

State Vs. Badri and ors.

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SooperKanoon Citation : sooperkanoon.com/465445

Court : Allahabad

Decided On : Apr-26-1957

Reported in : AIR1957All714; 1957CriLJ1195

Judge : Roy and ;Sahai, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 97, 97(1), 100, 100(5), 100(6), 103, 103(4), 304 and 362

Appeal No. : Criminal Appeal No. 992 of 1954

Appellant : State

Respondent : Badri and ors.

Advocate for Def. : Sri Ram Deputy Government Adv.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Appeal partly allowed

Judgement :

Roy, J.

1. This is an appeal by the State against an order of acquittal of the respondents who are father and son. Bishwanath was charged under Section 304. I. P. C., and Badri, his father, under Section 304/34 I. P. C.

2. The facts found by the learned Sessions Judge and which are not now disputed before as are these :--

3. Badri respondent was employed as a mistri in the loco department at Gorakhpur and he occupied one of the quarters provided by the railway. The deceased Gopal was the son in law of Badri Gopal's sister was married to Banarsi who was also employed as a mistri in the loco department and who lived in a neighbouring quarter provided by the railway. After his marriage with the daughter of Badri, Gopal came to live about three years before this occurrence with his father-in-law. They did not however pull on well together, with the result that Gopal shifted to the place of Banarsi after some time.

Badri later on, persuaded Gopal to return to his house after a month; but the relations did not become smooth and the situation did not improve. Some fifteen days before the date of the occurrence Gopal again went back to the place of Banarsi. This time Banarasi vacated one of the rooms occupied by him and put Gopal into it. Gopal desired to bring his wife from the place of Badri and found that she was un-willing to come. Badri and Bishwanath respondents both sided with the girl and they did not permit her to go to live with Gopal.

Gopal suspected her to be in love with one Moti who WPS on visiting terms with the family of Badri. This made Gopal all the more apprehensive and all the more vehement in his desire that the wife should leave Badri's house and come to him, the more so because Gopal had himself been provided with a job in the loco department some months before the date of occurrence and he wanted to lead an independent life.

On the 11th of June, 1933, at about 10 p. m. Bishwanath respondent came to Gopal. Discussions followed leading upto a quarrel. The quarrel ended. Bishwanath went back to his quarters and Gopal went to the adjacent quarters of Banarsi. Banarsi had not till then been back from his duty from workshop. Ram Nagina and Baij Nath the sons of Banarsi were sleeping in front of their quarter in the open. Gopal woke them up and desired, them to help to bring his wife immediately from the place of Badri.

As conversation was going on with them, Banarsi arrived home from the workshop. Gopal requested Banarsi to accompany him and to prevail upon Badri to send the girl with Gopal. Banarsi and his sons agreed. The party of four, namely Gopal, Banarsi Ram Nagina and Baij Nath went to the quarter of Badri respondent. There were some celebrations going on at a neighbour's house and there were gas lamps burning. Upon reaching Badri's place Banarsi and his two sons stood at a little distance from the door so as not to infringe the privacy of the interior, and Gopal stepped inside and asked his wife to come along.

Badri came out and was advised by Banarsi to agree to sending the girl to her husband. Badri did not agree and he asked Banarsi not to meddle in other people's affairs. While this talk was going on outside the quarter it was noticed that Gopal emerged from the main room dragging his reluctant wife behind. The wife caught hold of the chaukhat of the door; and a tug-of-war followed between her and Gopal. The accused Bishwanath at that moment cried out to his father saying 'Gopal nahin manta nai'. Badri accused replied by saying 'Gopal nahin manta hai to maro'.

Upon this Bishwanath took out a knife from his pocket and gave one vicious jab with it to Gopal and the knife penetrated into the heart. Gopal fell down unconscious in a pool of blood. The tragedy having been realised, Badri at once went inside the house and brought two pitchers full of water which he poured on Gopal, but the latter did not revive from the state of senselessness. Badri then laid Gopal on a cot for being taken to the hospital. He was accompanied by his son Bishwanath and by the party of Banarsi as also by two other neighbours. When they reached the hospital Gopal was found dead. Both the accused on realising the implications absconded, Ram Nagina the son of Banarsi went to the Kotwali and lodged a report.

4. The prosecution version found complete support from the evidence of Banarsi, Ram Nagina, Baij Nath, Ram Sundar and Ganga and their evidence has not all been challenged before us. The defence theory that Gopal was injured somewhere also by some other people and when information about it had been brought by Bam Nagina to Bishwanath, the latter went to Banarsi to ask for his

help to take the injured to the hospital, but he refused; that Bishwanath took Gopal to the hospital and on the way met his father Badri who was returning from the workshop who too went to the hospital; that at the hospital the life of Gopal was found extinct that the accused were going to the Thana to make report and when they learnt that Ram Nagina had already made a report implicating them in the crime they absconded on account of the fear of the police, was found to be false by the teamed Sessions Judge.

