(1965) 05 AHC CK 0016

Allahabad High Court

Case No: Criminal Appeal No. 828 of 1963

State of U.P.		APPELLANT
	Vs	
Jagdish Puttoo Lal		RESPONDENT

Date of Decision: May 3, 1965

Acts Referred:

- Evidence Act, 1872 - Section 105
- Penal Code, 1860 (IPC) - Section 96, 97

Citation: AIR 1966 All 244 : (1965) 35 AWR 711 : (1966) CriLJ 503

Hon'ble Judges: U.S. Srivastava, J; G.D. Sahgal, J

Bench: Division Bench

Advocate: R.B. Bisaria, for the Appellant; Shanker Sahai Saksena, for the Respondent

Final Decision: Dismissed

Judgement

U.S. Srivastava, J.
This is an appeal by the Slate of U. P. against the judgment and order, dated 31st of August 1963 passed by Sri A P. Bhalnagur Additional Sessions Judge, Lucknow, acquitting the respondent of an offence u/s 302, I. P. C., for the alleged murder of one Noor Mohammad alias Saktu, aged 55 years, on 30th August 1962 at 2.30 P.M.

2. It was alleged by the prosecution that both the respondent and the deceased lived in Bahdewan, Police Station Chowk, in the city of Lucknow, and they used to have monetary transactions between themselves. It is alleged that on 30th August 1962 at about 2.30 P.M. the respondent went to the house of the deceased and demanded money that was due to him from the deceased. The deceased was not in a position to pay back the money then and that led to an altercation between the two which resulted in exchange of hot words and abuses between them. The deceased"s brother Wafati P. W. 1 and Bhallu P. W. 2 nephew of the deceased, intervened in the quarrel and tried to assure the respondent that his money would be paid. It is, however, said that the respondent did not go and insisted upon the deceased the necessity of paying him the money then and there

at which the deceased is supposed to have turned round and told the respondent that he could not pay the money and that he could do whatever he liked. The respondent is then supposed to have abused and taken out a knife from his pocket, opened it and gave a blow to the deceased below his left arm-pit. The deceased fell down and bled. Some witnesses are said to have arrived on the spot among whom were Nawab Ali, Mohammad Ali, Smt. Pachcho. Shafiul Hasan and Mushtaq Ali. The respondent is said to have run away with the blood-stained knife after the incident. The deceased''s brother Wafati and his nephew Bhallu P. Ws, 1 and 2 then put the deceased in a rickshaw driven by Bhallu P. W. 2 himself and proceeded towards the Medical College to get him attended to. On the way they passed the police outpost of Khala Bazar where Wafati told a constable that the respondent had given a knife blow to his brother who was lying in the rickshaw. Accompanied by this constable he proceeded to the Medical College. On reaching there he was told by the doctor that Saktu was dead. Wafati thereupon entrusted the dead body to the constable and proceeded to the police station chowk to lodge the first information report Ex. Ka-1. The report was lodged at about 3.30 P.M. The report was taken down by Jamuna Rai, Head Constable, P. W. 13. The Sub-Inspector In-charge of the Station was not at the police station at that time. He was informed about this murder by telephone at the police outpost Thakurganj. From there he reached the spot at 5.45 P.M. and took down the statement of Wafati and after inspection of the locality prepared the site-plan Ex. Ka-12. He took bloodstained and plain earth from the place of the occurrence and had a recovery memo Ex Ka-9 prepared in respect thereof. He recorded the statements of the witnesses between 9 and 12 P.M. and searched for the accused at his house but neither the accused was found not anything incriminating recovered therefrom. He submitted the report for examination of the bloodstained cloth and blood-stained material by the Chemical Examiner, and on completion of the investigation submitted a charge-sheet against the accused. It may here be mentioned that the place of occurrence is about 200 paces from the police outpost Khala Bazar.

3. Dr. Khare conducted the post mortem examination on the dead body of Saktu on 31st August 1962 at 2 P.M. He found the following injuries on his person;--

1. Incised and penetrating wound 5" x l" chest cavity deep (6-7/10" deep), 4-8/10" below the left axilla. The 8th rib was cut by injury No. 1.

