

Gangada Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-11-1975

Reported in : 1975CriLJ1445; 1975()WLN274

Judge : Kalyan Dutta, J.

Appellant : Gangada

Respondent : The State of Rajasthan

Judgement :

Kalyan Dutta, J.

1. This appeal filed by Gangada is directed against the judgment of the learned Additional Sessions Judge, Jalore, dated 4-3-1974, convicting the appellant under Section 304, Part I, I.P.C. and sentencing him to undergo rigorous imprisonment for ten years.

2. The relevant facts, giving rise to this appeal, may be shortly stated as follows:

In the afternoon of 31-8-1973, Ram-kin deceased was grazing his camel in the field of Deoji Kalbi, which was situated to the east of Gangada's field at the outskirts of village Dadusan. Amalakh and Bhinya also were present with their camels in the same field at some distance, Teja son of Dhuda, Ladu and another Teja son of Kheta were collecting grass in a nearby field of one Gangada Bhambhi. At that

time, the appellant came to the field of Deoji Kalbi and picked-up a quarrel with Ramkin deceased over some money, which the latter owed to the former. During the course of wordy quarrel, Gangada appellant attacked Ramkin and inflicted several blows on his body with a cane-stick. The deceased raised an outcry, e.g. 'beaten, beaten', which attracted Amalakh, Bhinya, Ladu, Teja son of Dhuda and Teja son of, Kheta to the place of occurrence. All those five witnesses saw Gangada causing injuries to Ramkin deceased with a stick. The first blow fell on the left shoulder of Ramkin, the second fell on his left knee and the third hit him on his head. As a result of these blows, Ramkin fell down unconscious. The witnesses rushed towards the deceased but when they were hardly about 2 or 3 paces away from him, the accused disappeared from the place of occurrence. The deceased was found bleeding from his head injury. Teja son of Dhuda and Teja son of Kheta removed Ramkin to his house and stayed with him during the night. Ladu also reached there with the camels of Ramkin. At about midnight the deceased succumbed to his injuries. On the next morning Teja son of Kheta lodged a written report of the incident with Amar Singh. Head Constable at Police Station, Sarwana. A criminal case under Section 302, I.P.C. was registered on the basis of the first information report made by Teja son of Kheta. The police made the usual investigation into the case and, after collecting necessary evidence, sent the dead body of Ramkin to the Medical Officer, In-charge of the Primary Health Centre, Sanchoe, for post-mortem examination. Dr. Ramesh Chandra Purohit conducted post-mortem examination on the dead body of Ramkin and found the following three injuries:

1. lacerated wound 5 cm X 9 cm on the right side of frontal bone region 7 cm from the right eye brow 11 cm from right external ear 5 cm right to the mid-bone and parallel to it;
2. abrasion 1 cm X 1 cm on the antero-superior aspect of left shoulder joint;
3. contusion 6 cm X 3 cm across the upper half region of right side of back. In the opinion of the Doctor the death occurred due to coma caused by extra-dural haemorrhage. The appellant was. therefore, challaned in the court of the Munsiff-Magistrate, Sanohore, for the offence of murder punishable under Section 302,

I.P.C. The learned Magistrate conducted an inquiry, preparatory to commitment, and upon finding a prima facie case of murder against the appellant, committed him to the court of the Additional Sessions Judge. Jalore. The learned Additional Sessions Judge tried the appellant and found him guilty under Section 304, Part I, I.P.C. and sentenced him as stated above. Aggrieved by his conviction and sentence, the appellant has come up in appeal to this Court.

3. I have carefully gone through the record and heard the arguments advanced by Mr. M. C. Bhandari, appearing on behalf of the appellant and Mr. G. A. Khan, for the State. Firstly, it has been contended before me by the learned Counsel for the appellant that Ramkin deceased was an aggressor and that he struck a lathi blow on the back of the appellant in the first instance and that the appellant apprehending imminent danger to his life and limb, hit back and inflicted a fatal blow on the head of his assailant which ultimately proved fatal. He further urged that the incident was an outcome of a sudden quarrel that ensued between the two over a sum of money which the deceased had taken on loan from the appellant. According to him, the appellant asked the deceased to return the loan, which he had secured from him, Ramkin deceased resented the demand of money and in a fit of rage attacked the appellant who, in the exercise of the right of private defence of person, gave a single blow on the head of the appellant with a short cane-stick. In support of his above contentions, the learned Counsel for the appellant invited my attention to the plea taken by the appellant at the trial and to the evidence of Amalakh D.W. 1 whose presence at the time and place of occurrence was admitted by the prosecution itself, and cited Mohamed Habib v. Emperor AIR 1940 Pat 595 : 41 Cri LJ 520. Mr. G. A. Khan, appearing on behalf of the State. on the other hand, argued that no right of private defence of person accrued to the appellant in the circumstances of the case and that the plea taken by him in the trial court was an after-thought, because he never pleaded in the committing court that he was first attacked by the deceased and that he had a right of self-defence.

