

Bhagwan Swaroop

Vs

State of M.P.

Criminal Appeals Nos. 273-274 of 1980

(Kuldip Singh, R. M. Sahai JJ)

31.01.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Bhagwan Swaroop was charged under S. 302, I.P.C. for the murder of Man Singh and under S. 307, I.P.C. for an attempt to murder Shahid. He was further charged under S. 451, I.P.C. for committing trespass and also under Section 25-A (25(1 A)) of Arms Act. Ram Swaroop, father of Bhagwan Swaroop, was charged under Ss. 109/ 302,451, I.P.C. and 29 of the Arms Act. Ram Swaroop was acquitted of all the charges by the trial Court. Bhagwan Swaroop was, however, convicted under S. 302, I.P.C. and was sentenced to imprisonment for life. He was acquitted of the other two charges. The appeal filed by Bhagwan Swaroop was dismissed by the High Court. The High Court allowed the State appeal and further convicted Bhagwan Swaroop under S. 307, I. P. C. and S. 25-A (25(IA)) Arms Act. He was sentenced to five years and one year rigorous imprisonment respectively for the said offences. This appeal before us by way of special leave is by Bhagwan Swaroop against his conviction and sentence on the three counts.

2. Deceased Man Singh was the son of Shahjor Singh and brother of Babu Singh. They were living in the house owned by Ram Swaroop and his sons. There was dispute between the parties regarding a piece of land which according to the accused, the complainant party was forcibly occupying. A notice had been served upon Shahjor Singh by the accused, to vacate the said encroachment. According to the prosecution on May 11, 1969 at about 2.45 p.m. accused Ram Swaroop had an altercation with Babu Singh at a place called Gauri and thereafter he rushed towards the house of Shahjor Singh and on reaching there, abused the complainant party and started dismantling the tinshed on the disputed land. Shahjor Singh sent his son Babu Singh to the police station to lodge a report. Meanwhile Man Singh deceased came at the spot and gave a push to Ram Swaroop who as a result fell down. He got up immediately and shouted for his son Bhagwan Swaroop and asked him to bring the rifle and kill the complainant party. Bhagwan Swaroop rushed to his house, brought a gun and fired a shot hitting Man Singh. Bhagwan Swaroop fired the second shot which bit Shahid. Man Singh fell down and thereafter complainant Shalijor Singh took out a lathi and gave beating to Ram Swaroop. Man Singh succumbed to the gun-shot injury.

3. Both the accused denied the commission of the crime. Accused Ram Swaroop stated in his examination as under:-

"I found Babusingh gambling in my garden. I asked him as to why he is doing so in the garden, he started abusing me. I slapped him. His father came there both of them abused me and then left the place. I told him that I will make the report of the

incident to the police station. When I reached near the house of Shahjor Singh on my way to the Police Station he along with his sons caught me and started beating me with lathies. Shajorsingh brought an axe. When he was about to use his axe on me there was gun fire."

4. Accused Bhagwan Swaroop took the plea of alibi which has been rejected by both the Courts below. We are of the view that the said plea was rightly rejected.

5. The trial Court did not believe the prosecution version in toto. The trial Court found that the

"prosecution tried to indulge in exaggeration, misrepresentation and at times suppression of facts without any meaning."

6. The trial Court, further concluded as under :-

"The defence version that Babusingh was gambling along with others in the garden of the accused Ramswaroop appears correct. Ramswaroop went there and questioned Babusingh. There was altercation and use of hot words. Admittedly Shahjorsingh P.W. 1 came there and Babusingh accompanied him back to his house. Ramswaroop further stated in his examination that he gave one slap to Babusingh. Babusingh as P.W. 9 stated that he was given three or four slaps by Ramswaroop. Thus the fact that Babusingh was slapped, stand established in the case."

7. The part of the prosecution story, that the accused Ram Swaroop rushed towards the house of Shahjor Singh and reached there before the arrival of Shahjor Singh was also disbelieved by the trial Court.

8. Regarding the actual occurrence, it is not disputed that Ram Swaroop was given four simple injuries by the complainant. The prosecution case is that the injuries were given after the gun-shot had been fired whereas the defence version is that the gun-shot was fired while lathi injuries were being given to Ram Swaroop. Trial Court considered the statements of Banne Khan, P.W. 6, Shahid P.W. 8, Sarfuddin P.W. 11, Safaat Ahmad D.W. 1 and Hamid Ahmad D.W. 3 and came to the following conclusion:-

"Any way this one fact is clear from the evidence of these eye-witnesses that Ramswaroop was put to beating, then there was gun fire and Bhagwan Swaroop was seen on the spot."

9. The trial Court on appreciation of the evidence produced by the prosecution and the complainants came to the conclusion that the following facts stood established from the evidence:-

"Ramswaroop came near the house of Shahjorsingh. There was exchange of abuses between Shahjorsingh and Ram Swaroop. Ramswaroop tried to remove the tin shed of Gonda. He was pushed aside by Mansingh and then put to beating by lathies."

10. It was under these circumstances that Ram Swaroop asked his son to fire the gurishot. The question for our consideration is whether on the facts of this case the appellant can claim right of private-defence. The learned trial Court came to the conclusion that since minor injuries were caused by the lathi there was no basis for entertaining a reasonable apprehension that Ram Swaroop would be killed or hurt grievously and as such the plea of self-defence was rejected. The High Court

upheld the finding of the trial Court in the following words:-

"No doubt the respondent-Ram Swaroop had injuries on his person. There were two simple injuries caused by hard and blunt object and the other two could be caused by fall for which there is definite prosecution evidence that the respondent-Ram Swaroop was pushed and he fell down. These injuries on him could not give rise to any apprehension of either grievous hurt or death."

11. We do not agree with the Courts below. It is established on the record that Ram Swaroop was being given lathi blows by the complainant party and it was at that time that gun-shot was fired by Bhagwan Swaroop to save his father from further blows. A lathi is capable of causing a simple as well as a fatal injury. Whether in fact the injuries actually caused were simple or grievous is of no consequence. It is the scenario of a father being given lathi blows which has to be kept in mind and we are of the view that in such a situation a son could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified. We, therefore, set aside the finding of the Courts below on this point and hold that Bhagwan Swaroop fired the gunshot to defend the person of his father.

12. The trial Court on the basis of the evidence on the record, including that of Dr. Mukherjee P.W. 5, came to the conclusion that only one shot was fired by Bhagwan Swaroop. According to the trial Court Shahid was accidentally hit by the pellets spread by the gun-shot. It was on these findings that the trial Court acquitted Bhagwan Swaroop of the charge under S. 307, I.P.C. We agree with the trial Court and hold that the High Court was not justified in reversing the same. The High Court further grossly erred in setting aside the acquittal of Bhagwan Swaroop under S. 25-A(25(1A)) of the Arms Act. Using the licenced gun of his father under the circumstances of this case cannot be considered possessing an arm without a licence. We agree with the reasoning and findings of the trial Court and hold that High Court was not justified in setting aside the acquittal of Bhagwan Swaroop under Arms Act.

13. For the reasons given above we allow the appeal, set aside the conviction of appellant Bhagwan Swaroop under S. 302, I.P.C., S. 307, I.P.C. and S. 25 Arms Act and acquit him on all these counts. He is already on bail. His bail bonds are discharged.

Appeal allowed.

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