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SooperKanoon Citation : sooperkanoon.com/757843

Court : Rajasthan

Decided On : Nov-06-1970

Reported in : 1970WLN688

Judge : Kan Singh, J.

Appeal No. : S.B. Criminal Appeal No. 335 of 1970

Appellant : Kartar Singh

Respondent : State

Judgement :

Kan Singh, J.

1. This is an appeal by are Kartar Singh brought against the judgment of the Sessions Judge, Ganganagar, convicting him of an offence under Section 304 Part 1 Indian Penal Code and sentencing him to 8 years rigorous imprisonment together with fine of Rs. 50/-, in default three months rigorous imprisonment.

2. The appeal raises a question about the exercise of right of private defence. The facts lie within a narrow compass and are these.

3. The accused Kartar Singh and deceased Gurcharan Singh resided in Chak 7 S. II, district Ganganagar. They had their agricultural lands in that village which were served by a common water-course. Accused Kartar Singh had a square near the

water-course which was No. 14, On the other side of the water-course was square No. 15 which was abadi. The incident happened on the morning of 22.5.69 at 6.00 a.m. The accused had his turn of water on the preceding night when, through the water-course, he had taken water in the square. After his turn was over, the water was let into the 'Diggi' the pond for collecting water for the villagers. The lards of deceased Gurcharan Singh were down the water-course and his turn was to commence after the 'Diggi' had its turn. Sometime it so happens that the watercourse is broken on account of the flow of water and in their anxiety to see that the land-holders, who have to receive water get the supply undiminished, they repair the embankments of the water-course before their turn with earth. At the time of the incident Gurcharan Singh was strengthening the embankments of the water course and he had taken earth for the purpose from the edge of Kila No. 25 in the square of the accused. Kartar Singh then came there and asked Gurcharan Singh why he was taking earth from his field. Gurcharan Singh replied that he was doing so to strengthen the water course and was not doing any damage to him. Kartar Singh thereupon said that he would not allow him to take the earth while Gurcharan Singh insisted that he would do so. They then started abusing each other. Kartar Singh then hit Gurcharan Singh on his head after snatching the Kassi. On receiving the blow of the Kassi, Gurcharan Singh fell down. The accused then went away towards his own land, carrying the Kassi. Gurcharan Singh lost consciousness and did not speak- PW. 1 Tulsiram and P.W. 2 Kulvir Singh, who were also nearabout, came to the place when Gurcharan Singh had fallen, Pritam Singh, the brother of Gurcharan Singh, bad also come and then these persons removed Gursharn Singh to his house. From there Tulsiram (PW 1) went to police station Kesrisinghpur which was at a distance of 5 miles from the place of the incident and lodged information with the police which was Ex. P/1 on record. Gurcharan Singh was taken to the hospital at Ganganagar, but he succumbed to the injury on 30.5.69, at about 10.15 p.m. The police recovered a Kassi at the instance of the accused, but this Kassi was not found to have any marks of blood on it. After completing the investigations the accused was challaned with the result mentioned at the outset.

4. The prosecution case depended on the direct evidence of the two eye witnesses P.W. 1 Tulsi Ram and P.W. 2 Kulvir Singh alias Kuldip Singh. Tulsi Ram

(P.W.1) was to have his turn of water later on and he was there at the water-course to set it right. Kulvir Singh (P.W.2) had come to his brother in-law Inder Singh who had his agricultural land sguare No. 17 and on the day of the incident Kulvir Singh had gone to have the water-course repaired for the benefit of his brother-in-law Inder Singh.

