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Court : Madhya Pradesh

Decided On : Jul-01-1952

Reported in : 1952CriLJ1366

Judge : Radke, A.C.J.

Appellant : Ghasi Ram

Respondent : State

Judgement :

Radke, A.C.J.

1. This is convict's appeal from Jail.

2. The prosecution case is that one Gaffar had taken a contract of a coupe in the forest of Sarao and that the deceased AH Ahmed was looking after the coupe on his behalf. The accused was employed to prepare charcoal. On 14.12.1950 Ali Ahmed went to the coupe and found that one of the stacks of wood was not fit to be lighted for preparing charcoal. He told the accused about it who stated that there was nothing wrong with the stack of wood. This led to the exchange of hot words between them. The deceased abused him and finally assaulted him with a stick. The accused, who had an axe with him, hit the deceased with it on his head and other places as a result of which he fell down dead. The accused then took to his heels.

3. Information about this was given by the witnesses to Yusuf another Hawaldar of Gaffar who went to Raisen Station House and lodged a report (Ex. P-1) which was reduced to writing by Ali Hussain Sub Inspector (P.W. 1). He proceeded to the spot immediately and visited the scene of occurrence where the dead body of Ali Ahmed was lying uncared for and partially damaged by vultures. Inquest was held on the dead body by the Sub-Inspector and Ex. P-2 is the inquest report. The dead body was then despatched to Bhopal through Ajimuddin constable (P.W. 7) for postmortem examination. Dr. Bose (P.W. 10) performed the post-mortem examination and sent his report which is missing from the record. The doctor found four injuries on the dead body at the region of head and neck which were, in his opinion, caused by a sharp-edged weapon like an axe. Any one of those injuries was, according to medical opinion, sufficient to cause death.

3a. The accused had absconded and a search for him was made. He was caught by villagers who took him to Salamatpur Station House where he was arrested on 19.12.50. He was then sent to Raisen Station House.

4. On 23.12.50 the accused was produced, from Police custody, before a Magistrate who recorded his confession (Ex. P-11) which is on record.

5. The accused, in his statement before the Committal Court, denied all facts and this statement was admitted in the trial Court though it was not exhibited by the Sessions Judge. In his trial, the accused admitted most of the facts and added that the boys and females who were near the scene of occurrence snatched away the stick from the deceased after he had hit him with it and that thereafter he took out a pen-knife from his pocket and assaulted the accused with it. The first blow was parried with the axe. He again raised the knife to strike him but before he could do so, the accused hit him on the head with his axe two or three times in consequence of which he fell down. This he did in the exercise of the right of private defence.

6. The trial Court disbelieved the story of the assault by the knife for want of evidence and held that the accused had the right of private defence and that in the exercise of that right he struck the deceased with an axe as he apprehended that grievous hurt would otherwise be caused to him. The Sessions Judge further held

that the accused exceeded the right as he gave four blows to the deceased. He applied Exception (2) to Section 300, Penal Code, and found that the accused had committed an offence punishable under Section 304, Penal Code (whether it was Part I or Part II is not stated). He was accordingly convicted under this section, and sentenced to seven years' rigorous imprisonment.

7. The first question to be decided is whether the accused struck Ali Ahmed with an axe and killed him. After discussing evidence His Lordship concluded.

8. The evidence of the eye-witnesses coupled with the medical evidence and the examination of the accused unmistakably show that the accused hit the deceased with his axe and extinguished his life. But the prosecution relied on the confession of the accused (Ex. P-11) recorded under Section 164, Criminal Procedure Code, by a First Class Magistrate. That confession was not duly recorded as I shall show later. I would like to comment on the testimony of the three eye-witnesses so far as the procedure is concerned, but I do not hold that any prejudice is caused to the accused by the irregularity committed by the Sessions Judge. Since the matter involves important rule of procedure, I would advert to it in order to guide the subordinate Courts.

