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Cr1.A.No. 378 OF 2000

ITEM NO.101

COURT NO.10

SEC -II

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(S).378 OF 2000@@  
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Bhura Ram

Appellant(s)

VERSUS

State of Rajasthan

Respondent(s)

(with appln. for bail and exemption from filing OT and  
exemption from filing OT)

WITH

SLP(Cr1) 1333/2000

(with appln. for c/delay in filing SLP and issue of warrant of  
arrest of respt.)

DATE: 7-8-2002 This matter was called on for hearing today.@@

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ORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s) : Mr. LK Pandey, Adv. (AC)  
& res. in SLP

For Respondent(s) : Mr. Alok Bachawat, Adv.  
Mr. Javed M Rao, Adv.  
Ms. KV Bharati Upadhyay, Adv.  
Mr. Ranji Thomas, Adv.

UPON hearing counsel the Court made the following

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Mr. LK Pande, learned counsel for the appellant started  
his arguments at 10.30 a.m. and concluded at 11.55 a.m.  
Thereafter Mr. Alok Bachawat, learned counsel for the respondent  
argued upto 12.05 p.m.

Delay condoned and leave granted in SLP(Cr1) No.1333 of  
2000.

The appeals are dismissed in terms of the signed  
Judgment.

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(D.L. Chugh)  
Court Master

(V.P. Tyagi)  
Court Master

Signed Judgment is placed on the file

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CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.378 OF 2000@@  
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Bhura Ram

.... Appellant

VERSUS

State of Rajasthan

....Respondents

WITH

CRIMINAL APPEAL NO.782 OF 2002@@  
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(Arising out of SLP(Crl) No.1333 of 2000)

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Leave granted in SLP(Crl) No.1333 of 2000.

The appellant Bhura Ram and eleven others were charged for the offences punishable under Sections 147, 302, 323, 379 and 149 of the Indian Penal Code for assaulting Rooparam and having murdered him. The trial court on detail examination of evidence acquitted the seven accused. The appellant was convicted for the offences punishable under Sections 147, 302, 323/149 and 379/149 IPC. For offence under Section 302 IPC life imprisonment besides fine was imposed on him. In respect of other offences varied sentences were imposed. Besides the appellant four other accused, namely, Kesra Ram, Moola Ram, Sohan Lal and Bhanwar Lal were convicted for the offence under Section 302/149 and imprisonment for life and fine was imposed on them.

On appeal the High Court maintained the conviction and sentences of the appellant for offence under Section 302 IPC and other offences. The conviction of Moola Ram, Sohan  
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Lal and Bhanwar Lal for offence under Section 302/149 IPC and the consequent sentence for the said offence was set aside resulting in their acquittal for the offence of murder of Rooparam. Kesra Ram died during the pendency of the appeal before the High Court. The conviction of Moola Ram, Sohan Lal and Bhanwar Lal for offence punishable under Section 147, 323/149 and 379/149 IPC was sustained and to that extent their appeal was dismissed. The order of sentence passed by the trial court for these offences on these three accused was set aside and instead they were released on probation of good conduct.

Bhura Ram has challenged the impugned judgment and order of the High Court confirming that of the trial court. The State of Rajasthan has also challenged the impugned judgment and order of the High Court to the extent it acquits the three accused of the charge under Section 302/149 IPC.

