

BATHUSINGH AND ORS.

v.

STATE OF M.P.

AUGUST 25, 2004

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Penal Code, 1860—Sections 302/148, 96 and 99 :

Prosecution for murder—Prosecution case supported by 3 eyewitnesses—Corroborated by Medical evidence—Plea of self defence by accused—Conviction by Courts below—On appeal, held: Accused liable to be convicted as the offence proved by ocular evidence is corroborated by medical evidence—Defence version not proved—Even otherwise accused not entitled to right of private defence as assault was exceedingly vindictive and maliciously excessive.

Right of Private Defence—Nature of Held : It is not a right of reprisal or punishment—It is subject to restrictions indicated in Section 99.

Appellants-accused, alongwith other accused were alleged to have caused death of two persons. In the incident two persons also got injured. There were three eye-witnesses to the incident namely PWs 1, 2 and 3. Medical evidence corroborated the version of eye-witnesses so far as participation of the appellants were concerned. During trial, accused took the plea of self defence. Their version was that the victim party had set their crops on fire and assaulted them, and they attacked the victim party as a revenge. They examined five witnesses in support of their case. Trial Court convicted accused No. 1 and the appellants u/s. 302/148 IPC and other accused were convicted u/s. 302 r/w. 149 and 148 IPC. High Court confirmed the conviction of the appellants and acquitted the other accused.

In appeal to this Court, appellants contended that they were liable to be acquitted as they had resorted to the act in self defence and that the prosecution failed to prove its case beyond reasonable doubt.

A Dismissing the appeals, the Court

HELD : 1. So far as the appellants are concerned, there is overwhelming ocular evidence on record duly corroborated by the medical evidence and the statement of PW-1, to prove their offence.

B [790-E]

C 2.1. There is no evidence on record much less to establish the defence version of acting in self defence, which is a defence which was set up at a very late stage. The statements of the defence witnesses are also not helpful to the appellants. The appellants have not established their plea of private defence by preponderance of probabilities. The appellants have not laid any foundation in cross-examination of the prosecution witnesses as well as in their statements under Section 313 Cr.P.C. and by pointing out positive circumstances from the legally proved prosecution evidence which could establish their case of self defence of property and **D** person by preponderance of probabilities. [790-H; 791-A-C]

E 2.2. A right of private defence given by the Penal Code is essentially one of defence or self protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in Section 99 **F** IPC which are important as the right itself. In the instant case, the assault on both the deceased was exceedingly vindictive and maliciously excessive. Under these circumstances the appellants were not entitled for right of private defence and two persons were done to death by the appellants without there being any imminent danger to their property or lives. [791-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1295-1296 of 2003.

G From the Judgment and Order dated 19.4.2002 of the Madhya Pradesh High Court in Crl. A. No. 697 of 1995 and Crl. A. No. 831 of 1995.

Vidya Dhar Gaur for the Appellants.

H Ms. Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

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DR. AR. LAKSHMANAN, J. : These appeals are directed against the judgment and order dated 19.4.2002 passed by the High Court of Madhya Pradesh, Bench at Indore in Criminal appeal Nos. 697 and 831 of 1995 whereby the High Court has partly allowed Criminal Appeal No. 697 of 1995 by acquitting appellant No. 1, Balu Singh, appellant No. 5, Richhu, appellant No. 6, Bhangdibai and appellant No. 7, Nanbai of the offence they were charged and the appeal of appellant No. 2, Bathusingh, appellant No.3, Nar Singh and appellant No. 4, Bhal Singh was dismissed.

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The case of the prosecution, in brief, is as follows:-

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The appellants and the deceased persons as well as PW-1, Sardar Singh, PW-2, Jagat Singh and PW-3, Humabai are related to each other. On the fateful day, the deceased Dhan Singh @ Dhania was digging a well in his field and was storing stones on the embankment of the field for which the accused persons were having objection. At that time, all the appellants reached the place in question having arrow and bow, Denga (lathi) and stones and started assaulting the deceased Dhania. The deceased Bhuru also reached over there and he too was assaulted by the appellants. Jhillibai, sister of PW-1, Sardarsingh, was also assaulted when she was going to serve water to him. The incident was witnessed by PW-1, Sardar Singh, PW-2, Jagat Singh, PW-3, Humabai and other witnesses named Bhagat Singh, Buddhibai Jalam Singh, Pratap Singh and Bhim Singh.

