

Sagar Chandra Saha Vs. the State

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Court : Kolkata

Decided On : Mar-13-1961

Reported in : AIR1962Cal85

Judge : J.P. Mitter and ;D.N. Das Gupta, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 162 and 297; ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 96, 97, 300, 304 and 324

Appeal No. : Criminal Appeal No. 301 of 1959

Appellant : Sagar Chandra Saha

Respondent : The State

Advocate for Def. : F.M. Sanyal, Adv.

Advocate for Pet/Ap. : S.S. Mookerjee, ;P.C. Ghose and ;B.C. Rai, Adv.

Judgement :

Mitter, J.

1. The appellant and several others were tried upon divers charges by the learned Additional Sessions Judge at Burdwan sitting with a Jury. The Jury returned a majority verdict of guilty under Section 304, part II of the J.P.C. as against the appellant. By a similar verdict the Jury also found him guilty under Section 324 of

the I. P. C. The learned Judge accepted these verdicts, convicted the appellant of the relative offences and sentenced him to suffer rigorous imprisonment for seven years in respect of the offence under Section 304, part II and to two years in respect of the offence under Sec, 324 of the I. P. C. The Jury returned verdicts of 'not guilty' as against the rest.

2. According to the Prosecution, the genesis of the trouble was a rude remark which the appellant was said to have made to one Annakali, P. W. 9. The attack which appears to have been wanton resulted in the death of Radhapada. There is no doubt that there was a real riot and that several others participated in the rioting, notwithstanding the acquittal of the appellant's co-accused. In view of the order we propose to make, it is not necessary to go into the details of the Prosecution case.

3. The defence was a denial of the appellant's complicity in the crimes concerned. It was also the defence case that the occurrence, if any, took place on the verandah and in the Court-yard of the appellant's house. Needless to say that the defence called no evidence but relied mainly upon suggestions made in the course of the cross-examination of certain Prosecution witnesses. The learned Judge invited the Jury to consider the question whether the occurrence had taken place at the house of the complainant or at the house of the appellant. Yet, the learned Judge was minded to tell the Jury that none of the exceptions to Section 300 had any application to the facts of the case. Accordingly, the learned Judge gave no direction to the Jury as to whether a plea of the right of private defence was open to the appellant. We think that we should set out below material parts of the learned Judge's summing up bearing on the question whether, the occurrence had taken place at the house of the complainant or at the house of the appellant. At page 180 of the paper-book the learned Judge observed :

'In the F. I. R. practically the entire case as stated in Court has been mentioned including the important circumstance that the occurrence took place in the house of the complainant party which is the main item of consideration for our purpose.

On the point that the occurrence took place in the complainant's house there is the further circumstantial evidence of the finding of blood stained earth in the house of

the complainant. There is evidence to show that blood stained earth was found by the A. S. I. on the court-yard of the baithak-khana of the complainant on the next day of the occurrence It was argued by the learned lawyer for the defence that it was only probable that Radhapada on hearing the incident at Bamanpukur about the assault on his brother would go to the house of the accused in order to protest and chastise them and that accordingly the occurrence took place in the court-yard and verandah of the accused.

.. . . .

As against the prosecution case there is only the suggestion of the accused that the complainant party were the aggressors and they attacked the accused party and that the occurrence took place in the compound of the accused party. Practically there is no evidence besides the suggestion. At the same time you must carefully consider the suggestions.'

Later in the summing up the learned Judge pointed out that according to the defence the injuries found upon some of the accused persons had been caused by the complainant's party when they attacked them in their (accused's) house. Thereafter the learned Judge harped upon the same topic, namely, whether the occurrence had taken place at the complainant's house or at the accused's house. Finally, the learned Judge made the following observation:

'It is not claimed that any one of the accused persons assaulted Radhapada Or any of the complainant's party by way of self-defence. Therefore the question of right of private defence does not directly arise. Defence version in this connection is that some other unknown person caused the injury for which they are not responsible. If some other outsider person caused the injury resulting in the death of Radhapada, certainly the accused persons should not be held responsible for the offence and the right of private defence could not arise.'

The foregoing excerpts from the learned Judge's summing up led Mr. Mukherjee to argue that although the evidence in the case disclosed circumstances to suggest a plea of self-defence, the learned Judge erred in directing the Jury that the relative exception to Section 300 had no application. Mr. Mukherjee has also urged that

the learned Judge, at the same time, invited the Jury to consider whether the occurrence had taken place at the complainant's house or at the appellant's house. If the occurrence had taken place at the appellant's house, a plea of self-defence could properly be raised involving the further question whether or not the right of private defence had been exceeded. It is said on behalf of the State that any such alleged right of private defence was not raised on behalf of the appellant and that indeed it was his case that he had nothing to do with the injuries which had been inflicted on the deceased. In support of this contention, Mr. Sanyal cited the case of *Dhirendra Nath v. State* : AIR1952 Cal621 . This was a decision of Chakravartti and Sinha JJ. according to which a plea of the right of private defence can be taken by a person who admits the act charged against him, but pleads an excuse. This was an unfortunate decision, contrary to the law of the matter laid down in several decisions of this Court. In the Full Bench decision in the case of *Emperor v. Upendra Nath Das*, 19 Cal WN 653 : (AIR 1915 Cal 773) (FB) Woodroffe, J. observed :

'I am not prepared to hold as a general proposition of universal applicability that a Court cannot and should not consider a case in favour of the accused which he has not raised. For such a case may properly arise on the prosecution evidence, and if it did, I myself should put it to the jury for their consideration, whatever line might have been taken by the accused; or his counsel.'

In the case of *Jahur Sheikh v. Emperor*, 30 Cal WN 912 : (AIR 1926 Cal 1107) Rankin and Chotzner JJ. held that the mere fact that an accused person did not admit his presence at the occurrence and raise a case of provocation or that of passion or something of that sort did not render it unnecessary to give the Jury a proper direction as to the exception in Section 300 of the Indian Penal Code. In a recent case *Supdt. and Remembrancer of Legal Affairs, West Bengal v. Bhupati*, 60 Cal WN 114, a Division Bench of this Court, consisting of myself and Renupada Mukherji, J., took the view that a plea of the right of private defence was open to an accused even though he repudiated his complicity in the crime,, provided such a plea could properly be raised upon the evidence and the surrounding circumstances of the case. In our view, the learned Judge was bound, in the circumstances disclosed, to explain, to the Jury Exception II and the entire law

relating to the right of private defence. The omission to do so was a non-direction amounting to a gross misdirection. This omission was bound to affect the Jury's consideration, of the case.

4. The summing up suffered from certain other defects which we may as well point out. At page 178 of the paper-book the learned Judge made the following observation :

'The statement made to the police by the witness is in support of the prosecution case and is consistent with the evidence by Sankar who stated that the witness and he came together to the place.'

It is trite knowledge that a statement made to the I Police cannot be used to corroborate the person's evidence in Court, we should also point out to the learned Judge that the first information report can only corroborate or contradict the maker of it and not the prosecution case as a whole.

5. In view of the foregoing defects we are compelled to set aside the verdicts, of the Jury and the consequent convictions and sentences and to order that the appellant be retried upon charges under Section 304, part II and Section 324 of the Indian Penal Code with the aid of a fresh Jury. As already observed, the attack upon the deceased was both deliberate and wanton. Nevertheless, he should be enabled to have as fair a trial as is possible in accordance with law. Pending the retrial, the appellant will continue on the same bail.

D.N. Das Gupta, J.

6. I agree.

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