9. Umraosingh (P.W. 5) and Dhansingh (P.W. 6) are 14 and 13 years old respectively in the estimate of the Sessions Judge. They might be even younger or older actually. When young children are produced in law Courts as witnesses, it is the duty of the Presiding Officers to ascertain whether they are competent witnesses before they are examined and this can be done by putting a few questions to them in order to find out whether they are intelligent enough to understand what they had seen and afterwards inform the Court thereof. In the case of village boys, it is all the more necessary on account of their low intelligence and power of perception. Under Section 5 of the Oaths Act, oath shall be administered only to those witnesses who may be lawfully examined which means that who can understand the sanctity of oath. A witness may be a competent witness, and yet he may not be in a position to understand the sanctity of an oath. In such a case, Section 13 of the Act comes into play. A witness of this type can be examined without an oath and his testimony is as good as that of a

witness to whom oath has been administered.

10. In para 8 of his Judgment, the Sessions Judge stated that the boy witnesses are 'intelligent enough to understand the situation.' This shows that he was aware of the fact that only those boys can be examined as witnesses who have attained sufficient maturity of understanding to speak what they had actually seen without being tutored. But his record 'does not show that he had taken precautions which he was bound to take before examining such witnesses. In the present case, no prejudice is caused to the defence by this irregularity of procedure for three reasons viz., (1) because the version of the boy-witnesses is corroborated by Punaji who speaks about their presence at the scene of occurrence, (2) because the accused admits their presence at the time of the assault and (3) because the Sessions Judge says that they are intelligent enough which means that they are competent witnesses.

11. Punaji (P.W. 3) was examined in the committal Court and he was also examined in the Sessions Court. In the committal Court he stated that he was present at the time of the occurrence and that the accused had struck the victim two or three times with his axe. In the trial Court he resiled from his former statement and said that he did not know anything concerning the crime. When he was confronted with his former statement, he admitted having made it, but added a rider that he did so in terror of the Police. He did not say that the Police brought any influence to bear on him to make a statement to the Court. The Sessions Judge appears to have acted on the statement of the witness given in the committal Court and not on the statement as given before him. But he failed to follow the correct procedure enjoined by Section 288, Criminal Procedure Code. It is, therefore necessary to point out to him how he should have proceeded in the matter.

12. Section 288, Criminal Procedure Code, gives discretion to a Sessions Judge to admit in evidence, the deposition of a witness examined in the committal Court in the presence of the accused, provided he has also been examined in the trial Court. Such evidence, when transferred under this section to the record of the Sessions Court, becomes substantive evidence for all purposes. It means that the

evidence recorded at the trial is replaced by the evidence recorded in the committal Court. Great responsibility lies, therefore, on the Sessions Judges in resorting to the discretion given to them under Section 288, Criminal Procedure Code.

It should be borne in mind that the discretion once exercised is final and that it is not ordinarily open to higher Courts to interfere with it. The exercise of this discretion in a particular case is not governed by rules of evidence or procedure but is guided by experience, by observation of the demeanor of the witness and by other considerations not regulated by Acts of the Legislature. It is a matter of prudence and not of law. When the statement of a witness given in the committing Magistrate's Court appears to be, in all probability true and that given at the trial appears, to reason & experience, to be in all probability untrue, I do not think it is, imprudent on the part of the Sessions Judge to rely on the statement made in the committing Magistrate's Court. But the Sessions Judge, who wields such high powers under the Criminal Procedure Code, should make a record of the fact that he admitted the former statement of the witness in preference to the latter and should give cogent reasons for doing so, in order to enable the superior Courts to scrutinise that the discretion was wisely exercised.

The mere fact, that the witness resiles from > his former statement, is no ground to admit his statement in preference to the statements in the Sessions Court, There are several other considerations to be taken into account while exercising this discretion. In the present case, the record is silent whether the discretion, under Section 288, Criminal Procedure Code, was exercised, much less why it was exercised. The Sessions Judge referred to the former statement which shows that it was admitted in evidence before him, but the deposition-sheet is still to be found in the Magistrate's record and was not transferred to the record of the Sessions Court. This is clearly wrong. The deposition should have been placed on the record of the Sessions Court after having removed it from the record of the committal Court and exhibited in the case like other documents and a note to that effect should have been made in the order-sheet. Ordinarily, the prosecution should have applied for the exercise of the discretion by the Sessions Judge, under Section 288, Criminal Procedure Code, but that does not seem to have

been done in the present case.

13. I have read the deposition of Punaji (P.W. 3) given in the committal Court as well as that given at the trial, and I am satisfied that the former statement is true and that the latter is not. His presence at the scene of the occurrence cannot be doubted, but he wants to save his son-in-law by saying that he knows nothing about the occurrence. I am satisfied that the Sessions Judge was perfectly justified in relying on the former statement of Punaji.

