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Court : Rajasthan

Decided On : Nov-10-1975

Reported in : 1975WLN(UC)448

Judge : M.L. Jain, J.

Appeal No. : S.B. Criminal Appeal No. 852 of 1971

Appellant : Mangilal and anr.

Respondent : The State

Disposition : Appeal allowed

Judgement :

M.L. Jain, J.

1. This is an appeal against the judgment of the learned Additional Sessions Judge, Baran, dated 27th August, 1971, by which he convicted the accused appellants Mangilal and Ladhoolal under Section 304 part II, I.P.C. and sentenced them to rigorous imprisonment for five years and three years respectively.

2. I have beard arguments and perused the record. The prosecution case appears to be that on 24th October, 1969, Prabhulal Teli of village Talav within police station Khatoli, District Kota, with his wife Mat. Pushpa went to cultivate his land known as 'Beed Kankad' in the after-noon. After sometime accused Nathulal,

Mangilal, Ladhoolal and Jailal also came there. Since Prabhulal was plaguing the field on the northern side, the accused began to do so from the opposite side. He approached and asked them not to plough his field. Thereupon, the accused persons are alleged to have begun beating him with Chakkar, Parnia. Lathi and gadansi, in furtherance of their common intention to cause his death. Mst. Pushpa PW 1 seeing her husband so besieged ran to his help but by the time she reached the place of occurrence, Prabhulal was already dead. It is further alleged that besides her, the other witnesses of the occurrence were Ram Narain PW3, Bimda, Kalyan PW2, Radhey Shyam PW6 and Bhanwar Lal PW 7, Mst. Pushpa ran weeping to wards the village and returned with some persons Motilal, Brijmohan and Mst. Pushpa remained near the dead body, while Madanlal PW 13 and Phoolchand lodged the report Ex. 9/11 in the police station.

3. Kalyansingh PW 11 head constable reached the place of occurrence on 25-10-69 and prepared the Panchayanama Ex. P4 and site plan Ex. P5. He also recovered a 'Khatla' from the place of occurrence, vide memo Ex. P14. Vijay Bahadur Singh PW15 recovered on 30-10-1969 upon the information and at the instance of accused Mangilal, Nathulal and Ladhoolal, an axe, a 'Parnia' and a 'Chakkat' respectively. None of the weapons was found positive for blood.

4. After the investigation and inquiry was completed, the learned Munsif Magistrate, Baran committed all the four persons for trial under Section 302/34 IPC.

5. From the statement of Dr. P.K Nandi PW 10, who performed the autopsy, it transpired that the deceased Pradbhulal received the following injuries:

(1) Incised wound 3' x 1' deep into the brain matter on the left occipital region lying obliquely.

(2) Incised wound 3' x 1' deep in the brain matter on the lower part of occipital legion lying transversely.

(3) Incised wound 1/2' in length on the lower side of the left eye laterally.

(4) Bruise 3' x 1' on the back of right arm.

(5) Abrasion 1' x 1/2' on the left leg laterally.

6. Upon opening the body, occipital bones were found broken. Pieces of bone were found in the brain. Membrane and brain were lacerated. According to this Medical Officer, Prabhulal died on account of the two fatal injuries on the occipital region. These injuries were described as sufficient in the ordinary course of nature to cause death. The Medical Officer was further of the view that both injuries Nos. 1 and 2 could be caused by Chakkar, but they could not be caused by one below. Both these injuries were jointly and severally sufficient to bring about death.

7. The defence case was that the field of occurrence was that of deceased Prabhulal who purchased it in an auction on 14-10-66 vide the statement of Patwari Prabhulal PW. 5, but the land had been mortgaged by Prabhulal with Nathulal, Shankerlal, Mangilal and Ladhoolal for a sum of Rs. 1,500/- vide Ex. D/5 dated 5-6-69, which was found to have been proved by the lower Court. It was agreed in this paper that for the Samvat year 2026 the mortgagors and mortgagee shall cultivate the field together. If repayment was not made by Baiaskh Sud 15 of Samvat (sic). the accused shall exclusively be entitled the cultivation of the entire land. Prabhulal failed to pay as aforesaid & the accused went to plough the land on the day of occurrence which act was resented by Prabhulal. When Mangilal sowing was the field with the help of his mother, deceased Prabhulal inflicted a 'Kharla' blow on the head of Mangilal. It was in the exercise of right of private defence both of person and property that Mangilal returned the blow, perhaps with an axe and Prabhulal died. The other three accused persons were not there at all. The accused also produced Dr. B.S. Rathore DW 4 who examined Mangilal on 28-10-69 upon police requisition and found a four days old simple cut wound 5 cm. x 1/2 cm. x 3/4 cm. on his scalp left side. It could be caused by a Kharla. Injury report is Ex. D4.