2. Abrasion 6/10" X 4/10" on the left apex. In the opinion of the doctor Injury No. 1 was caused immediately before the death by a sharp-edged piercing weapon like knife and injury No. 2 was caused by friction. Death was caused, in the opinion or the doctor due to shock and haemorrhage resulting from injury to lung and aorta by a sharp penetrating weapon. The statement made by the doctor before the Committing Magistrate was tendered in evidence before the learned Additional Sessions Judge. The prosecution also tendered in evidence reports of the Chemical Examiner and Serologist. The Serologist reported that Langot and Pyjama of the deceased were stained with human blood. The origin of the blood stains could not, however, be determined by him because the material taken from the spot and the shirt of the deceased had been disintegrated. The

respondent in his statement stated that the deceased Saktu was intoxicated and he tried to fell him down and he tried to release himself. P. Ws. Wafati and Bhallu had, however, he alleged, caught hold of him and the deceased was trying to strangle. He, therefore, thought that he would be killed. Meanwhile Wafati is stated by him to have taken out a knife and while trying to assault him his knife hit the deceased and that is how he died. The respondent is said to have freed himself and ran away. It would thus appear that the respondent did not admit having given the knife blow to the deceased much less pleaded that he had done so in his self defence. It seems, however, that at the stage of the argument before the learned Additional Sessions Judge the respondent''s counsel pleaded an alternative case that even if it be held that the respondent struck the knife blow to Saktu he did it in the defence of his person and as such, he claimed protection of exception to Section 96.

4. At the trial several witnesses were examined by the prosecution out of whom P. W. 1 Wafati, P. W. 2 Bhallu, P. W. 6 Smt. Pachcho, P. W. 7 Mohammad Ali, P. W. 9 Nawab Ali, P. W. 10 Shafiul Hasan, and P, W. 11 Mushtaq Ali are said to be eye-witnesses of the occurrence. Sri Brij Kishore Dixit, Inspector Incharge of the Police Station Chowk is the Investigating Officer. The rest of the evidence is of a formal nature.

5. On a consideration of the entire evidence the learned Additional Sessions Judge came to the conclusion that the knife blow which caused the death of Saktu had been inflicted lay Jagdish respondent. Having found that he proceeded to determine the circum-stances under which the said injury was said to nave been caused to Saktu by the respondent ad in considering that question he came to the conclusion that there were indications in the prosecution evidence that it was possible that the respondent may have inflicted the knife blow to the deceased in self defence and having come to the conclusion that this possibility was not ruled out he gave benefit of doubt to the respondent and acquitted him of the charge levelled against him. The State has preferred this appeal against the said order by the leave of the Court.

6. The argument of the learned Government Advocate in support of this appeal against acquittal is two-fold. Firstly, he contends that no specific plea of self defence having been raised by the respondent, it was not open to the learned Judge to have set up this plea on his behalf on his own and acquitted him by giving him the benefit of doubt on the ground that the respondent might have inflicted the knife blow to the deceased in self defence and, that being so, the finding of acquittal recorded by the learned Additional Sessions Judge is perverse and should, therefore, be set aside, The second contention is that this plea of self defence was not put to any prosecution witness in cross-examination and that the Sessions Judge has built it up on the basis of certain stray statements made by the said witnesses. In a way the two contentions are inter-related and interconnected.

7. The approach that the High Court should make in an appeal against an order of acquittal was indicated by their Lordships of the Supreme Court in the case of Harbans Singh and Another Vs. State of Punjab, . Then Lordships emphasised that while they did

not in any way try to curtail the powers bestowed on appellate Courts u/s 423 of the Code of Criminal Procedure when hearing appeals against acquittal, they pointed out that the golden thread running through all the decisions of the Supreme Court is the rule that in deciding appeals against acquittal the Court of appeal

" must examine the evidence with particular care, must examine also the reasons on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable."

Again in a fairly recent decision, their Lordships of the Supreme Court remarked as under in the case of Noor Khan Vs. State of Rajasthan, .

"Before reaching its conclusion 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 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."

