

**SUPREME COURT OF INDIA**

Hira Rai

Vs.

State of Bihar

Crl.A.No. 4 of 1969

(P. Jagannmohan Reddy and D. G. Palekar, JJ.)

23.11.1971

**JUDGEMENT**

**PALEKAR, J.:-**

1. This is an appeal by special leave from the judgment of the Patna High Court confirming the appellant's conviction under Section 304, Part-I IPC and reducing the sentence of rigorous imprisonment from 10 years to 5 years.

2. In all 19 persons were put up for trial before the learned Additional Sessions Judge, Arrah-16 out of them were acquitted. Three who were convicted and sentenced appealed to the High Court. The High Court acquitted two more but confirmed the conviction of the appellant but reduced the sentence.

3. The incident out of which the case arose took place at about 9.45 A.M. on 23-2-1965 in village

Chilhari which is 6 miles from Dumra on Police Station. Plot No. 1327 measuring about 6.68 acres was in the possession of Chhedirai and Jitanrai who had grown their crops therein. One Kamlarai and his wife Suraj Kumari had filed a suit for the possession of this plot. The suit was finally decreed in favour of Suraj Kumari to the extent of 10 annas 8 pies share. The decree was executed about 12 days before the incident by awarding symbolic possession under O. XXI, R. 35 (2) C.P.C. In other words, she was put in joint possession of the property and no actual possession of any portion of the land was given to her. Admittedly the standing crop on the land belonged to Chhedirai and Jitanrai, and Suraj Kumari could have no claim to it. Still on the morning of 23-2-1965 Kamlarai and his son went to the plot with some ten to fifteen labourers for harvesting the crop. Chhedirai and others on his behalf including the appellant Hilarai were already on the spot. They were obviously armed with lathis and spears ready to resist if Kamlarai proceeded to harvest the crop forcibly. There was an altercation in which some five persons on the side of Kamlarai were injured. One of them Biharirai succumbed to the injuries. On the side of Chhedirai, Chhedirai alone appears to have been injured. In due course information was filed at the Police Station and, as already stated, 19 persons were put up for trial out of whom 18 have been acquitted and we are now concerned with the case of only one, namely, the present appellant.

4. The High Court found that Kamlarai and the members of the prosecution party had gone to the scene of offence also armed. Kamlarai and his associates encountered opposition from Chhedirai and others and the shouting brought on the scene Kaushal Kishorerai (P. W. 1), Nand Biharirai (P. W. 3), Sheo Biharirai (P. W. 4), Biharirai the deceased and Ram Naginarai (P. W. 5). The prosecution case was that these persons had come on the scene only to implore the parties not to quarrel. But that does not appear to be the case. It is a point worth noting that Kamlarai and his other associates did not receive any injuries. The injuries were received only by these five, who it is stated, had come there to intercede. There can be no doubt that they had not come to intercede but to help Kamlarai to forcibly harvest the crop.

5. The High Court also found that as soon as these five persons came, the prosecution party must have clearly showed their intention to cut the crop whereupon Chhedirai who was one of the owners of the crop obstructed. Chhedirai's obstruction was sought to be overcome by beating him up. Chhedirai received no less than six injuries and the nature of these injuries shows that lathis and a sharp weapon like Bhala were used against him. The prosecution insisted that the prosecution party had not been armed. But that case has been rejected by the High Court. The High Court was of the opinion that the members of the prosecution party must have carried some arms with them in order to deal with the opposition from the side of Chhedirai and his men. When Chhedirai was beaten with lathis and a bhala, his men, including the present appellant, used their weapons and in the assault four of the prosecution witnesses already referred to and Biharirai received injuries of which Biharirai died subsequently. The High Court further held that there was reasonable apprehension that grievous hurt would be caused by the members of the prosecution party and in those circumstances the members of Chhedirai's party, who were the accused, including the present appellant, were entitled to exercise the right of private defence as contemplated by Section 103-IPC. On that finding the appellant should have been also acquitted because under Section 103-IPC the right of private defence extends to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of theft "under such circumstances as may reasonably cause

apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised." Chhedirai was being attacked with lathis and a bhala. Apart from the fact that Chhedirai had actually sustained a fracture of his arm, there was reasonable apprehension that the person who was using the bhala against him may cause either death or grievous hurt to Chhedirai. If at that juncture, the appellant used his bhala against Biharirai reasonably apprehending grievous hurt to or death of his companion Chhedirai, he would be entitled to be acquitted. But the High Court thought that in the circumstances the appellant appeared to have exceeded the right of private defence. Section 99-IPC says that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. According to the High Court the appellant had caused more harm than was necessary and hence came to the conclusion that the conviction under Sec. 304, Part-I was justified.

6-7. It is contended by Mr. Singh for the appellant that the High Court was in error in thinking that the right of private defence had been exceeded. Chhedirai was being assaulted by a number of members of the prosecution party and deceased Biharirai was one of them. The case that Biharirai and his four companions had come there only to intercede has been rejected and must be rejected, the reason being that it is only these five persons who have received injuries in the assault on the prosecution side. It, therefore, stands to reason that Chhedirai was being assaulted by these five persons and it might well have been that Biharirai was the person who was using the bhala. Although the prosecution party was armed with lathis and bhalas, the prosecution insisted on saying that they were not so armed. Therefore, the possibility of Biharirai being armed with a bhala cannot be eliminated. The very fact that the appellant had used his bhala against Biharirai would go to show that Biharirai might have been using a more deadly weapon than the others. In any case since the prosecution has not been able to show that Biharirai was unarmed when he took part in the assault on Chhedirai, it is difficult to say that the appellant had exceeded the right of private defence. In any event the benefit of doubt must be given to the appellant and he must be acquitted.

8. The appeal is allowed and the conviction of the appellant and the sentence imposed upon him are set aside. He is acquitted and directed to be released. Bail bond cancelled.

Appeal allowed.