(1956) 12 AHC CK 0022

Allahabad High Court

Case No: Criminal Appeal No. 130 of 1955

Dhanno Khan		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Dec. 21, 1956

Acts Referred:

- Penal Code, 1860 (IPC) - Section 300, 302, 97

Citation: AIR 1957 All 317 : (1957) CriLJ 498

Hon'ble Judges: Mukerji, J; Chowdhry, J

Bench: Division Bench

Advocate: G. Kumar, for the Appellant; D.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Mukerji, J.
This is an appeal by Dhahnoo Khan, who has been convicted by the learned Sessions Judge of Rampur u/s 302 of the I. P. C. and has been sentenced to imprisonment for life and a fine of Rs. 100/-.

2. The facts giving rise to the incident briefly stated were these:

3. On the 14th of December, 1951, the deceased went to the shop of one Tullan, who was a carpenter, about sunset time in village Kajriyee. As he went there he found several people sitting at that shop. The deceased asked as to where the Pradhan of the village was. Thereupon Tullan asked the deceased as to why he was enquiring for the Pradhan. In answer to this querry by Tullan, the deceased replied that he wanted to meet the Pradhan for he wanted to complain to him against the actions of certain people who were driving carts through the ploughed fields and thereby causing damage. Dhannoo Khan the accused immediately said that the carts would be taken through the ploughed fields as they had been. This assertion by Dhannoo Khan led to an altercation between Dhannoo Khan, on the one hand, and Baddan alias Chet Ram the deceased, on the

other.

There was some scuffle also and according to the testimony of at least one eye-witness Baddan delivered a Danda blow on Dhannoo Khan. Those, who were sitting at that shop at the time, intervened and separated Dhannoo Khan and Baddan. During the course of the altercation the accused had whipped out a knife and attempted to make an attack on Baddan. He was thwarted by Nazeer Ahamd P. W. 6 who caught hold of Dhannoo Khan. Tullan thereupon asked Baddan to go away and Mohammad Jan P. W. 5 held down the accused by the hand. As Baddan was leaving Tullan''s shop he showered filthy abuses on Dhannoo Khan which apparently raised the temper of Dhannoo Khan further with the result that hardly Baddan had gone a hundred steps or so when Dhannoo Khan freed himself from the grip of Mohammad Jan and dashed out behind Baddan.

This made some of the witnesses follow Dhannoo Khan in an attempt to interfere with his intention to attack Baddan. None of the witnesses was, however, able to avert the tragedy that followed. Baddan was attacked with a knife and given two severe blows with it with the result that he collapsed and died on the sopt.

4. A report Of the incident was made at police station Kemri by Buddha Shah, the chowkidar, who turned up at the scene of occurrence hearing the noise and the hubbub that arose as a result of this untoward incident: the first information report was lodged at 11 p. m. on the 14th of December 1951. The police station was at a distance of seven miles from village Kajriyaee where the incident had taken place.

5. Sultan Khan Station Officer went to the spot, prepared an inquest report and also drew a site plan. The body of Baddan was sent for postmortem examination.

6. A post-mortem was actually conducted on the body of the deceased on the 15th of December, 1951, at 12-30 p. m. On examination the body was found to have one punctured wound 1" x 1/2"x lung-deep on the right side scapula. The edges were clean-cut and the direction of the wound was horizontal forwards and downward into the lung. Another punctured wound 1 1/4"" x 3/4" x 2" was found on the left side of the back 1" external to the 10th dorsal vertebra. The edges of this wound were also clean-cut. Severe damage was caused to the right lung with the result that the deceased died of syncope having been brought about by shock and haemorrhage.

7. The accused could not be apprehended for he apparently absconded. Proceedings under Sections 87 and 88 of the Code of Criminal Procedure were taken but they did not yield immediate fruit for the accused was actually arrested sometimes in 1954 and he was subsequently put up for trial.

