

Ramesh Chandra

Vs

State of Madhya Pradesh

Criminal Appeal No. 105 of 1981

(D.A. Desai, A.D. Koshal, A.P. Sen JJ)

27.01.1981

JUDGMENT

DESAI, J. -

1. We have heard learned counsel for both the parties.
2. Facts found and which are not disputed would show that the appellant was at his house on the date of the incident i.e. May 9, 1972. Omprakash PW 2 went to deliver holy ash (bhabhuti) to Radhabai PW 11 at the house of the appellant. Appellant disapproved visit of Omprakash and picked up a quarrel with him and assaulted him. Omprakash returned to his house. Thereafter Ramnarayan PW 1 accompanied by deceased Kailash and Omprakash armed with sticks came to the house of the appellant to rebuke him. Appellant was then standing in the balcony of his house. One Bharatlal who was acquitted also arrived there. Appellant apprehending trouble came down on the ground floor. At that time some other accused also joined in the melee. Appellant and acquitted accused assaulted Ramnarayan, Kailash and others. In this incident appellant gave three knife blows on the back and abdomen of deceased Kailash which proved fatal.
3. Appellant in his statement under Section 313, Code of Criminal Procedure stated that Ramnarayan PW 1, deceased Kailash and his brother Prakash who is none other than Omprakash came armed with sticks to his house and challenged him to come out of the house. He said that when he emerged from the house he was attacked by Ramnarayan, Kailash and Prakash with sticks. He was given blows with sticks on his head and he became unconscious.
4. Appellant was arrested on the same day. He was examined by Dr. B. N. Verma PW 24 who found on his person four lacerated wounds, one reddish bruise and multiple superficial abrasions on the front of both legs, both feet and right elbow.
5. On these rival contentions, the learned trial Judge framed point 6 for determination, whether the appellant caused injury in exercise of the right of private defence of body, and if yes whether in the facts and circumstances of the case he exceeded the same. The learned trial Judge examined this question in para 61 of the judgment, and rejected it holding that either "appellant should have bolted the door of his house from inside when aggressors Ramnarayan, Kailash (deceased) and Prakash came to his house armed or he should have (had) recourse to public authority". The High Court in paragraphs 21 to 23 examined this defence and negatived it holding that appellant was the aggressor. Is this conclusion at all reasonable in the circumstances of this case ?
6. Undoubtedly Omprakash PW 2 referred to by learned Sessions Judge as Prakash was annoyed by

the conduct of the appellant when the former went to deliver holy ash. That happened in the early hours of morning so says Omprakash. On hearing from Omprakash about the morning incident Ramnarayan, deceased Kailash and Omprakash went armed to the house of the appellant. Could they not have resort to public authority to ventilate their grievance against the appellant for the treatment meted out to Omprakash ? They challenged the appellant in an aggressive mood. Learned Sessions Judge has described them as aggressors. Coupled with this is the most unambiguous finding of the trial court in para 55 of the judgment that "Ramnarayan PW 1, Santosh Kumar PW 3 and Jagdish PW 4 are not totally reliable witnesses ". Therefore, how the attack opened cannot be ascertained with reasonable certainty from their evidence. Deceased and his companions, it thus transpires, were annoyed with the appellant. They went to his house armed and challenged the appellant to come out of the house. Appellant was alone because evidence shows acquitted accused joined later and therefore they were acquitted. Deceased and his two companions were armed. Add to this the fact that appellant has number of injuries including four lacerated wounds and number of abrasions. We may recall here his version of the incident that he was first attacked. Once the prosecution witnesses cannot be relied upon as to who opened the attack and prosecution witnesses had come armed to the house of appellant in an aggressive mood and the appellant had number of injuries, indisputably it would appear that he had reasonable apprehension of injury which may cause death or grievous hurt. He has thus the right of private defence of body. This cannot be negated on the specious plea of not bolting the door. And how can he seek resort to public authority when armed aggressors are in front of his house ? Both the courts in our opinion were in error in denying the right of private defence of body to the appellant. Has he exceeded the same ?

7. Here we may refer to the injuries of deceased. It is found that the deceased was armed with a stick. Appellant had the knife. Deceased Kailash had three incised wounds as noticed in autopsy by Dr. B. N. Verma. Of the three one was on back below the right scapula, another on the abdomen and third on the left loin. All the three injuries were caused by the appellant. Some injuries were caused after deceased fell down. Once deceased fell down with a serious injury it was hardly necessary for appellant to further attack him. Undoubtedly one cannot weigh the right of private defence in golden scales and cannot measure it step by step. But having regard to all the circumstances of the case, we are of the opinion that appellant initially had the right of private defence of body but when he continued to attack the deceased after he fell down, he exceeded the same.

8. In view of our finding, the appellant would be guilty of committing an offence under Section 304 Part II of IPC and he must be convicted accordingly. He is acquitted of the offence under Section 302, IPC and his sentence of life imprisonment is set aside. Appellant is convicted for an offence under Section 304 Part II, IPC and is sentenced to suffer RI for three years. Appeal allowed to the extent herein indicated.

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