

MOHAMMAD KHAN & ORS.

v.

STATE OF MADHYA PRADESH

October 21, 1971

[J. M. SHELAT, I. D. DUA AND S. C. ROY, JJ.]

Indian Penal Code, ss. 96 to 106—Scope—Right of Private defence—Exercise of the right when justified.

The inhabitants of village S who were all Muslims were divided into two groups. The relations between them were very much strained ; so much so that one group felt compelled to leave that village and shift to a new site for residence where they formed a new village called NS. The old village S was thereafter called JS. Differences between the two groups, however, remained unresolved and the bitterness did not abate. On the day of *Id* in February, 1965 residents of both the above villages went to Sanwar Mosque for offering prayers. The people from the old village (JS) had to pass through the new village (NS) for going to the Mosque. After the prayers when the inhabitants of JS were returning to their village they were confronted by armed inhabitants of NS at the outskirts of their village. There were attacks and counter-attacks between the rival groups belonging to the two villages resulting in casualties and also injuries to several persons on both sides. This occurrence gave rise to two cross-cases and both groups were separately tried by the same Judge. The prosecution succeeded in securing conviction of some accused persons in both the cases. The plea of the right of private defence raised by both sides was rejected.

On appeal in the High Court both sides repeated their plea of self-defence which was negatived.

On appeal by special leave.

HELD : (i) the people of village JS had a right to for prayers to Sanwar Mosque on the day of *Id* and merely because the only route to the Mosque passed through village NS the inhabitants of which were inimical towards them, they could not be deprived of the right to use that route. When in the lawful and *bonafide* exercise of their right to go back from the Mosque to their village by that route the inhabitants of village JS were confronted by the inhabitants of village NS who, armed with dangerous weapons, were waiting for them, they were fully justified in using force in defending themselves against unlawful aggression.

When enacting ss. 96 to 106, I.P.C. the legislature clearly intended to arouse and encourage manly spirit of self-defence amongst the citizens, when faced with grave danger. The right of private defence is designed to serve a social purpose and deserves to be fostered within the prescribed limits. On the facts and circumstances of the case the people from villages JS are held to have justifiably exercised the right of self defence and the appeal is allowed and the appellants (Cr. A. No. 204 of 1967) acquitted. [160 B]

(ii) As regards the other appeal (Cr. A. No. 83/68) since the people from village NS were aggressors, they had no right of private defence against the people from village JS and accordingly Cr. A. No. 83/68 fails and is dismissed.

- A** *G. V. S. Subramanyam v. State of A.P.*, A.I.R. 1970 S.C. 1079, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 204 of 1967 and 83 of 1968.

- B** Appeals by special leave from the judgment and order dated February 27, 1967 of the Madhya Pradesh High Court, Indore Bench in Criminal Appeals Nos. 238 and 249 of 1965.

R. L. Kohli, for the appellants (in Cr. A. No. 204 of 1967).

- C** *Ganpat Rai* and *S. K. Sabharwal*, for the appellants in Cr. A. No. 83 of 1968).

M. N. Shroff and *I. N. Shroff*, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

- D** *Dua, J.* These two appeals by special leave arise out of common judgment of the High Court of Madhya Pradesh which disposed of two criminal appeals by two rival factions belonging to two different villages situated at a small distance from each other which were involved in the occurrence in question dated February 4, 1965.

- E** Village Siloda in Tehsil Sanwer, district Indore was inhabited by Muslims but it was divided into two groups, the relations between whom were strained and differences rose to such a pitch that one group felt compelled to leave the village and shift to a new site for their residence. The new village formed by this group was called Naya Siloda. The original village
- F** Siloda was thereafter given the name of Juna Siloda. It appears that in spite of the departure of one group for Naya Siloda the differences between the two groups remained unresolved and the bitterness did not abate. The two villages virtually became inimical to each other. The animosity between the two villages was not confined to any specified individuals but the entire
- G** population of each village considered itself as the enemy of the entire population of the other.

