

Mannu Alias Ramadhar And Ors. vs State Of Uttar Pradesh on 15 September, 1978

Equivalent citations: AIR1979SC1230, 1979CRILJ1023, (1979)1SCC235A, 1979(11)UJ86(SC), AIR 1979 SUPREME COURT 1230

Author: P.S. Kailasam

Bench: A.D. Koshal, Jaswant Singh, P.S. Kailasam

JUDGMENT

P.S. Kailasam, J.

1. This appeal by the 10 appellants in by special leave which is restricted to the question of the offences and sentence only.

2. The 10 appellants and 3 others were tried by the Sessions Judge, Kanpur, for offences under Sections 147, 148, 302/149 and 307/149. The learned Sessions Judge found all the accused persons guilty of the charges leveled against them and sentenced them to varying terms of imprisonment. The trial court sentenced the appellants to a term of 5 years R.I. under Section 302/149 and obvious illegality. The complainant preferred a revision to the High Court to revise the sentence imposed by the learned trial Judge and pass an appropriate sentence. The convicted accused preferred an appeal against their conviction and sentence to the High Court. By a common judgment, the High Court disposed of the appeal and the revision petition. The High Court acquitted three persons and found the 10 appellants guilty of an offence under Section 302/149 and sentenced them to imprisonment for life. It also found the appellants guilty of other offences and imposed varying terms of imprisonment.

3. The special leave granted by this Court was restricted only to the question of the offence and sentences imposed on them.

4. The case for the prosecution may be briefly stated. On 25th March 1967 at about 8 or 9 O' clock in the morning, Kunwar Lal, deceased, and Chhetey Lal, PW 1, were going from their village to the market in the village of Reune. Due to prior enmity, by way of caution, Kunwar Lal had with him a Kanta and Chhotey Lal a barchha. When they had covered a distance of two furlongs on the main road and were at a distance of four pacas from the field of Raja Ram lying by the side of Betha, they heard a sound of some footsteps coming from behind. On turning round they saw all the appellants, Ram Sanshi and Maujilal armed with various weapons. Maujilal exhorted the other accused to commit murder. Kunwar Lal and Ghhotey Lal started running but they were chased and assaulted

by the appellants with their respective weapons. Chhotey Lal who was in front of Kunwar Lal found the life of Kunwar Lal in danger. Chhotelal used his barchha in self defence and caused injuries to some of the appellants. Kanwai Lal in order to save himself also used his kanta and caused injuries to some of the appellants. Rampal and Mool Chand, prosecution witnesses, who saw the life of Kunwar Lal and Chhotaylal in danger, came there, armed with lathis and beat the appellants, Kunwar Lal fell down in the field of Rajaram and died. Rampal, Mool Chand and Chhotey Lal received injuries, on the side of the prosecution while on the said of the accused, Ram Sanehi met his death falling on the Nali between the fields of Raja Ram and Vishwanath. Others injured on the side of the accused were indrapal, Ram Nath, Rachchoo and Ram Adhar, After the incident, Ram Jao dictated the First Information Report Ex. Ka.7 to Raj Narain and filed it at P.S. Meosanagar which is at a distance of four miles from the place of occurrence at 11.30 A.M. A counter complaint was filed by Ram Datt, brother of Ram Sanehi, deceased, at Shatampur Police Station which is at a distance of 11 miles from the scene of occurrence at 2.10 p.m. on 28th March 1967.

5. The doctor examined Kunwar Lal and found on him 14 injuries, which were sufficient in the ordinary course of nature to cause death. The other persons that were injured on the side of the prosecution were PW 1, Chhetay Lal and PW 2, Mool Chand. The doctor examined and gave wound certificates for the injured prosecution witnesses. On the side of the accused, Ram Sanehi died and the doctor who conducted the post mortem found two incised injuries-one on the back of the head and another on the top of the scalp. According to the doctor, the incised injury on the head was grievous and that it has cut the bone. Indrapal, Ram Adhar Bachcheo, Ram Datt and Ram Nath on the side of the accused were examined by the doctor and would certificates given. The case for the defence as set up in the complaint given at 2.10 p.m at Ghatampur Police Station is that on 28th March 1967, between 8 and 9 A.M. when Ram Datt. brother of the deceased, Ram Sanehi went to the field, accompanied by their wives and Chandra Shekhar and Chandrabhan, sons of Ram Sanehi to harvest their fields on a bullock cart and when they reached near the chak of Vishwanath which adjoins the field of Raja Ram, they discovered that about 40 cattle of Raj Narain and others including Chhotay Lal, Mool Chand and Rampal, prosecution witnesses were grazing in their fields, Ram Sanehi objected to the cattle of the prosecution witnesses grazing in their fields but the prosecution witnesses refused to take away the cattle as they were supporters of Maujilal and were entitled to graze the cattle. Thereupon Ram Sanehi got down from the cart & started driving the cattle to the pond. At that time, Kunwarlal and the other prosecution witnesses surrounded the accused and started beating them in the field of Vishwanath where they had run to save their lives. Hearing the alarm, the other accused, Ram Nath, Ram Adhar, Bachchoo and Indrapal arrived but they were also beaten by the prosecution party. In self-defence some of the accused used their weapons.

6. The question that arose for consideration before the trial court as well as the High Court was whether the version put forward by the prosecution or by the defence is true. The trial court on a consideration of the evidence accepted the version of the prosecution witnesses and rejected the defence version as a bundle of lies and that they had no right of private defence whatsoever. On appeal the High Court concurred with the findings of the trial court, accepted the prosecution version and rejected the case put forward by the defence.

7. In appeal before us, the learned counsel appearing for the defence did not question the findings of the courts below that the occurrence took place as put forward by the prosecution but he submitted that even if the prosecution version is accepted as true, the defence is entitled to right of private defence. On the findings we are unable to hold that the appellants are entitled to right of private defence. The trial court as well as the High Court have found that when Chhotey Lal and Kunwar Lal were going to the market they were waylaid by 13 persons, armed with various deadly weapons and the offence took place in the field of Raja Ram. The case put forward by the defence is that the incident took place near the field of Viswanath when the accused attempted to drive the cattle which were unauthorisedly grazing the accused fields but the Police Officer, who investigated the crime found no marks of any trampling in the field of Vishwanath or near about There were no blood stains or any signs of fight on the scene where, according to the defence/tie occurrence took place. On the other hand the prosecution had established that the occurrence took place in the place spoken to by them. On the findings that when the prosecution witness PW 1 and the deceased were going to the market, they were waylaid and attacked by the appellants with dangerous weapons and that the occurrence did not take place in the field of Viswanath as pleaded by the accused, no question of right of private defence arises.

8. We do not see any merit at all in the plea put forward by the defence. In the circumstances there is no ground for interfering with the conclusion arrived at by the courts below. The conviction and sentences passed upon the appellants are confirmed. The appeal is rejected.