

Meheruddin Sheikh Alias Meheruddin and Others

Vs

State of West Bengal

Criminal Appeal No. 273 of 1983

(A. Varadarajan, Ranganath Misra JJ)

13.02.1985

JUDGEMENT

RANGANATH MISRA, J. -

1. This appeal by the eight appellants is by special leave and is directed against the affirming judgment of conviction and sentence passed by the Calcutta High Court in appeal.
2. Twenty-two persons including the eight appellants were put on trial for committing murder of one Tasruddin and for inflicting injuries on his sons and other relations in an incident which took place around 11 a.m. on May 22, 1975. First Information Report was given at the police station located 14 km. away from the place of occurrence at 11.25 p.m. that night by PW 1, one of the sons of the deceased. Prosecution alleged that Plot No. 348/693 in Mallickpore Mouza had a total area of 33 decimals but the same had been recorded under two separate Khatians - 203/1 covered 22 decimals in the name of Tasruddin and 203/4 was in respect of 11 decimals in the name of Gafoormohammed who happened to be a nephew of Tasruddin. Tasruddin purchased the 11 decimals of Gafoor by a registered sale deed and prosecution alleged that Tasruddin was in enjoyment of the property originally belonging to him and subsequently acquired from Gafoor by amalgamating the two. In 1975 Tasruddin had grown jute crop on the land and it was standing when the incident took place. PW 1, the informant, who was the eldest son of Tasruddin, was working in the field and had engaged himself in weeding operation. Accused persons forcibly entered upon the land whereupon PW 1 protested but they paid no heed. PW 1 thereupon ran home and informed his father of the unlawful activities of the accused persons. Thereupon, Tasruddin accompanied by his four sons PWs 1, 7, 8 and 9 and two daughters, namely, PWs 5 and 6 came near the land. Seeing them, appellant 7 Gayasuddin shouted on hearing which the other accused persons rushed to the spot with deadly weapons like farsa, sulpi, hasua, etc. Accused persons gave blows on the head and other parts of the body of Tasruddin with these deadly weapons as a result of which he sustained several injuries. When his sons and daughters went to his rescue they too were brutally assaulted. The accused persons left the place after inflicting injuries. Tasruddin ultimately succumbed to the injuries while others were hospitalised.
3. Twenty-two persons in all were put on trial. Prosecution examined 15 witnesses out of whom PWs 1, 2, 3, 5, 6, 7, 8 and 9 were eye witnesses. PWs 5 and 6 had been injured in course of the occurrence. The defence denied the prosecution allegation of unlawful assembly or their having come to the spot armed with deadly weapons. They even denied infliction of injuries either on the deceased or on his relations. They examined two witnesses in support of their plea of having been assaulted by Tasruddin and his party while being in possession of the land acquired from Gafoor. They alleged interference with their enjoyment and claimed right of private defence of person and

property by pleading the prosecuting party to be trespassers. The trial court accepted the prosecution case in its material aspects but acquitted 14 of the accused persons and convicted the remaining eight under Sections 304/Part I/149 and 326/149 of the Indian Penal Code and sentenced the accused persons to different terms of imprisonment. The High Court in appeal reconsidered the entire evidence and did not find any merit in all the submissions advanced before it. It repelled the plea of the right of private defence, and held that the appellants had caused brutal injuries on Tasruddin and his relations. The appeal was, therefore, dismissed and the convictions and sentences were confirmed.

4. Mr Frank Anthony appearing for the appellants contended that the parties were relations and the accused had purchased a part of the property and were in possession. They were entitled to defend their possession and, therefore, the conviction was totally unjustified. He then contended that there was a delay of about 12 hours between the incident and the giving of the First Information Report and this delay had not at all been explained. According to Mr Anthony, taking advantage of this delay the case has been sufficiently embellished and improved. Mr Anthony also contended that the evidence was discrepant and the trial court as also the High Court had overlooked the same without any justification. He took us through the evidence of some of the relevant witnesses to support his stand.

5. The sale deeds are of October-November 1968. Tasruddin had purchased all the 11 decimals of Gafoor and though the sale deed was of October, the document was registered on November 16, 1968. Five decimals out of 11 decimals were claimed to have been sold to Safiuddin, one of the acquitted accused, by a registered sale deed dated November 1, 1968, by Gafoor. We are really not concerned in dealing with the question as to who had good title to the property. What was material for deciding the criminal case was possession on the relevant date. The trial court as also the High Court have considered the evidence on record for ascertaining which party was in possession at the appropriate time and both the Courts have concurrently held that Tasruddin and members of his family were actually in possession and had raised the jute crop which was standing when the occurrence took place in May 1975. That finding is one of pure fact and no compelling justification has been indicated to us for disturbing that finding.

6. The trial court as also the High Court have considered the evidence with reference to the setting, the manner in which the blows were given and as to who could be called the aggressor in the facts and circumstances of the case while examining the legitimacy of the right of private defence. Here again, evidence had been looked into and a finding has been reached in the trial court as also the High Court and we do not think any justification has been shown for disturbing the said finding. Admittedly there has been a gap of about 12 hours between the occurrence and the giving of the First Information Report at the police station. The High Court has accepted three reasons advanced by the prosecution to explain this delay. They are : (1) Tasruddin and many members of his family had been badly injured and medical attention was being given to them till 3 p.m. when Tasruddin succumbed to his injuries; (2) around that time there was a heavy downpour of rain which affected the moving about; (3) the police station was 14 km. away from the spot and had to be negotiated. These in our view are cogent reasons and the conclusion of the High Court that there was sufficient cause for the delay in furnishing the First Information Report does not warrant interference.

7. On examining the matter and after hearing counsel for the parties we are satisfied that the High Court came to the correct conclusion and there is no merit in the appeal. We accordingly dismiss the appeal. Some of the appellants who are on bail should now surrender to their bonds so that all the appellants may suffer the sentence imposed by the High Court.

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