

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Revision No. 622 / 2002

Hakim Khan S/o Ramjaan Khan, by caste Sindhi Muslim, resident
of Osian, Police Station Osian, District Jodhpur

----Petitioner

Versus



1. State of Rajasthan
2. Fateh Khan S/o Hasam Khan
3. Aamdin S/o Hasam Khan
4. Ilamdin S/o Hasam Khan
5. Kamaruddin S/o Kherdin
6. Njamuddin S/o Fateh Khan

[all by caste Muslims, residents of village Bedu Kalan, Police
Station Osian, District Jodhpur]

----Respondent

For Petitioner(s) : Mr.PN Mohanani

For Respondent(s) : Mr. Vishnu Kachhawa, PP and Mr. JS
Choudhary

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Judgment / Order

Per Hon'ble Mr.Justice Gopal Krishan Vyas

05/10/2017

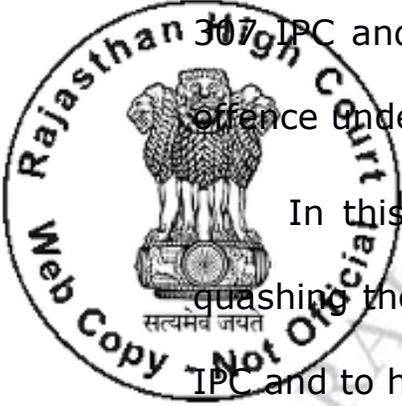
The instant cr. revision petition has been filed by the complainant petitioner Hakim Khan under Section 397/401 of Cr.P.C. against the judgment dated 22.4.2002 passed by the learned Addl. Sessions Judge No.3, Jodhpur whereby the learned

trial court acquitted the non-petitioners nos. 2 to 6 from the charges levelled against them under Section 302 and 149 IPC in Sessions Case No.38/2001 and held them guilty for offence under Section 304 Part II read with Section 149 IPC, so also, held accused appellant Kamaruddin guilty for offence under Section 307 IPC and all the accused persons were further held guilty for offence under Section 147 IPC.

In this cr. revision petition the complainant has prayed for quashing the finding recorded for acquittal under Section 302/149 IPC and to hold the respondents guilty for the said offence.

Before deciding this cr. revision petition it is worthwhile to observe that in criminal revision petition against the final judgment, the conviction cannot be altered. The only scope to remit the case for re-appreciation of evidence and in this case, the respondents were convicted for the offence under Section 304 Part II read with Section 149 IPC alongwith other offences, but the grievance of the petitioner Hakim Khan is that they should be convicted for the offence under Section 302/149 IPC. For the same, the matter is required to be remitted to the learned trial court.

After hearing learned counsel for the parties, we have perused the entire evidence, as well as finding recorded by the learned trial court to acquit the respondents from the charge levelled against them under Section 302/149 IPC and convicting them for offence under Section 304 Part II read with Section 149, 147 and 307 IPC to the accused Kamaruddin.



सत्यमेव जयते

Upon consideration of arguments and evidence on record, it emerges that incident took place on 6.7.2001 in the field of accused party and in the said incident injuries were caused to the accused party as well as complainant party. The learned trial court gave finding that it is a case of exceeding right of private defence. According to the prosecution case, a complaint was lodged by complainant Hakim Khan at Police Station Osiya on 6.7.2001 at 11.15 pm. Upon the said complaint, FIR no.72 (Ex.P/40) was registered in which following allegations were levelled by the complainant, which reads as under:-

