

CASE NO.:
Appeal (crl.) 912 of 2000

PETITIONER:
RAM BILAS YADAV & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 07/12/2001

BENCH:
U.C. Banerjee & K.G. Balakrishnan

JUDGMENT:

Balakrishnan, J.

The five appellants were convicted by the Sessions Judge, Madhubani in Bihar, for the offences under Section 302/34, Section 326/34 and also for the offences punishable under Section 148 and 447 of the Indian Penal Code. The appeal filed by the appellants was dismissed by the High Court. The appellants and the prosecution witnesses 1 to 4 are agriculturists having properties of their own. It appears that there was a dispute between these two parties regarding irrigation of their fields. Appellants paddy fields are at higher level. On 30.8.1980, PW2 Babulal Yadav had cut the ridge of the field of the appellants to allow flow of water from that field to his field. As the appellants objected to the cutting of ridge by PW2 Babulal Yadav, the parties on either side agreed to have a Panchayat to settle the dispute. On the next morning, i.e. 31.8.1980, however, the appellants came to their paddy fields and started repairing the ridge. At that time, PW2 Babulal Yadav was present in his field. After some time, PW4 Rajdeo Yadav, son of Ram Suchit Yadav came and informed PW1 Ram Bharosh Thakur and Ram Suchit Yadav that there may be some fight between the appellants and PW2 Babulal Yadav. PW1 Ram Bharosh Thakur, PW3 Subodh Yadav and deceased Ram Suchit Yadav hurriedly went to the place of the incident. One teacher from Nepal, who was present in the house of Ram Suchit Yadav, also accompanied them. PW3 Subodh Yadav asked appellant Ram Bilas Yadav as to why he was meddling with the ridge when it had been decided to have a settlement in the Panchayat. The appellant Ram Bilas Yadav asked PW3 Subodh Yadav as to how he had become a big mediator in the matter and exhorted other appellants to beat PW3 Subodh Yadav and others. The first appellant Ram Bilas Yadav cut PW3 Subodh Yadav with gandasa and his nose was chopped. All the appellants were armed with gandasa, bhala, spade and kudali, etc. They inflicted various cut injuries on Ram Suchit Yadav(deceased). He fell on the ground. PW2 Babulal yadav was also attacked by appellant Ramdeo Yadav with gandasa. The appellant Ramasis Yadav hit PW2 Babulal Yadav with lathi. People in the village collected there and found that PW3 Subodh Yadav, PW2 Babulal Yadav and Ram Suchit Yadav had sustained serious injuries and took them to the hospital. Ram Suchit Yadav died while undergoing treatment in the hospital.

PW1 Ram Bharosh Thakur gave FI statement at about 12.30 PM on 31.8.1980. In the F.I. statement, he mentioned the names of all the five appellants and the various overt acts alleged to have been committed by them.

PW8, who recorded the statement of PW1 Ram Bharosh Thakur, registered a case against these appellants and started the investigation. He prepared a roughly drawn map of the place of occurrence and also recorded, under Section 161 of the Criminal Procedure Code, statements of the various witnesses. The post-mortem examination was conducted by PW6 Dr. F.A. Khan and it was found that there were four incised injuries on the body of the deceased Ram Suchit Yadav. Injury No.3 was on the left parietal bones over scalp with brain matter coming out of the wound. He was of the opinion that injury nos. 1,2 & 3 were caused by farsa and these injuries were of serious nature and sufficient in the ordinary course of nature to cause death. Injury nos. 4,5,6,8,9 & 10 were stated to have been caused by lathi blows. On the side of the prosecution, four eyewitnesses were examined and they gave an account as to how the incident took place. These witnesses also spoke about the involvement of all the appellants in the incident.

The learned Senior Counsel, Mr. S.B. Sanyal, made a very persuasive argument to the effect that the appellants were entitled to exercise their right of private defence as the whole incident happened while they were exercising their right in respect of the property. It was further argued that even if the entire prosecution case is accepted, the offence, if any, committed by these appellants would only come under Section 304 part II of the Indian Penal Code as the overt acts committed by the appellants were only in exercise of their right of private defence. He also drew our attention to the fact that the incident happened when the appellants were repairing their ridge and they had every right to exercise their right of private defence. It was argued that PW 2 to 4 and deceased Ram Suchit Yadav caused trouble and prevented the appellants from doing their work and that they also tried to attack the appellants. The learned Senior Counsel for the appellants further pointed out that appellant Ram Bilas Yadav had sustained extensive injuries and this was as a result of the fact that the appellants were attacked by PW2 to 4 and deceased Ram Suchit Yadav and the incident happened in the property of the appellants, which was on the western side of the disputed ridge. The learned Senior Counsel also pointed out that from the evidence of PW8, the Investigating Officer, there was sufficient indication to show that the incident happened in the paddy field of the appellants as some paddy plants in their field were found trampled.

