

KURUPPUSAMY AND ANR.

v.
STATE OF TAMIL NADU

SEPTEMBER 29, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

Penal Code, 1860:

s.304(Part II) r/w s.34—Property dispute—Quarrel over—Person having no concern with property but siding with complainant assaulted—Victim died the following day—Trial court acquitting one accused, convicting another u/s 324 and convicting two others u/s 302/34—High Court affirming their conviction—Plea of self-defence not considered at all—Held, trial court had discarded prosecution case that accused had an intention to kill the deceased—Though blow given to victim was on a vital part, but it must also be borne in mind that when a person loses his sense, he may act violently—That by itself may not be a ground to reject plea of self-defence—The same should have been considered on its own merit—On facts, appellants are guilty of offence u/s 304 (part II)—Conviction altered accordingly—Criminal Law—Plea of self-defence—Consideration of.

Four persons including the two appellants were prosecuted for offences under sections 302/34 and 324/34 IPC. The prosecution case was that there arose a property dispute amongst the members of a joint family, namely, PW-1 on the one side and A-1 to A-3 on the other. PW-1, A-2 and A-3 are brothers. A-1 is their father and PW-2 their sister. The deceased was the husband of PW-2. On 5.7.1994, on the application of PW-1, the Village Administrative Officer (PW-9) and the Surveyor (PW-10) went in the village to measure the property. There PW-2 and her husband were also present. They were said to have taken the side of PW-1. The matter could not be settled and the parties were asked to meet PW-9 in his office. After returning from the office of PW-9, PW-1, PW-2 and her husband went to the bus stop from where the couple was to take a bus. Later, A-1 to A-4 reached there variously armed. A quarrel took place and A-3 hit the husband of PW-2 on his head with a firewood log. A-2 also hit him on the face with firewood log. The victim fell down. When

A PW-1 intervened, he was also assaulted. A-4, the wife of A-3 assaulted PW-2 on her leg. A-1 assaulted his daughter PW-2 with fists. PW-3, an employee of PW-1 was also present there and he also witnessed the occurrence. The victim, the husband of PW-2, was taken to the hospital where he succumbed to his injuries the following day. Before the trial court A-2 stated that he acted in self-defence as the deceased tried to stab him; that he went to the Police Station to lodge the report but he was detained there; thereafter he sent a written report to the Superintendent of Police on 8.7.1994 and also sent its copy to the Inspector of the Police Station. The trial court convicted A-2 and A-3 u/s 302/34 IPC and sentenced them to imprisonment for life. A-4 was convicted u/s 324 IPC. A-1 was acquitted. On appeal, the High Court confirmed the conviction and sentence of A-2 and A-3. Sentence of A-4 u/s 324 IPC was reduced to the period already undergone.

D In the present appeal filed by A-2 and A-3, it was contended that the trial Court as also the High Court did not consider their plea of self-defence in proper perspective and that PW-3 in his statement stated to have seen a knife at the place of occurrence, which has not been explained by the prosecution.

Allowing the appeal in part, the Court

E HELD: 1. The fact that the death of the deceased was caused due to assault upon him by appellants is not in dispute. What is, however, of some significance is that the trial judge acquitted accused no. 1 and convicted accused no. 4 only under section 324 of the Indian Penal Code. He, thus, had discarded the case of the prosecution that the appellants had come in a group to the bus stop with an intention to kill the deceased. It is wholly unlikely that A-2 wanted to murder the deceased owing to the property dispute. The deceased had nothing to do with that property, although he might have been siding with PW-1. [790-F-G; 791-A-B]

G 2.1. A-2 was said to be present in the police station at the time when the complaint was lodged. Evidently he also came there to lodge a complaint. According to him, the Investigating Officer was harassing them and had not been investigating the case properly, as they had been picked up by the police, although they were not at fault. Further PW-3 accepted that a knife was seen at the place of occurrence. It has not been explained by the prosecution as to who had held the knife. Admittedly, none of the accused was having any knife in their hands. [791-G-H; 792-A]