14. Every Sessions Judge is expected to be thoroughly conversant with the rules of procedure laid down in the Criminal Procedure Code as well as the rules of evidence as laid down in the Evidence Act as he has to try original criminal cases involving grave consequences. Any departure from the correct procedure, laid down by law, if it prejudices the accused, is fatal and vitiates the trial resulting in the failure of justice.

15. The accused was arrested on 19.12.50 and he remained in Police custody when he was produced before the Magistrate on 23.12.50 for recording his confession. The Magistrate put a few questions to the accused and then proceeded to record his confession. The Magistrate's record does not show that he was satisfied that the accused wanted to make a confession voluntarily before his statement was actually recorded. After the statement was recorded, a memorandum as is required by Section 364, read with Section 164, Criminal Procedure Code, was added at the foot of the record.

16. In my opinion, the Magistrate did not substantially conform to the spirit of law in recording the confession. His procedure is faulty in many ways. It is likely that other Magistrates in the State, who may be required to record confessions, hereafter may commit the same irregularities and so it is desirable to give detailed instructions to them in this branch of delicate judicial duty in order that the irregularities may not occur.

17. The first and the foremost duty of the Magistrate is to ask the accused as to the custody from which he is produced and the treatment he has been receiving in such custody in order to ensure that there is no scope for doubt of any sort of

extraneous influence proceeding from a source interested in the prosecution still lurking in the accused's mind. In case, the Magistrate discovers on such inquiry that there is a ground for such supposition, he should give the accused sufficient time for reflection before he is asked to make a statement and should assure himself that during this time of reflection he is completely out of police influence. If the accused is produced from Police custody, the Magistrate should refuse to record his confession forthwith and should send him to jail custody with instructions to the Jail authorities to keep him aloof from other undergrads and not to permit anyone interested in the prosecution to have any conference with him.

Before sending the accused to such custody he should be assured of every sort of protection against torture or pressure from outside agents or the Police and he should be asked the reason why he is going to make a confession which will surely go against him at his trial. He should further be told that even if he were to resile from his confession at the trial, it will still be used against him. After all this is done, he should be allowed time for reflection for a few days. During all this time, no Police officer, taking part in the investigation, should be permitted to be present. These safeguards become necessary to assure the Magistrate that the accused is a free agent to make a confession and that his willingness to confess is not the result of any deception practised on him.

18. After the accused re-appears, the Magistrate should put him a few questions in order to ensure that during his stay in Jail none had access to him and that he was not influenced by anyone to make a confession. He should again be warned against a danger of making a confession. After all these warnings, and taking of precautions, if the accused still persists in making a confession, and if the Magistrate is satisfied about its voluntary nature, he should proceed to record the confession taking care to see that no Police officer is present at the time. A record of the steps taken by the Magistrate, to satisfy his conscience, about the voluntary nature of the confession, should be prepared in order that the trial Court and this Court may be assured that the Magistrate performed his duty in essence and not in form.

19. The confession so recorded should be read over to the accused and his signature obtained thereon. After the confession is recorded, the Magistrate is in a better position to make out whether it was made voluntary. If he is so satisfied, he should put a memorandum at the foot of the statement as required by Section 364, read with Section 164, Criminal Procedure Code. Such a confession is faultless and is admissible in evidence. After the recording of the confession, the accused should be sent to the Jail custody and never to the Police custody.

20. In the present case, all these precautions have not been taken. The initial mistake the Magistrate has committed is that even though he learnt that the accused was produced from Police custody, he did not give him time to reflect after giving him a warning against the effect of making a confession. His record does not show whether any Police officer, connected with the investigation, was present. He did not probe into the accused's mind in order to elicit from him the real reason of making a confession. Before recording the confession ha did not make a note that he was satisfied that the accused wanted to make a confession voluntarily. Lastly, he sent the accused to Police custody after the confession was recorded.

21. These irregularities are fatal to the admissibility of the confession at the trial. It is surprising that even though the Sessions Judge asked the accused whether he had made a confession voluntarily, he did not ask him whether it was true. In the committal proceedings, he resiled from his confession and1 in the trial Court he admitted the truth of a part of it only. All these are enough to conclude that the confession is neither voluntary nor true and that some of the facts were drilled into the accused by interested persons in order to procure a conviction. I decline to admit it in evidence for that reason.

