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Rameshchandra Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-19-2007

Reported in : 2007(4)MPHT528

Judge : S.L. Kochar and ;Manjusha Namjoshi, JJ.

Appellant : Rameshchandra

Respondent : State of M.P.

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. Being aggrieved by the judgment dated 1-8-98 passed by the learned Special Judge, Dhar in Special Criminal Case No. 51/98 thereby convicting the appellant Ramesh Chandra for the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life with fine of Rs. 1,000/-, in default of payment of fine to suffer additional RI for two months, the appellant has preferred this appeal.

2. The prosecution case shorn of unnecessary details as placed before the Trial Court is that there was an old dispute between the appellant and complainant P.W. 1 Ramesh and his mother, deceased Mangubai. On 11-3-97 the complainant

Ramesh and his mother Mangubai reached to the field for watching the gram-crop. At that moment, the appellant and acquitted co-accused Govind were harvesting the crop along with labourers. The complainant and Mangubai raised objection to the harvesting, on which the accused persons abused them filthily and assaulted Mangubai by lathi. Mangubai fell unconscious in the field. Complainant Ramesh went to the village of P.W. 2 his uncle Ramaji and informed about the incident. They took the deceased in a jeep to Badnawar Civil Hospital where she was medically examined by Dr. C.S. Gangrade (P.W. 5) who issued MLC Report Exh. P-9. P.W. 1 Ramesh lodged the report at the Police Station, Kanwan Exh. P-l recorded by P.W. 11 ASI Kishansingh Chauhan. Since the matter was related to Harijan Police Station, Dhar, the First Information Report was sent and P.W. 9 S.S. Tomar registered the First Information Report Exh. P-13 and investigated the matter. Mangubai was referred for further treatment to MGM Medical College, Indore where she was admitted and was treated but, succumbed to her injury on 12-3-97. Her post-mortem examination report is Exh. P-12 which was conducted by P.W. 8 Dr. Rajkumarsingh. The Investigating Officer P.W. 9 Tomar prepared the spot map Exh. P-14 and effected arrest of the accused persons and on disclosure statement as per provision under Section 27 of the Evidence Act, one lathi was seized from the appellant. The memo is Exh. P-18 and the seizure is Exh. P-19. P.W. 10 Harinarayan Patwari prepared the spot map Exh. P-24. On completion of investigation, the appellant and his brother coaccused Govind were charge-sheeted for commission of offences punishable under Sections 302,302/34 of the Indian Penal Code and Section 3(1)(iv) of the SC & ST (Prevention of Atrocities) Act, 1989.

3. The accused persons refuted the charges and submitted that they were reaping the gram crop grown by them, along with the labourers. At that time, the-deceased Mangubai picked up quarrel with the labourers and during the said quarrel, she sustained injuries. Mangubai caused injury to one labourer and the said labourer assaulted Mangubai. They examined D.W. 1 Dr. S.K. Tiwari in defence regarding injury sustained by Sunita w/o Bherulal.

4. The learned Trial Court while acquitting the co-accused Govind, finding the appellant guilty for the aforementioned offence, convicted and sentenced him as

mentioned hereinabove.

5. We have heard learned Counsel for the parties and also perused the entire record carefully.

6. Learned Counsel for the appellant has submitted that the complainant P.W. 1 Ramesh lodged the report Exh. P-1 and in the said report, he mentioned specifically that the appellant Ramesh dealt a lathi blow on the head of deceased Mangubai, because of which she fell down in the field and according to P.W. 5 Dr. C.S. Gangrade, he found incised injury on the skull of the deceased Mangubai which could not be caused by hard and blunt object like lathi. Dr. Gangrade has also given specific opinion in this regard, but in the Court the complainant P.W. 1 Ramesh changed his version and deposed that the appellant dealt an axe blow causing injury on the head of his mother Mangubai. This change was done by P.W. 1 Ramesh deliberately to suit his version with the medical opinion and evidence of P.W. 5 Dr. C.S. Gangrade. According to the learned Counsel in cross-examination P.W. 1 Ramesh was confronted with his report Exh. P-1 as well as the statement Exh. D-1 wherein, it is mentioned that the appellant assaulted Mangubai by lathi, but he failed to explain this material contradiction and the learned Trial Court has not given proper appreciation of this conflict between the eye witness's account and the medical evidence. Therefore, the conviction of the appellant is bad in law.

