

Vidhya singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 201 of 1968

(K. S. Hegde, A. N. Grover JJ)

21.04.1971

JUDGMENT

HEGDE, J. -

1. Vidhya Singh, the appellant was a Gram Sewak with his headquarters at Bamor Kalan. On December 28, 1965, he was on his way from Bamor Kalan to another village. At about 2 p.m. when he was passing through the village Akoda he found Laxmichand (P.W. 1) and Babu Lal (P.W. 6) sitting on the Dehlan of one Mulla and chatting. He asked Laxmichand to give him some water for drinking. Laxmichand asked P.W. 19 Kishanlal to bring some water for him. Kishanlal brought some water and kept it on the Verandah. The appellant drank that water. Until this stage there is no dispute. The further case of the prosecution is that the appellant filthily abused Laxmichand for not getting the water himself; Laxmichand abused him back; then he picked up a stick which was lying there and beat Laxmichand on his arm as a result of which the arm of Laxmichand was fractured; on receiving the blow Laxmichand raised a hue and cry and at that stage several persons including the deceased Moti, P.W. 2, Mahavir Prasad, P.W. 3, Bharose and one Bhagwandas went to his help; at that stage it is said that the appellant stabbed Moti, Mahavir Prasad, Bharose and Bhagwandas and thereafter fled from the place; later he was caught in the village Mundri by some of the residents of Mundri and at that place he was assaulted.

2. At this stage it is convenient to note the plea of the accused. His case is that when he asked for water Laxmichand abused him. He returned the abuses. Then there was scuffle between the two and at that stage he picked up a stick lying nearby and gave one blow to Laxmichand. On receiving that blow Laxmichand raised a hue and cry and on hearing his cries several persons including Moti, Mahavir Prasad, Bharose and Bhagwandas came rushing. Some of them were armed. Fearing that they would assault him he began to run. They chased him and surrounded him and assaulted him. Fearing that his life was in danger he took out his knife and waved the same.

3. It is established by medical evidence that Laxmichand's arm had been fractured. It is also proved that Moti had sustained an incised punctured wound, 3" x 1" oval in shape and tranverse in direction on the left side of chest, 6" above the crease of lion in the mid-axiliary line. According to the medical evidence the injury sustained by Moti was sufficient in the ordinary course to cause death. Moti had died almost instantaneously. Mahavir Prasad had sustained a stab wound 1" x 1/2" x 3" on the back of left lower chest. He had also sustained an incised wound 1/2" x 1/8" x 1/8" on the left loin. In addition he had sustained an incised wound 1/4" x 1/6" x 1/6" on the back of the left chest. Bhagwandas also appears to have sustained certain injuries. The appellant had also sustained several injuries. He had sustained two lacerated wounds. His left ulna was fractured. He also suffered subconjunctival haemorrhage on lateral half of left eye. He sustained two bruises and clotted blood

was present in the left nasal cavity.

4. There was no previous enmity between the injured persons and the accused.

5. The appellant was tried for offence under Sections 302, 307, 324 and 325, I.P.C. The Trial Court held him guilty of offence under Section 304, Part I for the injury caused to Moti and for that offence he was sentenced to suffer rigorous imprisonment for five years. He was further found guilty of an offence under Section 325, I.P.C. for the injuries caused to Laxmichand and for that offence he was sentenced to rigorous imprisonment for one year. He was also found guilty under Section 308, I.P.C. for the injuries caused to Mahavir Prasad and for that offence he was sentenced to suffer rigorous imprisonment for one year. The several sentences imposed on him were ordered to run concurrently. Both the appellant as well as the State appealed against the decision of the Trial Court. The High Court dismissed the appeal of the appellant but allowed that of the State. In the result it convicted the appellant under Section 302, I.P.C. for causing the death of Moti and for that offence sentenced him to suffer imprisonment for life. It further convicted him under Section 307 for attempting to cause the death of Mahavir Prasad and for that offence it sentenced him to suffer rigorous imprisonment for five years. For the injuries caused to Bharose and Bhagwandas it convicted him under Section 324, I.P.C. and sentenced him to suffer rigorous imprisonment for six months. All the sentences were ordered to run concurrently. Thereafter this appeal was brought after obtaining special leave.

6. Both the Trial Court as well as the High Court have accepted the prosecution case as to the circumstances under which the incident commenced. In our opinion neither the prosecution nor the accused have come out with the truthful version as to how the incident commenced. Admittedly the accused had no enmity with any of the injured persons. Therefore it is unbelievable that merely because Laxmichand did not get the water himself but he asked another person to bring water could have afforded any reason for the appellant to abuse Laxmichand. Similarly we are unable to believe the version to the accused that Laxmichand abused him merely because he asked for some water. The versions given by the prosecution as well as the accused do not accord with human probabilities. We think that on this part of the case neither side has placed before the court the true facts. But there is no gainsaying the fact that after the appellant and Laxmichand abused each other, the appellant picked up a stick and assaulted Laxmichand as a result of which Laxmichand's arm got fractured. It is clear from the evidence on record and from the circumstances of the case that the appellant was a high strung type. As regards the assault on Laxmichand there is clear and convincing evidence. Therefore the Trial Court as well as the High Court were right in convicting the appellant under Section 325, I.P.C.

7. Now coming to the injuries caused to the other persons, the prosecution version is that when Moti, Mahavir Prasad, Bharose and Bhagwandas came to the rescue of Laxmichand, the appellant stabbed all of them. The version of the appellant is that on hearing the cries of Laxmichand, Moti, Mahavir Prasad, Bharose, Bhagwandas and others came rushing to the scene and they tried to catch hold of him; they also assaulted him and at that stage fearing that his life was in danger, he took out his knife and waved the same. It is admitted that the accused had sustained several injuries. Some of them are fairly serious injuries. The prosecution version is that those injuries were inflicted on him by the villagers at Mundri when they tried to catch him there. On this point, there is no reliable evidence. None of the witnesses from Mundri village supported that version. The probabilities of the case are in favour of the version given by the appellant. It is most likely that when the appellant assaulted Laxmichand, the villagers wanted to catch hold of the appellant and it is also not unlikely that in the heat of the moment they assaulted him. It must also be remembered that the appellant was

a stranger to the village and there is nothing surprising if the sympathies of the villagers were with the co-villagers who had sustained injured at the hands of the appellant. In assessing the value to be attached to the evidence of the type with which we are concerned, the courts have to rely more on human probabilities than on the assertions of the witnesses. It is least likely that merely because Moti or Mahavir Prasad or others came and asked the appellant not to assault Laxmichand, he would have taken out his knife and plunged the same on those persons. It is probable that when the appellant was encircled and assaulted he in the heat of the moment and fearing that he might be dealt with severely went on attacking those who encircled him. In our opinion, the learned Trial Judge was right in opining that the appellant attacked Moti, Mahavir Prasad, Bharose and Bhagwandas when they tried to catch him. We are inclined to go further and hold that the accused is likely to have sustained the injuries noticed on his person when the villagers tried to catch him and disarm him. Under those circumstances the learned Trial Judge was justified in coming to the conclusion that the accused had a right of self-defence but that he exceeded that right. The High Court failed to take an overall view of the case. The right of self-defence is a very valuable right. It has a social purpose. That right should not be construed narrowly.

8. For the reasons mentioned above we allow this appeal, set aside the judgment of the High Court and restore that of the Trial Court.

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