

RAM AVTAR AND ORS.

A

v.

THE STATE OF U.P.

NOVEMBER 20, 2002

[Y.K. SABHARWAL AND H.K. SEMA, JJ.]

B

Penal Code, 1860; Sections 224, 225, 302 r/w 149 and 307 r/w 149:

Murder—Injuries to both parties—Right to private defence—Commencement of—Held, Testimony of eye-witnesses clearly shows that danger to the life and liberty of accused did not exist—Under the circumstances, right to private defence not available to them.

C

Injuries sustained by accused—Non-explanation thereof by the prosecution—Effect of—Held, since prosecution evidence clear, cogent and credit-worthy, it could not be rejected solely on the ground of non-explanation of injuries by the prosecution.

D

According to the prosecution, PW1, brother of the deceased, lodged an FIR that two constables of GRP came to the house of his deceased brother enquiring whereabouts of one of the accused-appellant in connection with his arrest in some matter. These constables stayed with him and on the next morning they went along with PW1, his three brothers and others to a Chaupal where they found accused and held him. On raising alarm, relatives of accused came there equipped with weapons and assaulted the two constables and others resulting in the death of one of the brother of PW1 on the spot and other at the hospital. Trial Court found 8 accused persons guilty of committing offences under Sections 224, 225, 302 r/w 149 and Section 307 r/w Section 149 IPC and convicted and sentenced them accordingly. On appeal, High Court affirmed the conviction and sentence, except the conviction and sentence under Sections 224 and 225 IPC. Hence these appeals by the convicted accused.

E

F

G

Dismissing the appeals, the Court

HELD: 1. On reappraisal of the testimony of eye-witnesses PWs. 1, 4, 7 & 8, High Court came to the finding that the accused party have exceeded the right of private defence because right of private defence will

H

A remain limited to the extent it could have been available against a private individual. Relying upon the evidence of PW1 that one of the deceased was found lying dead outside a Baithak, High Court held that if prosecution witnesses had gone to the Baithak where accused was present, the accused already came out and the danger to his life had ceased to exist.

B It also appears from the testimony of PWs.1,4, 7 and 8 that the two constables had withdrawn themselves immediately of an assault on their person. This will clearly show that the so called danger to the life and liberty of accused had ceased to exist. [250-G, H; 251-A-B]

C 2. The complainant party received as many as 40 injuries including the injuries sustained by the two deceased persons, whereas the accused party sustained only 7 injuries. The deceased also sustained injuries. With regard to the injuries sustained by one of the deceased, the prosecution evidence is that he was first assaulted by lathis and when he was running away he was fired upon by fire arms. The injuries sustained by the deceased were first medically examined by Medical Officer-PW2, who was

D of the opinion that there were six lathi injuries and two gun shot injuries on the person of the deceased. And that the nature of the gun shot injuries shows that they could have probably been caused at the time when the deceased was running away. [250-D-F]

E 3. The law is well settled on the subject that where the prosecution evidence is clear, cogent and credit-worthy, mere fact that injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence and consequently the whole case. As noticed, in the instant case, the prosecution evidence is clear, cogent and credit-worthy and admits no ambiguity. [252-E, F]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 613 of 645 of 1994.

G From the Judgment and Order dated 16.9.1993 of the Allahabad High Court in Crl. A. No. 2426, 2427 and 2433 of 1979.

Salman Khurshid, Imtiaz Ahmed, Ms. Naghma Ahmed, Yunus Malik and Lakshmi Raman Singh for the Appellants.

H Arvind K. Shukla, Rasheed Saeed and Pramod Swarup for the Respondent.

The Judgment of the Court was delivered by

A

SEMA, J. These appeals have been preferred by eight appellants, who had been convicted by the learned VIII Additional Sessions Judge, Fatehgarh which had been confirmed by the High Court. The High Court, while confirming the sentence and conviction of the appellants under Section 302 IPC with the aid of Section 149 IPC and Section 307 IPC with the aid of Section 149 IPC set aside their conviction and sentence under Sections 224 and 225 IPC.

