

**Fattu Khan Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Sep-08-1983

**Reported in :** 1983WLN370

**Judge :** S.S. Vyas, J.

**Appeal No. :** S.B. Criminal Appeal No. 435 of 1977

**Appellant :** Fattu Khan

**Respondent :** State of Rajasthan

**Judgement :**

S.S. Vyas, J.

1. This is an appeal by accused Fattu Khan against the judgment of the learned Sessions Judge, Merta dated September 29, 1977 convicting the appellant under Sections 304 part 11 and 323, IPC and sentencing him to three years' rigorous imprisonment under the first and three months' like imprisonment under the second count. The sentences were directed to run concurrently.

2. At about 3.30 A.M. on 23-7-76, PW. 4 Manni Khan of village Girodakhara appeared at Police Station Deed wana (District Nagaur) and verbally lodged report Ex. P.2 It was stated therein that at about 7.00 P.M. on the previous day, he saw Jabdin of village Hindasariwala (the deceased victim) coming from the house of DW. 3 Mst. Saftidan: He was crying for help. Jabdin entered the house of DW I Chatura' Ram to take shelter therein. He was closely followed by the accused having a Lathi in his hand PW. 3 Jabdikhan also went in the house of Chatura Ram to intervene and separate the two. The accused struck a blow on the head of PW. 3 Jabdikhan. Jabdikhan got frightened and left the place. Jabdin of village Hindasariwala struck two or three blows to the accused with a Lathi. The accused thereafter struck a blow of his Lathi on the head of Jabdin (victim). Jobdin fell down arid became unconscious. He was immediately taken to Government Hospital, Deedwana for treatment. He, however, did not survive and passed away at about 3 10 A.M. The police registered a case under Section 302, IPC and proceeded with investigation. TW post-mortem examination of the deceased-victim was conducted at about 10.50 A.M. on 21-7-76 by PW. 7 Dr. Laxman Singh, the then Medical Officer Incharge, Government Hospital, Deedwana. The doctor noticed the following injury on the dead body of the victim.

Lacerated wound 3' x 1/2' x 1' oh the left side of occipital region of scalp obliquely. There was extra Vesation of blood in subcutaneous issue around tae wound.

In the opinion of the doctor, death of the victim had occurred due to intra cranial

haemorrhage caused by the blow on the head. The post mortem report is Ex. P.14.

3. At the same time, the accused was medically examined and the following injuries were found on his body:

- (1) Lacerated wound 1 1/2' x 1/4' x 1/2' horizontally on the occipital region of scalp.
- (2) Lacerated wound with swelling 1' x 1/2 x 1' on medial side of right leg 4' above ankle.
- (3) Abrasion 1 1/3' x 1/2' on anterior side of right leg 4' above ankle.
- (4) Bruise 4' x 1' on right scapular region.

The injury report is Ex. P.15. At about 11.45 A.M., on the same day (23-7-76), the doctor examined PW. 3 Jabdikhan and found the following injury on his person.-

Lacerated wound 1 1/2' x 1/2' x 1/2' on the right occipito parietal region, antero-posteriorly. The injury was simple and caused by blunt weapon. The duration was about 12 to 24 hours.

The accused was arrested and in consequence of the information, furnished by him whilst under custody, Lathi Article 9, alleged to have been used, by him in inflicting the blows, was recovered. The Investigating Officer inspected the site and seized the blood-stained earth from there. He also seized the blood-stained clothes of the deceased-victim and the accused. On the completion of investigation, the police submitted a challan against the accused in the Court of Munsif and Judicial Magistrate, Deedwana, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302 and 323, IPC against the accused, to which pleaded not guilty and claimed absolute innocence. According to him, the prosecution has put forth only a lop-sided and truncated version of the occurrence. The real facts have been concealed. He set up a counter version of the incident in his statement under Section 313, Cr. PC. He stated that PW. 3 Jabdikhan was on inimical terms with him. On the day of occurrence, he went in search of his missing cow and reached the house of Chatura Ram Jat. There, while he was smoking the CHILAM with Chatura Ram, somebody came behind him and struck blows of Lathi on his head and neck. He became unconscious. During trial, the prosecution examined eight witnesses and filed some document. In defence, the accused examined three witnesses, On the conclusion of the trial, the learned Session Judge held the accused to be an aggressor and found him guilty for causing the death of the victim Jabdin. However, in his opinion, the offence, committed by the accused, was covered not by Section 30 but by 304 Part II, IPC. He further held that the accused had caused a simple injury to PW. 3 Jabdikhan. The accused was consequently convicted and sentenced as mentioned at the very outset.

