

N.G. SREEDHARAN AND ANR.

v.

STATE OF KERALA

DECEMBER 13, 1995

[M.K. MUKHERJEE AND B.N. KIRPAL, JJ.]

Indian Penal Code 1860 :

Ss. 302/34 & 149, 143, 147, 148, 341—Murder—Acquittal of all accused as accused persons also sustained injuries—High Court reversing the acquittal of two of the accused—Convicting and sentencing them under s.302/34—Upholding acquittal of others—On appeal conviction and sentence recorded under s.302/34 set aside—One accused convicted u/s 302 IPC simpliciter and sentenced to life imprisonment

The head load workers of Trichur Taluk belonged to two different trade Unions. The two deceased brothers V and D belonged to one Union and accused belonged to a rival Union. A dispute arose between the members of the two Unions over unloading of a lorry and the work stopped. V, being the treasurer of the Union accompanied by P.W. 1 went to the Union headquarters to seek its advice. On their return A1 called V aside under the pretext of discussing the issue; but was soon surrounded by members of the rival Union. An altercation followed and A1 shouted that V was the trouble maker and should be done away with. V brandished a knife and tried to run away but was caught and stabbed by A1. A2 beat V with an arecanut split on various parts of the body. When D, the brother of V rushed to his rescue, he was also stabbed by A1. Both the brothers V and D died soon after.

The accused were charged with for offences under Ss. 143, 147, 148, 341, 302/147 IPC. The trial ended in acquittal of all the accused. State preferred an appeal, and the High Court reversed the acquittal of A1 and A2 convicted and sentenced them under S. 302/34 IPC, but upheld the acquittal of others. Hence this appeal by A1 and A2.

Partly allowing the appeal, this Court

HELD : 1. Both the appellants were found to have sustained injuries

A when examined by the Assistant Surgeon of District Hospital. While A1 sustained one penetrating wound 1 "x 1/2" on the right side of the chest A2 sustained four, of which two were incised and the other two were penetrating wounds. The eye-witnesses examined on behalf of the prosecution however did not offer any explanation as to how the two appellants sustained those stab injuries. Nonetheless their evidence discloses that

B when the altercation started between him and the appellants, V was found to brandish a knife which he had with him. Judged in that light the appellants were entitled to raise the plea of the right of private defence of their persons apprehending threat of assault with the knife so brandished in view of Section 102 IPC, which provides that right of private defence of

C the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence ('assault' in the instant case) though the offence may not have been committed, and it continues so long as apprehension of danger to the body continues. The evidence further discloses that not only the threat was imminent but the

D apprehension of the two appellants of being assaulted by V was also a reasonable one—and indeed, it ultimately turned into a reality. Then again, considering the nature of injuries sustained by them, it cannot also be said, in view of Section 100 IPC, that they had exceeded their right of private defence in causing the death of V. Thus the conviction and sentence of the two appellants for the murder of V cannot be supported.

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[652-F-H, 653-A-C]

Deo Narain v. State of U.P., [1973] 1 SCC 34*i*, relied on.

2. It is the consistent case of the eye-witnesses that when V fell down on being assaulted by A1 and A2, D who was sitting in a nearby tea shop, rushed to his brother's rescue. A1 then stabbed him with the knife as a result of which he fell down dead. There is not an iota of material on record to show that D had any weapon with him or that he was a party to the fracas that took place between the appellants and V earlier. Therefore, there is no reason to disbelieve the prosecution case as to the manner in which D met with his death, more so, when the eye-witnesses account in this respect stand corroborated by the medical evidence. A1 also cannot lay any claim that his apprehension of danger to his body continued even after V had dropped his knife and himself fallen down, so as to entitle him to exercise his right of defence in assaulting D. [654-C-E]

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H 3. There is no evidence on record to indicate that A2 stabbed D. In

fact, it was not the specific case of A2 even that he had stabbed D. Besides, in discarding the prosecution case altogether, the trial court was much influenced by the fact that only one knife was found at the spot, and according to it, as that knife was dropped by V the conclusion was inevitable that A1 had no knife with him by which he could have assaulted any of the two brothers. This finding is patently incorrect for P.W. 4 in his cross-examination categorically stated that when the knife fell down from V's hand, he saw A6 (since acquitted) lifting it. The above evidence of P.W. 4 stands corroborated by that of P.W. 5 when he also stated in cross-examination that the knife which was brandished by V fell down and A6 took it away. [654-H, 655-A-B]

