

Mohd. Ramzani

Vs

State of Delhi

Criminal Appeal No. 510 of 1979

(R. S. Sarkaria, D. A. Desai JJ)

30.01.1980

JUDGMENT

SARKARIA, J. –

1. This appeal is directed against a judgment, dated December 2, 1978, of the High Court of Delhi, maintaining the conviction of Mohd. Ramzani, appellant under Section 302, Penal Code, with a sentence of life imprisonment.
2. Appellant's father, Mohd. Shafi, is the eldest of the four brothers, others being Chhottey Khan, deceased, Mohd. Din and Abdul Rashid. Abdul Rashid and Mohd. Din were residing on the ground floor of House No. 2934 in Gali No. 5, Sarai Khalil, Sardar Bazar, Delhi, while the appellant, his father Mohd. Shafi, his mother and brothers and sisters were residing in the first floor of the same House No. 2394. Opposite House No. 2934, is House No. 2931 in which Chhottey Khan deceased along with his wife's brother, Fakira, and Abdul Rashid used to reside. Abdul Rashid was unmarried.
3. On April 8, 1974, Chhottey Khan deceased and Abdul Rashid gave a beating and caused injuries to Fatima, mother of the appellant and his sisters, Amina and Ashia. At that time, no menfolk were present at home.
4. The occurrence in question took place on April 16, 1974 in the forenoon at about 11.00 a.m. It was preceded by a sharp quarrel between Abdul Rashid and Mohd. Din in the bazar. Chhottey Khan deceased accompanied by Abdul Rashid and his wife went to Mohd. Din's house and assaulted Sarmadi, wife of Mohd. Din and further caused a knife injury on her six month old child. Thereafter, at a short distance from the house, Chhottey Khan deceased armed with an iron bar and Abdul Rashid, carrying a knife scuffled with the appellant's father, Mohd. Shafi, and caused him injuries. The appellant came to his father's rescue and a scuffle ensued between Chhottey Khan deceased and the appellant in the course of which both received injuries. After stabbing the deceased with a knife the appellant bolted away. Chhottey Khan was removed from the spot to Irwin Hospital. Mohd. Rashid went to the Sadar Police Station and lodged the FIR about this occurrence at 2.40 p.m. Another information is stated to have been recorded at 3.45 p.m.
5. In the hospital, Dr. Amita Sethi examined Chhottey Khan and found six wounds on his person. Injury No. 1 was a stab wound on the upper part of the posterior triangle on the left side of the neck. Injury No. 2 was a Y-shaped wound on the left pectoral region. Injury No. 3 was located on the left elbow on the posterior surface. Injury No. 4 was situated in the supra public region, while Injury No. 5 was a wound on the right forearm.

6. The learned trial Judge found that Mohd. Shafi, father of the appellant, was first manhandled and assaulted by Chhottey Khan and Abdul Rashid when he was proceeding to the police had station to lodge a report. He, however, held that since the stab wound to Mohd. Shafi was caused on the thigh, there was no intention on the part of Chhottey Khan and Abdul Rashid to cause any further injury to Mohd. Shafi when the appellant intervened and assaulted the deceased. On this premise, he held that the appellant had not caused the injuries to the deceased in the exercise of his right of private defence.

7. The High Court held that the injuries by Ramzani appellant to Chhottey Khan make it a cause of retaliation or retribution and not one of the exercise of his right of private defence. Nevertheless, the High Court conceded :

It appears to us that Mohd. Shafi was first attacked and injured. Ramzani naturally lost his temper and went for the persons attacking his father. If he had inflicted one injury perhaps it could be claimed that it was either in the heat of the moment or in the exercise of the right to private defence.

According to the High Court, since the appellant had caused more than one stab wound to the deceased his case "was not within the realm of exercising the right of private defence".

