
(1981) 04 GAU CK 0002
In the Gauhati High Court

Bayadas Bowri

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 23-04-1981

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 100, 302, 96, 97

Citation : (1982) CriLJ 213

Hon'ble Judges : S.M. Ali Mohamed, J;K.M. Lahiri, J

Bench : Division Bench

Judgement

K. Lahiri, J.—In a Welfare State the stance of the Public Prosecutor must be in harmony with the Preamble, the Directive Principles and in symphony with the threefold pillars of Article 21 of the Constitution? "fair, just and reasonable". A Public Prosecutor under the Constitutional Law as well as the Criminal P. C. must have the strength "not to disown the poor or bend his knees before the insolent might". He should have strength to raise his mind high above the daily strifes and surrender his strength that he derives from law to the services of the people with love. Lawyer's assistance is invaluable to a Judge and Justice may be defeated if the Public Prosecutor fails to lay all the cards fairly and squarely before the Court to enable it to look into the materials in the midst of voluminous records. A judgment is the reflection of the learning of "the Bar" and is a contribution of the lawyer. Justice is blind - "Justice discards party, friendship and kindred and is, therefore, represented as blind" ("Joseph Eden "The Spectator"). A Judge is not interested in either of the party to the litigation - the State or the subject. It is immaterial who Wins or loses. The prime duty and concern of judiciary is "to do justice within the four corners of law". However, often judges struggle for justice confronted with laws which at first blush may not appear to be in conformity with justice. At this juncture lawyer's assistance is an invaluable asset to the Judge. A Public Prosecutor is appointed by the State to uphold its case but not "to trample justice". The duty of the Public Prosecutor is not to win a case by hook or by crook. "Persecution" cannot be the object of a Welfare State

nor the aim and object of the Public Prosecutor be projected to achieve that end. A Public Prosecutor must be "an open book". Fair, just impartial and ever ready to unfold all material facts fairly and squarely to uphold the cause of justice, no matter in whose favour justice flows. In the instant case, we are charmed by the conduct of Shri Achyut Chandra Deka who has done his constitutional duty and performed his obligation in the true spirit of the Constitution and the law. He has assisted a disabled indigent accused "in the year of disabled persons", placed before us all facts in favour of the State as well as the indigent accused. He has acted in the true tradition of the noble profession to which he belongs. We deem it our duty to record our satisfaction and proceed to dispose of the case on its merit.

2. The appellant is an indigent, belongs to backward classes (a tea garden labourer) and he had lost his right palm and was a disabled at all relevant period. He has been convicted u/s 302, IPC and he is "a lifer" i.e. sentenced to imprisonment for life.

3. We narrate the case of the prosecution emanating from the records. On 27-3-1975 at about 8.30 PM at Chinamara Tea Estate, Jorhat the accused dealt a knife blow on Madhu Tanti which proved fatal. The accused was arrested by the police, who submitted "a remand report" to the Magistrate wherein they stated clearly that the accused had several injuries on his person and prayed to the Magistrate to medicate the accused by medical-man. On 28-3-1975 the learned Magistrate, on perusal of the Police Report and observing the injuries ordered that the accused must be examined by a doctor while in jail custody. At this stage it is pertinent to refer that we hunted for the medical report about the injuries of the indigent accused. The learned Public Prosecutor as well as Mr. R. P, Kakoty who defended the undefended accused as "amicus curiae" combed the records but failed to dig it up. It disappeared in a thin air, perhaps for the reason that the accused belongs to a listed class, indigent and is socially and economically backward. We do not find any other reason for non-production of such a weighty document. Failure to produce and prove the documents and non-examination of the medical man who examined the indigent person in jail is "a bizarre phenomenon" to use a soft expression. We feel like expressing that it is "atrociously shocking". Later, the accused was produced for recording his statement. Honest as he was he made a clean breast of the entire story, took upon himself the responsibility. He stated that it was "Holi Festival Day" and while returning home he met the accused (deceased ?) and complained to him why he had unfairly reported against some poor workmen, which might result in termination of their services. He pleaded for the poor but in return he was attacked by Madhu who caught hold of his throat, pulled him and gave thrust. We must recount at this stage that the accused was one-handed person. Madhu was not content with fistal forays but pulled out a bamboo post from a fencing and attempted to club the accused on his head who covered it by his only able hand (left hand) and the thump crashed down on his hand, he sustained injuries. Madhu struck him again in lower part of his body, he sustained thigh injury then

