

Emperor Vs. Param Sukh

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Court : Allahabad

Decided On : Jul-07-1925

Reported in : AIR1926All147

Appellant : Emperor

Respondent : Param Sukh

Judgement :

Boys, J.

1. In this case Government has appealed against the acquittal of one Param Sukh, son of Dwarka, caste Brahman, resident of Balhaura in the district of Banda. The charge was one under Section 302, I.P. C, and was in regard to the death of Sub-Inspector Jhamman Singh on whose head the accused was alleged to have struck two blows when he was engaged in making, or attempting, to make a search in the house of a cousin of the accused.

2. On 7th November 1924, a report was made at the Police-station by one Bal Govind against Mahadeo, relative of the chaukidar of the village, Jeorakhan. Bal Govind charged Mahadeo with having stolen three ornaments from the person of his (Bal Govind's) son. Jeorakhan apparently arrived at the thana either with Bal Govind or at any rate, at just about the same time and he informed the Sub-Inspector that as a matter of fact the report made by Bal Govind was false as regards two out of the three ornaments, which, as a matter of fact, he (Jeorakhan)

had seen on the person of the boy after the alleged theft had taken place. Two constables were deputed to investigate the matter at the village. We are not particularly concerned any further with their movements.

3. On the next day the Sub-Inspector Jhamman Singh, the deceased, went himself to the village accompanied by Ajodhya Prasad, a constable, and arrived there at 11 o'clock in the morning. He is said to have first enquired from Mt. Gilli, a daughter of Bal Govind, about 15-16 years of age, and to have been informed by her that, as a matter of fact, only one ornament had been stolen from the person of her brother and the other two ornaments had been placed by Bal Govind in the house of one Parmeshur who was a cousin of the present accused. I may say that there is reason to doubt whether Mt. Gilli ever gave the Sub Inspector any information at all. He had already got this information from Jeorakhan and it is very difficult to believe that Mt. Gilli would make a statement so prejudicial to her own father of her own accord to the Sub-Inspector. It seems much more probable that the Sub-Inspector proceeded to search Parmeshur's house on the information of Jeorakhan or even more probably the Mukhia Sital Prasad. If this be the fact the reason no doubt for putting the words into the mouth of Mt. Gilli would be to give a greater colour of bona fide to the search of Parmeshur's house, and it has this, but only this, indirect bearing on the matter which we have now to decide. It is common ground then that upon information received, be it from whatever source, the Sub. Inspector went accompanied by Ajodhya Prasad, constable to the house of Parmeshur in order to recover if possible the ornaments. One of the ornaments said to have been stolen was an earring that has never been traced. It was apparently indubitably stolen because the boy's ear bore signs of an earring having been wrenched out. The other two ornaments which were supposed to be in the house of Parmeshur were a tawiz (amulet) and a pair of silver bangles.

4. The Sub-Inspector and constable were also accompanied by Mt. Gilli and the Mukhia Sital Prasad. There is again a great discrepancy in the prosecution evidence in regard to the question whether Mt. Gilli prior to the visit of the Sub-Inspector was sent to demand the ornaments from Parmashur's wife. But this is immaterial against to the case we have to decide. It is only of importance as showing that in many aspects of the case the evidence for the prosecution is in

itself conflicting. It is in evidence and established beyond doubt that when the Sub-Inspector arrived he demanded the ornaments from Parmeshur's wife. She repudiated all knowledge of them and said that her husband would be back very shortly as he had only gone to fetch water from the Nadi close by. The Sub-Inspector, and this is established by the evidence for the prosecution itself, refused to be content with this reply or with merely surrounding the house to see that nothing was removed until Parmeshur returned. But at the very least it has to be admitted that he threatened Mt. Dhirajia, the wife of Parmeshur with a cane and laid hands on her dhoti. On her cries two men (cousins of Parmeshur) arrived. They were Param Sukh, the present accused, and Ram Nath. I may here observe that Ram Nath was put upon his trial at the same time with Param Sukh but was acquitted by the learned Sessions Judge and Government has not appealed against that acquittal. Param Sukh on his arrival naturally protested against the treatment he saw being meted out to Mt, Dhirajia. After this it is not very clear exactly what happened; but I think the facts as I shall now state them are sufficiently near to the truth. It is admitted that when Param Sukh and Ram Nath arrived they were empty handed and this is a fact of very great importance.

