

(1994) 09 MP CK 0013

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Revision No. 34 of 1990

Fattu @ Fateh Singh Laljiram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Sept. 7, 1994

Acts Referred:

- Penal Code, 1860 (IPC) - Section 325, 326, 96

Citation: (1995) 40 MPLJ 785 : (1995) MPLJ 785

Hon'ble Judges: Jayant Govind Chitre, J

Bench: Single Bench

Advocate: P.K. Saxena, for the Appellant; G. Desai, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

J.G. Chitre, J.

The petitioner is hereby taking exception to the order of conviction and sentence which has been passed against him by the Judicial Magistrate First Class, Shajapur in Criminal Case No. 479/88 wherein the learned Magistrate convicted the petitioner for an offence punishable u/s 326 of Indian Penal Code and sentenced him to RI for nine months with fine of Rs. 750/- in default further RI for three months which was modified to one punishable u/s 325 of Indian Penal Code by reducing the sentence to RI for three months and fine of Rs. 500/- in default RI for one month by the Sessions Judge, Shajapur in the matter of Criminal Appeal No. 81/89.

The facts of the matter are that on 14-11-1986 at about 4.00 p.m. the petitioner and his father were digging out water channel for irrigating their land from the lands of prosecution witness Manohar, who happens to be the cousin of the petitioner. The field of Manohar was adjacent to the field of the petitioner. It is the prosecution case

that at the time of digging out the said water channel, the petitioner was possessing a mattock and his father was possessing a spade. Prosecution alleged that petitioner assaulted PW Manohar by the said mattock on nose and mouth and caused an injury in which PW Manohar lost his one tooth. As per prosecution case the father of the petitioner, who is dead assaulted the father of Manohar named Ramcharan by the said spade.

After the said assault, the FIR was lodged against the petitioner and his father. Prosecution witnesses Manohar and Ramcharan were medically treated and after investigation the petitioner and his father Ramcharan (Ramkaran) faced trial.

The learned trial Magistrate accepted the prosecution evidence by discarding the evidence of the petitioner and his father that they caused those injuries to PW Manohar and Ramkaran (Ramcharan) in exercise of their private defence. The learned Magistrate held that the act of digging out the water channel from the adjacent field of Manohar was not with his permission and consent.

The Appellate Court held that the act of digging out the water channel was with the permission and consent of Manohar and Ramkaran. He held that the injuries which were caused by the petitioner and his father were falling under the purview of provisions of Section 325 of the Indian Penal Code. However, the appellate Court did not give any finding as to who out of the four, were aggressors and whether the act done by the present petitioner and his father was in exercise of their right of private defence.

The petitioner is hereby approaching this Court in revisional jurisdiction by contending that the Courts below committed an error in not coming to the conclusion that the act committed by the petitioner and his father were in exercise of their right of private defence. He contends in this petition that the acts committed by them were in exercise of their right of private defence and therefore, they should have been acquitted by the Courts below and as it was not done the petitioner should be now acquitted by allowing petition.

I Heard both the learned counsel for the petitioner Shri P. K. Saxena, as well as Shri G. Desai, Dy. G.A. for the State, who made reference to the evidence on record for substantiating their arguments.

It is quite clear from the judgment of the appellate court that appellate Court held that the act of digging the channel from the adjacent field belonging to Manohar and Ramcharan was with permission and consent. In this context the evidence of PW 4 Deokaran is very much important. Devkaran was the only independent eye witness available at that time on this point. He has fully corroborated the contention of the petitioner in respect of it, by saying that petitioner and his father were taking out the water from such channel for irrigating their lands.

Thus, when the Appellate Court concluded that the act of taking the water channel was with the permission and consent of PW Manohar and Ramkaran, it was necessary for the Appellate Court to decide as to who out of them were aggressors. It was also necessary for the Appellate Court to decide as to whether the acts committed by the petitioner and his father were in exercise of right of private defence. As it has not been done by the appellate Court, this Court will have to assess the evidence in this context for the purposes of coming to the just, proper and legal conclusion.

So far as right of private defence is concerned, in the matter of *Puransingh and Ors. v. State of Punjab* AIR 1973 SC 1674, the Supreme Court held that (Para 18) :

"It is not the law that a person when called upon to face an assault must run away to the police station and not protect himself or when his property has been the subject matter of trespass and mischief he should allow the aggressor to take possession of the property while he should run to the public authorities. Where there is an element of invasion or aggression on the property by a person who has no right to possession, then there is obviously no room to have recourse to the public authorities and the accused has the undoubted right to resist the attack and use even force if necessary. The right of private defence of property or person where there is real apprehension that the aggressor might cause death or grievous hurt to the victim could extend to the causing of death or grievous hurt should actually be caused before the right could be exercised. A mere reasonable apprehension is enough to put the right of private defence into operation."

