
(1978) 12 DEL CK 0009

In the Delhi High Court

Case No : Criminal Appeal No's. 392 and 423 of 1976

Tilak Raj and Shanti Devi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 06-12-1978

Acts Referred:

Citation : (1979) CriLJ 93 : (1979) ILR Delhi 267

Hon'ble Judges : V.D. Misra, J;F.S. Gill, J

Bench : Division Bench

Advocate : I.U. Khan, amices Curiae, Tilk Raj, M.S. Gandhi and K.K. Sud, for the Appellant;

Judgement

F.S. Gill, J.

(1) Appeal Nos. 392 and 423 of 1976 have arisen from the two judgments of the Additional Sessions Judge dated 8th and 12th of November, 1976, whereby Tilak Raj, Smt. Shanti Devi and Haveli Ram appellants were convicted for the murder of Brij Moban and each one of them was sentenced to imprisonment for life. Tilak Raj was also convicted and sentenced u/s 27 of the Indian Arms Act. Since both the appeals originate from the common judgments, they will, Therefore, be disposed of by this one composite judgment.

(2) Smt. Shanti Devi appellant is the mother of Tilak Raj appellant, while Haveli Ram appellant (since deceased) was his father. They all lived in House No. 790, Indra Colony, Tilak Nagar, Delhi.

(3) The prosecution case is that on 13-4-75 at about 8.45 P.M. Haveli Ram and his wife Shanti Devi were sitting on a cot in front of their house in the street- Amar Singh Public Witness , while driving his three wheeler scooter, came there and wanted to pass by the side of that cot. He blew the horn requiring Haveli Ram and his wife to clear the way, but they did not pay any heed. At that time, Brij Mohan (deceased) was also sitting in the passengers seat of the scooter. When obstruction was not removed, Amar Singh stopped the engine of his

scooter, got down and requested Haveli Ram to remove the cot from there. It is alleged that both Haveli Ram and his wife declined to do so and instead suggested that he should take his scooter from some other side. Meanwhile, Tilak Raj appellant and Balwant Singh, a neighbour, also came there. They started hurling abuses on Amar Singh. Brij Mohan watched all this while sitting in the scooter. He also came out and tried to pacify both the sides, but of no avail.

(4) It is further alleged that Haveli Ram then exhorted his son Tilak Raj appellant not to remain a, silent spectator but to stab with his knife and that he (Haveli Ram) would see to the consequences. (The actual words uttered were "Sale ko maro chakku, phir main dekh loonga"). It is further stated that thereafter all the four accused, namely, Tilak Raj, Balwant Singh, Haveli Ram and Smt. Shanti Devi grappled with Brij Mohan. Earlier, Haveli Ram had pushed Amar Singh away by giving him a leg blow in his abdomen.

(5) It is alleged that, at this stage, Tilak Raj appellant whipped out a dagger from the right side of the fold ("Dhub") of his trouser and stabbed Brij Mohan thrice. The first blow was struck on the right side of his chest, the second on the right side of his abdomen, while the third on his left thigh. As a result of these injuries, Brij Mohan started bleeding profusely.

(6) It is further alleged that Smt. Sheela Sethi, Smt. Beant Kaur and Suraj Parkash Public Witness s., who were the residents of the same locality, had also witnessed the occurrence and had tried to separate the parties. There was street light near the jhuggi of Amar Singh. Everything was, Therefore, visible to them. After the above injuries had been inflicted, Tilak Raj and other accused ran away from the spot.

(7) On the other hand, Brij Mohan injured was removed to Willingdon Hospital by Amar Singh and Suraj Parkash. He was examined by the doctor but was declared dead.

(8) When Brij Mohan had been taken to the hospital, the police constable on duty had informed the Tilak Nagar police about the bringing of the dead body. A report in this behalf was recorded in the daily diary and copy thereof was sent to Inspector Gian Singh, who was on patrol duty in the area. This Inspector, along with other police officials, rushed to the hospital concerned. There, he recorded the statement of Amar Singh, which was sent to the police station and on its basis a case u/s 302/34 of the Indian Penal Code . was registered.

(9) Inspector Gian Singh visited the spot and recorded the statements of Smt. Sheela Sethi, Smt. Beant Kaur and other witnesses. Various articles were also taken into possession during the course of investigation.

(10) It is further alleged that Tilak Raj accused, while in police custody, made a disclosure statement u/s 27 of the Indian Evidence Act and in consequence thereof got recovered dagger Ex. PI. from a Ganda Nallah near Sudershan Park, Moti Nagar. For keeping in possession this illicit arm, a case u/s 27 of Indian

Arms Act was also registered against Tilak Raj. (F.I.R. No. 359 of 1975).