4. I have heard Shri O.C. Chatterji, learned Counsel for the accused and the learned Public Prosecutor Shri 1 Section Udawat. I have also gone through the case file carefully.

5. In assailing the conviction of the accused under Section 4 Part II, IPC it was vehemently contended by the learned Counsel that the whole approach of the learned court below was erroneous. The prosecution evidence itself suggested in no uncertain

terms that it was the deceased-victim who first made an assault on the accused and struck as many as four blows to him, one of which was on the vital part viz, head. It was only thereafter that the accused struck a single blow to the deceased-victim. The circumstances clearly made out a case of exercise of the right of private defence. But this defence was wrongly rejected by the court below. It was also argued that the blow caused to the victim by the accused was simple in nature. He had not exceeded the right of private defence and did not cause more harm than it was necessary to inflict for the purpose of his self defence.

6. In reply, the learned Public Prosecutor supported the conviction of the accused and submitted that the plea of private defence should not be looked into as it was not specifically taken by the accused. It was also argued that the accused was the aggressor. He closely followed the victim while the latter was running away to save himself. There was no occasion for the accused to inflict blow on the victim I have taken the respective contentions into consideration.

7. It is true that the accused has not advanced the plea of self defence in so many words in his statement under Section 313, Cr. P.C, but that makes no difference. It is now a settled position in law that even if the accused has not specifically raised the plea of self defence, he is not precluded from making out such a defence on the basis of prosecution evidence and other materials on the record. When the material on record goes to support a plea of private defence in favour of the accused, the court is bound to consider it. Among the numerous authorities on the point, it will suffice our purpose to refer only to two Supreme Court authorities *Munshi Ram and Ors v. The Delhi Administration* AIR 1968 SC 702 & *Muthai Mathews v. State of Maharashtra* (1969) 2 SCWR 225. The contention of the learned Public Prosecutor that the plea of private defence should not be looked into as it was not specifically taken by the accused, is thus, now, a lost battle.

8. The pertinent question for deliberation and decision is whether the accused struck a blow to the victim in the exercise of his right of private defence. The prosecution has examined three witnesses viz., PW. 3 Jabdikhan, PW. 4 Manni Khan and PW. 5 Dullan Khan about the occurrence, the first two are the real brothers and the third is their cousin. It has been admitted by PW 1 Jabdikhan in his cross, examination that the deceased victim was his brother-in-law in some distance. They all deposed that the deceased-victim Jabdin came out running from the house of Mst. Sahidaa with a Lathi in his hand and went in the house of Gnatun Ram Jat. The accused followed him and he had also a Lathi with him. PW. 3 Jabdikhan, in his very examination-in-chief, stated that it was the deceased-victim who first struck two or three blows with his Lathi to the accused and it was only thereafter that the accused struck a single blows of Lathi on the victim's head. PW. 4 Manni Khan is the person who lodged the F/R (Ex. P.2) at the Police Station. Though in his statement during trial, he denied that the victim struck any blow to the accused, he could not explain as to how he came to mention this fact in the FIR (Ex. P.2). In Ex. P.2, he has clearly stated that it was the deceased victim who first struck two or three blows with a Lathi to the accused and it was only thereafter that the accused struck a blow on the head of the victim. PW. 5 Dulleh Khan has stated in his examination-in chief that when the victim and the accused entered the house of Chatura Ram Jat, both had Lathies in their hands it was the victim who first struck some blows to the accused with a Lathi. It was then and then only that the accused struck a blow of Lathi on the victim's head.

9. Thus, according to these three eye witnesses, of the occurrence, it was the

deceased-victim who first struck some blows to the accused with a Lathi. One of the blows was on the accused's held and the other on his scapular region. Ft was only after sustaining these injuries that the accused struck a blow of Lathi on the head of the victim.