That finding has also not been challenged before us by the respondents. The learned Sessions Judge, however, gave effect to the plea of self defence, pleaded in the alternative by the accused, relying upon two decisions the one in *Mt. Sakhu v. Emperor* AIR 1951 Nag 349 (A), and the other in *Jagat Singh v. King Emperor* AIR 1923 Lah 155 (1) (B) holding further that the right had not been exceeded and he acquitted them of the charge.

5. Learned counsel for the State has not challenged the acquittal of Badri before us. The entire fault on the part of Badri was that he asked Bishwanath to beat Gopal if the latter was persisting in carrying away his wife. There was no insisting by him that Gopal should be done to death. He never knew that Bishwanath had the knife in his pocket; and he never exhorted Bishwanath to assault Gopal with the knife. There had been no intention on his part that Gopal should be killed, nor can he be credited with the knowledge that any such assault would be made on him as was likely to produce death. The acquittal of Badri under Section 304/34, I. P. C. must therefore be upheld.

6 As regards Bishwanath learned counsel for the State has contended that upon the facts found by the Sessions Judge the conclusion reached by him that Bishwanath was perfectly within his rights to cause a fatal injury to Gopal and he was protected under section 100 of the Indian Penal Code was perverse. According to the Sessions Judge section 100 of the Indian Penal Code gave Bishwanath the right of private defence of the body extending to the voluntary causing of death on an occasion where an assault had been made with the intention of abducting; and further section 103 of the Code gave him the same right when an offence of house breaking by night was attempted to be committed

by Gopal when he entered the house forcibly. The learned Sessions Judge observed:--

'From inside the house he dragged out his wife against her will and., it is obvious that he would have carried her away had Bishwanath not come to her rescue. A party of his supporters were already waiting outside and were insisting that she be allowed to be taken away. Gopal was so adamant that he did not wait to allow Banarsi to have conversation with Badri over 'rukhsati' of the girl. He went infuriated right into the verandah, pushed aside the accused and reached the interior where he caught hold of his wife to drag out.'

6-a. The conduct of Gopal in our opinion amounted to abduction as defined in section 362 of the Indian Penal Code which says:--

'whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.'

7. But abduction simpliciter without such intention or knowledge as is referred to in sections 364, 365, 366, 366A, 367, 368 and 369 of the Code is not punishable and is consequently not an offence in view of the definition of 'Offence' in section 40 of the Indian Penal Code. We are in agreement with the view laid down by a Bench of this Court in *Ham Saiya v. Emperor* AIR 1948 All 205 (C), that the word 'abducting' used in clause (6) of section 100 refers to such abducting is an offence under the Penal Code and not merely to the act of abduction as defined in section 362.

It is the contemplated commission of the offence of abduction which gives the extended right of private defence of person. Mere abduction is not an offence and therefore cannot give rise to any right of private defence not to speak of the extended right of private defence,extending up to voluntarily causing death.

8. A somewhat contrary view was expressed by the Indore Bench of the Madhya Bharat High Court in *Dayaram Laxman v. State* AIR 1953 Madh B 182 (D). With all respect to the learned Judges who decided that case we are not in agreement with their view. Their decision did not take into consideration all the factors bearing

upon this legal proposition. We feel bound by the decision of our own Court, in the case of Ram Saiya (C), cited above and we hold that the word 'abducting' used in clause (5) of section 100 of the Indian Penal Code refers to such abducting as is an offence under the Penal Code, and not merely to the act of abduction as defined in section 362.

It is the contemplated commission of the offence of abduction which gives the extended right of private defence of person. Mere abduction is not an offence and therefore cannot give rise to any right of private defence, not to speak of the extended, right of private defence extending up to the voluntary causing of death.

9. It has been contended on behalf of the respondent, that the act of Gopal amounted to house trespass within the meaning of section 442 of the Penal Code and consequently under section 103, clause (4) of the Code the right of private defence of property extended up to the voluntary causing of death. It is not every sort of house-trespass which Under clause (4) of section 103 gives the extended right. Such right is conferred in the case of house trespass only when the house trespass is committed under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the, consequence if such right of private defence is not exercised. In the present case it cannot for a moment be contended that the house trespass, if any, which was committed by Gopal was committed under such circumstances as could reasonably have caused apprehension that death or grievous hurt will be the consequence if the right of private defence was not exercised. Consequently Section 103, Clause (4) will not be available to Biswanath.

10. It has next been contended that clause' (6) of Section 100 of the Code will apply. Under that clause the right of private defence of the body extends under the restrictions mentioned in Section 99, to the voluntary causing of death or of any harm to the assailant if the offence which occasions the exercise of the right be an assault with the intention of wrongfully confining a person under such circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his relief.

It has been argued that the assault that was made by Gopal over his wife was with the intention of forcibly taking her away and wrongfully confining her in his house; and the circumstances which led up to it might have reasonably caused the wife, or for the matter of that Bishwanath, to apprehend that they will be unable to have recourse to the public authorities for relief. It has further been contended that the act of assault on the wife was itself something which gave Bishwanath the right of private defence under Section 97, 100(1) of the Code.