(11) After the completion of the investigation, Tilak Raj, Shanti Devi, Haveli Ram and Balwant Singh were challaned u/s 302 read with section 34 of the Indian Penal Code. Tilak Raj was also charged u/s 27 of the Indian Arms Act. All the accused were committed to Sessions for trial by the Metropolitan Magistrate.

(12) The trial was held by Shri P. L. Singia, Additional Sessions Judge, Delhi, who convicted Tilak Raj accused u/s 302 of the 1. P. C while Haveli Rain and Shanti Devi were convicted u/s 302 read with section 34 of 1. P. C. All these three accused were sentenced to imprisonment for life. Tilak Raj was also convicted u/s 27 of the Indian Arms Act and was sentenced to undergo further R. I. for two years. Both his sentences were, however, ordered to run concurrently.

(13) The fourth accused, namely, Balwant Singh was given the benefit of doubt and was accordingly acquitted of the charge u/s 302/34 of the 1. P. C.

(14) Aggrieved from the conviction and sentence, two separate appeals were filed by the convicts. One was preferred by Tilak Raj, while the other by Shanti Devi and Haveli Ram.

(15) Of the three appellants, Haveli Ram died during the pendency of the appeals. His appeal, Therefore, abated. So, we are now required to decide the appeals of Tilak Raj and Shanti Devi only.

(16) First of all we take up the case against Tilak Raj appellant u/s 302 of the 1. P. C.

(17) The prosecution case has been amply proved by the statements of Amar Singh complainant (Public Witness II), Smt. Sheela Sethi (Public Witness 3) and Smt. Beant Kaur (Public Witness 12). The last two persons are also eye witnesses, whose names too appear in the F. T. R.

(18) Amar Singh is the principal witness. He was denied the passage for his scooter and was even assaulted by Haveli Ram. He also saw Bri] Mohan being stabbed by Tilak Raj. His statement has been fully corroborated by Smt. Sheela Sethi and Smt. Beant Kaur. The ocular account given by these witnesses is most coherent and convincing. Nothing tangible has been pointed out by the learned counsel for the appellants to impair the testimony of any of these witnesses. The discrepancies pointed out are too trivial to deserve any consideration. Such variations are really due to differences in the faculty of observation, perception and narration of details by individual witnesses. They are hardly a ground for rejecting their testimony, when there is great agreement as to material particulars. The learned trial Court has rightly considered these immaterial details as of no consequence in placing reliance on the depositions of these witnesses.

(19) Suraj Parkash Public Witness 4 is the other witness, whose name also finds a mention in the F. 1. R. as an eye witness. His examination-in-chief was

recorded by the court on 5-2-76, but later he deliberately disappeared. His presence was procured with great difficulty for the completion of his remaining statement. In his cross-examination held on 17-3-76 he committed a somersault by giving a version, while generally did not support the prosecution and was more akin to the defense story,. Obviously he had resoled from his first version to help the accused. On scrutiny we find that his testimony is highly unreliable. His statement has been rightly rejected by the learned trial Judge.

(20) The statements of the eye witnesses find full support from the medical evidence. Dr. Bharat Singh Public Witness 1, who performed the post mortem examination, found the following injuries :

1. One incised stab wound over the right side front of chest 2" below the medial to right nipple place horizontally. Size of the wound was 1" x 1/2" ? (depth) with tail-end on the right side. Margins were regular and smooth, wound was covered by dried blood. 2. One incised wound over the right iliac fossa 2" above the medial to iliac-crest placed horizontally. Size of the wound was 1" x 1/2" ? (depth). Tail end of the wound was on the right side. Margins were regular and wound was covered by blood. 3. One incised stab wound over the left thigh on the front 2. below the mid inguinal point placed horizontally. Size 3/4" x 1" ? (depth). Tail end was on the left side. Wound was covered by blood.

He opined that the above injuries were collectively or individually sufficient to cause the death. The nature and location of injuries was also proved by Dr. S. P. Singal Public Witness 2, who had examined Brij Mohan on 13-4-75 at 9.50 P.M. and had declared him dead. The post mortem examination was, of course, performed on the following day at 4 P.M.