The main contention urged in support of the appeal filed by Bhura Ram is that he was entitled to the benefit of exception (i) to Section 300 IPC. Mr. LK Pandey, learned Advocate who was appointed as amicus to assist the Court on behalf of the accused-appellant strenuously contends that as a result of sudden provocation the appellant Bhura Ram lost the power of self control and caused the death of Rooparam (deceased) by giving him an axe blow. Learned counsel further contends that assuming without admitting that Bhura  
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Ram had gone to the hut of the deceased Rooparam where Ugrasen was killed at the hands of Rooparam and, therefore, it is clear that he acted in the right of private defence and the resultant killing of Ugrasen at the hands of the appellant was the result of grave and sudden provocation due to which he lost the power of self control. It has been submitted that deceased Ugrasen along with two other persons had gone to the hut of Rooparam in a Jonga Jeep. The Jeep was parked at a distance. All other persons remained in or near the jeep and only Ugrasen had gone to call Rooparam for attending the Panchayat which was to meet on the date of incident itself with a view to resolve the controversy of land between Rooparam and others. It was pointed out that cultivatory possession of the land which was the subject matter of dispute resulting in the entire dispute was that of Kesra Ram who was cultivating the land for the last many years prior to the incident. He was illegally dispossessed and the possession of Rooparam in respect of the land was wholly unauthorised. On this basis an argument was build that in fact the aggressor was Rooparam and not the appellant Bhura Ram and his party.

The case against the appellant and others for the murder of Rooparam was registered on the statement of PW 2 Smt. Saudi. That statement was to the effect that on the date of occurrence another brother of Rooparam and her two ...4/-

daughters, who though living in the same hut had gone to the neighbouring huts. At about 5.00 p.m. Ugrasen along with large number of people came in a jonga jeep which was parked near her hut. The only two persons in the hut were she and her husband. 10 persons including Ugrasen came to the courtyard in front of the hut and Ugrasen enquired as to where is Rooparam. She told him that he had gone to village Hada. Thereupon Ugrasen told others to put all the household articles of Rooparam in the camel-cart and told her to get out of the village. The articles named in the fard bayan@

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were loaded in the camel-cart. Then those persons came to the hut of Rooparam. Rooparam was hiding inside the hut. He told his wife in a low voice that do not let them enter the hut otherwise he will be killed. She stood on the way upon which Kesraram inflicted lathi blows on her and thereafter they tried to enter forcefully in the hut whereupon her husband apprehending danger to his life, fired the gun shot at Ugrasen which hit him and he fell down immediately. Thereafter the appellant dragged her husband outside the hut. Other accused gave him beating with fists and kicks. Then, the appellant Bhura Ram who was armed with axe, inflicted axe blows on the head of Rooparam and he died instantaneous death. While leaving they also took the single barrel gun of Rooparam which was lying there.

The trial court as also the High Court on detailed .....5/-

and thorough scrutiny of the evidence has come to the conclusion that Ugrasen accompanied by the appellant and others went into the field and hut of Rooparam. Ugrasen was killed at the hands of Rooparam. Rooparam was apprehensive that otherwise he will be done to death.

Having regard to the evidence we see no reason to arrive at a different finding than that arrived at by the trial court and confirmed by the High Court that Bhura Ram was the aggressor and Rooparam in exercise of his right of

private defence had fired a gun shot at Ugrasen. Rooparam died instantaneously as a result of the axe blow given by the appellant. Immediately after the incident the FIR was registered on the statement of Saudi. In this view the courts have rightly relied upon the first proviso to exception (i) to Section 300 IPC for the appellant cannot take benefit of grave and sudden provocation as he himself was aggressor. First proviso to exception (i) to Section 300 is applicable and the appellant is not entitled to the exception as claimed. The appellant, in our view too, is the aggressor. We are unable to accept the main contention urged by Mr. Pandey that Rooparam was the aggressor and the appellant was entitled to the benefit of exception (i) to Section 300 IPC. The appellant has rightly been convicted and sentenced by the trial court duly confirmed by the High Court.

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In respect of the State appeal we have heard Mr. Bachawat, learned counsel and perused the reasoning given by the High Court. We are in agreement with the views expressed by the High Court that the prosecution has failed to prove common intention on the part of Moola Ram, Sohan Lal and Bhanwar Lal for the murder of Rooparam. Therefore their conviction has rightly been set aside by the High Court.

For the reasons aforesaid we dismissed the appeal filed by the appellant Bhura Ram and also the appeal of the State of Rajasthan.

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(H.K. SEMA)@@  
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New Delhi,  
August 7, 2002