

Rajasthan High Court

Prempal And Ors vs State Of Rajasthan Through P P on 26 August, 2021

Bench: Sandeep Mehta, Rameshwar Vyas

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal No. 660/2017

1. Prempal S/o Vikram Singh B/c Ahir, R/o Jakhrana, Police Station Behror, District Alwar. At Present Lodged In The Sub Jail, Behror.
2. Sonu S/o Prempal B/c Ahir, R/o Jakhrana, Police Station Behror, District Alwar. At Present Lodged In The Sub Jail, Behror.
3. Munni Devi W/o Prempal B/c Ahir, R/o Jakhrana, Police Station Behror, District Alwar. At Present Lodged In The Sub Jail, Behror.

----Appellants

Versus

State Of Rajasthan Through P.P.

----Respondent

For Appellant(s) : Mr. Ashwin Garg
For Respondent(s) : Mr. Harendra Singh Sinsirwar
Ms. Rekha Madnani, AGA for State of Rajasthan

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

Judgment

Date of pronouncement : 26/08/2021
Judgment reserved on : 17/08/2021

BY THE COURT : (PER HON'BLE MEHTA, J.)

The appellants herein have been convicted and sentenced as below vide Judgment dated 02.03.2017 passed by learned Additional Sessions Judge No.1, Behror in Sessions Case No.11/2016:-

(2 of 13) [CRLA-660/2017] "Convicted accused Prempal under Sec. 302 IPC whereas accused Sonu & Munni under Sec.

302/34 IPC: Sentenced to undergo imprisonment for life and to pay fine of Rs.1,00,000/-, in default of payment of fine to further undergo simple imprisonment for two years;

Convicted accused Prempal under Secs.341 IPC whereas accused Sonu & Munni Devi under Sec.

341/34 IPC: Sentenced to undergo simple imprisonment for three months and to pay fine of Rs.250/-, in default of payment of fine to further undergo simple imprisonment for ten days;

Convicted accused Prempal under Sec. 323 IPC whereas accused Sonu & Munni Devi under Sec.

323/34 IPC: Sentenced to simple imprisonment for six months and to pay fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for one month;

Convicted accused Prempal under Secs. 325 IPC whereas accused Sonu & Munni Devi under Sec.325/34 IPC: Sentenced to simple imprisonment for three years and to pay fine of Rs.10,000/-, in default of payment of fine, to further undergo simple imprisonment for six months.

Being aggrieved of their conviction and the sentences awarded to them by the trial court, the appellants have approached this Court by way of this appeal under Section 374 (2) CrPC.

Succinctly stated facts relevant and essential for disposal of this appeal are noted hereinbelow.

(3 of 13) [CRLA-660/2017] A Parcha Bayan (Ex.P/10) of Mahendra Pal (PW12) was recorded by Tej Raj Singh (PW-20), SHO Police Station Behror on 28.09.2013 wherein, the witness alleged that on the same day at about 7.00 AM, his brother i.e. the accused appellant Prempal and his family members assaulted him. After this incident, the informant along with his son Krishnapal were returning home and had reached the old bus stand at Behror and were proceeding towards their fields. At that point of time, Prempal, his son, two daughters-in-law and wife Munni who were reaping bajra crops in their fields accosted the complainant and his son. Prempal and his daughter-in-law Asha were armed with axes and his wife Munni, son Sonu and son's wife were armed with 'Bakdis'. These accused persons launched an indiscriminate assault on the complainant and his son Krishnapal by their respective weapons. Prempal gave blow on the head of Krishnapal with an axe, Asha also gave blows with the axe to the complainant and his son Krishnapal on the head, hands and chest. The remaining accused persons assaulted them with 'Bakdis'. The incident was seen by the neighbours Omprakash S/o Ramdayal (PW-14) and other persons. The villagers brought the complainant and his son to Kailash Hospital, where Krishnapal erupted as a result of the injuries inflicted to him.

On the basis of this Parcha Bayan, an FIR No.718/2013, came to be registered at Police Station Behror for the offences punishable under Sections 147, 148, 149, 323, 341, 302 and 447 IPC and investigation was commenced. The dead body of Krishnapal was subjected to autopsy by a Medical Board constituted at Government Hospital, Behror, which issued the postmortem report (Ex.P/3), taking note of an incised wound on (4 of 13) [CRLA-660/2017] the right parieto-occipital region and another incised wound on the right upper side of the chest of the victim. An opinion was expressed by the board that the head injury led to haemorrhagic shock resulting into death of Krishnapal. After concluding investigation, the Investigating Officer proceeded to file a charge- sheet against the appellants herein whereas the accused Asha was found to be innocent and was exonerated. It is

relevant to mention here that the prosecution did not make any effort for summoning Asha as an additional accused in this case. The case was committed to the court of Additional Sessions Judge No.1, Behror, District Alwar for trial where charges were framed against the accused appellants for the offences punishable under Sections 341, 323, 324 read with Section 34, 325, 325 read with Section 34, 302 read with Section 34 IPC.

