

Teju Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-14-1987

Reported in : 1987CriLJ1674

Judge : P.D. Mulye and ;B.B.L. Shrivastava, JJ.

Appellant : Teju

Respondent : State of M.P.

Judgement :

P.D. Mulye, J.

1. In S.T. No. 74 of 1983, decided on 21-12-83, by the third Addl. Sessions Judge, Indore, the appellant has been convicted for an offence under Section 302, IPC for committing the murder of Shivnarayan and sentenced thereunder to suffer R.I. for life and a fine of Rs. 500/-, in default further R.I. for two years and also convicted him for an offence under Section 307, IPC for voluntarily causing grievous hurt to P.W. 3 Antar Singh and sentenced him thereunder to suffer R.I. for five years and a fine of Rs. 250/-, in default further R.I. for one year, all the sentences to run concurrently, though the co-accused Smt. Umrao Bai, wife of the appellant has been acquitted.

2. The facts giving rise to this appeal may be stated, in brief, thus P.W, 3 Antar Singh is the cousin of deceased Shivnarayan. The appellant as also deceased

Shivnarayan and P.W. 3 Antar Singh all live in village Badarkhan, police station Hatod in the same vicinity. On 27-10-1982, which was the Dussera day, P.W. 3 Antar Singh was sleeping on his oatla at about 6.30 p.m. when wife of appellant i.e. Umrao Bai came there and started hurling abuses and thereafter left the place. Thereupon Antar Singh and his wife followed her. Wife of Antar Singh asked the appellant as to why his wife was hurling abuses, whereupon appellant Tejkaran, who was armed with a sword, inflicted blows upon his ear, cheek and hand. Antar Singh fell down on receiving the blows. His cries attracted the attention of Shivnarayan who rushed at him, but in the meanwhile the appellant Tejkaran gave a sword blow on the neck of Shivnarayan and the appellant's wife also gave a sword blow on the hand of Shivnarayan. Shivnarayan died on the way while he was being taken to the hospital. The FIR Ex.P-1 was lodged by P.W. 1 Daryao Singh, an eye-witness, at police station Hatod the same night at about 8.30 p.m., the distance being 7 kms. in which while narrating the incident the appellant has been named as the culprit.

3. P.W. 8 Dr. Hemant Chopra, RSO, M. Y. Hospital, Indore examined P.W. 3 Antar Singh the same night and was operated upon for the injuries sustained by him. In his , opinion the injuries sustained by Antar Singh were grievous in nature and would have resulted in his death if proper treatment was not given within time.

4. P.W. 10 Dr. K. K. Vijayavargiya, CMO, M.Y. Hospital, Indore first examined Antar Singh the same night at 10.10 p.m. and found injuries as per his report Ex.P-18, which could be caused by a weapon like sword and were dangerous to life which could have resulted in the death of Antar Singh.

5. P.W. 1 Dr. S. K. Khare, conducted the autopsy on the dead body of Shivnarayan as per his report Ex.P. 19. In his opinion death was homicidal, injuries were ante mortem, could be caused by a weapon like sword and were sufficient in the ordinary course of nature to cause death.

6. The said doctor Dr. Khare, also examined Siddhu, who is the maternal uncle of the appellant the same night at 9.05 p.m. and also found an incised wound on the head with a fracture. He also examined appellant Tejkaran on 29-10-82 at 10-15 a.m. and also found one incised wound on his left thumb, one abrasion and one

bruise. In his opinion the injuries sustained by Siddhu could be caused by a sharp edged weapon which was dangerous, to life and the injuries sustained by the appellant was of a simple nature.

7. P.W. 12 Dr. M. Shah, the Radiologist at M.Y. Hospital, Indore had taken the X-ray of Antar Singh and found fracture of frontal bone. He had also taken the X-ray of Siddhu and found dislocation of shoulder joint. This Siddhu has not been examined by the prosecution.

8. On these facts, after due investigation and arrest of appellant and his wife they were prosecuted, which resulted in the conviction of the appellant and acquittal of his wife.

9. P.W. 9 Jitendra Dwivedi is the Investigating Officer.

10. The defence of the appellant at the trial was of self-defence which has been negated by the trial court.

11. The learned Counsel for the appellant did not challenge the medical evidence as also the finding of the learned Sessions Judge on that point. It is, therefore, not necessary to reconsider the same, though the learned Counsel for the appellant submitted that the prosecution has failed to explain the injuries sustained by Siddhu as also the appellant.

