Master Tara Singh v. The State

Weston, C. J.

order. As it is conceded by the learned Attorney-General that the invalidity of this provision is concluded by the decision of the Supreme Court upon section 7 of the same Act I do not think it is necessary to discuss the matter further.

In the result, therefore, all three provisions of law under which the two prosecutions were initiated and were being conducted must be held to be void and we must, therefore, quash the proceedings and direct that the accused Master Tara Singh be set at liberty forthwith.

Khosla J.

KHOSLA, J. I agree.

APPELLATE CRIMINAL

Before Bhandari and Soni, JJ.

KIRPAL SINGH, SON OF SAWAN SINGH,—*Convict-Appellant,*

1950

Dec. 29th

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 477 of 1950.

Self-Defence—Plea of—Whether permissible—when person himself aggressor and wilfully brought on himself the necessity for killing.

A person cannot avail himself of the plea of self-defence in a case of homicide when he was himself the aggressor and wilfully brought on himself, without legal excuse, the necessity for the killing. A person cannot take shelter behind the plea of self-defence in justification of the blow which he struck during the encounter if he provokes an attack, brings on a combat and then slays his opponent.

Appeal from the order of Shri M. R. Bhatia, Sessions Judge, Ludhiana, dated the 7th October 1950, convicting the appellant.

J. G. SETHI and R. L. KOHLI, for Appellant.

NAND LAL SALUJA, for Advocate-General, for Respondent.

Kirpal Singh
v.
The State
—————
Bhandari J.

JUDGMENT

After giving the facts of the case and dealing with the evidence Mr. Justice Bhanderi, who delivered the Judgment of the Court, observed :

The evidence on record satisfies me that Kirpal Singh and Kartar Singh, accused, went to the land of Partap Singh on the day of the occurrence, that they started constructing either a new channel or widening an existing one, that Partap Singh and Waryam Singh appeared on the scene and prevented them from interfering with their possession, that hot words were exchanged between the parties and that as a result of the abuses which were exchanged Kirpal Singh who was armed with a spear and Kartar Singh who also is alleged to have been armed with a similar weapon pounced upon the deceased and killed them instantly at the spot. Indeed the evidence shows that as soon as the fight started Waryam Singh took to his heels but was pursued by Kartar Singh and was killed by him at a considerable distance from where his father Partap Singh was attacked and killed. If that story of the attack on Waryam Singh is true, it seems to me that the Court below was not justified in acquitting Kartar Singh. No appeal has been preferred by the State in regard to the acquittal of Kartar Singh and I need only say that Kartar Singh has been very fortunate in securing the verdict of acquittal.

The only question which needs to be considered at this stage is whether the appellant was rightly convicted of an offence under section 302 of the Indian Penal Code or whether the facts of this case do not indicate that he should have been given the benefit either of Exception 2 or of Exception 4 to section 300 of the said Code.

The plea that the appellant inflicted injuries on the person of Partap Singh, deceased, in order to defend his son Kartar Singh cannot bear a minute's scrutiny. Not a single witness has come forward to state that either Partap Singh or his son Waryam Singh initiated the attack on Kartar Singh and not an iota of evidence has been produced in support of the plea of self-defence other than the unsworn testimony

Kirpal Singh
v.
The State
——
Bhandari J.

of the appellant and his son. On the other hand, the persons who were present at the spot at the time of the alleged occurrence have stated on oath that when Partap Singh demolished the new *khal* which had been constructed on his land both the appellant and his son pounced upon him ; that Partap Singh delivered a *kahni* blow on the person of Kartar Singh with the object of warding off the spear blow which was aimed at him ; and that Waryam Singh, deceased, who had taken to his heels on account of fear was pursued a considerable distance by Kartar Singh, accused, and killed with a spear. The allegation that Waryam Singh was pursued and killed is supported by the fact that the body of Waryam Singh was found at a distance of 7 or 8 *karams* from the body of his father Partap Singh. It is an accepted proposition of law that a person cannot avail himself of the plea of self-defence in a case of homicide when he was himself the aggressor and wilfully brought on himself, without legal excuse, the necessity for the killing. It would be strange indeed if a person who provokes an attack, brings on a combat and then slays his assailant were to take shelter behind the plea of self-defence in justification of the blow which he struck during the encounter.

