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Court : Madhya Pradesh

Decided On : Dec-05-1950

Reported in : 1951CriLJ1246

Judge : Sathayb, J.C.

Appellant : Kashi Ram

Respondent : The State

Judgement :

Sathayb, J.C.

1. The appellant Kashi Ram has been convicted of an offence under Section 304, Penal Code, & is sentenced to suffer rigorous imprisonment for a period of three years for having caused the death of one Gada Teli of the same village on 6-1-1950, by the Ses. J., Raisen, in criminal Trial No. 60 of 1949- 50.

2. The facts of the case are undisputed. Gada. Teli of mouza Silwani had two wives. He had left his first wife & married another, She too had left him & had gone to Saugor. Gada suspected Kashi Ram, the appellant to have helped her to leave the house & go to Saugor. Gada's first wife held a debt against Kashi Ram. She lived with her mother in the same village. On the 6th of January, this year Gada took Kashi Ram to her house & in her presence demanded the debt. Gada's wife, however, did not show keenness to recover it, but Gada insisted that he would recover it by force. Gada then threatened to recover the debt by force & picking up

a bamboo stick, lying in the court-yard, began to assault Kashi Ram. Kashi Ram ran away to Shankar Sunar's shop & tried to conceal himself, but Gada pursued him into the shop inspite of the protests of Shankar & dragged out Kashi Ram & again started beating him with the stick. Kashi Ram received ten or fifteen blows of the bamboo stick which he tried to ward off & in the end took out a knife (kharda) from under his shirt & stabbed Gada in the chest & ran away. Gada was injured & after walking down a few steps fell down & though his wife gave him water, expired in her presence. Gada's father on being informed came there, but found him dead. Kashi Ram, the appellant had disappeared from the village for about a week & was arrested when he returned on the 3th of January 1950. In the investigation, on the information given by Mohanlal, the father of Gada, the weapon was recovered at the instance of Kashi Ram.

3. Kashi Ram did not fight shy of these facts urged that when Gada began to assault him & even pursued him & again assaulted him he had, save himself from the danger of either death or grievous hurt, struck Gada a passing blow of his knife. He added that ho had no intention to all Gada.

4. Ex. P-l is the First Information Report given by Mohanlal, the father of the deceased Gada. It only corroborates his evidence that he found Gada dead near Punia Chamhar'a house when reached there & it was from Mt. Chhutia, the wife of the deceased that he came to know about the dispute. He also referred to the dispute between to the two over Gada's second wife, Bhimai's leaving 'him. Ex. P-2 is the inquest report which notes the presence of a wound ' on the right chest of Gada. There was no other mark or injury, The bamboo stick with which the deceased was assaulting the appellant has been seized from Rukhmani, mother in-law of deceased Gada. It was 41/2 spans (about 3 feet) in length & had five knots. This was seized under Ex. p-5. Ex, P-8 is the seizure-memo under which the kharda or the knife was seized on 15-1-1950 it the instance of Kashi Ram This has been dentified by Shankar Sunar in front of whose shop Kashi Ram, the appellant had struck a blow to Gada the deceased. This knife was reported to be blood-stained by the Pathologist, Ex. P-1S is the confession of Kashi Ram, recorded by a Third Class Magistrate, on 19-1-50 which, however, has to be excluded from consideration as the Magistrate was not empowered to record it.

The evidence of Shankar (p. w. 4) & Jamuna (P. W. 6) is also of the investigating officer makes the facts perfectly clear & are as stated in Para. 2 of the judgment. It appears that Kashi Ram's person or body, after he was arrested, was not got examined by a Doctor or a medical man & therefore there is no evidence on record to inchoate the presence & nature of injuries on his person. There is no doubt, however, that it was Kashi Ram who had given a stab of his knife on the chest of the deceased Gada on account of which the latter died after a few minutes.

5. The only point for determination is whether is the circumstances stated above, Kashi Ram, the appellant had a right of private defence of his person. The learned Ses. J. held that Kashi Ram had not committed a murder as he had the right of private defence of his person but exceeded the power given to him by law & caused the death of Gada & therefore, convicted the appellant of an offence under Section 304, Penal Code. It is always advisable to state the parts of Section 304 of which an accused is convicted. The learned Ses. J. has omitted to do so. In my opinion, there is no doubt that the appellant did not intend to cause the death of Gada, but could be presumed to have known that his act was likely to cause the death & the offence, in the absence of the right of private defence & excess on the part of the appellant, would fall within the purview of Part II of Section 304, Penal Code.

