

## State vs Ram Khelawan on 18 May, 1951

**Equivalent citations: AIR1953ALL555, AIR 1953 ALLAHABAD 555**

### JUDGMENT

Agarwala, J.

1. This is an appeal by Ram Khelawan against his conviction under Section 304, Part II, Penal Code and a sentence of three years' rigorous imprisonment.
2. Originally four persons were tried by the learned Sessions Judge. Sheo Ram, Pyarey and Dodwa were acquitted and Ram Khelawan appellant alone was convicted.
3. The prosecution case was that on 2-8-1949 one Baghunath, Smt. Kanchanya and Nankoo were grazing their cattle on an 'usar' and 'parti' land in village Lachhmanpur, The 'usar' and 'parti' land belonged to the zamindar, Raja Saheb of Asothar, and the cattle of the entire village used to graze on it as a matter of right. When the cattle were grazing Sheo Ram, his sons Pyarey and Ram Khelawan and one Dodwa alias Ram Ratan, a , nephew of Sheo Ram, came there and objected to the cattle grazing on a piece of land on which they had their own preserved grass. They then rounded up the cattle of Raghunath and Kanchanya and drove them away towards the cattle pound. Raghunath protested because he said that the cattle were grazing on common 'usar' and 'parti' land and that the accused had no right to object. Upon it Ram Khelawan attacked him with a lathi. Raghunath raised an alarm on which one Pitna deceased came and objected to Ram Khelawan's beating Raghunath. Upon this all the four accused fell upon Pitna and gave him several lathi blows with the result that he dropped down on the ground and died shortly after. A report of this incident was lodged by Raghunath at the police station Tharyaon the same day.
4. The defence of the accused was that the land on which the cattle were grazing was their special preserve and they had grown their own grass there, that Raghunath and Kanchanya had no right to graze their cattle on the land, that Sheo Ram, Pyarey and Dodwa were not at all present at the time, that Ram Khelawan, however, was present and objected to the grazing of the cattle and rounded them up and when he was proceeding towards the cattle pound Raghunath and Pitna resisted and also attacked him with their lathis and he in self-defence also wielded his lathi.
5. No injury was proved to have been received by Ram Khelawan appellant. Raghunath received two simple injuries -- one a contusion and another an abrasion. Pitna received four injuries -- one was contused wound 2" x 1/2" bone deep left parietal" region 4" above the left ear, another contusion 2" x 2" on the right temple, third contusion 2" x 2" on the left temple and the fourth contused wound 2" x 1/2" x bone deep on the back and the inner side of the left forearm with fracture of left ulna. In the opinion of the doctor the death of Pitna was due to shock and haemorrhage as a result of the head injuries.

6. In support of the prosecution case Raghunath, Munwa, Bishwanath, Matroo, Lala, Kanchanya and Nankoo were produced as eye-witnesses. On behalf of the defence one witness only, namely Suraj Bhan Singh, was examined. The learned Sessions Judge arrived at the following findings : (a) that the land in dispute was in exclusive possession of Sheo Ram, father of Raghunath, (sic) and his preserved grass was standing thereon and that Raghunath and Kanchanya had no right to graze their cattle on it; (b) that Ram Khelawan alone had actually participated in the incident and the remaining three accused arrived subsequently; (c) that Raghunath and Pitna were armed with lathis and they had no right to take 'away the cattle forcibly from the possession of Ram Khelawan and that this action on their part gave a reasonable apprehension in the mind of Ram Khelawan that he might be beaten by Raghunath and Pitna if he did not desist from taking the cattle to the pound; (d) that Raghunath and Pitna did not ply their lathis and caused no injuries to Ram Khelawan and were merely trying to prevent their cattle from being taken away to the cattle pound; (e) that the number and nature of injuries show that the right of self-defence was exceeded.

7. Upon these findings the learned Sessions Judge acquitted Sheo Ram, Pyarey and Dodwa and convicted Ram Khelawan under Section 304, Part II, Penal Code.

8. In this appeal the findings of fact arrived at by the learned Sessions Judge have not been challenged before me. What has been urged is that upon these findings the right of self-defence was complete and it was not exceeded. It has been further argued that the sentence is too severe. In my judgment the learned Sessions Judge was right in holding that the right of self-defence was exceeded. It is true that as the cattle were grazing on the land of Ram Khelawan and his father, Sheo flam, Ram Khelawan had a right to take the cattle to the cattle pound, and Raghunath and Pitna had no right to prevent him from doing so. Their action in forcibly removing the cattle from Ram. Khelawan's possession amounted technically to robbery even though the cattle belonged to them. Ram Khelawan, therefore, was entitled under Section 103, Penal Code to prevent this being done and if necessary even to cause injuries to the extent of causing death. But the extent of harm to be caused in defending one's property depends on the circumstances of each case. Unnecessary harm is not permitted to be caused in the exercise of the right of self-defence.

9. In the present case even though Raghunath and Pitna had lathis they did not use them at all nor threatened Ram Khelawan that lathis would be used. In the circumstances of the case there could be no reasonable apprehension for Ram Khelawan that grievous hurt or death would be caused to him and he was not justified in causing the death of Pitna. I consider that the learned Sessions Judge was right in holding that Ram Khelawan exceeded his right of self-defence.

10. The learned Sessions Judge has convicted the appellant Ram Khelawan under Section 304, Part II. This is wrong. There appears to-be a misapprehension as to the applicability of Clause (2) of Section 304 as I find that in many a case lower Courts, have not correctly applied that clause.

11. Clause (2) of Section 304 applies when the act is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death. This clause, therefore, can never come into operation when there is 1 an intention to cause such bodily injury as is likely to cause death.

12. In the present case Ram Khelawan hit Pitna with a lathi. He had, therefore, the intention to cause injury and since he hit him on the head he had the intention of causing such bodily injury as is likely to cause death. As the act was not murder under Section 302 because it was covered by exception (2) of Section 300, the appellant should have been convicted under Clause (1) of Section 304.

13. It was suggested that the sentence was too severe, I do not agree.

14. The appeal is dismissed. Ram Khela-

wan is on bail. He shall surrender immediately and serve out the sentence.