4. I have given my anxious consideration to the rival contentions. At the outset I may observe that if the accused has a right of private defence, he can raise the plea for the first time in the trial court or in the appeal. He is not precluded from taking such plea at the trial, merely because he omitted to set it out in the

committing court. He can certainly show from the prosecution evidence and other material on the record that he acted in the exercise of his right of private defence of person or property. In the instant case, it is, therefore, necessary to find out whether the plea of self-defence taken by the appellant is a reasonable one and whether from the prosecution evidence itself or from other material on record it is established that the act was done by him in the exercise of his right of private defence of person. The appellant has led evidence to establish the circumstances which gave rise to a right of private defence and to show that he acted in the exercise of such right. The evidence is of Amalakh, D.W. 1. Amalakh stated in his deposition that he was grazing his camels in the same field in which the occurrence took place, According to his version, Gangada appellant told Ramkin why the latter was not repaying the loan which he owed to the former and that he should make immediate payment. Thereupon Ramkin deceased abused the appellant in a foul manner and inflicted two lathi blows on the appellant's hips. The third blow was aimed by the deceased at Gangada's head. Gangada then hit back and inflicted a blow on the head of Ramkin deceased with a short stick. As a result of the blow, Ramkin fell down on thorny bushes. Amalakh raised a hue and cry. The appellant ran away from there. After some time Bhinya P.W. 2 came there and asked Amalakh why Ramkin had been lying on the ground. Amalakh thereupon told Bhinya that Gangada had beaten him with a lathi. After Bhinya, Ladu, Teja son of Kheta and Teja son of Dhuda also reached the place of occurrence. To them also Amalakh disclosed that Gangada had beaten Ramkin. Amalakh further stated that besides the head injury, there were two injuries on the body of Ramkin, which were caused due to fall on the thorny bushes. The evidence of Amalakh is entirely untrustworthy. He admitted in his deposition that his eye-sight was weak and that he could not identify a person standing beyond 10 paundas. He, however, claimed to have seen the occurrence while standing at a distance of 10 paundas from the place of occurrence. If his evidence is taken to be true, the deceased had struck two blows with a lathi on the hips of the appellant and had aimed the third blow on his head, but curiously enough Gangada did not say so in his statement taken down at the trial under Section 342 of the old Criminal Procedure Code that the deceased had inflicted two blows on his hips with a lathi and had aimed the third blow on his head before he hit back and dealt

a single blow on the head of the deceased. The appellant merely stated that he told Ramkin why the latter was not repaying the loan for the last two years and that he should make immediate payment. Thereupon Ramkin deceased inflicted a blow on his back with a big stick and then he also struck a blow on his head with a stick Article 1 in his self-defence. If two blows were dealt upon his hips and the third blow was aimed at his head by the deceased, the appellant would have surely deposed to these facts in his statement at the trial. Hence it may be safely held that Amalakh has given out a false version in order to save the appellant from the consequences of his act. Apart from this, Amalakh falsely stated that Bhinya P.W. 2 was not present at the time and place of occurrence. His evidence on this point is that Bhinya is his daughter's son and that Bhinya had brought camels in the field of Deoji Kalbi on that day. but after some time he went away for taking his meals leaving Amalakh in the field with the camels. Bhinya P.W. 2 has appeared in the witness-box from the prosecution side. He stated on the other hand that his maternal-grandfather Amalakh was with him at the time and place of occurrence and that both he and Amalakh had reached the place of occurrence on hearing the cries of the deceased and had seen the appellant striking blows on the body of Ramkin with a stick. Bhinya is a boy of 15 years or 16 years of age. He is an independent witness having no enmity with or personal grudge against the appellant. Had he been away from the place of occurrence for the purpose of taking his meals, he would not have claimed to have seen the occurrence along with his maternal-grandfather Amalakh. The presence of Bhinya at the place of occurrence is alleged by the other witnesses, namely, Ladu, Teja son of Kheta and Teja son of Dhuda who also had reached the place of occurrence on hearing the cries of the deceased. In this manner, the evidence of Amalakh D.W. 1 is in direct conflict with the statement of the appellant and the evidence of his daughter's son Bhinya, The trial Judge rightly discarded his evidence,