8. In this background we will now proceed to consider if the conclusions reached by the learned Additional Sessions Judge are clearly unreasonable or not, The finding of the learned Additional Sessions Judge that the knife blow which ultimately caused the death of Saktu was inflicted by the respondent has naturally not been challenged by the learned Government Advocate who has appeared before us in support of this appeal. He has, however, urged that the learned Additional Sessions Judge was plainly wrong in acquitting the respondent on the ground that: he may have caused this injury in self defence although no such plea was taken by the respondent. In fact he had not admitted having caused the injury, so there was no question of his being given the benefit of the exception embodied in Section 96 of the Indian Penal Code. He also argued that the evidence on the record did not warrant an inference that the conduct of the deceased in any manner could have raised a reasonable apprehension in the mind of the respondent that a grievous injury may be caused to his person and that to ward off the same he caused an injury to the deceased to save injury being caused to himself. The first question, therefore, that arises for consideration is whether, where a plea of self defence has not been taken by the accused is it open to the Court to set up that defence for him and give him the benefit thereof if the circumstances so justified it ?

9. The learned Government Advocate cited a Bench decision of the Calcutta High Court reported in Ajgar Shaik and Others Vs. Emperor, in support of his contention. In this case it was held that in order to establish the exercise of the right of private defence it is absolutely necessary to detail the exact circumstances which led the accused to strike the blow in question. Such a defence can seldom, if ever, successfully be made out when the accused"s case is that he did not strike the blow at all. It is true that it was observed in

this case that if the accused do not admit striking the opposite party they can hardly be heard to urge that they struck the opposite party in the exercise of the right of private defence.

10. A later decision of the same Court reported in Kuti and Others Vs. Emperor, , however took a different view. In this later case it was held that the charge to the jury by a Judge in the following terms, namely

"the accused have not set up the right of private defence in answer to the charge against them, and there are not also circumstances appearing upon the evidence in the case justifying the exercise of that right. The learned Public Prosecutor had argued the matter by way of anticipation, but as it is not necessary for you to consider in this case, I do not think it necessary to place the law on the subject before yon" was held to amount to misdirection which occasioned failure of justice, because it was ruled that it ought to have been left to the jury to decide on a consideration of the evidence as a whole, whether the existence of the right of private defence had or had not been established and if so what would be the effect of the existence of that right on the question of the liability of the accused in respect of the charges on which he had been tried. It will thus appear that the Calcutta High Court itself has taken a view running counter to the earlier decision of that Court reported in Ajgar Shaik and Others Vs. Emperor, . Lot of water has flown down the judicial stream since these decisions were given and it appears that now the consensus of opinion of the different High Courts has been that even though the plea of self-defence may not have been taken by the accused specifically, it is open to the Court to give him the benefit of such plea, if on a proper appraisal of the evidence it comes to the conclusion that the injury caused by the accused was in the circumstances of the case inflicted at a time when he was having reasonable apprehension of a grievous injury being caused to him by the deceased,

11. In a majority decision of a Full Bench of this Court reported in Parbhoo and Others Vs. Emperor, it was held that the accused person is entitled to be acquitted if upon a consideration of the evidence as a whole a reasonable doubt is created in the mind of the Court whether the accused person is or is not entitled to the benefit of any general exception in the Penal Code.

12. In Govindan Neelambaran Vs. State of Kerala, it was remarked by a Bench of the Kerala High Court that the right of self-defence need not be specifically pleaded. It was further observed that a person taking the plea of the right of private defence is also not required to call evidence on his side but he can establish that plea by reference to the circumstances transpiring from the prosecution evidence itself The question in such a case, it was held, would be a question of assessing the true effect of the prosecution evidence and not a question of the accused discharging any burden. It was observed that in considering whether the accused is entitled to exercise the right of private defence an opinion has to be formed whether under the peculiar circumstances the accused did or did not have the apprehension of such injuries to his body as could entitle him to exercise

his right of self defence. The facts of this case reveal that the accused had denied having stabbed the deceased and inflicted the injury--in fact, he had even denied the possession of the knife with which the injury was said to have been caused. In spite of this statement of the accused and the defence ultimately conceding that the prosecution had succeeded in proving that it was the accused who inflicted the fatal injury on the deceased the High Court on a consideration of the entire evidence in the case, circumstances and probabilities came to the conclusion that the attack by the accused was neither intentional nor retaliatory in nature and held that his act did not, therefore, amount to an offence as he was completely protected by the right of private defence. This case is practically on all fours with the instant case before us and we are in respectful agreement with the learned Judges of the Kerala High Court in their finding that the right of self defence need not be specifically pleaded and that an accused person is entitled to the benefit of that plea, even though he may not have pleaded it if the facts and circumstances of the case are such as to lead to a reasonable inference that the attack might have been made by mm in the right of self-defence.

