has rightly rejected the contention of self-defence that had been raised, and acquitted some of the convicted accused, giving them the benefit of doubt. In light of such a fact-situation, we do not see any cogent reason to interfere with the impugned judgment. The present appeal thus lacks merit, and is

accordingly dismissed. The appellants are on bail. Their bail bonds are cancelled, and they are directed to surrender within a period of four weeks from today, failing which the learned Chief Judicial Magistrate, Bharatpur shall take them into custody, and send them to jail to serve out the remaining part of their sentence. A copy of this order be sent to the CJM, Bharatpur by the registry for information and compliance.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(DIPAK MISRA)

New Delhi,
May 21, 2013

JUDGMENT