The accused-appellants denied the charges and claimed trial. The prosecution examined as many as 21 witnesses and exhibited 52 documents in support of its case. The accused were questioned under Section 313 CrPC and were confronted with the circumstances appearing against them in the prosecution case. They denied the same. A pertinent defence was taken by the accused Prempal that he was proceeding to his field on his motorcycle and was carrying tea with himself. He was waylaid by Mahendrapal and Krishnapal who were armed with axe. They started assaulting the accused. Blows of axes landed on his motorcycle. Mahendrapal tried to inflict an axe blow onto him which incidentally landed on the head of Krishnapal. Ten documents were exhibited but no witness was examined in defence. After hearing the arguments advanced by the learned Public Prosecutor and the defence counsel and after appreciating (5 of 13) [CRLA-660/2017] the evidence available on record, the trial court proceeded to convict and sentence the appellants as above. Hence this appeal.

Learned counsel Shri Ashvin Garg, representing the appellants vehemently and fervently contended that the entire prosecution case is false and fabricated. The prosecution witnesses have intentionally concealed the genesis of occurrence. The house of the complainant party falls on the way to the field of the accused. The accused Prempal was proceeding towards his field on his motorcycle and on the way, Mahendrapal and the deceased Krishnapal accosted the accused and tried to assault him with an axe. A large number of injuries were caused to Prempal in this very incident. Two axe blows were landed on the motorcycle of the accused which corroborates the defence theory regarding the complainant party being the aggressor. The investigating agency did not find the accused Asha, involved in the incident and the evidence of the prosecution witnesses implicating her in the incident was discarded. He urged that the first informant Mahendrapal (PW-12), and the witnesses Vimla (PW-13), Omprakash (PW-14), Rekha @ Rinki (PW-15), did not offer any explanation for the injuries suffered by accused Prempal in this very incident nor could the prosecution witnesses give any explanation for obstructing Prempal while he was peacefully proceeding to his field through the way which was existing since ages. He, therefore, urged that as a matter of fact the accused appellant Prempal was unarmed and the first informant Mahendrapal and his son Krishnapal assaulted him with the axe. Prempal resisted the assault, snatched the axe from the hand of the complainant party and gave one blow thereof to the deceased Krishnapal while exercising the right of private defence. He thus (6 of 13) [CRLA-660/2017] urges that the conviction of the appellants as recorded by the trial court cannot be sustained and thus, the impugned Judgment deserves to be quashed and set aside. His alternate submission was that even if it is assumed that the injury caused by the accused Prempal to the deceased Krishnapal was disproportionate and excessive, then, the case would be that of exceeding the right of private defence and would be covered by explanation II to Section 300 IPC and hence, the accused Prempal could at best be convicted for the offence punishable under Section 304 part II IPC. He thus prayed for acceptance of the appeal in these terms.

Per contra, learned Public Prosecutor and Shri Harendra Singh Sinsinwar, learned counsel representing the complainant vehemently and fervently opposed the submissions advanced by Shri Garg. They urged that the accused party assaulted the members of the complainant party in the morning and a criminal case was registered for this incident. As the accused were unsuccessful in causing any significant harm to the members of the complainant party in the morning, they hatched a plan, launched a second assault in the afternoon after arming themselves with 'axes' and 'bakdis' and indiscriminate blows were rained upon the complainant party. The head injury caused to Krishnapal by an axe wielded by Prempal proved fatal. They submitted that the theory of private defence portrayed by the appellant's counsel is totally flimsy and untenable. The injuries received by Krishnapal were trivial and superficial and no explanation is required for such insignificant injuries. They thus implored the Court to dismiss the appeal and affirmed the judgment passed by the trial court.

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[CRLA-660/2017]

We have given our thoughtful consideration to the

submissions advanced at bar and have minutely re-appreciated the evidence available on record.

As per the story set out in the Parcha Bayan (Ex.P/10) of Mahendra Pal (PW-12), the accused party has allegedly assaulted the complainant party in the morning and the incident leading to the death of Krishnapal took place in the afternoon. Manifestly, as the complainant party had been assaulted by the accused in the morning, it is they who would be carrying the grudge and not vice versa. A case was set up by the material prosecution eye-witnesses viz. Vimla (PW-13), Omprakash (PW-14), Rekha @ Rinki (PW-15), that they were carrying on routine farming operations in their field at which point of time, the accused party including Asha formed an unlawful assembly and launched an indiscriminate assault on them.