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2.2. The accused had raised a plea of self-defence. The same should have been considered on its own merit. It could not have been rejected on the premise that Exhibit D.1 (letter written by A-2 to the Superintendent of Police) had not been proved. The High Court did not believe the story on the premise that the letter dated 8.7.1994 was issued by way of after-thought. PW-15 the Investigating Officer, however, accepted that he had received the same. It was for him to show when he received it. There is no reason as to why the prosecution did not bring on record the material document in relation to the receipt of the said document. The date of the letter being 8.7.1994 is not in dispute. It is one circumstance which was significant in determining the nature of the offence. The High Court could not have refused to consider the defence raised by the accused, particularly, when the theory that all the accused persons came at the bus stop with an intention to kill the deceased had not been accepted by the trial court. [791-B-D; 792-B-D]

3. Keeping in view the peculiar facts and circumstances of the case, the appellants should not have been found guilty for commission of an offence under section 302 of the Indian Penal Code. At the same time, it has been proved that both the accused gave one blow each. The blow given by appellant no. 1 although was on a vital part, but it must also be borne in mind that when a person loses his sense, he may act violently. That by itself may not be a ground to reject the plea of self-defence. In the circumstances, a holistic view of the matter is required to be taken. In the facts and circumstances of the case, the appellants are guilty of commission of an offence under section 304 (Part II) and not under section 302 IPC. The judgment of conviction is altered accordingly. They are sentenced to undergo 10 years rigorous imprisonment. [792-D-F]

Kailash v. State of M.P., CrI. Appeal No. 238 of 2006 decided by Supreme Court, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1018/2006.

From the Final Judgment and Order dated 25.4.2005 of the High Court of Judicature at Madras in Criminal Appeal No. 41/1997.

R. Radhakrishnan, Anupam Mishra, Jenis and V.J. Francis for the Appellants.

R. Shunmugasundaram, V.G. Pragasam and S. Vallinayagam for the Respondent.

A The Judgment of the Court was delivered by

S.B. SINHA. J. Leave granted.

Appellants herein were accused Nos.2 and 3 before the learned Trial Judge. They, along with accused No.3, as also the wife of Appellant No.2 **B** (accused No.4) were tried jointly for alleged commission of murder of one Shanmugam under Section 302 of the Indian Penal Code read with Section 34 thereof. Accused No.1 was acquitted of the said charge. Accused No.4 has been convicted only under Section 324 of the Indian Penal Code. Thus, only Accused Nos. 2 and 3 are before us.

C The incident took place on 5.7.1994 at about 6.00 p.m.

The parties were members of a joint family. A partition took place as regards their residential house. P.W.1-Chinnasamy was given a share of the building on the southern side, whereas accused No.2, Appellant No.1 herein, was allotted share on the northern side. Appellant No. 2 was allotted a portion **D** on the eastern side of the house. Allegedly, the portion allotted to P.W.1 was larger in area compared to the portion given to Appellants. Accused No. 1 was allotted another ancestral house and some lands towards his share. The house allotted to Accused No. 1 was also adjacent to the property allotted to P.W.1 and Appellant herein. P.W.1 is said to have given a sum of Rs.10,000/ **E** - to his father as the portion of the house allotted to him was larger in size.

Allegedly, despite registration of a Deed of Partition, P.W.1 was not allowed to enjoy the portion of the property allotted to him. Appellants are said to have erected a wall and, thus, effectively prevented him from entering into the house through the main door. P.W.1 fixed a new door and also **F** inducted tenant(s). Tenants were allegedly forced to vacate the house and had been threatened by the accused persons, in respect whereof a complaint was made. All the accused pursuant thereto were summoned by the police and were warned.

P.W.2 and the deceased Shanmugam were on visiting terms with P.W. **G** 1. They, allegedly, were once assaulted by the accused.

