

Jomna Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-16-1978

Reported in : 1978(11)WLN10

Judge : K.D. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 53/1977

Appellant : Jomna

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. M.C. Bhandari

Judgement :

K.D. Sharma, J.

1. This is a jail appeal filed by Jomna against the judgment of the Additional Sessions Judge, Dungarpur, dated 12th January, 1977, where by he was convicted under Section 304 Part 11, IPC and sentenced to under go rigorous imprisonment for three years and to pay a fine of Rs. 1000/-, in default of payment of fine to further suffer rigorous imprisonment for six months.

2. The prosecution case against the appellant was as follows : Jomna appellant and his wife Mst. Roopli had gone to the house Lachmana for cutting crops they were invited by Lachmana to do this work. Both the appellant and his wife staved

at the house of Lachmana in his village. During their stay Moti's wife breathed her last. On hearing the news of her death the appellant's father Ranchor started from his village for condolence & reached the house of Lachmana in the evening of the 6-10-76. Besides Ranchor some other guests, namely, Ratna, Babla, Bathia and Jawa also visited the house of Lachmana who served them food. When all the guests including Ranchor and the appellant were eating rice in the court-yard of Lachmana, Ranchor asked the appellant to go back to his house as, according to him, he was staying there unnecessarily for the last 3/4 days. Thereupon, the appellant replied that he would leave Lachmana's house in the morning for going back to his house. Ranchor resented the reply and picked-up a quarrel with the appellant. In the course of the quarrel Ranchor became enraged, picked-up a wooden plank lying nearby and with it inflicted a blow on the head of the appellant. The appellant snatched the wooden plank from the hands of his father Ranchor and dealt with it 2/3 blows in quick succession on the head of Ranchor, as a result of which the latter fell down and died after a short-while. On seeing Ranchor breathing his last, the other guests went away from there. Lachmana lifted-up the dead body of Ranchor and placed it on a cot. He, thereafter, sent Roopli wife of the appellant to the village Sadaria for giving information about the death of Ranchor. After Roopli's departure Arjun and Jawa came to the house of Lachmana and asked the appellant as to what had happened. The appellant confessed before them that Ranchor first struck a blow on his head with a lathi and, therefore, he inflicted three blows on his body as a result of which he died. Arjun and Hira wanted to see the dead body but the appellant refused to uncover it. Arjun and Jawa thereafter went away from there. In the morning the villagers of Sadaria and Arjun visited the house of Lachmana. Arjun sent Hira to lodge a report of this incident with the police at police station, Dhamola, District Dungarpur. However, Hira made a written report to the Station House Officer, Dhamola, at village Misalwara, on 7th October, 1976, at 11 a.m. The Station House Officer sent a first information report to the police station, Dhamola, for registration of a criminal case under Section 302, IPC against the appellant and rushed to the place of occurrence for investigation into the matter. The incharge of the police station, Dhamola, registered a criminal case under Section 302, I PC on the basis of the report on 7th October, 1976, at 11 a.m. Mujipur Rahman, Station House Officer

inspected the site, prepared a site-inspection memo and a site-plan in the presence of Motbirs. He prepared a Panchnama on the, dead body of Ranchor and arrested the appellant. While under police custody, the appellant gave the Station House Officer an information that he had concealed a wooden plank inside the house of Lachmana behind the door thereof and that he was prepared to get it recovered at his instance. The Station House Officer recorded the above information in Ex. P. 12 and recovered the wooden plank from the place mentioned above. As at the time of his arrest the appellant had an injury on his head, he was sent for medical examination of his injury. The dead body of Ranchor also was sent to Medical Officer Primary Health Centre, Sinalwara. Dr S.L. Jain, performed the postmortem examination over the dead body of Ranchor on 8th October, 1976 and found the following ante-mortem external injuries on it:

1. lacerated wound, 3 x 2 x 1/2 cms. at the scalp over the right occipital bone and right parietal bone, fractured;
2. lacerated wound 2 x x 1 cms. at the right pinna;
3. bruise 3 x 2 cms. at the forehead on right side over the right frontal prominence and frontal bone fractured and fracture extending upto right parietal bone;
4. bruise 4 x 3, 1/4 cms. with abrasion just below the left patilla;
5. bruise 1 x 2 cms. at the middle of the right leg;
6. bruise 4 x 3 cms. at the right knee below right patilla;
7. bruise 4 x 3 cms. at the right glutial region;

In his opinion, the multiple injuries on the head of the deceased injured the brain and caused shock which resulted in the death. The Doctor definitely opined that the injuries, in his opinion, were sufficient in the ordinary course of nature to cause the death of the deceased. The appellant was medically examined by Dr. K.L. Gandhi, vide injury report Ex P. 8 which bears his signatures. Dr. K.L. Gandhi could not tie examined at the trial as he had died. The injury report given by him was proved by Dr S.L. Jain, who claimed to have acquaintance with his

signatures. The injury report reveals that the appellant had one injury on his head which was as follows:

Lacerated wound with oblique 1 x 1/4' x muscle deep with clotted blood and sepsis on the right side of the frontal region, duration about 2/3 days, from the time of examination and giving injury report at 11 a.m. on 9-10 76. Tender in O.P.D.

The wooden plank, which was recovered at the instance of the appellant and in consequence of his information recorded under Section 27 of the Evidence Act from the house of Lachmana was duly sealed in the presence of Motbirs and. later on, sent to Chemical Examiner for analysis. The Station House Officer recorded the statements of the material witnesses and after collecting evidence, filed a challan under Section 302, I.P.C., against the appellant in the court of the Additional Munsiff and Judicial Magistrate, Dungarpur. The learned Magistrate, upon finding a prima facie case, exclusively triable by the court of sessions, committed the appellant to the court of the Additional Sessions Judge, Dungarpur, for trial for the aforesaid offence, The Additional Sessions Judge tried the appellant & found him guilty of the offence punishable under Section 304, Part 13, IPC only. He accordingly convicted and sentenced the appellant for the aforesaid offence and acquitted him of the charge of murder.

3. Although the appellant preferred, this jail appeal through the Superintendent, Central Jail, Udaipur, yet, later, on, Mr. M.C. Bhandari filed a Vakalatnama and argued the appeal on his behalf.

4. I have perused the record of the trial court and heard the arguments of Mr. M.C. Bhandari for appellant & Mr. M.C. Bhandari. Public Prosecutor, for the State. At the outset it may be observed that Mr. M.C. Bhandari could not assail the finding of the learned Additional Sessions Judge that it was the appellant who inflicted the injuries with wooden plank on the head of Ranchor deceased which resulted in the latter's instantaneous death. He however, contended that the deceased was aggressor and he at first struck a blow on the head of the appellant with wooden plank which was lying nearby and so Section 96, IPC would apply to this case. Mr. M.C. Bhandari further argued that the right of private defence of person accrued to the appellant to project himself for reflective resistance against unlawful

aggression committed by his father Ranchor deceased According to his submission, there was a reasonable apprehension either of grievous hurt or death in the mind of the appellant as a result of the blow received by him at the hands of his father and this apprehension continued at time when the injuries were caused by him to the deceased and so it cannot be said that the right of private defence of person came to end the moment the deceased was disarmed. In support of his above contention, learned Counsel for the appellant placed reliance on an authority of the Saurashtra High Court *Bharwad Vibha Ghoga v. State* AIR 1955 Sau. 1, wherein the following observations were made:

The learned Sessions Judge cited several authorities in which it has been held that the accused could not claim the right of private defence of person after the deceased was disarmed But the question whether the accused had the right of private defence is in every case essentially a question of fact to be decided according to the circumstances of each case and decided cases are not of much help except as indicating generally the principles which should be borne in mind in deciding the question.

