

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).4397/2009

(From the judgement and order dated 31/03/2009 in CRLA No.444/1983 of the HIGH COURT OF RAJASTHAN AT JODHPUR)

DAL DAS Petitioner(s)
VERSUS

STATE OF RAJASTHAN Respondent(s)

(With appln(s) for exemption from filing O.T.)

Date: 20/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s) Mr. M.R. Calla, Sr. Adv.

Mr. Mukul Kumar, Adv.
Mr. J.S. Bhati, Adv.
Ms. Charu Mathur, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

The petitioner herein had a boundary dispute with one Tulsi Das. He had been encroaching in the property of Tulsi Das by moving the boundary year after year. Tulsi Das, on the fateful day, is said to have demolished the fence put by the accused. A verbal altercation ensued between them. Two persons intervened. After they went away, the deceased inflicted as many as 15 injuries on Tulsi Das. One Bhanwardas son of Tulsi Das also intervened. He was also inflicted three injuries.

Deceased Ratna Das had nothing to do with the property in question. He came to the spot only after hearing the cries and on being assaulted six times, he died.

-2-

Mr. Calla, learned senior counsel appearing for the petitioner would contend that as the petitioner has a right of private defence with regard to his property, at best he might have exceeded his right of private defence and thus the offence committed by him would be one under Part I of Section 304 of the Indian Penal Code and not Section 302 thereof.

Strong reliance in this behalf has been placed by him in the case of Baijnath Mahton and Ors. vs. State of Bihar, 1993 Supple. (3) SCC 1. In that case, two deceased persons along with others, variously armed, admittedly, came to dispossess the accused and they also inflicted injuries upon them. It was in the aforementioned premise that this Court held that the accused had a right of private defence of property as also of person.

Such is not the case here as in this case, a right of private defence has been denied in respect of the property alone and not in regard to the person of the accused. The deceased Ratna Das had nothing to do with the property in dispute and he was there by way of exercising the right of private defence of the petitioner, so far as the deceased is concerned. For the same reason, reliance placed by Mr. Calla on Kesha and Ors. vs. State of Rajasthan, 1995 Supple.(4) SCC 453, wherein it was held that accused exceeded the right of self-defence in which case the offence would be punishable under Section 304,

Part I of the I.P.C., is not applicable.

The special leave petition is therefore dismissed.

(A.S. BISHT)
MASTER

COURT MASTER

(PUSHAP LATA BHARDWAJ) COURT