The learned Counsel on behalf of the State submitted that the appellants are not entitled to the right of private defence and that the arguments advanced by the learned senior Counsel for the appellants are not substantiated by the evidence in the case. As regards injuries of appellant Ram Bilas Yadav, the Sessions Judge as well as the High Court held that except one injury, all the injuries noted were of minor nature and injury no. 9, which was stated to be grievous one, caused some suspicion. The doctor noted that appellant Ram Bilas Yadav had lost one tooth, but there was no corresponding injury to show that his tooth was broken. As regards other injuries, they were mostly bruises and the incised injuries were not deep wounds and the Sessions Judge as well as the High Court came to the conclusion that these injuries must have been caused in the melee and the absence of serious injuries on the body of the appellant Ram Bilas Yadav were sufficient indication of the fact that PW2 to 4 and deceased Ram Suchit Yadav were not armed with any deadly weapons, whereas it is pertinent to note that the injuries sustained by PW2 to 4 and deceased Ram Suchit Yadav were of serious nature.

As regards the place of incident, PW8, the Investigating Officer, gave evidence to the effect that it was near the disputed ridge. He deposed that on the eastern side of the ridge, he found foot-marks of persons and also noted that some paddy plants were trampled on the western side of the disputed ridge. There were some marks found in the paddy field but it was not possible to fix the actual location of the place of incident, as the local people got collected there after the incident. There is no evidence that police came immediately after the incident and the place of occurrence was under their surveillance. From the evidence of PW8 Investigating Officer, it is not possible to ascertain with precision the actual place of incident.

The next contention urged by the learned Senior Counsel on behalf of the

appellants is that the whole incident happened when PW2 to 4 and deceased Ram Suchit Yadav started attacking the appellants while the appellants were lawfully exercising their right to property by repairing the ridge and the whole origin and genesis of the crime were suppressed by the prosecution. We do not find any merit in this contention.

In this case, the F.I. statement was given within hours of the incident. It is true that the prosecution witnesses are related to each other, but since they gave a consistent version regarding the origin of the incident, it is not possible to cast any doubt as to how the incident happened. When there was a dispute regarding the ridge, they proposed to settle the dispute by reconciliation and PW2 Babulal Yadav tried to dissuade the appellants from causing damage to the ridge. PW1, PW3, PW4 and deceased Ram Suchit Yadav came there later. There is no evidence to indicate that they were armed with any weapons. If these persons were fully armed with weapons, it is likely that there would have been some casualties on the other side. Whereas the evidence indicates that PW2 to 4 and deceased Ram Suchit Yadav sustained serious injuries, appellant Ram Bilas Yadav sustained only some minor injuries. Therefore, it is clear that the appellants were aggressors and they came to the place of the incident armed with gandasa, lathi, bhala, kudali, etc. If they had come there only to repair the ridge, there was no necessity for them to carry these deadly weapons. Deliberate intention on the part of the appellants is clearly discernible from these facts. Under such circumstances, the appellants cannot claim right of private defence.

Moreover, the case of the appellants is that PW2 Babulal Yadav and others had cut the ridge of the field of the appellants and thereby they committed the acts of trespass and mischief and, therefore, the appellants were entitled to exercise their right of self-defence and have not committed any offence, and even if it is assumed that criminal acts were committed by the appellants, such acts would come only within the purview of offence punishable under Section 304 Part II, I.P.C. We are not inclined to accept this plea. The right of a person to private defence of property would extend to the causing of death only against certain crimes which are enumerated in Section 103 I.P.C. If the appellants case is that PW2 and others had committed mischief, it should have been committed under such circumstance as may cause reasonable apprehension that death or grievous hurt will be the consequence and then only the right of private defence would extend to causing the death of person who committed the mischief. PW2 was alone in the field when all the appellants came there. All the appellants were armed with gandasa, bhala, kudali and other weapons. It is evident that the appellants came with a pre-meditation and the evidence also would indicate that they had done more harm than was necessary. The conduct of the appellants would indicate that they were not entitled to the benefit of Exception 2 to Section 300, so as to make the offence of murder as culpable homicide.

The appeal filed by the appellants is devoid of merits as they have been rightly convicted by the Sessions Court and their conviction confirmed by the High Court. The appeal is dismissed.

..J.
(U.C. BANERJEE)

..J.
(K.G. BALAKRISHNAN)

December 7, 2001.