22. The second point for determination is whether the accused acted in the exercise of his right of private defence and whether his act fell under the general exception laid down under Section 100, Penal Code, or whether his act was homicidal and fell under Secondly or Thirdly of Section 300, Penal Code, and the special exception (2) applies as found by the Sessions Judge.

23. The accused stated that there was a verbal quarrel between him and the deceased over the question of the stack of wood for preparing charcoal. The accused insisted on igniting the stack but the deceased objected to it. The deceased was annoyed and assaulted the accused with a stick. The witnesses, who were present, snatched the stick from him. Thereafter, the deceased took out a knife from his pocket and assaulted him with it. But he averted the blow with his axe. No evidence was led by the accused to prove his allegations regarding the snatching of the stick from he deceased and his assault on the accused with a knife. The eye-witnesses do not refer to this part of the story. Thus the story, of the knife must be rejected and the trial Court was justified in doing so.

24. Then the question arises whether the first part of the story that the deceased had given him stick blows and that the stick was snatched by the witnesses, is correct. Umrao stated that the deceased gave two blows to the accused but he does not refer to the snatching of the stick from him. He is corroborated by Dhansingh (P.W. 6). Punaji stated that the deceased gave stick blows to the accused. He too does not refer to the snatching of the stick from him, by the witnesses. Thus, there is no evidence to suggest that the stick was snatched from the accused by any one present. This part of the statement of the accused, therefore, appears to be untrue.

25. The accused admits that he gave axe blows to the deceased as he assaulted him with a knife, but the conclusion of the trial Court was that it was given when he was being beaten with a stick. This finding, which is in favour of the accused, to a certain extent cannot be disturbed in appeal. The trial Court further held that the accused had the apprehension that grievous hurt would be the result of the attack upon him with a stick by the deceased and that therefore he had a right of private defence presumably, under Section 100, Penal Code. This is also a finding in favour of the accused and cannot be disturbed.

26. The trial Court rightly stated the law of the private defence in para 12 of the judgment in the following terms:

Necessary harm that could be apprehended does not mean that it should be carefully calculated or gauged or weighed in golden scales. One who was under

an assault could not be expected to modulate his defence at every stroke.

27. The trial Court held that as four blows were given by the accused, he had exceeded his right of private defence. There is no indication in the judgment to show that the accused would have been within his right if he had struck only one blow. The matter will be re-examined later.

28. Section 96, Penal Code, lays down that nothing is an offence which is done in the exercise of the right of private defence. Section 97, Penal Code, gives a right to every person to defend his body and the body of another person against any offence affecting human body. Section 100, Penal Code, gives a right of private defence of body to the voluntary causing of death or any other harm to the assailant if the assault reasonably causes the apprehension of death or grievous hurt. But if the accused exceeds his right and kills his assailant though he could have caused lesser injury, the general exception may not apply. In that event, the case is likely to fall under exception 2 to Section 300, Penal Code.

29. The question, therefore, arises whether the act of killing will fall under the general exception as laid down under Section 100, Penal Code, or whether it will fall under the special exception 2 to Section 300, Penal Code. The question is delicate one, and it is desirable to look to the law of private defence somewhat minutely before applying it to the facts of this case.

30. Before embarking on this task, it is desirable to examine Sections 299, 300 and 304, Penal Code, closely as it will be necessary to determine the nature of the offence, exceptions apart, if the accused is held guilty. The discussion will also be a good guide to the Sessions Judges and help them to understand the law of culpable homicide and murder.

31. Killing may be murder although it is not premeditated. Generally speaking the proposition 'Murder' is killing with the intention of killing or inflicting a fatal injury will cover Clauses (1), (2) & (3) of Section 300, Penal Code. Cases under Clause (4) of Section 300, I.P.C. are very rare and a perusal of illustration (d) to Section 300, I.P.C. will amply bear me out. What the Sessions Judge should do, therefore is to look to Section 300, Penal Code. If the act falls under any one of the four clauses,

it is murder, provided of course that no exception applies. Clause (3) to Section 300, I.P.C. refers to a bodily injury sufficient to cause death and Section 299, I.P.C. refers to the bodily injury likely to cause death. The distinction between the two is one of degree. 'Likely to cause death' connotes that there is less probability of death but 'Sufficient to cause death' means that the probability of death is greater.

