SUPREME COURT OF INDIA

Prandas

v.

The State

(Kania C.J., Fazl Ali and Mukherjea JJ.)

March 14, 1950

Judgment

Fazl Ali J.

1. This is an appeal by special leave from the decision of the High Court at Nagpur, allowing the appeal of the Government of the Central Provinces and Berar under Section 417, Criminal P. C., against the acquittal of the appellant by the Sessions Judge of Bilaspur, and convicting him for committing murder of one Gayaram and causing hurt to his wife, Bahartin, and sentencing him to transportation for life and three months' rigorous imprisonment under Sections 302 and 323 respectively of the Indian Penal Code.

2. The case of the prosecution as presented in the trial Court may be shortly stated as follows. In village Taga, which adjoins village Dhanwa, where the alleged crime is said to have been committed, there is a field belonging to the deceased, Gayaram, and his sons, in which paddy was sown in 1948. On August 15, 1948, Hiraram, one of Gayaram's sons, arranged to bring water into this field from the field of one Tiharu, one of his relations, by making an opening in the ridge of an adjoining field belonging to one Sadhram. On the same day, in the afternoon, one Sukhchaindass, brother of the appellant, Prandas, stopped the water flowing from Sadhram's field, alleging that Prandas had asked him not to allow the water to pass through that field, as he had purchased it from Sadhram.

3. Next day, while Hariram and his father, Gayaram, were sitting in the verandah of one Thandaram, the latter proposed to Prandas, who was in his own verandah (opposite to that of Thandaram) that the dispute between him and Gayaram should be settled amicably by panchayat. While this proposal was being discussed, an altercation ensued, and Prandas proceeded with a lathi to the place where Gayaram was standing and inflicted on him several blows. The first blow was warded off by Gayaram with his right hand, but the next two blows fell on his head and he fell down. Thereafter, some of the relations of Prandas beat Hariram and Hiraram, sons of Gayaram, and Tiharu, cousin of Gayaram and Prandas struck Bahartin, wife of Gayaram. Hiraram then retaliated by striking Prandas on the head.

4. The same evening, between 9 and 9-45 P. M., several reports were recorded by the police officer in charge of police station, Jangir, which is at a distance of three miles from the place of occurrence, including the report of Hariram, which has been treated as the first information report in the present case, and that of Prandas and his relations who were also injured in the course of the occurrence and who gave their own versions thereof. Prandas's version which forms the ground work of the defence story put forward at the trial, was practically the same as the prosecution version as to the events which led to the clash. But it gives a different picture of the actual occurrence since, according to him, it was Hiraram who opened the assault by attacking him and Gayaram and his men were the aggressors.

5. The police immediately registered a case and, as a result of the investigation which followed, five persons including the appellant were committed to the Court of Session and were variously charged under Sections 302, 148, 325 and 323, Penal Code. The learned Sessions Judge came to the

conclusion that the account given by four principal witnesses who were examined by the prosecution to prove its version of the occurrence was wholly unreliable as "they were interested persons, being Gayaram's relations, and had suppressed material parts of the occurrence." He however based his judgment mainly upon the evidence of Thandaram and a boy of 16 named Agardas, who had witnessed only a part of the occurrence.

6. It is common ground that Thandaram was present at the time of the occurrence and in the first information report of Hariram, he was named as a witness along with three other persons, Ganesh, Bihari and Makkan. The prosecution however did not examine either Thandaram or any of the other three persons. Thandaram was also cited as a witness by the accused, but they ultimately decided not to examine any defence witness. In the circumstances, the Sessions Judge examined Thandaram as a court-witness and the account that he gave of the occurrence was substantially different from that given by the prosecution witnesses. This witness, after relating how the altercation ensued, consequent upon his proposal that the parties should settle their dispute by panchayat, proceeded to narrate what followed in these words :