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PW-1, Sardar Singh, informed this incident to village Chaukidar and thereafter lodged a report Ex.P-1 at the police station at 2.00 p.m. Both Dhania and Bhure died on the spot. Their bodies were sent for post mortem examination and injured persons Hirabai and Jhillibai were sent for medical examination. They were examined by PW-4, Dr. Fateh Singh. The deceased Dhania sustained two stab wounds at his stomach caused by pointed sharp edged weapon and a fracture on left temporal bone caused by hard and blunt object. His post mortem report is Ex.P-2.

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Dr. Fateh Singh, PW-4, on performing the autopsy on the dead body of Bhure, found one stab wound at the left chest caused by a sharp pointed object and a fracture of temporal bone. His post mortem report is Ex.P-

H

A 3. The police after completing the investigation filed the challan in the Court. The appellants denied the allegations of the prosecution and pleaded self defence as appellant, Baley Singh appeared and examined as DW-5 and stated that his wheat, Bajara and Urad crops in threshing field near his house were set on fire and thereafter they started throwing stones at his house. On coming out from the house, Bhagat Singh and Jagat Singh shot arrows from bow and in defence, the appellants also shot arrows and in that process one Bathu Singh sustained injury by arrow. The appellants examined five defence witnesses in their defence. Prosecution examined eight prosecution witnesses during trial. The trial Court held guilty of offences under Section 302/148 I.P.C. against Balu Singh, Bathu Singh, Nar Singh and Bhal Singh and sentenced them to life imprisonment and fine of Rs.1000, in default, R.I. for one year and six months, and Richhu, Bhagndibai and Nanbai were convicted under Sections 302 r/w 149 and 148 I.P.C. and sentenced them to undergo imprisonment for life and R.I. for one year. Both the sentences were directed to run concurrently.

D

The appellant, being dissatisfied by the judgment and order dated 31.8.1995, filed an appeal before the High Court of Madhya Pradesh against their conviction and sentence passed by the trial Court.

E The High Court partly allowed Criminal Appeal No. 697 of 1995 by acquitting appellant No.1, Balu Singh, appellant No. 5, Richhu, appellant No. 6, Bhangdibai and appellant No.7, Nanbai of the offence they were charged and the appeal of the appellants Bathu Singh (appellant No. 1 herein), Nar Singh (appellant No. 2 herein) and Bhal Singh (appellant No. 3) was dismissed.

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Being aggrieved by the said judgment, the appellants preferred these appeals by way of special leave.

G We heard Mr. Vidya Dhar Gaur, learned counsel appearing for the appellants and Ms. Vibha Datta Makhija, learned counsel appearing for the respondent.

H Learned counsel appearing for the appellants submitted that the incident occurred all of a sudden and the appellants had to resort in self defence as their crops in the thrashing field were set on fire and their house

was stoned. When the appellants acted in self defence, they sustained injuries on their person, so they immediately went to the police station to seek their assistance. In the meantime, complainant party also reached in the police station and the appellants were detained and put behind the bar. It was further submitted that the investigation made by the prosecution is a tainted one because the police has shown arrest of the appellants after three days of the incident and kept them in illegal detention since the day of the incident, the police has not medically examined the appellants for the injuries they sustained during the incident in spite of their requests. It was also submitted that the prosecution has examined all interested and partisan witnesses and has withheld independent witnesses, though shown to be present on the spot and were injured. The injured witnesses have also not been examined in the Court. Concluding his arguments, learned counsel submitted that the witnesses examined by the prosecution in the Court are not trustworthy and, therefore, reliance cannot be placed on them and that the prosecution has failed to prove their case beyond any reasonable doubt, therefore, the appellants are entitled for acquittal.

Learned counsel appearing for the respondent, *per contra*, submitted that the evidence on record clearly establishes that the appellants, after forming an unlawful assembly, committed murder of both Dhania and Bhuru and also caused injuries to two other persons and they were also armed with deadly weapons and none of the appellants had received any injury during the course of the incident. When the material on record is clearly establishing that the appellants were not acting in self defence, they are not entitled for acquittal.