he claims that he used force in snatching away the bamboo post and dealt a blow in defence of his persons and took to his heels to return and surrender. Police investigated the case on receipt of the First Information, examined witnesses, a host of witnesses were examined in Court. Queerly the learned Sessions Judge framed the charge against the accused for "intentionally caused the death of Madhu Tanti by assaulting him with a dao". It shows clear casualness on the part of the persons responsible for framing the charge. The unmistakable case of the prosecution was that the accused had dealt "only one blow with a knife "measuring about 6 (six) inches in length. We find that it is just the size of a pen knife. Why this sluggishness ? Was it because the accused was an indigent person? What prevented the learned Judge to go through the records, and scrutinise the order of the Magistrate dated 28-3-1978. Witnesses were examined before the learned Sessions Judge and the Judge convicted the accused turning down "the plea of self-defence" put forward by the accused.

4. It is the prosecution case itself that at the time when the incident happened nobody was present except the deceased and the accused. The accused claims that he was mercilessly assaulted by the deceased with a bamboo post, sustained "bodily injuries" whereupon he exercised his "right of private defence." It is also the prosecution case that the left-handed appellant dealt only one blow and made good his escape. No second blow was given. The case entirely depended on "the dying declaration of the deceased" wherein the deceased uttered that the accused was his assailant. The evidence is fortified by the statement of the accused in his confession read with his avowals in Court recorded by the trial Judge.

5. Now let us turn to examine who was the first assailant the respective physical capacities and incapacities of the combatants. The deceased was an able-bodied person aged about 30 years whereas the accused is a one handed person. The only person to speak about the quarrel leading to the incident is the accused who supplies the motive - the cause that infuriated the deceased. The accused pleaded the right of private defence. The prosecution itself relies on the declaration of the accused. It has not shown that the story of the accused that he was mercilessly "beaten up" by Madhu was false. If we turn to the records we find enough corroboration in the police report as well as the order sheet of the learned Magistrate which clearly and specifically show that the accused sustained several injuries on his person so much so that even the police officer had to pray for his medical examination and the Court passed the order accordingly. No explanation appears from any quarter regarding non-production of the medical report or non-examination of the doctor who examined the accused in jail custody. Under these circumstances we are impelled as well as compelled to draw conclusion that the doctor found grievous injuries on the person of the accused. The injuries on the accused prove that he was assaulted first. He sustained a number of injuries and the version as to the manner of assault including the bleeding injuries establish that the poor disabled accused had the right to defend himself against the onslaught.

6. Now, the question is whether the accused exceeded his right of self-defence. The question as to whether a person has exceeded his right of private defence cannot be weighed in a platinum scale. Considering the fact that accused was disabled, has sustained several injuries by a bamboo post and thereafter inflicted only one blow establish that the accused never exceeded his right of private defence of his person. The right of private defence of person is a statutory right. The question of excess does not arise in the instant case as it was a question of "life or death". The accused had to act in quick reflection. Sitting in cosy chairs hundred miles away from the place of occurrence it would not be justified to say that he should have taken to heels or ought to have taken other resorts. We do not consider it to be an unreasonable or rash act to use a pen-knife to escape death as an act done in excess. Unfortunately, the blow fell on a vital part of the body of the deceased. It was a fight for life and the blow was given during a sudden quarrel; the adversary was uneven (sic) and stronger. All these factors eloquently show that the accused was within his right of self-defence contemplated Under Sections 96 and 97, IPC We are constrained to hold that the case of the accused is fully covered by Section 100 of the IPC We are sure that the assault made on him and/or contemplated to be inflicted on him by Madhu (deceased) must have caused real apprehension that the consequence of such assault would be death or grievous hurt. The case falls u/s 100 First, as well as Secondly, of the IPC

7. In the result the appeal is allowed. The conviction and sentences are set aside and the appellant shall be set at liberty forthwith.

8. We bottom our judgment with a short foot-note that Shri R. P. Kakoty, who conducted the case of the undefended accused as "amicus curiae" acted splendidly and deserves our appreciation.