



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

D.B. Criminal Appeal (Db) No. 414/2019

1. Chetram S/o Parasram, Aged About 28 Years, R/o Moti Nagar, Police Station Hindaun City, Distt. Karauli Raj. (Presently Confined In Central Jail At Bharatpur)
2. Smt. Keshar W/o Parasram, Aged About 28 Years, R/o Moti Nagar, Police Station Hindaun City, Distt. Karauli Raj. (Presently Confined In Central Jail At Bharatpur)

-----Accused/Appellants

Versus

State Of Rajasthan, Through P.P.

-----Respondent/Non-Petitioner

For Appellant(s)	:	Mr. Dheeraj Singhal
For Respondent(s)	:	Mr. Vijay Yadav, PP

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

13/02/2026

By way of this appeal, the accused-appellants (for short-`the appellants) have assailed the legality and validity of the judgment dated 30.09.2019 passed by the learned Additional District and Sessions Judge No.2, Hindaun City (for short, `the learned trial Court') in Sessions Case No.17/16: CIS No.72/16 whereby, they have been convicted and sentenced as under:

Appellant-Chetram:-

Section 323/34 IPC:- 6 months simple imprisonment and fine of Rs.500/-; in default whereof, 10 days additional simple imprisonment.



Section 341 IPC:- 1 month simple imprisonment and fine of Rs.200/-; in default whereof, 4 days additional simple imprisonment.

Section 302 IPC:- Life imprisonment and fine of Rs.10,000/-; in default whereof, one year additional rigorous imprisonment.

All the sentences to run concurrently.

Appellant-Keshar:-

Section 323/34 IPC:- 6 months simple imprisonment and fine of Rs.500/-; in default whereof, 10 days additional simple imprisonment.

Section 341 IPC:- 1 month simple imprisonment and fine of Rs.200/-; in default whereof, 4 days additional simple imprisonment.

Section 302/34 IPC:- Life imprisonment and fine of Rs.10,000/-; in default whereof, one year additional rigorous imprisonment.

All the sentences to run concurrently.

The relevant facts, in brief, are that the complainant-Hari Mohan (PW3) submitted a typed report dated 05.06.2014 at about 12:50 pm at Police Station Kotwali, Hindaun City stating therein that when, at about 5:00 pm on 03.06.2014, he, along with his family members, was sitting on his plot purchased by him 10 years ago from Mahesh Meena, the appellants, along with co-accused, came armed with sariya (iron rod), daranti (a sharp edged curved instrument) and lathi to take forcible possession of the plot. It was alleged that his uncle-Puran was hit on head by



the appellant- Chetram with sariya with an intention to eliminate him whereupon, Puran fell down whereafter, he was hit by the other assailants with sticks and was also kicked and punched. Allegations were also levelled of beating the other family members. It was averred that Puran was shifted to hospital at Jaipur where he succumbed to injuries. Based thereupon, an FIR No.390 dated 05.06.2014 came to be registered at Police Station Hindaun, District Karauli for the offence under Sections 143, 323, 341, 447 and 354 IPC. After the death of Puran, Section 302 IPC was added. After investigation, only the appellants were charge-sheeted under Sections 341, 323 and 302/34 IPC. Charges were framed against them under Sections 323, 341 read with Section 34 and 302/34 IPC. After trial, they have been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, learned counsel for the appellants submitted that while recording their conviction, the learned trial Court did not appreciate that from the evidence on record, it was established that the subject plot was under their possession and to forcibly dispossess them, the complainant party, trespassing upon the property, assaulted them resulting into simple as well as grievous injuries. He contended that the complainant party was the aggressor one and they acted bona fide in right of their private defence to protect their body and property. Learned counsel asserted that there was no premeditation and the incident occurred at spur of the moment and hence, there was no occasion for the learned trial Court to have recorded their conviction that too with the aid of Section 34



IPC. He, therefore, prays that the appeal be allowed, the judgement impugned dated 30.09.2019 be quashed and set aside and they may be acquitted of the charges framed against them.

Per contra, learned Public Prosecutor, opposing the submissions and supporting the findings recorded by the learned trial Court, prayed for dismissal of the criminal appeal.

Heard. Considered.

