

# SUPREME COURT OF INDIA

Dharman

Vs.

State of Punjab

Crl.A.No.10 of 1956

(N. H. Bhagwati, S. J. Imam and P. Govinda Menon, JJ.)

13.09.1956

## JUDGEMENT

### GOVINDA MENON, J.:

1. This is an appeal by special leave, preferred by Dharman, son of Dhani Ram (accused No. 2), against the dismissal of his appeal by the High Court of Punjab, at Simla, thereby confirming the conviction and sentence of transportation for life passed on him by the Sessions Judge of Rohtak.

2. The facts which gave rise to the prosecution may be briefly stated as follows :-

There was a dispute regarding a vacant pieces of shamilat land in which the contending parties were, the party of the accused on one side and the party of the deceased on the other. Whereas the accused claimed that the land was in their possession, the party of the deceased put forward the claim that they had set up a line crushing machine on the land and that the land had been in their possession for many years. On the 13th of June, 1953, the party of the deceased built a Kacha wall near this machine which had the effect of shutting off the door of a pucca gher, belonging to the party of the accused. Proceedings under section 145 of the Criminal Procedure Code resulted on account of this action and the sub-inspector of police applied to the Magistrate that both the parties should be bound over under section 107 of the Criminal Procedure Code. These proceedings were posted for the pronouncement of orders to the 31st of July, 1953.

3. While the matters were in this state, on the 30th of July, 1953, the accused's party demolished the line crushing machine, when two women, Marwan and Nathian, relations of the deceased, intervened; whereupon the accused assaulted them and in the course of this assault the women received injuries with sharp edged weapons. At that time, Surja, a young lad of 11, ran to the place where the deceased Mansa Ram was working and informed him of what had occurred. On hearing this, Mansa Ram arrived on the scene with Rup Chand (P.W. 3 ) and Chaman Lal (P.W. 4). Immediately a fight ensued and in the course of this fight Mansa Ram received fatal injuries and Rup Chand (P.W. 3) was also injured. As a result of investigation the accused were sent up for trial before the Sessions Judge of Rohtak. The injured man Mansa Ram gave a statement before the police which after his death was admissible as a dying declaration. In that Mansa Ram stated that Dharman had stabbed him with a spear in his chest.

4. Both the Sessions Judge and the learned Judges of the High Court concurred in the conclusion arrived at regarding respective degrees of guilt of the various accused and this court hearing an

appeal under special leave would not and could not ordinarily canvass the correctness or justification of the findings on question of fact arrived at by the lower courts. The courts below found that there was no identity of purpose between the two incidents and such being the case they were of the opinion that the injuries on Mensa Ram, Rup Chand (P.W.3) and Chaman Lal (P.W. 4) were not inflicted in furtherance of a common object. The result of this conclusion was that so far as the second incident is concerned, each of the accused was responsible for his own act and nothing more.

5. In the trial court the accused put up the plea of self-defence and for the reasons stated by the learned Sessions Judge he found that the same had not been proved. In the court of appeal a similar plea seems to have been urged. The learned Judge of the High Court discussed at length the prosecution case and findings the same more probable and convincing than the story of the accused, especially since it finds corroboration in the circumstances, held that there was no justification for the plea of self-defence. In the main, the finding of the High Court was that the second incident in which Mansa Ram received the fatal injuries at the hands of Dharman, was more in the nature of a tree fight.

6. The question then revolves itself into this. The courts below negated the defence story of self-defence. The appellate Court found that Mansa Ram died in the course of a sudden and free fight by reason of the injury inflicted by the appellant. Could it, therefore, be said that the appellant was guilty of an offence under section 302 of the Indian Penal Code? On the findings by the learned judges of the High Court in our opinion the facts fall within the ambit of Exception 4 to section 300, Indian Penal Code. Mr. Jindra Lal for the State of Punjab, argued that when the appellant and his brother came on the scene after being apprised of the attack on their women-folk by Surja, they were actuated with an intention to inflict some injuries on the deceased's party in retaliation for what had been done to their women-folk and hence it should be deemed as if the appellant had some premeditation. (Sic) This argument runs counter to the findings of the High Court which are to the effect that the second incident was more in the nature of a fight. If it was such, no question of premeditation arises. Therefore, it is clear that the Injury on Mansa Ram was caused without premeditation in a sudden fight, after the appellant and his party arrived and during the course of the second incident. This cannot be gainsaid. That the appellant inflicted the injury on Mansa Ram in the heat of passion and upon a sudden quarrel can not also be doubted. The only other matter for consideration is whether the appellant had taken undue advantage and acted in a cruel or unusual manner in inflicting the injury on Mansa Ram.

7. From the deposition of Dr. Randhwa (P.W. 2) it is clear that the appellant himself had received injuries which are of a minor nature but the other accused had received incited wounds which could have been caused only by sharp edged weapons. In these circumstances, there can be no doubt, as is clear from the testimony of witnesses, that the deceased's party was also armed with dangerous weapons, and when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner. It would be otherwise if the deceased and his party were unarmed or armed with weapons which were not lethal or dangerous and the accused's party used sharp weapons. In that case the accused must be deemed to have acted in a cruel or unusual manner. The elements of such action are absent in the present case.

8. On the findings arrived at by the learned judges of the High Court the case against the appellant clearly falls within Exception 4 of section 300 of the Indian Penal Code.

9. It is then urged by Mr. Jindra Lal that no such point was taken by the defence before the learned Judges in High Court; but in a case where the question for decision is the nature of the offence deducible from proved facts, the matter is one of pure law and even if there has been no elucidation of the point with clarity in the courts below, this court is not precluded from giving a decision as to the exact nature of the offence proved on a scrutiny of the findings. In our opinion, on the findings of the learned Judges of the High Court the appellant cannot be held guilty under section 302 of the Indian Penal Code. He is entitled to rely upon Exception 4 which reduces the offence to one under section 304 of the Indian Penal Code.

10. The next question is which of the Paragraphs of section 304, Indian Penal Code, is applicable. It seems to us that at the time the appellant caused the injury, he did it with the intention of causing death or such bodily injury as was likely to cause death and, therefore, the offence is one under Part I of section 304 of the Indian Penal Code.

11. In the result the conviction under section 302 of the Indian Penal Code is set aside but the appellant is convicted under section 304, Part I, of the Indian Penal Code and sentenced to rigorous imprisonment for seven years.

Conviction and sentence altered.

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