

State of Rajasthan Vs. Nathu

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Court : Rajasthan

Decided On : Oct-08-1987

Reported in : 1988WLN(UC)73

Judge : S.S. Byas and; N.C. Sharma, JJ.

Appeal No. : D.B. Criminal Appeal No. 109 of 1977

Appellant : State of Rajasthan

Respondent : Nathu

Disposition : Appeal dismissed

Judgement :

S.S Byas, J.

1. This is a State's appeal against the judgment of the learned Sessions Judge, Partabgarh dated March 19, 1976, whereby the accused Nathu was acquitted of the offences under Section 302 and 325 IPC. The State challenges the acquittal

2. Briefly stated, the prosecution case is that PW 1 Gotu and the accused Nathu are the sons of PW Pyara while PW 5 Smt. Nanduri is his wife. Pyara had one more son Vaina. PW 4 Smt. Shawli is the widow of Vaina. Pyara effected partition among his three sons Vaina, Gotu and the accused Nathu nearly ten years before the incident. Gotu and Vaina were living in a separate Gawari while the accused

was living in another Gawari Pyara and his wife lived in that Gawari in which the accused lived Pyara has a daughter Tulchha by name.

3. Vaina is the deceased victim in the case. In the morning on August 1, 1975, PW 4 Smt. Shawli went to the house of Pyara to make inquiries about the ailment of Tulchha. The wife of the accused did not allow her to come inside. Shawli went back to her house and from there she went to her fields. Shawli complained to her husband Vaina that she was not allowed by the wife of the accused to enter the house and make inquiries about the ailment of Tulchha. At about 5.00 pm on the same day, Vaina left the fields and went to his house. After tethering his bullocks in the enclosure, he went to the house of the accused and told him as to why his wife had not allowed his (Vaina's) wife to enter the house and make inquiries about the ailment of Tulchha. This infuriated the accused, who had a lathi in his hand at that time. The accused struck a blow on the left side of the head of Vaina. Vaina fell down with a bleeding wound on his head. There was profuse bleeding from his head injury. The accused again lifted his lathi to strike a blow to Vaina, but the blow did not hit him. PW 1 Gotu tried to intervene and the accused struck a blow of lathi on his right hand resulting in the fracture of his left finger. The villagers tried their indigenous methods to save Vaina but he did not survive and passed away nearly after an hour. Many persons collected on the spot. They drew up report Ex. P 4 and sent it with PW 1 Gotu to the police Station, Nikumb, where he reached at about 6 00 a.m. on the next day. He presented the written report Ex. P 4 before the Station House Officer, who registered a case and proceeded with the investigation. The Station House Officer Mohan Lal PW 9 arrived on the spot, prepared the inquest report of the victim's dead body, inspected the site and prepared the site plan. The post-mortem examination on the victim's dead-body was conducted on August 2, 1975 by the Medical Officer Incharge, Government Hospital, Bari Sadri. The doctor noticed a fracture of frontal and left parietal bone. The frontal bone had the depressed fracture. In the opinion of the doctor, the cause of the death of the deceased-victim was shock resulting from severe fracture of skull bone. The report prepared by him is Ex. P 9. The injuries of PW 1 Gotu were examined by the Medical Jurist, Government Hospital, Chittorgarh. He found fracture of proximal phalanx of middle finger of right hand. The injury report issued by him is Ex. P 3. The accused was arrested and in consequence of the

information furnished by him, one lathi was recovered. On the completion of investigation the police submitted a challan against the accused in the Court of the Munsif cum Judicial Magistrate, Chotti Sadri, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302 and 325, IPC against the accused, to which he pleaded not guilty and faced the trial. Though in his statement under Section 313, Cr. PC the accused denied to have inflicted any blow with lathi to the deceased and PW 1 Gotu, he came out with a counter version. According to him, Vaina came to his house and called him out. Vaina had a lathi. Vaina asked him to leave the village with his wife. The accused asserted his right that he was living in his own house. Vaina struck a blow of his lathi on his head. PW 1 Gotu also came running with a wooden lathi. He also struck a blow of it on his (accused) shoulder. In support of its case the prosecution examined nine witnesses and filed some documents. In defence, the accused adduced no evidence. On the conclusion of the trial, the learned Sessions Judge held that it was the accused who was first assaulted by PW 1 Gotu and the deceased Vaina. In order to ward off further aggression and to protect himself from being further beaten, the accused struck one blow with his lathi on the head of Vaina and one blow on the hand of PW 1 Gotu. The accused had a right of private defence of person and since the danger to his life was grave and imminent, he had a right to use the force to defend himself. Granting a right of private defence of person, the learned Sessions Judge held that no offence was committed by the accused. The accused was consequently acquitted of the offences he was charged with.

4. We have heard the learned Public Prosecutor and the learned amicus curiae. We have also gone through the case file carefully.