The prosecution case is that the complainant was in occupation of and was residing in the subject plot, though, purchased in the name of his father; but, the entire sale consideration was paid by him. In the evening of fateful day, when, he along with other family members, was sitting on the subject plot, the appellants, along with co-accused person, came armed and attacked them resulting into death of Puran. Whereas, it is defence case that they were in possession of the subject plot, to forcibly dispossess them, the complainant party assailed them and in bona fide exercise of their right of private defence of the property as also their body, Puran died.

Although, it is alleged in the FIR that the complainant was residing in the subject plot for last about 10 years; but, complainant's wife namely; Smt. Kailashi (PW12) has deposed, in her examination-in-chief, that they were residing at Mandawara Phatak **on rent** for last about 10-12 years. Further, the prosecution could not establish that the subject plot was in occupation of the complainant rather, it was established that the appellants were in its possession. The site plan (Ex.P1) reflects house of Smt. Keshar Devi, i.e., the appellant no.2 in the subject



plot. The complainant has, as PW3, admitted that the aforesaid site plan was prepared at his instance, in his presence and he has signed the same after perusal and understanding the same. However, he has feigned ignorance as to how, the house of the appellant no.2 was shown in it. Shri Siyaram (PW4)-son of the deceased has admitted, during his cross examination, that the appellants were residing in the subject plot and the dispute, for resolution whereof they were called on the fateful day by Hari Mohan, was that the appellants were refusing to vacate the plot. He has further admitted that after the appellants were confined to custody, their household goods were thrown out. He has also admitted that in his police statement (Ex.D4), he has stated the disputed plot to be under possession of the appellant no.1-Chetram. Other prosecution witnesses such as Shri Kedar Lal (PW5), Shri Kinduri Lal (PW6), Smt. Kailashi (PW12)-wife of the complainant and Smt. Neeraj (PW13) have also admitted that the meeting of the family members was called on the fateful day as the appellants had refused to vacate the subject plot. Shri Vijay Kumar Singh (PW19), the Investigating officer has also admitted that he has shown possession of the appellants on the subject plot in the site plan (Ex.P1).

Thus, from the aforesaid testimony, we are satisfied that since, the appellants were in possession of the subject plot, there was no occasion for them to have attacked the complainant party to take its forcible possession and the prosecution story is not reliable to this extent.



Furthermore, the prosecution story is when the complainant, along with family members, was sitting on the subject plot in the evening of 3rd June, 2014, the appellants, along with co-accused persons, attacked them; but, evidence on record suggests otherwise. Although, it was alleged that the family members were gathered on the plot by the appellant no.1-Chetram but, all the prosecution witnesses, barring the complainant, have admitted, during their cross examination, that they were requested to assemble there by the complainant-Harimohan. It is also reflected from their testimony that the appellants were also sitting along with them to resolve the dispute but, later on, hot words were exchanged resulting into a scuffle wherein, both the appellants and the deceased have received injuries. Smt. Kailashi (PW12)-wife of the complainant has gone even to the extent of saying that Puran died while interfering when they were beating the appellants.

Although, it has also been the prosecution case that the appellants have not only beaten the deceased but, other members of the complainant party as well; but, there is no evidence on record that anybody, other than the deceased, has received any injury. The appellant no.1 has received four injuries as per Ex.D13-his Medico Legal Report including a bone deep injury on the left parietal region; although, all simple in nature and the appellant no.2-Smt. Keshar has received six injuries as per Ex.D11; out of which, after x-ray examination (Ex.D12), the injury no.2 was found to be grievous in nature. It is also reflected from the material on record that on the Parcha Bayan (Ex.D9) of the



injured appellant no.1, an FIR No.387 dated 03.06.2014 was lodged against the complainant party wherein, the police after investigation, filed charge-sheet on 20.08.2014 under Sections 323, 341 and 325 read with Section 34 IPC. We are informed at bar that trial in that case is going on. As per the postmortem report of the body of the deceased (Ex.P10) and the deposition of Dr. Priyanka Sharma (PW14), who conducted the autopsy, beside one head injury by blunt weapon, one lesion and three abrasions were found on the non-vital parts of the body of deceased and the cause of death was opined to be coma due to ante mortem head injury. The injury was inflicted with a sariya-a blunt object. As is revealed from the FIR and the prosecution evidence, construction work was going on in the subject plot and lying of a sariya there; was, but natural. Although, in the FIR, it is alleged that the appellants had come armed with Sariya and other weapons; but, it is evident from the prosecution evidence that the complainant party had come to the subject plot in order to dispossess the appellants and during the course of events, hot words were exchanged, a scuffle took place, the appellants were beaten resulting into simple as well as grievous injuries on their bodies and in bona fide exercise of their right of private defence of the body as also of the property, the appellant no.1 inflicted a single blow to Puran with a sariya which proved to be fatal. It is also noteworthy here that the injury was inflicted on 03.06.2014 and the deceased had succumbed to it on 24.06.2014, i.e., after 21 days.



