

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ZALIM & ORS.

DATE OF JUDGMENT: 07/05/1996

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
KURDUKAR S.P. (J)

CITATION:
JT 1996 (6) 9 1996 SCALE (4)255

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The three respondents herein alongwith one Hari Singh (accused) were put up for trial for committing culpable homicide not amounting to murder of Babu Ram (since deceased), an offence punishable under section 304 of the Indian Penal Code. The Second Addl. District and Sessions Judge, Etawah, vide judgment and order dated 29-5-1978 in Sessions Trial No. 199 of 1976 convicted the first respondent/accused Zalim under section 304 Part I of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for ten years. Partap the second respondent was convicted under section 304 Part I read with section 34 IPC and sentenced him to suffer rigorous imprisonment for seven years. Pyare the third respondent was also convicted under section 304 Part I read with section 34 IPC and sentenced him to suffer rigorous imprisonment for five years. The learned IInd Addl. District and Sessions Judge, however, gave benefit of doubt to Hari Singh and acquitted him of the said charge. The respondents being aggrieved by the order of conviction and sentence preferred an appeal to the High Court of Judicature at Allahabad and the High Court vide its judgment and order dated 6-4-1983 allowed the appeal of the respondents and acquitted them of the said charge. The State of U.P. has filed this appeal challenging the legality and correctness of the order of acquittal passed by the High Court.

2. Briefly stated the prosecution case is as under:-

On 9-5-1976 at about 1.00 p.m., a Panchayat was held in the Varandah of one Ram Das Chowdhary to resolve the dispute as regards a kotha situated at village Bakewar Distt. Etawah. Ram Sarup son of Munni Lal claimed to be in possession of the said kotha but however, he complained that respondent-Partap Singh and others took forcible possession thereof some five to six days prior to the date of incident which took place on 9-5-1976. The Panchayat deliberated on the issue and suggested that possession of kotha be returned

to Ram Sarup to which Partap the second respondent (accused) and his supporters did not agree.

Babu Ram (deceased) was also present at the said Panchayat. It is alleged that a heated discussion lasted for about two or two and half hours but no final decision could be arrived at as regards the said kotha. Babu Ram (deceased) in the said Panchayat told Partap (accused) that he owned 1/3rd share in the grove which is in possession of the respondents (accused) and they are continuing in possession "dishonestly." Partap (accused) thereafter retorted to Babu Ram (deceased) that if he has got power, he could take it back through court. Babu Ram then replied "if this is so, he would get his share just then and there only." This wordy quarrel led to the exchange of abuses between the two parties and thereupon Babu Ram abused by saying that the dishonest persons would suffer from the disease of "warm." Being felt insulted by this abusive words, Partap also hurled abuses to Babu Ram and his supporters. It is alleged by the prosecution that Babu Ram (deceased) thereafter took off the shoe from his left leg and snowed it to Partap, Pyare and Hari Singh the acquitted accused. The respondents felt insulted by the conduct of Babu Ram and thereafter the respondents alongwith Hari Singh rushed at Babu Ram. Partap, Pyare and Hari Singh (accused) caught hold of Babu Ram and took him in the middle of the road. Chheda Lal son of Babu Ram and others thereafter intervened and tried to separate them but, however, Partap (accused) asked Zalim (accused), the first respondent to cut off the left hand of Babu Ram by which he was holding the shoe. Zalim Singh (accused) took out the knife from his pant pocket and tried to give a blow on the left hand of deceased, however, the said blow fell on the left side of the chest, Because of this injury on a vital part, Babu Ram (deceased) collapsed on the ground. The respondents and the acquitted accused thereafter fled away.

Chheda Lal (PW1) lodged the F.I.R. on the same evening at about 9.30 p.m. The investigating officer alongwith police party reached the place of incident and commenced the investigation. After completing the investigation, four accused came to be charge sheeted for an offence punishable under section 304/34 IPC.

3. The respondents (accused) denied the charge and claimed to be tried. They admit their presence but, however, they pleaded a right of private defence. According to the respondents, Babu Ram (deceased) was holding a shoe in his left hand which caused reasonable apprehension in their minds as regards danger to their lives, and therefore, in exercise of their right of private defence they were justified in their action.

4. The prosecution in support of its case examined three eye witnesses, namely, Chheda Lal (PW 1), Munni Lal (PW 2) and Gangeshwar Dayal (PW 3). The respondents in their defence did not lead any evidence.

5. The courts below concurrently held that the prosecution has proved the incident in question. There is no serious challenge to this finding. The only question, therefore, that needs to be considered in this appeal filed by the State of U.P. is as to whether the respondents justify their act of causing grievous injury to Babu Ram (deceased) in exercise of right of private defence.

6. It is not disputed that Babu Ram (since deceased) who was admitted to Sadar Hospital, Etawah, on 10-5-1976 at 3.50 p.m., succumbed to his injuries. Dr. C.Prakash who held the post mortem examination on the dead body of Babu Ram, noted the following injuries:-

"Incised wound 4.5" x 1" x cavity

deep on the left chests laterally and directions from front to backwards, 4.5" below left nipple and also lateral to it and obliquely. Margins clean cut. On expiation sub-cutaneous tissue, muscles soft tissue, vessels and adjacent left sides pleura found cut penetrating into left side being in an area 3.5" x 3/4" from its anterior surface towards posterior surface. Left sides chest cavity containa 8 ozs of clotted blooe."

Dr. C.Prakash opined that the above noted injuries on Babu Ram (deceased) were ante mortem and he died due to shock and haemorrhage.

7. Both the courts below on appraisal of materials on record have concurrently held that Babu Ram (deceased) sustained the above bodily injury which was grievous in nature and which has resulted into his death. We see no reason to differ from the said finding.