6. The point, therefore, is whether Kashi Ram had the right of private defence of his person & if so, if he had exceeded it. The evidence of Jamuna (P.W. 6), who has actually seen the whole occurrence, clearly proves that Gad a had, firstly no business to insist of the payment of the debt due from Kashi Ram to his wife, Chhutia whom he had deserted & who had been living separate from him. He had further no business or justification to try to recover it by force & much less to start assaulting the appellant. It is also in the evidence of Jarauna (P. W 6) that Gada struck at least fifteen blows of the bamboo stick having five knots on Kashi Ram. It is also in the evidence of Shankar Sunar (p. w. 4) that Kashi Ram' did not try to retaliate in front of the house of Mt. Chhutia, but ran away & concealed himself in Shankar's shop It is further in the evidence of this Shankar that Gada pursued Kashi Ram & was shouting that he would recover the debt & would even kill him if

he did not pay. It is further in the evidence of the witness that inspite of his protest, Gada drew out Kashi Ram from his concealment & struck a few blows on Kashi Ram with the bamboo stick. It was then in the presence of the above two witnesses that Kashi Ram struck a blow of his knife on the chest of the deceased Gada.

6a. It was urged on the side of the Govt, that the stick which was being used by the deceased was not a dangerous weapon as it was a small bamboo stick which could not have caused very severe injuries. This is also the finding of the learned Ses. J., on the basis of which, he found that as against such stick Ka3hi Ram should not have used a knife or a kharda as it is called. In. Bahadur Khan v. Emperor A.I.R. (20) 1938 Oudh 63 it is observed that

the extent to which the exercise of the right of self-defence is justified depends not on the actual danger but where there is even a reasonable apprehension of such , danger. If a man is entitled to protect his own life by using a lathi, it is impossible to weigh the force of the blows which he uses for that purpose in golden scales & to adjudicate with great nicety as to the exact amount of force which would be justified.

In this case it must be remembered that Kashi Ram struck only one blow of knife as a last resort to save himself. He had nothing in his hand by way of stick or anything of the kind, but had a kharda & in a moment of danger or at least apprehension of a grevious hurt, which could be reasonably entertained because of the number of blows & the persistence with which they were dealt, he used the knife. In Imamuddin v. Emperor A.I.R. (12) 1825 Lah. 514, it is held that

in the heat of the moment, & while defending, oneself from a man armed with a stick it is practically irnpossible to calculate with accuracy the exact force which one is entitled to employ in self defence.

In Surain Singh v. Emperor, 29 Cr. L.J. 755, it is held that

where lathi blows are being showered upon a person he is justified in striking his adversary with, a spear & he cannot be said to have exceeded the right of private

defence simply because he inflicted several injuries which resulted in the death of the adversary.

The case on hand is easily of much less gravity as the deceased was given only one blow of the kharda (an agricultural implement), by the appellant.

7. The whole principle of 'the right of private defence' has been lucidly laid down in Sita Ram v. Emperor A.I.R. (12) 1925 Nag. 260, it is observed that

man who is assaulted is not bound to modulate the defence step by step according to the attack before there is reason to believe that the attack is over. He is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat, but may pursue his adversary till he finds himself out of danger if in any conflict between them he happens to kill, such is killing is justifiable. And of course, where the assault assumed a dangerous form every allowance should be made for one who with the instinct of self preservation strong upon him pursues his defence a little further than to a perfectly cool bystander would seem absolutely necessary. The question in such cases will be not whether there was a actually continuing danger, but whether there was any reasonable apprehension of such danger, It must, however, be remembered that every attempt or threat to commit the offence would not, much less an idle threat would, entitle a man to take up arms. He must pause & reflect whether the threat is intended to be put into execution immediately because there are many threats which people use as a form of abuse, but which are never intended to be taken seriously, & still others of which the persons saying them, have not the capacity to put into immediate execution for it is only against a danger present & imminent that the right of private defence avails. Under proper circumstances exaggeration of the danger that the accused was facing will not be unreasonable & law will always make just allowance for the sentiment of a person placed in situation of peril, who has no time to think. His blood is then hot & his sole object is to strike a decisive blow so as to ward off the danger.

At page 263 of the volume, it is pointed out that 'the threat uttered in that case constituted an offence of an attempt to commit extortion either by intentionally putting Bhagwan accused in fear of injury, or by attempting to put him in fear of an

injury in order to the committing of an extortion.'

8. In the case on hand, applying the test as laid down above, it would appear that Kashi Ram had seen that firstly the deceased had taken up the most unreasonable attitude & had also rankling in his mind due to his suspicion against the appellant in respect of his second wife. Not only this, but that Gada had actually picked up a stick & had started & persisted in assaulting him with it. Kashi Ram had done his best to save himself from Gada but the latter pursued him & still persisted .... in beating him. As pointed out above, Kashi Ram had received easily about ten or fifteen blows of the stick & yet his assailant continued the beating inspite of the protest of the bystanders. Shankar's (P. W.4) evidence indicates that when he tried to intervene, Gada had threatened him also with death, Gada was shouting that he would even kill Kashi Ram for extorting money due to his wife. In my opinion, there is no doubt that Kashi Ram had a very reasonable apprehension of at least a grievous hurt being caused to him, if not his death &, therefore, his act of giving a blow of knife to Gada to save himself was justified, It cannot be said that Kashi Ram had exceeded his right of private defence of his person &, therefore, he cannot be said to have committed any offence.

9. The appeal is, therefore, allowed & the conviction & sentence against Kashi Ram are set aside & he is acquitted. He shall be set forth at liberty at once.

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