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Court : Supreme Court of India

Decided On : Feb-23-1995

Reported in : AIR1995SC1953; 1995CriLJ3605; (1996)11SCC373a

Judge : Dr. A.S. Anand and; Faizan-Uddin, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 307; Terrorist Affected Areas (Special Courts) Act, 1984 - Sections 14

Appeal No. : Criminal Appeal No. 215 of 1985

Appellant : Baj Singh

Respondent : State of Punjab

Judgement :

A.S. Anand, J.

1. Through this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, the appellant challenges his conviction and sentence for the offence under Section 307, Indian Penal Code, as recorded by the learned Judge, Special Court, Ferozepur.

2. The appellant along with Mukhtiar Singh S/o Sardara Singh; Nishan Singh; Balkar Singh and Nishawar Singh were sent up for trial before the Special Court, Ferozepur. The Trial Court convicted Nishawar Singh but gave him the benefit of

the Probation of Offenders Act and directed him to furnish a bond in the sum of Rs. 1000/- for maintaining peace and to be of good behavior for a period of two years. Mukhtiar Singh, Nishan Singh and Nishawar Singh were acquitted. Baj Singh, appellant, was convicted for the offence under Section 307, I.P.C. and awarded four years rigorous imprisonment.

3. The case of the prosecution is that on 13-2-1984 P.W. 3, Mukhtiar Singh along with Gurbachan Singh (since dead) were returning from the tubewell of Gurbachan Singh and on reaching near the village Phirni, Baj Singh accompanied by Mukhtiar Singh and Balkar Singh, armed with their respective licensed guns, Nishan Singh armed with gandasi, and Nishawar Singh, empty handed came out of the house of Nishan Singh. Baj Singh raised a 'lalkara' challenging Gurbachan Singh and fired at him from his licensed gun but Gurbachan Singh got aside and saved himself. Nishan Singh, thereupon, gave a gandasa blow from the reverse side on the left leg of Gurbachan Singh. Nishawar Singh throw some brickbats hitting Gurbachan Singh on the head who on receipt of the same fell down. Mukhtiar Singh, P.W. 3, raised an alarm and picked up a brick-bat to hurl at the accused party when Baj Singh fired from his licensed gun hitting Mukhtiar Singh, P.W. 3 on his right arm. Nishawar Singh then threw a brick hitting Mukhtiar Singh, P.W. 3, on his face. Mukhtiar Singh and Balkar Singh, co-accused of the appellant, also fired at the victims but none was injured. Reports of the occurrence were lodged with the police both by the complainant party and by the accused party giving their own versions of the occurrence. After completion of investigation, the accused were sent up to face their trial.

4. We have heard learned Counsel for the parties.

5. Mr. Kohli, learned Counsel appearing for the appellant submitted that Baj Singh, appellant, had' acted in the exercise of the right of self-defence. Learned Counsel argued that Baj Singh came out from his house with the licensed gun on hearing noise and since he found that the accused party were hurling brick-bats and calling names and that Jagdish Kaur, the daughter of a neighbour had also been hit with the brick-bat resulting in serious injuries to her, he fired at the 'aggressors' in the exercise of the right of self-defence of himself and others. This plea was

raised before the Trial Court also but was not accepted and for what follows we do not find any merit in it either.

6. In the testimony of P.W. 3, Mukhtiar Singh, the sequence of events has been given in the following terms:

About a year back it would be 6.30 p. m. I and Gurbachan Singh were returning from the tubewell of Gurbachan Singh. Mukhtiar Singh son of Thakar Singh was behind us. We reached near the village Phirni. Baj Singh, Mukhtiar Singh and Balkar Singh accused armed with guns, Nishan Singh accused armed with gandasa and Nishawar Singh accused empty handed came out from 'the house of Nishan Singh. Baj Singh accused raised a 'lalkara' challenging Gurbachan Singh that he will not be spared. Baj Singh accused fired aiming at Gurbachan Singh but he got aside. Gurbachan Singh was not injured because of the firing by Baj Singh. Nishan Singh gave a gandasa blow from the reverse side on the left leg of Gurbachan Singh. Nishawar Singh throw a brick bat hitting Gurbachan Singh on the head. Gurbachan Singh fell down. I created alarm to save Gurbachan Singh. I tried to pick up a brick and wanted to hurl it at the party of the accused to save Gurbachan Singh. Baj Singh accused fired hitting me on the right arm. The shot ran across the arm.

7. The suggestion given to Mukhtiar Singh, P.W. 3, in the cross-examination, which was denied by him was that he had actually not witnessed the occurrence and that since Jagdish Kaur had been killed, injuries on his person 'were manufactured to make him a stamped witness of the occurrence.' The evidence of Dr. J.S. Gujral, P.W. 1, who had examined Mukhtiar Singh on 13-2-1984 at 1.15 a.m. and had noticed four injuries, including injuries 1 and 2, which were caused by fire arm, unmistakably shows that the suggestion given to Mukhtiar Singh, P.W. 3, in the cross-examination, had no basis and had not been made in accordance with the fact situation. Looking to the sequence of events, the Trial Court was justified in holding that the appellant did not act in the exercise of the right of private defence. Indeed a person has a right of repelling an attack by use of such force as is necessary but he docs not have the right to come prepared for a fight and then after attacking an unarmed victim claim the right of private defence on

being hit back by the victim or his associates. The right of private defence is not available in such circumstances. From the facts and circumstances, as are established on the record, we are of the opinion that the appellant did not act in the exercise of the right of self-defence. He was aggressor and received the injury with the brickbat after he had fired at Gurbachan Singh and was in the process of firing at P.W. 3. The Trial Court was, therefore, right in repelling the plea of self-defence and convicting the appellant for the offences as noticed above.

8. Our independent appraisal of the evidence and the circumstances established on the record show that the right of private defence could not be claimed by the appellant. It is he who had not only raised the 'lalkara' but actually fired the first shot aiming at Gurbachan Singh, who fortunately escaped and was not hit. The injury given by Nishawar Singh to Gurbachan Singh by brick-bat followed soon thereafter. It was only after Gurbachan Singh fell down on receipt of the injury that Mukhtiar Singh, P.W. 3 picked up a brick and as he was about to hurl it at the party of the accused, that Baj Singh appellant fired at him. This sequence of events does not justify the action of the appellant and it cannot be held that he acted in the exercise of the right of self-defence.

9. In our opinion, the conviction of the appellant is well merited and does not call for any interference. However, keeping in view the fact that the parties had indulged in brick-bating and causing injuries to each other and looking to the nature of the injury received by Mukhtiar Singh, P.W. 3, in our opinion, the interest of justice would be met if the sentence of four years rigorous imprisonment for the offence under Section 307, I.P.C. as imposed by the Trial Court, is reduced to the period of two years rigorous imprisonment. We make an order accordingly.

10. The appeal, except for the modification in the period of sentence, fails and is dismissed. The appellant is on bail. His bail bonds are cancelled and he is directed to be taken into custody to undergo the remaining period of his sentence.

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