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CRA-5221-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

ON THE 14th OF MAY, 2025CRIMINAL APPEAL No. 5221 of 2024*SURESH KUMAR YADAV AND ANOTHER**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Pramesh Jain - Advocate for the appellants.

Shri Nitin Gupta - Government Advocate for the respondent

No.1/State.

Shri Shivam Mishra - Advocate for respondents No. 2 to 5.

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ORDER

Per. Justice Vivek Agarwal

This Criminal Appeal under Section 372 of the Cr.P.C. is filed by two of the victims namely Suresh Kumar Yadav and Deen Dayal Yadav being aggrieved of the judgment dated 15.03.2024 passed by learned Additional Sessions Judge, Budhhar District Shahdol (M.P.) in S.T. No. 100 of 2016 (State of M.P. Vs. Ramgopal & Ors.), whereby the learned trial Court has acquitted the respondents No. 2 to 5 for the commission of offences punishable under Sections 147, 148, 149, 294, 323, 506 (Part-II) and 307 of the Indian Penal Code by giving benefit of doubt.

2. Shri Pramesh Jain, learned counsel for the appellants submit that,



brief facts of the case are that a Dehati Nalishi (Ex.P-1) was recorded at Police Chowki Keshwani, in the hands of Ct. Surendra Patel, according to which appellants and accused persons were having a dispute in regard to land.

3. On 23.03.2016 at about 08:00 p.m., Suresh Yadav (PW-4) was scolding his brothers Sandeep Yadav (PW-2) in regard to tying of animals when accused Kamta Prasad reached the place of incident and asked Suresh Yadav, as to why he is abusing him. Thereafter, allegation is that Kamta Yadav abused Sandeep Yadav (PW-2) and Suresh Prasad Yadav (PW-4). Kamta Yadav called other accused persons and there was fight between the complainant party i.e. Suresh Yadav and Sandeep Yadav with Kamta Yadav and others on other hand.

4. On the basis of aforesaid Dehati Nalishi, FIR registering Case Crime No. 265 of 2016 was registered under Sections 294, 323, 506, 147, 148 & 149 of IPC. Investigation was carried out. Spot Map (Ex.P-2) was prepared. Samples of blood soaked soil and simple soil were also drawn. Property Seizure Memo (Ex.P-2) was prepared. Injured persons were subjected to MLC. Chowki Incharge, Keshwani had sent Kamlesh Yadav, Suresh Ydav and others to the Primary Health Center Burdhhar. MLC report of Kamlesh Yadav (PW-3) is Ex.P-4, MLC report of Suresh Yadav (PW-4) is Ex.P-5, MLC report of Deendayal Yadav (PW-5) is Ex.P-6 and MLC report of Sandeep Yadav (PW-2) is Ex.P-7. Thereafter Satyam Yadav was subjected to MLC, report is Ex.P-8. Chowki In-charge, thereafter, sought query from Dr. R.K. Verma who had given his query report vide Ex.P-10. X-ray report



of Suresh Yadav (PW-4) is Ex.P-11, that of Kamlesh Yadav (PW-3) is Ex.P-12, that of Sandeep Kumar Yadav (PW-2) is Ex.P-13 and that of Deendayal Yadav (PW-4) is Ex.P-14. Seizure memo of Danda is Ex.P-15.

5. It has also come on record that a counter case was registered against the appellants registering S.T. No. 44 of 2019 (State of Deendayal & Ors.).

6. It is submitted that since in the medical documentation, it has come on record and mentioned by Dr. R.K. Verma (PW-9) that injuries to all the injured persons were caused by hard and blunt object. Kamlesh Yadav (PW-3) had sustained a fracture of scalp whereas Suresh Yadav (PW-4) sustained fracture of right forearm in radius and ulna bone. Deen Dayal Yadav (PW-5) sustained injuries namely fracture of left forearm in ulna and radius bone. Sandeep Yadav and Satyam had not sustained any fracture. Thus, it is submitted that, when it is available on record that Suresh Yadav, Deendayal Yadav and Kamlesh Yadav had sustained fractures, then finding of acquittal recorded by the trial Court is arbitrary and illegal.

7. Shri Shivam Mishra, learned counsel for respondents No. 2 to 5, in his turn submits that, its a case of free fight. It has come on record that PW-5 Deendayal Yadav had not given any evidence as due to age he was not in a position to speak. It is submitted that, Vinod Kushwaha (PW-8), Vikram Kushwaha (PW-10), Puran Kushwaha (PW-11) and Suresh Kushwaha (PW-12) have not supported the prosecution case. In fact its a case of private defence. Therefore, trial Court in the matter of free fight where there are counter cases against the parties has rightly recorded the finding of acquittal.



