

APPELLATE CRIMINAL.

Before Young C. J. and Tek Chand J.

MOHAMMAD KHAN (CONVICT) Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 410 of 1939.

Right of private defence — Accused armed with a formidable weapon — Lurking in a chhappar belonging to two deceased persons — father and son — with a view to meet the wife of son — pursued by them and other members of their family — all unarmed — Killed father and son one after the other — Right of private defence — Whether could be claimed by accused under the circumstances.

The accused, armed with formidable weapons, came to the enclosure of the two deceased (father and son) in order to meet the wife of the son and was waiting in a *chhappar* where he was seen by a member of the deceased's family. He gave an alarm and several members of their family including the two deceased (who were unarmed) recognised the accused and chased him into the *pasar* of one M. The father was the first to get close to the accused and endeavoured to get hold of him. The accused immediately produced a dagger and stabbed him in the chest whereupon the son seized the accused and was also stabbed in the stomach. Both the father and the son died shortly afterwards. The right of private defence on behalf of the accused was pleaded on the ground that when the accused ran away and was pursued, he had a strong apprehension that if he was caught, he would either be killed or would receive grievous hurt and, therefore, the right of private defence, even to the extent of killing, would arise.

Held, (repelling the contention) that, under the circumstances, the accused had no right of private defence. Even supposing that the two deceased and their companions had no right to arrest the accused for the original trespass, once he had killed the father, the right of arrest accrued to the

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pursuers at that moment and the killing of the son by the accused amounted to murder.

Further, the accused had gone to the house of the deceased to commit an offence, he knew that he might be discovered and he went prepared for this eventuality. Under these circumstances, when that which he anticipated actually happened and in pursuance of his pre-conceived intention he used his knife, it could not be said that he had the right of private defence.

Appeal from the order of Rai Sahib Lala Ram Kanwar, Sessions Judge, Attock, at Campbellpur, dated 31st March, 1939, convicting the appellant.

GHULAM MOHY-UD-DIN. for Appellant.

BASANT KRISHAN for Advocate-General, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—Mohammad Khan has been condemned to death by the learned Sessions Judge of Attock at Campbellpur for the double murder of Abdullah and Gul Mohammad.

Mohammad Khan before the occasion which gave rise to this charge had had a somewhat chequered career. Gul Mohammad, one of the deceased, had a wife, named, *Mussammat* Aishan. Mohammad Khan for some two years had an illicit intimacy with this woman. It is said that one *Mussammat* Basran came to know of this and reprimanded both Mohammad Khan and *Mussammat* Aishan. The result of this was that she was murdered by Mohammad Khan about one and half years before these murders. He was, however, acquitted after trial and continued his illicit connection with *Mussammat* Aishan. In addition to the murder of *Mussammat* Basran, he was committed for rape on her daughter *Mussammat* Began as well.

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He was acquitted on this charge also. The woman, who was murdered, and the woman, who was raped, were relatives of the deceased.

On the night of the 30th December, 1938, the accused Mohammad Khan came to the enclosure of the two deceased men in order to meet *Mussammât* Aishan. He was waiting in a *chhappar*. One of the family of Abdullah went out to ease himself and saw a man lurking in this *chhappar*. He gave an alarm and several members of their family, including the two deceased, ran out of their house. They recognised Mohammad Khan. Mohammad Khan ran away and was chased by the two deceased and some of their relatives. Mohammad Khan ran a short distance and entered into the *pasar* of Mian Ahmad. Abdullah, the father of Gul Mohammad, was the first to get close to Mohammad Khan and endeavoured to catch hold of him. Mohammad Khan immediately produced a dagger and stabbed Abdullah in the chest. Abdullah fell down. Thereupon Gul Mohammad, Abdullah's son, seized Mohammad Khan and was also stabbed with this dagger by Mohammad Khan in the stomach. Both these men died shortly afterwards.