5. The plea of the accused was that of denial. He stated that when he saw the deceased removing earth from his land, Kila No. 25, and that thereby his cotton crop was being damaged, he went towards the deceased. He had a Kassi with him, as he was working in his own field which had freshly received water from the water-course. He asekd the deceased not to remove earth from his land, but the deceased did not budge and showered abuses on him. In the course of the altercation the deceased lifted his Kassi to attack the accused and, therefore, in order to save himself the accused wielded his own Kassi and wanted to hit the deceased on his arm, but accidentally the blow landed on the head of the deceased. The accused claimed the right of private defence both on account of his property as well as on account of his person being threatened. He produced one witness D W. 1 Bohad Singh, his Brother. He stated that he heard the altercation between Gurcharan Singh and Kartar Singh Gurcharansingh was standing amids cotton crop anddigging a pit and thus damaging the crop. Kartar Singh asked him not to do, so but the deceased did not heed. Then the witness shouted at them not to fight. Then he saw Gurcharan Singh attempting to strike the accused with his Kassi and then the accused hit Gurcharan Singh and on receiving the blow Gurcharan Singh fell down. He stated that Tulsi Ram or Kulvir Singh were not at the spot.

6. The learned Sessions Judge accepted the evidence of the prosecution witness and did not find the defence worthy of belief. He observed that D.W. 1 Bohed Singh was no other than the brother of the accused and was, therefore, an interested witness on which no reliance could be placed. It was argued before the learned Judge that the accused had a right to defend his property against the deceased who was removing earth from the land of the accused and also damaging his crop. Learned defence counsel, however, conceded that this right of defending, the property did not extend to the causing of the death. It was however,

urged by him, that it was the deceased who had aimed the blow with the Kassi at the accused arid this gave the accused a right even to cause death of the deceased as the accused had a reasonable apprehension that he might be killed by the deceased or at any rate grievous injury might result to him. The learned Judge, however, did not accept this contention. The essentials of the reasoning of the legrned Judge will be clear from the following passage id his judgment

The learned counsel for the accused has further contended that it was admitted by Tulsi Ram and Kulvir Singh that the accused had taken earth from Killa No. 25 belonging to the accused and small cotton plants were standing therein and so the accused had a right to cause injury to the deceased in defence of his property. It has, however, been frankly conceded by the learned counsel for the accused that this right to defend property did not however extend to cause death of the deceased unless it was proved that the latter had also tried to inflict injury to the accused. In view of the prosecution evidence, mentioned above, it is proved that the accused had, after snatching kassi and thereby rendering the deceased unarmed, inflicted this injury to him and so the accused had no right of private defence to the extent of causing death of the deceased. It appears from the prosecution evidence itself, that the accused had suddenly come to the scene of occurrence on seeing the deceased taking earth from his killa and on an exchange of hot words had suddenly snatched the kassi from his hand and dealt a blow therewith on the head of the deceased. The accused is therefore guilty of an offence Under Section 304 Part I I.P.C.

7. In assailing the conviction of the appellant his learned counsel has submitted that both the eye witnesses were not reliable and again there was no sufficient reason for rejecting the testimony of D.W. 1 Bohad Singh simply on the ground that he was a brother of the accused specially when the presence of the witness was admitted even in the first information report lodged by P W. 1 Tulsi Ram. Regarding P.W. 1 Tulsi Ram it was submitted that he was the uncle of the deceased and was thus an interested witness and unless there was something to lend assurance to his testimony it should not have been believed. This witness, according to learned counsel, was of 70 and it was not natural that he would be going to repair the water-course when he had a 'Siri' and a grand-son to help him