13. There are some other decisions of our own Court which have been cited by the learned counsel appearing for the respondent which also take a somewhat similar view.

14. In a Bench decision of this Court reported In Babu Lal Vs. State, It was held that where there are circumstances proved in the case whether by the prosecution or the defence to make an exception applicable it is immaterial from which side the evidence is placed on the record, and the benefit of these circumstances cannot be denied to an accused on the ground that he did not plead the exception. Although the facts of this case did not relate to the exercise of the right of self defence the observations are nevertheless pertinent to determine the question of the availability of the benefit of an exception in a case where it is not being specifically claimed by the accused person. The decision of the Calcutta High Court reported In Kuti and Others Vs. Emperor, was referred to with approval in this decision. There is yet another decision of this Court reported in Baldeo v. State 1964 All WR 629 which has accepted the view laid down in the earlier decision of this Court cited by us above.

15. Lastly there is an unreported decision of this Court to which one of us was a party, namely, Criminal Appeal No. 843 of 1964 (Luc-know Bench) (Ram Bharosay v. State) decided on 22-1-65 laying down that it is not necessary for the accused to prove to the hilt that it was in the exercise of the right of self defence that the knife was used. It is enough that circumstances have been placed before the Court for it to conclude that it was in the tight of self-defence that the knife might have been struck by the accused at the deceased. It may be that the plea of the exercise of the right of self-defence was not taken probably because the accused had not enough courage to say that it was he who struck the knife.

16. Thus on a consideration of all the cases cited above, we have come to the conclusion that the argument of the learned Government Advocate that the Sessions Judge was

plainly wrong in giving the benefit of the right of self-defence to the accused respondent when he had not pleaded any such right in his defence, in fact having given altogether a different version about the manner in which the injury was caused to the deceased, is devoid of all merit.

17. It was next argued by the learned Government Advocate that the evidence on record did not justify the inference that the deceased tried to inflict any injury on the accused and therefore no right of self-defence had accrued to the respondent. We are not impressed with this argument at all. The question of the accrual of the right of private defence to a person does not depend upon an injury being caused to him. If the facts and circumstances of a particular case indicate that, placed as the accused was, he could have had a reasonable apprehension in his mind of a grievous injury being caused to him, then the fight of sell defence was available to him. The evidence in this case indicates that the deceased after the exchange of hot words and filthy abuses with the respondent grappled with him and tried to strangle him. The deceased''s own brother Wafati P. W. (1) admitted in his cross examination that the deceased was a previous convict and a history sheeter. It is also in the evidence of P. W. 1 Wafati, the deceased''s own brother that the deceased was a Pahalwan, and according to P. W. 6 Smt. Pachcho was armed with a knife. Another prosecution witness, namely, Saflul Hasan P. W. 10 stated that he found a knife lying on the ground and that he had seen the deceased and the respondent rushing at each other for grappling. It is, therefore, quite likely that the respondent seeing the deceased armed with a knife and also grappling with him and rushing at him, made him feel that if he did not strike the deceased he might strike him and cause grievous injury to him. It can, therefore, not be said that the situation was not such as could give rise to a reasonable apprehension in the mind of the respondent that if he did not attack the deceased grievous injury might be caused to him. If, under the circumstances, the respondent thought that attack was the better part of the defence he cannot be blamed for doing what he did, The second contention of the learned counsel for the appellant, therefore, also falls to the ground.

18. No other point was pressed before us in support of this appeal.

19. We accordingly find no force in this appeal and dismiss it. The respondent is on ball. He need not surrender to his bail. The bail bonds are hereby cancelled and the sureties discharged.