7. On the other hand, learned State Counsel has supported the impugned judgment and invited our attention to the statement of Dr. C.S. Gangrade (P.W. 5) who has stated that many a time injury on the skull as well as on the leg caused by hard and blunt object appears like an incised wound. He has also repeated this opinion in the cross-examination Para 8 that on the head and bone joints if the injury is caused by lathi, may appear like incised wound. He denied the defence suggestion that on both these parts, if injury is caused by lathi, cannot look like incised wound. Learned Counsel also took us through the statement of the Autopsy Surgeon P.W. 8 Dr. Rajkumar Singh proved the post-mortem report Exh. P-12 and on external examination, he found contusion on right forearm, second contusion on right upper arm, third contusion with bruise on right fronto temporal

region and a stitched wound on occipital region. After removing the stitches, he found that the edges were irregular and on internal examination he found underneath the injury No. 4 a linear fracture on back of skull and another linear fracture on right terrain bone. There was damage to the brain and in his opinion, Mangubai died because of cardio respiratory failure as a result of head injury and its complications before 24 hours from the date and time of post-mortem examination, i.e., 13-3-97 at 10.00 AM. In cross-examination, he has specifically stated that he did not find any injury mark/injury on the body of the deceased caused by sharp edged weapon. He has given specific opinion that all the injuries sustained by the, deceased were caused by hard and blunt object and injury on skull was sufficient in the ordinary course of nature to cause death.

8. We have perused the statement of the complainant/eye-witness P.W. 1 Ramesh who lodged the report Exh. P-1, P.W. 6 Anandibai and P.W. 7 Panchubai. These two witnesses are the independent witnesses and were labourers of the appellant. Both these witnesses Anandibai and Panchubai have specifically stated that the appellant Ramesh picked up a lathi which was lying on the embankment of the field and stuck a blow on the head of Mangubai. In view of the evidence of P.W. 6 Anandibai and P.W. 7 Panchubai that the appellant dealt a lathi blow and their version is corroborated by the statement of Autopsy Surgeon P.W. 8 Dr. Rajkumar Singh, we hold that the appellant dealt a solitary lathi blow on the head of Mangubai though P.W. 1 Ramesh has changed his version in Court regarding assault by appellant, causing an injury on the head of the deceased by axe. Apparently this statement has been changed by P.W. 1 Ramesh in view of the MLC report given by Dr. P.W. 5 C.S. Gangrade who mentioned the injury on the head as incised wound, but Dr. Gangrade in the Court statement, has also stated that the injury on head, described as incised wound, could be caused by lathi or hard and blunt object. According to the complainant P.W. 1 Ramesh and eye witnesses P.W. 6 Anandibai and P.W. 7 Panchubai, only solitary blow was given on the head by the appellant and no other blow was given by him on the person of the deceased, because of the lathi blow on the head of deceased, she fell down on the ground and in our considered, view, because of fall the deceased could have sustained other minor external injuries. In this view of the matter, as a matter of fact, there is no conflict between the eye witnesses' account and the medical

evidence.

9. The residual question is whether Mangubai and P.W. 1 Ramesh had any right to enter the field where the appellant and his labourers were reaping the gram crop. P.W. 1 Ramesh has specifically stated in Para 6 that the gram crop was sown and grown by the accused persons and after the same was ripe, they were harvesting it. The field was owned by the appellant. In view of this positive admission of P.W. 1 Ramesh, the physical possession of the field was with the accused persons and they were having their settled possession, the field was cultivated and because the crop was sown and after it was ripe, they were reaping the same. At that time, the complainant Ramesh and his mother, deceased Mangubai had no right to enter into the field and object to reaping of the crop. P.W. 1 Ramesh, further, in cross-examination, has stated in Para 9 that right from the time his consciousness, he had seen the possession of the accused persons over the disputed filed.

