

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
LAEEQ

DATE OF JUDGMENT: 22/04/1999

BENCH:
G.T. NANAVALI, & S.P. KURDUKAR.

JUDGMENT:

J_U_D_G_M,E_N_T
NANAVALI.J

The State has filed this appeal as respondent Laeeq, who was convicted by the trial Court for the offence punishable under Section 304 IPC, has been acquitted by the High Court.

Laeq was tried along with three others for committing murder of Ashfaq Hussain and causing injuries to Mohd. Yaseen, Ayub, Chhotey and Nathu. The trial Court did not believe the evidence of the eye-witnesses as regards the genesis of the incident and gave benefit of doubt to accused Mohd. Noor, Qayum Abdul Qayaum and Arshad and acquitted them. The role played by the respondent Laeeq was believed but giving him benefit of exception (4) to Section 300 IPC convicted him under Section 304 IPC and sentenced him to suffer imprisonment for life. Aggreived by the acquittal of the other three accused, State filed an appeal before the High Court and aggreived by the order of his conviction, Laeeq also filed an appeal before the High Court. Both the appears were heard together. The High Court dismissed State's appeal against acquittal and allowed the appeal of the respondent Laeeq. The State, therefore, filed two special leave petitions in this Court, out, leave was granted only against acquittal of Laeeq and the special leave petition against the other three accused was dismissed. Thus) Criminal Appeal No. 357 of 1989 really stood dismissed because no leave was granted in that case. Only Criminal Appeal No. 357A survives for consideration.

The High Court after reappreciating the evidence has held that " The possibility of Laeeq Ahmad accused having given a knife blow to the deceased and the injuries found on the person of Mohammad Yasin (P.W.I), Chhotey (P.W.2) and Ayub having been received after the accused had been assaulted with dandas by him, Nathu, Chhotey (P.W.2) and Ashfaq Hussein deceased cannot be excluded." Thus, believing the defence version that the respondent had caused the said injury in exercise of right of private defence, the High Court acquitted the respondent.

What is urged by the learned counsel for the State is that the High Court has failed to consider that in any case, the respondent had exceeded the said right as he did not have reasonable apprehension of death, or grievous hurt when he had inflicted the fatal blow on the deceased.

After going through the record we find that neither in cross examination of the witnesses it was suggested nor in his statement under Section 313 Cr.P.C. the respondent had stated that he had given the knife blow to the deceased while he feared death or grievous injury from the deceased or the persons who were with the deceased. Before the trial Court the plea raised on behalf of the respondent was that all the accused had wielded sticks in self defence. The trial Court rightly did not accept the version of the defence as the injury which was found on the person of the deceased was an incised wound possible by a sharp cutting instrument. The High Court has thought it fit to believe the version of the respondent, that the knife blow was given by him while he was trying to defend himself. The respondent, however, has not stated specifically under what circumstances he gave the knife blow to the deceased. Such a vague plea cannot justify causing of death. As provided by Section 100 I.P.C. right of private defence extends to voluntary causing of death of the assailant if the assault is such as would reasonably cause an apprehension that death or grievous hurt would otherwise be the consequence. There is no material on record from which it is possible to draw such an inference. As stated earlier, the plea raised by the respondent is vague and does not explain the circumstances under which he gave the fatal blow. The material on record does not show that the complainant side was armed with weapons other than sticks. The material also does not show that the deceased had aimed a stick blow at the respondent or any other person accompanying him when he had given the knife blow. Even if the defence version as accepted by the High Court is believed it only indicates that the deceased and the persons along with him had started the assault on the respondent and his co-accused by wielding their sticks but it does not further probablise causing of death under reasonable apprehension of death or grievous hurt. The required justification for causing death "in exercise of right of self defence was neither pleaded specifically nor the material on record probalises the same. Without considering this aspect the High Court gave the benefit of the exception and acquitted the respondent, Therefore, the judgment of the High Court and the acquittal of the respondent deserve to be set aside and it will have to be held that the respondent exceeded the right of private defence when he gave the fatal knife blow to the deceased. Accordingly, we hold him guilty for the offence punishable under Section 304 I.P.C. Considering the facts and circumstances of this case we are of the view that ends of justice would be met if the respondent is sentenced to suffer rigorous imprisonment for five years for committing the offence.

In the result this appeal is partly allowed. The judgment of the High Court and the acquittal of the respondent are set aside and the respondent is convicted under Section 304 I.P.C. and sentenced to suffer rigorous imprisonment for five years. The respondent is directed to surrender to custody to serve out the remaining part of his sentence.