5. Then it is not difficult to understand that Param Sokh would protest in forcible terms against the treatment he found being meted out to the woman and would urge again that the Sub-Inspector should do nothing until Parmeshur should come. The Sub-Inspector clearly resented this interference and after this it is not possible to be precise but from the evidence of the prosecution witnesses read to some extent with that of Mt. Dhirajia it is clear that very hot words would pass between Param Sukh who thought the woman of his household was being treated in a most undignified and insulting manner and the Sub-Inspector who would, as a man in authority, resent Param Sukh's attitude. Param Sukh then apparently grappled with the Sub-Inspector who had either threatened him with a cane or had struck him with it and on this it is not difficult to realise that Ajodhya Prasad, the constable would strike Param Sukh with his danda. Here again the facts are not clear whether Param Sukh snatched up a lathi which was standing near by as some witnesses said or whether he snatched away the danda from Ajodhya Prasad. I think that the latter is much more probably the truth for it is supported by the fact that Ajodhya Prasad is entirely unable to account for what happened to his danda.

Having possessed himself of this weapon Param Sukh struck the Sub-Inspector two blows on the head, with the result that the Sub-Inspector died next morning at sun-rise and it is proved by the medical evidence that he had two blows on the head, neither of the superficial wounds being very serious but the internal fracture of about 7 inches showing that at least one of the blows was delivered with considerable force. These are the facts so far as it is possible to be precise about them at all from the evidence on the record. Of such doubt as there is about the facts the accused must have the benefit. The burden does not fall on him to show what happened until the prosecution has discharged the primary burden of showing that he did bring about the death and how he brought it about. One of the most essential facts in this case upon which the decision of the right of self-defence must turn is the question whether the woman was or was not being assaulted, using the terms in the legal sense that is, whether hands were being laid upon her and whether she was being struck or even threatened with a cane. I have no doubt whatever that she was being so threatened. If she was not so threatened there is not the slightest reason to suppose that any disturbance would ever have taken place at all. This shows clearly that she was being insulted and that is why Param Sukh's anger rose. The next point is whether the Sub-Inspector was himself acting in excess of his powers or not. I think it is clear that he was exceeding his powers, and exceeding them not only technically and legally, but exceeding them in a very material manner. There can be no doubt that he was acting in excess of his powers in that he was making this search without having recorded any order in writing and giving his reasons therefore under Section 165 but that would in itself have little or no bearing on the point that we have to decide whether the accused had any right to strike him or not.

6. The next thing we find is that he took with him no witnesses to the search and further that he declined to wait for Parmeshur to return, though he himself had complete command of the situation and there could not really be the slightest reason to suppose that if he had kept his eye on the woman and a watch on the house the property could have been spirited away. Both these last two points are material as indicating the attitude of the Sub-Inspector. Neither of them would have justified the accused in attacking, him. But they are of importance as showing, in conjunction with the other facts, the attitude adopted by the Sub-

Inspector. The last and most important and material point is that clearly he had no right whatever of any sort or description to interfere with the woman. Granted that he had a right of search which he had and granted that the failure to reduce his reasons into an order in writing was a purely technical defect, as it was, he had no right to do anything more whatever than to go into that house and search it. He had no right whatever to use any means of any sort or description to compel the woman to produce the articles beyond being entitled to have facilities given to him for the search and not to be resisted. It is clear therefore that he was exceeding his authority and there can be no question of any mistake on his part as to what his authority was he was deliberately exceeding.