- H** The incident giving rise to the two cross-cases which are the subject matter of the two appeals before us took place on February 4, 1965 which was the day of *Id*. Many people had collected at Sanwer mosque to offer their prayers and the residents of the two Silodas had also gone there in the morning. They met at the prayer time but they apparently remained peaceful at that auspicious moment. Some evidence does seem to

have been led suggesting that some threats were given by the inhabitants of Juna Siloda to the inhabitants of Naya Siloda. According to the High Court it was not possible to base a firm conclusion in support of this allegation. After the prayer was over the inhabitants of Juna Siloda on their way back to their village had to pass through Naya Siloda. In the opinion of the High Court the residents of Juna Siloda had gone to Sanwer in a cart with children and weapons. The inhabitants of Naya Siloda also went there but it was a matter of controversy whether they too had weapons with them. After the conclusion of the prayer the Naya Siloda people with weapons in their hands were found waiting on the route at a small distance from their village. The inhabitants of Juna Siloda, after sending their children in advance, back to the village, came by the same route and were confronted by the Naya Siloda people on the outskirts of their village. At that spot two old men out of the inhabitants of Juna Siloda, namely, Rasul Khan and Nazim Khan, got down from the carts and proceeded to pacify the inhabitants of Naya Siloda and to plead with them to live peacefully. Without giving any definite finding as to whether these two persons were challenged by the inhabitants of Naya Siloda, according to the High Court, there was an attack and a counter-attack in which fire arms were used by the inhabitants of Naya Siloda. The inhabitants of Juna Siloda also got down from the carts and killed Latif Khan of the opposite faction and seriously injured several other members of the Naya Siloda group. The inhabitants of Naya Siloda also killed Majid and Yasin of the Juna Siloda group and injured several others, the number of the injured on both sides being almost equal. Amongst the injured on the Naya Siloda side were Abdul Karim, Amir Khan, Chhote Khan son of Ramzan, Garu Khan, Chhote Khan son of Latif, Kallu Khan and Munshi Khan. Amongst the rival faction the persons seriously injured were Roshan Khan, Manjoor Hussain, Abdul Kadar, Mohammad Khan, Najini Khan, Kallu Khan and Faqru. These injured persons were on both sides in addition to those who had lost their lives. The persons out of the group from Juna Siloda who were arrested after investigation were charged, under s. 302, I.P.C. for the murder of Latif Khan, and under s. 148, I.P.C. for being members of the unlawful assembly which had the common object of committing the murder of Latif Khan and of causing injuries to the inhabitants of Naya Siloda. They were further charged under s. 307, I.P.C. for attempting to commit murder of the persons mentioned earlier to have been seriously injured. Charges under ss. 302 and 307, I.P.C. read with s. 149, I.P.C. were also framed in the alternative for the offences for which charges under ss. 302 and 307, I.P.C. were framed.

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A The inhabitants of Naya Siloda who were arrested and put up for trial were charged for the murder of Yasin Khan and Majid Khan under s. 302, I.P.C. and also charged under s. 148, I.P.C. with the common object of murdering and causing hurt to the people of Juna Siloda. They were also in addition charged under s. 307, I.P.C. for committing the murder of the people mentioned earlier to have received serious injuries.

B In their case too charge on identical lines under ss. 302 and 307, I.P.C. read with s. 149, I.P.C. was framed in the alternative for the offences which were the subject of charge under ss. 302 and 307, I.P.C.

C The two trials were held by the same Judge. In the trial of the accused from Juna Siloda, Mohammad Khan, Roshan Khan, Rasul Khan, Munshi Khan, Mohd. Hussain, Chhote Khan, Kallu Khan, Shakoor, Nazim, Faqru Khan and Manjoor Hussain were convicted under s. 302 read with s. 149, I.P.C. and sentenced to rigorous imprisonment for life. The charge under s. 148, I.P.C. was also proved and on this count they were sentenced to rigorous imprisonment for two years. Chhote Khan was convicted under s. 325, I.P.C. and sentenced to three years' rigorous imprisonment. Mohammad Hussain, Chitu Khan, Mahrat and Mohammad Khan were also convicted under s. 323, I.P.C. and sentenced to rigorous imprisonment for six months each. Kallu was convicted under s. 324, I.P.C. and sentenced to rigorous imprisonment for one year. All the sentences were to run concurrently. All the accused were acquitted of the substantive offences under ss. 302 and 307 and also under s. 307 read with s. 149, I.P.C.

