

Dwarika Misra Vs. State

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Court : Orissa

Decided On : Dec-05-1968

Reported in : 35(1969)CLT255; 1970CriLJ1114

Judge : G.K. Misra and; S. Acharya, JJ.

Appellant : Dwarika Misra

Respondent : State

Judgement :

G.K. Misra J.

1. The appellant has been convicted under Section 302, Penal Code and sentenced to imprisonment for life. Originally 6 accused persons stood trial under Sections 302/34 and 323/34, Penal Code, 5 of them have been acquitted.

2. The prosecution case may be stated in brief. The deceased Balaram Satpathi, Dukhi-shyam (P. W. 8) and Ananda (P. W. 10) are the sons of Sudam Satpathy (P. W. 11). The accused are all agnates. There is no dispute that there is long standing family trouble between the Misras and the Satpathys. 19-8-65 was a Janmastami day. It appears that the appellant had purchased some meat from the deceased, but had not paid the price. In that fateful morning the deceased asked for the money. This led to some altercation. By then the father of the deceased was going to the temple to do Puja. The cloth of the appellant touched Sudam. This also led to some trouble. Both these matters led to a serious quarrel

ultimately.

The Misras, who are the accused, came with lathis and Katuas and assanlted the prosecution party. P. Ws. Section 10 and 11 and accused Gananath, Madan, Ghasi and Dwarika got simple injuries. Ghasi is alleged to have given a fatal stroke on the head of the deceased with a lathi. The deceased retreated some steps. Then the appellant gave a blow as a result of which the deceased fell down. Thereafter he went on indiscriminately assaulting him with a wooden Katua (M. O.I). The deceased died some time after.

In the defence the prosecution story as to how the quarrel originated is not challenged. The plea taken is that there was a free fight on either side and the accused were entitled to right of private defence.

The learned Sessions Judge held that the death of the deceased was homioidal. There was a free fight between the parties, but that the appellant was not entitled to right of private defence of body inasmuch as he exceeded his right of private defence by clausing the death of the deceased.

3. Mr. Mohanty for the appellant does not dispute that the death was homioidal. The Doctor (P. W. 17) held the postmortem examination. He found 7 external injuries. Out of these, injuries 1 to 4 were oblique cutting wounds on different parts of the head. In his opinion, injury No. 1 was the fatal injury and all the injuries were antemortem in nature and caused by some cutting like weapon. On the Doctor's evidence there cannot be any escape from the conclusion that the death was homioidal.

4. Mr. Mohanty frankly stated that it was not possible for him to support the conclusion of the learned Sessions Judge that the appellant was entitled to set up the plea of right of privates defence in a case where the finding is that there was a free fight between the two parties. The concession is well founded. When there is a free fight, that means, when both the parties come determined to fight without there being corresponding rights of private defence, no party is entitled to the protection of law. Each party and the members thereof are responsible for the illegal acts caused by them. There is therefore no question of any exercise of right

of private defence on the finding recorded that there was a free fight which is not assailed by the learned Standing Counsel.

5. The only argument available to Mr. Mohanty in a case of this nature is whether the prosecution has established beyond reasonable doubt that the appellant caused the injuries on the deceased so as to be responsible therefor. The positive prosecution evidence on this head is unfurled by Ajantha Padhan (P. W. 1) who is the immediate front-door neighbour, in front of whose house admittedly the occurrence took place. He says that Ghansi Misra at first gave a lathi stroke on the head of the deceased. When the deceased was retreating the appellant gave a blow with the katua as a result of which he fell down. Thereafter the appellant indiscriminately went on assaulting, and as a result thereof the deceased succumbed to death. The wooden Katua (M. O. I) is stated to be the Katua that was held by the appellant.

This was sent to the Doctor (P. W. 17) for his opinion as to whether the cutting injuries 1 to 4 could be caused by M. O. I. The Doctor clearly expressed the opinion that M.O.I. cannot cause such injuries. We ourselves examined the Katua M. O.I. Though it is used for the purpose of digging earth, its edge is not sharp. It is somewhat thudding. We are also satisfied that the cutting injuries could not be caused by the Katua M. O. I which, according to the prosecution, was in the hand of the appellant and was used as the weapon of offence against the deceased. If this is the ultimate conclusion, the entire prosecution case implicating the appellant must fail. On this evidence we cannot come to the conclusion that the injuries on the deceased were caused by the appellant. The appellant is therefore entitled to the benefit of doubt and must be acquitted.

6. Government has filed no appeal so far as the other five accused are concerned. If Government had filed an appeal, then on the finding that there was a free fight and the deceased died as a result of Katua strokes given by some of the accused, all or some of the accused could have been convicted under Section 302/34 or 302/149, Penal Code. Once the 5 accused have been acquitted, the appellant cannot be convicted unless the prosecution establishes beyond reasonable doubt that the appellant was responsible for the death of the deceased. There can be

hardly any doubt that the deceased died as a result of assault on him given by some of the accused. But in view of the finding recorded by the learned Sessions Judge and the order of acquittal already made, against which there is no appeal, the appellant cannot be convicted for causing the death of the deceased.

7. For the aforesaid reasons we set aside the order of conviction and sentence passed by the learned Sessions Judge and acquit the appellant. The appeal is allowed and the appellant be set at liberty forthwith.

S. Acharya, J.

8. I agree.

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