We are satisfied that in this case the apprehension of danger to the appellant could not be considered as at an end by the fact that the appellant had succeeded in taking away the spear from the deceased and in striking down the deceased it cannot be said that he was not exercising the right of private defence. It is impossible to judge accurately the moment when the right of private defence came to an end. The circumstances, however make it probable that the apprehension of danger continued after the deceased was disarmed and the appellant should get the benefit of the exception to Section 100, IPC.

Mr. K.C Bhandari, Public Prosecutor, on the other hand argued that the appellant is not entitled to the benefit of Section 96, IPC. in the instant case, because, assuming for the sake of argument the defence version to be true, the right of private defence came to an end after the wooden plank was snatched by the appellant from the hands of the deceased. According to his submission, after Ranchor had been disarmed by the appellant, there could be no reasonable apprehension of any danger to the latter's body because the deceased was

completely disabled from causing any harm to the appellant.

5. I have considered the rival contentions. There is reliable evidence of Lachmana, P.W 1, and Ratna, P.W.8 on the record which conclusively established that it was the appellant who inflicted 2/3 blows in quick succession on the head of Ranchor deceased with a wooden plank, as a result of which Ranchor fell down unconscious and died an instantaneous death. These two witnesses professed to have eye-witnessed the occurrence and there is nothing on the record to disbelieve their version which has been rightly relied upon by the trial court after close scrutiny thereof. Besides the evidence of the two eye witnesses, the prosecution has led further evidence of Mst. Dali. P.W 9 and Babla P.W 10 before whom the appellant admitted soon after the occurrence that he had caused fatal injuries to the body of his father with a wooden plank after the latter had inflicted a blow on his head. As stated earlier, Mr. M C Bhandari could not succeed in assailing the evidence of the aforesaid witnesses. Hence I agree with the learned Additional Sessions Judge that it was the appellant who was responsible for infliction of the fatal blows on the body of his father Ranchor.

6. The next pertinent question that arises for determination is whether the appellant was entitled to exercise the right of private defence of his person. It will not be out of place to mention that the appellant denied having committed the act alleged. His plea at the trial was that he went to the house of Lachmana where Ratna and Babla asked him to take wine. He did not accede to their request and refused to take in liquor. Thereupon, they became annoyed and Babla struck a lathi blow on his head as a result of which he fell down. On hearing the noise his father Ranchor tried to enter the house of Lachmana but he was killed outside by Babla, Ratna and Lachmana. The above plea set up by the appellant was rejected by the trial court as there was nothing on the record in support thereof & as the evidence led by the prosecution in proof of the guilt of the appellant was found entirely trustworthy upon careful scrutiny thereof. But in spite of the denial of the appellant having committed the offence, if there is sufficient evidence on the record to show that he acted in self defence, he cannot be precluded from pleading it for the first time in appeal. Without having set up the plea of right of private defence of person the appellant could show from the prosecution evidence

and other materials on the record that he acted in self defence. As the plea of private defence has been raised in appeal, it is the duty of this Court to consider and examine the same in the light of the evidence available on the record.

7. In the instant case, it transpires from the prosecution evidence itself that a quarrel ensued between the appellant and the deceased over the appellant's stay at Lachmana's house for 3/4 days. It has come in the evidence of both the eye-witnesses namely, Lachmana PW 1 and Ratna, PW 8, that Ranchor on seeing the appellant in the house of Lachmana asked him to go home as he had been staying there unnecessarily for the last 3/4 days. The appellant told his father that he would go back to his house in the morning. This led to a wordy quarrel between the two. In the course of the quarrel Ranchor picked-up a wooden plank lying nearby and struck a blow with it on the head of the appellant. The appellant snatched the wooden plank from the hand of his father and inflicted 2/3 blows in quick succession on the latter's head as a result of which he fell down unconscious and died after a short-while. It is, therefore, evident from the evidence of the two eye-witnesses that the deceased was an aggressor as he was not justified in attacking the appellant with a wooden plank during the wordy quarrel that ensued between the two on the appellant's stay at the house of Lachmana. It is further established by the injury report Ex. P. 8, which has been duly proved by the testimony of Dr. S.L. Jain that the appellant had a lacerated wound 1' x 1/4' muscle deep with clots of blood on the right side of the frontal region of his head at the time of his arrest and medical examination. The injury was no doubt a simple one caused by a blunt weapon within 2/3 days from the date of examination, i.e. 9-10-1976 at 11 a.m. It appears from the testimony of Lachmana, PW 1, that Ranchor deceased was in an angry mood and that he wanted to inflict another blow on the body of Jomna with the wooden plank but the weapon was snatched away from his hand by the appellant. From these facts it is established that there was an apprehension of death to the body of the appellant as he had already received one injury on his head at the hands of the deceased. The violent attitude of the deceased would certainly give rise to a reasonable apprehension in the mind of the appellant that he was in danger of receiving grievous hurt at least and so there was occasion for the exercise of the right of private defence. The appellant was justified in protecting his person by snatching the wooden plank from the hand of

