
(1955) 08 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Appeal No. 94 of 1954

Dohariya

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 12, 1955

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342
- Penal Code, 1860 (IPC) - Section 300, 302, 304

Citation: AIR 1956 MP 23

Hon'ble Judges: V.R. Nevaskar, J; S.M. Samvatsar, J

Bench: Division Bench

Advocate: Sohoni, for the Appellant; Govt. Advocate, for the Respondent

Judgement

Samvatsar, J.

The accused Dohariya is convicted of an offence u/s 302, I. P. C. and sentenced to transportation for life by the Sessions Judge, Ratlam , Aggrieved by his conviction and sentence, he has preferred this appeal.

2. The accused Dohariya and the deceased Pahadsingh were residents of the village Ojhad, Tehsil Alirampur. There were disputes between them regarding some land and litigation was going on between them for this land before the Revenue Courts. The relations of these two persons were naturally very much strained.

3. On 14-1-1954 the deceased Pahadsingh went to the house of the accused and threatened to beat him and his mother. The mother ran away out of fear, but it is alleged that the accused hit back with an axe and caused to Pahadsingh an incised wound 7"x2"x4" starting from 1/2" in front of the light ear (E. A. M.) to point 6" above the bridge of nose in frontal area. Pahadsingh died on the spot on account of external haemorrhage and shock.

4. One Dasam Bhilala lodged the First Information Report Ex. P/1 at about 4 p.m. on 15-1-1954 at the Palpur police station which is at a distance of six miles from Ojhad. The accused also lodged a report Ex. P/8 at the Alirajpur Police Station which is 16 miles from Ojhad on 15-1-1954 at 7.45 p.m.

5. The accused was arrested and put up for trial. The Sessions Judge Ratlam found him guilty of murder and sentenced him to transportation for life as stated above. The accused has therefore preferred this appeal.

6. There is no eye-witness to the crime, but the main incident is no longer in dispute. The dead body of Pahadsingh was found inside the house of injury as noted in the post injury was sufficient in ordinary course to cause death.

7. The accused was the first person to give information of what had happened to P. W. 3 Bhaya, P. W. 4 Gadriya, P. W. 5 Gullu and P. W. 6 Ramdas, and the evidence of these witnesses is practically the only material on which the guilt of the accused is to be judged.

8. P. W. 3 Bhaya has stated that the accused told him, "The deceased approached me with an axe for beating. The deceased was then twisting his own mustaches. I threw the axe and ran away. I do not know if it hit him". Bhaya is the uncle of the accused and his evidence has been held to be partial to the accused.

9. P. W. 4 Gadriya was also present at Bhaya's house when the accused narrated the incident. According to this witness the accused then said that Pahadsingh went with an axe. He snatched it and throwing it got away.

10. P. W. 5 Gullu who was also present at Bhaya's house has stated that the accused told them that the deceased Pahadsingh went, to quarrel with the accused armed with an axe. He therefore took the axe and struck him (the deceased).

11. In his statement, the accused has stated that the deceased went to his place with an axe in a threatening manner and beat D. W. Welbai, his mother. He thereupon snatched the axe and hurled it towards the deceased.

12. The accused has examined in defence, his mother Welbai who has also deposed that the deceased, Paliadsingh went to the house of the accused, twisting his mustache's and armed with an axe and began to abuse her and her son the accused. She ran away out of fear. She has further stated that there were strained relations between the deceased and the accused and the deceased had beaten her a few days ago.

13. On this evidence the learned Judge found that it was the deceased who had gone to the house of the accused and died of, the injury inflicted by the accused with an axe. This finding is not seriously challenged in this appeal.

14. The learned Judges did not believe the case of the defence that while going to the house of the accused, Pahadsingh had carried any weapon and has held that

even if the deceased had carried an axe the right of self defence did not continue after the axe was snatched away by the accused from the deceased Pahadsingh.

15. The learned Sessions Judge has relied upon the statement of P. W. Kalu to hold that the deceased was unarmed when he went to the hut of the accused. No such inference can be drawn from Kalu's statement. He simply says that the deceased met him while he was returning from the temple, which is near his (Pahadsingh's) house.

At that time the deceased had nothing in his hands. He does not know if the deceased had subsequently carried any weapon. He does not say at what time, Pahadsingh met him and his statement is absolutely incapable of supporting the inference drawn on its basis by the learned Sessions Judge.

16. The prosecution had seized one blood stained axe during the course of investigation as the weapon with which death was caused. That axe is not produced in Court. If it was the axe which belonged to the accused, that fact could have been easily proved. In the absence of the axe and proof of its ownership, the inference will be that it belonged to the deceased. No other axe was also found on the scene of occurrence.

17. D. W. Welbai has stated on oath that the deceased went to her house with an axe. She has not been cross-examined on this point. The learned Judge has based the conviction only on the admission of the accused that he had snatched the axe that Pahadsingh had carried and had hurled it towards the deceased. This admission of the accused cannot be truncated and believed in part and rejected as to the rest.

In my opinion the doubt expressed by the learned Sessions Judge as to whether the deceased was armed with an axe when he went to the house of the accused is quite unfounded. It is established beyond doubt that Pahadsingh had carried an axe when he went to the house of the accused.

18. From the evidence on record it cannot be disputed that the deceased and the accused were not on good terms and the deceased had only 3 days ago beaten Welbai, the mother of the accused. It is also proved beyond doubt that on the date of occurrence the deceased was the aggressor. He had entered the house of the accused armed with a deadly weapon with intent to beat the accused and his mother. Welbai ran away. The accused however snatched the axe from the deceased and hit him with it.

19. The deceased had entered the house of the accused with intent to commit an offence and his act constituted criminal trespass. He also beat or threatened to beat the accused and his mother. The accused was justified in causing harm to the deceased cannot therefore be gainsaid. The harm caused should not be excessive and there must not be greater harm caused than is necessary or the purpose of defence.

The crucial point to be considered is whether the accused had exceeded his right of private defence.

20. The accused has stated in his examination u/s 342, Code of Criminal Procedure that Pahadsingh had beaten him with the rod of the axe and there is nothing on record to bear out even this much. The accused thereafter snatched the axe and hit the deceased with its sharp edge.

The accused was perhaps in a perturbed state of mind by reason of the apprehension of danger and could not be expected to modulate his defence step by step or to measure with very great nicety the force of his blow.

Even if it be assumed that deceased Pahadsingh had actually beaten the accused, it was with the rod of the axe. The axe was thereafter snatched and the deceased was disarmed. He therefore became incapable of causing grievous hurt. There could not be taken reasonable apprehension of any grievous hurt being caused at his hands.

At any rate there is no material to hold like that, Whatever right of self defence the accused had, was under the circumstances clearly exceeded and there was no justification for the accused to hit back the deceased forcibly with the axe. In my opinion accused had the right of self protection but it is clearly exceeded. The accused cannot be therefore acquitted altogether.

21. The next material question to be determined is what offence is committed by the accused.

22. The accused had the right of self protection against the deceased who was the aggressor, but in my opinion, the accused had exceeded it and caused his death without premeditation and without any intention of doing more harm than was necessary for the purpose of his defence. His case is covered by the Except. 2 to Section 300, I.P.C. The conviction of the accused should therefore be altered to one u/s 304, Part 1, I.P.C.

23. Consider the circumstances of this case, I think the accused should be sentenced to rigorous imprisonment for five years.

24. The appeal is partly allowed. The conviction of the Appellant is altered to one u/s 304, Part 1, I.P.C. and his sentence is reduced to rigorous imprisonment for five years.

Nevaskar, J.

25. I agree.