for the purpose. Then the learned counsel pointed out that his statement was prevaricative. In his examination-in-chief he stated that they were working on the water-course, but in the cross-examination he had to admit that he was not doing the work of repairing the water-course. Then it was urged that the turn of the witness was to come 3 to 4 days after the incident and, therefore, there could be no occasion for him to be present at the water-course. Learned counsel, lastly, submitted that the witness had not spoken anything when the accused had snatched away the Kassi from the deceased. About P.W. 2 Kulvir Singh learned counsel submitted that he too did not interfere when the deceased and the accused were engaged in an altercation. Further according to learned counsel, this witness did not belong to this village, nor did he have any land in this village and, therefore, there could be no good reason for the witness to be present there. Further, it was submitted that Tulsi Ram and Inder Singh,his brother-in-law, were used to move together. Then the learned counsel submitted that the right of private defence of property as well as person was fully made out. He drew my attention to a number of cases, such as, Amjad Khan v. State : 1952 CriLJ648 , Modsingh v. State ILR 4 Raj. 7, Mahatab Ali v. Madanlal AIR 1934 Lah. 995, State of U.P. v. Jagdish : AIR1966 All244 and a judgment of their Lordships of the Supreme Court in Kishna v. State of Rajasthan (Criminal Appeal No. 23 of 1960-decided on 30-10 62). Learned counsel maintained that it is not neceassary for the accused to prove his plea of private defence and if as a result of the evidence of the prosecution along with it a reasonable doubt is created in the mind of the court, then the accused should be taken to have made good his plea. For this learned counsel relied on Rishi Kesh singh v. State : AIR1970 All51 which has affirmed an earlier decision of a Bench of seven Jugges reported as Parbhoo v. Emperor : AIR1941 All402 .

8. Now, it has to be noticed that the first information report of the incident was lodged at 7.00 a.m. by P.W. 1 Tulsiram. The police station, as I have already noticed, is 5 miles from the place of the incident. Therefore, it is obvious that the resport was lodged without any loss of time with all promptitude. The first information is a fairly detailed document and sets out the whole prosecution version. It is mentioned therein that Gurcharan Singh and Kulvir Singh were at the water-course. They then saw that Kartar Singh came towards Gurcharan Singh.

He snatched away the Kassi of Gurcharan Singh and then dealt a blow with it on the head of Gurcharan Singh as a result of which Gurcharan Singh fell down. Tulsiram and Kulvir Singh then raised shouts and then Kartar Singh fled away. They have added that the brother of the accused was coming behind him and he was saying "beat', but before this Kartar Singh had already fled away after hitting Gurcharan Singh with a Kassi. The brother of the accused then ran away after him and the witnesses brought Gurcharan Singh to his house. P.W. 1 Tulsiram is fully corroborated regarding the prosecution version by what he had stated in the first information report without any loss of time. The bone of contention is whether it was the Kissi of the deceased that was snatched by the accused and he struck it on his head or that the accused was already having a Kassi with him and with it he had hit the deceased when the former was threatened by the deceased. The first information report does show the presence of D.W. 1. Bohad Singh who had reached there soon after the accused had hit the deceased and gone away.

9. Now, Tulsiram is, no doubt, the uncle of the deceased, but regarding Kulvir Singh beyond saying that he did not live in that village nothing has been urged. Kulvir Singh had been vary candid in stating what hesaw. He stated that Kartar Singh came from his square and asked Gurcharan Singh why he was taking earth from his land. At this Gurcharan Singh replied that he v as strengthening the embankment of the water-course and was doing no harm to the accused. There upon Kartar Singh said he would not permit him to take earth from his land and then Gurcharan Singh replied that he would do so, and then the two started abusing each other. It was then that the accused hit Gurcharan Singh with a Kassi on his head. He has clearly stated how arrogant the deceased was and he did hot need the protestations of the accused. He had also stated that cotton crop was growing at the place where the decesed was digging earth. True, Kulvir Singh was not living in that village, but he had his brother in-law Inder Singh, who had his square No. 17 not quite far from the square of the accused and which was served by the same water-course. Therefore, the presence of Kulvir Singh was not unnatural and I have no reason to doubt it as has name has been mentioned in the first information report at the earliest. Inder Singh and Tulsiram may be on cordial terms, but that is no reason to think that Kulvir Singh would falsely implicate the accused against whom he had nothing. Tulsiram has admitted that he had a 'Shri'

