

Janab Ali Shaikh

Vs

State of W.B.

Criminal Appeal No. 63 of 1992

(Kuldip Singh, M. Fathima Beevi JJ)

23.01.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Special leave granted.

2. While working in the fields Janab Ali . Shaikh and Golam Shalkh had some altercation which prompted Janab All Shalkh to pick up a "Faora" (a heavy agricultural implement) and inflict an injury with the said "Faora" on the head of Golam Shaikh resulting in his death. The trial Court convicted Janab Ali Shaikh under Section 304, Part1, I.P.C. and sentenced him to four years rigorous imprisonment. The High Court dismissed the appeal. Hence this appeal by Janab Ali Shaikh.

3. The defence plea of the appellant was that at the time of altercation of Golam Shaikh made an attempt to hit the appellant with a "panchan" and Janab Ali Shaikh tried to resist the same out of fear to his life and used the "faura" for that purpose.

4. Mr. Hardev Singh, learned Counsel for the appellant argued that the appellant acted in his right of self defence in using the "Faura". According to him the appellant apprehended grievous hurt at the hands of the deceased who was threatening to hit the appellant with a "panchan" which is a lathi like object. This contention was rejected by the trial Court in the following words:-

"From cross-examination it appears that suggestion has been given to the effect that Golam made an attempt to hit Janab with a panchan and that at that time Janab hit Golam with the faora. Panchan is a stick used for driving for cattle at the time of ploughing. It has been stated by Janab Ali in his statement under Section 313, Cr. P.C. that he was apprehending death at the time when Golam made an attempt to assault him and in order to save his life he tried to resist with the faora and it hit Golam resulting in his death. The evidence of the doctor would show that there was fracture of frontal bone, that there was subdural haemotoma with laceration of meninges and brain matter over frontal region. It shows that the blow was given with sufficient force and it cannot be accepted that accidentally it touched the head of Golam Shaikh at the time of giving resistance to him when Golam made an attempt to hit Janab Ali with a panchan. Learned lawyer for the accused submits that it would be sufficient for the accused to hit his opponent in case he apprehends any grievous hurt and here in this case Golam Shaikh made an attempt to hit him and thereby accused Janab Ali in exercise of his right of private defence had the right even to

cause his death. In other words he submits that Janab Ali has exercised his right of private defence and accordingly he cannot be said to have committed any offence under Section 304, I.P.C. In the instant case i am unable to accept his contention. For sake of argument even if it be accepted that Golam made any attempt to hit Janab Ali with a stick it cannot be said that thereby Janab Ali had any apprehension of any grievous hurt as submitted by the learned lawyer for the accused. At best there could have been simple injury on the person of Janab All and he certainly for that purpose had no right to hit Golam with such force causing fracture of the @page-SC1695 frontal bone of his head. It clearly goes to show that this injury was caused by Janab at the heat of the moment and that he is not entitled to get the benefit of the right of private defence as claimed by him. Accordingly, I find that accused Janab Shaikh committed an offence under Section 304, Part I, I. P. C. "

5. The High Court upheld the verdict of the trial Court. We see no infirmity in the reasoning and the findings reached by the courts below.

6. We, therefore, dismiss this appeal. Appeal dismissed.

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