

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

ORDER

S.B. CRIMINAL APPEAL No.277/1986.

: :

Nolaram & Ors. Vs. State of Rajasthan.

: :

Date of Order 29.8.2008

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Suresh Dhenwal for the petitioner.
Mr.D.D.Sharma, P.P.for the State.

This appeal has been filed against the judgment dated 23.6.1986 passed by the learned Court of Sessions Judge, Jaipur District, Jaipur whereby the accused-appellant No.4 Deburam was convicted for offence under Section 436 IPC and was sentenced to undergo 5 years rigorous imprisonment with a fine of Rs.600/- in default whereof to further undergo 6 months rigorous imprisonment and accused-appellants No.1, 2 & 3 were convicted for offence under Section 436/34 IPC and were sentenced to undergo 2 years rigorous imprisonment in default whereof to further undergo 4 months rigorous imprisonment.

Mr.Suresh Dhenwal, learned counsel for the petitioner at the outset has produced the death certificate of

accused-appellants No.2, 3 & 4 namely; Hardev, Manglaram and Deburam respectively, which is taken on record, and argued that appeal for these concerned appellants may be abated and disposed of.

Learned counsel further argument on merits in so far as the appeal of the appellant No.1 Nolaram is concerned that this is a case of over implication PW.3 Baxaram in his report to the police has initially implicated 8 persons but the police in the investigation found the case *prima facie* proved against only four accused-appellants herein and challan was filed against them. The very genesis of the incident is, therefore, doubtful. PW.3 Baxaram in the FIR has made accusation against appellant Deburam that he was the one who set fire to chhapar whereas in his Court statement he made an improvement by stating that this was done at the exhortation of appellant Hardev. It was contended that there were various infirmities in the statements of prosecution witnesses. The accused-appellants were falsely implicated due to inimical relationship between the parties. It is argued that so far as accused-appellant Nolaram is concerned, none of the prosecution witnesses has assigned any specific role to him and all that has alleged against him is that he was present at the time of incident with other accused. The

learned trial Court has, therefore, erred in law in convicting the accused-appellant on the basis of such a weak nature of evidence. In the alternative, the learned counsel argued that the incident is of 6.12.1982 and the appellant was at that time 36 years old and he is now more than 62 years of age. The principal accused Deburam, who was convicted for offence under Section 436 IPC, has expired so also the other two accused namely; Hardev and Mangla, were also like the sole surviving appellant Nolarma convicted for offence under Section 436/34 IPC, have also expired. The accused-appellant had remained in confinement for a fortnight, therefore, this Hon'ble Court should consider his case for altering the sentence for two years already undergone by him.

Mr.D.D.Sharma, learned Public Prosecutor has opposed the appeal and submitted that all the prosecution witnesses have proved the case against the accused-appellant Nolarma and even if three accused have died, this does not, in any manner, lessens the gravity of his offence. Learned Public Prosecutor argued that the accused-appellant Nolarma has rightly been convicted with the aid of Section 34 IPC. The accused-appellants had burnt the chhapar of the complainant, which resulted into serious burnt injuries caused

to cattle of the complainant. The conviction of the accused-appellant cannot be questioned.

Upon hearing learned counsel for the accused-appellant as well as the learned Public Prosecutor and perusing the judgment and other material available on record, I find that prosecution witnesses have named the accused-appellant Nolaram as the one who had accompanied all other accused. Reference in this connection is made to the statements of PW.3 Baxaram, PW.4 Rameshwar, PW.5 Godu and PW.6 Pahalwan. The statements of the aforesaid four witnesses show that the accused-appellant Nolaram is named amongst the other accused who had pulled down the chhapar and thereafter the chhapar was put to fire by Deburam upon being exhorted by accused Hardev. On account of this, he was convicted for substantive offence of Section 436 IPC whereas the other three accused-appellants were convicted for offence under Section 436/34 IPC. But this further indicates that gravity of offence of the accused Nolaram cannot be placed at same level as that of co-accused Hardev, who was convicted for offence under Section 436 IPC. The statement of PW.3 Baxaram however, makes it evident that he in examination-in-chief stated that PW.4 Rameshwar, PW.5 Godu and PW.7 Ramchandra came

there when he raised hue and cry. In the same statement, PW.3 Baxaram stated that he raised hue and cry after the chhapar has been pulled down and it was thereafter Rameshwar and Ramchandra came there and seeing this, accused Hardev exhorted Deburam to set chhapar on fire. He has further stated that the other neighbors came to the scene of occurrence still thereafter. In the same manner, PW.5 Godu has also stated that accused had initially pulled down the chhapar and thereafter when heard others raised hue and cry, neighbors Pahalwan, Rameshwar etc reached at the site. Apart from four appellants, Ghisa, Ridu, Pepsingh and Birali were also named amongst those who pulled down the chhapar. The story of the prosecution has thus been full of contradictions and inconsistencies and after investigation the police filed the challan against the present appellants only. The role assigned to accused Nolaram that he was present with other seven accused when the chhapar was pulled down. Evidence of prosecution witnesses i.e. PW.3 Baxaram and PW.5 Goduram becomes doubtful and they both make the statement of PW.4 Rameshwar and PW.6 Pahalwan also doubtful because PW.3 Baxaram and PW.5 Goduram both stated that Rameshwar reached after the chhapar had been pulled down and that Rameshwar came

there when Hardev exhorted Deburam to pulled down the chhaper. In fact PW.5 Godu has also made the presence of Pahalvan doubtful from the beginning of the incident because he also states that when the chhapar had been pulled down thereafter, they are started making hue and cry and hearing that Pahalwan and Rameshwar came there. All these statements makes the very presence of accused-appellant Nolaram doubtful at the seen of occurrence. Apart from this, there is no evidence on record that there was any meeting of mind between the accused so as to commit the offence under Section 436 or there was any common intention in the meaning of Section 34 IPC. The conviction of the accused-appellant Nolaram on the strength of such weak evidence cannot be therefore, sustained.

In the result, the appeal of the accused-appellants Hardev, Manglaram and Deburam is disposed of as having been abated and the appeal of the accused-appellant Nolaram is allowed. His conviction is set aside and the accused-appellant Nolaram is acquitted of all the charges.

His bail bonds and sureties are discharged.

(MOHAMMAD RAFIQ)J.