5. Apart from this, the other circumstances also do not give rise to a right of private defence and do not show that the appellant acted in the exercise of such a right. One of the circumstances is that the appellant had no injury on his back. If a lathi blow was received by him on his back at the hands of the deceased, he would have sustained an injury on his back in the form of swelling, contusion or abrasion. No injury report has been produced or caused to be produced by the appellant in

this case. The absence of injury on the body of the appellant may lead to an inference that the deceased was unarmed and that the appellant was the aggressor. It is of course a rebuttable presumption, because the right of private defence could accrue to the appellant irrespective of the fact whether or not an injury was caused to him by the deceased. The test to determine the accrual of the right of private defence of person is whether the appellant could reasonably apprehend that death or grievous hurt would be caused to him by the deceased and that he could not protect himself otherwise than by using force against his assailant. The facts established in this case do not show that the appellant was first assaulted by the deceased with a lathi. The definite stand of the appellant was that he received a blow in the first instance at the hands of the deceased with a lathi, but his above stand appears to be unfounded, because of absence of injury on any part of his body and because the eye-witnesses produced by the prosecution do not say in their depositions that the deceased was armed with a lathi and that they had seen any injury being caused to the body of the appellant. The authority of the Patna High Court cited by the learned Counsel for the appellant is of no help to him, because in that case the trial Judge himself arrived at a finding that the deceased was the aggressor and that the deceased had first come to the spot with a stick in his hand and that Habib and Sattar had no weapons with them at that time. On these findings the Hon'ble Judges of the Patna High Court came to a conclusion that under the circumstances a right of private defence accrued to the appellant which he did not exceed in defending himself against his assailant. The relevant observations made by their Lordships are quoted below:

Looking at the nature of the injury caused on the head of Wahab, which ultimately caused the death of Wahab, it appears that the skull was not fractured; and it was due chiefly to the pressure on the brain that death ultimately resulted. It cannot therefore be said that the injury inflicted by the appellant on Wahab's head was of an unusually severe nature or that it was intended to be so. It appears, therefore, that the appellant had in the circumstances a right of private defence which he did not exceed in protecting himself against his assailant.

Consequently, upon careful review of the entire evidence, I do not feel persuaded to hold that the appellant has made out a prima facie case for self-defence.

6. Another argument put forward on behalf of the appellant is that the trial Judge committed an error in relying upon the testimonies of the alleged eye-witnesses to the occurrence. The above contention has no force. Of the eye-witnesses examined in support of the prosecution case, the trial Judge relied upon the evidence of Bhinya, P.W. 2, Ladu son of Ramu and Teja son of Dhuda to the extent that they saw the appellant striking a blow on the head of Ram-kin with a cane-stick, but he did not rely upon the testimony of another Teja son of Kheta. because, according to him, Teja reached the place of occurrence after the incident was over. After careful scrutiny of the evidence, he was of the view that the eye-witnesses could not have seen the appellant causing the first two lathi blows-one on the left shoulder and the second on the left knee-on the body of the appellant, because they had run to the place of occurrence upon hearing the hue and cry of the deceased from a place which lay at some distance from the spot and because there was no injury on the left knee of the deceased at the time of post-mortem examination. It was the duty of the trial Judge to sift and assess the evidence and to get at the truth. He has scrutinised the evidence in a careful manner and has appraised its weight in the light of the criticism made against it by the defence. The evidence of Bhinya, Teja son of Dhuda and Ladu cannot be rejected in its entirety merely on the ground that their version was believed to the extent that one blow on the head of the deceased was inflicted by the appellant in their view or presence. The learned Counsel for the appellant could not assail their evidence on any reasonable grounds. The trial court has rightly placed reliance upon their testimony and I see absolutely no reason to take a different view.

