

Pramod Kumar Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-05-2003

Reported in : 2003CriLJ2718

Judge : M.C. Jain and ;K.N. Ojha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 913 of 1980

Appellant : Pramod Kumar

Respondent : State of U.P.

Advocate for Def. : Ratan Singh, A.G.A.

Advocate for Pet/Ap. : B.P. Gupta, Adv. and ;Ashok Nath Tripathi, Amicus Curiae

Judgement :

M.C. Jain, J.

1. This appeal has been filed by the appellant Pramod Kumar against the judgment and order dated 21st April, 1980 passed by Sri B. D. Agarwal, the then. Sessions Judge. Saharanpur in Sessions Trial No. 64 of 1960, convicting him under Section 302, I.P.C. and sentencing him to life imprisonment.

2. The facts of the matter may be related shortly. The incident took place on 24-11-1979 at about 11.45 a.m. opposite the Labour Gate of Lord Krishna Textile Mills, Saharanpur. The deceased was Malkhan Singh and report was lodged by his brother Raj Bahadur PW-2 at the concerned police station the same day at 1.15 p.m. The deceased aged about 18 years was employed by a contractor Jagdish Prasad in the printing section of the said Mills in July 1979 and the accused was also employed in the same section. The worker used to observe lunch between 11.30 a.m. and 12.30 p.m. On the fateful day and time, there was a quarrel between the deceased and the accused opposite the Labour Gate of the Mills. The accused assaulted Malkhan Singh with a knife on the chest and pushed him. Malkhan Singh fell bleeding. Raj Bahadur PW-2 (brother of the deceased) had brought his meals at that time on cycle. Lal Singh PW-3 and Rakam Singh PW-4 had their tea shops opposite the Labour Gate. These persons with Daya Ram and Ram Murti gave a chase to the accused who ran towards the eastern side. At a distance of about 400 yards. Satpal PW-5 and Bhopal Chaukidar came up with Dandas. Satpal PW-5 had his flour mill at that place. After giving beating to the accused they took him down. He had thrown the knife in the Nala adjacent to the mill while fleeing. Lal Singh and Ram Murti went to the outpost Labour Colony, situate at a distance of about 100 paces and informed the police. The police came and took in their custody the accused near the flour mill of Satpal PW-5. In the meantime, S.C. Mathur PW-11, Labour Welfare Officer, attached to the Mills picked up Malkhan Singh from the place where he had been lying and took him to the hospital by car. The Doctor in the emergency ward of the hospital pronounced him to be dead. Raj Bahadur PW-2 (brother of the deceased) lodged the F.I.R. at P. S. Sadar Bazar at 1.15 p.m. Investigation followed. A search was made for the knife also in the Nala (drain), but to no effect.

3. It may be also related here that the autopsy on the dead body of the deceased was conducted the same day at 5.35 p.m. by PW-1 Dr. H. K. Sharma. The following ante-mortem injury was found on his person.

Stab wound 2 cm x 1 cm x chest cavity deep on left side chest. 7 cm below to the left nipple at 7 'O' clock position. On opening, incised wound was found present between 6th and 7th rib and aorta was punctured along with left auricle.

4. According to the Doctor, the deceased was aged about 18 years and about half a day had passed since he died. The death had occurred due to shock and haemorrhage as a result of the ante-mortem injury sustained by the deceased.

5. After conclusion of the investigation, the accused was put on trial which culminated into the judgment impugned in this appeal.

6. At the trial, in all 12 witnesses were examined, out of whom, Raj Bahadur PW-2, Lal Singh PW-3 and Rakam Singh PW-4 were eye-witnesses of the actual incident.

7. The accused pleaded not guilty. According to him, at about 10 a.m. on 24-11-1979, the deceased dropped his frame over his frame while working in the printing section. He scolded him, but Malkhan Singh the deceased attacked him to assault. However, he was rescued by other labourers. At about 11.30 a.m., he came out of the Mills and Malkhan Singh caught hold of him by neck, saying that there was none to save him there. Picking up a brick. Malkhan Singh hit him at his head and wanted to hit him again when he took out a knife from his pocket and assaulted him with the same in self-defence. He was caught hold of by those present at the spot and taken to the police station followed by his medical examination at 4 p.m. by Dr. A. K. Pant DW-1. The following ante-mortem injuries were found on the person:

1. Lacerated wound 3 cm x 1/2 cm x scalp on right side head, 12 cm above right ear, bleeding on pressing.

2. Contusion (reddish) 3 cm x 1 1/2 cm on left temporal region.

3. Contusion (reddish) 5 cm x 1 cm on front of right knee.

4. Multiple contusions (reddish) in an area of 10 cm x 8 cm on top of left shoulder.

5. Contusion (reddish) 8 cm x 1 cm on left temporal forearm upper part.

6. Contusion (reddish) with swelling 5 cm x 4 cm on dorsum of left hand.

7. Contused swelling (reddish) 3 cm x 1 cm on back of right little finger.

8. Contusion (reddish) 2 cm x 2 cm on back of right elbow.

9. Contusion 20 cm x 11/2 cm on left scapular region back and left shoulder.

8. The injuries were fresh and could be caused at about 11.30 a.m. that day. The age of the accused was estimated by the Doctor to be about 17 years.