An application was filed by P.W.1 for measurement of his property, wherefor he also paid requisite fees. A Village Administrative Officer (P.W.9) and the Surveyor (P.W.10) were appointed for the said purpose. They came **H** to measure the property. P.W.2 and Shanmugam were present. Upon

measurement, they allegedly informed the parties that the portion allotted to P.W.I runs upto the middle portion of the house and advised them to erect a wall, whereupon, allegedly, it was stated by the accused that they would not permit P.W.I to do so. They were asked to see the Village Administrative Officer by P.Ws. 9 and 10. Accordingly, the parties went to the office of P.W.9 at 5 p.m. on 5.7.94. P.W. 1, P.W. 2 and Shanmugam were coming back from office of P.W.9. They came to the bus stop as the deceased and P.W.2 wanted to catch a bus for going to Velayuthampalayam. Accused allegedly came there variously armed. Appellant No.2, allegedly, asked the deceased as to why he had been giving trouble to them whereupon a quarrel ensued. Appellant No.2 is said to have assaulted the deceased on his head with a firewood log, whereas Appellant No.1 is said to have assaulted him on his right cheek with a firewood log. P.W.I intervened. He was assaulted on his leg and on the back of his chest. Accused No.4 allegedly assaulted P.W.2 on her leg. She also fell down. Appellant No.1 also, allegedly, assaulted his daughter with fists. Apart from the injured witnesses (P.Ws.1 and 2 and P.W.3), an employee of a power loom factory belonging to the P.W.I, was also present there and witnessed the occurrence. The deceased was taken to the hospital by the P.Ws. 1 and 2. A complaint was made by P.W.I to the Head Constable of the police station, P.W.13, which was reduced to writing. Accused No.1, according to the prosecution witnesses, was also present in the police station. Shanmugam was referred to Coimbatore Medical College, where he died at about 10.40 a.m. on 6.7.1994. In the meantime, the Inspector of Police, P.W.15 started investigation. He, apart from examining P.Ws. 1 and 2, also examined Shanmugam, the deceased. Accused Nos. 1, 2 and 3 were arrested on 8.7.1994. Accused No.3 surrendered before the Court on the same day.

The defence raised by Accused No. 4 was that as the deceased attempted to stab him with a pichuva knife, he picked up a stick, which was lying nearby and assaulted him. The deceased had, allegedly, boarded a bus and went to the police station where he was detained. Appellant No. 2 herein, admittedly, wrote a letter to the Superintendent of Police on 8.7.1994, a copy whereof was sent to the Inspector of the Police Station, P. W. 15. In his deposition, P. W. 15 admitted to have received the said letter.

The accused persons admittedly were in custody from 8.7.1994 to 12.7.1995. The defence, however, was not accepted by the courts below, on the premise that the same was by way of an after-thought. In its judgment, the High Court opined that the letter must have been dispatched on 11.7.1994, after the arrest of Appellant No. 1 herein with a view to create a defence.

A Mr. V.J. Francis, learned counsel appearing on behalf of Appellants would submit that although a plea of self-defence was raised on behalf of Appellants, the same was not considered in its proper perspective either by the learned Trial Judge or by the High Court. The learned counsel pointed out that P.W.3 had admitted that a knife was found at the spot. Our attention was further drawn to the fact that even the learned Trial Judge in his judgment
B noticed:

“...The 13th Witness Thiru Manikam, Head Constable has denied the suggestion made by the learned counsel for the accused that the 2nd accused Kuruppusamy has come to the Police Station before Chinnasamy came to lodge his complaint. But the 1st witness Chinnasamy has admitted in his cross examination that he has seen the 2nd accused Karuppusamy in the Police Station. It creates a cloud of doubts with regard to the confession and recovery of material objects by the 2nd accused. Anyhow, the 14th witness who is the VAO has categorically deposed about the confession as well as the recovery of the material objects from the 1st, 2nd and 4th accused. Further the evidence of 1st, 2nd and 3rd witnesses categorically prove beyond reasonable doubt and that the 3rd accused Mottaippan has attacked Shanmugam on his head with the help of wooden stick which is marked as M.O.1 and the 2nd accused Kuruppusamy has attacked Shanmugam on the face and other parts with the help of wooden stick which is marked as M.O.2 and thereby caused the death of Shanmugam, and that 4th accused Banumathi has attacked 2nd witness Lakshmi with the help of wooden stick which is marked as M.O.3 and caused injuries viz. 1) a contusion on her right hand ankle, 2) a contusion on her right leg knee and 3) contusion measuring 3 cm x 7 cm on the left side of her hip and that he has given a wound certificate which is marked as Ex.P.18.”

