

(1976) 07 AHC CK 0016
In the Allahabad High Court
Case No : Criminal A. No. 2745 of 1972

Raja Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-07-1976

Acts Referred:

Arms Act, 1959 — Section 30

Penal Code, 1860 (IPC) — Section 100, 302, 304, 307, 324

Citation : (1977) ACR 23

Hon'ble Judges : Mohd. Hamid Hussain, J

Bench : Single Bench

Advocate : Prem Prakash and C.S Saran, for the Appellant;

Judgement

Mohd. Hamid Hussain, J.—Raja Ram "has preferred this appeal. He was tried in Sessions Trial No. 6 of 1972 and has been convicted under Sections 304 Part II and 324 IPC and section 30 Arms Act, and has been sentenced to 5 years RI, 3 years RI and a fine of Rs. 200/- in default to undergo 3 months RI, respectively, under the three counts.

2. The prosecution case, in brief was that PW 6 Jamadar's mother's sister (Mausi) Smt. Ramwati was married to Appellant Raja Ram who resided in village Ritaul. Raja Ram had a daughter Ladli from Smt. Ramwati who originally came from village Ranipur Gaur which was at a distance of one mile from village Ritaul. On 8-9-69 in the early morning Jama-dar and his mother brought to their house in village Ranipur Gaur Smt. Ramwati and her daughter Km. Ladli from the house of Raja Ram in village Ritaul while Raja Ram was away in his fields, and without the permission of Raja Ram. On return to the house Raja Ram found his wife and daughter absent and on enquiry he was told that they had been taken to village Ranipur Gaur by Jamadar and his mother. Raja Ram did not have a good opinion about the character of Jamadar and resented his wife Smt. Ramwati and daughter being taken away without permission. Raja Ram and his father Param Sukh were both gun Licensees and their guns were kept together in the house.

Raja Ram picked up his Arms Licence and one of the two D. B. B. L. guns taking it to be his own, and went to village Ranipur Gaur, and on reaching the house of Jamadar at about 10 A.M. enquired of him why he had brought his wife and daughter without permission. At that time Kashi a close associate of Jamadar, was also present at the house of Jamadar. There was an exchange of abuses between Raja Ram on the one side and Jamadar and his associate Kashi on the other. Raja Ram was assaulted by Jamadar and Kashi. Kanhai Singh (PW 1), Sarpanch of the village whose house was closely came and intervened. Thereafter Raja Ram picked up his minor daughter Ladli and left the house of Jamadar on his way to his own village Ritaul. Kanhai Singh apprehending that Raja Ram may again be assaulted by Jamadar and Kashi decided to escort Raja Ram and his daughter to the outskirts of village Ranipur. The way from the house of Jamadar to Ritaul passed in front of the house of Kanhai Singh. The wife of Kanhai Singh, namely, Smt. Jamna Devi also accompanied her husband Kanhai Singh who was escorting Raja Ram to the outskirts of the village. As Raja Ram and his daughter reached in front of the Baithak of Siya Ram, who is the nephew of Kanhai Singh, Jamadar and Kashi again surrounded Raja Ram & started assaulting him with fists, kicks, shoes and lathis. Kanhai Singh asked Jamadar and Kashi not to assault Raja Ram. Jamadar threw a challenge to Raja Ram to shoot if Raja Ram happened to be a true Ahir. C'n this challenge Raja Ram aimed his gun at Jamadar and simultaneously fired two shots at Jamadar who ducked and escaped injury, but the shot struck Jamna Devi, wife of Kanhai Singh, who was standing behind Jamadar on whom the gun was aimed. From the two shots fired three other persons standing near about, namely, Rameshwar (PW 2), Ram Autar (PW 3) and Kailash also suffered gunshot injuries. Thereafter Raja Ram was overpowered and the gun was snatched from him. He was kept in custody. Smt. Jamna Devi on receiving the gunshot injury fell down dead on the spot. Kanhai Singh (PW 1) went by cycle to Police station Kaimganj which was at a distance of 3 miles, and lodged an oral report of the incident. On the basis of this oral report Head Moharrir Raghubar Singh (PW 5) registered a case u/s 302/307 IPC against Raja Ram on 8-9-69 at 11.15 A.M.

3. Investigation was taken up by Station Officer Chandra Pal Singh (PW 8). The injured victims Rameshwar (PW 2), Ram Autar (PW 3) and Kailash were medically examined by Dr. G.D. Ahuja (PW 7) who noted their injuries in their respective injury reports Exs. ka 4, ka 6 and ka 7. Post mortem examination on the dead body of Smt. Jamna Devi was held on 9-9-69 at 12.15 P.M. by Dr. R. P. Chaudhry who noted two gunshot ante mortem injuries in the post mortem examination report Ex. ka 21. On internal examination the doctor found comminuted fracture of the frontal bone and anterior cranial fossa. He extracted 19 pellets from the dead body. In his opinion Smt. Jamna Devi was about 55 years of age and her death was due to coma resulting from gunshot injuries to the brain, and the probable time since death at the time of the post mortem examination was about one day.