(21) The prosecution witnesses have described the weapon of offence as a Kirpan and at places as a dagger. In order to appreciate the nature of the fatal injuries to the deceased better, we felt the necessity of inspecting the weapon of offence. Shri Sud, the learned counsel for the State, has reported that this weapon EX. Pi has since been destroyed under the orders of some police officer. We are constrained to observe that such an important piece of evidence should not have been destroyed till the final disposal of the case as it constituted an integral part of the evidence. To prevent the recurrence of such indiscreet orders in heinous cases, like the present, we hope that an enquiry will be held by the Administration to ensure proper preservation of case properties in future.

(22) Now adverting to the case against Tilak Raj we observe that this appellant has admitted that he had caused the injuries to the deceased with the dagger. He has, however, pleaded the right of private defense. To determine the efficacy of his plea, it seems necessary to reproduce his answer to question No. 39, given in his statement u/s 313 of the Criminal Procedure Code . It is in these words :

"AMAR Singh, Public Witness was beating my father and mother, Haveli Ram and Smt. Shanti Devi. I tried to rescue them from his clutches and meanwhile Brij Mohan, deceased brought out dagger from the jhuggi of Amar Singh, with which

he tried to attack me. I caught hold of Brij Mohan deceased from his hand in which he was carrying the dagger and ultimately, I succeeded in snatching the dagger from him. But, soon after the deceased Brij Mohan leapt at me and again tried to snatch the dagger with a view to attack me with it. In the process. I also received injury on the palm of my left hand, but the police did not send me for medical examination. It was in my self-defense that I stabbed the deceased. Had I not done so, Brij Mohan, deceased would have certainly caused me grievous hurt or have caused me death with the said weapon."

(23) Smt. Shanti Devi appellant, who is Tilak Raj's mother has also made a similar statement u/s 313 of the Criminal Procedure Code . She too has tried to justify the infliction of the fatal injuries by her son on the ground of self-defense.

(24) It is well settled that law allows resort to force to repel force. But the onus lies on the antagonist to prove that he acted In exercise of the right of private defense to do the act, which would otherwise be an offence.

(25) According to the prosecution case dagger Ex. Pi i.e. the weapon of offence, was already with Tilak Raj; whereas the appellants have alleged that the same had been brought by Brij Mohan from Amar Singh's jhuggi and when Brij Mohan had tried to attack Tilak Raj, the latter had snatched it from Brij Mohan and had caused the injuries under the stress of the circumstances to save himself.

(26) Firstly, there is no reliable evidence to prove that the weapon was brought by Brij Mohan from the house of Amar Singh. Even if it be assumed that he had brought the same from his house, it has to be gauged whether the circumstances appearing in the case vested any right of private defense in him to cause the injuries on the vital parts Mohan's body. The evidence on record does not establish the accrual of any such right.

(27) Even taking the defense version, the dagger was in the hands of Tilak Raj after he had snatched it from Brij Mohan. In other words Brij Mohan had been completely disarmed. Whether in such a situation the right of private defense could be available to cause the impugned injuries ? This is a simple question needing answer.

(28) The appellant (Tilak Raj) has to show that there was reasonable apprehension created in his mind as a result of Brij Mohan's aggressive posture. Secondly, whether it had continued at the time of causing the fatal injuries or it had terminated. With the ending of the justification, if any.

(29) Verily there is a limit and latitude of the right of private defense. According to section 97 of the Indian Penal Code . every person has a right of private defense of the body and of property, but the same is subject to the restrictions as are placed in section 99. Section 99 provides that the right of private defense in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defense.

(30) Section 102 of the Indian Penal Code . embodies as to when the right of

private defense commences and up to which time it continues. According to this provision the right of private defense of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

(31) We think that it will also be relevant to mention here Exception (2) of Section 300, which too has been relied by the appellant's counsel during the course of arguments. It stipulates that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.

(32) It may be observed in the outset that the application of an exception can only arise if the right of private defense has actually accrued and in exercising the same, it has been exceeded. In such circumstances culpable homicide shall not amount to murder and the case would squarely fall u/s 304 of the Indian Penal Code.

(33) In the present case the dispute between Amar Singh Public Witness and Tilak Raj's parents had arisen over the removal of the cot from the passage. There is no reason to disbelieve the prosecution evidence that Tilak Raj appellant was already in possession of the dagger, which he had used in the attack. If Brij Mohan had gone to bring the dagger from Amar Singh's house, as alleged, then during the intervening short span, Tilak Raj and Amar Singh would have grappled with each other. The reason is not far to seek as the dispute had originated between Amar Singh and Tilak Raj's parents. But no such encounter took place between them. In our view, this fact copiously demonstrates that the story of the appellants that Brij Mohan had brought the dagger from Amar Singh's house is a sheer concoction. Moreover, if a man goes to the house of another person, he would, in the normal course of events, take time in searching the weapon. So, some time is bound to be wasted in this process. The fact that the fight continued at the spot shows that Brij Mohan had not left the venue of the occurrence but had been attacked by Tilak Raj appellant as stated by the prosecution witnesses.

