

PETITIONER:
SONE LAL & ORS.

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT 03/04/1981

BENCH:
ISLAM, BAHARUL (J)
BENCH:
ISLAM, BAHARUL (J)
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1981 AIR 1379 1981 SCR (3) 352
1981 SCC (2) 531 1981 SCALE (1) 604

ACT:

Indian Penal Code 1860, Ss. 302, 307, 323 read with S. 149-Enmity between parties of the accused and deceased-Altercation and assault-Accused receiving injuries-Accused whether aggressors-Whether entitled to right of private defence.

HEADNOTE:

The prosecution alleged that there was a long standing enmity between the parties of the deceased and the appellants. There was a vacant plot of land in front of the flour mill and residence of PW. 1. The appellants started throwing rubbish on this piece of land. PW.1 and his son, the deceased, objected to this. On the fateful day at about noon there was an altercation in connection with the throwing of rubbish, and at about 8 p.m. one of the appellants armed with a lathi went to the flour mill and challenged PW. 1 and his companions. At the call of this appellant, the other appellants who were armed with gun, pistol, lathi and spear arrived at the spot. PW. 1 managed to snatch the spear from the hands of one of the appellants and started giving blows to the assailants in order to defend himself. At that time two of the appellants fired their gun and pistol as a result of which the son of PW. 1 received injuries, to which he succumbed while being removed to the Police Station. The defence of the appellants was one of alibi and that the offence had not taken place on the land of PW. 1.

The appellants were tried before the Sessions Judge who convicted and sentenced them under Sections 302-307 and 323 read with Section 149 of the Penal Code.

The High Court dismissed the appeal. It agreed with the trial Court and found that the prosecution case was established by the evidence of the prosecution witnesses and that the defence version of the case had to be rejected on account of the inconsistent pleas made by the appellants before the committing court and the Sessions Court.

In the appeal in this Court, it was contended that there was no finding by the trial and appellate courts as to how the assault initially started and which party was the aggressor, that the prosecution had not explained as to how

the

353

appellants received the injuries, and that the appellants had the right of private defence and, therefore, they had committed no offence.

Dismissing the appeal,

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HELD: 1. The High Court rightly accepted the prosecution case as true and held that the defence case was false. [356 F]

2. The findings of the two courts below indicate that it was the appellants who were the aggressors and that the occurrence took place on the land lying in front of the house of PW. 1 who was in possession thereof and that the deceased and PW. 1 had the right of private defence of property and person and that they exercised that right. The appellants who were the aggressors, even if they received injuries from the victims of their aggression, cannot have any right of private defence. The findings are that the deceased and PW. 1 were unarmed and that P.W. 1 snatched the weapon from one of the assailants and caused injuries to them. If the deceased and the other prosecution witnesses had been the aggressors, PW. 1 would not have come without his licensed gun.

[356 H-357A, 356E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 220 of 1974.

Appeal by Special Leave from the Judgment and Order dated 9th January, 1974 of the Allahabad High Court in Criminal Appeal No. 356/77 connected with Criminal Appeal No. 723 of 1970.

R. K. Garg, S. S. Bhatnagar, V. J. Francis and Sunil Kumar Jain for the Appellants.

R. K. Bhat for the Respondent.

The Judgment of the Court was delivered by

BAHARUL ISLAM, J. This appeal by special leave has been directed against the judgment and order passed by the Allahabad High Court dismissing two appeals filed by the appellants before it. The appellants were convicted under Sections 302, 307 and 323 all read with Section 149 of the Penal Code. They were sentenced to imprisonment for life, each, under Section 302/149, rigorous imprisonment for 7 years, each, under Section 307/149 and rigorous imprisonment for six months, each, under Section 323/149 of the Penal Code. Appellants Harish Chandra and Nathu were further convicted under Section 148 of the Penal Code and sentenced to rigorous imprisonment for two years, each. The sentences were directed to run concurrently.

2. The facts material for the purpose of disposal of this appeal may be stated thus. The prosecution alleges that there was

354

long standing enmity between the parties of the deceased and the appellants. Some time prior to the incident a flour mill was installed and a house constructed by P.W. 1, Pahelwan, in his plot of land. In front of the flour mill and the residence of Pahelwan there was some vacant land in his possession. The appellants had started throwing rubbish on the land. Pahelwan and his son, Ram Swarup (deceased) objected to this. The appellants were annoyed at the objection of Pahelwan and his son Ram Swarup. On 31st