8. The defence of the accused was that he made the attack on the deceased with a knife in self-defence. The accused, however, produced no evidence in support of his contention and relied entirely on the circumstances which he could gather from the prosecution evidence itself. The trial Judge did not accept the contention raised on behalf

of the accused because he was of the opinion that the circumstances of the case indicated that the accused himself was the aggressor and, therefore, there could, in his case, be no right of self-defence,

9. Learned counsel appearing on behalf of the appellant raised two contentions before us. The first contention was that on the facts and circumstances of the case the accused was clearly entitled to the exercise of his right of private defence and that he had hit the deceased in the exercise of that right. This contention was founded on the circumstance appearing in the testimony of P. W. 2 Aziz Khan, namely, that during the exchange of abuses between Baddan and the accused at the shop of Tullan, Baddan had struck the accused with a Danda, and further on the circumstance that while Baddan was going away he showered abuses on the accused and further that before the knife was actually struck on the body of Baddan he had attacked the accused with his Danda.

The aforementioned statement of Aziz Khan does not appear to us to be perfectly correct, for no other witness has stated that Baddan attacked the accused with a panda when the accused chased him after freeing himself from the grip of Mohammad Jan. Even if we accept the entire testimony of Aziz Khan in regard to how the incident took place, it is not possible for us to hold that the accused had a right of self-defence. The two incidents, one at the shop of Tullan and the other a hundred paces away from it, were not two isolated incidents: they were intimately connected with each other as cause and effect.

Further, the evidence on record clearly indicates that at the first incident the accused had whipped out a knife and had attempted to strike the deceased, even though the persons at the shop at the time had attempted to separate the two quarrelling individuals, namely, the accused and the deceased. The evidence on record clearly indicates that had it not been for the timely intervention of Nazeer Ahmad and Mohammad Jan, the accused would have stabbed the deceased at the shop itself.

The witnesses present at the shop were impressed by the fact that if the accused was permitted to act freely, then there was grave danger to the deceased Baddan: that is clear from the fact that Mohammad Jan had held the accused by the hand when Baddan was leaving Tullan''s shop. It is no doubt true that while leaving the shop of Tullan, Baddan showered abuses on the accused, but this was not a new provocation or a provocation that went to the length of depriving the accused of his self-control to an extent that justified him in freeing himself from the grip of Mohammad Jan and launching an attack on Bad-dan.

The accused was armed with a knife; he had already made an attempt once to use that knife on Baddan and if Aziz Khan''s version of what followed when the accused and the deceased met each other a hundred paces or so away from Tullan''s shop be accepted, namely, that Baddan gave a Danda blow or two to the deceased, one cannot say justly that Baddan had no justification for doing so. Situated as Baddan was and the experience that Baddan already had of the intentions of the accused, he was, we are of the view,

entitled to presume that the accused was chasing him with the object of doing him to death with the knife and, therefore, he was qertainly within his rights to disable, if he could, the accused with his Danda.

Viewed in this setting, the act of the accused in using his knife on Baddan could not possibly amount to his exercising a right of self-defence. The law does not confer a right of self-defence on a man who goes and seeks an attack on himself by his own threatened attack on another, an attack which was likely to end in the death of that other. The right of self-defence conferred by the law or preserved by the law for an individual is a very narrow and circumscribed right and can be taken advantage of only when the circumstances fully justify the exercise of such a right.

10. The next argument of learned counsel was that the appellant acted under grave and sudden provocation and, therefore, his case fell within the first exception to Section 300 of the Indian Penal Code. The first exception to Section 300, I. P. C.,, is in these words.

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following proviso:

First.--That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.--.....

Thirdly.--.....

Explanation.--Whether the provocation was grave or sudden enough to prevent the offence from amounting to murder is a question of fact.""

According to learned counsel, the accused got the provocation first at the shop of Tullan when he was attacked by Baddan with a Danda and the accused got the second provocation when Baddan left showering abuses on the accused. What may amount to grave and sudden provocation, as has been provided for in the aforequoted Explanation to Exception I of Section 300, is a question of fact.

It is clear that the provocation has to be, not only sudden, but grave and that the gravity of the provocation is to be judged by the fact whether or not the offender is deprived of the power of self-control. Each little provocation cannot be called grave simply because the consequences ensuing from that provocation at the hands of the accused have been grave. The provocation must be such as will upset not merely a hasty, hot-tempered and hyper-sensitive person but would upset also a person of ordinary sense and calmness. The law does not take into account abnormal creatures reacting abnormally in given

situations. The law contemplates the acting of normal beings in given situations and the protection that is offered by the first Exception of Section 300, I. P. C. is the protection for normal beings reacting normally in a given set of circumstances.