The prosecution called five persons who witnessed this double killing and the learned Sessions Judge has believed their evidence. There is no occasion for us to discuss this evidence, as the appellant here does not challenge the fact that he is responsible for the deaths of Abdullah and Gul Mohammad. He raised, however, a plea of self-defence when this case first came before a Bench of this Court on the 7th of June, 1939. That Bench was of opinion that the plea of self-defence might depend upon the nature of the building in which Mohammad Khan had been trespassing and

the case was adjourned for this to be ascertained. That evidence is now before us but, on the facts of the case, which were not gone into on the last occasion, we are satisfied that this point does not arise.

The plea of self-defence is put as follows :—

Mohammad Khan was in this *chhappar*: the *chhappar* was not a building which would give rise to a charge of lurking house-trespass: the offence that he was committing there did not, therefore, give a right of arrest to Abdullah and Gul Mohammad under section 59 of the Criminal Procedure Code: when Mohammad Khan ran away and was pursued he would have every reason to consider that, if he was caught, he would either be killed or would receive grievous hurt and, therefore, the right of self-defence, even to the extent of killing, would arise.

Learned counsel alluded to the two deceased men and their friends as “ bloody-minded Pathans ” and contended that, if persons of this description had their women interfered with, the person so interfering might reasonably expect to be killed or seriously injured, if caught. On the record, however, there is no evidence to show that the unfortunate Abdullah and Gul Mohammad or their relatives were Pathans at all, or were anything but what they are described to be in the record, namely peaceful weavers: they were, in fact, *kamins*. The accused Mohammad Khan is an Awan, that is, a member of the proprietary body, and we doubt if a man of the past experience and position of the appellant would have any fear of death or of grievous hurt from *Kamin* weavers. In fact, the evidence of Mian Ahmad, one of the sons of Abdullah, is that they chased Mohammad Khan with the object of catching him and entreating him not to come to

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their house or otherwise persecute them in the future. We consider that, in the circumstances of this case, this is believable and we do not think that any serious apprehension, such as of death or grievous hurt, on the facts outlined above would have entered into the mind of Mohammad Khan.

In addition, it is in evidence and the learned Judge below believes it and we see no reason to disagree with him, that the pursuers of Mohammad Khan were all unarmed. This is another reason to show that Mohammad Khan would not reasonably apprehend death or grievous hurt. From this it would appear that, even supposing that Abdullah and Gul Mohammad and the others had no right to arrest Mohammad Khan for the original trespass, once Mohammad Khan had killed Abdullah, either he had no right of self-defence or, as held by the learned Sessions Judge, he had grossly exceeded that right. Under these circumstances, when Mohammad Khan had killed Abdullah the right of arrest at that moment would arise. Gul Mohammad was exercising that right and the right of self-defence, therefore, would not then arise to justify the killing of Gul Mohammad by Mohammad Khan. It is, in our opinion, difficult to argue that the killing of Gul Mohammad at any rate did not amount to murder.

In addition to these points raised by counsel for the appellant we hold that the right of self-defence under the circumstances of this case could not possibly have arisen. Mohammad Khan had gone that evening to the house of the deceased to commit an offence he knew that the men of the family might discover him, and Mohammad Khan went prepared for this eventuality. The dagger used in this case is one of

the most formidable weapons we have seen. The blade alone measures over a foot in length. We are satisfied from the facts of this case that Mohammad Khan went armed to this adventure, with every intention of using his dagger if discovered. Under these circumstances, when that which Mohammad Khan anticipated actually occurred, and Mohammad Khan in pursuance of what we consider to be a pre-conceived intention used that knife, we do not think that under any circumstances can it be said that he had the right of self-defence.

The plea of self-defence having, therefore, in our opinion hopelessly broken down, the result is that Mohammad Khan is guilty of murder.

With regard to the sentence, the facts and circumstances described above make it clear that the sentence of death in this case is thoroughly justified. We, therefore, confirm the sentence of death and dismiss the appeal.

A. K. C.

Appeal dismissed.

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