

Abdul Razzaq Vs. State

Abdul Razzaq Vs. State

SooperKanoon Citation : sooperkanoon.com/462989

Court : Allahabad

Decided On : Feb-15-1960

Reported in : AIR1960All567; 1960CriLJ1179

Judge : S.K. Verma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299 and 300

Appeal No. : Criminal Appeal No. 825 of 1959

Appellant : Abdul Razzaq

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Hasim Ahmad and ;Shamsuddin Ahmad, Advs.

Disposition : Appeal allowed

Judgement :

S.K. Verma, J.

1. Abdul Razzak has filed this appeal against the judgment of the learned Sessions Judge of Allahabad, convicting him under Sections 323 and 325, 'each read with Section 34 I. P. C. and sentencing him to one year's rigorous imprisonment for the former offence and to two years' R. I. for the latter offence.

The sentences were ordered by the learned trial Judge to run concurrently.

2. The following facts are not in dispute, Abdul Razzak and his son Naziruddin are residents of village Kasari Masari, police station Dhumanganj, district Allahabad. Reayat Hussain P. W. 1 is also a resident of that very village. On 22-4-1958, at 6 a.m. an incident, involving the use of violence, took place near a well situate at a short distance from Reayat Husain's house. In this incident Reayat Husain, Abdul Majid and Ramizan Ali received injuries on the side of Reayat Husain and Abdul Raz-zaq and bis son received injuries on the other side. Reayat Husain bad two traumatic swellings on his bands and an abrasion on one of his fingers. Abdul Majid had nine injuries consisting of two contused wounds, six contusions and an abrasion. Ramzan Ali had nine injuries consisting of contused wounds, a lacerated wound and abrasions. Ramzan AH and Reayat Husain had one grievous injury each. The remaining injuries were simple. Abdul Razzaq appellant had the following injuries :

(1) Contused wound $3/4' \times 1/4'$ x scalp deep on the back of head, right side, just above the occipital region. .

(2) Abrasion $3-4' \times 1/4'$ adjacent to injury No. 1 On its left side.

(3) Traumatic swelling over the whole of the left thumb on its dorsal aspect $2' \times 1 \frac{1}{2}'$.

(4) Traumatic swelling $3' \times 3 \frac{1}{2}'$ on the dorsum of the left hand outer side.

3. X-ray revealed that his thumb had been fractured. As regards the appellant's son Nazirud-din, he died as a result of the injuries received by him. His post mortem examination was performed by Dr. R. P. Mathur D. W. 1 and the report of that examination shows that Naziruddin had the following injuries :

(1) Contused wound $1 \frac{1}{2}' \times 1/2'$ x bone, vertical $3'$ above the root of the nose.

(2) Contusion $2 \frac{1}{2}' \times 1 \frac{1}{2}'$. antero posterior, $2 \frac{1}{2}'$ above the left ear.

(3) Abrasion $1/4' \times 1/4'$ back of the left elbow.

(4) Abrasion 1/2' x 1/4' vertical, middle of the front of the left leg.

(5) Abrasion 1/4' x 1/4' front of the middle of the right leg.

4. In the opinion of the doctor death was due to coma resulting from injuries to the head.

5. It is also undisputed that the fight took place because of the watering of buffaloes by the appellant and his son Naziruddin at the well near Eeayat Husain's house. The points upon which there was a dispute were as to how the fight originated, who were the aggressors and who were the participants in the occurrence. According to the prosecution case, the watering of the buffaloes at the well made theeround muddy and slippery as a result of which Reayat Husain slipped and fell. He protested against the manner in which the buffaloes were being watered whereupon he was taunted. A verbal altercation ensued and then arrived on the scene Iftikhar Ahmad, Abdul Wahab, Kulla and Sirajuddin on the side of the appellant. Out of these persons Iftikhar Ahmad had a spear and others were armed with lathis.

On seeing these persons Reayat Husain retreated and mounted the platform of his house, Abdul Wahab and Naziruddin launched an attack upon him. Ramzan Ali P.W. 9 and Abdul Majid P.W. 4 turned up. They remonstrated with the assailants of Reayat but they were also beaten. According to the prosecution version, thus, the appellant and Iftikhar Ahmad and others mentioned above were the aggressors. As regards the defence version Abdul Razzaq admits that he and his son Naziruddin were watering the buffaloes at the well. According to him, Reayat asked them not to do so. Naziruddin replied that he had every right to do so. He was abused and he also abused in return. Upon this Reayat Hussain, Kifayat Hussain, Baqridi, Nanhey. Iliyas and Abdul Majid turned up armed with lathis. They attacked Naziruddin and the appellant who also plied their lathis in self defence. The learned trial Judge found the prosecution evidence thoroughly unsatisfactory. He observed in his judgment as follows :

* * *

6. (After quoting the portion from the judgment of the trial Judge, his Lordship continued:) The learned Judge acquitted Iftikhar Ahmad, Abdul Wahab, Kulla and Sirajuddin on the finding that Imtiaz Ahrnad's alibi had been proved and that others might have been falsely roped in. The appellant was convicted by the learned Judge as he admitted! his presence on the spot and had injuries on his person. His conviction was recorded on the finding that there was a 'free fight'. The learned Judge arrived at this conclusion by observing that the fight was sudden, without premeditation, in the heat of passion upon a sudden quarrel, that both the parties were duly armed only with lathis and no one seems to have taken undue advantage, or to have acted in an unusual, or cruel manner. In other words the learned trial Judge applied Exception 4 of Section 300 to the facts of the case. He relied upon *Jumman v. State of Punjab* : 1957 CriLJ586 & held that neither party had the right of private defence. The learned trial Judge was alive to the warning given by Harrison J. in *Ahmad Sher v. Emperor*, AIR 1931 Lah 513. After quoting passages from Harrison J.'s judgment, he held that in the present case he had no hesitation in holding that it was a case of 'free fight'. I find it impossible to endorse the view taken by the learned trial Judge. In Cri. App. No. 804 of 1955 connected with Cri. App. No. 805 of 1955 and Cri. App. No. 1044 of 1955 D/- 3-12-1957 (All.) this question was considered by a Division Bench of this Court. The Bench observed as follows:

