

Gauhati High Court

State Of Assam vs Upendra Das And Ors. on 4 March, 1991

Equivalent citations: 1991 CriLJ 2930

Author: S Haque

Bench: S Haque

JUDGMENT S. Haque, J.

1. The Hon'ble Judges of the Division Bench being divided in opinion vide their judgment dated 10-7-1988, the case has been placed before this court under the order dated 14-7-1987 of the Hon'ble Chief Justice for delivering its opinion for disposal of the appeal in accordance with the provision of Section 392 of the Code of Criminal Procedure following the opinion of this court.

2. Eight (8) accused-respondents had been acquitted vide judgment dated 28th April, 1981 passed by the Sessions Judge, Nagaon in Sessions Case No. 31(N)/1978. The acquittal was on the ground that the acts done by the accused were in exercise of their right of private defence. Three (3) persons, namely, Sudhir, Mansur and Gurucharan died in the occurrence. The Division Bench in agreement held that the accused persons had right of private defence of property and person, but Hon'ble Hansaria, J. was of the view that accused Upendra and Gopendra were responsible for killing three persons and thereby had exceeded the right and held them guilty Under Section 304 Part I of the IPC. But Hon'ble Srivastava, J. differed with that view.

3. Hon'ble Hansaria (J) held that initially accused Upendra and Gopendra armed with spear chased Sudhir and hurled spear on his back causing death and then caused fatal blows on Mansur and Gurucharan resulting death. Rescrutiny of the evidence of the eye witnesses P.Ws. 4, 5, 6, 7 and 8 on those facts would be necessary.

4. It is found from evidence that Sudhir accompanied by Dipti Barma and 30-40 persons of different villages in a group came over to the cultivable field of the accused party who were ploughing the land. Sudhir was the owner of that land, but the accused party was in possession of the land under Sudhir since many years and regularly cultivating thereon. Dipti Barma agreed to purchase that land from Sudhir if the later could deliver vacant possession of the land. The prosecution case and evidence was that Sudhir took Dipti Barma and 30-40 labourers that day to point out the land where they would have to cultivate. Admittedly, the accused party was ploughing over the land at that time. It transpired from evidence of the eye witnesses that at the spot Sudhir and party divided into two groups, one group stood at Southern boundary and the other group at the eastern boundary and thus encircled the accused group. On scrutiny of the entire evidence along with the defence version it was found that the prosecution party acted in that manner to forcibly oust and drive away the accused party from the field and to take vacant possession over the land. Sudhir and his party were armed with deadly weapon in as much as Dipti Barma had a gun in hand. Apprehension of grievous hurt or of death naturally arose on the accused at the preparation of the prosecution party to state extending right of private defence of property and person.

5. P.W. 4 Motia Keot deposed that Upendra and Gopendra chased Sudhir and assaulted him by lathies. But no wound caused by blunt weapon could be found on the deceased. He sustained eight

(8) incised wounds and two penetrating wounds. So, the version of assault by lathies was not accepted. He further deposed that Upendra assaulted Gurucharan by lathi and Gopendra assaulted Mansur by lathi. But he did not state these facts before the investigating officer at the earliest opportunity. Introduction of these facts at the trial was afterthought and disbelieved.

6. P.Ws. 5, 6 and 7 deposed that Upendra and Gopendra chased Sudhir and hurled spear on the back causing wounds. P.W. 8 also deposed that Upen and another accused acted in that manner. But the medical evidence did not corroborate their version. There was no fatal penetrating wound on the back except one with 1" length which was of simple nature. All Other wounds were caused by sharp cutting weapon and one penetrating wound on front of the chest. So the version of these 4 eye witnesses as to causing fatal wounds on the back of Sudhir by spear hurling had not been proved. The story of chasing and hurling spear on the back by two accused Upen and Gopen is not acceptable. It was not also specifically proved who caused that simple penetrating wound on the back.

Furthermore, there was no evidence by these 4 witnesses about Upendra and Gopendra assaulting Gurucharan and Mansur. They could not say which of the accused assaulted them as some of them fled away while marpit was going on. P.W. 8 did not know the names and faces of the accused persons from before and saw them for the first time on the occurrence. So, his evidence pointing and identifying accused at the trial was very much doubtful and it could be reasonably suspected that he might be tutored. Thus there was no evidence that Upendra and Gopendra were solely responsible to cause death of 3 persons exceeding right of private defence. But it was found from evidence that other accused including ladies with daos, lathies and other weapons assaulted Sudhir, Gurucharan and Mansur and medical evidence indicated that their acts were mainly responsible for death of those three persons. Those accused got acquittal on the ground of exercising their right of private defence extending to cause death.

7. Admittedly, there was mutual marpit between the parties. The prosecution party Sudhir and others were aggressors. Four accused persons sustained injuries of which both Upendra and Gopendra received grievous hurt over their heads (vital part). The other accused persons acquitted, in exercise of right of private defence, acted more violently as indicated above than that of Upendra and Gopendra, then they two were also entitled to the same benefit for their acts done under similar right together. There was no evidence of exceeding in any manner of their rights of private defence.

8. The prosecution suppressed the injuries on the accused party, but the evidence disclosed that Upendra and Gopendra sustained grievous wounds on vital parts. Other two accused also sustained wounds of significant nature. Such suppression of the injuries on accused at the occurrence by the prosecution only inferred that the prosecution had suppressed the genesis and origin of the occurrence and had not presented the true version; and that the defence version explaining the manner of sustaining the injuries on accused rendered probable so as to throw doubt on prosecution case. The defence version that the prosecution party Sudhir with others with deadly weapons came to field to oust accused forcibly, and were aggressors, and that they used weapons injuring accused party had been accepted by the Division Bench. Thus reasonable inference could be drawn that prosecution had suppressed the genesis and origin of the occurrence to cover up their violent

aggression. The defence version was acceptable in view of evidence on record.

(Relied Lakshmi Singh v. State of Bihar, AIR 1976 SC 2263) : (1976 Cri LJ 1736).

9. Reasons recorded by Hon'ble Hansaria (J) for holding Upendra and Gopendra guilty for exceeding right of private defence were in conflict with his finding rejecting prosecution case and accepting defence case as probable and further holding existence of occasion of right of private defence of property and person for all the accused. Furthermore all the accused got acquittal Under Sections 148 and 149, IPC. so, only scope for scrutiny was whether they individually acted exceeding right of private defence for assessing each of them guilty for such individual acts. Application of Section 34, after failure of Section 149, for any act by one of the two accused would not be appropriate; but only individual act of each can be considered on the basis of specific and distinct evidence for assess if there was any act exceeding to the right of private defence of each of them. Section 34 can only be made applicable in which evidence, circumstances and conduct of accused more than one, relieved from Section 149, act in a manner and actually participate in furtherance of their common object distinct from that of the co-accused of the common group. In the instant case both Upendra and Gopendra did not act in any manner to make them responsible for any individual act or acts of exceeding their right of private defence specifically distinct from the co-accused with whom they were charged Under Section 149 and acquitted. The injuries on their persons were themselves enough to extend right of private defence to the killing of the aggressors in that mutual marpit in order to avert the violent aggression.

10. From the above discussions and observations, I fully agree with the views and decisions taken by Hon'ble Srivastava, J. Acquittal of all the accused by the trial court was justified.

11. Let the case now be placed before the Division Bench consisting Hon'ble Srivastava (J) as one of the Judges for final disposal of the appeal.