9. In this appeal, the appellant is in Jail. Sri Ashok Nath Tripathi the was appointed as amicus curiae to argue out the appeal for he appellant. We have heard him and Sri Ratan singh learned A.G.A. from the side of the State. The record of the case has been carefully examined by us.

10. The central core of the argument of learned amicus curiae is that the knife injury had been caused by the accused to the victim in exercise of the right of private defence of body as he had earlier been attacked by the victim and had been hit by a brick on his head and the victim wanted to hit him again therewith, when he took out a small knife from his pocket and caused knife injury to him (victim) to save him. He made reference in this behalf to the statement made by the accused under Section 313, Cr. P. C. and the statement of Dr. A. K. Pant DW-1 who had medically examined him in the hospital on 24-11-1979 at 4 p.m., finding 9 injuries on his person, including a bleeding lacerated wound on right side of head above right ear. Other injuries found on his person were in the shape of contusion and contused swelling.

11. Obviously, in the present case there is no controversy on the point that the deceased died of stab wound inflicted on his chest with sharp edged object, i.e. knife at or about the time and place alleged by the prosecution. The injury was on vital part (chest) and the accused appellant admits that he was the author of the said injury. but pleads the right of private defence, it is established position of law that an accused person, without calling defence evidence in support of the plea of self-defence can rely on evidence led by the prosecution and the material existing on record that he acted in self-defence. In the present case, the prosecution evidence is that before stabbing of the victim by the accused appellant, the two were grappling. However, the prosecution has not been able to prove as to how the incident started, The genesis of the incident is obscure for want of evidence

in this behalf. The evidence only bears out that the accused and the victim were embroiled in physical scuffle before the latter was stabbed by the former. The victim and the accused were co-workers of very young age, the deceased being of about 18 years and the accused appellant of about 17 years. It is also borne out from the injury report of the accused appellant, proved by Dr. A. K. Pant DW-1 that as many as the injuries including a bleeding lacerated wound on the head, as stated above, were found on his person. The evidence of the prosecution witnesses is that when the accused started running after assaulting the victim, he was arrested at a little distance on being chased by Lal Singh PW-3, Rakam Singh PW-4, Satpal PW-5 and others and at that time he was thrashed. Satpal PW-5 claimed that he and Bhupal Chaukidar hit him with Dandas/lathis. Others slapped, kicked and shoed him. In this way, the prosecution has tried to explain the injuries sustained by the accused appellant. The statement of Dr. A. K. Pant DW-1 is that injury No. 1 of the accused appellant (bleeding lacerated wound on head) could be caused by hitting with a brick.

12. Sections 99 and 100, I.P.C. read conjointly contain a bridle as to the extent of right of private defence. The right of private defence in no case extends in inflicting of more harm than it is necessary to inflict for the purpose of defence. Further, the right of private defence of body can extend to the voluntary of death if the offence which occasions the exercise of the right be an assault reasonably causing the apprehension that death or grievous hurt would otherwise be the consequence of such assault. In the present case, admittedly the victim and the accused appellant were fighting at the start of the incident and it may be stated at the risk of repetition that it is not known as to who out of the two was to be blamed for the quarrel. The accused appellant sustained as many as 9 injuries including a bleeding lacerated wound on the right side of his head above right ear. He was chased by a number of persons and was apprehended, The possibility is there that the bleeding lacerated wound on his head could be caused on being hit by brick by the victim at the start of the incident, though Satpal PW-5 owned to have caused the bleeding lacerated wound on the head of the accused appellant by Danda in the process of nabbing him, but he did not say so in his statement under Section 161, Cr. P. C. to the Investigating Officer Lajpat Rai PW-9: The possibility cannot be ruled out that in the quarrel the deceased had first hit the accused appellant on his head causing

bleeding lacerated wound whereafter he (accused appellant) stabbed him in his chest whipping out a knife from his pocket. Receiving such a bleeding lacerated wound on his head, the accused appellant lost his cool and caused stab wound on the chest of the victim. The fact, however, remains that the victim was unarmed. Under the circumstances, the accused appellant could be justified in causing injury to the victim short of death. Instead, he chose his vital part (chest) and gave a vicious knife jab to him, which resulted in his instant death. We, therefore, converge to the conclusion that it is a case covered by Exception 2 of Section 300, I.P.C. as the accused appellant exceeded the right of private defence in causing the death of the deceased. It is, therefore, culpable homicide not amounting to murder. The single forceful knife blow was given by him to the deceased on the vital part (chest) and he shall be imputed the intention of causing such bodily injury to him as was likely to cause his death on the premise that everybody is supposed to know the natural and probable consequences of his act. We are accordingly in judgment that the accused appellant committed an offence punishable under Section 304, Part 1, I.P.C. and a sentence of seven years' rigorous imprisonment would meet the ends of justice.

13. In the net conclusion, we partly allow this appeal and convert the conviction of the accused appellant from Section 302, I.P.C. to Section 304, Part I, I.P.C. His sentence of life imprisonment is also converted into that of seven years' rigorous imprisonment under Section 304, Part I, I.P.C.

14. The bail of accused appellant was cancelled during the pendency of the appeal and presently he is in Jail. He shall serve out the sentence of seven years rigorous imprisonment awarded to him.

15. The office shall send a copy of this judgment along with record to the Court below for needful compliance under intimation to this Court within two months.

16. Sri Ashok Nath Tripathi, Advocate, who argued out the appeal as amicus curiae shall get Rs. 1000/- as fee.