10. Now we proceed to consider the statements of P.W. 6 Anandibai and P.W. 7 Panchubai who have stated that the deceased Mangubai was having a sickle in her hand and was preventing the labourers from reaping the gram crop. She was also scuffling and quarreling with the labourers and while quarreling they went upto some distance. P.W. 7 Panchubai has also stated that the deceased Mangubai was having a sickle and started quarreling after entering into the field. She was not allowing the labourers to reap the gram crop and she started wielding the sickle which caused injuries at the hand of wife of Govind. She has also stated that Mangubai had scuffled with the labourers. In the light of the statement of all the three eye-witnesses namely, P.W. 1 Ramesh, P.W. 6 Anandibai and P.W. 7 Panchubai, it emerged that the appellant was having settled possession over the field. He had sown the gram crop and was also reaping the same with his labourers. At that moment, deceased Mangubai having a sickle in her hand, with her son P.W. 1 Ramesh and acquitted son co-accused Govind entered inside the field and started raising objection and prevented them and also tried to use the sickle and scuffled with the labourers. In such situation, the appellant had right of private defence of property and if he caused one blow by lathi, his act is fully covered by the law of private defence of person and property. Mangubai was having a sharp edged instrument (sickle) therefore, the appellant and labourers

could apprehend of sustaining of grievous injuries by sickle as well as right of private defence of property as envisaged under Sections 96, 97, 100 and 103 of the Indian Penal Code. Section 100 of the Indian Penal Code gives right to a person to cause death if he had an apprehension of grievous hurt to be caused to him by the opposite party and Section 103 of the Code gives right to a person to defend his property up to the extent of causing death of the opponent. In this context, provision of Section 105 of the Indian Penal Code would be relevant which says that right of private defence of property against criminal trespass or mischief continues as long as the offender continues commission of criminal trespass or the mischief. In the instant case, the appellant was in settled possession of the property (here the agricultural field) and deceased Mangubai as well as P.W. 1 Ramesh had no right and business to enter into the said field and prevent them from reaping the crop. Mangubai also used force against the labourers, therefore, if the appellant dealt a solitary blow, which resulted into the death of Mangubai, it cannot be said that he acted beyond limitation of right of private defence of person and property. Supreme Court, in the case of Puran Singh and Ors. v. The State of Punjab : AIR 1975 SC1674 pointed out four circumstances for invoking right of private defence of person and property and in Para 11 observed thus:

The nature of possession which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

(i) the trespasser must be in actual physical possession of the

property over a sufficiently long period;

(ii) the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possidendi. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

(iv) one of the usual tests to determine the quality of settled possession, in the case of cultivable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true has no right to destroy the crop grown by the trespasser and take forcible possession, in which case the trespasser will have a right of private defence and the true owner will have no right of private defence.

11. In the instant case, the aforementioned four tests are fully satisfied. The Investigating Officer P.W. 9 S.S. Tomar has admitted in Para 16 that the accused persons were in possession of the land and the crop was also sown and grown by them. Patwari P.W. 10 Harinarayan in Para 6 has also stated that he was the Patwari of the said village since last five years and he is seeing the accused persons to be in possession of the said land. They had also sown and grown the crop therein. Again in Para 7, he has stated that till he was Patwari of that area, he saw the accused persons in possession of the land on which the incident has taken place and Mangubai was never in possession of the said land.

12. In the light of the positive evidence available on record with regard to possession of the appellant on the disputed land since last so many years and also is cultivating it. He has settled possession over the said land and the deceased Mangubai as well as complainant P.W. 1 Ramcsh had no business to commit criminal trespass. When the crop was standing and was being reaped by the appellant and his labourers.

13. Resultantly, in view of the foregoing legal and factual discussion, this Court is of the considered view that the act of the appellant is fully covered by the law of right of private defence of person and property. Therefore, it is held that he has not committed any offence. As a consequence of the aforesaid conclusion, this appeal of the appellant succeeds and is hereby allowed. He is on bail. His bail and surety bonds stand discharged.

14. Let a copy of this.judgment be sent to the Trial Court along with its record in due course.

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