

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 SCriminal Appeal No. 325/2009

BHANWARI &amp; ORS.

Appellant(s)

VERSUS

STATE OF RAJASTHAN

Respondent(s)

Date : 03/11/2015 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA  
HON'BLE MR. JUSTICE UDAY UMESH LALITFor Appellant(s) Mr. V. J. Francis, A.O.R.  
Mr. Anupam Mishra, Adv.  
Mr. Simanta Kumar, Adv.For Respondent(s) Mr. Shovan Mishra, Adv.  
Mr. Milind Kumar, A.O.R.UPON hearing counsel the Court made the following  
O R D E RFor the detailed reasons given in the signed  
order, the appeal is dismissed.[KALYANI GUPTA]  
COURT MASTER[SHARDA KAPOOR]  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 325 OF 2009

BHANWARI & ORS. .... APPELLANTS

VERSUS

STATE OF RAJASTHAN .... RESPONDENT

O R D E R

This appeal by special leave at the instance eight appellants challenges the judgment and order dated 18<sup>th</sup> July, 2008 passed by the High Court of Rajasthan at Jodhpur in Division Bench Criminal Appeal No.679 of 2000.

2. Initially, 27 persons were charge sheeted for having committed offences punishable under Section 302, in the alternative under Section 302/149; 307, in the alternative under Section 307/149; 325, 323, in the alternative under Sections 323/149, 148 and 447 of the Indian Penal Code[for short 'IPC'].

3. One of the accused persons named, Deva Ram died pending trial. Out of 26 persons so tried by the trial Court, 16 were acquitted by the trial Court while

other 10 were convicted and sentenced under Section 148 IPC to undergo rigorous imprisonment for two years, under Section 302 read with 149 IPC to undergo life imprisonment with a fine of Rs. 1,000/- each in default whereof to suffer further simple imprisonment for three months; under Section 325 IPC read with Section 149 IPC to undergo rigorous imprisonment for three years with a fine of Rs. 500/-, in default whereof to undergo simple imprisonment for two months; under Section 324 IPC read with Section 149 IPC to undergo rigorous imprisonment for two years and under Section 323 IPC read with Section 149 IPC to undergo rigorous imprisonment for six months. The ten convicted accused preferred Division Bench Criminal Appeal No. 679 of 2000 before the High Court. During the pendency of the appeal, two appellants namely, Amra Ram and Niryana Ram died and their appeal was dismissed as abated by orders dated 12<sup>th</sup> May, 2003 and 9<sup>th</sup> October, 2006, respectively. The appeal of the remaining eight accused was dismissed by the High Court by the judgment under appeal confirming the conviction and sentence as recorded by the trial Court.

4. This appeal by way of special leave has been preferred by those eight accused. It appears that four

appellants named Mohan Ram, Kunana Ram, Gopal Ram and Indra Ram have already completed their sentence. Two appellants, Tulcha Ram and Likhma Ram, are stated to have expired and their appeal is declared to have abated. One appellant Bhagwana Ram was kept in open jail. Thus, we are concerned in this appeal namely, Smt. Bhanwari, wife of Megha Ram and the appeal insofar as other seven appellants are concerned is not being pressed and the appeal qua those seven appellants stands dismissed as such.

5. According to the prosecution, the incident which occurred on 30<sup>th</sup> June, 1989 has genesis in rival claims set up in respect of agricultural land Khasra No. 229 and 357 of Village Dassusar of Halka Simsiya in District Churu, Rajasthan. This land originally belonged to one Moola Ram who died issueless leaving behind his widow Sua Devi. One Jetha Ram claimed to have been adopted by said Moola Ram. The fact of adoption was being denied by the said Sua Devi. Sua Devi sold this land in dispute to one Nirayana Ram and Giridhari Lal by registered sale deed and according to her she had delivered possession to the purchasers. The aforesaid sale by Sua Devi was challenged by Jetha Ram by filing a Civil Suit in the Court of the

Sub-Divisional Magistrate, Ratangarh in which an interim order was passed on 4<sup>th</sup> November, 1988, restraining the purchasers from interfering with the possession of the land in question. It further appears that Niryana Ram had filed a counter suit. In this scenario, when both the parties had filed civil litigation claiming the right to and possession of the land in question, the incident on 30<sup>th</sup> June, 1989 occurred.

6. According to the prosecution in the morning of 30<sup>th</sup> June, 1989, the accused party came on a camel cart and finding that the complainant party was ploughing the agricultural land, members of the accused party exhorted that they be taught a lesson. In the fight that ensued thereafter five persons from the complainant side namely, Shera Ram, Sugana Ram, Narayana, Tiku and Gordhan sustained various injuries and succumbed to their injuries. Additionally, five witnesses namely, P.W. 4- Bhagwana Ram, P.W. 5- Thakur Ram, P.W. 10- Harkha Ram, P.W.11- Girdhari Ram and P.W. 14- Bhagwana Ram (2) also suffered injuries. According to the prosecution, all 27 accused persons were variously armed and had come to the agricultural land in question by forming an unlawful assembly.

