

Sk. Rafiq S/O Karim

Vs

State of Maharashtra

Criminal Appeal No. 372 of 1974

(V. R. Krishna Iyer, V. D. Tulzapurkar, R. S. Pathak

JJ)

10.11.1978

JUDGMENT

PATHAK, J. -

1. This appeal by special leave is directed against the judgment and order of the Bombay High Court dismissing an appeal filed by the appellant against his conviction and sentence under Section 302 and Section 307 of the Indian Penal Code.

2. The case of the prosecution is that the appellant and certain other persons were on inimical terms with one Mannu because of a dispute in respect of land, that Mannu's son, Nasir, was threatened by the appellant with violence and some days later when Nasir was proceeding with Kadir to his field, they were met by the appellant, Karim, Habib and others. A quarrel ensued in which the appellant attempted to assault Nasir fatally with a pen-knife and after the blow missed he stabbed Kadir who, however, succeeded in inflicting some injuries on the appellant with a stick. The six accused, including the appellant, were committed to stand trial. The learned Sessions Judge found the appellant guilty of the offence under Section 302 and sentenced him to imprisonment for life. He was also found guilty of the offence under Section 307 and sentenced to rigorous imprisonment for seven years. The sentences were to run concurrently. On appeal, the High Court maintained the conviction and sentence of the appellant under Sections 302 and 307. The High Court found that the appellant had attempted to murder Nasir, and had given a knife blow to Kadir on the left part of his chest with the intention of causing death. The appellant obtained special leave to appeal from this Court on October 11, 1974 against the judgment and order of the Bombay High Court, but the special leave was confined to the nature of the offence and the quantum of sentence.

3. Before us, learned Counsel for the appellant contends that the offence under Section 302 is not made out, and urges that this is a case where the provisions of the first part of Section 304 can be said to be attracted. It is pointed out that during the quarrel between the parties Kadir attacked the appellant and inflicted several blows with a stick and it was then that the appellant stabbed Kadir with a knife and in doing so, it is submitted, the appellant acted in the exercise of his right of self-defence. It is said that at the worst this is a case where the appellant exceeded his right of private defence. After hearing learned Counsel for the parties, it seems to us reasonable to accept the contention raised on behalf of the appellant. There is no dispute that the appellant suffered a number of injuries when Kadir set upon him with a stick. The question is whether the injuries were inflicted by Kadir on the appellant before or after the appellant had stabbed him with a knife. In support of his contention that the knife blow came after, learned Counsel for the appellant has referred us to

evidence showing that the knife pierced the heart of the deceased and the blow was of such violence that the deceased fell down immediately and the blood drained out from his heart. It is suggested that there was no possibility thereafter of the deceased inflicting any blows with a stick on the appellant. It is pointed out that Nasir and Kadir must have been already armed with sticks when the affray took place because only a few days earlier the appellant is said to have threatened Nasir and thereafter the latter did not move about in the village alone. According to the prosecution case itself, because of the fear so generated, Nasir sent for Kadir to accompany him when proceeding to his fields. We are impressed by the force of these submissions. It seems to us on the evidence before us that Kadir first attacked the appellant and inflicted several blows on him with a stick, and it was thereafter that the appellant plunged the knife into him. The medical evidence does not convince us that Kadir could, after the fatal knife wound in his heart, set about to wield blow after blow with a stick on the appellant. Having regard to all the surrounding circumstances, a continuous assault by Kadir on the appellant after he had been stabbed must, in our opinion, be ruled out. The injury to the heart was far too grievous. The prosecution sought to support its case by reference to the testimony of Fakira and Gafoor, according to whom the blows with the stick followed the knife injury. But the High Court had disbelieved the testimony of Fakira and Gafoor that they had seen the knife blow. It is clear to us that first Kadir started beating the appellant with a stick, and the latter then stabbed him with a knife. The appellant acted in the exercise of his right of private defence, but if regard is had to nature and violence of the blows suffered and apprehended by him, he exceeded that right when he stabbed Kadir in the heart. In our view, the appellant is guilty of an offence under the first part of Section 304 of the Indian Penal Code, and we sentence him to rigorous imprisonment for five years and a fine in the sum of Rs. 2600. The fine, if received, shall be paid as compensation to the father of the deceased who, we are told, was dependent on the deceased. On failure to pay the fine, the appellant shall be liable to rigorous imprisonment for a further period of two years. As regards the conviction of the appellant under Section 307 the circumstances of the case indicate the desirability of reducing the sentence of imprisonment from a period of seven years to a period of five years, and, therefore, we reduce the sentence to that period. The substantive sentence pursuant to the two convictions shall run concurrently. The appeal is allowed accordingly.

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