A BHAGWAN SWAROOP

v.

STATE OF MADHYA PRADESH

JANUARY 31,1992

B [KULDIP SINGH AND R.M. SAHAI, JJ.]

Penal Code,1860—Sections 96,100—Right of private defence—Lathi blows inflicted on father by complainant party—Apprehension of danger to his life—Firing a gun shot at that time by son—Whether right of private defence can be claimed.

C

Arms Act, 1959—Section 25A—Conviction under—Using of father's licensed gun by son to save life of father—Whether acquittal proper.

The deceased along with his father and brother was living in the house owned by the accused appellant's father.

D

There was dispute between the accused and the complainant party regarding a piece of land which according to the accused, the complainant party was forcibly occupying.

On May 11, 1969 at about 2.45 p.m. appellant's father had an E **altercation with deceased's brother. Thereafter he went to deceased's house and abused the complainant party and started dismantling the tin-shed on the disputed land.**

The prosecution's case was that the deceased's brother was sent to the police station to lodge a report. The deceased came at F **the spot and gave a push to appellant's father. He fell down. Getting up, immediately, shouted for appellant and asked him to bring the rifle and kill the complainant party. The appellant brought a gun and fired a shot hitting the deceased. the appellant fired the second shot which hit another. The deceased fell down and thereafter the deceased's father took out a lathi and gave beating to appel-** G **lant's father. The deceased succumbed to the gunshot injury.**

Appellant was charged under Sections 302, 307, 451 IPC and also under section 25-A of Arms Act. The father of appellant was charged under sections 109/302, 451 IPC and 29 of the Arms Act.

H **The appellant and his father denied the commission of the**

crime. Appellant's plea of alibi was rejected by the trial court. It also did not believe the prosecution case in toto. A

The appellant's father was acquitted of all the charges by the trial court. It convicted the appellant under section 302 IPC and he was sentenced to imprisonment for life, but he was acquitted of the other charges. B

The High Court allowed the State's appeal convicting the appellant under section 307 IPC and section 25-A Arms Act also. He was sentenced to five years and one year rigorous imprisonment respectively for the offences. C

The appellant filed this appeal before this Court by way of special leave.

On the question, whether on the facts of the case, the appellant-accused can claim right of private defence, allowing the appeal, this Court, D

HELD:1. It is established on the record that the appellant's father was being given lathi blows by the complainant party and it was at that time that gun-shot was fired by the appellant to save his father from further blows. A lathi is capable of causing a simple as well as a fatal injury. Whether in fact the injuries actually caused were simple or grievous is of no consequence. It is the scenario of a father being given lathi blows which has to be kept in mind. In such a situation a son could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified. The appellant fired the gun-shot to defend the person of his father. [470 E-G] E F

2. Using the licensed gun of his father under the circumstances of the case cannot be considered possessing an arm without a licence. The High Court grossly erred in setting aside the acquittal of the appellant under section 25-A of the Arms Act. [471 A-B] G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos.273-74 of 1980.

From the Judgment and Order dated 19.1.1980 of the Madhya Pradesh High Court in Crl. A. Nos. 107 of 1970 and 1 of 1971. H

A R.L. Kohli and K.C. Kohli for the Appellants.

Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Bhagwan Swaroop was charged under Section B 302 IPC for the murder of Man Singh and under Section 307 IPC for an attempt to murder Shahid. He was further charged under section 451 IPC for committing trespass and also under section 25-A of Arms Act. Ramswaroop, father of Bhagwan Swaroop, was charged under sections 109/302, 451 IPC and 29 of the Arms Act. Ramswaroop was acquitted of all the charges by the trial court. Bhagwan Swaroop was, however, C convicted under section 302 IPC and was sentenced to imprisonment for life. He was acquitted of the other two charges. The appeal filed by Bhagwan Swaroop was dismissed by the High Court. The High court allowed the State appeal and further convicted Bhagwan Swaroop under section 307 IPC and section 25-A Arms Act. He was sentenced to five years and one year rigorous imprisonment respectively for the said of- D fences. This appeal before us by way of special leave is by Bhagwan Swaroop against his conviction and sentence on the three counts.

Deceased Man Singh was the son of Shahjor Singh and brother of Babusingh. They were living in the house owned by Ramswaroop and his sons. There was dispute between the parties regarding a piece of land E which according to the accused, the complainant party was forcibly occupying. A notice had been served upon Shahjor Singh by the accused, to vacate the said encroachment. According to the prosecution on May 11, 1969 at about 2.45 p.m. accused Ramswaroop had an altercation with Babusingh at a place called Gauri and thereafter he rushed towards the house of Shahjor Singh and on reaching there, abused the complainant F party and started dismantling the tin-shed on the disputed land. Shahjor Singh sent his son Babusingh to the police station to lodge a report. Meanwhile Man Singh deceased came at the spot and gave a push to Ramswaroop who as a result fell down. He got up immediately and shouted for his son Bhagwan Swaroop and asked him to bring the rifle and kill the complainant party. Bhagwan Swaroop rushed to his house, brought G a gun and fired a shot hitting Man Singh. Bhagwan Swaroop fired the second shot which hit Shahid. Man Singh fell down and thereafter complainant Shahjor Singh took out a lathi and gave beating to Ramswaroop. Man Singh succumbed to the gun-shot injury.