8. Before us, the argument of the learned counsel for the appellant is twofold. Firstly, it is urged that the circumstances brought on the record are sufficient to show with a balance of probability, that the appellant caused the injuries to the deceased in the exercise of his right of private defence of his father and of himself and, as such, his case was covered by Section 96, Penal Code. Secondly, it is submitted that in any case, the circumstances and material brought on the record in cross-examination of the prosecution witnesses, or otherwise, establish such preponderance of possibility, verging on probability, in favour of the plea of private defence, that by its inexorable impact it creates a strong doubt with regard to the truth of the prosecution story, viz. that the appellant stabbed the deceased after Mohd. Shafi had been released and got aside to nurse his injury.

9. We sent for the original record and examined it to ascertain whether the courts below had appreciated the evidence in the context of the plea of private defence taken by the appellant, correctly.

10. The trial Court had found that Abdul Rashid who had lodged the first information report and claimed to be an eyewitness of the occurrence, was not a reliable witness. Besides being the brother of the deceased, he had the audacity to tell patent lies on material points. In this case, it may be noted that both sides had received injuries. Mohd. Shafi, the acquitted co-accused, the father of Mohd. Ramzani appellant, had received four injuries, including a stab wound. This stab wound, according to the defence, as it appears from the material on record, was inflicted by Abdul Rashid. Initially in FIR Abdul Rashid gave a very funny account of this injury on Mohd. Shafi. He stated that this injury was inflicted by his son, Mohd. Ramzani (appellant) when the blow attempted by the latter on Chhottey Khan accidentally landed on Mohd. Shafi. At the trial, he did not give any explanation whatever, as to how Mohd. Shafi received the injuries, although in cross-examination he admitted that in the course of the occurrence Mohd. Shafi was also injured. In cross-examination, he denied the defence suggestion, that Mohd. Shafi was assaulted by the witness with a knife and by Chhottey Khan deceased with an iron bar (saria). He also denied the suggestion that the blood-stained knife (Ex P-3) found from the torn shirt piece at the spot, was the one that he had used at the time of occurrence. In examination-in-chief, improving upon his version in the FIR, he said that

Mohd. Shafi had clenched the deceased in his arms from the back side, while his son, Mohd. Ramzani appellant, repeatedly stabbed him (Chhottey Khan). This story was contradicted in material particulars by the other two eyewitnesses, namely, Nanhe Khan (PW 5) and Mohd. Ikram (PW 6). Nahne Khan (PW 5), stated he was sitting at his shop situated in the vicinity of the scene of occurrence, when he saw three persons, namely, Chhottey Khan, Abdul Rashid and Mohd. Shafi quarrelling and beating each other at some distance from his shop. The witness then heard and saw Mohd. Ramzani appellant shouting that he would teach a lesson to the deceased for defaming his sister, and saying so, he stabbed Chhottey Khan with a chhuri. In cross-examination, the witness initially stated that he did not care to note whether Mohd. Shafi had also received any injury, but on further cross-examination, he did not categorically deny the defence suggestion that it was Abdul Rashid who first opened the assault on Mohd. Shafi with knife. He tried to evade this question by saying that he could not see Mohd. Shafi bleeding from any injury because this stabbing took place 10 or 12 feet away from his shop and he was then busy weighing and selling articles to some children who were standing at his shop. Cross-examined further, the witness conceded that after the first quarrel, Mohd. Shafi attempted to go to the police station, but Chhottey Khan caught hold of him and prevented him. Mohd. Shafi, however, got himself released and tried to run towards the police station. It was at his juncture that Mohd. Ramzani came and stabbed Chhottey Khan. Abdul Rashid also intervened and caught hold of Ramzani's hand. The witness denied having seen any injury being caused to Mohd. Ramzani.

11. Although Nanhe Khan demolished Abdul Rashid's story that Mohd. Shafi had gripped the deceased from behind while the appellant stabbed him, yet from the general tenor of his statement, it appears that he was not desirous of telling the whole truth. He tried to favour Abdul Rashid and keep him out of picture. However, after a good deal of equivocation and prevarication, towards the end of the cross-examination, the witness conceded : "It is correct that Chhottey Khan and Abdul Rashid attacked Mohd. Shafi when Mohd. Ramzani came there to help his father".

