
(1982) 04 RAJ CK 0031
In the Rajasthan High Court
Case No : Criminal Appeal No. 79 of 1977

Jawaharlal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-04-1982

Acts Referred:

Penal Code, 1860 (IPC) — Section 100, 147, 148, 307, 326

Citation : (1982) WLN 55

Hon'ble Judges : Kanta Bhatnagar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—In the trial conducted by the Sessions Judge, Udaipur for the offences under Sections 307, 147 and 148, Indian Penal Code five accused were acquitted of the charges while the appellant Jawaharlal was held guilty for the offence u/s 326, Indian Penal Code and sentenced to one yaer"s rigorous imprisonment and a fine of Rs. 500/- in default to undergo six months" rigorous imprisonment.

2. Being dis-satisfied with his conviction and sentence the appellant has preferred this appeal in this Court

3. Briefly stated the facts of the case leading to the trial of the appellant and the present appealare as under:--Kishanlal, father of the appellant and Dalchand, are real brothers. On 1-12-1974 at 6 p.m. Jawaharlal son of Kishanlal caused injury with a stone on the eye of Chunnilal son of Dalchand. Champalal, brother of Chunnilal, on seeing his brother injured, went to the police outpost and informed the police constable there. Thereafter Champalal went to his house to have the cycle to take his brother Chunnilal to the hospital. Jawaharlal appellant and co-accused Geharilal and Kishanlal (acquitted by the trial court) caught hold of Champalal and took him inside their house. Motibai, Amba Bai, and Mohani Bai three ladies of the family of Kishanlal were also there. It is alleged that

Jawaharlal inflicted axe-blows to Champalal and the five co-accused caused lathi-injuries to him. On raising a cry his father Dalchand and cousins Ramlal and Ganeshlal also reached there inside the house of Jawaharlal. Champalal and Dalchand received injuries. Both of them along with Chunilal, who is said to have sustained injuries a little while before, were taken to the General Hospital, Udaipur where Dr. R.K. Katara, Medical Jurist examined their injuries. The Medical Jurist telephonically informed Sebir Mohammed, Station House Officer, Police Station, Bhopal pura about a medico legal case and Champalal being admitted in the hospital because of the injuries sustained by him. The Station House Officer reached the hospital and recorded the statement of Champalal. On the basis of that statement first information report was chalked out. The Station House Officer went to the site and conducted necessary investigation. Upon completion of investigation charge sheet against the appellant and five others was filed in the Court of Munsiff Magistrate, Udaipur. The learned Magistrate finding a prima facie case exclusively triable by the Court of Sessions committed the appellant and the co-accused to stand their trial in the Court of Sessions Judge, Udaipur. The learned Sessions Judge, as stated earlier tried them for the aforesaid charges and five co-accused were acquitted and the appellant was convicted and sentenced as stated above.

4. The learned Counsel for the appellant strenuously contended that the learned trial Judge was in error in picking out certain portions of the statements of the prosecution witnesses while disbelieving the major part of the prosecution case. Another ground for assailing the findings of the learned Trial Judge is that in view of the injuries sustained by Jawaharlal appellant his father Kishan Lal and mother Mod Bai, the learned Judge should not have held that Jawaharlal appellant had exceeded the right of private defence available to him.

5. The learned Public Prosecutor controverting these contentions submitted that the number and nature of injuries sustained by the appellant and his family members do not justify causing as many as 14 injuries to Champalal, 4 to his father Dalchand and 2 to his brother Chunnilal. According to the learned Public Prosecutor the learned trial Judge has looked into the evidence on record in its proper perspective and has rightly held that right of private defence can be said to have accrued to the appellant but the circumstances did not warrant causing grievous injury with sharp edged weapon to the leg of Champalal and that there being specific evidence about Jawaharlal being the author of that injury the conviction and sentence for the offence u/s 326, Indian Penal Code calls for no Interference.

6. The prosecution case relates to two incidents: first, regarding the injury caused by Jawaharlal to Chunnilal at about 6. p.m. with a stone outside the houses of the parties. The learned Trial Judge, after discussing the evidence of Chunnilal and other circumstances of the case, did not believe this story of the prosecution to be true. The second part of the prosecution case relates to the incident inside the house of Jawaharlal appellant. The learned Judge did not

believe the prosecution case that Champalal had gone to inform the police and P.W. 8 Dharma Ram constable had reached the site. The presence of Dalchand, father of Champalal and the alleged eyewitnesses Ganeshlal, Manoharlal and Ramlal reaching the house of the appellant on hearing the cries of Champalal has also been disbelieved by the learned Trial Judge. The learned Judge has given cogent reasons for disbelieving the prosecution case as coming forth from the evidence of injured Champalal, Dalchand and the other eye-witnesses to the occurrence. Regarding the injuries of Chunnilal and Dalchand the finding of the learned Trial Judge is that it cannot be said as to who was the author of those injuries. Champalal has sustained 14 injuries, three of which are incised wounds assigned to Jawaharlal appellant. Out of those three incised wounds, one on the leg is grievous in nature. The learned Trial Judge after discussing the evidence regarding the infliction of injuries to Champalal has arrived at a conclusion that in view of the facts and circumstances of the case the assailants can be held liable only for their individual acts. The reason for this conclusion given is that the complainant party appears to have entered the house of the appellant with an intention to give a beating. The learned Trial Judge however arrived at a specific conclusion that at least one injury by sharp edged weapon on the leg of Champalal can be attributed to the appellant Jawaharlal. The learned Judge was of the opinion that there was no necessity for Jawaharlal to use sharp edged weapon with such force so as to cause grievous injury to Champalal and therefore it was held that the appellant had exceeded the right of private defence.