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F In the case against the accused from Naya Siloda all of them were convicted under s. 302 read with s. 149, I.P.C. for the murder of Yasin Khan and Majid and sentenced to rigorous imprisonment for life. They were further held guilty of the offence under s. 148, I.P.C. and sentenced to rigorous imprisonment for two years each. Kallu Khan and Abdul Karim were also convicted under s. 326, I.P.C. and sentenced to rigorous imprisonment for three years. Amir Khan was convicted of an offence under s. 324, I.P.C. and sentenced to rigorous imprisonment for one year. Chhote Khan son of Ramjan and Gammu Khan were in addition sentenced to rigorous imprisonment for six months each under s. 323, I.P.C. All the sentences in their case were also to run concurrently.

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H The High Court first considered the case against the accused from Juna Siloda. The only point raised on their behalf was that they had a right of private defence and whatever injuries were inflicted by them were in the exercise of that right. According

to their case they carried the weapons because they were always in an apprehension of assault from the inhabitants of Naya Siloda. It may be pointed out that the trial court had not accepted the right of private defence pleaded by either side and according to that court this was a case of free fight there being no occasion for the exercise of the right of private defence on the part of either faction. It was on this basis that both parties were convicted as already stated. After considering the arguments addressed before it the High Court considered one basic fact to be clear that none of the witnesses had seen how the assault had started and all that could be said was that somehow the quarrel did start between the two factions. The fight had taken place on the cart track and both groups which were inimical to each other met there when they had arms with them and they both were seen assaulting their opponents. The High Court, after considering the evidence on the record and the circumstances of the case, came to the conclusion that the object of Juna Siloda people was to chastise the Naya Siloda people and this appeared to be evident from the circumstance that they had sent back their children earlier and they took the path through Naya Siloda. Since they were aware of the inimical attitude of the people of Naya Siloda through which village they had to pass and there was no question of Juna Siloda people being taken unawares while passing through Naya Siloda, according to the High Court, there was no question of any right of private defence being available to the people of Juna Siloda. The High Court further observed that the right of private defence, if at all available, must be claimable by all members of the group and there was no question of considering the case of each individual accused for the purpose of determining this right apart from the entire assembly. After so holding the High Court considered the case of each member of the group from Juna Siloda for determining whether he was present at the spot as a member of the assembly. Holding them all to be present their appeal was dismissed.

The High Court similarly dealt with the appeal presented by Naya Siloda group. In that Court's view the mere failure of the accused from Juna Siloda to satisfactorily prove their right of self-defence could not serve to clothe the accused from Naya Siloda with such a right. The two cases having been tried separately each case, according to the High Court, had to be decided on the facts established on its record with the result that in the appeal of the Naya Siloda group they had independently to prove that Juna Siloda people were the aggressors and the Naya Siloda group were, therefore, entitled to claim the right of private defence. After considering the evidence in the case the High Court came to the conclusion that the Naya Siloda

