A BANDLAMUDDI ATCHUTA RAMAIAH AND ORS.,

*v.*

STATE OF ANDHRA PRADESH

SEPTEMBER 26, 1996

B [DR. A.S. ANAND AND K.T. THOMAS, JJ.]

*Indian Peal Code, 1860—Sections 97, 304 (Part-I)—Following an altercation on the previous day, Second accused inflicted a stab injury on the chest of the deceased, when he was held by other accused—All the accused were*
C *caught and beaten by the furious neighbours—Held, on facts deceased's party was aggressor—Second accused had exceeded the limit of right of private defence and is liable to be convicted under Section 304 (part-1)—But the third accused cannot be found guilty of any offence as his acts had not gone beyond the limit of right of private defence.*

D *Criminal Procedure Code, 1973—Section 154—FIR—Use of—Statement contained in the FIR lodged by the accused cannot also be used against another accused—Such statement cannot be used against its maker, if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial—It can*
E *be used as an admission against its maker along unless the admission does not amount to confession.*

**According to the prosecution, following an altercation on the previous day, the appellants attacked PW-1 by beating him. When his wife PW-2 intervened she too was assaulted by the appellants. Hearing the hue**
F **and cry, some other persons from the household of PW-1 including the deceased and PW-3 rushed to the scene. When the deceased was held by the other accused, A-2 inflicted a stab injury on the chest of the deceased. By then, the neighbours who arrived at the scene caught hold of A-2 and A-3. A-1 escaped from the scene but he was chased and caught from his**
G **house and brought back to the scene. All the accused were beaten up by the furious neighbours and finally they were trussed up at the same place. Police arrived at the scene and removed all the injured to the hospital, but the deceased succumbed to his injuries on the way.**

**On the basis of the statement recorded from PW-1, a case was**
H **registered. After completion of the investigation, a charge sheet was filed**

against all the accused. A

The Sessions Judge acquitted A-1 but convicted A-2 under Section 304 (Part II) besides Section 326 and 324 IPC and sentenced him to a rigorous imprisonment for five years for the main offence. A-3 was convicted under Section 324, IPC and was sentenced to R.I. for one year. High Court, on appeal, convicted A-2 under Section 302 and sentenced him to undergo imprisonment for life, and set aside the acquittal of A-1 but convicted him under Section 326 read with Section 34 IPC and sentenced him to R.I. for three years. High Court passed the same conviction and sentence as against A-3. Hence these appeals. B

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Allowing the appeals, this Court

HELD: 1. The Sessions Court and the High Court have concurrently found that all the three accused sustained injuries when the furious mob attacked them in retaliation of what they did to PW-1 and his family members. There is no scope to disturb the said finding. The trial Court and the High Court concurrently found that it was the second accused who inflicted the fatal stab injury on the chest of the deceased while the other two accused held him by hands. The evidence on that score is overwhelming and this court is not persuaded to interfere with that finding. [39-E-F] D

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2. In view of the concurrent finding that the second accused inflicted the stab injury on the chest of the deceased while the other two were holding him, there is little scope for reaching a finding that the assailants did not intend to cause the chest injury which is sufficient in the ordinary course of nature to cause death. [39-H; 40-A]

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3. The statement attributed to the first accused in Ext. P-24 was completely disowned by him when he was questioned by the Sessions Judge under Section 313 Cr. P.C. Even assuming that this was truly recorded by the police, its utility in evidence is very much restricted by law. A statement in an FIR can normally be used only to contradict its maker as provided in Section 145 of the Evidence Act or to corroborate his evidence as envisaged in Section 157 of the Act. Neither is possible in a criminal trial as long as its maker is an accused in the case, unless he offers himself to be examined as witness. [40-H; 41-A-B] G

*Nisar Ali* v. *The State of Uttar Pradesh* AIR (1957) SC 366; *Faddi* v. H

A *The State of Madhya Pradesh* [1964] 6 SCR 312; *Aghnoo Nagesia* v. *State of Bihar* [1966] 1 SCR 134, referred to.

4. In the instant case Ext. P-24 cannot, undoubtedly, be used against the second accused or the third accused. As the first accused is not alive, it is unnecessary for this court to exercise its mind as to the extent to which
B it could have been used against the first accused himself. However, none of the prosecution witnesses had a case that any cash or even any property of the accused had been taken away by PW-1, or his party on the previous night. The High Court, therefore, went wrong in relying on the aforesaid statement contained in Ext. P-24 to reach the finding that accused had a
C strong motive to launch an attack on PW-1 and his men on the night of occurence. [42-D-E]

