

Padmeswar Phukan Vs. the State

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Court : Guwahati

Decided On : May-28-1971

Judge : P.K. Goswami, C.J. and M.C. Pathak, J.

Appellant : Padmeswar Phukan

Respondent : The State

Prior history : P.K. Goswami, C.J. 1. This appeal is against conviction Under Section 302, Indian Penal Code and sentence of rigorous imprisonment for life. 2. Prosecution evidence discloses that on the night of 22nd August, 1965 at about 2-3 A.M. hulla was raised by the accused crying 'thief, thief. Phanidhar (P.W. 1), a neighbour of the accused and relation, went out and met the accused who told him that he had cut a thief- He then along with the accused and another Dimbeswar went to Padmeswar Gaonbura (P.W

Judgement :

P.K. Goswami, C.J.

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2. Prosecution evidence discloses that on the night of 22nd August, 1965 at about 2-3 A.M. hulla was raised by the accused crying 'thief, thief. Phanidhar (P.W. 1), a neighbour of the accused and relation, went out and met the accused who told him that he had cut a thief- He then along with the accused and another Dimbeswar

went to Padmeswar Gaonbura (P.W. 3) aroused him from sleep. The accused told the Gaonbura that he had cut a thief with the dao which he was carrying at that time and showed it to the Gaonbura. The gaonbura then came to the place of occurrence with them and found the dead body of the deceased Tepuram lying near 3/4 nals from the house of the accused. The place where the dead body was found was 20/25 nals from the house of the deceased. Tepuram had bleeding injuries.

3. P.W. 1 lodged the ejahar (Ext. 1) in the thana in the morning and the Sub-Inspector of Police (P.W. 8) came to the place of occurrence, seized the dao produced by the accused's wife and found the dead body of Tepuram lying in a field near the house of the accused. He did not see any blood mark inside the compound of the accused. The field where the dead body was lying adjoins the compound of the accused at a distance of 50 yards from the house of the accused. He seized a dao which was lying under the dead body.

The doctor P.W. 2 (P.W. 4 in the committing court), who held the post-mortem examination, found five deep gaping cut wounds on the left side of the back from scapular region to the lumber region transversely one below the other. The measurements are as follows:

- (1) 12' x 2' x 4' cutting scapula and the ribs;
- (2) 20' x 2" x 2' cutting the chest wall with protrusion of the lungs;
- (3) 9' x 2" x 4' with protrusion of the lungs;
- (4) 10' x 3' x 4' with protrusion of the intestinal coils; and
- (5) 16' x 6' .v 6' cutting the lumber spine, the left kidney and coils and intestine.

Death, according to the doctor, was due to shock and haemorrhage from the injuries described.

P.W. .3 corroborates the above version of P.W. 1 and stated further that the accused told him that thieves came to his house and he (the accused) brandished a dao which cut the thief. He also stated that the thieves cut the corner of the

house, the wall of the granary and the door. P.W. 4 is the wife of the deceased. She stated that her husband went to the market on the date of occurrence at about 4 P.M. to buy 'bidi' and match. He did not return from the shop and the following morning received information that he was lying dead in a field. She admits that Phanidhar (P.W. 1) and her husband belong to same family. She could not say who cut her husband. P.W. 5 heard hulla at night raised by the accused and when he went the accused admitted to have cut a thief. He did not go to see who the thief was. P.W. 7 is the officer-in-charge of the Sonari Police Station who sent the accused for recording his confessional statement¹ as he was willing to confess.

The accused admits to have made the confession and the statement therein may be quoted:

Q. Say what you desire to say?

Ans. On Sunday last, about 1 A.M. some three persons tried to enter my house by cutting the door of the wall. I woke up from sleep and went out with a dao in my hand and began to scuffle with the thieves. Among the three thieves, one of them got injured from my dao and fell down dead. I could not recognise the thief on account of darkness. Afterwards, the rail came and saw that he was no other than Tepuram. Tepuram is my cousin. I had no quarrel with him. I myself surrendered to police.

4. It appears that there is no eyewitness to the occurrence. The statement of the accused is corroborated by the prosecution witnesses examined in the case. The accused claims to have assaulted the deceased with his dao in exercise of his right of private defence. It is really unfortunate that the police officer did not make any statement as to whether there was blood either inside the house of the accused or near the walls of the house which were said to be cut by the thieves. The police officer did not state anything about the cutting of the walls or door, although P.W. 3 deposed to that effect. The only statement which the police officer (P.W. 8) made is to the effect that he did not see any blood mark inside the accused's compound. Although he held the inquest, he does not say whether there was a pool of blood at the place where the dead body was lying. When the only evidence against the accused is confession, it was necessary during investigation

to check the truth or otherwise of the confession by an independent investigation which is deficient in this case.

5. We are, therefore, left only with the statement of the accused admitting to have killed the deceased during scuffle after he went out with a dao to resist the attack in his house by an attempted house breaking. The learned Sessions Judge, while convicting the accused, observed as follows:

In the circumstances, the accused is found to have far exceeded his right of defence of the property if any to a great extent, so the accused cannot claim to be absolved of the crime of murder and his plea of private defence of the property cannot be accepted.

Since the accused has to be convicted on his confession, corroborated by the prosecution evidence, his entire confession has to be accepted. It is clear from the confession, in absence of any evidence to the contrary, that there was an attempt at house breaking by night in his house. It was a dark night and he was asleep. He was roused by the intruders' attempted house breaking by night for committing theft and he went out with a dao; he scuffled with three of the intruders and hit one, namely the deceased, who died. Even though the deceased was found 3/4 nals from the house of the accused, it is not a very big distance and it cannot be said on the evidence on record that apprehension to person or property had already ceased when the accused gave the blows. If, in a dark night, three persons came to the house of the accused to commit theft and cut the walls and door of the house and the accused indignantly roused from sleep rushed out with a dao challenging them and in that process clashed with the intruders and caused injuries resulting in death of one of them, it cannot be said that the accused is deprived of the right of private defence of person as well as of property. The right of private defence was his only impelling motive in rushing out of the house with the dao to prevent the attempted house breaking by night, although in killing the deceased, he exceeded the right. In the entire circumstances of the case, we are prepared to hold the accused's action as bona fide and give him benefit of the doubt with regard to his intention to cause more harm than was necessary in this case. Although the accused hit the deceased severely, the impulse of the moment

was such that he cannot be definitely attributed the intention to cause more harm than was necessary for the purpose. We will, therefore, hold that the accused did not have such an intention to be denied the benefit of Exception 2 to Section 300, Indian Penal Code. His case is covered by Section 103, I.P.C. subject to the restrictions Under Section 99, I.P.C. which does not permit the inflicting of more harm than it is necessary for the purpose of defence.

6. The next question, therefore, that has to be considered is whether the accused exceeded the right of private defence. The deceased is a relation of the accused, who is a young man aged 25 years, and there is no bad blood between the parties. The deceased was hit from the back all the time and the injuries were very severe resulting in his immediate death. It was not necessary for the accused to have dealt so many blows to the deceased in the entire circumstances of the case, when he could have been overpowered and detained with a lesser injury. Although the police found a dao under the dead body, the accused does not state that he was sought to be attacked with a dao by the deceased or by any of them. Our conclusion, therefore, is that although Exception 2 to Section 300 of the Indian Penal Code is attracted, the accused is guilty of culpable homicide not amounting to murder Under Section 304, Part II of the Indian Penal Code. He is, therefore, convicted Under Section 304, Part II of the Indian Penal Code and sentenced to rigorous imprisonment for four years.

7. The appeal is partly allowed accordingly.

M.C. Pathak, J.

8. I agree.

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