
(2000) 05 MP CK 0028
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 787/89

Jagjivan Lal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 308, 324

Citation : (2000) 4 MPHT 375

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : A. Pawar, for the Appellant; Ashok Tiwari, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra, J.—This appeal has been filed by Jagjivan Lal who has been found guilty of offence u/s 308, IPC and sentenced to undergo R.I. for 3 years and for causing injury to Satishchandra he has been convicted u/s 324, IPC and sentenced to undergo R.I. for one year. He has been further convicted u/s 324, IPC for causing injury to Ramakant and sentenced to undergo R.I. for one year. Sentences were ordered to run concurrently.

2. Prosecution case briefly narrated points out that on 14-8-85 at about 12 O'clock accused was the member of unlawful assembly, the common object of which was to cause death of Sharadchandra and cause simple injury to Satishchandra and Ramakant. The accused was carrying knife at the relevant time and caused injury deliberately to Sharadchandra. He also caused injuries to Satishchandra and Ramakant. One of the accused tried to fire from country-made revolver. According to the prosecution case when Satishchandra, Sharadchandra and Jawaharlal Tamrakar were going on a motor-cycle from their house towards bus-stand and when they reached the house of Balkumar Gupta, on account of previous enmity, the motor-cycle was stopped by the accused persons. Sharadchandra stopped the motor-cycle. Accused Jagjivan Lal abused

him and inflicted one injury by knife which hit him on left side of chest. Satishchandra asked him not to indulge in such act, on that he was also abused and inflicted injury by Jagjivan Lal on left shoulder by knife. Ramakant Tiwari also came on the spot, who was also assaulted by Jagjivan Lal by knife. Ajaja, co-accused fired, but, did not hit anybody. Other accused persons armed with lathis started beating Sharadchandra, Satishchandra, Jawahar and Ramakant, injuries were caused to them. They were taken to Mangawan Hospital, where they were examined by Dr. D.P. Pandey who submitted the reports vide Exs. P-1 to P-3. Injury caused to Sharadchandra was certified to be dangerous to life and he was referred to G.M. Hospital, Rewa. Report was lodged of incident at Police Station, Civil Lines, Rewa from where the same was sent to Police Station, Mangawan. Investigation was set in. The injury report from doctor was obtained, statements of witnesses were recorded. Sharadchandra, whose condition was critical, had been admitted in Gandhi Memorial Hospital, where by operation Dr. S.C. Sinha stopped the bleeding and operation note was prepared on his instruction by Dr. A.K. Verma vide Ex. P-8. During the investigation blood soiled clothes of Sharadchandra, Satishchandra and Ramakant which were obtained from Primary Health Center, Mangawan, were seized and spot map was got prepared by Patwari.

3. Certain accused persons were absconding initially. Challan was filed in their absence. After their arrest, after committal, separate Sessions Trial was registered. Thus two Sessions Trial were going on vide S.T. No. 126/85 and S.T. No. 60/86. Both were tried together and decided by common judgment of the trial Court.

4. The accused took the defence that Jagjivan Lal was sitting in the shop of Raju Tailor, at that lime Sharadchandra, Satishchandra and Jawaharlal came on motor-cycle and attacked on him. Sharadchandra had caused several knife injuries by knife to Jagjivan Lal and Satishchandra had caused injury by country-made revolver, at which he had wielded scissor, due to which Sharadchandra had also received injuries.

5. Counter case against the complainant party was registered for offence u/s 307, IPC and was tried vide S.T. No. 2/86 and S.T. No. 26/86. All were taken together for decision. Cross appeal arises out of the same incident, i.e., Cr. A. No. 739/89, is also being decided together.

6. Learned counsel for the appellant has submitted that it is a case where an offence u/s 308, IPC is not made out. He has submitted that the accused was exercising right of private defence, hence, no conviction could be recorded.

7. Learned counsel for the State has submitted that it is a case where the complainant were not aggressor. Injured complainants were going on motor-cycle. They were stopped and assault was made to kill them, but, conviction which has been recorded under Sections 308 and 324, IPC for causing injuries to three persons calls for no interference.

8. It may be seen that Sharadchandra has suffered the following injuries:

(1) Incised wound 1" x 1/2" on the left side of chest.

He was unconscious, pulse was absent, B.P. was not recordable, respiration deep was 30 per minute. The injury was certified by the Doctor to be dangerous to life, as deposed by Dr. D.P. Pandey (P.W. 1). However, depth could not be measured and it required immediate surgical treatment and surgery was performed.

9. Injured Satishchandra had suffered the following injuries :

(1) Incised wound 2" x 1/2" x 1/4" on the posterior aspect of body right side.

(2) Incised wound 1/4" x 1/4" x 1/4" on the left thumb caused by sharp edged weapon.

(3) Abrasion 1/2" x 1/4" on the posterior aspect of body on the left side.

(4) Abrasion 1/4" x 1/4" on the left side of forehead.

10. Injured Ramakant Tiwari had suffered the following injuries :

(1) Incised wound 1/4" x 1/4" about 1/4" on the dorsal aspect of right wrist joint.

(2) Incised wound 3" x 1/2" x 1/4" on the right arm.

(3) Incised wound 1/2" x 1/4" x about 1/4" on the left side of chest.