4. The evidence of the Doctor (P.W. 9) who held post-mortem examination on the dead body of D, testified that he found on penetrating incised wound in the midline of chest 5 cm. below the root of neck, 3 cm. long horizontally and 5 cm. deep. He opined that the injury was capable of causing instantaneous death and that it could be caused by stabbing with a knife, like M.O. 1, which according to the eye-witnesses A1 threw away at the spot, and later seized by the Investigation Officer. Considering the nature and situs of the injury, the attending circumstances and the fact that it was inflicted without any provocation whatsoever it must be said that the offence committed by A1 is one of murder. [655-D-E]

5. The order of conviction and sentence recorded against A1 and A2 under Section 302/34 for the murders of V and D is set aside and A2 is acquitted in respect of those charges. A1 is convicted under Section 302 IPC simpliciter for the murder of D and he is sentenced to suffer imprisonment for life. [655-F]

CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 263 of 1983.

From the Judgment and Order dated 14.3.83 of the Kerala High Court in Crl. A. No. 21 of 1987.

U.R. Lalit and M.P. Vinod for the Appellants.

M.T. George for the Respondent.

The following Judgment of the Court was delivered :

A **M.K. MUKHARJEE** : N.G. Sreedharan and V.K. Sudhan, the two appellants herein, (hereinafter referred to as A1 and A2 respectively) alongwith four others were placed on trial before the Session Judge, Trichur to answer charges under Sections 143, 147, 148, 341 and 302/149 (two counts) I.P.C. The trial ended in an acquittal of all of them; and aggrieved thereby the respondent-State preferred an appeal. In disposing of the appeal the High Court reversed the acquittal of A1 and A2 and convicted and sentenced them under Section 302/34 I.P.C., while upholding the acquittal of others. Hence this statutory appeal at their instance. Shorn of details, the case for the prosecution is as under :

C The head load workers of Trichur taluk, which includes village Adattu, own allegiance to different trade Unions. While Vincent and his brother Davis (the two deceased) belonged to one of those Unions the accused belonged to a rival one. On December 9, 1979 a dispute between the members of those two Unions over unloading of a lorry at Puranattukara Centre in the above village took such a violent turn that it had to return without unloading the materials. To seek advice of his leaders in the matter Vincent, who was the treasurer of their Union, went to their headquarters at Mundor on the following day, that is on December 10, 1979, accompanied by Ashokan (P.W. 1). In the evening they returned by bus and alighted at the Puranattukara centre at or about 7.30 P.M A1, who was present there, called Vincent aside under the pretext of discussing the issue. He was then surrounded by some members of A1's Union and wrongfully restrained. In course of the altercation that followed A1 shouted that Vincent was the trouble maker and he should be done away with. Then A1 and another caught hold of Vincent. In an attempt to save himself Vincent brandished a knife which he had with him and managed to escape. F The accused persons however chased him and ultimately succeeded in apprehending him at the gate of Pambungal Ramakrishnan. There A1 stabbed him with a knife and A2 beat him with an arecanut split on various parts of his body. Finding his younger brother a helpless victim of such attacks. Davis, who was nearby, rushed to his rescue but A1 stabbed him G also. Both the brothers died soon after.

On that very night Ashokan (P.W. 1) lodged an information about the incident with the police and on that information a case was registered for the above two murders. Shri Muthalali (P.W. 13), Circle Inspector of H Crime took charge of investigation and after holding inquest upon the dead

bodies of Vincent and Davis, sent them for post-mortem examination. He seized some blood stained earth, a blood stained knife and an arecanut spill from the place of occurrence and sent them for chemical examination. After receipt of the reports of post mortem and chemical examination and completion of investigation he submitted charge-sheet. A