8. Shri Nitin Gupta, learned Government Advocate for the respondent No.1/State supports the submissions made by Shri Shivam Mishra, learned counsel for the respondents No. 2 to 5 and submitted that, though the learned trial Court has not taken a plea of private defence but acquittal is to be examined from the aspect of private defence.

9. We have heard learned counsel for the parties and on going through the records, notice that PW-5 Deendayal is a injured witness. However, it has come on record that Deendayal Yadav was not is a position to hear, understand and respond, therefore, he was given up as a prosecution witness.

10. Vinod Kushwaha (PW-8) stated that, Ramgopal and Suresh were in altercation when he and Vikram Kushwaha (PW-10) intervened alongwith other villagers. Ramgopal had gone back to his house. Police had not recorded any of his statements. This prosecution witness also stated that he had not seen any 'mar-peeet' taking place between the parties.

11. Similarly, PW-10 Vikram Kushwaha, stated that both the parties are known to him. At the time of incident, he had heard certain noises being made, when he reached the place of incident, then saw the injury on head of Ramnaresh. He had called the police at Dial-100 when Kamlesh had snatched his mobile and had stated that he will not allow this witness Vikram to make any call. This witness also stated that he had not seen the incident. Several persons from the village had collected.

12. In cross-examination PW-10 further stated that complainant party were beating the accused persons inside the courtyard of the accused



persons and accused persons had not caused any 'mar-peeet' in their courtyard.

13. Puran Kushwaha (PW-11) too has turned hostile. In his cross-examination, he has stated that complainant party Deendayal, Suresh, Sandeep armed with Lathi and Danda had entered in the house of accused persons, thereafter, he had left the place of the incident and had not seen the incident.

14. Suresh Kushwaha (PW-12) also stated that complainant party namely Deendayal, Suresh and Sandeep armed with a 'danda' had entered in the house of the accused persons and thereafter, he had left the place of the incident.

15. Ramkripal (PW-13) too has not supported the case of the prosecution and stated that, police personnel had obtained his signatures on blank papers and had not read over Ex.P-15. He further stated that, he had no intimation in regard to the incident.

16. Dr. L.P. Verma (PW-9) found following injuries on the body of Suresh Prasad Yadav (PW-4):

- "1. Swollen bruise on right forearm, measuring 1 inch X 1/2 inch,
2. Torn wound on the right forehead of head, measuring 1.5 inch X 1/2 inch X bone deep, with red colored scab,
3. Swollen bruise on left arm, measuring 1.5 inch X 1.5 inch,
4. Swollen bruise on left thigh, measuring 2 inch X 2 inch."

Similarly, he found following injuries on the body of Deendayal (PW-5):



- "1. A lacerated wound on the left side of the forehead, measuring 1/2 inch X 1/4 inch 1/9 inch, containing dried blood,
2. A lacerated injury on the right arm measuring 1.5 inch X 1.5 inch,
3. A swollen injury on the left leg measuring 2 inch X 2 inch,
4. A swollen injury on the left forearm measuring 1.5 inch X 1.5 inch.
5. A lacerated injury on the right forearm, measuring 1/2 inch x 1/2 inch containing red scab."

Similarly, he found following injuries on the body of Sandeep Yadav (PW-2):

- "1. A swollen injury on the left thigh, measuring 2 inches x 1 inch, which was red-blue in colour.
2. A swollen injury behind the left knee, measuring 2 inches x 2 inches.
3. A blue mark on the right side of back, measuring 1.5 inches x 1/2 inches.
4. A swollen injury on the right arm measuring 1.5 inches x 1.5 inches.
5. A lacerated wound on the right side of chin measuring 1/4 inch x 1/2 inch."

17. In cross-examination, Dr. L.P. Verma (PW-9) admitted that, injuries sustained by Kamlesh could be accidental in nature. All the injuries sustained by Kamlesh were not grievous and were simple in nature. Similar statement is given by Dr. Verma in regard to Suresh Prasad Yadav that all the injuries were accidental, they were not unusual and all the injuries were



simple in nature. Similar statements have been made in regard to Deen Dayal and Sandeep Yadav. Dr. Verma categorically stated that the nature of fracture of the forearm of Suresh Yadav was not dangerous to life and there were no complications foreseen for Kamlesh Yadav on account of head injury. There were no complications in the injuries sustained by Deendayal and they were not dangerous to life.

