
(1949) 01 CAL CK 0022
In the Calcutta High Court
Case No : Criminal Revision No. 954 of 1948

Ashutosh Hait

APPELLANT

Vs

Indra Hait

RESPONDENT

Date of Decision : 14-01-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 99

Citation : AIR 1952 Cal 217

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : N.K. Basu and Siddheswar Chakravarty, for the Appellant;

Judgement

Sen, J.—This Rule has been obtained by the accused petitioner who has been convicted of having committed the offence of hurt with a dangerous weapon, to wit, a gun and sentenced to pay a fine of Rs. 100/- in default to undergo rigorous imprisonment for two months.

2. The case against the accused briefly is as follows: There was a certain piece of land which was in the possession of the complainant who ploughed it. On the day of the occurrence the accused Ashutosh Hait armed with a gun came on the land accompanied by others armed with spears and lathis and began to beat the complainant. The accused then said that he would shoot the complainant unless he left the land. On the complainant refusing to leave the land the accused fired a shot at him but missed. The complainant then began to run away when another shot was fired and it hit him on the leg. On these allegations the complainant charged the accused and others with having committed various offences punishable under the Indian Penal Code including those of rioting and hurt. The trial Court acquitted all the accused persons except the accused Ashutosh Hait. The learned Magistrate disbelieved the story of the complainant. He held that the land belonged to the accused and that the complainant and his party wrongfully entered upon the land and tried to take forcible possession. The accused objected and he has chased. He ran into his house being followed by the

complainant and his party who scaled the wall of his house. The accused then fired a shot in the air and thereafter another which hit the complainant on the back of the leg. Upon these findings the trial Court held that the accused had the right of private defence but that he had exceeded it in firing at Indra Hait when he was running away. He held that the position of the wound indicated that Indra was shot from behind. Against this decision there was an appeal. The learned Additional Sessions Judge found the complainant's story to be false and he held that the Magistrate was perfectly justified in acquitting all the accused who had been charged with rioting and allied offences. He held that the complainant had failed to prove that he was in possession of the plot. He then went on to consider whether the accused had the right of private defence and whether he had exceeded such right. By a process of reasoning which I must respectfully but frankly say does not appear to be clear he finds that the accused had not the right of private defence. Then he goes on to say that in any case that right had been exceeded. In my opinion the accused on the finding arrived at by both the Courts had clearly established the right of private defence. The fact that a shot entered the back of the leg of the complainant cannot by itself show that the right was exceeded. There may be 101 reasons why the shot entered the back of the complainant's leg. When firing at the crowd some of whom were advancing and some were retreating a shot may every well hit one of the retreating persons. That would not indicate that the person threatened by the crowd was exceeding his right of private defence. Again the complainant may have just turned away at the very moment that the shot was fired thus causing the bullet to enter the back of his leg. Prior to that he may have been advancing towards the accused. The accused in such a case would be justified in firing and it could not be said that because the shot entered the back of the leg of the complainant it indicated that the right of private defence had been exceeded. I hold therefore that the accused had the right of private defence and that he did not exceed it.

3. The order of conviction and sentence is bad and is set aside. The Rule is made absolute. The fine, if paid, shall be refunded.