A Court has to consider whether a reasonable person placed in the same position as the accused was would have reacted under that provocation in the manner in which the accused did. We have not the slightest doubt that a normal man, particularly a man coming from the strata of society from which the accused came would not have reacted to abuses in the manner in which the accused reacted. We have it in the evidence of Nazeer Ahmad and Tullan that the accused was of ''firy temper''. The action of the accused was, in this case, out of all proportion to the gravity or magnitude of the provocation that had been offered and, therefore, it cannot in any manner be brought within the four-corners of the first exception.

The tragedy which befell the deceased was certainly not premeditated but it could not be said under the circumstances of this case that the tragedy happened in the heat of passion upon a sudden quarrel, nor could it be said that the offender in this case had not taken undue advantage or had not acted in a cruel or unusual manner. There was absolutely no occasion for the accused to throw a challenge to the deceased in the matter of taking carts through the ploughed fields, for the complaint which the deceased wanted to make to the Pradhan was a very reasonable complaint. Nobody can have the right, unless possibly the ploughed fields were on a right of way, to take a cart through ploughed fields.

The evidence does not disclose that the carts were being taken through cultivated fields because the cultivation had been raised on a right of way. It was the accused who raised the quarrel and it was the accused who made first an attempt to take the life of the deceased by whipping out a knife at the shop of Tullan and it. was again the accused who subsequently chased the deceased and made an attack on him. So, that, there could be no question of Exception 4 being available to the accused in mitigation of the offence which he has committed.

The suddenness of the fight may have been at the shop of Tullan but the suddenness and the legal consequences which could have flowed from that suddenness disappeared the moment Naseer Ahmad and Mohammad Jan and others intervened and separated Baddan from the accused and held the accused back. The incident in which the deceased lost his life, was, as we have already noticed as a result of an attack which the accused launched after freeing himself from the grip of Mohammad Jan. So that, the facts of this case could not in any way bring Exception 4 into play. Further, the accused had in this particular case taken undue advantage of the deceased''s position. He was on the run and the accused attacked him from behind--and this is perfectly plain on the medical evidence--with a knife. The accused acted without doubt cruely.

11. Learned counsel raised another contention and that was in connection with the appropriateness of the sentence which has been awarded by the learned Judge to the appellant. Learned counsel contended that the sentence of fine, which had been imposed by the learned Sessions Judge, was illegal. In this connection learned counsel relied on a case of the Bombay High Court reported in State Vs. Pandurang Tatyasaheb Shinde, In that case Gajendragadkar and Shah JJ. expressed the view that in a case where an accused has been sentenced to suffer imprisonment for life an order of fine was "wholly inapposite"". This decision does not go to the length of saying that the imposition of a fine, when there has been a sentence of transportation for life, was illegal. Section 302, I. P. C., provides as follows:

"Whoever commits murder shall be punished with death or transportation for life and shall also be liable to fine."

The Code confers a discretion on the Court to sentence an accused as it thinks proper. In a murder case the sentence of death was till before the amendment held by Courts to be the normal sentence and when Courts award the lesser penalty, namely transportation for life or imprisonment for life they had to give reason for imposing the lesser penalty. Whether there should be a sentence of fine also is for the Court to determine. Nevertheless when a Court imposes a sentence of fine also u/s 302, I. P. C., then obviously the Court has got to give reasons why a sentence of fine also was being imposed, for the simple reason that a sentence of fine over and above the substantive sentence is deemed to be in excess thereof and it has always been thought desirable to give reasons for imposing the excess penalty, so to speak.

In this particular case, the trial Judge has given absolutely no reasons for imposing the sentence of fine. As was pointed out by the Bombay High Court in the aforequoted case of Pandurang Tatyasaheb Shinde (A), a sentence of fine in a murder case looks appropriate only where the murder has been motivated by monetary gain. We therefore, think that this was not a fit case which called for the imposition of a sentence of fine. We, therefore, set aside that sentence

12. In the result, we dismiss this appeal and affirm the conviction and the sentence of imprisonment for life only of the appellant but set aside the sentence of fine. The fine, if it has been paid, shall be refunded to the appellant.