> *"As Pran was coming, Hiraram towards him to beat him. Hira began to strike Pran with a gedi pole which he had picked from the land. There were many such gedis lying there. Pran also struck back Hira with a similarly picked up pole. Then, Gaya, Hari Nanki and Tiharu also went over and attacked Pran on one side, and to help Pran, came Panch Ram, Videshi and Ghurbin and the parties began to strike one another. I could not notice who was striking whom. It was like a Rout dance, one hitting the other. All had picked the nearby lying gedi poles and had begun to strike one another."*

7. Agardas stated that having heard a noise from a distance, he came near Thandaram's verandah, and saw Prandas striking Gayaram with a lathi on the head, but, being frightened, he immediately ran back. Relying on the evidence of Agardas and certain other circumstances, the learned Sessions Judge came to the conclusion that the prosecution had proved that the appellant was responsible for the fatal injury of Gayaram and believing Thandaram, he held that "Gayaram and his sons and Tiharu are shown to be the aggressors on Pran, and Pran helped by other accused as defenders, against an unjustified assault, had thus a private right to defend his and their persons against it."

8. He referred to the fact that four of the accused persons, Prandas, Thandaram, Bidesi and Ghurbin, had suffered as many as "10 injuries between them including 5 on the head and a fracture of an armbone" and the fact that there were more injuries on members of Gayaram's family did not alter the position so far as the law of private defence was concerned. In this view, he held, in agreement with the assessors, that none of the charges framed against the accused had been proved and acquitted them.

9. The Provincial Government, being dissatisfied with the order of acquittal passed by the Sessions Judge, preferred an appeal to the High Court. This appeal was allowed by an order dated September 14, 1949, as a result of which the appellant has, as has been already stated, been convicted under Sections 302, and 323, Penal Code and sentenced to transportation for life and three months' rigorous imprisonment respectively, the two sentences having been made to run concurrently. The acquittal of the other accused persons was also set aside and they were sentenced either to short terms of imprisonment or fine, but we are not concerned with them as they have not appealed to this Court.

10. The learned Judges of the High Court who heard the appeal, were not disposed to place reliance on the evidence of Thandaram and in view of certain admissions made by him in the course of his evidence, they came to the conclusion that because of his defective eyesight, he was

not in a position to see the genesis of the attack. They attached great weight to the evidence of Agardas who had stated that Prandas had hit Gayaram on the head and observed that although the prosecution evidence mainly emanated from interested witnesses, it was supported by that of Agardas and it was also corroborated by Hariram's first information report.

11. While dealing however with the question as to whether the offence committed by the appellant could be brought within exception 4 to Section 300, Penal Code, they stated that exception 4 to Section 300, Penal Code could not operate in his favour inasmuch as it could not be said that Prandas "had not taken undue advantage acted in a cruel or unusual manner."

12. It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under Section 417, Criminal P. C, to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under Section 417, Criminal P. C. in an appeal from an order of acquittal has been stated in *Sheo Swarup v. Emperor*[1], at pp. 229, 230, in these words :

> *"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."*

13. Such being the correct position in law, we cannot say that the learned Judges of the High Court were compelled to attach the same weight to the evidence of Thandaram as the learned Sessions Judge had done. But before the final conclusion arrived at by the High Court can be upheld, there are certain points arising from its judgment which require serious consideration.

14. There are obviously two principal questions involved in the case: firstly, whether Prandas delivered the fatal blow and secondly, if the answer to the first question is in the affirmative, whether there are any grounds which can be urged on his behalf in justification or in mitigation of his act. So far as the first question is concerned, both the Courts have answered it in the affirmative, and there the matter rests. As to the second question, the Sessions Judge held that the accused was protected by the law of private defence, but this view has been negatived by the High Court. In our opinion, the judgment of the High Court can be supported on the short ground that on the evidence of Thandaram himself the plea of the right of private defence could not be sustained. Thandaram has stated that Hira, son of Gayaram, was the first person to commit assault and he attacked Prandas with a gedi pole. On this fact alone, Prandas cannot be said to have the right to inflict a fatal blow on Gayaram (who was not at that time with Hiraram), though that might have afforded some justification for his hitting back Hiraram.