The investigation of the case was undertaken by Tejraj Singh (PW-20), who admitted in his cross-examination that Mahendrapal and Prempal have their agricultural fields by way of joint khatedari and the kutchra road which reaches the field of Prempal, passing (through) the complainant party's fields. The I.O. also admitted that the motorcycle of Prempal was seized in this case vide seizure memo (Ex.P/47) and when the inspection thereof was undertaken, dents were noticed on this motorcycle. These dents are also visible in the photographs (Ex.P/30). When the accused Prempal was arrested vide arrest memo (Ex.P/17) on the very day of the incident, fresh injuries were noticed on his head, left hand, left ear, left leg and back. The presence of these injuries on the body of Prempal and the dents on the motorcycle lends credence to the (8 of 13) [CRLA-660/2017] defence theory that the incident did not take place in the manner alleged by the prosecution witnesses.

In the backdrop of these significant facts, we would now briefly discuss the evidence of the eye-witnesses. Mahendrapal (PW-12), the first informant, alleged that after the incident of assault

which took place with them in the morning, he went to report the matter at Police Station, Behror and while he was returning back at about 2.30 PM, his son met him at Behror bus stand. They were proceeding towards their house and were allegedly waylaid by six accused namely Prempal, Munni, Asha, Sussi, Sonu and Poonam. Prempal allegedly inflicted an axe blow on the head of the complainant's son, Asha delivered an axe blow on the chest, the others laid fist and kick blows to Krishnapal. Sonu gave blows with the reverse side of the bakdi on the hands of Krishnapal. Prempal allegedly inflicted 3-4 axe blows on the head of Mahendrapal and Asha chopped off his hands with the axe, Poonam and Sussi inflicted bakdi blows on the informant's wife. In cross-examination, all the witnesses admitted that the police arrested (Sunderpal) and Prempal at the spot and the weapons were also recovered from the spot. The witnesses also admitted that the place where the incident took place was near the road, the field besides the road was in Mahendrapal's possession whereas, Prempal's field was nowhere near. The witnesses were confronted with their police statements and Parcha Bayan regarding various contradictions/improvements and they could not reconcile the same. Specific suggestion was given to the first informant Mahendrapal regarding he and Krishnapal being armed with the axe and being the aggressors which he denied. The (9 of 13) [CRLA-660/2017] suggestion regarding inflicting axe blows on the person of Prempal and on his motorcycle was also refuted by the complainant.

Similar deposition was made by Vimla (PW-13), Omprakash (PW-14) and Rekha (PW-15). As the evidence of these witnesses is more or less on the same lines as that of Mahendrapal (PW-12), we need not discuss them in detail. What can be culled out from the evidence of these witnesses is that they have intentionally concealed the fact that Prempal was proceeding on his motorcycle when the incident took place. All these witnesses denied the defence suggestion regarding injuries having been caused to Prempal in the same incident and obviously, they failed to offer any explanation for the same. The witnesses also alleged that Asha inflicted an axe blow on the chest of the deceased Krishnapal which in fact is corroborated from the postmortem report and the evidence of the Medical Jurists Dr. Sonia Meena (PW-7), Dr. Jaldeep Yadav (PW-4) and Dr. Sarika Jaiswal (PW-3). However, The I.O. did not find Smt. Asha involved in this case and she was exonerated. The witnesses Rampal (PW-1) and Balwant (PW-2) who were portrayed to be independent witnesses of the incident, did not support the prosecution theory. They categorically stated that Prempal was proceeding towards his field on his motorcycle when he was waylaid by Krishnapal and Mahendrapal. They launched assault with an axe and the blow thereof landed on the motorcycle. Mahendrapal's own axe blow landed on the head of Krishnapal. The witnesses were declared hostile but the fact remains that there are independent witnesses of the incident and they supported the defence theory. The I.O. Shri Tejraj Singh (PW-