8. The learned Additional Sessions Judge (while discussing point No. 2) held that three persons namely, Mangi Lal, Ladoo Lal and Nathu Lal were alone responsible for killing Prabhu Lal but there was no common intention to kill. According to him the land was to possession of the accused and they had cleaned it prior to the occurrence and thus, they had 'a semblance of right to remain on the field and to

cultivate it.' It appear that he acquitted Nathu Lal because his act was covered by legitimate exercise of right of private defence, while accused Mangi Lal and Ledhoo Lal exceeded such ,right. He also acquitted Jailal because there was no evidence against him.

9. The learned Additional Sessions Judge had found that the testimony of the eye witnesses was not categorical as to which of the accused was holding which weapon though their case. In the police and in the committal court was that Nathu Lal was holding Parama and Mangi Lal was armed with Kulhari and Ghakkar and Mangi Lal delivered Kulhari blow. But Mst. Pushpa PW 1, however, deposed that Mangi Lal was holding the Chakkar and aimed it on the head of her husband who warded off the blow on his 'Kharla'. It was picked up by Laddoo Lal when it fell down Laddoo Lal then, used the Chakkar 10 hit Prabhu Lal. There was no reliable evidence other than that of Mst. Pushpa with regard to actual occurrence. She too stated in the police that when Mangi Lal advanced towards her husband, he gave a blow with 'Kharla' and she now stated before the court of Sessions that her husband did not strike the first blow. The learned Judge found the version of the accused reliable to the extent that the first blow was struck by Prabhu Lal. He was definitely of the view that the accused persons had acquired the right of private defence of person and properly on the basis of the conduct of Prabhu Lal because he threatened their right to cultivate the land by committing mischief and ties-pass. But since Mangi Lal and Laddoo Lal bad exceeded the right of private defence, when they struck blows with sharp weapons on the head of Prabhulal, he convicted them under Section 304 Part II, as aforesaid.

10 Now. the learned Counsel for the appellants urged that the two fatal blows on the bead of the deceased were of the size 3' x 1' and could be caused by the Chukkar. There is no evidence that one of these two injuries was caused by the axe which was alleged to be in the hands of Mangi Lal. Therefore, none of the fatal bellows can be assigned to Mangi Lal and both the blows should have been found to have been inflicted by Laddoo Lal. Apart from that, the learned Additional Session Judge held that Prabhu Lal was the aggressor because the accused had the right of the occupation of the field as per terms of the mortgage made by him and that he had a wooden Kharla in his hand and had also inflicted first blow on

the head of Mangi Lal. The learned. Additional Sessions Judge should have further held that if a person as an aggressor and comes with a heavy stick in his hand, then it is sufficient to cause reasonable apprehension in the mind of the accused that death or at least grievous hurt will be caused to him and in such a situation, the accused could cause death and there was no question of any excess in the exercise of the right of private defence.

11. The substance of the argument advanced on behalf of the appellants is that they were entitled to cause to death of Prabhu Lal because it was done in exercise of the right of private defence of person and properly and therefore the learned Additional Sessions Judge should have entered the finding of not guilty. Even if the best case of the prosecution is accepted Mangi Lal was not at all responsible for inflicting any of the fatal injuries. The fatal injuries are caused by Laddoo Lal. The learned Additional Sessions Judge has also ruled out the existence of common intention between the accused and therefore, Mangi Lal cannot be convicted even under Section 34 IPC and respecting Laddoo Lal, the learned Additional Sessions Judge was found to have allowed him benefit of Probation of Offenders Act, which this court should BOW extend.

12. I have considered over these arguments and have also perused the record of evidence Out of the alleged eye witnesses Kalyan PW 2 did see the accused beating the deceased from a distance of 50' 60' but he could not say which weapon was used by which of them Ramnarain PW 3 also gave a similar statement. He deposed that he could not identify the weapons because he was watching the occurrence from a distance of 150 yards. Radhey Shyam PW 6 saw the accused beating the deceased with Dadas. The details of the occurrence are available only from the statement of Mat. Pushpa PW 1. In her examination in chief she stated that her husband abused the accused where-upon Mangilal raised his 'Chakkar' at him. Prabhulal had a Kharla in his hand and he warded off the attack on the Kharla. The Chakkar fell down and Mangilal caught her husband by the waist. Her husband gave stick blow to Mangilal but she could not say in which part of body Mangilal was hurt, Ladhulal picked up the 'Chakkar' and hit it on the head of her husband who could not stand the blow and sat down when the accused gave five and six blows more and thus silenced him. The learned