If, on referring to Section 300, I.P.C. the Judge is of opinion that the killing does not come within any one of the four clauses, he should then refer to Section 299, I.P.C., and if the act of killing comes within the second part of Section 299, I.P.C., it falls under Section 304, part I of the I.P.C. But if there is absence of intention, and knowledge only is established, it comes under Part II of that section. Cases under exceptions to Section 300, I.P.C., will fall under part I to Section 304, Penal Code. In murder cases, the burden of proving that the accused had the requisite intent is on the prosecution. In majority of cases this intention is proved by the act itself in relation to the surrounding circumstances. If an offence falls under part II of Section 299, I.P.C. it will be murder, if Clauses 2 or 3 of Section 300, I.P.C. applies, and the first part of Section 304, I.P.C. is applicable only when the offence would have been murder if one of the exceptions does not apply.

32. The Sessions Judge has ruled out that the act was done with the intention of killing. Part I of Section 299 and Firstly to Section 300, I.P.C. do not apply for that reason. His finding is that the case falls under part II of Section 299, I.P.C. and also under thirdly to Section 300, Indian Penal Code. There is intention to cause bodily injury and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death.

33. A man's intention can only be gathered from his acts as every man is presumed to intend the natural consequences of his act. In deciding the question of intention, therefore, the nature of the weapon used, the part of the body on which the blow is given, the force of the blow and its number are some of the factors which assume importance. Death from a blow or blows on the head with a heavy sharp edged Weapon is probably as a rule associated by the villagers with the breaking of the skull but the ignorance of the actual cause which will bring

about the victim's death as a result of the blow or blows cannot affect the question of striker's intention. In the present case, a heavy sharp-edged weapon like an axe was used and four blows were given as would appear from the medical evidence.

There are multiple fractures of the skull which proves the force of the blow. The evidence of the eye-witnesses is that the victim fell down on getting the first blow and yet the accused struck him three more blows with the same weapon. The medical evidence is that every injury caused to the victim was sufficient to cause death. The fact, that the accused went on striking, shows unmistakably that he intended to cause bodily injury and that the bodily injury intended to be caused was sufficient to end fatally. The offence thus clearly falls under Thirdly to Section 300, Penal Code, and it is murder unless the general or the special exception applies.

34. The question, therefore, arises under what circumstances the accused will be said to have exceeded the statutory right of private defence. The exercise of the right of private defence is derived from English law. Self-help was the first rule of criminal law. 'The right of private defence', wrote Bellham,

'is absolutely necessary.' The vigilance of the Magistrate can never make up for the vigilance of each individual on his own behalf.

35. The rule has been laid down in Russel on Crimes, 9th Edition, in the following terms:

A man is justified in repelling force by force in defence of his person, habitation or property, against one who manifestly intends and endeavors, by violence or surprise, to commit a felony upon either. In these cases, he is not obliged to retreat, but may pursue I his adversary till he finds himself out of danger; and if, in a conflict between them, he happens to kill, such killing is justifiable. (Page 512).

When a man is assaulted in the course of a sudden brawl or quarrel, he may, in some cases, protect himself by killing the person who assaulted him, and excuse himself on the ground of self-defence. But, in order to entitle himself on this plea, he must first show that before a mortal stroke was given he had declined further

combat; secondly, that he then killed his adversary through mere necessity, in order to avoid immediate death. (Page 505).

In all cases of homicide excusable by self-defence, it must be taken that the attack was made upon a sudden occasion, and not premeditated or with malice, and from the doctrine which has been above laid down it appears that the law requires that the person who kills another in his defence should have retreated as far as he conveniently or safely could, to avoid the violence of the assault, so far he turned on his assailant; and that not factitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood.' (Page 506).

36. The matter is encrusted with a series of judicial decisions and I may instance a few in order to show that the law in India is almost the same as in England. Alingal Kunhinayan v. Emperor 28 Mad 454 is often cited as an authority in India on the subject of the law of private defence. I cannot do better than to quote from that decision.

