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Akloo Mia Vs. the State

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Court : Guwahati

Decided On : Jan-17-1949

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : Akloo Mia

Respondent : The State

Prior history : 1. The appellant Akloo Mia has been convicted by the learned Additional Sessions Judge, A. V. D., under Section 301, part 2, Penal Code, and sentenced to rigorous imprisonment for 5 years. The case was tried by the learned Additional Sessions Judge with the aid of assessors who were divided in their opinion. 2. The facts of the case are these: It appears that there was a dispute over the possession of certain charbharat land situated in the village of Peladahar, which had been taken on lease b

Judgement :

1. The appellant Akloo Mia has been convicted by the learned Additional Sessions Judge, A. V. D., under Section 301, part 2, Penal Code, and sentenced to rigorous imprisonment for 5 years. The case was tried by the learned Additional Sessions Judge with the aid of assessors who were divided in their opinion.

2. The facts of the case are these: It appears that there was a dispute over the possession of certain charbharat land situated in the village of Peladahar, which had been taken on lease by Haji Hasan Mia and his sons and nephews and was in

their possession for some 7 or 8 years. To the east of this land was the periodic pafcta land belonging to another Hasan Mia. Haji Hasan Mia and his sons and nephews grew paddy on the land leased by them.

3. On 24th December 1917, the deceased Abdua Sattar and one Abdul Samad, Lalu Mia, Abdul Salam, and some other persons were gathering paddy in the morning over a certain area of the disputed land. In the afternoon, Abdul Samad noticed that one Jowaid Ali, Abdul Majid, Arjan All and Matahir AH were also gathering paddy on the same land, Abdul Samad and his companions protested, and after some exchange of words it wa3 agreed that the matter should be settled on following day. The following day (26-12-17) the deceased Abdua Sattar and the deceased Maimbai Ali and certain prosecution witnesses in the case went to attend the meeting. While they were waiting for the appellant and his companions to turn up, they found the appellant and 14 others coming out of a khal with lathis and lenjae. Instead of a settlement, a fight took place between the two opposing sides in the course of which, Abdus Sattar and Maimbar AH received injuries, to which they succumbed. Some persona from the party of the appellant also received injuries with sharp cutting and blunt weapons. The matter was reported to the police, and after due investigation, the appellant and his 14 companions were sent up for trial. The 14 companions of the appellant were acquitted by the learned Sessions Judge, The appellant was, however, convicted and sentenced, as we have stated above.

4. It is contended on behalf of the appellant that upon the findings of the learned Sessions Judge, the appellant ought to have been acquitted. The learned Sessions Judge has stated in his judgment:

Having regard to these circumstances, the ace used persona must be deemed to have had the tight of private defence of their property as wall as of their persons. Now, the question is if they exceeded the right of private defence of their property or of their persons. Having regard to the oircumistanoes of the case and the nature of the injuries sustained by the deceased and the pro-section witnesses Lalu Mia and Konai Mia and those sustained by accused Kala Raja Majamil AH and one Abdul Haque and Arab Ali, I am of opinion that the assailants of Abdus Sattar and

Maimbar Ali exceeded the rights of private defence-both of their property and of their persona.

5. The injuries upon the accused persons who were acquitted clearly suggest that they were caused by blunt and sharp cutting instruments. The learned Sessions Judge baa not stated why in his opinion the appellant Akloo Mia exceeded the right of private self-defence. Having regard to the injuries inflicted upon the party of the appellant, we think the appellant and his companions might well have apprehended that at least grievous hurt would be caused to them. If such an apprehension was justified-and we think it was the appellant and his companions had the right to defend their persons to the extent of causing the death of their assailants.

6. The learned public prosecutor conceded that the injuries inflicted upon the appellant and his companions might justify their apprehension in this behalf, but contended that the evidence showed that the deceased Maimbar Ali did not take any part in the assault; that he was in fact acting as a mediator. We cannot accept this contention although there appears to be some evidence in support of it, in view of the finding of the learned Sessions Judge that the appellant Akloo Mia had the right of private self-defence against the deceased Maimbar Ali.

7. We are unable to accept the view of the learned Sessions Judge that the appellant exceeded the right of private self-defence. The appellant inflicted only one blow and that with the point of a spear, but it is obvious that where an assault is made upon a person and he is obliged to act in the exercise of the right of private self. defence, as in this case, it is not to be expected that he should measure his blows or select a particular part of the body of his assailant or use a particular part of the weapon only. Once the exercise of the right of private self-defence is established, as in this case, it is not to be weighed, as it were, in golden scales.

8. We are not prepared, on the finding of the learned Judge, to hold that the appellant exceeded the right of private self-defence. We accordingly set aside the conviction and sentence passed upon the appellant and acquit him.

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