

Kesha and Others

Vs

State of Rajasthan

Criminal Appeal No. 290 of 1985

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

27.08.1993

JUDGMENT

1. There are four appellants before us. They were tried for offences punishable under Sections 302 and 302 read with Section 34, IPC for causing the death of Mada, the deceased, in the case. PWs. 2 and 3 are the main eye-witnesses.
2. The prosecution case is that on 17-5-1976 at about 6.30 a.m. when Karansingh, PW 2 and Mada, deceased, were smoking 'chilam' at Birmawala Bera, A-1 and his sons A-2, A-3 and A-4 armed with lathies and kulhari came there and addressed Mada, the deceased saying that they will kill him today and so saying they started beating the deceased. It is alleged that A-2 was armed with a kulhari and A-1, A-3 with lathies and A-4 with the handle of kulhari. A-1 gave a blow with lathi on the head of the deceased. A-3 inflicted injury with lathi on the head of the deceased. PW 2 took A-3 in his grip so that he may not be in a position to give any further blow. A-1 took the deceased in his grip. A-4 gave a blow on the head of the deceased with the kulhari as a result of which the deceased fell down on the ground. A-3 and A-4 came and joined them and all the four accused started causing injuries on the person of the deceased and they have in all thus inflicted 10 to 12 injuries. PW 1 and other people came there. All the accused ran away. A report was given to the police. The case was registered. An inquest was held and the dead body was sent for post-mortem. The doctor, PW 8, conducted the post-mortem and he found two incised injuries and several bruises and lacerated wounds. Injury No. 1 was an incised wound on the occipital scalp; injury No. 2 a bruise on occipital scalp; injury No. 3 an incised wound up to bone frontal scalp; injury No. 4 a lacerated wound on centrally scalp above occipital premises; injury No. 5 is a lacerated wound; injuries Nos. 6, 7, 8, 9 and 10 were bruises on the scalp region. On internal examination the doctor found that the occipital bone was fractured and got separated; temporal bone was also fractured. He opined that these injuries were sufficient to cause death in the ordinary course of nature. The accused were arrested. At the time of arrest the investigating officer found some injuries on them also. After completion of the investigation the charge-sheet was laid.
3. The prosecution examined witnesses, PW 2 and PW 3 as eye-witnesses and also relied upon the evidence rendered by the other witnesses by way of corroboration. The accused pleaded not guilty. They stated that A-3 had gone to the field for watering when the deceased gave him some beatings. A-3 told to other accused about the beatings. A-1 went to inquire about the beatings. Then the deceased replied that he would beat them also. Deceased gave a blow of the axe on the back side of A-1 and as a result of which he fell down on the ground. Second blow was given on the -leg. He caught him from -the back side and snatched the axe from A deceased. The deceased then attacked

with lathi and gave a blow on his back side and when the deceased was beating him he gave a blow with axe on the head of the deceased. A-1 became unconscious. The deceased attacked A-2. When he wanted to attack A-2 by giving another blow on the head by then A-1 became conscious. A-2 who also received injuries became unconscious, In essence a plea has been taken that during the scuffle the deceased inflicted injuries on the accused and in exercise of right of private defence they inflicted injuries on the deceased having a reasonable apprehension of danger to their bodies.

4. Both the Courts below rejected this plea and accepted the prosecution evidence corroborated by medical evidence and found them guilty and punished each of them to undergo Rigorous Imprisonment for life.

5. In this appeal the learned counsel for the appellants submits that the prosecution has not come forward with the genesis of the occurrence and the whole truth is not before us and the Courts below ought to have accepted the plea of self-defence put forward by the accused. It is also his submission that both the Courts below erroneously failed to note that the accused need not prove the plea of self-defence beyond all reasonable doubt like the prosecution which has to prove the case beyond all reasonable doubt, and the benefit of any reasonable doubt has to be given to the accused.

6. From the above stated facts it can be seen that the place, time and the presence of eye-witnesses and participation of the accused are not in doubt. The only question that arises for consideration is whether the Courts below were right in rejecting the plea of self-defence in its entirety or whether it can be held in the facts and circumstances of the case that the accused had exceeded the right of self-defence. In this regard we must point out that the trial Court more than once has observed that the burden of proof under the general exceptions for right of self-defence is entirely on the defence. The trial Court nor the appellate Court have considered the aspect whether in the circumstances it can be said that the accused had exceeded the right of private defence. The appellate Court has pointed out the nature of the injuries found on the accused. On A- I there were four injuries. A-3 had three injuries. It has been observed that the injuries on these accused persons were simple and possibly they were received as a result of scuffle.

7. It has been observed in a number of cases that it is the duty of the prosecution to explain the injuries on the accused. Of course even, if there is no explanation that can be ignored provided the other evidence is cogent and convincing. But in case where the accused set a plea of self-defence and relied on the medical evidence in support of the fact that they had injuries on their persons and thus justify their right of self-defence that creates a doubt.

8. This is a case where the father and 3 sons are involved. It is alleged that A-2 one of the sons finding that his father is being beaten up inflicted injury. In such a situation it cannot be said that the accused are falsely pleading the self-defence. However, it may be noted that there was no reasonable apprehension that death or grievous hurt would be caused.

9. In this view of the matter, the accused are entitled to the right of self-defence. Once their plea of self-defence is not turned down then the question remains whether they are within the limits or they have exceeded the limits. In this case having regard to the various circumstances and the nature of the injuries on the accused as well as on the deceased we are of the view that the accused had exceeded the right of self-defence in which case the offence would be one punishable under Section 304, Part I, IPC. Accordingly the conviction of each of the appellant under Sections 302 and 302 read with Section 34, IPC and sentence for life imprisonment are set aside. Instead each of them is convicted under. Section 304, Part I, IPC and sentenced to Rigorous Imprisonment for 7 years.

10. If they have already served out the sentence they shall be released forthwith and if some of them are on bail their bail bonds shall stand cancelled provided they all have served out their sentence. The appeal is disposed of accordingly. Order accordingly.

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