

The State Vs. Satish Sangma

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Court : Guwahati

Decided On : Apr-28-1952

Judge : Thadani, C.J. and Deka, J.

Appellant : The State

Respondent : Satish Sangma

Judgement :

Thadani, C.J.

1. This is a reference made by the learned Deputy Commissioner of Garo Hills District under Rule 16 of the Rules framed for the administration of justice in the Garo Hills in a case in which one Satish Sangma was convicted by him Under Section 304, I. P. C. and sentenced to R. I. for 7 years. The case has come before us for confirmation.

2. The case for the prosecution was that on 5-12-1950, the deceased Mingran Morale who was the employer of the accused, suspected the latter of theft of some jute from his house. That day, 6-12-1950, the accused had gone to attend Gorobadha Hat. On his return from the Bazar in the evening, the accused went to the house of one Thangan Sangma at about 8 P. M. Thangan Sang-ma was a neighbour of the deceased. As the accused was warming himself by the fire in the house of Thangan Sangma, the deceased appeared in an angry mood, abused the accused saying 'dog, ass' and accused him of the theft of his jute. Not content

with abusing the accused, the deceased took up a bamboo from a heap of bamboo faggots lying there and dealt 2 blows on the back of the accused and continued to abuse him. The accused protested and warned the deceased that if he struck him another blow there would be trouble. The deceased, however, took no notice of the accused's protests and maintaining his angry attitude, dealt a third blow to the accused who took up a bamboo faggot & dealt 2 blows on the head of the deceased. On receiving the injuries, the deceased fell to the ground and did not regain consciousness till his death which occurred on 8-12-1950. In due course a report of the offence was made to the D. C. under whose orders a case under section 304, I. P. C. was registered against the accused.

3. The defence of the accused was that he gave the two blows to the deceased in self-defence. The learned D. C. has accepted the case of the accused that he struck the deceased two blows in the circumstances alleged by him but took the view that the accused had committed an offence under Section 304, I. P. C. giving the accused the benefit -of exceptions 1, 2 and 4 to Section 300, I. P. C. We do not think exception 1 to Section 300, I. P. C. has any application to the facts of the case. Exception 1 says:

Culpable homicide is not murder if the offender, whilst deprived of the power of selfcontrol by grave and sudden provocation, causes the death of the person who gave the provocation or causes death of any other person by mistake or accident.

This was not a case of grave and sudden provocation; it was a case of an aggressive attack made by the deceased upon the accused, which called for the exercise of the right of private self-defence. The liability, if any, of the accused for the act admitted by him is governed by the law relating to the exercise of the right of private self-defence, as contained in Section 96 and subsequent sections of Chapter IV of the Indian Penal Code.

4. The learned D. C. has stated in his Judgment that 'the deceased was in a furious mood, he abused & hit the accused, the accused all this time was silent & protested, but when the deceased began to strike him a third time, the accused took up a piece of fire-wood & hit the deceased on the head.' On these facts, there is no question of the applicability of Exception 1 or 4. The question of the

applicability of exception 2 to Section 300, IPC arises only if the alleged offender exceeds the right of private-self-defence. Section 96, Penal Code is in these terms: 'Nothing is an offence which is done in the exercise of the right of private defence.' Section 100, IPC subjects the right of private self-defence to the restrictions mentioned in Section 99, to the voluntary causing of death or of any other harm to the-assailant, if the offence which occasions the exercise of the right be of any of the descriptions thereafter enumerated, namely, such an assault as may reasonably cause the apprehension that death-will otherwise be the consequence of such assault; and secondly, - such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault. The restrictions contained in Section 99, Penal Code except the one restricting the right to the use of no more violence there (than?) is necessary for the purpose of defence have no application to the facts of this case,

5. So far as the facts of this case are concerned, it might be conceded that there was no reasonable apprehension of death being caused to the accused, but can it be said that the accused did not apprehend grievous hurt to himself? On the facts as accepted by the learned Deputy Commissioner, there is no doubt that the occasion for the exercise of the right of private self-defence arose immediately the deceased struck the accused a blow. If the deceased had been content with striking one blow, there might not have been any justification for the accused to act in the manner in which he did. Even when the deceased struck the accused a second time, the accused protested and warned the deceased to desist from causing him further Injuries - an act of restraint which must go to the credit of the accused. The deceased, however, paid no heed to the accused's protests. What then must have been the state of the mind of the accused when he saw the deceased persisting in his aggressive attitude & ready to strike him again? Can it be said that the accused did not then apprehend grievous hurt to himself? We think not.

We do not wish to lay down any hard and fast rule in matters involving the exercise of the right of private self-defence, but we think it is reasonable to say that once the exercise of the right of private self-defence begins - as in this case it undoubtedly began - a fact conceded by the learned Government Advocate, -it is

not to be weighed in golden scales. In the face of danger which, in the circumstances of this case, was no less than grievous hurt to the accused, it is not reasonable to expect the accused to measure the force of his blows or to succeed in avoiding a vital part of the aggressor's body. We are satisfied, in the circumstances of this case, that the accused acted in good faith in the exercise of his right of private self-defence, and we are not prepared to say that he exceeded it, merely because the act of the accused has resulted in the aggressor's death. It is not always reasonable to say that when a person hits another with a blunt instrument on the head, 'he necessarily intends to cause his death. The intention may well be to incapacitate the aggressor in order to save his own life or escape grievous hurt being caused to himself. In the circumstances of this case, we are inclined to take the view that the accused, in inflicting 2 blows upon the head of the deceased, did not have the intention of doing more harm than was necessary for the purpose of self-defence. In this view, the accused is entitled to an acquittal. We accordingly set aside the conviction and sentence and acquit the accused.

6. The reference is accordingly rejected.

Deka, J.

7. I agree.

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