20), admitted in his cross-examination that the mud road, which passes through the fields, is the only way to access the field of (10 of 13) [CRLA-660/2017] Prempal. He clicked photographs of the motorcycle of Prempal and dent marks were visible thereon. Prempal was arrested vide arrest memo (Ex.P/17), and numerous injuries were noticed on his person, all of which were received in this very incident. Lokesh Kumar (PW-21), is yet another independent witness who claimed to have seen the incident. In his evidence, the witness stated that he saw the complainant party and the accused party fighting with each other. Thus, this witness who was relied upon by the prosecution did not allege that the accused parties initiated the assault or were the aggressors. He rather stated that a free fight

was going on between the parties. As has been noted above, the accused Prempal also received numerous injuries including one on the head in this very incident. His motorcycle was seized vide seizure memo (Ex.P/47) and was found bearing dent marks. The prosecution witnesses did not offer any explanation for the injuries of the accused Prempal and apparently thus, there is merit in the contention of Shri Garg that the prosecution witnesses have suppressed the genesis of occurrence and have not come out with the truthful version of the incident. The defence theory that the accused Prempal was proceeding on his motorcycle, is probablized by the circumstances narrated above. In this situation, it is unlikely that he would be able to launch an assault with an axe on the two victims. The fact regarding the accused traveling on the motorcycle was admitted by the I.O. Therefore, the defence has been able to substantiate its theory by a preponderance of probabilities. As per the allegation of the material prosecution witnesses, the accused Prempal inflicted a solitary injury with the axe on the head of the deceased Krishnapal which proved fatal. The second injury on the chest of the deceased was attributed to (11 of 13) [CRLA-660/2017] Asha who was not found involved in the incident. The two accused Sonu and Munni Devi have been held guilty with the aid of Section 34 IPC. Manifestly, as Prempal himself had been inflicted with large number of injuries in this very incident, it can safely be concluded that he must have raised arms in defence of his person and property. However, considering the fact that the injuries caused to the accused Prempal were not life threatening, while inflicting the blow on the head of the deceased Krishnapal, the accused Prempal definitely exceeded the right of private defence as the injury caused on the head of Krishnapal was disproportionate and thus, his case could fall under Exception 2 provided under Sec. 300 IPC. Our view is fortified by the following observations made by Hon'ble the Supreme Court in the case of Jangir Singh Vs. State of Punjab reported in (2019)13 SCC 813:

"7. The evidence of PW3 clarifies that the deceased had 303 bore rifle with him at the time of occurrence. So also, the accused had the rifle. PW3 was standing at a distance of about 60 feet from the appellant and the deceased where the incident has taken place. It is admitted by him in cross- examination that he looked at the accused and the deceased only when he heard the sound of gunshot. He did not notice as to who was the aggressor and as to whether the altercation between the accused and the deceased had taken place or not. Looking at the trend of answers given by PW3 in the cross-examination, it is clear that he did not see as to how the incident started and continued. Thus, there can be no categorical deduction from the evidence of PW3 that the accused fired at the deceased with premeditation.

8. On the other hand, the evidence of PW4 specifies that the deceased had aimed a rifle at the accused, obviously because of an altercation between them, pursuant to which the accused also used his gun to fire at the deceased suddenly, without any premeditation. The evidence of PW4 corroborates the defence taken by the accused as found in his statement under Section 313 of the Cr.P.C.

9. The evidence of PWs 3 and 4 collectively would show that though the incident has taken place because of the gunshot (12 of 13) [CRLA-660/2017] fired by the accused towards the deceased and the deceased lost his life, but the act of the accused will fall under Exception II to Section 300 of the IPC, in as much as the fire by the accused

was due to the aforementioned fact of the deceased pointing gun towards the accused, i.e., because of the threat perception created by the deceased in the mind of the accused."

As we have held that the accused party were acting in the exercise of right of private defence and exceeded the same, the mischief of Section 34 IPC providing for vicarious liability cannot be invoked against the accused Munni Devi and Sonu.

As a consequence of the above discussion, the impugned judgment dated 02.03.2017 passed by learned Additional Sessions Judge No.1, Behror is quashed and set aside. The conviction of the appellant Prempal as recorded by the trial court for the offence punishable under Section 302 IPC is altered to one under Section 304 Part I IPC and he is sentenced to eight years RI and a fine of Rs.5,000/- on this count. In default of fine, he shall further undergo two months simple imprisonment. However, he is acquitted of the remaining offences i.e. those punishable under Sections 341,323 and 325 IPC.

The conviction of the accused appellants Munni Devi and Sonu is hereby set aside and they are acquitted of the charges levelled against them. The accused Sonu and Munni Devi are on bail and their bail bonds are discharged.

However, keeping in view the provisions of Section 437-A Cr.P.C., each of the appellants is directed to furnish a personal bond in the sum of Rs.15,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a Special Leave Petition against the present judgment on receipt of (13 of 13) [CRLA-660/2017] notice thereof, the appellants shall appear before the Supreme Court.

The appeal is partly allowed in these terms.

Record be returned to the trial court forthwith.

(RAMESHWAR VYAS) , J

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