Supreme Court further observed in the same matter :-

"This however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available the individual citizen is entitled to protect himself and his property."

Supreme Court further observed that:-

"There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself of his property and so, he would naturally be anxious to strike a decisive blow in exercise of his right."

Supreme Court further observed that -

"But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a Court room, for instance long after the incident has taken place. That is why in some judicial decisions it has been observed that the means which a threatened person adopts of the force which he uses should not be weighed in golden scales."

In the present matter it has come in the evidence of PW 4 Devkaran that the said quarrel started when the petitioner and his father were digging out water channel from the adjacent field belonging to PW Manohar and his father and at that time PW Ramkaran (Ramcharan) prohibited them in doing so and thereafter a quarrel started between them. It is his evidence that at that time PW Manohar hit the petitioner by a stick which hit the petitioner on his legs. On receiving such blow of stick, the petitioner hurled a stone on PW Manohar and father of petitioner assaulted Ramcharan (Ramkaran) with spade. It is the evidence of Devkaran that at that time he intervened and pacified them. It is also evidence of Devkaran that besides him none was present excluding PW Manohar, Ramcharan on one side petitioner and his father on the other side.

It is pertinent to note that PW Devkaran further stated in his evidence that when PW Manohar assaulted petitioner with stick petitioner Fatehsingh hurled a stone at PW Manohar for the purposes of saving himself and the said stone hit Manohar on his face. He further stated that thereafter there ensued scuffle between Manohar and petitioner in which PW Manohar fell down on the ground. PW Devkaran categorically stated in his evidence that at that time he did not see either the petitioner or his father possessing mattock or spade.

It is important to note that Devkaran has not been disowned by the prosecution as a person hostile to its case. No questions were put to him in the nature of cross-examination for the purposes of showing that he was suppressing the truth and telling some other story. Therefore in view of this aspect of the matter it was for the courts below to appreciate the evidence on record in proper perspective but unfortunately it has not been and therefore this Court will have to assess the evidence for the purposes of doing justice.

When the quarrel started at the instance of Ramkaran, father of Manohar and thereafter Manohar assaulted petitioner with stick, both the petitioner and his father were bound to defend themselves. When such acts were committed by Manohar and his father, the rustic villagers like the petitioner and his father would have been taken aback and in the hot moment of the said incident they might have taken recourse to defend themselves by causing hurt to Manohar and his father. Keeping oneself in the place of petitioner and his father, the acts committed by them will have to be judged. Those acts cannot be judged by dispassionate attitude for the purpose of fixing criminal responsibility. The Court will have to keep in mind that both the petitioner and his father were rustic villagers.

When rustic villagers like petitioner and his father were attacked suddenly when they were doing lawful act, they would be in panic and in it their reflexes would react for defending them motivated by idea of self-defence. They would not act in calculated manner judging minutely pros and cons of their actions. They would try to defend themselves with any weapon of assault which would be available to them for protection. It will have to be judged in prudent way whether their act was motivated with instinct of self defence by giving due consideration to evidence on record assessed as a whole.

The medical evidence in the present matter shows that the tooth of Manohar was lost about 15 days prior to his examination. When the medical officer in this case Dr. Joshi gave his evidence, he stated that the teeth near dislodged tooth were healthy however the gum was swollen and blood was coming out of it. Learned counsel P. Saxena submitted that assessing the medical evidence as whole, the conclusion will have to be drawn. I accept his submission because that will have to be done when it has come in the evidence of Devkaran that a stone was hurled which hit Manohar on his face. The said injury is possible and because of that there can be an injury on the lip, on the socket and tooth and because of that the gum can be swollen. The injury which was on the root of the nose, can be attributable to the act committed by deceased co-accused because as per prosecution case he caused an injury to Manohar near his eyes. That blow would have also caused an injury to the root of the nose which was very near to eyebrow where Manohar also sustained an injury.

When the finding of the Appellate Court is in favour of the petitioner that they were doing the work of digging water channel, when they were obstructed in doing so and they were assaulted initially, both the petitioner and his father were entitled to retaliate by exercising their right of private defence. The learned appellate Court should have come to the conclusion positively that Manohar and his father were aggressors in view of evidence on record. And it was necessary for that Court to come to a conclusion that acts committed by the petitioner and his father were in exercise of right of their private defence in view of the observations made by the Supreme Court quoted supra.

As the Courts below have not appreciated the evidence on record correctly they have landed in error in convicting and sentencing the appellant as mentioned above. That order of conviction will have to be set aside by allowing this revision petition. Hence the following order :

"The petition is hereby allowed. The order of conviction and sentence passed by the J.M.F.C, Shajapur in Cri. C. No. 479/88, which has been confirmed by the Sessions Judge, Shajapur in Cr. A. A.-81/89 is hereby set aside. The petitioner is hereby acquitted. The fine, if any paid by him, shall be refunded to him. No order interfering the order in respect of disposal of property.