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SooperKanoon Citation : sooperkanoon.com/463473

Court : Allahabad

Decided On : Dec-19-1924

Reported in : AIR1925All319

Appellant : Ramzani and anr.

Respondent : Emperor

Judgement :

1. In this case two men appeal, one Ramzani against a conviction for murder and one Shafiq Ahmad against a conviction for rioting, he having been found to have been the ring leader in an undoubted fight. Seven other persons were put upon their trial. Six of them were convicted and sentenced and have not appealed and one Bashir was acquitted. But in the view which we take of this case, it is not necessary to go into the question of differentiating between the cases of the various accused. We propose to take a broader view of the matter a great deal of which is fatally clear. In a group of villages or hamlets in which there are rival zamindars and apparently rival factions, Mt. Mango was a tenant of two brothers, Usman and Sultan, who lived at a village named Malpur, a mile away. Sultan was the man who was killed. Mt. Mango is the woman over whom the trouble began. She was living with the wife of her nephew who had been sent to jail, and there is no doubt that for some reasons, which it is unnecessary to pursue further, these two women had made up their minds to leave the house where they were living and give up their tenancy under the zamindar. For this purpose they made arrangements with Ramzani, the man who has been convicted of murder and who

lives in another village about the same distance away and in another zamindari, and he collected two carts and a large body of men carrying lathis to go to Mt. Mango's village to remove the woman and their goods. There is no doubt that in going as they did, they showed that they anticipated the possibility of an attack which might compel them to defend not only the women but themselves. The party, as it proceeded on its journey might to a stranger have presented the appearance of a small armed force, but in itself there would be no harm in that. The learned Judge says that the party was admittedly quite beyond the necessity of the occasion if it had gone on a peaceful mission or no resistance was apprehended. This is not quite a correct statement of the position. It was beyond what was necessary unless it had reason to fear interruption or attack. The event showed that it had good reason to fear interruption or attack, but it was engaged in a perfectly lawful purpose and was a lawful assembly. Ramzani had a perfect right to go with as many men as he pleased to take the women away. Neither Sultan nor his brother had any right to prevent it, not any reason to be present there, and if they had not interfered, the party would have gone to the village and back and quietly removed the woman and their goods. We, therefore, start with this fact established that they were a lawful assembly engaged in a lawful purpose. On a careful examination of the evidence for the defence we have come to the conclusion that the account of the matter given by them and their witnesses is much more trustworthy than that of the prosecution witnesses. We are fortified in this view by the opinion of the learned Judge formed about the place where the fight ultimately took place. Except for the purpose of testing the credibility of the witnesses, the place is quite immaterial. The Judge thinks that the witnesses for the defence were telling the truth about this, and it is obvious that there was no motive for them to state an untruth about the place; while the Judge has pointed out that the prosecution had a motive for altering the place, which they did. There is no doubt that -Sultan appeared upon the scene either with or without his brother and with an appreciable number of companions. The first report made by his brother subsequently is a very disingenuous document, in which, reading between the lines, it is easy to see that the author of the report is carefully avoiding awkward circumstances from the point of view of his brother and preparing the way of meeting the case which he knows is going to be raised by the defence. He

goes so far as to start by saying that the police were at the bottom of the whole thing, that he does not trust the police to make an honest investigation and that the other persons from the other side who had reached the thana before him were on familiar terms with the police and that was why they were there, thereby carefully laying the ground for an attack upon what he knew was coming from the other side. The learned Judge has also laid great stress upon the fact that several of the prosecution witnesses, brought into play a new story on the vital question of what Sultan was doing when he was stabbed, which they had not told before the Magistrate and which by an obvious concert they had omitted before the Magistrate and introduced at the trial. There are other circumstances which it is unnecessary to mention in a long and complicated case of this kind which are only too common when two parties are engaged in a fight and which shake one's faith in the prosecution witnesses. It is sufficient to say that they are by the two circumstances already mentioned very much discredited. But as to whether the accused and their ring-leader, Shafiq Ahmad, ever became an unlawful assembly, the question of the credibility or otherwise of the evidence is of very little importance, because on the admitted circumstances we think that the learned Judge has gone wrong in misunderstanding the true rule about self-defence. The outstanding feature of this part of the case is that Sultan carried a loaded gun. The fact that it was loaded is placed beyond controversy. The only man who tried to say that it was not gave a futile reason for his belief and obviously did not want to say much about it, but one of the prosecution witnesses admits that Sultan had a belt of cartridges round his shoulder and that it remained in that position after he had been felled to the ground. That gun was seized by the accused party and taken to the thana and contained one cartridge which had not been fired and an empty barrel from which a cartridge had been fired. Those cartridges could only have got into the gun while it was in the possession of Sultan. But whether it was loaded or whether it was not, for the purpose of this question, it is quite sufficient that the party protecting the ladies thought it might be. Their very conduct in going with a large body of men when two would have been ordinarily sufficient, as the learned Judge says, is the strongest evidence of the existence of danger, and having gone there under circumstances which might threaten danger, the appearance of the zamindar on the scene with a gun which they believed to be loaded, and

