A

DEO NARAIN

v.

THE STATE OF U.P.

December 11, 1972

[A. ALAGIRISWAMI, I. D. DUA AND C. A. VAIDIALINGAM, JJ.]

B

Indian Penal Code (*Act* 45 *of* 1860), *Ss.* 100 *and* 102—*Right of private defence—Scope of.*

There was a clash between the parties of the accused and complainant over the possession of certain land; in which the appellant inflicted a fatal spear injury on the chest of the deceased. In a prosecution for offences under s. 302 and s. 302/149, I.P.C., the trial court and the High C Court found that the party of the complainant had deliberately come to forcibly prevent or obstruct the possession of the accused persons, and that such forcible obstruction and prevention were unlawful. But while the trial Court acquitted all the accused on the ground that the accused were exercising their right of private defence, the High Court held that the appellant exceeded his right of private defence on the sole ground that he had used his spear with greater force than was necessary, that he had given a dangerous blow with considerable force with a spear on the chest I of the deceased though he himself had only received a superficial lathi blow on his head, and convicted him for an offence under s. 304.

Allowing the appeal to this Court,

HELD: The High Court erred in conviciting the appellant on the ground that he exceeded his right of private defence. [60D-E]

E To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in s. 102, I.P.C. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehnsion of F danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not to remote or distant, danger. This right rests on the principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not a punitive right. If, after sustaining a serious injury there is no apprehension of further danger to the G body then obviously the right of private defence would not be available. [60D-H, 61A]

Therefore, as soon as the appellant reasonably apprehended danger to his body even from a threat (which is real) on the part of the complainant's party to assault him for the purpose of forcibly taking possession of the land in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor H in exercise of that right. [61A-B]

(b) The approach of the High Court that merely because the complainant's party had used lathis, the appellant was not justified in using his spear is equally misconceived and cannot be supported under s. 100,

I.P.C. During the course of malee, like the present, the use of a lathi on the head may very well give rise to a reasonable apprehension that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a lathi as distinguished from the use of a spear must always be held to result only in milder injury, because, a blow by a lathi on the head may prove instantaneously fatal. Therefore, if a blow with a lathi is aimed at a vulnerable part like the head it cannot be laid down as a sound proposition of law that in such cases the victim is not justified in using his spear in defending himself. In such moments of excitement or disturbed mental equilibrium it is difficult to expect parties facing grave aggression to coolly weigh, as if in golden scales, and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression. The view of the High Court is not only unrealistic and unpractical but also contrary to law and in conflict with its own observations, while acquiting the other accused, that in such cases the matter cannot be weighed in scales of gold. [61D-H; 62A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 192 of 1969.

Appeal by special leave from the judgment and order dated April 30, 1969 of the Allahabad High Court in Govt. Appeal No. 1373 of 1966.

U.P. Singh and *Sri Ram Tiwari*, for the appellant.

D. P. Uniyal, and *R. Bana*, for the respondent

The Judgment of the Court was delivered by

DUA, J. This appeal is by special leave and is directed against the conviction of the appellant Deo Narain, by the High Court of Judicature at Allahabad on appeal by the State against the judgment and the order of the Sessions Judge of Ghazipur acquitting five accused persons, including the appellant of various charges including the charge under ss. 302/149, I.P.C. and in the alternative the charge against the appellant under s. 302, I.P.C.

It appears that there was some dispute with respect to the possession of certain plots of land in village Baruara, Police Station Dildarnagar, District Ghazipur. There were several legal proceedings between the rival parties with respect to both title and possession of the said plots. On September 17th 1965 after 12 noon there was a clash between the party of the accused and the party of the complainant. Both sides lodged reports with the police. The appellant Deo Narain, along with Chanderdeo and Lalji, two of the other accused persons acquitted by the trial court, whose acquittal was confirmed by the High Court, went to the police station Dildarnagar and made a report against the complainant's party about the occurrence at about 5.45 p.m. on September 17, 1965 but, as the Station House Officer had already received information from the chowkidar that these accused persons had cased the death of one Chanderama, he took them

into custody. Ram Nagina on behalf of the complainant's party lodged the report with the police station Kotwali which was adjacent to the District Hospital, Ghazipur and did not go to the police station Dildarnagar for making the report because of the long distance. The Sessions Judge, after an exhaustive discussion of the evidence produced both by the prosecution and the defence, came to the conclusion that the possession of the disputed plots of land was undoubtedly with the accused persons. The only further question which required determination by the trial court was, if the complainant's party had gone to the plots in question with an aggressive design to disturb the possession of the accused person by unlawful use of force and if the accused persons had exceeded the right of private defence in beating and killing Chandrama and causing injuries to the other members of the complainant's party. According to the trial court the complainant's party had actually gone to the plots in question for the purpose of preventing the accused persons from cultivating and ploughing the said land. After considering the evidence on the record the trial court felt great difficulty in agreeing with either of the two rival versions given by the prosecution and the defence witness Mangla Rai about the manner in which the *marpeet* had taken place. The learned Sessions Judge, however, considered himself to be on firm ground in holding that the injuries suffered by Chanderdeo and Deo Narain rendered it difficult to believe that they had inflicted injuries with their spears on Bansinarain and others. In his opinion, had the accused persons been the aggressors they would not have abstained from causing injury to Raj Narain who was actually ploughing the field. In view of this improbability the learned Sessions Judge did not find it easy to place reliance on the statements of the prosecution witnesses Tin Taus, Rajnarain, Suresh and Bansinarain. Again, after examining the injuries sustained by the members of both parties, the learned Sessions Judge felt that Deo Narain and Chanderdeo must have received injuries on their heads before they inflicted injuries on the members of the complainant's party. On this view the accused were held entitled to exercise the right of private defence, and to inflict the injuries in question in exercise of that right. On the basis of this conclusion the accused were acquitted.