Both the accused denied the commission of the crime. Accused H Ramswaroop stated in his examination as under:-

> "I found Babusingh gambling in my garden. I asked him as to why he is doing so in the garden, he started abusing me. I slapped him. His father came there both of them abused me and then left the place. I told him that I will make the report of the incident to the police station. When I reached near the house of Shahjor Singh on my way to the Police Station he alongwith his sons caught me and started beating me with lathies. Shahyor Singh brought an axe, when he was about to use his axe on me there was gun fire."

Accused Bhagwan Swaroop took the plea of alibi which has been rejected by both the courts below. We are of the view that the said plea was rightly rejected.

The trial court did not believe the prosecution version in toto. The trial court found that the "prosecution tried to indulge in exaggeration, misrepresentation and at times suppression of facts without any meaning". The trial court further concluded as under:-

> "The defence version that Babusingh was gambling alongwith others in the garden of the accused Ramswaroop appears correct. Ramswaroop went there and questioned Babusingh. There was altercation and use of hot words. Admittedly Shahjorsingh P. W. 1 came there and Babusingh accompanied him back to his house. Ramswaroop further stated in his examination that he gave one slap to Babusingh. Babusingh as P.W.9 stated that he was given three or four slaps by Ramswaroop. Thus the fact that Babusingh was slapped, stand established in the case".

The part of the prosecution story, that the accused Ramswaroop rushed towards the house of Shahjor Singh and reached there before the arrival of Shahjor Singh, was also dis-believed by the trial court.

Regarding the actual occurrence, it is not disputed that Ramswaroop was given four simple injuries by the complainant. The prosecution case is that the injuries were given after the gun-shot had been fired whereas the defence version is that the gun-shot was fired while lathi injuries were being given to Ramswaroop. Trial court considered the statements of Banne Khan, P.W.6, Shahid P.W.8, Sarfuddin P.W.11, Safaat Ahmad D.W.1 and Hamid Ahmad D.W.3 and came to the following conclusion:-

> "Any-way this one fact is clear from the evidence of these eye-witnesses that Ramswaroop was put to beating, then there was gun fire and Bhagwanswaroop was seen on the spot".

A The trial court on appreciation of the evidence produced by the prosecution and the complainants came to the conclusion that the following facts stood established from the evidence:-

> "Ramswaroop, came near the house of Shahjorsingh. There was exchange of abuses between Shahjorsingh and Ramswaroop.
B Ramswaroop tried to remove the tin shed of Gonda. He was pushed aside by Mansingh and then put to beating by lathies."

It was under these circumstances that Ramswaroop asked his son to fire the gun-shot. The question for our consideration is whether on the facts of this case the appellant can claim right of private-defence. The
C learned trial court came to the conclusion that since minor injuries were caused by the lathi there was no basis for entertaining a reasonable apprehension that Ramswaroop would be killed or hurt grievously and as such the plea of self-defence was rejected. The High Court upheld the finding of the trial court in the following words:-

D
> "No doubt the respondent Ramswaroop had injuries on his person. There were two simple injuries caused by hard and blunt object and the other two could be caused by fall for which there is definite prosecution evidence that the respondent Ramswaroop was pushed and he fell down. These injuries on him could not give rise to any apprehension of either grievous hurt or death."
E

We do not agree with the courts below. It is established on the record that Ramswaroop was being given lathi blows by the complainant party and it was at that time that gun-shot was fired by Bhagwan Swaroop to save his father from further blows. A lathi is capable of causing a simple as well as a fatal injury. Whether in fact the injuries actually
F caused were simple or grievous is of no consequence. It is the scenario of a father being given lathi blows which has to be kept in mind and we are of the view that in such a situation a son could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified. We, therefore, set aside the finding of the courts below on this point and hold that Bhagwan Swaroop
G fired the gun-shot to defend the person of his father.

The trial court on the basis of the evidence on the record, including that of Dr. Mukherjee P.W.5, came to the conclusion that only one shot was fired by Bhagwan Swaroop. According to the trial court Shahid was accidentally hit by the pellets spread by the gun-shot. It was on these
H findings that the trial court acquitted Bhagwan Swaroop of the charge

under 307 IPC. We agree with the trial court and hold that the High Court was not justified in reversing the same. The High Court further grossly erred in setting aside the acquittal of Bhagwan Swaroop under section 25-A of the Arms Act. Using the licensed gun of his father under the circumstances of this case cannot be considered possessing an arm without a licence. We agree with the reasoning and findings of the trial court and hold that High Court was not justified in setting aside the acquittal of Bhagwan Swaroop under Arms Act. A B

For the reasons given above we allow the appeal, set aside the conviction of appellant Bhagwan Swaroop under section 302 IPC, 307 IPC and 25 Arms Act and acquit him on all these counts. He is already on bail. His bail bonds are discharged.

V.P.R. Appeal allowed.