We have gone through the entire record and judgments rendered by both the Courts. As already noted, the prosecution has examined PW-1, Sardar Singh, PW-2, Jagat Singh and PW-3, Humbai as eye witnesses of the incident. According to them, when the deceased Dhania reached at his field for digging the well and thereafter the deceased Bhuru for watching the mango crop, Balu Singh (appellant No.1 in the High Court) gave a lathi blow on the head resulting into fall of deceased Dhania on the ground. Thereafter Nar Singh shot an arrow piercing in his stomach. Bathu Singh (appellant No. 2 before the High Court) shot an arrow piercing at the chest of the deceased Bhuru and Bhal Singh (appellant No.4 before the High Court) gave a lathi blow (Denga) on his head whereas Richhu, Nanbai and

A Bhangdibai used the stones in the incident. These three eye witnesses have also stated that when they and other villagers tried to intervene in the incident, the appellants chased them away. Thereafter PW-1 and PW-2 came to the village and gave information to village Chaukidar and thereafter reached the spot and found Dhania and Bhuru lying dead there.

B PW-4, Dr. Fateh Singh, had performed the autopsy on the dead bodies of Dhania and Bhuru. The doctor witnessed two stab wounds on the stomach and two fractures of parietal bone of Dhania and one stab injury and fracture of occipital bone on the person of Bhuru. According to him, both the deceased died because of shock and excessive bleeding. PW-4

C has also examined Jhillibai who too was assaulted by the accused persons during the course of the incident. He found two diffused swelling on her person. Thus it is seen that the evidence of PW-4, Dr. Fateh Singh, is clearly corroborating the statements of eye witnesses so far as participation of Bathu Singh (appellant No. 1 herein), Nar Singh (appellant D No. 2 herein) and Bhal Singh (appellant No. 3 herein) is concerned. It is significant to note that Dr. Fateh Singh found, in all, four injuries on the person of deceased Dhania i.e., two stab wounds, one fracture of left temporal bone and on dissection, he noted one fracture of temporal and parietal bone.

E So far as the appellants herein are concerned, there is overwhelming ocular evidence on record duly corroborated by the medical evidence and the statement of PW-1, Sardar Singh.

F Learned counsel appearing for the appellants has also taken us through the statements of DW-1 (Thumlibai), DW-2 (Sukliya), DW-3 (Hirasingh), DW-4 (SDOP Rajendrasingh Kushwah) and DW-5 (Balusingh) examined as defence witnesses. The statements of these DWs are also not helpful to the appellants Bathu Singh, Nar Singh and Bhal Singh because DW-1 has not named any of the deceased or the prosecution witness.

G DW-2, who is a village chowkidar has not levelled any allegation against the witnesses and the deceased persons about setting fire to their crop. On the contrary, this witness has contradicted the case of the appellants about setting fire to the wheat crop. Likewise, there is absolutely nothing in the statement of DW-3 which could support the defence version. We cannot

H also draw any inference from the statement of DW-4 who made a vague

statement and that no inference can be drawn by this Court that the deceased and the witnesses had set fire on the crop. The statement of DW-5 is also not helpful to the appellants' case. A

The appellants, in our opinion, have not established their plea of private defence by preponderance of probabilities. The appellants have not laid any foundation in cross-examination of the prosecution witnesses as well as in their statements under Section 313 CrI.P.C. and by pointing out positive circumstances from the legally proved prosecution evidence which could establish their case of self defence of property and person by preponderance of probabilities. This Court in catena of cases has held that a right of private defence given by the Penal Code is essentially one of defence or self protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in Section 99 which are so important as the right itself. In the instant case, the assault on both the deceased was exceedingly vindictive and maliciously excessive. Under these circumstances, we are of the opinion that the appellants were not entitled for right of private defence and two persons were done to death by the appellants without there being any imminent danger to their property or lives. B C D

There is no evidence on record much less to establish the defence version of acting in self defence, which is a defence which was set up at a very late stage. E

For the foregoing reasons, we are of the opinion that the appeals have no merits and are, accordingly, dismissed. F

K.K.T.

Appeals dismissed.