supporters with him would justify prompt action. Under such circumstances it must be remembered that if the men had run away, they would have left the women and their goods at the mercy of the zamindar and the whole object of the expedition would have been defeated. Men who have reason to fear that a man is going to attack them with a loaded weapon are entitled to attack him first and use force in order to destroy his power of attack or take the weapon from him. This is not a case such as that well-known authority in *Queen Empress v. Prag Dut* (1898) 20 All. 459 in which two bodies of men are determined to vindicate their rights by unlawful force and go out to meet one another with the intention of enforcing their rights or supposed rights by show of criminal force, in which case the question of self-defence does not arise. This is a case of men who went out on a perfectly peaceful and lawful mission with the fear that they might be interfered with and confronted with, the certainty that they were going to be interfered with and with imminent risk to themselves from a person with a loaded weapon. Under such circumstances we think that they were never rioters at all and all that they did was acting reasonably in defence of themselves and the women who formed part of their party. Whether Sultan ever intended to shoot any one of them is another matter which is relevant to the appeal of Ramzani, but so far as the appeal of Shafiq Ahmad is concerned, we hold that he has clearly established the right of self-defence, even if he was there, on the showing of the prosecution evidence itself, and that the same must apply to all the accused who were convicted of rioting, and under Section 439 of the Code of Criminal Procedure, acting in revision, we deal with their cases to avoid the necessity of any further delay or appeal and direct that they all be acquitted and discharged.

2. With regard to the case of Ramzani it stands on an entirely different footing, and it is this. If after Sultan had been legitimately attacked and felled to the ground he was wilfully and maliciously stabbed to death by Ramzani, it would be a clear case of murder. If, on the other hand, the stabbing took place in the circumstances described by the witnesses for the accused, he equally was acting, although in a separate and isolated transaction, in defence of his own person. His case was admirably presented to us by Mr. Shabd Saran who dwelt appropriately upon the really astonishing clearness with which the accused himself and five witnesses for the defence described what Sultan was doing at the time he was stabbed.

Ramzani is perfectly clear and it is unusual to find an accused person unless in an honest case of self-defence, stating what would otherwise be sufficient for convicting him of murder. He says that Sultan had fired a shot. We are satisfied that this is proved. One barrel had been fired when the gun reached the police station. The evidence of Ismail Jan, who may possibly be friendly with the accused but whose evidence appears to be straightforward, gave a description which leads us to think that the hurt on Kamua might have been due to a glancing shot grazing the top of his head as the buck-shot separated from the mouth of the barrel, Kamua being at that time at a distance of some 10 to 15 paces from the gun. The learned Judge has failed to appreciate the strength of the circumstantial evidence that this wound was caused from a shot of a gun. It is difficult to conceive, and it has not been seriously suggested, that Kamua was able to produce the abrasion, which was upon his head and which the doctor subsequently saw although he thought it was not due to a gun-shot wound, on his way to the thana. It is of course possible, but it is far from being established, and it does corroborate the view which we are inclined to take and which the learned Judge does not seem to have appreciated that if the attack by Sultan took place away from the abadi when the carts were moving, Sultan fired the gun in the direction of the party without intending to hit anybody, in the hope of frightening them off and taking possession of the carts and the women. It is a very common mode of attack both by dacoits and also by other persons who are concerned in removing an obstacle of unarmed men to fire a gun in the air or in their direction without hitting them in order to frighten them off. It is absurd to suppose that Sultan who was an expert could not have hit anybody if he so wanted but it happened that a particular shot grazed the head of one of the men. We are satisfied that the prosecution witnesses who say that no shot was fired are telling a deliberate falsehood. The fact that one shot had been fired is a matter of vital importance in the consideration of Ramzani's case. When we come to examine the defence witnesses as Mr. Shabd Saran asked us to do, we find that they tell a plain and apparently unvarnished tale which differs in just those small details with regard to which variations must arise, when people see the same thing from a different angle and at different moments of time, but which dispose of the suggestion that they are repeating a lesson which has been carefully coached and they present a picture which to our mind is probably very

near the truth, that the party instead of being driven off on the firing of the gun divided itself up leaving some of the men to go off with the carts and the women and the others running back to dispose of the assailant with the gun which they effectually did. They all say that while the lathi fight was going on, Sultan stepped back 5 or 6 paces. He was then, if this is true, in a somewhat, hot corner and, according to the evidence which seems to us very natural, he raised his gun and took aim again, this time no doubt appearing to be even more threatening than he was before. He may not have intended to fire. If the evidence is true, he had time to shoot Ramzani through the head, but he did point what they knew then was a loaded gun which had once been fired, direct at Ramzani. We say nothing by way of justification in general of the use of a knife, but if under the circumstances we come to the conclusion that Ramzani was entitled to do anything that was open to him at the moment to save his own life, we are not prepared to say, even if he had hold of the knife and stabbed it at the abdomen as he admits having done, that he was not acting reasonably in his own defence. One ought not to weigh the mentality of a man in a crisis of that sort with golden scales. Whether an expert would try to strike away the gun with a lathi, or kick the fellow in the stomach before he could shoot, or adopt other alternatives, it is difficult to say; but taking a broad view, we are unable to say that the act done by Ramzani on that occasion was not one legitimately and reasonably done in his own defence. His appeal, therefore, must succeed and he is entitled to be discharged.

3. The result is that the appeals of Ramzani and Shafiq Ahmad are allowed, their convictions and sentences are set aside and they are acquitted and discharged. Their bail bonds are also discharged.

4. Padna, Kamua, Boshan, Kallan, Bahadur and Fatua, who have not appealed, are also entitled to an acquittal and must be discharged.