On appeal by the State the High Court upheld the conclusions of the trial court that the accused persons had the right of private defence and that they were justified in exercising that right. But in its opinion that right had been exceeded by the appellant Deo Narain in inflicting the spear injury on the chest of Chandrama, deceased. Chandrama had received one lacerated wound on the right side of his skull and one incised wound on the left shoulder with a punctured wound 4½" deep on the right side of the chest.

The last injury was responsible for his death. This injury, according to the High Court, was given by the appellant Deo Narain with his spear. The reasoning of the High Court in convicting the appellant is, broadly stated, that it was only if the complainant's party had actually inflicted serious injury on the accused that the right of private defence could arise, justifying the causing of death. In the present case as only two members of the party of the accused persons, namely, Chanderdeo and Deo Narain, appellant, had received injuries which though on the head, were not serious, they were not justified in using their spears. On this reasoning the High Court convicted the appellant, of an offence under s. 304, I.P.C. and sentenced him to rigorous imprisonment for five years.

Before us the appellant's learned counsel has, after reading the relevant part of the impugned judgment of the High Court, submitted that the High Court has misdirected itself with regard to the essential ingredients and scope of the right of private defence. Our attention has been drawn to a recent decision of this Court in *G. V. Subramanyam* v. *State of Andhra Pradesh*(1) where the scheme of the right of private defence of person and property has been analysed.

In our opinion, the High Court does seem to have erred in law in convicting the appellant on the ground that he had exceeded the right of private defence. What the High Court really seems to have missed is the provision of law embodied in s. 102, I.P.C. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant, danger. This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further

(1) [1970] 3 S.C.R. 473

A danger to the body then obviously the right of private defence would not be available. In our view, therefore, as soon as the appellant reasonably apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of
B private defence and to use adequate force against the wrongful aggressor in exercise of that right. There can be little doubt that on the conclusions of the two courts below that the party of the complainant had deliberately come to forcibly prevent or obstruct the possession of the accused persons and that this forcible obstruction and prevention was unlawful, the appellant
C could reasonably apprehend imminent and present danger to his body and to his companions. The complainants were clearly determined to use maximum force to achieve their end. He was thus fully justified in using force to defend himself and if necessary also his companions against the apprehended danger which was manifestly imminent. Again, the approach of the High Court that merely because the complainant's party had used
D *lathis*, the appellant was not justified in using his spear is no less misconceived and insupportable. During the course of a *marpeet*, like the present, the use of a *lathi* on the head may very well give rise to a reasonable apprehension that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a *lathi* as distinguished
E from the use of a spear must always be held to result only in milder injury. Much depends on the nature of the *lathi*, the part of the body aimed at and the force used in giving the blow. Indeed, even a spear is capable of being so used as to cause a very minor injury. The High Court seems in this connection to have overlooked the provision contained in s. 100, I.P.C. We do
F not have any evidence about the size or the nature of the *lathi*. The blow, it is known, was aimed at a vulnerable part like the head. A blow by a *lathi* on the head may prove instantaneously fatal and cases are not unknown in which such a blow by a *lathi* has actually proved instantaneously fatal. If, therefore, a blow with a *lathi* is aimed at a vulnerable part like the head we do not think it can be laid down as a sound proposition of law that in
G such cases the victim is not justified in using his spear in defending himself. In such moments of excitement of disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to coolly weigh, as if in golden scales, and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting
H the unlawful aggression. No doubt, the High Court does seem to be aware of this aspect because the other accused persons were given the benefit of this rule. But while dealing with the appellant's case curiously enough the High Court has denied him the right

of private defence on the sole ground that he had given a dangerous blow with considerable force with a spear on the chest of the deceased though he himself had only received a superficial *lathi* blow on his head. This view of the High Court is not only unrealistic and unpractical but also contrary to law and indeed even in conflict with its own observation that in such cases the matter cannot be weighed in scales of gold.

Besides, it could not be said on the facts and circumstances of this case that the learned Sessions Judge had taken an erroneous or a wholly unreasonable view on the evidence with regard to the right of private defence when acquitting all the accused persons. No doubt, on appeal against acquittal the High Court is entitled to reappraise the evidence for itself but when the evidence is capable of two reasonable views, then, the view taken by the trial court demands due consideration. It is noteworthy that the High Court considered the learned Sessions Judge to be fully justified in acquitting the other accused persons and it was only in the case of the present appellant that the right of private defence was considered to have been exceeded on the sole ground that he had used his spear on the chest of the deceased with greater force than was necessary to prevent the deceased from committing unlawful aggression. Apparently the High Court seems to have implied that the appellant should have used the spear as a *lathi* and not the spearhead for defending himself or should have given a less forceful thrust of the spear or on a less vulnerable part of the body and not on the chest, in order to be within the legitimate limits of the right of private defence. This, as already stated, is an erroneous approach because at such moments an average human being cannot be expected to think calmly and control his action by weighing as to how much injury would sufficiently meet the aggressive designs of his opponents. As a result there is clear miscarriage of justice.

For the foregoing reasons this appeal succeeds and allowing the same we acquit the appellant.

V.P.S. *Appeal allowed.*