his father, but as soon as the wooden plank was forcibly snatched from the hand of Ranchor appellant, the apprehension of danger did not continue and came to an end. There were no such circumstances as could make it probable that the apprehension of danger continued after Ranchor was disabled from causing harm to the appellant. The eye-witnesses did not state in their depositions that after the wooden plank was forcibly snatched by the appellant from the hand of Ranchor, the latter made an attempt to get back the weapon and attack the appellant. Once the wooden plank had been seized from the deceased, the right of private defence of person that had accrued to the appellant came to an end and did not continue because after the deceased was disabled from causing further harm, there was no longer a reasonable apprehension of danger to the body of the appellant. Hence, in the peculiar circumstances of this case, I do not feel inclined to hold that the right of private defence of body continued even after the deceased was disarmed. The appellant was therefore, riot justified in causing fatal blows on the head of his father Ranchor. Although the act committed by the appellant did not fall under Section 300, I.P.C. Yet it was certainly done with the knowledge that he was likely by such act to cause the death of the deceased. In this view of the matter, no interference is called for with his conviction under Section 304, Part II, I.P.C.

8. As regards sentence, Mr. M.C. Bhandari, learned Counsel for the appellant vehemently argued that there was no bad-blood between the appellant & his father Ranchor deceased & the incident was the result of sudden wordy quarrel that ensued between the father & the son over a petty matter. He further urged that the appellant has already served out rigorous imprisonment for about one year and has undergone detention during investigation, inquiry and trial of case since 8th October, 1976, to 12th, January, 1977 on which date he was sentenced to undergo rigorous imprisonment for three years. According to him, the ends of justice would be met if a lenient view is taken, and the sentence awarded to him is reduced. The above contention of the learned Counsel for the appellant has some force. There is nothing on the record to show that the relations between the father and the son were strained prior to the incident. The occurrence was result of a sudden wordy quarrel that ensued between the appellant & his father over the farmer's stay at Lachmana's house. It has come in the evidence of Lachmana PW 1, that the deceased was of hot temperament and that he first assaulted the

appellant without any provocation from the latter's side In these circumstances, the ends of justice would be met if the sentence of three years' rigorous imprisonment awarded to the appellant is reduced to a term of two years' rigorous imprisonment and the sentence of fine of Rs. 1000/-, is reduced to a fine of Rs. 500/, in default of payment of fine to suffer further rigorous imprisonment for three months only.

9. Consequently, I partly accept the appeal filed by Jomna appellant and while maintaining his conviction Under Section 304 Part II, IPC reduce the sentence of three years' rigorous imprisonment to a term of two Years' rigorous imprisonment and further reduce the fine of Rs. 1000/-, to a fine of Rs. 500/-, in default of payment of fine the appellant shall undergo rigorous in prison merit for three months only. However, the period of detention, if any, undergone by Jomna during investigation, inquiry and or trial of this case & before the date of such conviction, shall be set off against the terms of imprisonment imposed on him and his liability to undergo imprisonment, on such conviction, shall be restricted to the remainder, if any, of the terms of imprisonment imposed on him. The appellant is already in jail. He shall serve out sentence awarded to him by this Court.

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