To prove its case the prosecution examined 12 witnesses and exhibited certain documents. Of the witnesses examined Ashokan (P.W. 1, Mohanan (P.W. 2), George (P.W. 3), Davis (P.W. 4) and Jose (P.W. 5) were produced as eye-witnesses but P.W. 3 turned hostile. Besides, the prosecution relied upon the evidence of the doctor who held post-mortem examination upon the two deceased and the reports of chemical examination which indicated presence of blood in the articles seized by the police from the place of occurrence. B C

In giving out his version of the incident A1 stated, while being examined under Section 313 Cr.P.C., that Vincent and Davis alongwith P.Ws. 1, 2, 4 and others came to the place where he was talking with A2. Reaching there Vincent shouted that he would not permit him (A1) and his associates to do the loading and unloading work at Puranattukara and immediately thereafter Vincent stabbed him on his chest and then A2, on both sides of his abdomen with a knife. When vincent made further attempts to stab, A2 took away the knife from him. At that time Davis choked the neck of A2. He went on to say that both he and A2 then cried out and hearing their cries the members of their Union rushed to the spot. Thereafter there was a confrontation between the members of the two rival Unions. A1 specifically denied to have stabbed Vincent or Davis. A2 also gave a similar statement; and further stated that after snatching away the knife from Vincent he stabbed him once or twice out of fear of instantaneous death. The appellants however did not adduce any evidence in support of their respective pleas. D E F

On perusal of the judgment of the trial Court we find that the principal grounds that weighed with it for recording the acquittal were, that the prosecution suppressed the fact that the accused persons also sustained injuries in the incident; that non availability of a second knife at the scene of occurrence discredited the entire prosecution case; that the defence version that A2 inflicted the stab wounds on both the deceased was more reasonable; and that the assertion of the eye-witnesses that A1 stabbed H

- A Vincent and Davis was not acceptable as the prosecution case about A1 having a knife stood almost falsified.

- B In reversing the order of acquittal passed in favour of the two appellants the High Court first held that the finding of the trial Court that the eye-witnesses suppressed the fact that Vincent had a knife with him was factually incorrect for both P.Ws. 2 and 4 categorically stated that Vincent had a knife with him and that he was brandishing it. The High Court next held that there was absolutely no basis for the trial Court to conclude that the prosecution attempted to suppress the injuries sustained by A1 and A2. The High Court further observed that the trial Court's
- C finding about the non availability of another Knife was equally unsustainable for in an incident of the nature which resulted in death of the two victims it might not be possible for the prosecution to account for all the weapons used by the accused or by the victims in retaliation. After having
- D found that findings of the trial Court to acquit the accused were wholly unsustainable and perverse, the High Court dealt with and discussed the evidence of the eye-witnesses at length to conclude that both the appellants were guilty of the murder of the two brothers.

- E This being a statutory appeal we have carefully looked into the entire evidence on record to ascertain whether the High Court was justified in holding that the findings of the trial Court as against the appellants were perverse and reversing the same on that score. Before we proceed to consider the evidence of the eye-witnesses in that perspective we may at the outset point out that both the appellants were found to have sustained injuries when examined by the Assistant Surgeon of District Hospital
- F Trichur in the night in question. While A1 sustained one penetrating wound 1 "x 1/2" on the right side of the chest A2 sustained four, of which two were incised and the other two were penetrating wounds. The eye-witnesses examined on behalf of the prosecution however did not offer any explanation as to how the two appellants sustained those stab injuries,
- G Nonetheless their evidence discloses that when the altercation started at puranattukara centre between him and the appellants, Vincent was found to brandish a knife which he had with him. Judged in that light the appellants were entitled to raise the plea of the right of private defence of their persons apprehending threat of assault with the knife so brandished in view of Section 102 I.P.C., which provides that a right of private defence
- H of the body commences as soon as a reasonable apprehension of danger

to the body arises from an attempt or threat to commit the offence ('assault' in the instant case) though the offence may not have been committed, and it continues so long as apprehension of danger to the body continues. The evidence further discloses that not only the threat was imminent but the apprehension of the two appellants of being assaulted by Vincent was also a reasonable one - and indeed, it ultimately turned into a reality. Then again, considering the nature of injuries sustained by them, it cannot also be said, in view of Section 100 IPC, that they had exceeded their right of private defence in causing the death of Vincent. For the aforesaid reasons the conviction and sentence of the two appellants for the murder of Vincent cannot be supported. In arriving at the above conclusions we have drawn sustenance from the following observations made by a 3 Judge Bench of this Court in *Deo Narain v. State of U.P.*, [1973] 1 SCC 347.