15. The next question which arises upon the judgment of the High Court is whether the case falls under exception 4 to Section 300, Penal Code. According to this exception, "culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of

passion upon a sudden quarrel and without the offender's having acted in a cruel or unusual manner."

16. The Sessions Judge was distinctly of the opinion that the version of the four interested prosecution witnesses which was to the effect that Gayaram and his companions were assaulted one after another, without any provocation, cannot be accepted, but in fact there was a free fight in which both parties assaulted each other. On this aspect of the case, the High Court seems to have at first sight expressed two conflicting opinions in two separate parts of its judgment. In para 26 of the judgment, the learned Judges say :

> *"Although the prosecution evidence mainly emanated from interested witnesses, it was supported, as shown, by that of Agardas; and it was also corroborated by Hariram's first information report, Ex. P-1." in the next paragraph, they proceed to say: "Exception 4 to Section 300, Penal Code cannot operate in his (Prandas's) favour, inasmuch as although the culpable homicide can be said to have been committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, it cannot be said that Prandas had not taken undue advantage or acted in a cruel or unusual manner."*

17. These two statements can be reconciled only on the footing that in the earlier paragraph, the learned Judges of the High Court were referring only to that part of the prosecution case which related to the appellant having struck Gayaram on the head, with regard to which alone the evidence of Agardas lends some corroboration to the statements of the remaining prosecution witnesses. We think that this is the only way in which we can explain the conclusion expressed in the statement in para 27, which conclusion seems to be consistent with the probabilities of the case and with the fact that four of the accused persons were also injured and the injuries on the parties were more or less evenly distributed. This conclusion does not conflict with the evidence of Agardas, whom both the Courts have believed.

18. The question which now arises is whether the High Court was justified in not giving to the appellant, the benefit of exception 4 to Section 300, Penal Code, in spite of the fact that it found most of the ingredients of that provision to have been established. In the opinion of the High Court, the case did not come within this exception, because "it cannot be said that the appellant had not taken undue advantage or acted in a cruel or unusual manner". But, beyond this bald statement, there is nothing in the judgment of the High Court to show on what grounds this conclusion is based. According to medical evidence, Prandas had sustained 6 injuries in the course of the occurrence including the fracture of a bone and an injury on the head, and the High Court has not expressly reversed the finding of the Sessions Judge that these injuries were not sustained after Gayaram and his companions had been assaulted. The High Court has also not expressed its disagreement with the finding of the Sessions Judge that Gayaram was not assaulted after he fell on the ground. As will appear from the judgment of the Sessions Judge, several discrepant statements were made by the witnesses as to the number of blows said to have been dealt by Prandas, and Agardas speaks of one blow only. In these circumstances, it seems to us that the view of the High Court that the appellant is not entitled to the benefit of exception 4 to Section 300, Penal Code cannot be sustained, and that being so, the conviction under Section 302 cannot stand. In our opinion, the case comes within the second part of Section 304, which deals with the punishment for culpable homicide not amounting to murder when the act is done with the knowledge that it is likely to cause death or cause such bodily injury as is likely to cause death. The conviction of the appellant is therefore altered to one under Section 304, and he is sentenced to undergo rigorous imprisonment for five years. His conviction and sentence under Section 323, Penal Code will stand and the sentence passed by the High Court under that section shall run concurrently with the sentence under Section 304, Penal Code.

Case Number(s)
Not stated in the source

Judgment(s) referred

Judgment	Citation	Para	Remarks
1. Sheo Swarup v. Emperor	AIR 1934 PC 227	12	

Statute(s) referred

Statute	Section/Article	Para
Code of Criminal Procedure, 1898	Section 417	1, 12
Indian Penal Code, 1860	Section 300, Exception 4	11, 15, 16, 18
Indian Penal Code, 1860	Sections 302, 304, 323	1, 5, 9, 18

Advocate(s)
Not stated in the source text.
(P) – Provisional