

SUPREME COURT OF INDIA

Kashi Prashad

Vs.

State of U.P.

Crl.A.No.....of 2008

(Dr. Arijit Pasayat, P. Sathasivam and Dr. Mukundakam Sharma JJ.)

16.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court holding the appellant guilty of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC') and Section 323 read with Section 34 IPC.

2. The appellant and his father Baldu had filed the appeal before the High Court questioning the correctness of the conviction and imposition of sentence as done by the learned Sessions Judge, Hamirpur in Sessions Trial No.287 of 1980. The appellant's father Baldu died during the pendency of the appeal before the High Court and, therefore, the appeal stood abated so far as he is concerned.

3. The prosecution version as unfolded during trial is essentially as follows:

“Kali Charan, first informant (PW-1), his father Lachhi Ram (hereinafter referred to as the 'deceased') and his mother Smt. Ram Kunwar were returning after ploughing the land of Chandra Bhan with their bullocks on 28.7.1980 through the village pathway which was running from western to eastern side as shown in the site plan. The land of Pandit Laxman Prasad resident of village Mas Gaon is towards the northern side of the village pathway. This land was with the accused persons on share crop basis. On account of existence of mud on the village pathway, the bullocks of Kali Charan, first informant strayed into the field of accused Kashi Prasad. The accused persons became agitated on account of damage caused by the bullocks in their field and consequently they abused Kali Charan and his father Lachhi Ram. Latter took exception to it and asked the accused to refrain from abusing. Accused Kashi Prasad dealt the deceased Lachhi Ram with a blow by a spear. Lachhi Ram fell on the ground. Baldu mounted an assault on the deceased with his lathi. Kali Charan also received lathi injuries. Kali Charan who was carrying a Khaulia used the same in

defence of his father, as a result of which accused Kashi Prasad and Baldu received injuries. After making necessary arrangement, Lachhi Ram was put in a bullock cart but he took his last breath on way to police station Kharela. The dead body was taken to police station where a written first information report, Exh.ka-2 was lodged by Kali Charan. The investigation was undertaken. The Autopsy Surgeon Dr. G.S. Pandey (PW-5) found the following ante mortem injuries on the body of the deceased Lachhi Ram:

1. Stab wound 1 cm x 1cm in front of abdomen 4 cm from umbilicus at its level and right side. Skin, muscles, peritoneum, loops of large intestine pierces and finally entering the right side of kidney, which is done in pieces. There is plenty of blood and blood clots seen in peritoneal cavity. Contents of large intestines are mixed in pool of blood in cavity.
2. Contusion 7cm x 2cm in right side forearm in postero lateral aspect the underlying radio ulna fractured at lower 1/3rd.
3. Lacerated wound 5cm x 1cm x bone deep in right parietal prominence direction front to back.
4. Contusion 5cm x 1 = cm in right side of forehead at upper border front to back direction.
5. Abraded contusion 6 = cm x 4 cm on right side of chest in thoracic region in anterior axillary line in 7th to 10th I.C.S.
6. Contusion 4 = cm x 2cm in left shoulder joint at acromian process in lateral aspect.

On the person of Kali Charan who was medically examined on 29.7.1980 by Dr. M.Y. Qureshi (PW-2) following nine injuries were found:

1. Contused wound 2 cm x = cm on the left side of head 7 cm above ear.
2. Abrasion 6cm x 2cm on the right arm upper half outside.
3. Swelling 7 cm x 3 cm over the right thigh.
4. Abrasion 5.5 cm x 2cm on the right arm upper half front.
5. Abraded contusion 5 cm x 3 cm just above the shoulder blade.
6. Swelling 7cm x 2cm on the left index finger dorsal surface.
7. Selling 2cm x 1 cm over the left thumb distal phalangeal joint dorsum.

8. Abraded contusion 5 cm x 2cm, 2cm outer to left right nipple.
9. Abraded contusion 5 cm x 2cm on the left forearm half.

The accused Kashi Prasad and Baldu who were taken in custody were medically examined by Dr. S.N. Dixit, (D.W.1) Assistant Medical Officer, District Jail, Hamirpur, Kashi Prasad received the following two injuries:

1. Contusion 3 cm x 1cm on left wrist joint radial aspect.
2. Contusion 2 cm x 1 cm on left arm middle part. Baldu had received following three injuries:
 1. Dressed wound 1/2cm x 1/2cm x bone deep on the left fore arm 3 cm above left wrist joint.
 2. Dressed wound 1 2/2 cm x = cm x muscle deep on the left hand dorsum 2 cm medial to web to left thumb.
 3. Lacerated dressed wound 2cm x 1cm x muscle deep on left hand just on base on index finger.

The injuries received by Kashi Prasad and Baldu were termed to be simple having been caused by some blunt object.

At the trial, Kali Charan (PW-1), Jhalli (PW-3) and Sukh Lal (PW-4) were examined as eye-witnesses besides other formal witnesses.

The accused persons took the plea of self defence. According to Kali Prasad, Kali Charan and deceased-Lachhi Ram had deliberately driven their bullocks into field of the accused and on his intervention Lachhi Ram and Kali Charan began to abuse him and threatened him. He further stated that Kali Charan caught hold of him and when he managed to release himself from the clutches of Kali Charan, the deceased began to assault him with lathi and Kali Charan armed with a Khaulia rushed at him and thereupon his father Baldu rushed to save him and thereafter Kali Charan began to mount assault upon Baldu with Khaulia. Kashi Prasad further stated that he used spear to defend himself and his father Baldu and that he and Baldu both received injuries and they were medically examined in the District Jail, Hamirpur. The accused Baldu took similar plea. The accused Maha Prasad pleaded alibi.

The trial Court on consideration of the evidence on record came to hold that the plea of self defence raised by the accused was not made out and it was a case of murder of deceased. The accused also caused injuries on the informant. The High Court found no substance in the plea of accused appellants and dismissed the appeal.”

4. Learned counsel for the appellant submitted that even if the prosecution version is accepted in toto, the appellant cannot be convicted for offence under Section 302 IPC. A single blow was given in course of a sudden quarrel. Therefore, exception 4 to Section 300 applies.

5. Learned counsel for the respondent-State on the other hand supported the judgments of the trial Court and the High Court.

6. It appears that the bullocks of the informant Kali Charan strayed into the field of Chandra Bhan. On account of rainy season there was mud in the field with the result that four bullocks of the informant entered the abutting field of the accused. The evidence on record shows that there was no pique or enmity between the parties prior to the incident in question. The appellant and his father Baldu became hypersensitive and felt hurt and quarrel thereafter started and in course of the quarrel a blow was given by the appellant.

7. The only question is applicability of Exception 4 of Section 300 IPC.

8. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

9. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to

Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is no possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression `undue advantage' as used in the provision means `unfair advantage'.

10. Considering the factual scenario as projected by the prosecution, the proper conviction would be under Section 304 Part I IPC. Custodial sentence of 10 years would meet the ends of justice.

11. The appeal is allowed to the aforesaid extent.