"What the High Court really seems to have missed is the provision of law embodied in Section 102 I.P.C. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. *The threat, however, must reasonably give rise to the present and imminent, and no remote or distant danger.* This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. *To say that the appellant could not only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him.* It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. *If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available.* In our view, therefore, as soon as the appellant reasonably apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the

A purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor in exercise of that right."

(emphasis supplied)

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The same conclusions cannot however be drawn for the assault on, and consequent death of, Davis. It is the consistent case of the eye-witnesses that when Vincent fell down on being assaulted by A1 and A2 Davis, who was sitting in a nearby tea shop, rushed to his brother's rescue. A1 then stabbed him with the knife as a result of which he fell down dead. There is not an iota of material on record to show that Davis had any weapon with him or that he was a party to the fracas that took place between the appellants and Vincent earlier. we do not, therefore, find any reason to disbelieve the prosecution case as to the manner in which Davis met with his death, more so, when the eye-witnesses' account in this respect stand corroborated by the medical evidence. A1 also cannot lay any claim that his apprehension of danger to his body continued even after Vincent had dropped his knife and himself fallen down, so as to entitle him to exercise his right of defence in assaulting Davis. It appears that when in the trial Court the Public Prosecutor raised such a contention the trial Court rejected the same with the following words :

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"The submission of the learned Public Prosecutor is that even if the stabs on Vincent could be justified as an act of private defence there is no explanation as to why his brother Davis also could have been stabbed. The evidence of P.Ws. 1, 2, 4 and 5 is to the effect that Davis came to the scene after the stabs were inflicted on Vincent and that the Ist accused himself stabbed Davis. From the foregoing discussions, I have come to the conclusion that the probabilities are in favour of the defence version that it was the second accused who stabbed. The eye- witnesses would in one word say that it was the Ist accused who stabbed Davis also."

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The above conclusion of the trial Court is patently perverse for there is no evidence on record to indicate that A2 stabbed Davis. In fact, it was not the specific case of A2 even that he had stabbed Davis. Besides, as has already been noticed, in discarding the prosecution case altogether, the trial Court was much influenced by the fact that only one knife was found

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at the spot, and according to it, as that knife was dropped by Vincent the conclusion was inevitable that A1 had no knife with him by which he could have assaulted any of the two brothers. This finding is patently incorrect for P.W. 4 in his cross-examination categorically stated that when the knife fell down from Vincent's hand, he saw A6 (since acquitted) lifting it. The above evidence of P.W. 4 stands corroborated by that of P.W. 5 when he also stated in cross-examination that the knife which was brandished by Vincent fell down and A6 took it away.

Now that we have found that, though A1 and A2 cannot be held liable for the murder of Vincent, A1 is liable for having caused the death of Davis of by stabbing him with a knife, we have to ascertain what offence A1 committed thereby. The evidence of Dr. K.C. Prakasan (P.W. 9) who held post-mortem examination on the dead body of Davis, testified that he found one penetrating incised wound in the midline of chest 5 cm. below the root of neck, 3 cm. long horizontally and 5 cm. deep. He opined that the injury was capable of causing instantaneous death and that it could be caused by stabbing with a knife, like M.O.1, which according to the eye-witnesses A1 threw away at the spot, and later seized by the Investigation Officer. Considering the nature and situs of the injury, the attending circumstances and the fact that it was inflicted without any provocation whatsoever it must be said that the offence committed by A1 is one of murder.

On the conclusions as above we allow this appeal in part by setting aside the order of conviction and sentence recorded against A1 & A2 under Section 302/34 for the murders of Vincent and Davis and acquit A2 in respect of those charges, but convict A1 under Section 302 I.P.C. simpliciter for the murder of Davis and sentence him to suffer imprisonment for life.

Since both the appellants are on bail A2 will stand discharged from his bail bond and A1 will surrender to his bail bond to serve out the remainder of the sentence.

G.N.

Appeal partly allowed.