Nor can the appellant claim the benefit of Exception 4 to section 300 of the Penal Code. The help of this Exception can be invoked if and only if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner. To bring a case within this Exception all the ingredients mentioned in it must be found. According to the English law if the homicide was committed in a sudden heat of passion on account of provocation and not of express malice, it amounts only to manslaughter ; but if the killing was the result of malice and of deliberate and premeditated intent it is murder. Thus, even in the case of a sudden quarrel where the parties immediately fight, the case may be attended with such circumstances as will indicate malice on the part of the party killing, and then the killing would be murder, and not merely manslaughter. If, for

Kirpal Singh
v.
The State

Bhandari J.

example, the parties at the commencement attack each other upon equal terms, and afterwards, in the course of the fight, one of them in his passion snatches up a deadly weapon and kills the other with it, this would be manslaughter only, *R.* v. *Snow* (1). But if the use of a deadly weapon was intended from the first, the killing is murder, *R.* v. *Kessal* (2). The position is more or less the same under the law as it obtains in this country. Exception 4 comes into play only if death is caused without premeditation. To constitute a premeditated killing it is necessary that the accused should have reflected with a view to determine whether he would kill or not and that he should have determined to kill as the result of that reflection; that is to say, the killing should be a predetermined killing upon consideration and not a sudden killing under the momentary excitement and impulse of passion upon provocation given at the time or so recently before as not to allow time for reflection. Premeditation may be established by direct or positive evidence or by circumstantial evidence. Evidence of premeditation can be furnished by former grudges or previous threats and expressions of ill-feeling; by acts of preparation to kill, such as procuring a deadly weapon or selecting a dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of premeditation. Premeditation is not proved from the mere fact of a killing by the use of a deadly weapon but must be shown by the manner of the killing and the circumstances, under which it was done or from other facts in evidence.

The question which arises in the present case is whether the appellant killed the deceased in the heat of passion aroused by the demolition of the *khal* or whether there was a design to kill before the *khal* was demolished. I am of the opinion that the appellant had formed a deliberate design to kill Partap Singh and Waryam Singh and that the death was in conse-

(1) I Leach 151.
(2) I C. & P 437.

Kirpal Singh
v.
The State

Bhandari J.

quence of previous malice and not of the sudden provocation. It is true that the appellant is a brother of Partap Singh and an uncle of Waryam Singh, but it is in evidence that immediately after the death of their father disputes arose between Kirpal Singh and Partap Singh in regard to the partition of land as they would not agree to its proper distribution. The appellant was aware that he was constructing a new channel in the land which was in the cultivating possession of his brother Partap Singh, deceased, and he knew or should have known that the deceased would object to this new construction. Notwithstanding this knowledge he armed himself with a *kirpan* and took his son to the scene of the occurrence and started digging up a new channel with the object of taking canal water from the fields in the south to the fields in the north. Partap Singh came to the spot and, as was to be expected, he objected to the new construction and proceeded to demolish it. The appellant knew that this would happen and he was prepared for it. He pounced upon Partap Singh. Waryam Singh, son of Partap Singh, took to his heels but Kartar Singh who was armed with a spear ran after him and overtaking him at some distance plunged this deadly weapon into the body of the victim. In the circumstances it seems to me that neither the appellant nor his son was prompted to kill the deceased as a result of passion suddenly aroused. On the other hand I am inclined to think that the occasion was not sudden but, as pointed out by an eminent Judge in another case, was urged only as a cloak for pre-existing malice. The provocation was not of a character as would be naturally calculated to excite or arouse the passion and, in any case, it was not sufficient to reduce the offence of murder to culpable homicide not amounting to murder.

For these reasons, I would uphold the order of the learned Sessions Judge and dismiss the appeal preferred by the appellant. The sentence of death is confirmed.

Soni J.

SONI, J. I agree.