(1915) 08 BOM CK 0021

Bombay High Court

Case No: None

Bechar Anop		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Aug. 19, 1915

Acts Referred:

- Penal Code, 1860 (IPC) - Section 325

Citation: 31 Ind. Cas. 372

Hon'ble Judges: Hayward, J; Batchelor, J

Bench: Division Bench

Judgement

Batchelor, J.

This is an appeal from a judgment of the learned Sessions Judge, of Broach, who convicted the three appellants of voluntarily causing grievous hurt otherwise than on grave and sudden provocation, and u/s 325 of the Indian Penal Code sentenced accused Nos. 1 and 2 to five years" rigorous imprisonment and accused No. 3 to one year"s rigorous imprisonment.

2. The only contention advanced by the learned Pleader on behalf of the appellants was that the learned Judge below should have acquitted the appellants, on the ground that they were entitled by their right of private defence to use the violence which in fact they, did use. The evidence, however, satisfies us that the fight which resulted in the death of one man and in injuries to one or two Mothers, took place in the public street between the accused"s party and the deceased"s party, and that both sides Voluntarily engaged in it. There is every reason to believe that both sides were more or less drunk on the occasion in question, the quarrel having arisen" about a log of wood which was thrown into the Holi fire and the parties belonging to a caste in which it is usual to make the festival of Holi a pretext for intoxication and quarrelling. NoW where both sides voluntarily and deliberately engage in fighting as in the circumstances now before us, it is not, I think, open: to a member of either party to claim the right, of private defence, In Russell upon Crimes (7th Edn.. Vol. I,

p. 810, Bk. IX, Chap. I), the law is stated in; the following words: The law is that if the blow, from the effect of which the deceased, died, was given purely in self-defence, as distinguished from a desire to fight, it is excusable, and it is a question for the Jury whether the prisoner struck the blow in self-defence, or whether he really desired to fight:" see Reg. v. Knock (1877) 14 Cox. 1. And in India we have a similar decision by the Calcutta High Court in Kabiruddin v. Emperor 35 C. 368 : 12 C.W.N. 384 : 7 C.L.J. 359 : 7 Cr. C.L.J. 256 : 3 M.LO.T. 385 where Mr. Justice Rampini says:

I have no doubt that according to the Penal Code no right of private defence arises in circumstances such as those of the present case, when both parties armed themselves for a fight to enforce their right or supposed right and deliberately engaged in very large numbers in a pitched battle, killing one man and wounding others...in the present case the appellants, if they had any right of private defence, which in the circumstances in my opinion they had not, did not act within the legal limits of such right. They did not restrict themselves merely to the use of such force as was necessary to resist trespass. On the contrary, they far exceeded their right, if they had any, for they killed a man and inflicted serious injuries on others.

4. So here, even if it could be shown by the appellants, on whom the onus lies, that they were entitled to the right of private defence--and in my opinion it cannot be so shown--yet it is manifest that they exceeded that right by causing the death of the deceased man on whom no less than eleven injuries were found. But, as I have said in my judgment, this appeal fails: because the right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of. fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them.

5. The convictions must, therefore, be confirmed. But in view of all the circumstances disclosed on the record, I think that the sentences passed upon accused Nos. 1 and 2 may safely be reduced: to sentences of two years" rigorous imprisonment in the case of each.

Hayward, J.

6. I concur.