4. Appellant Raja Ram was admitted in the District Jail, Fatehgarh and on

10-9-69 at 7.30 A.M. he was medically examined by Dr. R. P. Chaudhary who found 6 injuries which he noted in the injury report, copy of which is Ex. kha 10. One of the injuries was found to be grievous, and the injuries were caused by blunt weapon and were about two days old.

5. After the conclusion of the investigation and the magisterial inquiry Raja Ram was committed to the Court of the Sessions to stand his trial.

6. Appellant Raja Ram pleaded not guilty. Both in the Court of the Committing Magistrate as well as in the trial Court he took the consistent defence that his wife and daughter were taken away by Jamadar and his mother in his (appellant's) absence and his wife had taken away the ornaments also and that since Jamadar's character was bad and Jamadar used to abduct women and sell them he (Raja Ram) immediately went to village Ranipur Gaur and enquired from Jamadar as to why he had brought his wife and daughter. On this Jamadar gave abuses and refused to send the appellant's wife and daughter. When Appellant Raja Ram protested Jamadar and Kashi assaulted him and the people intervened and saved him, and thereafter Raja Ram left the house of Jamadar and his minor daughter accompanied him and, when Raja Ram came in front of the house of Siya Ram, Jamadar, Kashi and other miscreants assaulted him and he suffered injuries at their hands and fell down, and his gun was snatched, and during the grappling his gun which was loaded got fired. In support of his defence of being assaulted Raja Ram examined Dr. R. P. Chaudhary as a defence witness who stated that he medically examined Raja Ram in jail and found injuries on his person which he noted in the injury report Ex. Kha 10.

7. The prosecution in support of the case examined 8 witnesses, 5 of whom are the eye witnesses, namely complainant Kanhai Singh (PW 1), Ram-eshwar injured (PW 2), Ram Autar injured (PW3), Jaipal Singh (PW 4) and Jamadar (PW 6).

8. The trial Court on scrutiny of the evidence on record and after considering the defence plea recorded the following findings :

I. "Thus overall character of Jama dar indicates that the suggestion of his undesirability does carry some weight. With this background in view the apprehension of Raja Ram regarding his wife and daughter going to the house of Jamadar on the morning of 8-9-69 without his permission was not altogether baseless."

II. "All this leads to the irresistible conclusion that both Jamadar and Kashi Ram are hands in gloves with each other and that they have been invariably actuated with common intentions."

III. "It is not disputed that Raja Ram was saved from Jamadar and Kashi Ram at the door of Jamadar by intervention of Kanhai Singh (PW 1) and thereafter Raja Ram with his tender aged daughter Ladli had left back for home with his D. B. B. L. gun Ex. 1 still in his hand and was being escorted by Kanhai Singh PW 1 and

his wife Jamna Devi least they would be way laid by Jamadar and Kashi Ram."

IV. "The testimony of Kaihai Singh thus makes out a clear case of aggression on the part of Jamadar and Kashi Ram and firing by Raja Ram in exercise of right of self defence of person and property."

V. "Taking the statement of Ram Autar made in this Court and made earlier to the investigating officer the irresistible conclusion is that both Jamadar and Kashi Ram took law into their hands, surrounded Raja Ram and his daughter in front of the Baithaka of Siya Ram and after abusing him started beating him and then Raja Ram fired his gun."

VI. "Thus even testimony of Jaipal Singh (PW 4) leads to a like conclusion that Raja Ram fired his gun on Jamadar and Kashi Ram in exercise of right of self defence of property and person.

9. After arriving at the above conclusion the trial Court proceeded to consider if the plea of self defence as set up by Raja Ram had been proved, and the learned trial judge was of the view that it was not proved since no question was put by the defence to the witnesses that the grievous injury suffered by Raja Ram had been caused prior to the firing of the gun which accidentally shot dead Smt. Jamna Devi on the spot and injured three other persons. According to the learned judge it was incumbent upon the Appellant to have specifically put this question of grievous hurt, namely, injury to the teeth, having been caused to him to the prosecution witnesses, and no such question having been put it was not open for the Court to infer that this injury would have caused before the gun was fired and in this view of the matter the trial judge felt that the Appellant was liable to be convicted u/s 304 Part II IPC for causing the death of Smt. Jamna Devi and u/s 324 IPC for causing injuries to Rameshwar, Ram Autar and Kailash, and u/s 30 Arms Act for carrying the gun of his father and not his own.

10. Sri. C. S. Saran, learned Counsel for the Appellant has rightly contended that once the trial Court has come to the finding that Jamadar and Kashi were the aggressors and Raja Ram had fired his gun in exercise of his right of private defence of person and property, there was no occasion for the trial judge to consider whether the defence has established the fact of the grievous hurt having been sustained by the Appellant prior to his firing the gun.