(34) Thus the story of the defense that Brij Mohan "had gone to the house of Amar Singh and had brought the dagger in question is highly incredible and, Therefore deserves to be discarded.

(35) Now we revert to the vital question, viz., whether the right of private defense was at all available to Tilak Raj appellant as urged on his behalf. The scrutiny of the statements of the eye witnesses and consideration of the circumstantial evidence lead us to the conclusion that no such right had ever accrued to the appellant. It has been established that at the time Tilak Raj had

caused the three fatal injuries to the deceased, the latter was absolutely unarmed. So much so, even Amar Singh had no weapon with him to rescue his friend.

(36) Tilak Raj appellant had felt infuriated when Amar Singh Pw had insisted that Shanti Devi and Haveli Ram should remove the cot and allow his scooter to pass. There was not the slightest provocation on the part of Amar Singh or Brij Mohan, to prompt Tilak Raj to cause the injuries. So, it was a cold blooded attack made on an unarmed person. There is absolutely no evidence to show that there was any apprehension, much less genuine and reasonable apprehension of death or grievous hurt, to Tilak Raj at the hands of Brij Mohan. No right of private defense had, Therefore, accrued to Tilak Raj to cause the fatal injuries.

(37) It is contended that Tilak Raj apprehended that Brij Mohan would snatch the weapon from him and would then cause him the bodily harm. This allegation of threat is without any foundation and is a sheer figment of imagination to justify the assault. It was too remote to be called imminent. So much so, even Amar Singh and Brij Mohan had no opportunity to make concerted efforts to snatch the weapon from the assailant (Tilak Raj) as the latter had acted with determination and lightening speed. The eye witnesses have unanimously stated that Tilak Raj had suddenly taken out the knife from his fold and had administered the fatal blows to Brij Mohan. There is no reason to disbelieve them.

(38) Further, there is no evidence to show that Brij Mohan had at any moment acted as an assailant. If the sharp edged weapon had been in his hand and Tilak Raj had snatched the same, some injury must have been suffered in the process. There is no evidence that Tilak Raj received any injury on any part of his body. This itself is eloquent enough to negative or discount the version of the defense that the weapon had been brought from the house of Amar Singh and that Brij Mohan had tried to attack Tilak Raj.

(39) The learned counsel for the defense has tried to place reliance on a number of decisions of the Supreme Court to fortify his contention about the plea of self-defense. They are :

(40) Ravulappalli Kondaiah and Others Vs. State of Andhra Pradesh, in which it was held that if five persons armed with deadly weapons had raided the house (of one of the accused pleading right of private defense in a murder case), to assault the inmates, it is inconceivable that they would tamely take all the beating, without causing even a scratch to their adversaries. The right of private defense could be pleaded by the accused.

(41) Gottipulla Venkatasiva Subbrayanam and Others Vs. The State of Andhra Pradesh and Another, lays down that where a right of private defense is available an average person, whose mental excitement could be better imagined than described, it is not possible to weigh his position in golden scales.

(42) Dominic Varkey Vs. The State of Kerala, and Prabhu Prasad Sah Vs. State of

Bihar, are the cases where the question about exceeding the right of self-defense was considered and decided in the light of the particular facts,

(43) State of Himachal Pradesh Vs. Wazir Chand and Others, relates to a case where Exception (4) of Section 300 of the Indian Penal Code . was found applicable. In Thakarda Lalaji Gamaji Vs. The State of Gujarat, . grave and sudden provocation was proved and the case was held to fall under Exception (4) of Section 300 of the Indian Penal Code .

(44) In Mohan Singh Vs. State of Punjab, it was held that an accused pleading the right of self-defense need not prove it beyond reasonable doubt. It is enough if he establishes facts which on the test of preponderance of probabilities makes his defense acceptable.

(45) There is no dispute about the principles enunciated in the above decisions, but they do not apply to the facts of the present case. They, therefore, do not advance the case of the appellant in any manner. Clearly, there was no existing necessity to justify the infliction of the fatal injuries.

(46) On the other hand the learned counsel for the State seeks support from Gurbachan Singh Vs. State of Haryana, where it is held that no right of private defense can exist against an unarmed and unoffending individual. The import of this decision aptly applies to the facts of the instant case.

