

Makwana Takhat Singh Ratan Singh

Vs

State of Gujarat

Criminal Appeal No. 473 of 1981

(K. Jayachandra Reddy, G. N. Ray JJ)

11.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. This is an appeal under Section 379, Cr.P.C. read with Section 2 of the Supreme Court, (Enlargement of Criminal Appellate Jurisdiction) Act. The appellant is the original accused No. 1. He along with four others was tried for offences punishable under Sections 148, 302, 302/ 149, 323 and 325 etc. The trial Court acquitted all of them accepting the plea of self-defence. The State preferred an appeal and the High Court while confirming the acquittal of A-2 to A-4 convicted A-1, the appellant herein under Section 302, I.P.C. on the ground that he gave a dharia blow having chased the deceased, which resulted in his death. Therefore the act committed by the appellant amounted to offence of murder. Learned counsel for the appellant submitted that there were serious injuries on the persons of the accused and the prosecution has not come forward with any explanation and thus suppressed the very genesis of the incident and that the trial Court has taken a reasonable view in holding that under the circumstances the accused had a right of self-defence and did not exceed the same. Further submission is that having rejected the prosecution case as against the four accused, the High Court ought not to have interfered in an appeal against acquittal particularly when the view taken by the Sessions Court is reasonable one. The prosecution case is as follows.

2. The accused, the deceased and the material witnesses belong to the same village Ambawada. One year prior to the occurrence, one Halusinh, uncle of the present deceased Kalusinh was murdered and in regard to that offence Kesaji Ratan and Chaturji Motaji were tried but they were acquitted. Because of this incident there were factions in the village. After their acquittal, the present accused persons apprehended some danger to their lives and hence, they moved the Police Officer at Prantij Police Station for taking the necessary bonds and sureties of the persons on the prosecution side. The deceased and others were asked to attend police station in connection with the said application moved by the accused. On 28-6-77 when the complainant, the deceased Kalusinh and others proceeded towards the police station, it is alleged that the accused chased the deceased who, according to the prosecution, in order to save his life ran towards a place called Hakam Fali. Thereafter it is alleged that the appellant gave a dharia blow to the deceased and caused injuries to other P. Ws. who had come there to save the deceased. It is alleged thereafter A-5 came there with a stick. The injured were taken to the hospital where the deceased expired. A report was given to the police and the accused were arrested. The accused pleaded not guilty and asserted that the complainant, the deceased and their party were the aggressors and attacked the appellant and others who acted in self-defence.

3. As pointed out by the learned counsel for the defence, the prosecution has not explained the injuries on the accused. If there are simple or minor injuries perhaps the Court need not give much importance to the non-explanation but in this case we find some serious injuries. On accused No. 1, the Doctor, P.W. 6, found a contused lacerated wound 1/2'x 1/2' on the right parietal region and also an abrasion on the right shoulder joint and tenderness on the right side of the chest. Then on accused No. 2 he found two simple injuries but on accused No. 4, the Doctor found the following injuries:

- 1) The incised wound 1' x 1/2' gaping on the right side of forehead just near the right eye on the lateral angle oblique in direction.
- 2) Incised wound 1/2' x 1/4' gaping on the right little finger on lateral side on the distal part of the finger.
- 3) Wheel mark 3' x 1' on the right upper arm oblique in direction.
- 4) Wheel mark 3' x 1/2' on the right scapular region oblique in direction.

Likewise on accused No. 3 the Doctor found the following injuries:

- 1) Tenderness on the left wrist joint, with quarry fracture of the left ulna.
- 2) Wheel mark 1' x 1/2' on the left shoulder joint.
- 3) Abrasion 1/2' x 1/2' on the left side of the scapular region.
- 4) Tenderness on the right frontal region.
- 5) Tenderness on the right knee joint with no external injury on it.
- 6) Abrasion 1/4' x 1/4' on the left knee joint.

But the prosecution case, as we find from the evidence of P.W. 2 the complainant, is to the effect that accused Nos. 1 to 4 who had dharias with them had chased the deceased and that A-1 alone gave a dharia blow. The High Court has not duly considered the effect of the non-explanation of the injuries found on the accused person. What all the High Court has stated is that it is the accused alone who chased the deceased and inflicted the injury with dharia. But what we have to see in a case of this nature is whether the prosecution has come out with the true story of the genesis of the occurrence. To decide as to who was the aggressor this becomes necessary, particularly when the accused had come forward with a plea that the prosecution party was the aggressor. The fact that some incised injuries were found on one of the accused itself shows that one of the members of the prosecution party used the sharp-edged weapon. There is also no material to show at what stage of the occurrence the appellant, A-1 came to attack the deceased. No doubt some of the prosecution witnesses are also injured but likewise some of the accused persons also received injuries. In this state of affairs, the view taken by the trial court that the accused party acted in exercise of right of private defence is not unreasonable as to warrant interference in an appeal against acquittal. Having given our earnest consideration and particularly in view of the fact that the High Court also confirmed the acquittal of four out of five accused, we think it is not safe to convict the appellant alone. In the result the conviction and sentence passed against the appellant are set aside. If he is on bail his bail bond shall stand cancelled. The appeal is allowed accordingly. Appeal allowed.

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