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Court : Rajasthan

Decided On : Nov-12-1951

Reported in : AIR1952Raj158

Judge : Wanchoo, C.J. and; Sharma, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 97, 99, 100 and 102

Appeal No. : Criminal Appeal No. 51 of 1951

Appellant : Pheli

Respondent : State

Advocate for Pet/Ap. : R.K. Rastogi, Govt. Adv.

Disposition : Appeal allowed

Judgement :

Wanchoo, C.J.

1. This is an appeal by Pheli against his conviction under Section 304 of the Indian Penal Code by the Additional Sessions Judge, Gangapur city.

2. The facts which have been found by the Court below and which in our opinion have been proved by the evidence of the prosecution witnesses are these :

3. The appellant Pheli had taken some land from Amolakh P. W. 4. On the 5th of May 1950 the appellant was at his field which is near the well of Amolakh. The deseased Hukma was also there. The cattle of Hukma had trespassed into the field of Pheli and thereupon there was an exchange of abuses between them. This took place at the well of Amolakh and while the exchange of abuses was going on Hukma gave a lathi blow on the person of Pheli. Pheli happened to have a sword with him and struck Hukma with the sword in return. The first blow was stopped by Hukma on his lathi and then Pheli gave a second blow on the left leg of Hukma with the Result that Hukma fell down injured. There after Pheli did not give any other blow to Hukma and went away. Hukma died in the hospital on the 6th of May, 1950 and it is said that this was the result of the injury which had been caused by Pheli on his left leg on the previous day.

4. The appellant's story was that he had not caused the injury at all and that it was Amolakh who had done so and had passed on the blame to him. This story has not been believed and we are of opinion that there is no force in this contention of the appellant and that the learned Sessions Judge was right in believing the version of the prosecution, as we have already said above.

5. The main question, however, which arises on the version, which was believed by the learned Sessions Judge is whether the appellant had a right of private defence of person This aspect of the matter was however completely ignored by the learned Sessions Judge, for we find no mention of it in his judgment, it is admitted by the prosecution witnesses that after the appellant and Hukma had been exchanging abuses for some time, it was Hukma who gave the first blow to the appellant with the lathi, and the appellant hit back with the sword, which he-happened to have in his hand, only in return. under Section 97 of the Indian Penal Code every person has a right, subject to the restrictions contained in Section 99 to defend his own body against any offence affecting the human body. Obviously when Hukma hit at the appellant with a lathi right of private defence of person arose in favour of the appellant. The extent of this right is defined in Section 100, I. P. C. It extends even to the voluntary causing of death or of any other harm to the assailant if the offence which occasions the exercise of the right be of any one of the descriptions mentioned in that section. The second clause of Section 100 is as

follows :

'Secondly -- such an assault as may reasonably cause the apprehension that grievous hurt will otherwise bp the consequence of such assault.'

6. In this case, Hukma had hit at the appel-lant with a lathi and we are of opinion that the assault was of such a nature that the appellant could have an apprehension that at least grievous hurt would be the consequence of such assault if he did not defend himself. He was, therefore, entitled to hit back in defence of his own person and even to cause the death of the assailant namely, Hukma. It cannot be said in this case that there was time to have recourse to the protection of the public authorities or that the right of private defence was exceeded and more harm than was necessary was caused to Hukma. These are the only two restrictions which would apply to the present case under the third and fourth para of Section 99, I. P. C. and neither of these restrictions can be said to apply in the present case.

The evidence is that after the appellant had been hit, he hit back at Hukma and the first blow was stopped by Hukma on his lathi. The appellant then hit back again this time on the leg of Hukma. The place of attack clearly shows that the intention of the appellant was to disable Hukma, who was still armed with the lathi. The apprehension that had arisen in the mind of the appellant must still have continued, for, Hukma, was still in possession of the lathi, under Section 102, I. P. C. the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues. So long therefore as Hukma had a lathi in his hand, he could repeat the attack which he had already made on the appellant. Under these circumstances, the second blow which was given by the appellant was also justified. We have already said that the place of the blow shows that the appellant had no intention of killing Hukma. His whole intention appears to have been, to disable Hukma from repeating the attack which Hukma had already made upon him once. We are therefore of opinion that on the facts which have been accepted by the learned Sessions Judge and have been

proved from the evidence of the prosecution witnesses this is a clear case in which the appellant is entitled to the benefit of private defence of his own person.

7. We therefore allow the appeal, set aside the conviction and sentence, and acquit the accused. He will be set at liberty at once. The fine, if paid, will be refunded.

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