

Balmukund and Another

Vs

State of Madhya Pradesh

Criminal Appeals Nos. 686-687 of 1981

(D.A. Desai, R.B. Misra JJ)

17.07.1981

JUDGMENT

1. We have heard learned counsel Mr. R.L. Kohli for the appellants and learned counsel Mr. N.K. Agarwal for the respondent-State. Balmukund filed Criminal Appeal No. 54 of 1974 against his conviction and sentence for offences under Sections 302 and 307, Indian Penal Code and sentence of imprisonment for life and rigorous imprisonment for seven years respectively. Appellant Gunna alias Gur Narayan filed Criminal Appeal No. 62 of 1974 against his conviction for an offence under Section 307, Indian Penal Code and sentence of rigorous imprisonment for seven years. Both these appeals were filed in the High Court of Madhya Pradesh at Jabalpur. There was also a third appeal, being Criminal Appeal No. 7 of 1974, by the other three accused who were tried at the same trial, but none of them has appealed to this Court and, therefore, we are not concerned with them in this matter. Even though Balmukund and Gunna alias Gur Narayan preferred separate appeals in the High Court, they have filed a joint petition for special leave but as there were two separate appeals in the High Court, the joint S.L.P. has been given two separate numbers.

2. This Court by its Order dated April 20, 1981 issued notice to the respondent-State limited to the question of sentence. Special leave is accordingly limited to the question of sentence only.

3. The question of sentence assumes importance in this case in view of the findings of the High Court. The High Court reached the conclusion in Para 28 of its judgment that the scrutiny of the prosecution evidence probalised the defence version that the field where the complainant party had started ploughing was in possession of the appellants and the quarrel arose because the complainant party would not desist from ploughing the field in spite of objections raised by the appellants. The High Court further in categorical terms recorded a finding as a unauthorised visit of the complainant's party to the dispute field on the date of occurrence in the following words : "We are of the view that the appellant's party was in possession of the field and the complainant party was trespasser." After having recorded the finding that the appellants (accused) were in possession of the disputed field and that the complainant and his associates took the law into their hands, trespassed into the field of the appellants and tried to plough the same, the High Court rightly reached the conclusion that there arises in favour of the appellants a right of private defence of property. The High Court in terms held accordingly and, in our opinion, rightly.

4. The High Court then proceeded to examine whether the use of a firearm in the facts and circumstances of the case would be wholly covered by the right of private defence of property or it was exceeded. In Para 33 of the judgment the High Court recorded finding and that looking to the force used by the appellant Balmukund, he had no justification to direct firearm at vital part of the deceased Autar Singh and as far as the gunfire at the Autar Singh is concerned, he had definitely

exceeded the right of private defence of person and property and is liable for conviction under Section 304, Indian Penal Code. This finding will further reinforce the conclusion that not only the High Court held that the appellant had a right of private defence of property but also of person. In this background the High Court examined the question of the use of a firearm as being justified or the right was exceeded.

5. While analysing the evidence the High Court recorded apparently contradictory inference in Paras 33 and 34 read with Para 36 where the High Court slightly confounded the issue by saying that the "appellant fired without any rhyme or reason" as if there was no right of private defence.

6. We propose to steer clear of this mist and confusion and agree with the High Court in view of the discussion at the Bar the appellant had the right of private defence of person and property.

7. In rural landscape even today dispute as to possession of agricultural land is a part of life. Occupancy of land being the only source of survival, emotional attachment apart, the struggle for survival leads to fierce fight and resort to arms to protect possession because in the context of tardy slow moving litigative process actual possession has ceased to be mere nine point in law but it has assumed alarming proportions. Years upon the years spent in legal conundrums moving vertically through hierarchy of courts coupled with the cost and time to throw out a trespasser or even a rank trespasser provides occasionally provocation to resort to physical violence. The use of the firearm used to be spasmodic but it has started becoming a recurring malady. But right of private defence cannot be judged step by step or in golden scales. Once we accept the finding of the High Court that the appellants had the right of private defence of person and property meaning thereby that the appellants were the victims and the complainants were aggressors, but in the facts of the case they exceeded the same by wielding a firearm, a sentence of 10 years' rigorous imprisonment would appear to us in the facts and circumstances of the case to be a little bit too harsh.

8. Having given our earnest consideration to the question of sentence alone in this case, we are of the opinion that Balmukund, appellant 1, should be sentenced to rigorous imprisonment for five years, and simultaneously the sentence of seven years under Section 307, Indian Penal Code awarded to appellants 1 and 2 both be reduced to three years each. The substantive sentences should run concurrently.

9. When we were about to conclude the judgment, Mr. Kohli, learned counsel for the appellants, informed us that Balmukund is suffering from tuberculosis and this aspects should be taken into consideration while awarding appropriate quantum of sentences. A reference was made to some medical certificate produced at this stage in the Supreme Court that appellant 1 Balmukund is suffering from tuberculosis. Our attention was invited to Annexure A, page 58 a medical certificate signed by Dr. V.K. Saxena, Assistant Surgeon, District Hospital, Bhind (M.P). The diagnosis is Bilateral Pulmonary Tuberculosis advising treatment and rest. Maybe, this may be true, because we have no reason to doubt the authenticity. But the other side has no opportunity to meet this certificate. Therefore, while not giving full consideration to the certificate which would have weighed with us in determining the quantum of sentence, we hope that the State would take this aspect into consideration, both for his treatment and for his early discharge if it is permissible.

10. The appeals are allowed to the extent herein indicated.

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