4.2. On the other hand, there are certain other broad features in evidence to assume with some degree of certainty that PW-1 and his people would have been the aggrieved party at the close of the first day's scir-
D mishes and consequently they would have had the animus to retaliate. A careful assessment of the entire gamut of previous night's events would lead to that inference. It is quite improbable that PW-1 would have coolly responded to the challenge hurled by the second accused from the road on the second day. [42-F; 43-C]

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5. The evidence shows that the normal route of the accused for going home was along the road lying in front of PW- 1's house. It is also in evidence that they used to go back home after their work. In the light of the above broad features percieved from the evidence the view taken by the Sessions Court that PW-1 and deceased would have been waiting to
F retaliate for the previous night's occurence seems to be reasonable. As held by the Sessions Judge, the aggressor, in all probabilities, would have been PW-1 and his party. [43-C-E]

6. There is no doubt that the second accused, by inflicting the fatal injury on the deceased had exceeded the limit of right of private defence.
G He is, therefore, liable to be convicted under Section 304 (Part-I) of the Indian Penal Code, However, the sentence of RI for five years passed by the Sessions Court on second accused would be sufficient to meet the ends of justice in the circumstances of the case. But the third accused cannot be found guilty of any offence as his acts had not gone beyond the limit of
H right of private defence. [43-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 701 and 701-A of 1992. A

From the Judgment and Order dated 25.8.92 of the Andhra Pradesh High Court in Crl. A. Nos. 347 and 718 of 1990.

Mrs. K. Amareshwari and G. Narasimhulu for the Appellants. B

Anil Kumar Tandale for the Respondent.

The Judgment of the Court was delivered by

**THOMAS, J.** How the barks of a dog could have snowballed into the C murder of a young student, is the nub of the story narrated in this case. Police charge-sheeted Sambasiva Rao and his father Atchuta Ramaiah as also another relative of them for the murder of the young man (Srinivasa Rao) and also for causing hurt to some others. Sessions Court acquitted the father (Atchuta Ramaiah), but convicted Sambasiva Rao under Section D 304 (Part 2) besides sections 326 and 324 of the Indian Penal Code and awarded a sentence of rigorous imprisonment for five years to him for the main offence. The remaining accused was convicted under Section 324, IPC and was sentenced to R.I. for one year. High Court, of Andhra Pradesh, on appeal, convicted Sambasiva Rao under Section 302 IPC and sentenced him to undergo imprisonment for life. By the same judgment, the High E Court set aside the acquittal of his father and convicted him under section 326 read with section 34 of the Indian Penal Code and a sentence of R.I. for three years has been awarded to him. High Court passed the same conviction and sentence as against third accused also. Hence, all the three have filed this appeal jointly under section 2 of the Supreme Court (En- F largement of Appellate Jurisdiction) Act of 1970, and also under sections 379 and 380 of the Code of Criminal Procedure.

During the pendency of this appeal, the old man Atchuta Ramaiah (first accused) died. So the appeal now remains as filed by the second and third accused. G

A synopsis of the case is the following:

(Deceased) Sriniwasa Rao was the brother-in-law of PW-1 (Suryanarayana Rao) who was residing with his wife and children in a house situated adjacent to the house where his brothers-in-law and mother- H

A in-law were residing in Thummapudi Village (Guntur District). All the accused belonged to a different village. But for some time they were residing in a house situated about 200 feet away from the house of the deceased. On 1.7.1988, while second accused (Sambasiva Rao) was returning home he was confronted by a dog which emerged from PW1's house. When the animal barked at the second accused he pelted stones at it. PW-1 (Suryanarayana Rao) came out of his house and told the accused not to harm the mongrel. This was followed by an altercation between the two which was soon aggravated into a brawl and PW-1's wife and brothers-in-law (deceased) joined in it. Second accused left the scene giving a warning that he would avenge for the insult meted out to him.

On the next day (2.7.1988) second accused accompanied by his father (A-1) and their relative (A-3) reached the same place by about 11.30 P.M. Second accused called PW-1 to come out and in response to it PW-1 came out accompanied by his wife and children. Then all the three assailants attacked PW-1 by beating him. When his wife (PW-2) intervened she too was assaulted by the assailants. Hearing the hue and cry some others from the household of PW-1 including the deceased Srinivasa Rao and PW-3 Raghuvulu rushed to the scene. When the deceased was held up by the other two accused, A-2 inflicted a stab injury on the chest of the deceased. By then, a few of the neighbours arrived at the scene and they caught hold of A-2 and A-3. Atchuta Ramaiah (A-1), by the time escaped from the scene but he was chased and was caught from his house and he was brought back to the scene. All the three assailants were beaten up by the furious neighbours and finally they were trussed up at the same place. Police reached the scene and removed all the injured, including the assailants, to the hospital, but the deceased succumbed to his injuries on the way.