7. The last contention raised by the learned Counsel for the appellant is that looking to the nature of the injury caused on the head of the deceased and the weapon with which it was inflicted, it cannot be safely held that this injury inflicted by the appellant was of a severe nature and was capable of causing his death. It was further argued that skull was not fractured due to this injury and that the death ultimately resulted chiefly due to coma caused by the extra-dural haemorrhage. The learned Counsel, therefore, contended that at the most the appellant could be

convicted for causing simple hurt to Ramkin deceased with a canestick. In support of his above contention, he referred to *Ania Ghanchi v. State of Rajasthan* Criminal Appeal No. 595 of 1966, decided on 19-1-1967 (Raj). The above contention is devoid of force. On dissection of the dead body of Ramkin, Dr. Ramesh Chandra Purohit, found a large size 12 cm X 12 cm brown coloured blood clot present on the extra-dural portion of right frontal and right parietal region. He noticed haemorrhage from middle meningeal artery on both sides also. Dr. Ramesh Chandra Purohit was examined in the trial court also. In his deposition at the trial he stated in clear and definite terms that the injury on the head was sufficient in the ordinary course of nature to cause the death of the deceased, because the internal effect of this injury was as follows:

Haemorrhage from the middle meningeal artery present on both sides. A large sized (12 cm X 12 cm) brown coloured blood clot present on the extra-dural portion of right frontal and right parietal region.

The Doctor was definitely of opinion that due to this injury there was compression of the brain, which resulted in extra-dural haemorrhage. He further definitely opined that injury No. 1 on the head could be caused by cane-stick Article 1, if it was used with great force in striking the blow.

8. In the referred-to-above Rajasthan authority cited by the learned Counsel, Hon'ble V. P. Tyagi. J. arrived at a conclusion having regard to all the circumstances of that case that it was difficult to hold that Mst. Bihikhi died of the injuries caused by the appellant. The relevant observations made by Hon'ble Tyagi J. at page 6 of the judgment are quoted below in extenso to show that the present case is distinguishable on facts from that case:

It cannot be denied that shock is the direct result of the injuries, but it is difficult to say that it could be the natural result of the injuries sustained by the deceased at the hands of the accused. The injuries were all simple. The dimensions of the injuries are also such that generally it is not likely to cause such a degree of shock which may result in an instantaneous death. There are various factors which can be responsible for causing shock out of which the subjective condition of a person, is very important. The instances quoted by Modi in his book referred to above

(Medical Jurisprudence, 1963 Edn.) may cause death in one out of thousand cases, but that possibility is there and it cannot totally be ruled out that even the minor injuries of the nature which were caused by the accused in this case could create a condition of shock to a person which may result in the instantaneous death.

The question whether death is the direct result of the head injury caused to Ramkin in this case is to be judged from several factors like nature, size and the effect of the injury together with the force with which it was struck on the vital part of the body of the victim of assault. The size and the nature of the injury in this case coupled with considerable force, with which it was struck upon the head of the deceased, clearly indicate that the blow was a violent one resulting in extra-dural haemorrhage and causing compression of brain. Hence the contention of the learned Counsel that the offence committed by the appellant at the most amounts to an offence of voluntarily causing simple hurt only is not acceptable.

9. The next question that remains to be considered is whether the appellant was rightly convicted under Section 304, Part I, I.P.C. In this connection, it may be observed that the eye-witnesses are believed to have seen the appellant causing a single blow on the head of the deceased with a cane-stick. It transpires from the prosecution evidence itself that the assault on the deceased was not a pre-meditated one or a calculated move. It appears that the appellant insisted upon the deceased to make immediate payment of the loan which he had secured from the appellant prior to this occurrence. The deceased could not make the payment. Thereupon in a fit of anger the appellant caused a blow on his head with a cane-stick as a result of which he fell down and died on account of extra-dural haemorrhage. In these circumstances, I am of opinion that the accused-appellant must have known that the blow which he was inflicting on the head of the deceased Ramkin may cause such bodily injury as was likely to cause death. He should have been, therefore, convicted under Section 304, Part II, I.P.C. As regards the sentence, suffice it to say that a sentence of four years' rigorous imprisonment only will meet the ends of justice.

10. Accordingly, the appeal is partly accepted and the conviction of the accused-appellant is altered from under Section 304, Part I to one under Section 304, Part II, I.P.C. and the sentence of ten years' rigorous imprisonment awarded to him by the trial Judge is reduced to a sentence of four years' rigorous imprisonment only. However, the period during which the appellant- remained in detention during investigation, inquiry or trial of the case (i.e. from 2-9-1973 the date of his arrest to 4-3-1974, the date of judgment of the trial Court) shall be set off against the term of imprisonment imposed on him by the trial Judge on his conviction and his liability to undergo imprisonment shall be restricted to the remainder of the term of imprisonment imposed upon him.

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