सेवामें

श्रीमान थानेदार साहब,
पुलिस थाना – औसियाँ

विषय :- हत्या का मुकदमा दर्ज करवाने बाबत।

मान्यवर जी,

नम्र निवेदन है कि प्रार्थी हकीम खां पुत्र रमजान खां कौम मुसलमान निवासी ग्राम बोदुकला की अर्ज मालुम होवे आज दिन में करीब 3 बजे हमारे विवादित खेत में एक ट्रैक्टर से फते खां, इलमदीन, आमदीन पुत्र हासम खां व निजामदीन पुत्र फते खां, कमरदीन पुत्र खेरदीन कास्त करा रहे थे। जिनको महरदीन पुत्र रसाल खां व अमेद अली पुत्र नसीर खां व मैं हम तीनों मना करने गये व उनको खेत खड़ने से मना किया तो उन सभी आदमीयों ने एक राय होकर हमें जान से माने की नियत से लाठियों व फरसी से हमारे पर एक दम हमला बोल दिया सबसे पहले कमरदीन ने महरदीन के सिर में फरसी की चोट मारी व निजामदीन ने लाठी की चोट महरदीन के पेरों व हाथों पर मारी एवम फतेखां व आमदीन ने भी लाठी की चोटे महरदीन के मारी तो महरदीन जमीन पर गिर गया हमने बीच-बचाव किया तो मेरे निजामदीन ने सिर पर लाठी की मारी। झगड़ा देखकर ढाणीया से रमजान खां, अखे खां पुत्र बरसे खां, जमाल खां पुत्र शेर खां मुसलमान निवासी बेदु कला दौड़ कर आये तो इन लोगों ने धमकी दी कि नजदीक आये तो जान से खत्म कर देंगे तो वे डर कर रुक गये बाद में हल्ला सुनकर महरदीन का भाई खेरदीन भी छुड़ाने भागा जिसे रास्ते में ही हमारे खेत में आड़े फिर कर रोक लिया व कमरदीन व मजीद खां पुत्र मोहम्मद सरीफ ने जान से मारने की नियत से लाठी व फरसे से मारपीट की जिससे वह भी घायल होकर वही गिर गया। फिर वो लोग मारपीट कर भाग गये। बाद में महरदीन व खेरदीन को हम मोहन सिंह जी की गाड़ी से सफाखाना

लेकर आ रहे थे तो महरदीन की रास्ते में ही मारपीट से आयी चोटों से मृत्यु हो गयी व खेरदीन गम्भीर रूप से घायल है जो कि जोधपुर में अस्पताल में भरती है। तथा महादीन की लाश M.G.H. मुरदाखाना में रखी है। मुलजीमानों ने जान बुझ कर हत्या करने की नियत से हमला कर चोटे पहुंचा कर महरदीन की हत्या की हैं व खेरदीन व मुझे घायल किया है। दोषियों के खिलाफ सख्त कार्यवाही की जावे, रिपोर्ट पेश है।

तारीख 6.7.2001

अ.नि०

एसडी/—

हकीम खां



The investigating agency after completing the investigation filed charge-sheet against the respondents for the offences under Sections 148, 302/149 IPC and under Section 4/25 of the Arms Act. In the trial, after framing charge statements of 21 witnesses were recorded by the learned trial court and, thereafter, the statements of accused respondents were recorded under Section 313 Cr.P.C. and in defence statement of DW-1 Dr. Hari Kishan Sharma, DW-2 Pema Ram @ Prema ram and DW-3 Muse Khan were recorded from defence side and finally the judgment was delivered on 22.4.2002 whereby the accused respondents were acquitted from the charge levelled against them for offence under Section 302/149 IPC but convicted them for offence under Sections 304 Part II read with Section 149, 147 and 307 IPC to the accused Kamaruddin.

Learned counsel appearing for the petitioner argued that the learned trial court has grossly erred in law and facts in not convicting the non-petitioners in spite of the fact that prosecution has proved its case beyond reasonable doubt for forming unlawful assembly and their object was to cause murder but the learned

trial court failed to appreciate the entire evidence in right perspective. Further, it is argued that it was not necessary for the prosecution to explain the injuries caused to the accused in every case, therefore, the learned trial court was not required to throw the prosecution case on this ground. No other ground is raised by

the learned counsel for the petitioner, but prayed that the finding of learned trial court for acquittal of respondents from the charge under Section 302/149 IPC is not sustainable in law.

Per contra learned counsel appearing for the respondents vehemently argued that no interference is called for in this revision petition because the learned trial court has appreciated entire evidence and considered the most important fact that number of injuries were caused to the accused persons which is not properly explained, so also, gave finding that the place where occurrence took place, the accused party was in possession, therefore, the instant revision petition may kindly be dismissed.

After hearing learned counsel for the parties we have examined the entire evidence and considered the most important fact that injuries were caused to four accused persons. The learned trial court though observed in the judgment that injuries are there but there is no explanation from the prosecution so as to prove how these injuries were caused to the accused respondents. Further, the learned trial court gave detailed finding so as to acquit the respondents from the charges levelled against them under Section 302/149 IPC and to give finding that it is a case of exceeding the right of private defence.



In our opinion, it is not a fit case for interference to disturb the finding of the learned trial court or to remit the case for re-appreciation.

Therefore, this revision petition is hereby dismissed.

(MANOJ KUMAR GARG)J.

(GOPAL KRISHAN VYAS)J.



RAJASTHAN HIGH COURT



सत्यमेव जयते