7. It is pertinent to note that the prosecution has not explained the injuries sustained by the appellant, his father Kishanlal and his to the Shrimati Moti Bai. The learned Trial Judge has held the place of occurrence to be inside the house of Jawaharlal and Kishanlal. In the absence of explanation regarding the injuries sustained by the accused appellant Jawaharlal and his family members the learned Trial Judge has given his own idea as to how the incident might have occurred. The learned Counsel for the appellant vehemently stressed that the learned Trial Judge should not have, on the basis of conjectures and surmises, opined that after Champalal sustaining the injuries Dalchand other persons reaching the site might have caused injuries to the appellant and others, or that these persons might have sustained injuries in the scuffle. Learned Counsel emphatically argued that when the prosecution case is disbelieved on material points the learned Judge should not have picked up a few words of the witnesses to hold the appellant liable to conviction for one injury caused to Champalal.

8. The learned Trial Judge has arrived at a conclusion that at least one injury of Champalal can be assigned to Jawaharlal. He has also considered the possibility of Jawaharlal causing injuries to Champalal in order to save his father from the attack by Champalal. In this view of the finding of the learned Trial Judge the important question for determination before this Court is that Jawaharlal appellant had exceeded the right of private defence to person.

9 Dr. B.K. Katara, Medical Jurist has noted 14 injuries on the person of

Champalal. Five of them are lacerated wounds, one is haematoma, three are incised wounds and remaining are bruises, abrasions etc. As stated earlier, Jawaharlal has been held responsible only for the incised wound on the left leg of Champalal which according to X-Ray Report was grievous in nature. The same doctor has examined on the same day Kishan, Moti Bai and Jawaharlal. Kishan had one incised wound and 2 abrasions. Moti Bai had 1 incised wound and 1 abrasion and Jawaharlal had 1 incised wound. The incised wounds were by sharp edged weapon and the abrasions by blunt object. All the injuries were simple in nature.

10. The point for consideration is whether without there being any grievous injury caused to the appellant or his family members, there was any justification for him to use sharp weapon like axe and cause grievous injury on the leg of Champalal. Non explanation of the injuries sustained by the accused has been viewed with seriousness by their Lordships of the Supreme Court in the case: Lakshmi Singh and Others Vs. State of Bihar, Their Lordships while giving out the inferences which can be drawn for failure of the prosecution to explain the injuries of the accused, were pleased to observe that in such a case it may be inferred that the prosecution has suppressed the genesis and the origin of the occurrence and thus not presented the true version. The learned Judge has of course kept this principle in view and for that reason has concluded that right of private defence was available to Jawaharlal. However, in view of the nature of the injuries sustained by the accused party the learned Judge further opined that it is a case of exceeding the right of private defence. I find myself unable to subscribe to the findings of the learned Trial Judge that it is a case in which Jawaharlal can be said to have exceeded the right of private defence accrued to him. Section 100, Indian Penal Code, enumerates the circumstances when the right of private defence of the body extends to even causing of death. According to clause second of this section the right of private defence of the body extends even to voluntarily causing of death or of any other hurt to the assailant if the assailant has given reasonable cause to apprehend that a grievous hurt will otherwise be the consequence of assault. In the case on hand, there is of course no grievous hurt caused to the appellant or any of his family members, but he as well as his father Kishanlal and mother Moti Bai had sustained injuries with sharp edged weapon at the hands of the complainant party. Thus the apprehension of sustaining grievous hurt was there.

11. The argument of the learned Public Prosecutor that the appellant should not have even in those circumstances used so much force so as to cause fracture of the leg of Champalal has no force. In the case of Yogendra Morarji Vs. State of Gujarat, their Lordships of the Supreme Court while discussing the general principles embodied in the Penal Code governing the exercise of the right of private defence were pleased to observe as under

...injury which is inflicted by the person exercising the right should be commensurate with the injury with which he is threatened. At the same time, it is

difficult to expect from a person exercising this right in good faith, to weigh "with golden scales" what maximum amount of force is necessary to meet within the right....It would be wholly unrealistic to expect of a person under assault, to modulate his defence step by step according to the attack.

With this principle in view, when I turn to the facts and circumstances of the present case, that Champalal and others had entered the house of the appellant, caused injuries to him and his parents with sharp edged weapon, the prosecution version having been disbelieved by the Trial Judge on most of material particulars, the conviction of the appellant for the injury on the leg of Champalal cannot be said to be justified on the ground that he had exceeded the right of private defence of person by giving a blow more severe than what was warranted in view of the injuries sustained by him and his parents. Hence the conviction of the appellant is not sustainable.

12. Consequently, the appeal is allowed and the conviction and sentence awarded to the appellant Jawaharlal for the offence u/s 326, Indian Penal Code, is set aside and he is acquitted of the charge. He is on bail and need not surrender to it. His bail bonds stand discharged.