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Court : Rajasthan

Decided On : Jan-16-1986

Reported in : 1987(2)WLN668

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Cr. Appeal No. 671 of 1976

Appellant : Gafoor

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Guman Mal Lodha, J.

1. Gafoor appellant has challenged his conviction under Section 308 IPC and sentence of 18 months' rigorous imprisonment.

2. This is one of these cases where the facts are not in dispute. The incident happened at about 6-7 a.m. on July 17, 1975. The injured Umed demanded Rs. 90/- from the accused on account of the price of Kharia. The accused told him that he had no money with him. The complainant persisted in his demand. At this, there was altercation and Ummed caught hold of accused by neck and them accused Gafoor gave two knife blows to Ummed in his abdomen. The whole

version has been given out clearly by PW 3 Ummed. The relevant portion from the judgment of trial court is reproduced here which reads as under:

et:c us eqyfte xQqj dk xyk idM+k vkSj nks ykr xQqj ds mEesn ekjh A xokg bLrxkl ?kVh us chp&cpko; djus dh dksf'k'k dh] fQj Hkh mEesn ugh ekuk vkSj nk SM+dj nks twrh xQqj dks ekjh A

?kVuk ls iwoZ eqyfte o et:c mEesn es nkar dkVh jksVh FkhA et:e xokg mEesn okds ds le; iSjks es twrh igus Fkk A mEesn dh ,d ykr xQqj ds fiaMh ij isV dh uhps dh rjQ yxh A twfr;ka nksuks xQqj ds flj es yxh A

3. In addition to above, it has come in the evidence of Ummed himself that-eS Mhy MkSy es eqyfte ls dqN T;knk gwa A

Ghanti PW 2 has also stated that-

ml txg vkdj vkil es xqFkexqFkk gks x, A mEesn us xQqj dh ckag idM+ yh A xQqj us Hkh idM+us dh dksf'k'k dh ijUrq mEesn us ykr nsdj NqM+k fy;k A

4. The question which emerges for consideration in this appeal is as to what offence has been committed by the accused. The trial court has held that the accused has committed an offence under Section 308 IPC.

5. Mr. Singhvi has argued that the injured was a strong man in comparison to the accused who is weak and thin. The injured Ummed did not stop by catching hold of Gafoor but continued to give beating by kicking him with shoes in his abdomen, which could have caused his death by rupture of spleen. The injured further gave blows on the head of accused by shoes twice. In such circumstances it was a case where the right of private defence was available to the accused, argued Mr. Singhvi.

6. Mr. Mathur, on the contrary submitted that the present one is the case where the accused acted under sudden and grave provocation and there was no right of private defence of parson. Mr. Mathur argued that even if there was a right of private defence, the accused exceeded it.

7. I have given my thoughtful consideration to the above submissions of the learned Counsel for the parties and the facts of the case as emerged from the prosecution evidence. Undoubtedly, as per-prosecution case, the injured Ummed is a healthy and strong person in comparison to the accused who according to the evidence of Ummed is comparatively weak, the injured caught hold of the neck of the accused and gave kicks in his stomach which could have caused him grievous injury and some time even death, if the splin is ruptured. A healthy person having the shoes in his legs and using that leg with shoes for kicking in the abdomen of another person who is comparatively weak certainly puts the other person into a position where he has to fight for his life or in any case for being saved from grievance hurt.

8 In each circumstances, it is difficult to weigh the force which a weak person used against the strong person in golden scales. In Narain Singh v. State of Punjab, 1966(1) Cr. L.J 730 it was observed by their Lordships of the Supreme Court that if a person reasonably apprehends that his assailant is attempting to strangulate him, exercise of the right of defence of person extends even to causing death of the assailant. In Deo Narain v. State of U.P. : 1973 CriLJ677 , the right of private defence was held to be preventive and not positive right. It was held that it is available against apprehension of unlawful aggression and not for punishing the aggressor. Therefore as soon as a reasonable apprehension of danger a rises, right of private defence can be exercised. In the above case when a blow with a Lathi was aimed on the hand of the accused, the accused was justified in using his spear in defending himself which caused death. In the above case the High Court was of the opinion that the right of private defence was exceeded on the ground that spear should not have been used from the sharp side and it should have been used as a Lathi. The Supreme Court observed that at such moments on average man cannot be expected to think coolily and control his acting by weighing his force against aggression.

9. In the instant case as mentioned above, the complainant injured Ummed continued his aggression firstly by catching hold of the neck of the accused, then by giving kicks with his shoes in his abdomen and then giving shoe blows on his skull and belabouring the accused taking the advantage of his strong body.

10. Mr. Mathur pointed out that in Yogendra Morarji v. The State of Gujarat : 1980 CriLJ459 the principles of right of private defence have been laid down in detail.

11. In the above decision the important, aspect which is relevant for our purposes is that the right of private defence extends to the inflicting of such harm as defence as is necessary and it should be commensurate with the injuries with which he is threatened. Their Lordships of the Supreme Court have observed that at the same time it is difficult to expect from a person exercising this right in good faith to weigh 'with golden scales what maximum amount of force is necessary to keep within the right. Every reasonable allowance should be made for the bonafide defender 'if he with the instinct of self-preservation sprung upon him, persues his defence a little further than may be strictly necessary in the circumstances to avert the attack'. It would be wholly unrealistic to expect of a person under assault to modulate his defence step by step according to the attack'.

12. In the instant case as mentioned above the assault by Ummed was repeated so many times and worse was kicking in the abdomen with a leg having shoe and them continuously beating and also catching hold of the accused by his neck making him desperate for defence. The accused used knife only once and did not repeat it.

13. In such circumstances, I am of opinion that following the above principles and giving due comparison by a weak person who was almost trying to save himself from the repeated blows of a strongly built person, one of knife by the accused and giving single blow cannot be said to be wholly disproportionate, though it should have been avoided.

14. The result of the above discussion is that the accused is entitled to get the benefit of right of private defence of person and that would result in his acquittal.

15. Consequently, the appeal is accepted and the appellant is acquitted. He is on bail. He need not surrender to his bail bonds.

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