7. Now to consider the case from the other aspect whether the accused Param Sukh had a right of self-defence. We have heard arguments about the sections of the Indian Penal Code which control that right. I feel myself that these sections are very valuable indeed in that they lay down general principles for the guidance of the Court, but they are principles which are only to my mind intended to afford a guide to the Court as to what is to be held reasonable and what is to be held unreasonable and punishable by law. I do not think anything whatever is to be gained by entering into a meticulous examination of the wording of those sections. Bearing in mind then, the principles laid down in those sections I have really to consider whether Param Sukh's action in striking the two blows he struck was unreasonable and unjustified; whether his acts were acts which in ordinary parlance he had no right to commit. Now, what was the situation. He had a right to defend the wife of his brother from being insulted and threatened. There can be no question that for the Sub-Inspector to have laid his hands on that woman in any way whatever, however mildly, would be regarded by the members of the household as a very grave insult; much more so, would it be the case, when they found her being actually struck even lightly or even threatened with a cane. These events naturally led to hot words between Param Sukh and Ram Nath on the one hand and the Sub-Inspector on the other. Resenting this the Sub-Inspector uses his cane on Param Sukh who defies his authority, The result is equally inevitable. Param Sukh grapples with him. There follows the inevitable assistance given by the constable to his superior and from that follows the snatching of the danda from the constable and the blows on the Sub-Inspector's head. Regarding the whole of

the facts and bearing in mind the principles laid down in the Indian Penal Code I find it quite impossible to hold that the action of Param Sukh was unreasonable or unjustifiable. As to whether he voluntarily caused death I do not think for one moment that he could ever have voluntarily intended to cause even grievous hurt or that his real intention was to do anything more than to stop the Sub-Inspector's illegal aggressions and the consequent illegal aggression by Ajodhya Prasad. In this connexion one may note that there is no real question of a lathi having been used. It is quite possible that there would be no distinction on the particular facts of the case even if it was a lathi that had been used. But as I find that, in fact, it was only a danda and the prosecution have not been able to establish what the nature of the danda was, I find it still more impossible to hold that Param Sukh intended to cause death. If he did not so intend under the circumstances he was certainly entitled to an acquittal.

8. There is one further aspect affecting the necessity for the degree of injury that was in fact caused. At the moment two further constables ran up and there can be very little doubt indeed that but for the two blows that the Sub-Inspector received Param Sukh himself would have received injury. These considerations entirely to my mind justify us in refusing to allow this Government appeal.

9. Two further matters may be dealt with very briefly. The learned Judge has held that the whole search which the Sub-Inspector proposed to hold was entirely illegal and he has apparently held this, at least in part, for two reasons: (1) that there was no order in writing and (2) that there were no search witnesses. But his chief reason as I gather, is that the Sub-Inspector was not searching for anything that was alleged and believed by him to be stolen property. The idea underlying is that the Sub-Inspector was searching for something which had never been stolen at all though it had been falsely alleged by Bal Govind to have been stolen. It is clear that the learned Sessions Judge overlooked the words of Section 165, which do not authorise a police-officer 'to make a search only for what is stolen and believed to be stolen property but permit a search for anything necessary for the purposes of an investigation into any offence.' If the story which was told to him was true the two articles for which he was searching were clearly necessary for the purposes of the investigation, and he was fully justified under Section 165 in

searching for them though he should undoubtedly have taken the precaution of putting his reasons in writing as required by Section 105 and of taking two witnesses with him as required by Section 103.