But a man who is assaulted is not bound to modulate his defence step by step according to the attack, before there is reason to believe 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; and if in a conflict, between them, he happens to kill, such killing is justifiable, and, of course where the assault has once 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 an actually continuing danger, but whether there was a reasonable apprehension of such danger.

37. In Chhatar v. Emperor AIR 1929 All 897, it was pointed out by Young J. that where a man has been attacked by another man who uses a weapon such as a lathi, it is impossible to lay down with any sort of accuracy the extent to which the attacked person rightfully acts in his defence. In such a case if the accused hits the victim rather harder than perhaps he intended to have done and thus kills him, he cannot be said to have exceeded his right of private defence and should not be

convicted.

38. The following remarks of Aga Haidar J. in Ahmed Din v. Emperor AIR 1927 Lah 194 also throw light on the subject of private defence:

That in the excitement & confusion of the moment it is not to be expected that an average man would weigh the means that he intends to adopt at the spur of the moment for self-defence in golden scales, though the counter attack should not be out of all proportion to the force employed in the original attack.

The same view was adopted in a later Lahore case. I may instance Dinanath v. Emperor AIR 1948 Lah 117.

39. In Ramadhin v. Emperor AIR 1933 Oudh 59, it was held that if a strong and powerful adversary attacks an accused with a lathi and if he causes the death of his adversary, he cannot be said to have exceeded his right of private defence.

40. In Mohammad Habib v. Emperor AIR 1940 Pat 595, the facts were similar to this case. In that case the deceased hit the accused with a stick and the accused hit back and caused injuries to the assailant which resulted in his death. It was held that he had not exceeded his right of private defence.

41. In Inzar Gulkhan v. Emperor ILR (1936) Nag 194, the same principle of law was enunciated and applied. In addition the remarks of Markby J., in Queen v. Moizuddin 11 WR (Cr) 41 at p. 42 which are as follows, were approved:

If the prisoner was justified in using it (lathi) at all surely he is not to be expected on such occasion to measure out with any graver nicety the force of his blow.

42. All these authorities lay down the rule that even if the accused were to cause more harm than is absolutely necessary in repelling the attack, it cannot be said that he exceeded the right given to him by law.

43. The accused was a labourer under the contractor and the deceased was his Hawaldar. He used to watch the work of the labourers and had authority to do so from his master. He thus occupied an important position and it is why, as the accused says, he abused him and when he went to the length of striking him with

a stick, looking to the fact that the deceased had an authority and that in exercise of that authority he assaulted the accused it was but natural that he should apprehend danger to his life. When he found that the victim was beating him mercilessly and it was not possible for him to prevent the assault by any other means, he struck him with his axe on the head and to this extent, the learned Judge agrees that the accused was within his right. The medical evidence shows that the first injury was on the left frontal parietal area and that on opening the wound it was found that there was fracture of frontal and left parietal bone. A portion of the brain matter was also found protruding out of this wound.

This injury was sufficient to cause death. The accused was justified in causing this injury on account of a sudden attack on him by a man in authority. The apprehension that the victim would get up and again assault him was all the more prominent because of the counter attack by him in retaliation of the attack by the deceased. Even after the first blow he apprehended danger and this time may be even to his life and therefore he went on striking him in confusion. In fact, according to the medical opinion, the other blows, even if they were sufficiently serious, did not in any way affect the effect of the first blow on receiving which the deceased would have died instantaneously. The three blows, therefore, have not much to do with the result that followed. They only show that the apprehension continued.

44. Even if the blow was given somewhat harder, it does not follow that the accused had exceeded his right of private defence when it is once held that he had the right of private defence and in a proper case to either disable the assailant or kill him.

45. Applying the law enunciated above, I come to the conclusion that the learned Judge of the trial Court was not justified in holding that the ease falls under the 2nd exception to Section 300, Indian Penal Code. Disagreeing with him I hold that it falls under Section 100, Indian Penal Code which gave him the right to take the life of his assailant under certain circumstances which, in my opinion, exist in the present case. It is unfortunate that the life of a man should be extinguished on petty affairs but the victim himself is responsible for the consequences as he took

the law in his own hands and assaulted a villager without any justifying cause. The case, therefore, comes under the exception and no offence is committed.

46. In the result the appeal is accepted, the conviction and sentence of the accused are set aside and he is acquitted and set at liberty.

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