On the strength of a statement recorded from PW-1 a crime case (No. 60 of 1988 of Duggirala Police Station) was registered. Another FIR was registered as Crime Case No. 61/88 based on a statement recorded from the first accused. The latter was referred by the police as "mistake of law" within a couple of days and the former was charge-sheeted after completion of investigation.

Post-mortem examination conducted on the dead body of the deceased (Ext. P-8 is the Post-mortem Certificate) revealed that he sustained a spindle shaped stab injury on the front of the chest just below the

right nipple which had reached up to the lung causing an incised wound on the medial lobe of the right lung. His thorasic cavity was filled with dark fluid blood. The doctor considered the injury as necessarily fatal. A

PW 12 Doctor examined all the other injured. He noted an incised wound on the right chest of PW 1 besides some contusions and abrasions elsewhere. The doctor noticed an incised wound on the abdomen of PW 2 and another incised wound on his chest. When the doctor examined PW-4 he noticed an incised wound on his right foot. B

First accused Atchuta Ramaiah had a skin deep lacerated wound on the parietal region of the head, and also on the elbow besides a few other contusions elsewhere. On X-ray examination, a fracture on the left ulna was observed. Injuries on second accused (Sambasiva Rao) included lacerated wounds on both sides as well as on the pate of his head and lacerated wounds on both legs besides an incised wound on the left knee. X-ray revealed a fracture on the left tibia. The doctor noticed as many as eighteen injuries on the person of third accused which were either contusions or abrasions. C D

Sessions Court and the High Court have concurrently found that all the three accused sustained the injuries when the furious mob attacked them in retaliation of what they did to PW-1 and his family members. We do not find any scope to disturb the said finding nor has that been seriously disputed before us. The trial court and the High Court concurrently found that it was the second accused (Sambasiva Rao) who inflicted the fatal stab injury on the chest of the deceased while the other two accused held him by the hands. The evidence on that score is overwhelming and we are not pursuaded to interfere with that finding either. E F

Learned counsel for the appellants contended that PW-1 and his party were the aggressors and the maximum that could be found against the second accused (Sambasiva Rao) is that he had committed the offence of culpable homicide not amounting to murder by exceeding the right of private defence. Alternatively, he contended that as the deceased sustained the fatal injury in a scuffle it was not intended by the second accused and hence the offence which he would have committed cannot, at any rate, go above section 304 (Part 2) of the IPC. G

In view of the concurrent finding that the second accused (Sambasiva H

A Rao) inflicted the stab injury on the chest of the deceased while the other two were holding him, there is little scope for reaching a finding that the assailants did not intend to cause the chest injury which is sufficient in the ordinary course of nature to cause death.

Therefore, the crucial question narrowed down in the appeal is
B whether it was the deceased party who were aggressors in the occurrence which happened on the night of 2.7.1988. Learned Sessions Judge found that point in favour of the accused, but further found that second accused had over-stepped the permitted limit in exercise of that right. But the High Court differed from the Sessions Judge and found that the accused them-
C selves were the aggressors.

In reaching that conclusion the High Court found that second accused left the scene on the previous night as an aggrieved person as he was badly mauled by PW-1 and the deceased and further found that second accused had openly proclaimed that he would settle scores soon. In that
D context learned judges made a reference to Ext. 24 (the first information statement recorded from first accused (Atchuta Ramaiah) which is the basis for the FIR in Crime Case No. 61/88) and advanced the following reasoning:

'E "It is significant to note that one important fact is suppressed both by the prosecution as well as the defence in the course of trial with regard to the happenings of the incident dated 1.7.1988. Ex.P-24 statement of A-1 which was recorded by PW 24 in the presence of the Medical Officer, PW 12, shows that apart from the altercation between PW 1 and his brothers-in-law on the one side and
F A-2 on the other, PW 1 and his brothers-in- law have forcibly taken away Rs. 700 from the pocket of A-2. That fact is probable because A-2 might have been carrying that day's earnings. Curiously, none of the prosecution witnesses have spoken about this fact because they have illegally snatched away Rs. 700 from the pocket of A-2.
G The accused also did not suggest this fact to any of the prosecution witnesses nor did they speak of this fact during their interrogation under section 313 of the Criminal Procedure Code obviously for the reason that the said snatching away of Rs. 700 affords a motive for A-2 to attack PW 1 on the date of the occurrence."