- A** people had gathered under the *Kabit* tree on the road by which the Juna Siloda people were returning from Sanwer to their village after the prayers. The Naya Siloda people had not gone to Sanwer with arms but had returned to their village after *1d* prayers a little earlier and after collecting the arms had gathered under the *Kabit* tree waiting for the Juna Siloda people to come.
- B** In these circumstances the Naya Siloda people were also held disentitled to claim any right of private defence. According to the High Court if Naya Siloda people had merely assembled inside their village for self-defence apprehending aggression on the part of Juna Siloda people then they might have been able to put forward the plea of self-defence. But having gone out of their village fully armed and gathered on the road under the
- C** *Kabit* tree which was the only route for the carts of Juna Siloda people when returning to their village from the Mosque the plea of self-defence could by no means be open to them. The Naya Siloda people, according to the High Court, on the circumstances of the case could also have approached the police with a complaint that they were apprehending assault from the Juna Siloda people who were armed with dangerous weapons and were to pass through their village on the return journey from the Mosque. Negating the claim to the right of private defence on the part of the Naya Siloda people their appeal was also dismissed by the High Court. In the concluding portion of its judgment the
- D** High Court observed that the trial court had erroneously acquitted some members of the unlawful assemblies for offences under s. 302, I.P.C. because by virtue of s. 149, I.P.C. they were all liable to be committed pursuant to the common object of the assembly. But there being no appeal against acquittal the High Court was content merely with this observation.
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- F** In this Court Shri R. L. Kohli addressed elaborate arguments on behalf of the appellants from Juna Siloda (Crl. A. No. 204 of 1967). According to the counsel right of private defence had been fully established on the record so far as his clients are concerned and the courts below have misread the evidence while considering the plea of private defence. Great emphasis was laid on the fact that Majid and Yasin out of the
- G** appellants' group had been killed and it was thereafter that the appellants used their weapons in exercise of their right of private defence. The counsel drew our attention to the following passage from the judgment of the High Court in which the right of private defence on the part of the Naya Siloda people was negated:

- H** "There is also the story of Rasulkhan and Najimkhan going to pacify them. Whether this is true or not is not very material for this case. They got down,

they got injured in the fight that took place. Therefore there cannot be any question of self-defence for the Naya Siloda people in general when we find that they had gathered under the *Kabit* tree on the road by which the carts were going. These people did not go to Sanwer with arms. They came to Naya Siloda earlier, collected the arms and waited for Juna Siloda people to come. Under these circumstances Naya Siloda people cannot claim any right of private defence though the Juna Siloda people may or may not be having a right of self-defence."

The counsel laid emphasis on the fact that, according to the High Court, the Juna Siloda people had not gone to Sanwer with arms whereas the Naya Siloda people had returned earlier to their own village, and after collecting the arms lay in wait for the Juna Siloda people to come: thereafter when the two unarmed men from the group of Juna Siloda people got down from their cart they were injured. On this premise, according to the counsel, the Juna Siloda people were clearly entitled to protect themselves against the aggressive assault by the Naya Siloda people. Shri Kohli drew our attention to the evidence of Kallu Khan (P.W. 16) of Naya Siloda who was himself injured during the occurrence. According to him Latif Khan was armed with a gun and had fired three or four shots and it was thereafter that he was surrounded by the people from Juna Siloda and beaten with *dharia* and *farsi*. According to counsel Latif Khan was clearly assaulted after he had used his gun against the inhabitants of Juna Siloda and therefore they were entitled to plead the right of private defence. Reference was also made to the evidence of Munshi Khan of Naya Siloda (P.W. 18). According to him a woman handed over a gun to Latif Khan which he used against the people of Juna Siloda. Latif Khan, according to this witness, was surrounded when he had exhausted his ammunition. This according to the counsel, also supports the plea of private defence on the part of the inhabitants of Juna Siloda. The counsel, however, seems to us to have ignored that part of the statement of this witness where he says that the people of Juna Siloda were already assaulting the party of the witness with *lathis*.

Shri Kohli then submitted that there is no evidence on the record justifying the observation of the High Court that the people of Juna Siloda had sent back their children earlier. He added that the evidence of some other prosecution witnesses, according to whom the Juna Siloda people had passed through Naya Siloda on their way to the Mosque in the morning with various dangerous weapons, is wholly incredible and untrustworthy.

- A The learned counsel for the State conceded that in this case there was no evidence that the children had been sent away earlier by the people of Juna Siloda. In fact evidence to this effect was only led in the counter-case which admittedly could not be used in the present case. He referred us to the judgment of the High Court where it is stated that the Juna Siloda people
- B knew that the only route was through Naya Siloda and they should have, therefore, avoided the cart track. The High Court, after so observing, proceeded:

C "It was not incumbent for them to come by carts only. It is not that Sanwer was at a long distance so that they could not go without a cart. We are not considering the case of a person ignorant of the situation. We are considering the facts with the background of mutual hostile relationship. It was such that the parties could not live in the village and the authorities were forced to find out a different place to live. It is true that there is evidence that there was a tree over the Nala on the other route so that carts might not go, but if one did not want to fight which was inevitable in that route one would have avoided going through Naya Siloda. We are not saying that the law teaches us cowardice but law does not encourage bravado. The right of self-defence only arises if

D the apprehension is unexpected and one is taken un-awares. If one enters into an inevitable danger with the fullest intimation before hand and goes there armed to fight out, the right cannot be claimed. Under these circumstances we do not think that Juna Siloda people had any right of private defence."