11. For appreciating the view taken by the learned judge for convicting the Appellant, the statement of complainant Kanhai Singh (PW 1) was examined. A perusal of the statement of Kanhai Singh clearly shows that Appellant Raja Ram had been beaten twice by Jamadar and his associate, Kashi, once at the house of Jamadar and a second time in front of the Baithaka of Siya Ram while Raja Ram was peacefully returning with his minor daughter to his village Ritaul. Kanhai Singh in cross examination has stated that Jamadar had brought Appellant Raja Ram's wife and daughter without Raja Ram's permission, that Jamadar and Kashi had assaulted Raja Ram at about 10 A.M. in front of Jamadar's house, that at that time he (witness) went to the house of Jamadar and saved Raja Ram

from further assault, and at that time Raja Ram was having a gun. He has also stated that he proceeded to escort Raja Ram least Jamadar & Kashi may not assault him again, that Raja Ram was again surrounded in front of Siya Ram's Baithaka by Jamadar and Kashi and inspite of the witness (Kanhai Singh) asking them not to quarrel, Jamadar and Kashi started assaulting Raja Ram with fists, kicks, shoes and lathis and it was thereafter that Raja Ram fired. This statement clearly proved that Raja Ram fired the gun in exercise of the right of private defence of person.

12. The learned State Counsel Sri Srivastava contended that Appellant Raja Ram was not justified in causing the fatal injury to Smt. Jamna Devi and injuries to the other three victims who were not participating in the assault, and, therefore the trial Court has rightly convicted and sentenced the Appellant under the various Sections. This contention of the learned Counsel cannot be accepted.

13. Section 79 of the Indian Penal Code provides as under :

Section 79. "Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by Jaw, in doing it.

Section 80 of the Indian Penal Code provides as under :

Section 80. "Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge n the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Section 96 of the Indian Penal Code provides that:

Section 96. "Nothing is an offence which is done in the exercise of the right of private defence.

From the evidence on record and the findings of the trial judge it is abundantly clear that Raja Ram fired the gun to defend his person and the firing of the gun at the assailant could not be deemed to be an offence. Section 100 IPC gives the right to a person of private defence of the body to the extent of voluntarily causing death or any other harm to the assailant in an assault which may reasonably cause apprehension that grievous hurt might otherwise be the consequence of such assault. The evidence is that the shot was fired at Jamadar, but Jamadar was agile enough to duck in order to escape injury and the shot accidentally hit Smt. Jamna Devi and three other persons. The firing was resorted to by Raja Ram in self defence and an innocent woman, namely Jamna Devi, and the three other victims were hit by the firing. The Appellant is protected from any consequence of the firing which was resorted to by him in self defence. Kanhai Singh (PW 1), whose own wife Jamna Devi had received fatal injury has not said a word directly or indirectly that Raja Ram intended to cause injuries to his wife or the other three victims. In the circumstances, Raja Ram Appellant cannot be upheld liable for the fatal injury to Smt. Jamna Devi or injuries to the three other victims.

14. The contention of the learned State Counsel is that the injuries of the Appellant as found by the doctor were not of such magnitude or seriousness as to give the right to the Appellant to fire the gun causing the death of Smt. Jamna Devi and injuring three other persons unconnected with the assault. This contention of the learned Counsel is also not acceptable. It is not the actual injuries sustained by a person which give him the right to fire at the assailant in self defence. u/s 100 IPC the right of private defence of the body extends to voluntarily causing of death to the assailant during the assault if the victim has reasonable apprehension that grievous hurt would otherwise be the consequence of such assault. It is this apprehension in the mind of the victim which gives him the right of private defence to voluntarily cause the death of the assailant. Even if the grievous injury to the tooth may not be taken into account, there is an injury on the head of the Appellant as noted by the doctor, namely, "Lacerated wound 3/4" x 1/2" x scalp deep on left side head 4 1/2" above middle portion of left eyebrow oblique." This injury by itself could have caused apprehension in the mind of the Appellant of the likely infliction of grievous hurt giving him the right to voluntarily cause the death of the assailant. It has been held by the Supreme Court in the case *Jai Dev Vs. The State of Punjab*, that :

There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that invariably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be ward off the danger and to save himself or his property, and so, he would naturally be anxious to strike a decisive blow in exercise of his right.

15. From a scrutiny of the evidence on record and on the findings as given by the trial judge which have been stated above, the Appellant cannot be held to have committed any offences u/s 304 Part II IPC and Section 324 IPC.

16. It has been stated by Appellant Raja Ram that the two guns owned by him and his father were of the same make and type, and since they were kept together he in a hurry, by mistake picked up the wrong gun of his father instead of his own. The fact that Raja Ram carried his own licence shows that he wanted to carry his own gun and it was by sheer mistake when he was perturbed in mind that he carried the gun of his father in place of his own. Therefore, he has committed no offence u/s 30 of the Arms Act.

17. The result is that this appeal is allowed. The conviction of Appellant Raja Ram u/s 304 Part II and 324 IPC and u/s 30 of the Arm Act, and the respective sentences" of 5 years" RI, 3 years" RI and Rs. 200/-fine, in default to undergo 3 months" RI are set aside and the Appellant is acquitted of the charges for which he was tried.

18. Appellant Raja Ram is on bail, he need not surrender and his \\bail bonds are

discharged.