10. The last point to which I will refer was the action of the Government Pleader which is referred to by the learned Sessions Judge. The witness Mt. Gilli had been asked in Court to identify Ajodhya Prasad constable. She identified him and said that he was the constable who had gone with us to Parmeshur's house.' Later in her evidence in cross examination she stated 'the sipahi also whom I have identified here to-day, beat Param Sukh with a danda. Param Sukh caught hold of the sipahi's stick.' A note made by the Court is as follows: 'At this stage the Government Pleader suggested in English notes (sic words) the witness perhaps means daroga by sipahi and then the witness was asked what she meant by sipahi and she replied that she meant darogaji. On being asked by the Court she stated that by the sipahi she did not mean the sipahi who had come in the Court.' It is as clear as it can possibly be that the witness corrected her statement in consequence of the remark made by the Government Pleader in view of the fact that he used the words darogaji and sipahi. There cannot be the shadow of a doubt that she would be able to understand that she was supposed to have made some mistake. It is equally clear that in consequence of her so understanding she altered her statement. There can be no doubt whatever that the action of the Government Pleader was very wrong. It may have been due to mere carelessness or thoughtlessness. If it was due to carelessness or thoughtlessness it was reprehensible carelessness. If it was due to a deliberate intention to suggest something to the witness the proceedings would require to be characterised in very much stronger terms. A Government Pleader is expected at the least to be more careful than this.

11. For the reasons that I have given I would hold that the appeal by Government in this case must fail and I would dismiss it.

Ashworth, J.

12. I concur in dismissing the appeal. The evidence in the case is conflicting and beyond a certain point unreliable. It would not be safe to accept as proved any facts more incriminating than the following:

13. The Sub-Inspector was searching the house of one Parmeshur for some property necessary for the proper investigation of a certain cognizable offence. He was entitled to do this under Section 165, Criminal P.C. He acted, however, illegally in not recording first in writing his belief that the search was necessary to discover the particular articles. He also acted illegally in not taking with him two search witnesses. These illegalities, whatever effect they might have in any other Connection would not, in my opinion, prevent it being held that the Sub-Inspector was acting in good faith under colour of his office within the meaning of Section 99, I.P.C. No objection was raised to the search being made on the ground of these illegalities. This search, therefore, initially gave no right of resistance to the accused.

14. The Sub-Inspector had no sooner entered the house than he began to act illegally and otherwise than in good faith. Parmeshur's wife was in a court yard. The Sub-Inspector was entitled to tell her to stand aside and to allow him to search the house. He went beyond this and caught hold of her clothes and detained her and threatened her with a cane, She cried out. The accused Param Sukh ran to her assistance without having any weapon in his hand. An altercation ensued. Ultimately the Sub-Inspector and the constable, Ajodhya Prasad who was with him, together beat Param Sukh, the former with a cane and the latter with a stick (danda). The accused snatched the stick from the constable and struck the Sub-Inspector on the forehead fracturing his skull.

15. On these facts I hold that the accused had a right of self-defence against this dual assault on his person. That right under Section 101, extended to voluntarily causing grievous hurt but not to voluntarily causing death. Section 99 did not interfere with this right of self-defence inasmuch as the conduct of the Sub-Inspector at the time was not in good faith. The question then is whether the accused can be said to have voluntarily caused death. Under Section 39, which defines 'voluntarily' in order to hold that he did so, we must hold that he intended

to cause death or had reason to believe that he was likely to cause death. He can never have intended to cause death. There is no clear evidence as to the size or character of the stick. We cannot, therefore, assume that it was a very heavy one. It might be suggested that the accused had been so provoked that he could not exercise his reasoning powers for the purpose of forming a belief whether the stick was likely to cause death or not. I hold that we are not entitled under the present state of the law to take into consideration the possible fact of the reasoning power of the accused being in abeyance owing to severe provocation. That may be the law one day but it is not the law at present. Even thus I am not convinced that the accused had reason to believe that his two blows on the forehead of the Sub-Inspector were likely to cause death. He cannot, therefore, be said to have voluntarily caused death. The death was caused involuntarily during the lawful exercise of a right of self-defence.

16. For these reasons I agree in the view that the accused was rightly acquitted and dismiss the Government appeal.

17. The order of the Court is that the appeal filed on behalf of the Government be dismissed, the accused Param Sukh, son of Dwarka, Brahman, released forthwith and if he is on bail, his bail-bonds be discharged.