Hardev Bhanji Joshi

Vs

State of Gujarat

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

Criminal Appeal No. 475 of 1981

11.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.

1. This is an appeal under S. 379, Cr. P.C. read with S. 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The appellant is the original accused No. 2. He along with his father Bhanji Shamji Joshi (A1) was tried for offence punishable under S. 302 read with S. 34, IPC. The charge was that on 25-12-77 at about 6 p.m. both of them in furtherance of their common intention caused the death of Dhuda Ramsang, the deceased in the case and they also caused injuries to P.W. 2, the father of the deceased thereby committing an offence punishable under S. 325/34, IPC. On behalf of the accused a plea of self-defence was set up and the trial court accepted the plea and acquitted both the accused. The State preferred an appeal against the said order of acquittal. A division Bench of the High Court confirmed the acquittal of A-1 and convicted A-2, the appellant before us under S. 302 simpliciter and sentenced him to undergo imprisonment for life. The High Court disagreed with the finding of the trial court that the accused had right of self-defence.

2. Learned counsel for the appellant submitted that the view taken by the Sessions Court is reasonable under the circumstances of the case and that the accused had reasonable apprehension that the deceased was likely to cause grievous hurt or death to them and therefore. in exercise of right of self-defence they caused the death of the deceased and also caused injuries to P.W. 2.

3. The prosecution case is as follows:

> The accused, the deceased and P.W. 2 belong to the same village Nanota. On 25-12-77 sometime in the evening P.W. 2 was at his field and he was returning to his house. He saw A-1 and A-2 planting some cactus plants near the border of their field. On seeing them P.W. 2 questioned as to why they were planting like that. Thereupon a quarrel ensued and A-1 abused him. P.W. 2 questioned as to why he was abusing. Thereupon, it is alleged that A-1 dealt a dharia blow in his back. P.W. 2 raised an alarm. The deceased, son of P.W. 2, came rushing from another field and seeing him A-1 dealt a dharia blow and A-2 dealt a pick axe blow on his head with the result he fell down and died. The injured were placed on a cart and they were taken to the hospital. The Doctor was not available there. P.W. 2 however gave a report at the Shihori Police Station. An inquest was held and thereafter the Doctor examined P.W. 2 and also conducted the post-mortem on the dead body of the deceased. On the

deceased he found the following injuries:

1) Contused lacerated wound in size of 1.1/2" x 1/2" horizontal at right interior parietal region. It was bone deep.

2) Contused lacerated wound in size of 2" x 1/2" vertical right anterior parietal region. It was bone deep.

On opening the skull, he found the fractures of both the parietal bones and also laceration of the brain. He opined that the death was due to head injuries. On P.W. 2 the Doctor found two wheel marks in size of about 4" x 1/2" over right lateral side of chest and a fracture of right side of 10th rib. The Doctor opined that the two injuries could have been caused by blunt weapon.

4. The presence of P.W.2 at the scene of occurrence cannot be doubted. The High Court by confirming the acquittal of A-1, to a large extent, agreed with the appreciation of the material by the trial court. The plea of self-defence is mainly based on the circumstance that there was an injury on A-2 but the Doctor who examined him opined that it was only an abrasion. Further it must also be noted that the deceased came into the picture after his father was beaten. At this juncture, we are also unable to agree with the trial court that the accused had the right of self-defence. In any event that question need not be gone into in view of the fact that A-2 is convicted for his individual act by the High Court.

5. Even, according to P.W. 2, A-2 dealt only one blow. The nature of the injury shows that the sharp edge of the axe was not used. The whole thing happened in a sudden manner. Under these circumstances clause I of S. 300, IPC is not attracted. If A-2 had the intention to cause death, one would expect him to use the sharp edge of the axe. The very fact that he used the blunt side of the axe shows that he had no intention to cause the death. Further it is not a premeditated act. Now coming to clause III of S. 300, IPC, admittedly he caused only one injury with the blunt side of the axe which unfortunately resulted in the fracture of skull bone. Further this happened during the quarrel. Under these circumstances, it is difficult to hold that he intended to cause that particular injury which the Doctor found to be sufficient in the ordinary course of nature to cause death. Under similar circumstances the courts have held that the offence punishable would be one of culpable homicide as knowledge that he was likely to cause death by such an act can be attributed to the accused. Accordingly we set aside the conviction of the appellant under S. 302, IPC. and the sentence of imprisonment for life thereunder. Instead we convict him under S. 304, Part II and sentence him to five years R.I. He shall surrender and serve out the sentence. The appeal is partly allowed.

Appeal partly allowed.

</html