7. The reporting of the incident was made by P.W.

3 Mana Ram at 11:00a.m. at Government Hospital, Ratangarh pursuant to which the crime in question namely, FIR No.10 of 1989 was registered. A cross case was also registered at the instance of the accused party who contended that it was in fact the complainant party who had come to the field in question to dispossess them. It may be noted that some of the accused persons had also suffered injuries in that transaction which injury reports are available at Exhibits D10 to D20 and insofar as the first appellant herein is concerned, the Injury Report Exhibit D-19 shows that she had suffered a punctured wound though described as simple.

8. The Post-Mortem Report in respect of Shera Ram, Exhibit P77 shows that he suffered 20 injuries, out of which 1-13 and 7-20 were caused by a blunt weapon while injuries 14-16 were caused by a sharp-edged weapon and that he died due to the said injuries. The Post-Mortem Report Exhibit P78 shows that Sugana Ram had suffered 28 injuries caused by blunt weapon, sharp-edged weapon piercing object and that he suffered fractures and damage to liver. The Post-Mortem Report, Exhibit P79 in respect of Gordhan reveals that he sustained two punctured wounds on vital parts, four lacerated wounds and one abrasion and that he died due to injury to his

vital organ namely, left lung. Post-Mortem Report, Exhibit P80 shows that Tiku Ram suffered 19 injuries including incised wounds, fractures, piercing wounds, crushed wounds and abrasions including injuries to his lungs. Lastly, the Post-Mortem, Exhibit P81 shows that deceased Narayan Ram suffered 21 injuries inflicted by blunt weapons, sharp-edged weapons and piercing object resulting in his death. These Post-Mortem Reports were proved by P.W. 23, Dr. Bhanwar Lal Verma.

9. The eye witness account given by P.Ws. 4, 5, 10 and 11 specifically shows the presence of the first appellant. The eye witness account further shows that she was armed with a weapon namely, lathi. It is true that none of the witnesses have specifically alleged any role to the first appellant in causing any injury to any of the deceased.

10. The trial Court after considering the material on record by its judgment dated 15<sup>th</sup> November, 2000, convicted and sentenced 10 accused as mentioned hereinabove. According to the trial Court, P.Ws. 3,4, and 5 being interested witnesses could not be relied upon. The trial Court, however, found the case against 10 accused persons being proved by the prosecution. The fact that the accused had suffered injuries in the

transaction, according to the trial Court, fully established their presence. The trial Court found that the agricultural land in question was actually in possession of the accused party and thus acquitted the accused of the charges under Section 447 IPC. However, the trial Court recorded that the accused had completely exceeded their right of private defence and as such were guilty of the offences as alleged. The High Court has confirmed the conviction and sentence as recorded by the trial Court.

11. Mr. V.J. Francis, learned Advocate appearing for the appellant Bhanwari submitted that the trial Court having not relied upon the version of P.Ws. 3, 4 and 5, there being no specific allegation against the first appellant, the possession of the disputed land having been found with the accused and they having been acquitted under Section 447 IPC, the conviction and sentence as recorded against the first appellant was completely erroneous. It was further submitted that the incident in question was a case of free fight and there was no room to conclude that the first appellant was an active participant in the transaction so as to warrant her conviction with the aid of Section 149 IPC. The learned Advocate appearing for the State, however,

submitted that the presence and participation of the first appellant was proved beyond any doubt and the fact that all 27 persons had come prepared to open an assault actually shows the satisfaction of the ingredients under Section 149 IPC.

12. We have considered the matter and the rival submissions. The fact that the first appellant was present at the time of occurrence has not been seriously disputed or questioned. Her presence is spoken to by PWS. 4, 5, 10 and 11 who say that she was present and was also armed with a lathi. Exhibit D19, the injury report further establishes the presence of the first appellant. It is true that as affirmed by the trial Court, the land in question, was actually in possession of the accused and as such it was pleased to acquit the accused of the charges under Section 447 IPC. However, that would not in any manner justify the assault and the intensity in which five persons lost their lives. The finding that the accused exceeded the right of private defence and as such would be guilty of the offence with which they were charged is absolutely correct. The presence, participation and the preparedness on part of the accused stands fully established. Being member of the unlawful assembly which openly assaulted, the first

appellant is definitely guilty of the offence with which she was charged and convicted. We have seen the evidence of P.Ws. 4 and 5 and the criticism adopted by the trial Court, in our view, is not correct. They may be interested but that by itself does not diminish the value of their testimony. Their testimony as well as that of other eyewitnesses is quite cogent and consistent and corroborated by the materials on record. We find no reason to differ from the view which has weighed with the trial Court and the High Court. We, therefore, dismiss the present appeal.

.....J  
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J  
[UDAY UMESH LALIT]

NEW DELHI  
NOVEMBER 03, 2015.