

Nizamuddin

Vs

State of M.P.

Criminal Appeal No. 2433 of 1980

(K. Jayachandra Reddy, R. C. Patnaik JJ)

07.02.1992

JUDGMENT

1. This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh at Jabalpur. The petitioner has also filed another special leave petition which was directed to be heard along with the appeal.
2. The appellant is convicted u/S. 302, I.P.C. and sentenced to suffer imprisonment for life for causing death of Mohd. Yusuf, the deceased in the case. The appellant along with another accused Misawul Hasan were tried by the Sessions Court. The learned Sessions Judge held that when the appellant stabbed the deceased, acted in exercise of his right of self-defence, but exceeded the same. In that view of the matter, he convicted him under Section 304 Part I, I.P.C. and sentenced him to three years R.I. and to a fine of Rs. 300/- in default of payment of fine to undergo two months Rigorous Imprisonment in addition. The other accused is acquitted.
3. The State preferred an appeal against the order of acquittal of both the accused. The convicted accused also preferred an appeal. The High Court rejected the defence version and accepted the prosecution version and held that the appellant was an aggressor and he had no right of private defence and accordingly set aside the order of Sessions Court and convicted him under Section 302, I.P.C. as stated above. The appeal preferred by the accused was dismissed. The High Court convicted the other accused Misawul Hasan under Section 352, I.P.C. and sentenced him to undergo one year's R.I. He has not preferred an appeal and we are not concerned with him,
- 3A. The learned counsel submits that the view taken by the Sessions Judge is a reasonable one and the High Court has erred in holding that the appellant-accused had no right of private defence. His further submission is that the High Court has not properly appreciated the scope of right of private defence as laid down in number of decisions and that in such a situation the accused is not expected to modulate his defence and the only important aspect that has to be considered is whether there was a reasonable apprehension in the mind of the accused that he would receive grievous hurt or death would be caused to him by the victim.
4. Much of the facts are not in dispute. The deceased was a tenant in the house of the accused. There was a quarrel between the younger brother of the accused, and the accused on the one hand and P.W. I Mohammad Hamid, son of the deceased on the other. The dispute was in respect of the disconnection of electric connection. On 17-3-73 at 10.50 p.m. Dr. V. K. Mehta had examined Sirajuddin in respect of the injuries received during scuffle. That incident is said to be the motive.

On 19-3-73 the day of incident a scuffle between the accused and the deceased took place at about 5.30 or 5.45 p.m. and the deceased was found to be injured and bleeding and the accused ran away. The deceased was taken to the Hamidia Hospital and he was examined by the doctor and he was given the treatment but he died within ten minutes. P.W. 1 son of the deceased lodged a report and investigating officer reached the hospital and held the inquest on the dead body of the deceased and sent it for post-mortem examination. The Doctor who conducted the post-mortem found as many as eleven injuries, three stab wounds, three incised wounds, one lacerated wound, two abrasions and two bruises. Injury No. 10 was proved to be fatal. After completion of the investigation, the police laid the charge-sheet.

5. Before the trial Court the accused when examined under Section 313, Cr.P.C. stated that the deceased abused him and also attacked him with the stick and dealt blow. The accused caught hold of the lathi. They scuffled and the lathi fell down on the ground. The deceased picked it up and gave the third blow. The accused, however, stated that thereafter he did not know anything. The Doctor P.W. 2 who examined the accused found three injuries; one lacerated wound 3 ½" x ¼" superficial on the left ear, one haematoma of ½" diameter on the head and one bruise ¾" on the right leg.

6. D.W. 2 who claimed to be an eyewitness deposed that the deceased was coming from Jinsi and the accused was coming from the other side and the deceased stopped the accused and questioned him as to why the electricity was disconnected. There was an altercation between them and the deceased who was armed with a lathi and gave a blow on the leg of the accused. When the accused tried to proceed, the deceased gave another lathi blow on the parietal region of the accused and the third blow was given on the head behind the ear. Thereupon the accused caught hold of the lathi. The deceased again managed to snatch the lathi and there was a scuffle. The accused stabbed the deceased in self-defence. However, the prosecution came forward with a theory to explain the injuries on the accused. P.W. 5 one of the eyewitnesses deposed that after inflicting injuries when the accused was going away, the son of the deceased inflicted those injuries. Therefore, the whole question relevant for both the Courts below to consider was whether the deceased received stabbed injuries during the scuffle and whether the accused inflicted those injuries after the deceased took lathi and inflicted injuries on him. The question has to be examined in the light of all the probabilities and circumstances of the case. The presence of the injuries on the accused and the consistent plea taken by him show that there was a scuffle between the deceased and the accused and the deceased armed with the lathi dealt blows on the head and other parts of the accused. Now the defence contention is that the accused had a reasonable apprehension that the deceased would likely to cause hurt to him and even if he inflicted injuries with the knife, he did so in exercise of right of self-defence. The learned counsel submits when there was a reasonable apprehension, the accused had the right to go to the extent of causing the death as permitted under the law. We have examined the injuries on the deceased as deposed by the doctor. The first incised stab wound is on the metacarpal bone, injuries 2 to 5 are abrasions and bruises which could be due to lathi blow, injury No.6 is on the forearm and simple one and it is only injury No. 10 which is a very serious one which caused lot of damage to the internal organs. This injury was sufficient in the ordinary course of the nature to cause death. Having regard to the nature of the injuries found on the accused and the weapon used, we are of the view that the accused had the right of self-defence, but in exercising that he had clearly exceeded the same as rightly held by the learned Sessions Judge. The High Court has not examined the defence version closely. We find that the learned Judges of the High Court were not prepared to go to the extent of believing that the accused received injuries during scuffle. D.W. 2's evidence was examined and since he did not say in clear words that the deceased tried to inflict the third blow, the plea of the accused that when the deceased inflicted the third blow he received another injury' was found to be incorrect. We may at once add in appreciating the plea of self-

defence particularly when he had pleaded specifically the same cannot be subjected to such scrutiny. It is well settled that the accused need not prove his defence. It is enough if he can show by preponderance of the probability that the plea taken by him is plausible and raises a reasonable doubt. Then he is entitled to the benefit. Having examined the material on record and the nature of the injuries found on the accused and the injuries on the deceased as held above, the accused has exceeded the right of private defence. Accordingly we set aside the conviction of the appellant u/S. 302. I.P.C. and the sentence of imprisonment for life. Instead we convict him u/S. 304, Part I, I.P.C. and sentence him to undergo Rigorous Imprisonment for five years. The appellant should surrender and serve the remaining period of sentence.

7. The appeal and the special leave petition are allowed to the extent indicated hereinabove.

Appeal partly allowed.

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