December, 1968 at about noon appellants Harish Chandra and Ram Sewak had some altercation with Pahelwan and Ram Swarup in connection with throwing of rubbish on the aforesaid land and as a consequence the relation between the parties worsened. In the evening at about 8 O'clock on the 1st of January, 1969, appellant, Ram Sewak, armed with a lathi went to the front of the flour mill of Pahelwan and started to hurl abuses on Pahelwan and his son Ram Swarup. Appellant, Ram Sewak, challenged Pahelwan and his companions to see them that day. At that time, it has been alleged, an electric light was burning in the front of the room of the flour mill as usual. At the call of the appellant, Ram Sewak, the other appellants came variously armed with lathis and spears and started giving blows to Pahelwan and his son, Ram Swarup, both of whom, according to the prosecution, were unarmed. Pahelwan, somehow, managed to snatch the spear from the hand of the appellant, Ishwari, and started giving blows to the assailants in order to defend himself. At that time, it has been further stated, appellants Harish Chandra and Nathu fired their gun and pistol respectively. As a result, Ram Swarup was hit and he fell down in front of the flour mill. The shot of Nathu hit P.W. 1 Pahelwan, Lal Ram and Shri Kishan, all of whom received injuries. Lekh Raj, P.W., then attacked the appellants with his lathi, as a result of which some injuries were caused to the appellants including Harish Chandra. Thereafter the appellants escaped.

3. Ram Swarup succumbed to bullet injuries while he was being removed to the police station. A first information report was lodged by P.W. 1, and eventually the appellants were committed to the court of Sessions that convicted and sentenced as stated above. Their appeal was also dismissed by the High Court as earlier stated.

4. Learned counsel for the appellants submitted that large number of injuries had also been received by the appellants and that there was no finding by the courts below as to how the assault

355

initially started and which party was the aggressor, prosecution has not explained as to how the appellants received the injuries. As such, he submitted, the conviction for the offences with the aid of Section 149, Penal Code, was bad in law. In support of his contention he relied on a decision of this Court reported in AIR 1976 S. C. 2263. This Court in A.I.R. 1976 S.C. 2263 has held:

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

The submission of the learned counsel is that the injuries found in the persons of the appellants have not been explained by the prosecution. The injuries are serious.

The appellants had the right of private defence, and therefore, they have committed no offence.

The submission of the learned counsel is not warranted by the findings of the High Court. The High Court agreeing with the trial Court has found that the prosecution case as alleged has been established by the evidence of the prosecution witnesses. The High Court as well as the trial Court has rejected the defence version of the case, in view of their inconsistent pleas before the Committing Court and the trial Court. Before the Committing Magistrate pleas of appellants, Harish Chandra and Soney Lal, were alibi. The defence of appellants, Ram Sewak and Nathu, was that the occurrence-

356

ence had not taken place on the land of P.W. 1, Pahelwan, as alleged by the prosecution, but it had taken place at a different place. According to them there was a quarrel in respect of some property between Ram Swarup, (deceased) and Zorawar, brother-in-law of Ram Swarup, in which appellant Nathu intervened whereupon Pahelwan (P.W. 1), Lala Ram, Shri Kishan, Triloki, Ram Swarup Prasad, Munna Jamadar, Lekthraj and others attacked the appellants and in that incident injuries were received by P.W. 1 and the deceased. The defence of appellant, Ishwari, before the Committing Magistrate was that Pahelwan (P.W.1), Lekh Raj and others attacked him, as a result of which he became unconscious. The defence of the appellants before the Sessions Judge was one of the right of private defence. The defence of appellant Harish Chander before the Sessions Judge was an alibi. The defence of the other appellants was that Ishwari had been returning from Ghurwal Chak. At that time he was attacked by the prosecution witnesses and the deceased. The incident took place on a land between residence and flour mill of P.W.1 and in that assault the appellants had to defend themselves.

5. On a consideration of the evidence on record the learned High Court agreeing with the Sessions Judge has accepted the version of the prosecution and rejected that of the defence. In coming to that conclusion the High Court has also taken notice of the fact that P.W.1. had a licensed gun. Had he and Ram Swarup and other P.W's been the aggressors, he (P.W.1) would not have come without the gun. In view of the "inconsistent pleas" and "in view of the fact that no infirmity worth the name has been shown in the statement of eye witnesses of the occurrence", the High Court accepted the prosecution case as true and held "that the defence case is false". The High Court has also held that "appellants were the aggressors".

It is therefore, not correct to suggest as contended by the learned counsel for the appellants that there were no findings on record to show as to how the quarrel started and that the appellants were the aggressors.

6. From the findings of learned courts below the facts that emerge are (1) that it was the appellants who were the aggressors; (2) that the occurrence took place on the land in front of the house of P.W. 1, Pahelwan, who was in possession thereof; (3) that P.W.1 and the deceased had the right of the private defence of property and person and they did exercise that right. Aggres-

357

sors, even if they receive injuries from the victims of their aggression cannot have the right of private defence. The findings are that P.W.1 and the deceased were unarmed. P.W.1 snatched a weapon from one of the assailants and caused injuries on them. On the top of it two of the

appellants brought fire arms and fired at the deceased and the P. W. 1, as a result of which the deceased expired. The submissions of learned counsel for the appellants do not stand scrutiny.

7. This appeal has no merit and is dismissed.

N.V.K.

Appeal dismissed

358

JUDIS