

ALLAHABAD HIGH COURT

Ram Sewak

Vs

Emperor

(Mukerji, J.)

21.10.1924

JUDGMENT

Mukerji, J.

1. After stating facts as above the judgment proceeded: This story for the prosecution has not been believed by the learned Additional Sessions Judge, in the main portion of it. Gayadin was never sent up, and the learned Sessions Judge has acquitted Ramraj. The learned Judge has found that human blood was found at or near the platform of Gayadin, a relation of Bam Sewak, and he has believed the defence story in so far as it states that Kalka Singh received his injuries near the platform of Gayadin. To reconcile the fact that blood was found near the platform of Gayadin, and the alleged fact that a part of the tiled roof of Bhagwandin's shop was found damaged, the learned Judge came to the conclusion that the fight must have started at the shop of Bhagwandin and must have continued till the parties arrived at the platform of Gayadin. Indeed the Judge's finding is that Bam Sewak, the appellant, drew the quarrel upon himself by hitting, or trying to hit, Baij Nath, that he was thereupon attacked by Baij Nath and Kalka Singh, that Ram Sewak ran away for his safety to the house of Gayadin but, there instead of taking shelter in the house, he turned back and used his lathi against Baij Nath and Kalka Singh. It has been urged by the learned Counsel, appearing for the appellant, that even if we accept his story, as found by the learned Sessions Judge the appellant was striking in self-defence and he committed no offence. The learned Judge has got over this argument by stating that Ram Sewak drew the quarrel upon himself by trying to hit Baij Nabh and that, therefore, he had no subsequent right of self-defence. I have already indicated that the learned Judge was of opinion that Ram Sewak's duty was to have taken shelter in the house of Gayadin.

2. Taking the findings of the learned Sessions Judge, I am not sure that his conclusion in law is correct. Assuming that Ram Sewak picked the quarrel and tried to hit Baij Nath, he ran for his safety from the subsequent attack made on him by Baij Nath and Kalka Singh. If, after running some distance, Ram Sewak found that he could not very well make his escape, and if he turned round and hit a blow, it must be said that he hit in self-defence. Ram Sewak might be punished

for having struck the first blow at the shop of Bhagwandin. But Kalka Singh and Bajj Nath Singh had no right to take the law into their own hands and chastise Ram Sewak by trying to hit him with lathis. As a matter of law, therefore, Ram Sewak would be, in my opinion, justified in turning back and defending himself against an attack with lathis. I would also mention that an attack with lathis was likely to create a reasonable fear of grievous hurt being caused to Bam Sewak and Bam Sewak would be justified in striking with a lathi in self-defence to the extent of causing grievous hurt, or even death, vide Section 100 of the Indian Penal Code.

3. His Lordship then examined the evidence and concluded by setting aside the conviction.