

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.2043 OF 2010.

DAYAL SINGH

APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN

RESPONDENT(S)

O R D E R

Heard learned counsel for the appellant as well as learned counsel for the State.

2. This appeal has been filed against the judgment of the Division Bench of the High Court of Rajasthan, Jodhpur Bench, dismissing the Criminal Appeal No.118 of 1986 filed by the appellant. The appellant was convicted under Section 302, IPC for life imprisonment; Section 307, IPC for seven years rigorous imprisonment and Section 324, IPC for one year imprisonment.

3. Brief facts leading to this appeal are that on 11.02.1983 at 2.30 p.m. Manji s/o Nanda Meeta (PW-1) filed a written report Ex.P.1 that on the same day at 12 O'clock, Mammu Khan, his wife Shayari and sons Aziz Khan, Rustam Khan and Akram Khan came to clean and dig their

strip of land, then Dayal Singh and his father Shambhu Singh came there. Dayal Singh was having a sword with him and he inflicted injuries on Aziz, Rustam and Akram, whereby Aziz Khan died on account of head injury inflicted with the sword. According to the FIR, there was dispute between Mammu Khan and their village Thakur accused Shambhu Singh over the disputed land for 3 to 4 years. The incident was witnessed by Mammu Khan, Shayari, Dalu, Hasan, Nathu Meena. On hearing the cries, Manji came from his well to the spot, where Shayari and Mammu Khan narrated the incident and Mammu Khan and his wife Shayari send him to report the matter to the police.

4. The appellant, as well as Shambhu Singh, his father, were sent for trial . The prosecution produced witnesses to prove the charge. The injury report of injured, the post mortem report of Aziz Khan were taken into consideration by the trial court along with the oral evidence. The trial court after marshaling the evidence held the charges proved against the appellant and convicted him under Section 302, 307 and 324, IPC. Another accused Shambhu Singh was acquitted.

5. Aggrieved, the appellant filed the appeal which has been dismissed.

6. Learned counsel for the appellant contends that the plot of land which was the subject matter of dispute between the appellant and the complainant was owned by the appellant. He submits that a claim was made by Mammu Khan on the basis of Patta (Ex.P-14) and documents of sale dated 25.11.1972 (Ex.P-1) which did not convey the title to Mammu Khan. It was the appellant who was the owner of the plot and when on the day of incident he reached on the plot he found the complainant and other members of the family digging the foundation. He submits that in the concerned part of the property, scuffle took place and on his right of private defence he caused certain injuries. He submits that at best he may have exceeded his right of private defence but conviction under Section 302 was not made out. He further submits that after the incident it is the appellant who went to the police station and narrated the incident but police did not register any case on the statement made by the appellant. He further submits that there was injury report which mentioned that there were 10 injuries, on the body of appellant and the learned Sessions Judge found that there was no explanation given on the record on behalf of the prosecution about the aforesaid injuries.

7. Learned counsel for the State while supporting the judgment of the High Court contends that the appellant had

come on the spot with sword which clearly indicates that he came with a pre-determinative mind and injuries caused by him are injuries which had been noted on the body of the deceased as well as other members of the family were sufficient for conviction of the appellant under Section 302, 307 and 323, IPC.

8. Learned counsel for the appellant has lastly contended that at best the case was a case of sudden fight without any pre-determination and in view of the injuries suffered by the appellant offence under Section 302, IPC was not committed but at best it was the case for conviction under Section 304, IPC.

9. We have heard learned counsel for the parties and perused the record.

10. In so far as the case of private defence is concerned, learned Sessions Judge in detail has considered the said defence and has not accepted the said defence of the appellant.

11. The courts below have accepted the fact that there was a dispute between the appellant and Mammu Khan with regard to the plot in question. On the day of incident deceased Aziz Khan and other family members had all

gathered on the plot and were cleaning the plot and digging the foundation. The appellant and his father went on the spot and thereafter the incident took place. From the sequence of events and evidence which has been brought on record by the prosecution it is clear that the fight took place on the spur of the moment and when the appellant reached on the said plot the respondents were cleaning and digging the foundation. Both sides received injuries which is clear from the post mortem and injury report as narrated by the Sessions Judge. The appellant has also received 10 injuries in his body which has been extracted by Sessions Judge in para 13 of the judgment. Eight injuries out of 10 were by sharp weapon.

12. Learned counsel for the appellant has further submitted that the appellant has already been in incarceration for more than thirteen years.

13. In the facts of the present case, we are of the view that ends of justice would be served in convicting the appellant under Section 304, IPC and sentencing him to the period already undergone.

14. In result, the appeal is allowed to the extent indicated above and the impugned judgment is modified

accordingly.

15. The appellant shall be released forthwith if not required in any other case.

.....J.  
[ASHOK BHUSHAN]

.....J.  
[INDU MALHOTRA]

NEW DELHI  
NOVEMBER 29, 2018

ITEM NO.109

COURT NO.8

SECTION II

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

Criminal Appeal No(s).2043/2010

DAYAL SINGH

APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN

RESPONDENT(S)

Date : 29-11-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN  
HON'BLE MS. JUSTICE INDU MALHOTRA

For Appellant(s)

Mr.Doongar Singh, Adv.  
Mr.V.J.Francis, Adv.  
Mr.Anupam Mishra, Adv.  
Mr.Harikumar V., Adv.

For Respondent(s)

Mr.Milind Kumar, Adv.  
Mr.Anish Roy, Adv.  
  
Mr.R.Gopalakrishnan, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(Ashok Raj Singh)  
Court Master

(Chander Bala)  
Court Master

(Signed Order is placed in the file)