12. The eye-witnesses to the incident are P.W. 1 Daryaosingh, P.W. 2 Mehtab, P.W. 3 Antar Singh and P.W. 4 Maniram whose maternal uncle was deceased Shivnarayan.

13. The learned Counsel for the appellant after taking us through the evidence of these eye-witnesses, submitted that all the eyewitnesses are close relations, P.W. 1 Daryao Singh being the elder brother of deceased Shivnarayan. He, therefore, submitted that the eye-witnesses being close relations are interested witnesses. He further submitted that the prosecution has failed to explain the injuries sustained by Siddhu as also the appellant which arose out of the same incident. The learned Counsel further submitted that it was the deceased who came to the house of the appellant in a drunken condition and it is the deceased who caused

injury to his maternal uncle Siddhu and in the right of self-defence he inflicted injuries on Shivnarayan as also Antar Singh. Therefore, according to the learned Counsel he was justified in killing Shivnarayan by giving a severe blow on his neck. The learned Counsel further submitted that the prosecution witnesses have changed the place of incident which according to the appellant took place in front of his house, which clearly indicates that the appellant was not the aggressor. He further submitted that even though P.W. 2 Mehtab had received injuries in the incident he has denied the same. He, therefore, submitted that the prosecution evidence being not reliable and interested one, the learned Sessions Judge has committed an illegality in convicting the appellant.

14. The learned Counsel further submitted that in fact the counter-case was launched against Antar Singh for the injuries sustained by the appellant as also Siddhu, which arose out of the same incident and consequently the finding of the learned Sessions Judge is not based on proper consideration and appreciation of evidence and material on record.

15. On the other hand the learned Counsel appearing for the State submitted that firstly the burden lay upon the appellant to prove that he had a right of self-defence. He further submitted that there is no evidence to substantiate the plea of right of self-defence that the deceased Shivnarayan and P.W. 3 Antar Singh were armed with any weapon at the time of the incident. He further submitted that the appellant has failed to examine Siddhu, who according to the appellant had received serious injuries in the said incident. He, therefore, submitted that the appellant having not examined this material witness Siddhu, the plea of right of self-defence has not at all been established by the appellant.

16. After hearing the learned Counsel and after going through the record as also the judgment of the learned Sessions Judge, we are of opinion, that even though there are some variations in the testimony of the eyewitnesses they are quite natural. All the eyewitnesses have described how the incident took place and they have positively stated that it was the appellant who first inflicted sword blow on the person of Antar Singh and thereafter when Shivnarayan came there, appellant gave another sword blow on his neck as also on his left arm and there appears no

reason to doubt the testimony of these eye witnesses merely because they happen to be close relations as their testimony in that capacity has to be read with great caution. From the medical evidence it does not appear that at the time of the incident either Shivnarayan or Antar Singh were dead drunk as no such alcohol was found when Antar Singh was examined or when autopsy was conducted on the dead body of Shivnarayan. It is no doubt true that the prosecution has not tried to explain the injuries sustained by the appellant and Siddhu, but it is clear from the appellant's own case that he, as also Siddhu had received injuries in the said incident. That apart, the injury sustained by the appellant was of a simple nature though, no doubt, the injury sustained by Siddhu was of a serious nature. But it was for the appellant to examine Siddhu to prove that on the basis of some apprehension or on the basis of some actual assault on Siddhu that the appellant had exercised his right of self-defence to protect his maternal uncle Siddhu. But in absence of any such evidence to that effect we are not inclined to agree with the submission made by the learned Counsel for the appellant that the appellant had a right of self-defence.

17. The learned Counsel for the appellant also criticised the evidence of the Investigating Officer P.W. 9 Jitendra Dwivedi and submitted that even P.W. 2 Mehtab who is said to have received injuries has flatly denied that he ever received any such injury. However, that by itself, in our opinion, does not help the case of the appellant in any way, because so far as the main incident is concerned all the eye-witnesses have positively stated how the appellant caused injuries to P.W. 3 Antar Singh as also to deceased Shivnarayan with the sword, which the appellant had used in the incident.

18. Thus we see no merit in this appeal which is dismissed. The conviction of and the sentence awarded to the appellant being proper and justified, are maintained. The appellant, who is on bail shall surrender to his bail bond and serve out the remaining sentence for which the police shall take him into custody.