10. It was contended by the learned Public Prosecutor that the victim came running from the house of Mst. Sahidan (DW 3) and the accused closely also followed him with a Lathi in his hand. In these circumstances, the accused should be taken to be the aggressor. I am unable to accept this part of the prosecution story for some cogent reasons, ff the victim had come from the house of Mst. Sahidan (DW. 3). he would not have been chosen the house of Chatura Ram (DW. 1) for shelter. He would have taken shelter in the house of any of these witnesses, who are his relatives. The counter version rout in defence is mare convincing. DW. 3 Mst. Sahidan deposed that she and the accused were coming from her field. When they came near the house of Chatura Ram, the deceased-victim and PW. 3 Jabdi Khan were found standing there with Lathies in their hands. They tried to surround the accused. The accused, apprehending danger entered the house of Chatura Ram. DW. 1 Chatura Ram is the person, in whose court-yard the occurrence took place. He deposed the same facts and further stated that when the accused entered the court-yard of his house, the deceased victim and PW. 3 Jabdikhan followed him with Lathis in their hands. The presence of Chatura Ram (DW. 3) cannot be doubted on the place of occurrence as it was his court-yard where the occurrence took place. The same facts were deposed by DW. 2 Birma Ran. His house is also situate near the place of occurrence. DW. 3 Mst. Sahidan is the widow of the deceased-victims real brother. Nothing could to elicited in the cross-examinations from the defence witnesses which may make their evidence unworthy of belief.

11. The factual position which thus emerges out is that the accused entered the house of Chatura Ram for his personal safety. The deceased-victim and PW 3 Jabdikhan went there. The deceased-victim had a Lathi in his hand. It w s he who first struck four blows with a Lathi to the accused. It was only thereafter that the accused struck a single blow with a Lathi on the head of the deceased-victim. The deceased-victim was, thus, the aggressor. So long the deceased-victim had a Lathi in his hand and was striking blows with it to the accused on the various parts of his body including the head, the apprehension of death or at least of grievous hurt could not be averted. It is not correct so say that a person apprehending dinger to life or grievous hurt should inflict an injury of the same nature to the assailant as was caused to him. An accused, who is assaulted, is not bound to modulate his defence step by step according to attack. Section 100, IPC speaks of reasonable apprehension of death or grievous hurt. It does not lay down that the accused must have been actually assaulted first If the actual assault was there or injuries on his person have been inflicted, they are the additional factors to give support to his plea of private defence. It is the apprehension of danger to his body and not the actual injury received by the accused which should be looked in deciding whether the act of the accused is justified.

12. In the instant case, it was the accused who was assaulted first and was struck blows on the vital part, (head) of his body. In these circumstances, facing with the imminent peril to his life, the accused was left with no alternative but to take to aims and strike back in defence for self preservation. The counter blow by him was, thus, perfectly justified to avert and ward-off further attack on him from the victim. The exercise of the right of private defence by the accused does not appear to be vindictive or maliciovs. He had a real arid immediate threat to his person.

13. The right of private defence is the right to self-help and is probably the first rule of criminal law known to us. This right has been recognised since the dawn of civilization. Manu the first known Hindu Jurist of global eminence-permits homicide if committed when danger to life was feared. He enjoined resort to arms in self-defence in the following words:

'kL=a fntkfrfHkxzkZgea nekS ;=hi :/;rs A

fntkrhuka p oxkZuka foIrs dkydfjrs AA48

vkReud'k ifj=kxs nk'koukZ p laxj A

L=hfoizkiqirks p pUpfex u nqO;fr AA49

xq:Z ok ckyo`/kkS ok czge ok cgq=e~ A

vkrrk;h uek;kUr gU;nsok fopkj;r AA50

ukrrk;hoFks nh'kk gLrqHkZofr d=u A

izdk'k okD;dk'k ok e|qLr e`R;q e`Pnkafr AA51

These very principles have been echoed by their lordships of the Supreme Court in Mohammed Khan and Ors. v. State of Madhya Pradesh 1971 SCR 1183 that the right of private defence is designed to serve a social purpose and deserves to be fostered within the prescribed limits.

14. It was the deceased victim who had a grudge and animus against the accused. DW. 3 Mst. Sahidan is the widow of his real brother. He suspected her of having liaison with the accused. It appears that the victim had come from his village to teach a lesson to the accused. Any way, the prosecution evidence in itself is sufficient to make out a plea of private defence of person in favour of the accused. He cannot be, therefore, held guilty for an offence under Section 304 Part II, IPC.

15. Coming to the charge under Section 323, IPC, it does not appear that PW. 3 Jabdikhan used any force against the accused. The accused was, therefore, guilty in striking a blow to him. The conviction of the accused under Section 323, IPC is therefore, maintained.

16. It may be mentioned that the accused had been in custody from 23-7-76 to 26-10-77 i.e for one year three months and three days.

17. In the result, the appeal of accused Jabdi Khan is partly allowed. His conviction and sentence under Section 304 Part II, IPC are set-aside and he is acquitted.

18. His conviction and sentence under Section 323 IPC are maintained. He is on bail. Since he had already served the sentence of three months, he need not surrender. His bail bonds shall stand cancelled.