'Section 299 I. P. C. defines the offence of culpable homicide. Section 300 I. P. C. defines murder. According to this definition, culpable homicide is murder if the act by which the death is caused is done with either the intention or the knowledge mentioned in Section 300 and if the case does not come within any of the Exceptions to Section 300 I. P. C. The occasion to use Exception 4 to Section 300 will arise only when it is found that the accused has committed culpable homicide and the Court is to determine whether the culpable homicide committed by the accused amounts to murder or not. It will not amount to murder if it is committed in the circumstances mentioned in this Exception. A person who causes the death of another in the exercise of the right of private defence of person does not commit] the offence of culpable homicide as defined in Section 299 I. P. C., and therefore, no question can ever arise for determining whether he has committed the offence of murder and it is consequently obvious that no occasion will arise to determine

whether his case comes under Exception 4 to Section 300 I. P. C., or not. An occasion to consider the applicability of this Exception will thus arise where the accused who had no right of private defence of person had caused the death of another in circumstances which according to him would bring his case within this Exception 4. This means that Exception 4 may be of help to an accused who was the first to strike or to create an apprehension of danger in the mind of the other and as such could not rely on any right of private defence of person, or in the circumstances was not entitled to any right of private defence. It is to mitigate the gravity of his offence that he may take advantage of Exception 4 by pleading that he had caused the death of the other without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without his, taking, undue advantage or acting in a cruel or unusual manner. The true import of the Explanation to Exception 4 is that the fact that the accused committed the first assault will not in such circumstances deprive him of the benefit of the Exception. In other words, his being responsible for the first assault in the fight and thus for the entire incident will not aggravate the offence against him because of the want of premeditation, the suddenness of the incident, heated passion and his not taking unfair advantage do not put him at par with one who deliberately commits the murder of another with the intention or knowledge contemplated in Section 300 I. P. C. The Explanation, therefore, is just for the benefit of the person who cannot invoke the right of private defence of person In this view of the matter, we are of opinion that Exception 4 to Section 300 can be of help to an accused who has no right of private defence of person, he having committed the first assault, if the conditions of that Exception are satisfied. Its help need not be sought by a person who has acted in the exercise of the right of private defence of person and has not exceeded it. Such a person does not commit any offence-and surely Exception 4 to Section 300 is not meant to create an offence against him when otherwise he had not committed any offence.'

7. The Bench thereafter considered the question of 'free fight' and after considering and approving of the decision of Harrison J. referred to in the judgment of the learned trial Judge, it considered the effect of the decision of the Supreme Court in : 1957 CriLJ586 and observed as follows :

'In : 1957 CriLJ586 their Lordships posed a question whether it would be correct to assume private defence for both the parties where a mutual conflict developed and there was no reliable and acceptable evidence as to how it started and as to who was the aggressor, and answered it in the negative. They further held that the particular facts of that case satisfied the conditions of Exception 4 to Section 300 and altered the conviction of the persons held to have caused death from 302 I. P. C. to 304 I. P. C. This simply means that no such assumption about each party having a right of private defence of person can be made and does not mean that whenever the prosecution leads unreliable evidence and makes it impossible for the Court to decide which party was the aggressor, the Court must convict both the parties if the incident had taken place suddenly and both the parties be before the Court.'

8. In my opinion this is precisely what the learned trial Judge has done in the present case. The prosecution evidence is thoroughly unreliable. At least some persons have been falsely roped in. On the finding of the learned trial Judge himself, the parties did not start with an intention to hold a trial of strength by mutual combat. Simply because the appellant and his son had lathis would be no evidence of a guilty intent, for all villagers who water their cattle generally have lathis with them and simply because the fight was a sudden one and without premeditation, the aid of Exception 4 to Section 300 cannot be invoked for the purpose of recording a conviction.

9. The Court has still to decide who started the fight and who was the aggressor. It cannot follow the path of least resistance and convict both parties by holding that the fight was a free one. If the prosecution evidence is unworthy of credence, the onus still lies on the Court to arrive at a finding on the basis of probabilities. Now, what are the probabilities in the present case? The appellant and Naziruddin were obviously watering their buffaloes at the well. Because of this the ground had become slippery and muddy and as Reayat Husain's house was in the vicinity he was being inconvenienced. He protested but when Naziruddin remained intransigent, Reayat Husain had every reason to embark on the path of aggression. He must have started abuses, and on being abused in return, he and his supporters must have attacked Naziruddin first. In support of the defence

version of the occurrence the witnesses examined were Nazeer D. W. 7 and Mian Jan D. W. 8. They were cross-examined at some length but I have found nothing in their cross-examination to discredit them. The version given by them is more consistent with the probabilities of the case, as I have pointed out above. The appellant and his son Naziruddin received injuries and the latter actually died. The appellant clearly had the right of private defence of person and his conviction is wholly unjustified.

10. I, therefore allow this appeal set aside the conviction and the sentences of the appellant and acquit him. He is on bail; he need not surrender. His bail bonds are discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com