(47) Thus at the time the fatal injuries were caused, the doctrine of private defense was not available to this appellant. He could exercise such a right for his defense and not for punishment and retaliation as the law permits the taking of life of another for prevention and not for retribution.

(48) Indubitably when a person is confronted with an impending danger, not of his creation, he has a natural impulse or necessity to avert the same. During the existence of such a real or apparent danger he is justified even in taking the life of another person. But the right of private defense being a very narrow and circumscribed right, a bare fear of any offence, unaccompanied with any overact ,does not make the allowance of slaying another person.

(49) On scanning and appreciating the entire evidence in an integral manner, we find that the appellant has failed to vindicate his action for deriving any benefit from the principles stated earlier. The right of private defense had never accrued to Tilak Raj and, Therefore, the question to determine as to when it had ceased to exist does not arise. Nor it is a case where the right of private defense was available and the appellant had exceeded the same. Thus the right of private defense of the body was never available to Tilak Raj and, Therefore, his action is indefensible. The learned trial Court had rightly come to this conclusion and we have no hesitation in endorsing the same.

(50) For the reasons stated above, we find no merit in Tilak Raj's appeal, which is hereby dismissed and the conviction and sentence passed against him u/s 302 of the Indian Penal Code . are accordingly affirmed.

(51) The second charge against Tilak Raj appellant is u/s 27 of the Indian Arms Act. According to the prosecution, the recovery of Kirpan/Dagger Ex. P.1 was made in consequence of the disclosure statement made by this appellant. The blade of the dagger is stated to be more than the length permitted by law. So its possession was held to be illegal.

(52) Tilak Raj was arrested on the evening of 14-4-75. According to the statements of Amar Singh, Madan Lal and Inspector Gian Singh Public Witness s this appellant was in police custody when disclosure statement Ex. Public Witness 4/A was made on 15-4-75 at 10 A.M. In pursuance of the said statement he got the recovery effected from the "Gftnda Nala" not on the same day, but on the following day at 12-45 P.M. The recovery memo prepared in this behalf was Ex. Public Witness 11/C.

(53) There is no plausible Explanation rendered by the prosecution as to why more than 26 hours were. taken by the appellant in leading the police and the non-official witnesses to the place of the recovery. Amar Singh is an important eye witness, while the latter is a relative of the deceased. By showing his omnipresence and alignment after the main incident, Amar Singh loses much of his credibility. The other witness is a relative of the deceased, so naturally interested. Clearly no independent witness was co-opted by the police for effecting the recovery. In our view the prosecution evidence pertaining to the recovery of the Kirpan at the instance of the appellant is not free from doubt. The appellant is, therefore. entitled to its benefit.

(54) Thus, by giving the benefit of doubt to the appellant, we accept his appeal with regard to the offence u/s 27 of the Indian Arms Act. Consequently, his conviction and sentence are set-aside and he is acquitted of this charge.

(55) The case of Smt. Shanti Devi appellant is on a different footing than his son Tilak Raj. The original dispute had taken place between Amar Singh Public Witness on the one hand and Shanti Devi and her husband, Haveli Ram on the other. So far as Smt. Shanti Devi's part qua Brij Mohan's murder is concerned, it is alleged that she, along with her husband (Haveli Ram), son (Tilak Raj) and neighbour Balwant Singh had grappled with the deceased and that her clothes had smeared with blood, which had oozed out of the injuries of Brij Mohan. This appellant is a lady above 50 years of age. The evidence of the prosecution witnesses with regard to her grappling with the deceased is very unsatisfactory. The most important piece of evidence to inculpate her was about the presence of blood stains on her clothes. According to the prosecution when this appellant was arrested, blood stains were found on her shirt Ex. P3 and Salwar Ex. P4 which were got removed and were taken into possession. In order to satisfy ourselves about the particular spots where the clothes had blood stains, we asked the State Counsel to produce the shirt and the Salwar. To our utter amaze, we have been informed that these clothes have since been destroyed by the police. These clothes constituted an important piece of evidence. It is unfortunate that such evidence has been destroyed during the pendency of the appeal. The benefit of

the destruction of this evidence is bound to go to the appellant, as the other evidence is most feeble.

(56) There is no other evidence to link this appellant with the murder of Brij Mohan. The evidence against Shanti Devi is thus both insufficient and unsatisfactory. She is, Therefore, entitled to acquittal.

(57) We accordingly accept Shanti Devi's appeal, set aside her conviction and sentence passed u/s 302 read with section 34 of the Indian Penal Code and acquit her of the charge.