(4) Incised wound 1/4" x 1/4" x 1/4" on the lateral wall of right side of nose.

(5) Lacerated wound 1/4" x 1/4" x 1/4" on the right side of scalp.

11. There is overwhelming evidence on record to show that the accused was carrying knife and he caused injuries to three injured persons and that was not disputed. But, the submission of learned counsel is that he was exercising right of private defence. Trial Court has given benefit of doubt to other accused persons. The trial Court has even given a finding in Para 30 of the judgment that accused appears to have exercised in right of private defence. On the person of Jagjivan Lal 10 injuries/wounds were found as follows :

(1) Incised wound 2" x 1/2" x about 1/2" on the Deloid region of posterior aspect.

(2) Incised wound 2 & 1/2" x 1/4" x 1/4" on the left side of chin.

(3) Lacerated wound 2" x 1/4" x upto bone on the left side of scalp; on the left parietal bone.

(4) Lacerated wound 2" x 1/4" x up to bone on the left side of scalp on the posterior 1/3rd of parietal bone.

(5) Incised wound 2" x 1/2" x about 1/41" on the posterior aspect of body left side at scapular region.

(6) Incised wound 2" x 1/2" x about 1/4" on the left side of posterior aspect of chest.

(7) Incised wound 2" x 1/2" x about 1/4" on the right scapular region.

(8) Incised wound 1" x 1/4" x about 1/4" on the right acromian scapular region.

(9) Incised wound 2" x 1/2" x about 1/4" on the posterior aspect of right D. muscles.

(10) Incised wound 1/2" x 1/4" x about 1/4" near left clavicle.

Most of the injuries were caused by sharp cutting object found on the person of appellant Jagjivan Lal.

12. Sharadchandra Tiwari (P.W. 9) had deposed that when he fell on ground injuries were caused by accused. He took out RAPI lying at the shop of cobbler and inflicted several RAPI injuries to Jagjivan Lal. The trial Court has come to the conclusion that 8 injuries caused by Sharadchandra were of serious nature, he could not have inflicted these injuries to Jagjivan Lal after being injured. Thus, it was unnatural to accept that Sharadchandra had inflicted these injuries to accused Jagjivan Lal first and thereafter Jagjivan Lal had inflicted injuries in his self defence by knife. The categorical finding to this effect has been recorded by the trial Court in Para 47 of the judgment. It has been found that the injury was inflicted in the self defence, but, right was exceeded. It is settled law the view adopted by the trial Court as regard to that injuries were inflicted in the self defence appear to be justified and based on evidence on record. However, it appears that the trial Court has committed error of law in holding that the person who had suffered as many as 10 injuries, most of them were incised wounds on various parts of body, has inflicted only one injury by knife, he had exceeded his right of private defence of person.

13. Learned counsel has relied on various decisions. It is trite law that right of self defence cannot be weighed in golden scales. Reliance was placed by learned counsel on a decision of Supreme Court in case of Buta Singh Vs. The State of Punjab, . In the said case injuries caused to both sides. All the injuries caused to deceased were caused by appellant Buta Singh, which was not the prosecution case. Besides, even if it were so, having regard to the nature of the incident, it was held that it is difficult to say that he exceeded the right of private defence for the obvious reason that he could not have weighed in golden scales in the heat of the moment the number of injuries required to disarm his assailants who were armed with lethal weapons. In the instant case only one injury was caused to injured Sharadchandra and other injuries suffered were minor injuries by two other injured persons. Thus, it cannot be said that the accused had exceeded right of private defence.

14. Learned counsel has further relied on a decision of the Supreme Court in case of Abdul Kadir and Others Vs. State of Assam, . In the said case two of the accused persons were badly beaten and they suffered grievous injuries. It was

held that the accused persons were entitled to right of private defence of the body and property to cause death. In the instant case death has not taken place, only grievous hurt has been caused as compared to the injuries on accused and injuries were suffered by the other injured and number of persons were involved in cross case.

15. Learned counsel has also relied on decision of the Supreme Court in case of Deo Narain Vs. The State of U.P., wherein it has been laid down that for exercising the right of private defence it is not necessary that the party exercising it must have actually received some injury at the hands of the aggressor. It is a preventive and not punitive right. In the instant case injuries have been suffered. The case stands on the better footing. Reliance has also been placed on the decision of the Supreme Court in case of Bahadur Singh and another Vs. State of Punjab, where it has been held that accused in view of their specific plea and injuries are entitled to be given benefits of right of self-defence. Another decision of the Supreme Court in case of State of U.P. Vs. Niyamat and Others, has been placed into service, where certain persons trying to rescue person illegally arrested and being carried away by police, during night - They following police from a distance - Attack on police, resulting in death of one accompanying police, launched only after one constable fired three shots one after another, it has been held that attackers were protected by right of private defence.

16. In view of the deposition of injured Sharadchandra himself, right of self defence is clearly made out. Injured was armed with a weapon. His case of bringing a RAPI is not borne out. It appears that the complainant party was aggressor and accused has exercised right of private defence. The injuries found on the person of appellant go to show that he was severally beaten and right of self defence clearly made out.

17. Thus, the appeal is allowed. The appellant is acquitted of the charge u/s 308, IPC so also u/s 324, IPC for causing injuries to other two injured persons.