

Kishan

Vs

The State of Madhya Pradesh

Criminal Appeal No. 37 of 1973

(S. N. Dwivedi, Y. V. Chandrachud JJ)

19.11.1973

JUDGMENT

DWIVEDI, J. -

1. It is an appeal from the Judgment of the High Court of Madhya Pradesh convicting the appellant under Section 302, I.P.C. and sentencing him to imprisonment for life. By the same judgment the High Court convicted Ganesh and Damrural under Section 323, I.P.C. and imposed a sentence of Rs. 50/- each. They have not appealed.

2. The aforesaid three persons were tried for the murder of one Bucha by the Additional Sessions Judge, Tikamgarh. The prosecution case was this : On May 4, 1968, Damrural went to the house of Bucha while he was supervising foundation-digging near his house. Damrural warned the deceased to abstaining from using bricks belonging to him. Bucha replied that he was using his own bricks. There was an exchange of hot words between them. Thereafter Damrural left the place angrily after giving a warning to Bucha that he would soon settle the score. The work came to a stop at about 9.00 a.m. and the labourers left the place. Damrural, Ganesh and the appellant along with their brother Har Charan arrived there. Ganesh exhorted his brother Har Charan to catch hold of Bucha and kill him. Bucha was dragged out of his house up to a nearby neem tree. There he was given a beating by fists and kicks by the appellant and his three brothers. Bucha contrived to extricate himself from their grip and picked up a Khutai lying nearby. He gave three blows on the head of Har Charan with the Khutai. Har Charan fell down on the ground and became unconscious. Thereafter the appellant and his remaining two brothers, Ganesh and Damrural, caught hold of Bucha. The appellant snatched the Khutai from the hand of Bucha and gave two to three blow on his head. Bucha fell down on the ground and became unconscious. The appellant, Ganesh and Damrural carried away Har Charan in a cart and lodged a report with the police. Kanhaiyalal, P.W. 6, lodged the F.I.R. about the incident in the Police Station, Prithvipur. Bucha died soon afterwards.

3. The prosecution examined four eye-witnesses of the occurrence. Kanhaiyalal, P.W. 6, Mst. Khumania, P.W. 1, Mst. Tijia, P.W. 2 and Bhagola, P.W. 3. Kanhaiyalal was declared hostile by the prosecution. The Additional Sessions Judge relied on the evidence of Mst. Khumania, Mst. Tijia and Bhagola to the extent that the appellant, Ganesh and Damrural along with the deceased Har Charan had gone to the house of Bucha and beaten him by fists and kicks. He also found that Bucha extricated himself from their hold and picked up a khutai. He gave three blows on the head of Har Charan. Har Charan fell down and became unconscious. The appellant grappled with Bucha and snatched the khutai from his hand. He then gave two or three blows on the head of Bucha. Bucha fell down and became unconscious. The Sessions Judge found that Ganesh and Damrural did not participate in beating Bucha after Har Charan had fallen down on the ground. Accordingly, he held

that only the appellant was responsible for causing injuries to Bucha. He was of opinion that after Bucha was in possession of the Khutai there was a reasonable apprehension of grievous injury in the mind of the appellant. So when the appellant snatched the Khutai from his hand and struck blows on his head, he was acting in exercise of the right of self-defence. The appellant had no intention to cause grievous hurt to Bucha or to take his life. Bucha was the aggressor. The Sessions Judge considered that the appellant could be held guilty under Section 304 Part I, I.P.C but as he has acted in exercise of the right of self-defence, he was not guilty of that offence. The Sessions Judge, therefore, acquitted the appellant as well as his co-accused.

4. The State appealed against the judgment of the Sessions Judge to the High Court. The High Court did not rely on the evidence of Kanhaiyalal. The High Court, however, relied on the evidence Mst. Khumana, Fijia and Bhagola. Agreeing with the Sessions Judge, the High Court has held that the appellant had inflicted blows on the head of the deceased Bucha by the Khutai. The High Court has further agreed with the Sessions Judge that Ganesh did not instigate the appellant to kill Bucha. But there the area of agreement between them ends. Disagreeing with the Sessions Judge, the High Court has held that the appellant and his co-accused were the aggressors; Bucha was not in aggressor. So the appellant could not claim to have beaten Bucha in exercise of the right of self defence. The High Court said :

"The respondents had come prepared to beat the deceased and, as stated above, were the aggressors. The respondents, therefore, could not claim protection under a right to defend against Bucha who, in exercise of a right of private defence, wielded the Khutai causing serious injuries and even death of one of the attackers."

In the result, the High Court has convicted the appellant of the offence of murder under Section 302 I.P.C.,

5. Counsel for the appellant has addressed us on two points. Firstly, he has urged that the appellant has acted in exercise of the right of self-defence. Secondly, he has submitted that the applicant's act of causing injury to Bucha falls not within Section 302 but within Section 304 Part II, I.P.C.

6. We are unable to accept these arguments. The finding of the Courts below is that the appellant along with his three brothers, Ganesh, of his house up to the neem tree and there subjected him to punching and kinking. So they were aggressors. They took the law in their own hands. Bucha contrived to escape from the grip, caught hold of the Khutai and struck three blows on the head of Har Charan. Bucha was then acting in exercise of the right of self-defence. Therefore, he was not an aggressor. The appellant could not claim to have beaten Bucha in exercise of the right of self-defence.

7. Turning to the second argument, the appellant and his co-accused had gone to the house of Bucha with the intention of causing physical harm to him. They went unarmed to his house. So they did not then have any intention to kill him. Bucha picked up the khutai and inflicted deadly blows on the head of Har Charan, a brother of the appellant. Har Charan fell down and became unconscious. (He died soon thereafter.) At that moment the appellant hurled the khutai on the head of Bucha. The blow was so severe that there was profuse bleeding inside the brain. One of the skull fractures extended from the right temporal region to the left temporal region and proceeded internally to the base of the skull. Dr. S. N. Banerji, who did the autopsy on the dead body of Bucha had deposed : "With these injuries death was inevitable". This medical opinion clearly brings the case of the appellant within the purview of Section 300, third clause. So the High Court is right in convicting

him under Section 302, I.P.C. The appeal is accordingly dismissed.

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