H It is necessary to point out that the statement attributed to the first

accused (Atchuta Ramaiah) in Ext. P-24 was completely disowned by him when he was questioned by the learned Sessions Judge under section 313 of the Code of Criminal Procedure. Even assuming that this was truly recorded by the police, its utility in evidence is very much restricted by law. A statement in an FIR can normally be used only to contradict its maker as provided in section 145 of the Evidence Act or to corroborate his evidence as envisaged in Section 157 of the Act. Neither is possible in a criminal trial as long as its maker is an accused in the case, unless he offers himself to be examined as a witness (vide *Nisar Ali* v. *The State of Uttar Pradesh,* AIR (1957) SC 366) Kapoor J. speaking for the three judges bench in that decision has observed:

> "A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157, Evidence Act, or to contradict it under s. 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

However, another bench of two judges in *Faddi* v. *The State of Madhya Pradesh,* [1964] 6 SCR 312 has stated that if the FIR given by the accused contains any admission as defined in Section 17 of the Evidence Act there is no bar in using such an admission against the maker thereof as permitted under Section 21 of the Act, provided such admission is not inculpatory in character. In the Judgment their Lordships distinguished Nisar Ali's case (supra) in the following lines:

> "But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held that first information report lodged by the co-accused who was acquitted, to be inadmissible against Nisar Ali and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course, a as confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused."

However, a caution has been struck by this Court (Subba Rao,

A Raghubar Dayal and Bachawat JJ.) in *Aghnoo Nagesia* v. *State of Bihar*: [1966] 1 SCR 134, that when the statement in the FIR given by an accused contains incriminating materials and it is difficult to sift the exculpatory portion therefrom the whole of it must be excluded from evidence.

The legal position, therefore, is this: A statement contained in the B FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an C admission under Section 21 of the Evidence Act against its maker alone unless the admission does not amount to confession.

In this case Ext. P-24 cannot, undoubtedly, be used against the second accused or the third accused. As the first accused is not alive now, it is unnecessary for us to exercise our mind as to the extent to which it D could have been used against first accused himself. However, in this context we may observe that none of the prosecution witnesses had a case that any cash or even any property of the accused had been taken away by PW-1 or his party on the previous night. The High Court, therefore, went wrong in relying on the aforesaid statement contained in Ext. P-24 to reach the E finding that accused had a strong motive to launch an attack an PW 1 and his men on the night of occurrence.

On the other hand, there are certain other broad features in evidence to assume with some degree of certainty that PW-1 and his people would have been the aggrieved party at the close of the first day's skmishes and F consequently they would have had the animus to retaliate. A careful assessment of the entire gamut of previous night's events would lead to that inference.

PW-1 in cross-examination said that despite their numerical strength on the first day's occurrence (they were three as against second accused G who was then alone) his party received more blows from second accused than what could be given back. His wife PW-2 said that second accused dealt two blows with his fist on her husband as well as on her brother (the deceased) while the victims could not fist the second accused in return. PW-5 (brother of the deceased) has further stated that second accused H succeeded in over-powering the deceased on the first night and inflicted a

few blows on him and he showered PW-1 with lot of abuses whereas nothing could be done in return to the second accused, not even hurling abuses. A

If what happened on the previous night could be discerned from the above evidence it is difficult to believe that PW-1 and party would have retreated from the scene without any animus towards second accused or that the latter would have left the scene saying that he would retaliate next day. In the analysis we think that it was quite improbable that PW 1 would have coolly responded to the challenge hurled by the second accused from the road on the second day. B

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The next broad feature is, the evidence shows that the normal route of the accused for going home was along the road lying in front of PW-1's house. (The house of the accused is situate only 200 ft. away therefrom.) It is also in evidence that they used to go back home after their work by this time.

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In the light of the above broad features perceived from the evidence the view taken by the Sessions Court that PW-1 and deceased would have been waiting to retaliate for the previous night's occurrence seems to be reasonable. We, therefore, agree with the learned Sessions Judge that the aggressor, in all probabilities, would have been PW-1 and his party. E

The three accused had sustained all the injuries only when the furious neighbours manhandled them. As the two courts below have uniformly found that point against the accused we do not think that the accused had till then any cause to entertain reasonable apprehension in mind that death or grievous hurt would ensue to them from PW-1 or the other members of his family. None of them was armed with any lethal weapon. We have, therefore, no doubt that second accused, by inflicting the fatal injury on the deceased had exceeded the limit of right of private defence. He is, therefore, liable to be convicted under section 304 (Part I) of the Indian Penal Code. However, we taken into account the fact that A-2 received a lot of injuries from the furious mob, for determining the quantum of sentence. We are of opinion that the sentence of RI for five years passed by the Sessions Court on second accused would be sufficient to meet the ends of justice in the circumstances of this case. But the third accused cannot be found guilty of any offence as his acts had not gone beyond the limit of right of private defence. F G H

A In the result, we allow this appeal and alter the conviction of the appellant Sambasivarao (second accused) to section 304 (Part I) of the Indian Penal Code and sentence him to undergo RI for five years. Needless it is to say that if he has already completed the said sentence he is entitled to be released forthwith unless he is required in any other case. However, we set aside the conviction and sentence passed on the third accused and B acquit him. His bail-bond shall stand discharged.

K.H.N.S. Appeals allowed.