Additional Sessions Judge. appears to have believed this story and indeed. I see no reason to disagree with his finding in this respect. The learned Additional Sessions Judge was of the view that Mangilal and Laddoolal acted in defence of right to property and person and they had no common intention to cause the death of deceased Prabhulal. But Laddoolal used the Chakkar and Mangilal according to his statement before the committing court, used the Kulhari. When all the accused were beating Prabhulal he was unarmed as stated by Kalyan PW/2 and Ramnarain PW3. In these circumstances, the learned Additional Sessions Judge found that Mangilal and Laddoolal had exceeded the right of private defence.

13. According to Section 100 I.P.C the right of private defence of body extends to the voluntarily causing of death if an assault reasonably causes the apprehension that death will otherwise be consequence of such assault. But Section 99 I.P.C. provides that the right of private defence in no case extends to inflicting more harm than it is necessary to inflict for the purpose of defence. According to exception II to Section 300 I.P.C. culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property exceeds the powers given to him by law and causes the death of persons against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. It appears that the offence committed by the accused was held by the learned lower court to fall under Section 304 part II, because the act was done with the knowledge that it is likely to cause death. It was a case of culpable homicide not amounting to murder.

14. Now, there appears an error here. Having held that there was no common intention shared by the two accused, it was not possible for the learned lower court to have further said that Mangilal exceeded the right of private defence in any manner, because according to Mst. Pushpa, blow did not fall on the head of the deceased but on the 'Kharla' of the deceased and his weapon slipped from his hand. It was then, that Laddoolal found time to pick-up the 'Chakkar' which had fallen from the hand of Mangilal and delivered it on the head of the deceased while he was so immobilised. The learned Additional Sessions Judge observed that Mangilal stated in the committing court that he had an axe in his hand and he hit in

on the head of the deceased. Firstly, the statement of the accused made in the committing court was not taken on the record of the Sessions trial and secondary there is no such statement made by the accused Mangilal as the learned lower Court has assigned to him. He only said that an axe was lying there. Thirdly in the absence of corroboration, it is not safe to convict the accused person upon the statement made by him before the committing court. The learned judge committed one more mistake. He remarked, 'But from the statement made by them in the police and in the committing court it transpires that Nathulal was holding a Parniya and initially Mangilal was holding a kulhari and chakkar.,' It was illegal to take into consideration the statements in the police and the committing court as substantive piece of evidence. It therefore, follows that Mangi Lal deserves an acquittal, because he was convicted almost on no evidence. His injury was also not satisfactorily explained.

15. As regards Laddoo Lal, there is incontrovertible evidence that it was he, who gave the fatal blows to the deceased. I agree with the learned Additional Sessions Judge that even if a right of defence of property and person was available to him, he certainly exceeded the same to cause two blows on the head of a man who was already been caught by waist by Mangi Lal and there was no more any threat of his causing any injury to him of to Mangi Lal The learned Additional Sessions Judge has therefore rightly convicted him under Section 304, Part II, I.P.C.

16. As far as the question of his Sentence is concerned, the learned Additional Sessions Judge observed that ha was a youngster of teenage and deserves to be liberally treated. It was for this reason that he awarded him rigorous imprisonment for three years only. Here, it is urged before me that at the time he was found guilty, he was only 19 years of age and he should be given the benefit under Section 6 of the Probation of Offenders Act, 1958 His age was estimated by the learned Additional Sessions Judge to be 18 years at the time of his examination. It is for Consideration whether there are reasons to deny him such benefit. The circumstances in which he attacked the deceased do not appear to me to justify his release on probation. The deceased was caught by the waist by Mangi Lal and it was then that Laddoo Lal delivered two blows on the head of the deceased from behind with sharp weapon with such force that the man was done to death

instantaneously. Mere age cannot be a ground for enlarging him on probation of good conduct. Though the accused appellant was under 21 years of age, yet I am satisfied that having regard to the circumstances of the case and nature of the offence, it would not be desirable to deal with him under Sections 3 or 4 of the Act and for the reasons presently recorded, I reject this request.

17. The result is that the appeal of Mangi Lal succeeds and he is acquitted of the offence under Section 304 Part 11 I.P.C. He need not surrender to his bail bonds.

18. The appeal of Laddoo Lal fails. His conviction and sentence are maintained. He shall surrender to his bail bonds to the Additional Sessions Judge, Baran in order to serve his sentence. In case, he fails to so surrender, the learned Judge shall have him arrested and committed to prison for the purpose according to law.

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