and a grand-son and does not generally engage himself in repairing the water course, but there is nothing unusual in his going to the water-course to see that it was set right. It has to be remembered that it was the month of May and at about 6.00 a.m. if one goes near the water-course which receives water after sufficient intervals then there is nothing surprising or extraordinary, in it. It is also true that while the altercation was going on the eye witnesses did not intervene, but that was obviously for the reason that the result may not have been expected. It has to be further noticed that Kila No. 25 is quite near the water-course and the site map shows that the pit though inside this Kila, was on one side of it and nearer to the water-course In these circumstances, if the learned Sessions Judge has accepted the prosecution evidence and has not attached any value to the defence evidence for the reason that the defence witness was the brother of the accused, I am unable to hold that the conclusion reached by the learned Judge was erroneous Learned course submitted that if the accused had hit the deceased with the Kassi of the latter then he Would not have taken it away, but would have droopped it on the spot and the fact that the Kassi was taken away suggests that it was the Kassi of the accused with which he had hit the deceased. One cannot always say how the mind of a particular individual would react to a particular event, It may be that fearing that the Kassi might be taken possession of he had gore away with it, but that again is a speculation, but nothing turns on this It is true, the general burden of proving its case is on the prosecution and even where the accused has not been able to prove his right of private defence, but on consideration of the prosecution and the defence as a whole a reasonable doubt is left in the mind of the Court, then its benefit has to be given to the accused. But, as I have already observed; the evidence of P.W. 2 Kulvir Singh is quite convincing and is fully supported by what Tulsi-Ram had stated in court as well as what was narrated by him in the first information report and I do not accept the defence version.

10. The several cases relied on by learned counsel are about the accrual of right of private defence on arising of a reasonable apprehension in the mind of the accused about the causing of hurt, grievous hurt or death or where a property has been trespassed upon. But the circumstances of a particular case will, by and large, be determinative of the question whether the right of defence could or could not be claimed by an accused. In providing for a right of private defence the

Legislature has taken note of the natural instinct of self preservation in all humans and without its recognition they may be dubbed as criminals, but at the same time good care has been taken to ensure that the right does not over flow its banks and under the garb of a defensive an offensive action is not taken and there by the sacredness of the other human life not disregarded. That is why, while making provision for the right it has been laid down that no force more than what is reasonably necessary for the defence can be used and also, if there is time to approach the public authorities, they have to be so approached. The observations made by their Lordships in Kishna's case are almost classic and I may reproduce them. After quoting Sections 96, 97, 99 and 100, their Lordships observed:

The, combined reading of these provisions indicates that a person has a right to defend his own body and the body of another and in doing so he can voluntarily cause the death of another, if the assault made by the, other is such as may reasonably cause the apprehension that death or grievous hurt will otherwise be the, consequence of such assault. The right of private, defence serves a social purpose; not. only it will be a restraining influence on bad characters, but it will encourage the right spirit in free citizen. There is nothing more degrading to the human spirit than to run away in the face of peril. These provisions will therefore have to be liberally construed. The extent of the right will depend not on the actual danger to the accused but on his reasonable apprehension of such a danger. He cannot obviously be expected to weigh in 'golden scales' and use only such force as is exactly sufficient to ward off a particular danger.

Running away in the event of the peril is certainly degrading to the human spirit, but with all respect, I have to observe that the over tone of the action that the accused might take has to be at all times defensive, though sometimes in the event or grave apprehension an offensive action may itself be a defensive action. A proper balance has to be struck though at times it may be difficult to do so, but all the same the so-called defensive action is not to be characteristic of the offensive, granting that at times one may not be expected to weigh in golden scales the danger for modulating one's defence. In a very recent case decided by the Court of Appeal in England and which is reported as R. v. Julien 1969 (2) A11.E.R. 856, the learned Lords made the following observations:

The sturdy submission is made that an Englishman is not bound to run away when threatened, but can stand his ground and defend himself where he is. In support of this submission no authority is quoted, save that counsel for the appellant has been at considerable length and diligence to look son the subject, and has demonstrated to us that the text-books in the main do not say that a preliminary retreat is a necessasy pre-requisite to the use of force in self defence. Equally, it must be said that the textbooks do not state the contrary either; and it is, of course, well known to us all that for very many years it has been common form for judges directing juries where the issue of self-defence is raised in any case (be it a homicide case or not) that the duty to retreat arises. It is not, as we understand it, the law that a person thereatened must take to his heels in the and run dramatic way suggested by counsel for the appellant;but what is necessary is that he should demonstrate by his actions that he does not want to fight. He must demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal; and to the extent that that is necessary as a feature of the justification of self-defence, it is true, in our opinion, whether the charge is a homicide charge or something less serious. Accordingly, we reject counsel for the appellant's third submission.

It is recognised in the above passage that though a person threatened need not take to his heels and run in a dramatic way, but he must demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal and this is necessary as a feature of the justification of self-defence. No Indian case has been brought to my notice wherein exactly the same thing has been said. Learned counsel submitted that in this respect the law of private defence in India is net in line with the English law. I am far from satisfied. The texture of our law is built on the pattern of the English law and embody its essential principles. This principle will fall within the framework of the provisions of Sections 97 and 99 of the Penal Code, because the accused is entitled to use only such force as is neceassary. I do not think that to demonstrate that the accused does not want to fight will be degrading to the human spirit, that is, to run away in the face of peril. On the contrary, I should think this will ennoble the human spirit all the more. Again it may be a question in each case whether there could at all be time to make this gesture to the other side that the accused does not want to fight.

If the danger is right on the head of a person, well then in that situation there may be absolutely no time for him to indicate his unwillingness to fight. Can it be said so in the present case? The deceased was a person of 60, the accused was much younger being 32 only. Further there is one more circumstance that blood was found right near the pit where the deceased was digging the earth. True, the deceased was arrogant and was taking earth from the land of the accused and was also causing damage to the small cotton plants that were sown. Where the danger may be graver or it may be right on the head of the accused, he may have no time to demonstrate his unwillingness to fight, but in the present case if by the accused were making this display of unwillingness to fight at the most the deceased may have taken a spade full of earth more. Then the deceased did not move from the place where he was digging. Therefore, in that situation it cannot be said that the accused was faced with such a danger that he could not show his unwillingness to fight. Learned counsel wanted to draw a distinction in the present case on the plea that the right of private defence of property having already accrued to the accused he had a right to beat the deceased and turn him out of his land. Therefore, here, in the present case, the right to give a beating having been already there with the accused, if on being threatend he used his Kassi then the accused was well within his right of private defence. I have carefully considered this submission, but that, in my view, does not advance the position. The right against a trespasser was only to use reasonable force to turn him out and will not extend to causing of death. Learned counsel wanted to make it out a case of robbery on the part of the deceased when he was determined to remove the earth inspite of the protest made by the accused. I have not been able to appreciate that submission. In my view, it will not be a case of robbery at all. Thus, I am satisfi?d that in hitting the deceased with a Kassi the accused has exceeded his right of private defence or property. He could only use reasonable force to turn out the deceased. Therefore, the accused has been rightly convicted of the offence under Section 304 Part I Indian Penal Code, but in the circumstances the sentence awarded to the accused calls for reduction. Learned counsel relied on Bachu Lal v. Emperor AIR 1935 Oudh. 442 in which sentence of one year was awarded. Here the right was only on account of trespass and looking to the fact that the deceased was an old man and the accused quite young, the sentence should be two and a

half years rigours imprisonment.

13. Consequently I allow the appeal in part. While maintaining the conviction of the accused under Section 304 Part I Indian Penal Code, I hereby reduce the sentence awarded to him to 21 years rigorous imprisonment only. The sentence of fine is unnecessary and it is set aside.