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Devisingh Bapusingh Vs. State

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Court : Madhya Pradesh

Decided On : Mar-09-1954

Reported in : 1955CriLJ471

Judge : Newaskar and; Samvatsar, JJ.

Appellant : Devisingh Bapusingh

Respondent : State

Judgement :

Samvatsar, J.

1. This is an appeal by the accused Devisingh Kalota who has been convicted Under Section 304, IPC for causing death of one Kanha Kalota and sentenced to suffer rigorous imprisonment for a period of 10 years by the Sessions Judge Dewas.

2. The prosecution case briefly stated is that the accused Devisingh and the deceased Kanha who were members of the same family were co-sharers in some mango trees which stood in a field belonging to the accused in the village Sumrakhedi. Both the accused and the deceased used to divide the fruit half and half. In May 1953 the accused began to assert his exclusive claim to the trees because they stood in the holdings recorded in his own name and sold the entire mango crop of that year to one Ram-chandra. On May 22, 1953 this said

Ramchandra accompanied by about 8 or 10 labourers went to the trees to collect the fruit. The accused was also. present there at that time. The deceased Kanha on hearing of this also went to the trees along with his brothers Daryav and Vijaysingh and nephew Kashiram. He also took with him certain other parsons to act as panchas.

On reaching the spot Kanha demanded his share of the mangoes or its equivalent in money. The panchas who had accompanied Kanha also tried to persuade the accused Devisingh to agree to share the fruit or the income of the trees but the accused remained adamant. The panchas apprehending further trouble and finding the parties were in no mood to listen to them but were bent on vindicating the rights by violence if necessary, left the place. An altercation soon followed wherein injury was caused to the deceased Kanha in his stomach by the accused with a spear and as a result of this wound, Kanha died on the same day in the hospital at Dewas at about 5 p.m.

3. First information report was lodged the same day by P.W. Ganpat at the Police Station Dewas. The accused had also sustained injuries and was in the hospital at Sonkach. He was arrested on 26-5-1953 and after the necessary investigation by the Police Sonkach, the present prosecution was launched against him and he was convicted and sentenced as stated above.

4. Mr. Shukla, the learned Counsel for the ap-nellant, did not seriously dispute that the accused had a spear with which he caused injury to Kanha and that it was that injury which was the cause of Kanha's death. The learned Counsel, however, urged that the act of the accused was done in exercise of the right of self-defence and did not constitute in law any offence in view of the provisions of Section 96, Penal Code. The right self-defence which the accused claims to have exercised is the right of the defence of the person and it is conceded by the learned Counsel that in this case there is no question of the defence of property.

5. The post-mortem examination revealed that the deceased had one incised penetrating wound 1 1/2' long and 1/2' broad and deep up to peritonial cavity. The interior examination disclosed that omentum and mesocolon were perforated and the lateral most part of anterior margin of lever was.cut for about 1 1/4'.

6. The accused Devisingh was examined by the Medical Officer at Sonkach on the same day at about 1 p.m. and there were five injuries found on his body which could be caused by hard and blunt substance like lathis. These injuries were as follows:

1. Contused wound right frontal vertical 1'x1/8'x1/8'.

2. Contusion on right shoulder 2'x1/2' oblique back side.

3. Contusion on left shoulder back side oblique 3'x1/2'.

4. Contusion on right hand back side fifth finger 1/2' x 1/2'.

7. It is not disputed that these injuries to the accused were caused by P.W. 2 Daryavsingh, P.W. 5 Kashiram and P.W. 9 Vijaysingh, but these witnesses have stated that they beat the accused after he had caused injury to the deceased Kanha with a spear and that this was done to save their own life. The trial Court has believed this version and found the accused to be the aggressor and therefore guilty Under Section 304, IPC (His Lordship then adverted to the evidence, briefly reviewed it and reached the conclusion as follows:)

8. From the evidence on record it is clear that:

1. The accused and the deceased belonged to the same family and that the eight annas share of the mango crop was claimed by Kanha, and his brothers.

2. The accused denied this claim believing that the trees belonged to the person who was the owner of the land in which they stood.

3. The accused apprehending that he would be beaten by Kanha's party on account of this claim had left Sumrakhedi and taken up residence at Bhavrasa.

4. The accused had. sold the mango crop of 1953 to Ramchandra and that he and his men had gone to pluck the fruit. These men carried no arms.

