

Saiduddin Vs. State

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Court : Allahabad

Decided On : Apr-10-1973

Reported in : 1973CriLJ1643

Judge : H.N. Kapoor, J.

Appellant : Saiduddin

Respondent : State

Judgement :

H.N. Kapoor, J.

1. Saiduddin has been convicted by the Assistant Sessions Judge. Farrukhabad. by his order dated 29-8-70 under Section 307, I.P.C. and has been sentenced to seven years' R. I. for making a murderous assault on Mohammad Wahid P. W. 1 on 27-3-67 at about 9 P.M. in Mohalla Khacheri Tola, P.S. Kannauj. district Farrukhabad.

2. The facts are that a marriage party of the bridegroom Durab Ali D.W. 1 consisting of about 175 persons had gone to the house of Subedar P.W. 7 in connection with marriage of Subedar's daughter. The bridegroom was riding a horse belonging to Anand Ram P-W. 6 who was accompanying that horse. Subedar belonged to Behna community. There is a custom in that community that the same horse is ridden by the brother of the bride after the bridegroom gets

down. Instead the appellant Saiduddin who was with the marriage party rode the horse as soon as the bridegroom got down. It was resented by the persons belonging to the bride's side. When the appellant did not get down from the horse he was pulled down by Mohd. Wahid P.W. 1. He then grappled with Mohd. Wahid and felled him down. They both still grappled with each other and Mohd. Wahid had given him a blow with his hand. He then stood up and took out a knife from his pocket and struck Mohd. Wahid on his chest causing serious injuries. The occurrence was witnessed by Mehdi Hussain P-W. 3, Anand Ram P.W, 6, Subedar P.W. 7 and many others. There was a municipal light on the spot. There was also light by a powerful bulb of 500 wt, which was lighted in front of the tent at the bride's place. The witnesses surrounded the appellant and apprehended him and snatched away the blood-stained knife Exh. 1 from his hand. Bashiruddin brother of Mohd. Wahid reached the place of occurrence and Mohd. Wahid dictated to him F.I.R. Exh. Ka 1 and took the same to the P.S. and lodged it at 11 P.M. The police station is about six miles from the place of occurrence. A Clerk Constable Shahzade Singh prepared the Chik Report Exh. Ka 4 and registered a case in the G. D. a copy of which is Exh Ka 8. He also prepared the Fard Exih. Ka 3 in respect of the knife. The accused was also taken to the Police Station and locked up in the Hawalat.

3. The injured was then sent to Kannauj Dispensary where his injuries were examined by Dr, Gupta at 11-45 P.M. on the same day. The injury report is Exh. Ka 2. He found the following injuries on his person:

Incised wound oblique 2'x9/10'x depth not measured, bleeding present on right side of chest 2 1 /2' below and inner to the right nipple. Tail of the wound was at lower end.

According to him the injury was caused by a sharp pointed weapon and it could be the result of knife Ext. 1. He identified the clothes of the injured Exts. 2 and 3 which he had taken off from the injured and handed over to the constable in a sealed bundle. He has further stated that the injury was in the region of liver and death was possible from such an injury. He did not make a probe as to the depth of the injury for fear of making it more dangerous to the injured.

4. The injured was then removed to Lala Lajpat Rai Hospital. Kanpur and was given special treatment with effect from 28-3-67. Surgical operation was performed by Dr. K. K. Bhatnagar P.W. 10. The report of the Doctor is Exh. Ka 12. He opened the stitched wound and found the following fact:

1. There was haematoma Just beneath the stitches.
2. Rectus muscle, rectus sheath and peritoneum were cut
3. Coastal cartilage was cut.
4. Superior epigastric orcostophrenic vessels were cut.
5. There was a cut of 1 1/2 on the entro superior surface of the liver.
6. In the peritoneal cavity there was about 3 pint blood in free and clotted condition.
7. There was 2' long cut on the inferior surface of the diaphragm.

He was discharged from the hospital on 10-4-67.

5. The S. I. Chandrapal Singh P-W. 8 conducted Investigation. He interrogated the witnesses. He prepared the site plan Ka 5. He took blood' stained and ordinary earth from the place of occurrence and prepared the recovery memo Exh. Ka 6 after completing the investigation. He submitted charge-sheet Exh. Ka 7.

6. The blood-stained articles Including knife Exh. 1 were sent to the Chemical Examiner. Agra duly sealed and human blood was detected on this article by the serologist. The report of the serologist is Exh. Ka 10. The report of the Chemical Examiner is Exh. Ka 9.