18. Shubham Yadav (PW-1) has categorically admitted in para-9 of his cross-examination that when incident took place with Kamta at that time, Ram Gopal, Ram Naresh and Omkar were not at the place of the incident. He has further admitted in his cross-examination that, every year a dispute occurs in regard to the land which both the parties claim to be belonging to them. He also admitted that accused and the complainant belongs to the same family. Land dispute is going on between them for several years. He also admitted that, land dispute is pending before the Court at Budhhar and Chanodi. PW-1 admitted that, some of his statements in regard to injuries being sustained by Beenu Yadav, Leela Yadav Shivam Yadav and Sandeep Yadav if not mentioned in the case diary statement (Ex.D-2) he cannot give any explanation for the same.

19. Sandeep Kumar Yadav (PW-2) stated that Pooran had hit his elder brother of his father with a 'danda' on his head. In cross-examination this witness admits that, incident took place due to misunderstanding because accused persons thought that his relative was abusing them. He further admits in para-6 of his cross-examination that both the parties have sustained injuries in the incident and both the parties had since sustained injuries they



were taken to hospital.

20. Kamlesh Yadav (PW-3) in his cross-examination admitted that, accused persons are related to him. Their houses are adjacent to each other and even their fields are adjacent to each other. Their land dispute is going on for last 30 years. The land dispute is pending in the Court.

21. Suresh Prasad Yadav S/o Deendayal Yadav (PW-4) admitted in his cross-examination that, the accused are sons of his '*Tau Jee*' (elder brother of his father) and thus are brothers in relation. He admitted that, accused persons are residing in a old home where other members of his family are also residing. He admitted that, land dispute is going on for last 25-30 years and cases are pending in the Courts of law. He further admits that, dispute had occurred suddenly on account of tying of animals. He further admitted that, when altercation had taken place with Kamta at that time, Ram Gopal, Puran, Ram Naresh and Omkar were not present. In para-8 of cross-examination he further admitted that, on the report of Ram Gopal a case has been registered against the complainant party also. He admitted that, complainant party had beaten Ram Gopal and Omkar.

22. PW-6 Shivam, S/o Kamlesh Prasad Yadav is a hearsay witness, in as much as, he admits that, at the time of the incident, he was in the house.

23. PW-7 Smt. Beenu Yadav too is not an eyewitness and is a planted witness. She had not seen the incident. However, she has admitted old enmity with the accused persons.

24. As stated above, PW-8 Vinod Kushwaha, PW-10 Vikram Kushwaha, PW-11 Pooran Kushwaha & PW-12 Suresh Kushwaha have not



supported the prosecution case and they have admitted that, the place of the incident was in the Courtyard of accused persons when complainant party namely Deendayal, Suresh, Sandeep had entered the house of accused persons and the accused persons too sustained injuries as is admitted by the prosecution witnesses, thus, it is the case of free fight.

25. In the aforesaid factual backdrop, the High court of Madras in the matter of *Gunasekaran Vs. State by Inspector of Police, Anaimalai Police Station, Coimbatore District 2018 SCC OnLine Mad 2347* has held as under:

"17. Elaborating the scope of right of private defence, in Dharam v. State of Haryana, (2007) 15 SCC 241 in paragraphs (18) and (19) it was held as under:—

"18. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property



cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence.

*19. It is trite that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self-defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record (see *Munshi Ram v. Delhi Admn.*(AIR 1968 SC 702), *State of Gujarat v. Bai Fatima*((1975) 2 SCC 7) and *Salim Zia v. State of U.P.*, (1979) 2 SCC 648).”*

26. In the case of *Bhanwar Singh Vs. State of M.P.*, (2008) 16 SCC 657, in paragraphs (50) and (60), the Hon'ble Supreme Court has held as under:—

“50. The plea of private defence has been brought up by the appellants. For this plea to succeed in totality, it must be proved



that there existed a right to private defence in favour of the accused, and that this right extended to causing death. Hence, if the court were to reject this plea, there are two possible ways in which this may be done. On one hand, it may be held that there existed a right to private defence of the body. However, more harm than necessary was caused or, alternatively, this right did not extend to causing death. Such a ruling may result in the application of Section 300 Exception 2, which states that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence 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 defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. The other situation is where, on appreciation of facts, the right of private defence is held not to exist at all.

60. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. Necessity must be present, real or apparent”.

(emphasis added)



27. The same view is also expressed in the cases of *Biran Singh Vs. State of Bihar*, (1975) 4 SCC 161 : AIR 1975 SC 87, *Wassan Singh Vs. State of Punjab*, (1996) 1 SCC 458, *Sekar alias Raja Sekharan Vs. State represented by Inspector of Police, T.N.*, (2002) 8 SCC 354, *Buta Singh v. State of Punjab*, (1991) 2 SCC 612 : AIR 1991 SC 1316 and *James Martin Vs. State of Kerala*, (2004) 2 SCC 203.

28. Similarly in the case of *State of Orissa Vs. Nirupama Panda* 1988 SCC OnLine Ori 65, the Division Bench of Orissa High Court has held as under:

"10. Law is well settled that a judgment of acquittal should not be interfered with unless the assessment of evidence and the conclusion drawn by the trial court are unreasonable erroneous or perverse. Reversal of a judgment of acquittal will not be justified merely on the ground that the appellate court's view on the evidence on record may be different from that of the trial court or on the same set of evidence two views are reasonably possible (See Ganesh Bhavan Patel v. State of Maharashtra., Smt. Dhara Dei v. Prafulla Swain, and Babu Lodhi v. State of U.P.)"

29. Hon'ble Supreme Court in the case of *Parshuram Vs. State of M.P.* 2023 SCC OnLine SC 1416 has noted referring to judgment of supreme Court in the case of *Laxmi Singh Vs. State of Bihar* (1976) 4 SCC 394 that *"non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following*



inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.”

It is further held that, " *The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would*



obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.”

30. Thus, when facts of the present case are taken into consideration, then in the present case also prosecution witnesses PW-1 Shubham Yadav, PW-2 Sandeep Kumar Yadav, PW-3 Kamlesh Yadav, PW-4 Suresh Yadav, PW-5 Deendayal Yadav, PW-6 Shivam Yadav & PW-7 Smt. Beenu Yadav are interested witness. They are closely related to each other.

31. Dr. L.P. Verma (PW-9) reported all the injuries to be simple. There is no explanation of injuries on the persons of the accused, which causes doubt. Prosecution has failed to bring on record the real genesis of the incident. As per the prosecution witnesses Vikram Kushwaha (PW-10), Puran Kushwaha (PW-11) and Suresh Kushwaha (PW-12) have admitted that, actually it was the complainant party who entered the house of the accused persons and caused 'mar-peeet'.

32. Secondly, Shubham Yadav (PW-1) admitted that, there is a long pending land dispute. In the first phase after altercation Ram Gopal and his companions returned back. PW-2 Sandeep Kumar Yadav also admitted that both the parties had sustained injuries and both were taken to hospital. Both had filed a case against each other. PW-3 Kamlesh Yadav also admitted in



regard to the fact that place of incident is 'Khalihan' near new house and his house is situated there itself but when Kamta had come then apart from Kamta and Suresh nobody else were present. He also admitted that counter case is filed by the accused persons. PW-4 Suresh Prasad Yadav also admitted the facts on the similar lines.

33. Thus, when it is stated by the prosecution witnesses PW-10 Vikram Kushwaha, PW-11 Pooran Kushwaha & PW-12 Suresh Kushwaha that complainant party was the aggressor, both the parties sustained injuries, then it is evident that the injuries which were sustained by the complainant party were caused on account of self defence, plea of which is available to the accused persons. Since place of incidence is the house of the accused persons, prosecution has not explained injuries on the persons of the accused, therefore, in case of the free fight, when Dr. Verma (PW-9) has opined that injuries were simple in nature, acquittal of the respondents No. 2 to 5 on the ground of free fight and secondly on the ground of right to private defence, when examined in the light of judgment in the case of *Gunasekaran Vs. State by Inspector of Police (supra)*, *Dharam v. State of Haryana (supra)*, *Bhanwar Singh Vs. State of M.P. (supra)*, *Parshuram Vs. State of M.P.* and that of the Orissa High Court in the case of *State of Orissa Vs. Nirupama Panda (supra)*, cannot be faulted with.

34. Therefore, impugned judgment of acquittal being passed on due appreciation of facts and law cannot be faulted with calling for interference in the jurisdiction of this Court.

35. Accordingly, this Criminal Appeal fails and is dismissed.



(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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