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Court : Allahabad

Decided On : Aug-21-1952

Reported in : AIR1953All338

Judge : Misra, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 96 and 99

Appeal No. : Criminal Revn. No. 323 of 1951

Appellant : Rahmat Ali and anr.

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : H. Husain and ;H.N. Misra, Advs.

Disposition : Revision allowed

Judgement :
ORDER

Misra, J.

1. Rahmat Ali and Rifaqat All, applicants in this criminal revision were convicted by the learned Assistant Sessions Judge of Unnao of offences under Sections 308 and 323, Penal Code. The former was sentenced to rigorous imprisonment for one

year under the first count, and under Section 323 to one month's rigorous imprisonment. Rifaqat Ali was sentenced to three months' rigorous imprisonment for the offence under Section 308, Penal Code, and to fifteen days' rigorous imprisonment under Section 323, Penal Code, but he was given the benefit of Section 4, First Offenders Act, and was ordered to give two sureties of Rs. 1000 and a personal bond in like amount to appear and receive sentence, if necessary, within a period of one year. In appeal Rahmat Ali's conviction under Section 308, Penal Code, was altered to one under Section 325, Penal Code, but his conviction under Section 323 was left unaltered. His sentence was reduced from one year's rigorous imprisonment under the first named section to three months' simple imprisonment and a fine of rs. 150 or one month's further simple imprisonment in default. For the offence under Section 323 he was awarded one month's, simple imprisonment and a fine of rs. 50 or one week's further simple imprisonment in default. The order in respect of Rifaqat Ali was upheld. Dissatisfied with the decision of the Court below the applicants have come up to this Court by way of revision.

2. Only one point has been argued by the learned counsel in support of his clients's application and that is to the effect that the accused were entitled to the right of private defence on the facts found proved by the lower appellate Court.

3. The case for the prosecution was that on 20-8-1950, there was a marpit between the accused Rahmat Ali and his son Rifaqat Ali on one side and Abdul Wahid and his party on the other. The dispute arose in connection with the erection of a wall which Rahmat Ali was constructing in front of his shop in the town of Unnao. It was said that on Abdul Wahid's remonstrating with the accused, he and his brother Abdul Ahad were attacked and beaten and that the accused continued the assault even after Abdul Wahid had fallen on the ground. The medical evidence showed that Abdul Wahid received twelve injuries including one grievous injury. Rahmat Ali had five simple injuries and Rifaqat Ali had two. The Learned Sessions Judge after a close examination of the evidence arrived at the following conclusions :

1. That the wall which was being constructed by Rahmat Ali was in front of his shop,

2. That there was no dispute between the parties in respect of the land on which the construction was being put up,

3. That it did not cause any obstruction to the passage to the house of Abdul Wahid,

4. That the complainant and his party arrived at the spot at about 4-30 P. M. and wanted to prevent the accused from proceeding with the construction, and

5. That they demolished the wall and this resulted in a free lathi fight between the complainant and his brother on the one side and the accused on the other.

4. It may be mentioned here that two other persons Rahat Ali and Gaya Prasad were also sent up for trial along with the applicants but they were acquitted by the Learned Assistant Sessions Judge. The Learned Sessions Judge in appeal considered that Abdul Wahid and Abdul Ahad in the course of their evidence suppressed certain facts and exaggerated others and the story put forward by them could not be relied upon with confidence. He did not, for example, accept the story that Abdul Wahid was beaten even after ho had fallen on the ground and he rejected the theory that the accused's party were the aggressors. His view was as follows :

' . . . . there was a quarrel between the appellants and the complainants over the construction of a wall and there was an exchange of blunt weapon blows in which both parties received injuries. I cannot agree with the learned lower Court that it could be specifically said that the accused were the first to be attacked or were the aggressors . . . Although the appellants have failed to establish the facts on the basis of which their plea of self-defence could be acceptable in any sense, the circumstance that the complainants had gone over to the appellants to prevent them from constructing the wall, had partly demolished the wall, and had somehow inflicted injuries on them in the course of the fight cannot be minimised too much.'

The right of private defence was negatived by the learned Judge because in the view taken by him the applicants could have gone to the police station which was within a short distance, of the place of occurrence and obtained necessary assistance for preventing the complainant's party from taking the law into their own hands. I am clear that this view of the law of private defence is unwarranted. It was found by the learned Judge that the land on which the construction was being put up by Eahmat Ali did not belong to Abdul Wahid or his brother and that the wall did not obstruct the passage to his house but that Abdul Wahid nevertheless came determined to prevent Eahmat Ali from carrying on the construction and demolished a part of the wall. According to the defence he was armed with a stick. He was thus apparently bent on using force. The prosecution has failed to establish that the initial blow was struck by the accused and there is thus a clear possibility that Abdul Wahid commenced wielding his stick. The observation of the learned Judge that Rahmat Ali should, in these circumstances, have proceeded to the thana and obtain police help does not appear to be justified. As stated in Mahandi v. Emperor, 31 Cri. I. J. 654 (Lah.) the law does not require a citizen, however law-abiding he may be, to behave like a rank coward on any occasion. The right of self-defence as defined in Sections 96 and 97, Penal Code, contemplates that if a man is attacked he would be justified in the eye of law if he holds his ground and delivers a counter attack provided always that the injury which he inflicts in self-defence is not out of all proportion to the injury with which he was threatened. Looked at in this light it is impossible in the circumstances to which reference has been made earlier in the course of this judgment to get over the plea of private defence set up on behalf of the applicants. It was urged on behalf of the State that the right was in any event exceeded. The argument was based upon a comparison of the injuries found on the persons of the accused and on Abdul Wahid, it being maintained that inasmuch as Abdul Wahid received twelve injuries as against seven on the persons of Rahmat Ali and Rifaqat Ali and four out of those on Abdul Wahid injuries were on the head, one being a grievous injury, the accused must be taken to have used more force than was necessary.

5. Obviously when two parties begin to use lathis or blunt weapons, one by way of attack and the other by way of defence, it is impossible to count the blows inflicted by the assailants and to expect that an equal number of blows would be given in

retaliation. Similarly it would be an unwarranted restriction on the right of private defence to hold the defender liable if the blows dealt by him prove to be somewhat heavier than those from which he endeavoured to save himself. The law of private defence is not based on the theory of retaliation--a blow for a blow or a tooth for a tooth. The acts of an accused person done in good faith for the purpose of resisting unlawful aggression are protected because of necessity that the defender should be able to help himself and repel the attack. The blows dealt on him do not necessarily always indicate what further injuries would have been inflicted if he did not act betimes. It is not only the injuries already inflicted but the injuries which the attackers might inflict if the defender does not save himself that must be taken into consideration.

6. On the facts and circumstances of this case I have no hesitation in holding that the accused were entitled to the right of private defence and that they did not exceed that right in inflicting the injuries that they did on Abdul Wahid. I accordingly accept the revision application, set aside the order of the Court helow and acquit Rahmat Ali and Rifiqat Ali of the charge in respect of which they have been convicted. Rahmat Ali is on bail. He was ordered to be present at today's hearing but an affidavit tiled by his son, Rifiqat Ali shows that he is seriously ill and could not present himself at today's hearing. He n'eed not surrender. Let his bail bonds be cancelled. The fines if paid will be refunded.

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