5. In challenging the acquittal, it was contended by Dr. Bhandawat the learned Public Prosecutor that the accused was the aggressor. The court below crept into an error in arriving at the conclusion that the accused was first assaulted and struck blows by the deceased Vaina and PW 1 Gotu. It was also argued that even if the right of private defence is held available to the accused, he exceeded it. He struck the blow with such a violent force on the head of the deceased that the deceased passed-away within an hour of the incident. The acquittal of the accused

is, therefore erroneous. He should be convicted under Section 302 and if not under this section, atleast under Section 304 Part II, IPC. It was, on the other hand contended by the learned amicus curiae that PW 1 Gotu and the deceased Vaina were rightly held as the aggressors by the court below. As per medical evidence, vide injury report Ex. P 3, the accused was struck one injury on the head and the other injury over the head or right humerus, that is, shoulder. The accused therefore had a reasonable apprehension that unless he used force to repel the attack he would be either killed or atleast receive grievous injury Apprehending grave danger to his life, he struck one blow to the deceased victim and again one blow to PW 1 Gotu. In these circumstances, it cannot be said that the accused had no right of private defence of persons or that he had exceeded it. We have taken the respective submissions into consideration.

6. Admittedly, as revealed by the injury report Ex.P. 3, two injuries were found on the person of the accused--one on his head and the other over the head of the right humerus, that is, shoulder. When the prosecution witnesses PW 1 Gotu, PW 2 Roopa and PW 3 Pyara were asked to explain as to how the accused received two injuries--one on his head and the other on his shoulder, they faced an inconvenient situation PW 3 Pyara, who is the father of the accused as well as of the deceased, stated that when he reached the spot, he found his son Vaine lying down out-side his house and Gotu sitting at his house. He asked the accused as to why he had struck blows to Gotu and Vaina. Saying so, he struck two blows to the accused with a Lathi. The same version was given by PW 1 Gotu. However the could not maintain this position successfully. PW 3 Pyara admitted in his cross-examination that when he reached the spot, he found blood cozing out from the head injury of the deceased Vaina as well as of the accused Nathu. Therefore, the version of these two witnesses that the injuries to the accused were inflicted by PW 3 Pyara falls to the ground and cannot be accepted The learned Sessions Judge was perfectly justified in dismissing this explanation furnished by the eye witnesses as wholly untrue and unfounded.

7. The sequence of events appears like this that when the wife of the deceased Vaina was not allowed to see Tulchha she approached her husband Vaina and complained against it. The decesed Vaina became infuriated, came to the

accused's house, reprimanded him and struck a blow with the Lathi on the head of the accused. The accused thereafter struck a blow to the deceased which fell on his head. Meantime, PW 1 Gotu came to intervene and he struck a blow with the Lathi on the shoulder of the accused. The accused then struck a blow with his Lathi on his right hand. The facts must be appreciated in the natural sequence in which they appear to have taken place. We, therefore, agree with the learned Sessions Judge that the deceased was the aggressor. It was he who reprimanded the accused and struck a blow of his Lathi on his (accused's) head. It was only thereafter that the accused struck a blow of his Lathi on the head of the deceased. The accused, therefore, had a right of private defence of person to use violence against the deceased-victim and PW 1 Gotu, who were the aggressors.

8. The next question which arises for consideration is whether the accused exceeded the right of private defence available to him in the law. Section 99, IPC lays down that the right of private defence, in no case, extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Section 100, IPC lays down that the right of private defence of the body extends under the restrictions mentioned in Section 99, IPC to the voluntarily causing of the death or of any other harm to the assailant if there is reasonable cause for the apprehension that death or grievous hurt will otherwise be consequence of the assault made on him (accused). Section 99 and 100, IPC are to be read together. Now, in considering whether the accused exceeded the right of private defence available to him and caused more harm than was necessary, all the facts and circumstances arising in the given case should be taken into consideration. One should place himself in the position of the accused and view the entire matter with his vision. It cannot be expected from the accused to modulate his defence step-by-step in a cool, calm and composed manner. When a person apprehends a real and grave danger to his life, it cannot be expected from him that he would judge all the things and then strike the blow to ward off further aggression. Every allowance must be made for the fear of the man who thinks he is likely to be killed or severely injured. The man placed in a grave and imminent danger to his life cannot be expected to wield the weapon with the same force or impact which has been wielded against him by the assailant and aggressor. Expecting blow for blow with the same measure from a person placed in the accused's situation, when grave

and imminent danger to his life is there, would be wholly erroneous and injudicious approach. The accused, in the instant case, has received injury on his head and he struck a single blow to the deceased on his head. PW 1 Gotu struck a blow of lss on his shoulder and the accused, in him turn, struck a blow of lathi on Gotu's hand. In these circumstances, it cannot be said that the accused exceeded the right of private defence granted to his by the law. We find no infirmity or flaw in the approach of the learned Sessions Judge in extending the complete right of private defence of person to the accused. The accused was rightly acquitted and no interference is called for.

9. The appeal of the State against the acquittal of accused Nathu is consequently dismissed.

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