

Madan Mohan Pandey

Vs

State of U.P.

Criminal Appeal No.736 of 1979

(S.R. Pandian, K. Jayachandra Reddy JJ)

11.12.1990

JUDGEMENT

1. The appellant Madan Mohan Pandey along with his father Laxmi Shankar Pandey and brother Hirdaya Narain Pandey were tried for offences u/ Ss. 302, 304 and 307 read with S. 34 IPC. The trial court convicted all the three of them u/ S. 304 I read with S. 34 IPC and sentenced the appellant to undergo six years imprisonment and the rest to two years imprisonment. The High Court took the view that they have exceeded the right of private defence. On appeal the appellate court acquitted Hirdya Narain and pending the appeal the father Laxmi Shankar died. So far as the appellant is concerned his conviction is confirmed but the sentence is reduced to four years. Questioning the same this appeal has been filed.

2. The three accused persons, the deceased in the case and material witnesses belong to village Pipraich. There were misunderstandings between the two families. On 30-6-72 the deceased was taking his tractor to his house through the rasta and found it blocked as the accused had kept their tractor on the rasta. The deceased asked them to remove the tractor on the rasta. The deceased asked them to remove the tractor but that led to a quarrel. Thereupon the father Laxmi Shankar Pandey asked his sons to bring guns from the house. Immediately the appellant and his brother brought one gun each and appellant lost no time and fired six times at the deceased, P.Ws. 1, 2 and 4 others. The deceased who was sitting on his tractor fell down dead. The P.W. 1 went and reported the occurrence at the police station. The sub-inspector immediately left for the spot. He examined the material witnesses, held inquiries and sent the injured for medical examination and for treatment. The inquest was held for the dead body of the deceased am Dulary and the same was sent for postmortem. Before Sessions Court all the injured witnesses along with other witnesses were examined. A plea of right of private defence was put forward on behalf of the accused. The learned trial Judge took the view that the witnesses are not wholly independent and having regard to the presence of some injuries on some of the persons belonging to the accused party held that the appellant, his father and brother had right of private defence but exceeded the same. In that view of the matter the learned Sessions Court convicted all of them u/ S. 304 Part II PC as already stated. The High Court to that extent agreed with the trial court but acquitted the brother Hirdaya Narain since no role was assigned to him. Laxmi Shankar Pandey, the father, however, died during the pendency of the appeal.

3. Shri Promod Swarup, counsel for the appellant, vehemently urged that the accused were entitled to right of private defence and that the courts below erred in convicting the appellant. According to the learned counsel the appellant who had the right of private defence is not expected to weigh the

same in golden scales and modulate his defence. It is his submission that the presence of injuries on some of the persons belonging to the accused party established that the appellant only shot the deceased and other persons having a reasonable apprehension that death or grievous injuries otherwise would be the result so far as his party persons are concerned. We have gone through both the judgments and the evidence on record. Admittedly the appellant has not received any injuries. Some of the injuries alleged to have been found on the persons who are examined as defence witnesses are only simple. In the absence of any injuries on the accused appellant it would only go to show that though he had right of private defence he could not have gone to the extent of firing six times then killing one person and injuring six others. It is clearly a case of exceeding the right of private defence. The learned counsel in support of his submission, however, relied on a judgment of this Court in State of U.P. v. Ram Niranjana (1971 Cri LJ 1125): AIR 19-71 SC 1432. We have perused the same but we find that the facts are different. It is needless to say that in case of this nature, the facts and circumstances vary from case to case. In judging whether the appellant has exceeded his right to private defence or not the Court has to take into account the weapons used particularly in a case of firing and a number of shots that were fired. There was no need for the appellant to fire six times indiscriminately even assuming that he had such a right. Therefore, we see no ground to interfere and the appeal is dismissed.

Appeal dismissed.

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