12. Mohd. Ikram (PW 6) also falsified Abdul Rashid's story that Mohd. Shafi was holding the deceased from behind while Mohd. Ramzani was inflicting the knife blows on the deceased. PW 6 candidly stated that Mohd. Shafi did not do any such thing but he was simply present there and was already injured. Thus, he admitted that Ramzani stabbed Chhottey Khan only after Mohd. Shafi had been injured. In cross-examination, the witness further disclosed that he had seen Abdul Rashid stabbing Mohd. Shafi on the leg with the knife (Ex. P-3). He did not categorically deny the defence suggestion that after Mohd. Shafi had been injured, Mohd. Ramzani rushed to save his father, but Chhottey Khan and Abdul Rashid intercepted him, but simply stated that he did not see. On further, cross-examination, the witness admitted :

Chhottey Khan was armed with a saria. At first, injury was caused to Mohd. Shafi. Thereafter, Ramzani felt enraged and quarrel ensued between Mohd. Ramzani and Chhottey Khan ...

13. In his examination under Section 313, CrPC, Mohd. Shafi inter alia, stated :

The correct facts are that on April 16, 1974 at about 11.00 a.m., I was present in my house along with my son Ramzani when Abdul Rashid and Chhottey Khan came there. They first injured Sarmadi and her child and thereafter started beating me. I started going to police station whereupon Abdul Rashid and Chhottey Khan caught hold of me and also tore my shirt. While I was going (starting for the police station) Abdul Rashid gave a stab wound on my thigh; that Chhottey Khan was holding a

saria in his hand and they wanted to further attack me when my son Ramzani came to my rescue. They also beat Ramzani and both Chhottey Khan and Ramzani grappled with each other.

14. Similarly, the appellant, during his examination at the trial stated :

I was present at my house along with my father Mohd. Shafi. Chhottey Khan and Abdul Rashid came there. Abdul Rashid stabbed Sarmadi with the knife. He also cut off the nose of a child aged about 1 year of Sarmadi. Chhottey Khan was armed with a saria and Abdul Rashid was armed with a knife and they started beating my father. Thereupon my father Mohd. Shafi, started going to the police station, and thereupon Chhottey Khan along with Abdul Rashid caught hold of my father Mohd. Shafi. (In the process) the shirt of my father was torn. Abdul Rashid then stabbed my father Mohd. Shafi, and Chhottey Khan at that time was armed with a saria and they tried to hit my father with the saria. Then I came in between to save my father. I and Chhottey Khan grappled with each other and I was also injured.

15. It may be noticed that Mohd. Shafi was examined on April 16, 1974 by Dr. Y. K. Goel at the written request of Shri Ishwar Singh, Sub-Inspector of Police who had investigated the case. Exhibit PW 15/A shows that in the "statement of injuries" prepared by the Investigation Officer, he had noted three bleeding injuries on the left eye, head and left buttock of Mohd. Shafi, apart from a swelling on the right side of the mouth. Dr. Goel, vide Ex. PW 15/A found four injuries on Mohd. Shafi :

- (1) Abrasion 1/4" x 1/10" left side of scalp parietal region. Reddish in colour.
- (2) Lacerated wound 1/4" x 1/10" x 1/10" left upper bital (occipital) region.
- (3) Incised wound 1" x 1/10" x 1/10" thick upper back with clean-cut margins and elliptical in shape.
- (4) Complaints of loosening of upper left inciser (sic). (Slight loosening seen. Referred to Dental Surgeon for expert opinion.)

According to the Doctor, all the injuries except No. (4) were simple and all the injuries [except No. (3) which was caused with a sharp-edged weapon], were caused with a blunt object. The duration of all the injuries at the time of medical examination was 12 to 13 hours.