B

During the pendency of the appeals, three accused, namely, Saddam s/o Shri Banni (appellant No. 2), Sonpal s/o Shri Punni (appellant No. 3) and Net Ram s/o Shri Parasad (appellant No. 6) expired. Their appeals, therefore, stand abated. These appeals are survived in respect of Ram Avtar s/o Rohan Lal (appellant No. 1), Shambhu s/o Shri Rohan Lal (appellant No. 4), Shivaji s/o Shri Rohan Lal (appellant No. 5), Nek Ram s/o Fauzdar (appellant No. 7) and Kailash s/o Shri Ram swarup (appellant No.8).

C

In these cases, the accused are related. The complainant group is also related among themselves. Accused Net Ram and Rohan are brothers being the sons of Parasad. Accused Ram Avtar, Shambhu and Shivji are sons of Rohan. Similarly, accused Subhash Chandra and Mool Chand are sons of Devi Shankar. Among the injured persons, Raj Narain, Prem Narain, Bhoop Narain, and Brij Narain are brothers. The other injured, namely, Rakesh, Shashi Kant and Vipin are sons of Raj Narain, while Mukesh is the son of Prem Narain.

D

E

Briefly stated the prosecution case is that PW-1 Brij Narain lodged the first information report (exh. Ka 17) that two constables from GRP Kaimganj, namely, Mahtab Singh and Lal Hans had come to the house of his brother Bhoop Narain in the evening of 22.11.76 and disclosed that they had warrant of arrest of accused Ram Avtar S/o Rohan. They sent Bhoop Narain to ascertain the availability of Ram Avtar but he returned with negative information. Next morning, the two constables who had stayed with Bhoop Narain, were informed by Bhoop Narain that Ram Avtar was sitting in the Chaupal of Son Pal Kahar warming himself near the fire. After receipt of the said information, two constables together with Brij Narain Hardwai, Puttu Lal, Bhopal Singh, Rishi Pal, Bhoop Narain, Raj Narain, Prem Narain and Reeti Mal went to arrest Ram Avtar. After pointing out to Ram Avtar, the two constables held him. Saddam and Son Pal were sitting by the side of Ram Avtar. On being held, Ram Avtar raised an alarm calling his father Rohan.

F

G

H

A Thereupon, Rohan along with his two sons Shambhu and Shivji and brother Net Ram and others, namely, Nek Ram, Amar Nath, Kailash, Subedar, Har Narain, Devi Shankar, Mool Chand and Subhash Chand arrived. Out of these Har Narain was holding his licenced gun while Net Ram and Subhash Chand had illicit guns and Mool Chand and Amar Nath had Tamancha. Rohan, Shambhu, Shivji, Nek Ram, Devi Shankar Kailash and Subedar had lathis. B They assaulted the two constables resulting in injuries in their head. Ram Avtar was, thus rescued. Saddam and Son Pal also brought Tamancha from their house. They all began to make fire from their guns and started assaulting with the help of lathis, resulting injuries to different persons and death of Bhoop Narain at the spot. Injured Prem Narain was removed to the hospital C where he died.

During the trial, there was practically no dispute about the factum of scuffle that had taken place except certain variations about the time. Both the courts below have accepted the eye-witness account of PW-1 Brij Narain, PW-4 Raj Narain, PW-7 Bhopal Singh and PW-8 Constable Mahtab Singh. D

In the instant cases, from the evidence on record, it appears that the complainant party received as many as 40 injuries including the injuries sustained by the deceased Bhoop Narain and Prem Narain, whereas, the accused party sustained only 7 injuries. The deceased Bhoop Narain and Prem Narain sustained eight injuries. With regard to the injuries sustained by E the deceased, Prem Narain, the prosecution evidence is that he was first assaulted by lathis and when he was running away he was fired upon by fire arms. The injuries sustained by Prem Narain, deceased, were first medically examined by Dr. R.P. Gupta PW-2 of the District Hospital, Fatehgarh. Dr. F Gupta was of the opinion that there were six lathi injuries and two gun shot injuries on the person of the deceased Prem Narain. He further opined that the nature of the gun shot injuries shows that they could have probably been caused at the time when the deceased was running away. According to him, 'injury No. 7 is a gun shot wound $\frac{3}{4}$ " x $\frac{1}{4}$ " x muscle deep present over the back of right forearm upper 3rd part.'