That again is subject to the restrictions contained in Section 99, one of the restrictions being, that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Whether the matter is brought under Clause (6) of Section 100 or Clause (1) of Section 97 of the Indian Penal Code we are of the opinion, upon the facts and circumstances of the case and the evidence on the record, that the right of private defence had been exceeded by Bishwanath.

11. The two decisions relied upon by the learned Sessions Judge are clearly distinguishable upon facts. In AIR 1951 Nag 349 (A), the wife after her marriage lived with the husband for a few months and then went to live with her father where she resided for about ten months when the husband went with some of his friends to fetch her back. On arrival the husband asked the father-in-law to send the wife back with him. The father-in-law refused to do so and even closed the door of the house.

The husband and his companions then tried to force open the door. As soon as they succeeded in doing so, the wife rushed at the husband and inflicted two or three injuries with a knife on the neck as a result of which the husband fell down and later died. It was held upon these circumstances, bearing in mind the fact that the only other inmate of the house, namely, her father was already put under restraint by two of the companions of the husband, that it was natural for the wife to think that the only way in which she could prevent her conduct was to incapacitate the husband from carrying out his purpose and it was apparently with that object in view that she attacked the husband with a knife after he forced open the door and caught hold of her by the wrist.

It was further observed in that case that it may be that she could have stopped after inflicting one injury, but placed as she was it was certainly difficult for her to Judge whether what she had done was enough to serve her object, that is to prevent her abduction. In the present case the facts are materially different. Here three of the persons who had accompanied the husband in order to prevail upon the father-in-law to allow the wife to go back with the husband had observed the limit of decency and they did not even come in front of the door lest the privacy of the interior of the house may be invaded. The father was outside the house and he was haranguing with those who had come, not agreeing to their suggestion that the wife should be sent back. The father was not under restraint.

When Bishwannath asked the father as to what he should do, the father exhorted him only to beat the husband. He did not direct him to give a fatal blow with a knife. Consequently the decision in the case of *Mst. Sakhu v. Emperor (A)*, cannot afford any parallel for the decision of the present case.

12. In the other case, namely, *Jagat Singh v. Emperor, (B)*, the facts were also absolutely different. A Muslim woman was converted to Sikhism while she was already married to a Mohammedan. She then married one of the party of the accused. Her previous husband's relatives forcibly took her away against her will from the party of the accused. During the fight one of the party of her first husband's relatives received a fatal blow. It was held under those circumstances that the accused did not exceed the right of private defence. It was observed that the party who came to get her back intended to employ and actually did employ force in order to attain their object, and under Section 100 of the Indian Penal Code the accused's right of private defence against an assault committed with such intent extended to the causing of death. Those facts do not again afford any parallel to the present case.

13. Homicide is justifiable only upon the plea of necessity and such necessity only arises in the prevention of atrocious crimes. In the present case even if the act of Gopal amounted to a crime of assault, or of abducting his wife who was a recalcitrant wife with a view to take her to his house, we are of opinion that the homicide was not justifiable and it did not arise out of any necessity for the

prevention of any atrocious crime. We are of opinion upon the facts and circumstances of the case that Bishwanath did not have the right of private defence of person to the extent of causing the death of Gopal in our opinion he had the right of private defence to do any harm short of death to Gopal on account of the assault which Gopal had made on the wife.

We are further of opinion that Bishwanath exceeded the right of private defence of person. We have considered Exception 2 of Section 300 as also Exception 4 of Section 300 and we are of opinion that the offence of Bishwanath reduced itself to culpable homicide not amounting to murder punishable under Section 304, Part II of the Indian Penal Code. The act was committed without premeditation in a sudden fight and in the heat of passion or upon a sudden quarrel; and in view of the fact that there was only one lone injury the offender cannot be said to have taken undue advantage or acted in a cruel or unusual manner.

There was no intention on the part of Bishwanath to cause the death of Gopal. He whipped out his knife obviously in the exercise of the right of private defence, and his intention cannot be said to be of doing more harm than was necessary for the purpose of such defence. Unfortunately, however, he could not weigh the force of the attack with his knife and it was that unfortunate thing which resulted in the death of Gopal. Under these circumstances we are of opinion that the learned Sessions Judge's view that the exercise of the right of self-defence had not been exceeded in the case, was perverse and was not based upon the proved circumstances of the case upon the evidence on the record. Consequently Bishwanath merited conviction under Section 304 Part II of the Indian Penal Code.

14. For reasons stated above we dismiss this appeal so far as it concerned Badri, but we allow it against Bishwanath respondent and we convict him under 'S. 304, Part II of the Indian penal Code. In the circumstances of the case we sentence Biswanath to suffer three years' rigorous imprisonment which in our opinion would be sufficient in the ends of justice. He shall be taken forthwith into custody to serve out this sentence.