

(1952) 04 GAU CK 0007**Gauhati High Court****Case No:** None

Nowab Ali

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: April 1, 1952**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 100, 103, 104, 149, 302

Citation: AIR 1952 Guw 148 : (1952) CriLJ 1267**Hon'ble Judges:** Ram Labhaya, Acting C.J.; Haliram Deka, J**Bench:** Division Bench**Judgement**

Deka, J.

This is an appeal from jail by accused Nowab Ali who was convicted u/s 304, Part II, Penal Code and sentenced to 4 years" rigorous imprisonment for causing the death of a person by the name of Hamed Ali with a lathi. Six persons including the accused were put under trial and committed to the Court of Sessions and a charge u/s 302, Penal Code was framed against Nowab Ali for causing the death of Hamed Ali and charges u/s 302/149, Penal Code and various other sections were framed against the rest of the accused for causing the murder of Hamed Ali and grievous and simple hurt to Jabed Ali and Kashem Ali respectively. The defence was that Jabed Ali and his party had been quarrelling with Nowab Ali and Hatem Ali from long before the occurrence and that on the date of the occurrence, Jabed Ali with his sons including Hamed Ali forcibly entered into the compound of Nowab Ali and erected a house and while resisted, the complainant and his party not only set fire to the house of Hatem Ali, the nephew of the accused Nowab Ali, but attacked Nowab Ali as well with dao and he sustained a bleeding injury. The main question, therefore, was whether in the exercise of the right of private defence of the property as well as his person, Nowab Ali could inflict a fatal injury or injuries on any of his assailants. Other accused persons having been acquitted, we have only to consider whether Nowab Ali's case had been fairly placed before the jury or whether he has been

prejudiced as a result of some material misdirection in the charge.

2. Nobody having represented before us, we had to peruse the record for ourselves and heard the learned Assistant Government Pleader who Contended that the charge was reasonable and fair.

3. It has, however, been admitted by Mr. Goswami who appeared on behalf of the State that the direction of the learned Sessions Judge was not quite fair and adequate as to the right of private defence available to the accused in the present case. The learned Sessions Judge confines himself solely to the right of private defence exercisable in connection with the property and though at times he referred to the injuries sustained by the accused, he nowhere said that the accused had the right to defend his person even to the extent of causing death when there is a reasonable apprehension in the mind of the person attacked that death will otherwise be the consequence of such an assault or the grievous hurt will otherwise be the consequence of such assault, as provided u/s 100, Penal Code. The learned Sessions Judge confined himself in his directions to the jury to Sections 103 and 104, Penal Code and he opined that the accused will be entitled only to the extent of voluntarily causing the wrong-doer any harm other than death. In this matter, the learned Sessions Judge was certainly wrong and the accused had been prejudiced by such a wrong direction.

4. There is a further fact that there were several injuries on the person of the deceased and the medical evidence is that any of those injuries might cause death. The Sessions Judge nowhere directed that there was scope to hold that the death might be due to some other injury apart from the one the accused Nowab AH was alleged to have inflicted. This was a point that ought to have gone to the jury and this might have affected their decision as to the accused's guilt.

5. There are sufficient materials on the record to hold that the complainant's party were aggressors and the jury accepted their defence to be correct. It is palpable that the accused Nowab Ali was attacked by several persons and he sustained bleeding injury which he said was caused by dao and, therefore, there was reasonable apprehension that he might have suffered grievous hurt or death if he would not resist the attackers. In that view, he cannot be said to have exceeded the right of private defence and were the correct view of law properly placed before the jury, they might have held that the accused did not exceed the right of private defence. We find from the reading of the charge as well as the material portion of the evidence that the accused cannot be said to have exceeded the right of private defence and there will be no use in sending the case back on remand. We, accordingly, allow the appeal, set aside the convictions and direct that the accused should be set at liberty at once.

Ram Labhaya, Ag.C.J.

6. I agree.