5. The accused Devisingh was present in the field when the labourers were plucking the mangoes on 22-5-1953. The deceased with his relatives and panchas

reached the spot to assert his claim, determined to use force if necessary.

6. The accused refused to yield and when the deceased threatened to use force, called the panchas to save his life but they had left having failed to persuade Kanha and others to leave the place.

7. The deceased Kanha, his two brothers and , Kashiram rushed towards the accused with a view to use violence. The accused ran back, took out the spear which was concealed under the sugar-cane crop and thrust it in the stomach of Kanha, who along witte others was pursuing him.

8. The accused was In fact attacked and hammered by Vijaysingh, Daryav and Kashiram. Several injuries were caused to him which took about a month to cure.

9. Considering all these facts I am of the opinion that the accused has acted in self-defence and is therefore not guilty of the oKence with which he is charged. The learned Sessions Judge has held that the accused exceeded the right of self-defence when he caused an injury which resulted in Kanha's death. This opinion is based on two factors which appear to have weighed; very much with the learned Judge. These are (1) Kanha had not attacked the accused with a lathi and others also beat him only after he had caused injury to Kanha with the spear and (2) there was enough time for the accused to approach the public authorities for redress and he need not have used his spear on the vital part of the body like the stomach of the deceased Kanha.

10. The right of private defence of the body extends under the restrictions mentioned in Section 99 to the voluntary causing of death or any other harm to the assailant if the offence which occasions the exercise of the right be an assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. Whether the apprehension was reasonable is always a question of fact to be determined by the surrounding circumstances. The test in such a case is not whether there was any actual danger but whether there was reasonable apprehension that such danger existed. At the same time it must be borne in mind that a man acting under apprehension of death or grievous hurt cannot be expected to judge too nicely the situation and modulate his defence

step by step. And where the assault has assumed a dangerous form every allowance must be made for one, who with instincts of self-preservation strong upon him, pursues his defence a little further than to a perfectly cool bystander would seem absolutely necessary.

11. It is clear from the prosecution evidence that the accused Devisingh had been apprehending trouble at the hands of Kanha and others, left the village Sumrakhedi and taken up residence in Bhavrasa On the date of occurrence the accused along with the purchaser and his men had gone unarmed to uluck the fruit. Even according to the prosecution witnesses it was Kanha and his men who took; an obstinate attitude and decided to enforce their right, then and there by using violence. When Kanha and others rushed towards him the accused shouted' for help and when he found that it was not forthcoming, he picked up the spear and struck the deceased Kanha with tt. According to P.W. 6-Kanha Bagri and P.W. 8 Pannalal Tell, the deceased had a stick in his hands and P.W. 6> Kanha Bagri goes to the length of saying that Kanha the deceased gave a lathi blow to the accused. The seriousness of the assault is not minimised or affected even if it is assumed that Kanha the deceased did not have any weapon In, his own hands. He was the leader of the assailants and had proclaimed his intention to take his share of the fruit by using force. He was admittedly followed by 3 or 4 persons who carried deadly weapons like sticks and pharsas. In my opinion the circumstances clearly indicate that the accused had apprehension of death or grievous hurt being caused to him by the assailants who were not less than four and if under these circumstances he picked up a spear and struck Kanha with it, it cannot be said that he exceeded the right of private defence.

12. The learned Sessions Judge has also found that the accused had time enough to approach the public authorities for redress and by his omission to avail of it, the accused has transgressed the limitations imposed by Section 99, Penal Code. The learned Sessions Judge has, however, not stated how the accused could have escaped being beaten once the assault was launched by Kanha and his men. There was at that stage no time to escape as the assailants were actually upon him. The accused had either to concede the claim or suffer the consequences, as the assailants were not prepared to wait any further.

13. The learned Government Advocate tried to support the conviction entirely on another ground. He referred to the statement of P.W. 6 Kanha Bagri wherein he has said that the accused said 'Idhar aao'. The learned Counsel stated that it was a challenge to Kanha and his party men by the accused. The learned Government Advocate further submitted that the assault was commenced by the accused and therefore no right of self-defence had accrued to him at all. The evidence on record does not appear to me to support this line of reasoning. I hold that the accused had not exceeded his right of self-defence and he is entitled to be acquitted.

14. The appeal is allowed, the conviction and sentence passed by the lower Court is quashed and the accused is acquitted of the charge.

Nevaskar, J.

15. I agree.

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