

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1100 OF 1998

DEVKARAN AND ORS.

Appellant (s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date: 03/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr. Mahabir Singh,Adv.

Mr. Rakesh Dahiya,Adv.

Mr. Nikhil Jain,Adv.

Mr. Gagandeep Sharma,Adv.

For Respondent(s)

Ms. Madhurima Tatia,Adv.

Mr. Aruneshwar Gupta,AAG.,Rajasthan.

UPON hearing counsel the Court made the following

O R D E R

.40 a.m. to

Heard the learned counsel for the parties from 10

11.35 a.m.

The criminal appeal is disposed of.

[T.I. Rajput]

[Veera Verma]

Court Master

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1100 OF 1998

Devkaran & Ors.

...Appellant(s)

Versus

State of Rajasthan

...Respondent(s)

O R D E R

Five accused persons were tried by the learned Sessions Judge, Merta, in

the State of Rajasthan for various offences punishable under the Indian Penal Code,

the main offence being under Section 302 read with Section 149 of the Indian Penal

Code, 1860 [for short, "I.P.C."]. All the accused persons were found guilty of

offences punishable under Section 323 I.P.C. and Section 452 I.P.C. Each of them

was sentenced to undergo rigorous imprisonment for a period of one year for the

offence punishable under Section 323 I.P.C. and two years' rigorous imprisonment

under Section 452 I.P.C. All the accused persons filed an appeal challenging their

conviction and sentences. The State of Rajasthan also preferred an appeal against

the acquittal of these accused for the offence punishable under Section 302 I.P.C.

read with Section 149 I.P.C. During the pendency of the appeal before the High

Court, the first accused, Bhagirath, died and his appeal abated. The High Court, by

a common judgement, held that the second accused, Devkaran, is guilty of offence

punishable under Section 302 I.P.C. and

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the other three accused, Kana, Sangram and Ram Karan, were found guilty of

Section 302 I.P.C. read with Section 34 I.P.C. They were also found guilty of other

minor offences for which they were charged. The accused persons have filed this

appeal challenging their conviction and sentence.

We have heard the learned counsel for the appellants and the learned

counsel for the State.

Bhagirath, since deceased, was the father of the four appellants herein. It

appears that there was a property dispute between Bhagirath and his brothers,

Jawana Ram and Dhanna. Some time prior to the incident on 20th December, 1977, a

heap of "Murda Loong" had been collected on the disputed land. The accused

persons came to this place and started to remove the leaves therefrom. Jawana Ram raised objection and the accused persons started beating him. Dhanna, brother of Jawana Ram, came there and tried to pacify the assailants. The accused persons then started beating him. According to the prosecution, the first accused, Bhagirath, gave a blow of "lathi" on the head of Dhanna and he fell down. Thereafter, the accused, Devkaran, gave a blow of "lathi" on his head and all other accused started beating him. The accused, Devkaran, beat Jawana Ram and also trespassed into the house wherein Sugnai was there and she was also beaten by him. The injured Dhanna, Jawana Ram and Sugnai were taken to the hospital at Ajmer and on the way, Dhanna died.

Jawana Ram later gave statement to the police narrating the whole incident and P.W.13, Inder Singh, conducted the investigation. He held inquest on the dead body and the injured persons were examined by the doctor. Post-mortem examination of the deceased was conducted. Injured Jawana Ram had sustained series of bruises and evidently beaten by some blunt weapon. The post-mortem

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examination of Dhanna revealed that he had sustained a lacerated wound on the right parietal region and there was a lacerated wound on the left side of skull on temporo-parietal region. The doctor was of the opinion that Injury No.2, which was on the base of the skull was sufficient in the ordinary course of nature to cause death.

Some of the accused in this case had set up a plea of private defence.

Three accused, Ramkaran, Kanna and Sangram stated that they were not present at

the place of occurrence and were falsely implicated. The learned counsel for the

appellants vehemently contended before us that the property in question was in the

possession of Bhagirath and the injured Jawana Ram and deceased Dhanna caused

obstruction to the appellants while they were removing the leaves which belonged to

them absolutely. It is also submitted that the appellants had also sustained injuries

at the hands of Jawana Ram and Dhanna and the appellants were justified in

causing injuries to Dhanna and Jawana Ram. We do not find any force in this

contention. The nature of injuries sustained by the appellants would be evident from

Exhibits D-4 and D-5. Ram Karan had sustained two scratches and two minor

abrasions while Bhagirath had sustained one lacerated injury and one abrasion. They

were also all minor in nature and had not caused any serious fracture to any bones.

The nature of injuries of these two accused persons would only prove that they had

engaged in some scuffle and the persons who caused injuries to the appellants were

not evidently armed with any weapon.

The learned Sessions Judge acquitted the appellants on the ground that

they had right of private defence since they were owning the land and the leaves

belonged to them; and Dhanna and Jawana Ram caused obstruction to them. The

said finding has rightly been reversed by the High Court. On a re-appreciation of the

evidence, it is clear that these

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four appellants have participated in causing injuries to deceased Dhanna and the other two injured persons. It may be noticed that Dhanna sustained two injuries on his head. The first injury was on the parietal region which, according to the evidence of P.W.9, was caused by Bhagirath. Then he fell down and the appellant, Devkaran, caused the injury on the base of his head and that resulted in injury No.2 which was sufficient to cause death in the ordinary course of nature, as stated in the post-mortem certificate. It is clear that this injury must have been caused by Devkaran and that injury was sufficient in the ordinary course of nature to cause death. There is also evidence to show that series of other injuries were caused by the other appellants, including Devkaran. From this it is clear that the accused, Devkaran, has committed the offence of murder punishable under Section 302 I.P.C. and the High Court was fully correct in finding him guilty of offence under Section 302 I.P.C. and we see no reason to interfere with such a finding.

As regards the complicity of other appellants, it is clear that they had caused series of injuries to Dhanna, Jawana Ram and Sugnai but it is difficult to believe that they shared common intention with Devkaran in causing the death of Dhanna. The entire incident had started on a minor dispute between the parties and they were evidently not there to cause death of Dhanna. He came all of a sudden to intervene in the melee that had been taking place between Jawana Ram and other

appellants.

Under these circumstances, the appellant, Kanna, Sangram and Ramkaran

are found not guilty of offence punishable under Section 302/149 I.P.C. but they are

found guilty of offence punishable under Section 326 I.P.C. read with Section 34

I.P.C. As the incident occurred in the year

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1977, we take a lenient view in the matter of sentence and sentence each of them to

undergo imprisonment for a period of three years for the offence punishable under

Section 326 I.P.C. read with Section 34 I.P.C. The conviction and sentence of the

appellant, Devkaran, for the offence punishable under Section 302 I.P.C. is

confirmed.

The appellants, who are on bail, shall be taken into custody forthwith to

serve out the remaining part of the sentence. Their bail bonds are cancelled

accordingly.

The criminal appeal is, accordingly, disposed of.

.....J.

[K.G. BALAKRISHNAN]

.....J.

[B.N. SRIKRISHNA]

New Delhi,

March 03, 2005.