It is defence case that the complainant wanted to forcibly dispossess them from the subject plot inasmuch as he has sold it to Shri Prem Chand Meena, a local Constable who has denied payment of balance sale consideration until he was handed over its vacant possession. Although, during his cross-examination, the complainant has denied to have sold the subject plot to Shri Prem Chand Meena and has also denied that Prem Chand Meena was defendant no.8 in the civil suit pertaining to subject plot pending in the Court at Hindaun and they had engaged a common Advocate Shri Ramesh Chand Gupta; but, from the Ex.D1-the reply filed in the temporary injunction application in the case no.57/2014-Harikesh vs. Kesar Bai and Ors., it is reflected that amongst others, the complainant Shri Hari Mohan, the appellant no.1-Chetram and Shri Prem Singh Meena were defendants therein and S/Shri Hari Mohan and Prem Chand Meena have filed their common reply through counsel Shri Ramesh Chand Gupta. The defence story further gets strengthened from the testimony of Shri Siyaram (PW4) who has categorically stated that after the appellants were confined to custody in the instant case, their household goods were thrown out as also from the deposition of the complainant as PW3, wherein he has admitted that he was facing a criminal case No.553/2014 on the allegation of throwing out the household articles of the appellants from the subject property. He has further admitted that he was residing in a rented premises as is corroborated from the testimony of his wife Smt. Kailashi (PW12). Therefore, we find substantial force in the defence case.



There is one more important aspect of the matter. The FIR was lodged on 05.06.2014 whereas, the incident had occurred on 03.06.2014. The prosecution has miserably failed to offer any plausible explanation for this inordinate delay except that some of the family members were engaged in treatment of the deceased but, the fact remains that the complainant-Harimohan did not go to Jaipur to take care of the deceased but, was staying in the village itself in the interregnum. However, no explanation has been offered as to why he did not lodge the FIR immediately after the incident. Shri Hari Mohan has also admitted during his cross-examination that the FIR was got written from Shri K.K. Puri, Advocate. In the same breath, he has also admitted that the report was lodged as the police intended to arrest them in the FIR lodged by the appellants. The aforesaid facts also raise a doubt as to veracity of the prosecution case.

In the conspectus of aforesaid evidence, we are of the considered view that the appellants were in peaceful and settled possession of the subject plot, the complainant party was the aggressor one and wanted to forcibly dispossess them, the family members including the deceased were gathered on the subject plot by the complainant in order to exert pressure upon the appellants to remove their possession, a scuffle took place between the parties, the appellants were beaten resulting into simple as well as grievous injuries and in bona fide exercise of their right of private defence of their body as also their property, in good faith and without any premeditation, the appellant no.1 inflicted a single blow on the head of the deceased with an iron



rod, which could have been available at the site on account of ongoing construction, which proved to be fatal. Therefore, we do not find it to be a case of either murder or culpable homicide not amounting to murder or, that any offence is made out against the appellants.

Resultantly, the appeal is allowed. The judgement impugned dated 30.09.2019 passed by the learned Additional District and Sessions Judge No,2, Hindaun City in Sessions Case No.17/16 is quashed and set aside. The appellants are acquitted of the charges framed against them. The appellant no.1-Chetram be set at liberty forthwith if not required to be detained in any other case. Since, the appellant no.2-Smt. Keshar is on bail, her bail bonds are discharged.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants namely **1. Chetram S/o Parasram and 2. Smt. Keshar W/o Parasram** are directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in that event of Special Leave Petition being filed against the judgement or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(SAMEER JAIN),J

(MAHENDAR KUMAR GOYAL),J