G On reappraisal of the testimony of PW-1 Brij Narain, PW-4 Raj Narain, PW-7 Bhopal Singh and PW-8 Mahtab Singh, the High Court came to the finding that the accused party have exceeded the right of private defence because right of private defence will remain limited to the extent it could have been available against a private individual. Relying upon the evidence H of PW-1 Brij Narain that Bhoop Narain was found lying dead outside the

Baithak of Son Pal (Kahar), the High Court had held that if the prosecution witnesses had gone to the Baithak of Son Pal where Ram Avtar and others were warming themselves, he had already come out and the danger to the life had ceased to exist. It also appears from the testimony of PWs. 1, 4, 7 and 8 that the two constables had withdrawn themselves immediately of an assault on their person. This will clearly show that the so called danger to the life and liberty of Ram Avtar had ceased to exist.

As already noticed, the High Court, on reappraisal of the entire evidence on record, particularly of PWs. 1, 4, 7 and 8, has come to the following findings:

“It has been stated by all concerned Brij Narayan, Bhopal Singh and Raj Narayan as also constable Mahtab Singh that the two constables had withdrawn themselves immediately of an assault on their person. This also means that the so called danger to the liberty of Ram Awatar had ceased to exist. Then again, it was shown in the cross-examination of PW-1 Brij Narayan that Prem Narayan got the gun injury when he was in the lance behind the Baithak of Sonpal. When a person even if he was aggressor has gone back and reached back of the house where he had gone for aggression, the right of private defence would not continue. This right is always limited to the extent that it can repel the aggressor, it is not a matter of defence but a matter of retaliation which cannot be permitted for looked upon with an eye of approval. Even the person who made fire upon Prem Narayan had come out from the Baithak of Sonpal and is shown to have been on the Chabutra, possibly belonging to Brij Nandan, son of Punni. It has also been made out in his cross-examination that when Rakesh, Shashikant, Bipin and Mukesh arrived, Bhoop Narayan, Revti Raman and Prem Narayan were already lying on the earth surrounded by the accused persons. This means that they had not only over powered Bhoop Narayan, Revti Raman and others but were in a domination situation but despite that these villagers have been given injuries including gun shot wounds. This simply shows that the incident was not limited at the stage of self defence. Even if the earlier act was aggression by the complainant group, the accused group has not confined itself to the mere residence to save its life and liberty but has gone to the extent of complete retaliation, for which they would have no right. Further existing right of private defence can be at times against an individual only but it cannot form the

A matter of common intention at all. The situation in this case is a little
bit abnormal. Nothing has been said as to who had, in fact acceded
the right of private defence. The right of private defence could be
available at best to Ram Awatar, Son Pal and Netram and may be to
other persons who had arrived on the alarm raised by Ram Awatar or
B for any reason but then the right of every person will be limited to
save his own in so far as the injuries are concerned and to save the
person of Ram Awatar from illegal arrest and by no stretch of
imagination it can take the shape that all persons had a right to finish
the aggressor group. An individual action in exceeding right of private
C defence may be tolerated but where the entire group behaves in a
manner acceding that right, it is a matter of aggression on their own
part with common intention of retaliation.”

Mr. Salman Khurshid, learned senior counsel has taken pain to take us
to the entire evidence again which, in our view, is a mere repetition of what
has been discussed already by two courts. We are unable to persuade ourselves
D to take the view contrary to the views already taken by two courts.

Lastly, learned senior counsel for the appellants faintly submits that the
injuries sustained by the accused have not been explained by the prosecution,
which will affect the prosecution case. The law is now well settled on this
subject that where the prosecution evidence is clear, cogent and credit-worthy,
E mere fact that injuries are not explained by the prosecution cannot by itself
be a sole basis to reject such evidence and consequently the whole case. As
noticed above, in the instant case, the prosecution evidence is clear, cogent
and credit-worthy and admits no ambiguity.

F For the reasons aforestated, there is no merit in these appeals, which
are accordingly dismissed. The appellants are on bail. Their bail bonds are
cancelled. They are directed to surrender to the bail and serve out the remaining
part of sentence.

S.K.S.

Appeals dismissed.