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- F We find it difficult to agree with this approach of the High Court. The people of Juna Siloda had a right to go for prayer to Sanwer on the day of *Id* and merely because the only route passed through Naya Siloda the people of which were inimical towards them, it cannot deprive them of their right to use that route for going to Sanwer. If while exercising that right they
- G were attached without justification, the right of private defence cannot be denied to them. And then the Juna Siloda people having gone to Sanwer for *Id* prayers in their carts, they had to come back with their carts, which they could not be expected to leave behind, merely because there was an apprehension in their mind that on their way back the Naya Siloda people were likely to confront them. The only cart-route being the one that
- H passed through Naya Siloda they had no alternative except to use that route. When in the lawful and *bona fide* exercise of the right to go back to their village in their carts by that route

they were confronted by the Naya Siloda people who were armed with dangerous weapons and were waiting for them, they were fully justified in using force to defend themselves against unlawful aggression. When enacting ss. 96 to 106 of Indian Penal Code, excepting from its penal provisions, certain classes of acts, done in good faith for the purpose of repelling unlawful aggression, the legislature clearly intended to arouse and encourage the manly spirit of self-defence amongst the citizens, when faced with grave danger. The law does not require a law-abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. As repeatedly observed by this Court there is nothing more degrading to the human spirit than to run away in face of danger: *G. V. S. Subramanyam v. State of Andhra Pradesh*⁽¹⁾. The right of private defence is thus designed to serve a social purpose and deserves to be fostered within the prescribed limits. Not only is the approach of the High Court erroneous in law but the High Court also wrongly held without any evidence that the Juna Siloda people had earlier sent back their children by another route for the purpose of having a confrontation with the Naya Siloda people. We, however, must not be understood to endorse the view of the High Court that the fact of Juna Siloda people having actually sent back their children would, if true, have deprived them of the right of private defence while lawfully going back to their home by the route through Naya Siloda. However, once the above approach of the High Court is held to be erroneous and it is also part of the Juna Siloda people to arm themselves for confrontation, the only permissible conclusion open on the record is that the Juna Siloda people had used force only in justifiably exercising their right of private defence. It may be recalled that the Naya Siloda people had returned from the prayers early and gone out of their village after equipping themselves with arms in order to wait for confronting the Juna Siloda people on their way back home from their *Id* prayers. It was nobody's case before us that if there was the right of private defence, it was exceeded by the Juna Siloda people. We have, therefore, no hesitation in allowing this appeal and acquitting the appellants which we hereby do.

On the view taken by us in Crl. A. No. 204 of 1967, the other appeal (Crl. A. 83 of 1968) presents no difficulty. Having known the origin of the conflict about which there is no contrary finding in Crl. A. No. 83 of 1968 it cannot but be held that the people of Naya Siloda were the aggressors and they had no right of private defence against the people of Juna Siloda. Indeed, the learned counsel for the appellant in Crl. A. No. 83

(1) A.I.R. 1970 S.C. 1079 at 1087.

- A** of 1968, Shri Ganpat Rai, did not put forward any serious or sustained argument that the appellants from Naya Siloda were compelled to use force to defend themselves against unlawful aggression. Naturally there was no argument in regard to the guilt of any individual appellant nor was any argument addressed on the question of sentence. Criminal Appeal No. 83 of 1968
- B** must, therefore, fail and the same is hereby dismissed.

S.N.

Cr. A. No. 204 of 1967 allowed.
Cr. A. No. 83 of 1968 dismissed.