16. From this medico-legal report, it is clear that at least three of the injuries on Mohd. Shafi, could possibly be caused with the iron bar carried by the deceased. Unfortunately, Dr. Y. K. Goel does not seem to have been examined as a witness at the trial. It was the duty of the prosecution to produce Dr. Goel as a witness, particularly when he had examined Mohd. Shafi, at the instance of Investigating Officer. The prosecution could not be allowed to take advantage of their own default and object that the medico-legal report, which had been exhibited in evidence as Ex. PW 15/A, was not formally proved. The inference that can reasonably be drawn from this medico-legal report (Ex. PW 15/A) is that at least three of the injuries on Mohd. Shafi could possibly be caused with the iron bar carried by the deceased. In this connection it may further be noted that according to the report of the Serologist, human blood of Group 'O' was found on the shirt (Ex. P-7), baniyan (Ex. P-8) and tehmad (Ex. P-9). Mohd. Shafi admitted that these clothes belonged to him, but added that this blood on them had been "planted" by the Investigating Officer. The blood of the deceased which

was collected from the spot, according to the Chemical Examiner, was also of Group 'O'.

17. The courts below have rejected the prosecution story propounded by its witness Abdul Rashid inasmuch as he stated that Mohd. Shafi was holding the deceased from behind when Mohd. Ramzani stabbed Chhottey Khan. As a necessary corollary from that finding it follows that the blood of Group 'O' found on the clothes of Mohd. Shafi was a fabrication. But in spite of this implication which had necessarily cast a doubt in regard to the core of the prosecution case, the courts below did not extend its benefit to the appellant.

18. Dr. S. Choudhry had examined Mohd. Ramzani appellant under the order of the Magistrate on April 19, 1974 at 5 p.m. and prepared the medico-legal (Ex. PW 15/DY) wherein he has noted these injuries :

- (1) Infected abrasion wound over the right index finger palmer aspect distal part about 1/2 inch.
- (2) Infected abrasion would about 1/2 inch over the right middle finger palmer aspect distal part.
- (3) Infected abrasion wound over middle of the right ring finger palmer aspect.

In the opinion of the doctor, the duration of these injuries was three to four days and they had been caused with blunt hard, pointed object. Dr. Choudhry was not examined as a witness in the case. However, the medico-legal report was let in evidence without any objection. The prosecution cannot profit by their failure to examine the doctors. This medico-legal report (Ex. PW 15/DY) was proved by Om Pal Singh (PW 15), Record Keeper of Police Hospital, who was acquainted with the handwriting and signature of Dr. Goel and identified Dr. Goel's signature on Ex. PW 15/DY. The medico-legal report shows that the possibility of Ramzani appellant having received these injuries on his hands with an iron bar, cannot be ruled out.

19. It is trite that the onus which rests on an accused person under Section 105, Evidence Act, to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged, beyond reasonable doubt. It is further well established that a person faced with imminent peril of life and limb of himself or another, is not expected to weight in "golden scales" the precise force needed to repel the danger. Even if he in the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a clam and unruffled mind, the law makes due allowance for it. Viewed in the light of these principles, the defence, in the instant case had succeeded in establishing with a balance of probability, that the deceased and Abdul Rashid armed with a saria and knife, respectively, first assaulted Mohd. Shafi and thereupon the appellant assaulted the deceased to save his father and himself from further injuries. Even if it be assumed for the sake of argument that the material on record fell short of discharging the nature of onus on the appellant under Section 105, Evidence Act, on account of the non-production of the doctor who examined Mohd. Shafi and the appellant, and prepared the medico-legal report, Ex. PW 15/A and Ex. PW 15/DY, then also the benefit of that deficiency and the doubt arising therefrom, could not be given to the prosecution. The prosecution case as propounded by its star witness Abdul Rashid was that both the father (Mohd. Shafi) and the son (appellant) actually participated in the assault on the deceased. To support that story, the prosecution went to the length of 'planting' the deceased's blood on the clothes of Mohd. Shafi. When this substratum of the story viz. Mohd. Shafi

holding the deceased at the time of the fatal assault, was found to be false and no satisfactory explanation was coming forth from the prosecution about the injuries of Mohd. Shafi and the appellant, the only prudent course in the ultimate analysis, for the court was to hold that the prosecution had failed to discharge its burden of bringing home the guilt to the appellant beyond reasonable doubt.

20. For reasons aforesaid, we had per our order dated September 13, 1979 allowed the appeal and acquitted the appellant.

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