8. We are conscious of the fact that we are dealing with a judgment of acquittal recorded by the High Court. We have carefully gone through the judgments of the Courts below as well as the evidence on record and in our opinion the impugned judgment of acquittal recorded by the High Court cannot be sustained.

9. The Trial Court has very succinctly discussed the evidence relating to what happened at the Panchayat meeting. During heated discussion, Babu Ram (deceased) took off his shoe and aimed it towards Partap (accused). Pyare, Zalim and Partap (accused) then dragged Babu Ram in the middle of the road from the Verandah where Panchayat proceedings were going on and thereafter Partap (accused) asked Zalim (accused) to cut off the hand of Babu Ram by which he was holding the shoe. Zalim (accused) then took out the knife from his pant pocket and tried to hit on the left hand. Babu Ram (deceased) while warding of the said blow, it fell on his left side of the chest. Babu Ram thereafter fell down on the ground. The Trial Court held:

"Now could it be contended that that mere holding of shoe by the deceased at Partap in the course of that heated altercation would provoke a prudent human being in having him caught hold of by accused Zalim and Pyare and that ogging (sic) on Zalim to deal a knife blow to cut off the limb that held the shoe knowing full well that if the knife wont amiss the target or the victim, who was not a statue standing moved it would lend on his vital organ and might result in his instant death? Certainly not. Accused Pratap did not fear death from the mere holding of shoe by the deceased. No prudent human being would fear grievous injury to him or his fellow beings by mere show of shoe. In the facts and circumstances of the case the action of accused Pratap in calling upon his nephew accused Zalim to

make short work of the deceased Babu Ram's left hand, could not be within the periphery of self defence. The accused exceeded the limit of right of private defence, and could not, as such be exonerated of the charge u/s 304 I.P.C."

The High Court, however, did not agree with this finding and it held that the accused had right of private defence and they have not exceeded the same. The High Court after re-appreciating the evidence of the eye witnesses held as under:-

"It therefore becomes clear beyond doubt that it was deceased Babu Ram himself who was aggressive, and in these circumstances a right of private defence of person accrues to the appellant's side.

The next question which arises is as to what extent this right of private defence can be exercised, under section 102 of the Indian Penal Code. Right of private defence of person commences as soon as a reasonable apprehension of danger to the body arises from an attempt to commit the offence though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues. In this case as has come in evidence deceased Babu Ram arrived (sic) the shoe at the head of the appellant Pratap with the intention of beating him. Hence, the right of defence accrued at that very moment when a reasonable apprehension of danger to the body arose, and this right would continue as long as the apprehension of danger to the body continued. It has not come in evidence that this apprehension had ended by the time appellant Zalim made the assault. On the other hand, as has come in evidence, just after the apprehension arose, the entire incident occurred within a short time which has been stated by the witnesses to be one minute."

The High Court thus held that the appellants did not exceed the right of private defence of person. While justifying the act of the respondents/accused, the High Court then observed:

"According to him, the deceased was making on a result (sic) on the upper part of the body of the appellant Pratap, with the result that there had arisen a reasonably (sic) apprehension that if the shoe hit those parts of the face, such as eye or teeth, grievous hurt was to have been caused"

10. Mr. Anis Ahmad Khan, learned counsel for the appellant

in support of this appeal assailed that the aforesaid findings of the High Court being perverse and unsustainable in law. He drew our attention to sections 100 and 102 I.P.C. and urged that the act committed by the respondents does not fall in any of these provisions and, therefore, they had no right of private defence. He urged that no prudent man can expect a bodily injury by a shoe beating to such an extent that it would endanger the life. The facts of the present case do not justify the assault by a sharp edged weapon like knife. He, therefore, urged that the order of acquittal is unsustainable and consequently it be set aside and the order of conviction and sentence passed by the learned trial court be restored.

11. Mr. Sanjeev Dubey, learned counsel appearing for the respondents vehemently urged that the impugned order of acquittal does not call for any interference. He urged that the view taken by the High Court is also equally probable and reasonable view and therefore, if two views are possible the one which is in favour of the accused if accepted by the High Court, no interference in the order of acquittal is called for.

12. After hearing counsel for the parties and after going through the evidence on record, we are of the opinion that the High Court has committed an error in law in holding that the respondents/accused had not exceeded the right of private defence. On the facts of this case, we are unable to sustain this finding. It is difficult to believe that Babu Ram who was holding a shoe in his left hand assuming that he was to hit any of the accused or Pratap, should it cause a reasonable apprehension in the mind of the respondents (accused) that there would be danger to their lives and in exercise of right of private defence, caused such a grievous hurt with the sharp edged weapon namely the knife in exercise of the said right. The evidence on record clearly shows that the respondents caught hold of Babu Ram dragged him to the middle of the road and thereafter a call was given by Pratap to Zalim Singh to cut off the left hand. Zalim Singh (accused) took out the knife from his pocket and gave a blow with the said knife on the left side of the chest of Babu Ram. The description of the injuries given by Dr. C. Prakash clearly indicates the force with which the blow was given to Babu Ram. Partap and Pyare (accused) were holding Babu Ram in the middle of the road and that facilitated Zalim to give a blow with the Knife on him. In the facts and circumstances of the case, the action of the respondents could not fall within the periphery of right of private defence and assuming that they had a right of private defence, they had exceeded the same.

13. For the reasons recorded above, we are unable to agree with the order of acquittal passed by the High Court. The impugned judgment and order of acquittal dated 6-4-1983 passed by the High Court is set aside and the judgment and order of conviction and sentence passed by the trial court on 29-5-1978 is restored. The respondents, who are on bail, are directed to surrender to their bailbonds forthwith to serve out the remainder of their respective sentences. Appeal is allowed.