7. The appellant was duly tried. He denied the prosecution allegations and stated that Subedar got annoyed with the marriage party because only 50 persons were invited while the marriage party consisted of 175 persons. Subedar therefore picked up a quarrel with the marriage party. Some unknown person got on the horse back and there was quarrel and the knife injury was then inflicted on Mohd.

Wahid by that man. He, however, slipped away in the crowd. The defence version was supported by the evidence of Durab Ali D-W. 1 who was bridegroom. It may be stated here that all sorts of vague suggestions were made to the witnesses that there was knife in the pocket of Mohd. Wahid and during the grappling he got Injury with his own knife.

8. The prosecution case has been proved by the evidence of Mohd, Wahid, Mehdi Hussain, Anand Ram and Subedar. They have corroborated each other on all material particulars. Mohd. Wahid is the injured person. Anand Ram is the Gharwala. Their presence cannot be doubted. Mehdi Hussain is son of Subedar. He. therefore, must have been present at the time of the reception. All these witnesses are mentioned in the first information report which was lodged without any delay. Subedar is the father of the girl. He was not mentioned in tihe first information report but there can be no doubt about his presence. These witnesses have stated that the appellant was apprehended on the spot and the knife was also snatched from his hand. The Doctor has stated that the injury would have been caused with this very knife. It has come in evidence that there was sufficient light of the Municipal bulb and one of 500 wt. which was lighted in front of the tent at bride's place. Even the accused stated that the person who got on horse back had struck with knife. He however, stated that he could not be apprehended and slipped away and that he was unknown person. This defence version cannot be believed as in that light and place where there were so many persons the assailant could easily have been apprehended. Durab All had supported the accused as the accused had gone with his marriage party. The marriage could not be [performed and so he was obviously ag-igrieved against Subedar and others and so supported the accused person. But there appears to be no reason to disbelieve the evidence of the prosecution witnesses who are natural witnesses of the occurrence. It can safely be held that the occurrence did take place in the manner as alleged by the prosecution-

9. learned Counsel for the appellant has argued that even if the prosecution story is believed the appellant could have inflicted this injury in exercise of his right of private defence of person. No doubt it has not to be specifically pleaded and in case it could be found from the prosecution evidence that the accused had a right

of private defence under circumstances of the case its benefit can be given to the accused. The evidence in this case is that Mohd. Wahid and others pulled the accused, while he was riding the horse back and the accused then grappled with Mohd. Wahid. Mohd. Wahid also admitted that he had given one blow with his hand to him which had struck on his back after he was taken down from the horse back and when he started grappling with the witnesses. learned Counsel for the appellant has argued that it can be held on the basis of this evidence that the accused was being beaten by Mohd. Wahid and others and in order to extricate himself he wielded his knife. He has placed reliance on the case of *Go-minik Varkey v. State of Kerala* : 1971 CriLJ1057 in which it was held that the accused had not exceeded his right of private defence while he had struck the deceased with knife and had given two blows on his thigh in exercise of right of private defence when the deceased had picked a stone of dangerous size and was about to hurt with the same. In the present case Mohd. Wahid and his companions were unarmed. There is nothing to suggest that the appellant could have apprehended danger to his life or danger of being caused grievous hurt. learned Counsel for the appellant also placed reliance on the case of *Nanhoo Kahar v. State of Bihar*. : 1971 CriLJ1467 In which It was held that when there was dispute with regard to the property and the victim had gone to the disputed land and the accused had also sustained some injuries the accused had some right of (private defence of his person and when he wielded sword at the victim causing severe injuries resulting in the cutting away of the hand of the victim the accused only exceeded right of private defence and the case fell not under Section 307 I.P.C. but under Section 326. I.P.C. The High Court awarded only one year's sentence in that case,

10. It can be said that under the circumstances of the present case the accused had some right of private defence in order to extricate himself but there is nothing to show that this he could do by using his knife only and inflicting such serious injuries on the person of Mohd. Wahid who was unarmed. Mohd. Wahid had no doubt given him a blow with hand but there is nothing to show that he was aiming another blow at the accused. The right of private defence is preventive and not retaliatory. The appellant obviously far exceeded the right of private defence if he had any under the circumstances of the present case. He inflicted a very dangerous injury on the chest of Mohd. Wahid and he could be saved only by

providence and timely medical aid. In both the cases cited above injuries were not inflicted on vital parts of the body. In the circumstances of this case I am of opinion that the conviction should be under Section 326. I.P.C. it is possible to reduce the sentence suitably.

11. In the result the appeal is partly allowed to this extent that the conviction is altered to one under Section 326. I.P.C. from Section 307. I.P.C. and the sentence is reduced to three years E. I. The appellant is on bail. He shall surrender to his bail bonds and will be taken into custody forthwith to serve out the sentence awarded to him. His bail bonds are cancelled.

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