The fact that the death of the deceased was caused due to assault upon him by Appellants herein is not in dispute. What is, however, is of some significance is that the learned Trial judge acquitted Accused No.1 and convicted Accused No.4 only under Section 324 of the Indian Penal Code. He, thus, had discarded the case of the prosecution that Appellants had come in a group to the bus stop with an intention to kill the deceased.

The parties had gone to the Village Administrative Officer. The deceased and his wife, P.W.2, accompanied the parties. Their close relation with P.W.1

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has been noticed by us. It is, thus, not very unlikely that the parties had picked up a quarrel at the bus stop as they might not have agreed to the suggestion of P.W.9. A

It is wholly unlikely that the Accused No.1 wanted to murder the deceased owing to the property dispute. The deceased had nothing to do with the property in dispute, although that he might have been siding with P.W.1. The High Court did not believe the story on the premise that the letter of Appellant dated 8.7.1994 was issued by way of after-thought. P.W.15, however, accepted that he had received the same. It was for him to show when he received it. We fail to see any reason as to why the prosecution did not bring on record the material document in relation to the receipt of the said document. The date of the letter being 8.7.1994 is not in dispute. P.W.15 in his deposition stated: B C

“The third accused had sent to me a copy of the complaint dated 8.7.94 addressed to the Superintendent of Police (Rural) and that is marked as Ex.D.1. and the post acknowledgement card is Ex.D.2.,”

It is one circumstance which, in our opinion, was significant in determining the nature of the offence. D

P.W.3, who is stated to be an independent witness, in his cross-examination did not support the prosecution case. He stated :

“...I know the warp stick in the loom; that the 2nd accused also beat the injured person; at the place of attack there was a stick and bichuva knife; that stick was not that of a warp stick.” E

The fact that a knife was found at the spot, therefore, was accepted. It was not the prosecution case that any of the accused was carrying any knife. F

He denied the suggestion that after the occurrence Appellant No.1 went away by a bus. He furthermore accepted that the parties quarreled with each other. After the assault, allegedly, a lady shopkeeper and some others interfered and separated the parties. He was not in a position to say who had assaulted the lady. He also left the place. He did not notice whether the brother (*viz.* R W. 1) came along with the wife of the deceased. G

Appellant No.1 was in the police station at the time when the complaint was lodged. Evidently he also came there to lodge a complaint. According to him, the Investigating Officer was harassing them and had not been investigating the case properly, as they had been picked up by the police, H

A although they were not at fault.

We have noticed hereinbefore that P.W.3 accepted that a knife was seen at the place of occurrence. Who had held the knife has not been explained by the prosecution. Admittedly, none of the accused was having any knife in their hands. They were, allegedly, armed with sticks.

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Whether they had assaulted the deceased or not is one thing, but, the question as to whether they had intention to kill him is another. They had raised a plea of self-defence. The same should have been considered on its own merit. It could not have been rejected on the premise that Exhibit D.I had not been proved. The receipt of Exhibit D.I is not in dispute. The fact that it was sent by post is also not in dispute. It was received by the Investigating Officer. It was for the Investigating Officer to show as to when it had been dispatched. In our opinion, the High Court could not have refused to consider the defence raised by the accused, particularly, when the theory that all the accused persons came at the bus stop with an intention to kill the deceased had not been accepted by the trial court.

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Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that Appellants should not have been found guilty for commission of an offence under Section 302 of the Indian Penal Code. We are not oblivious of the fact that both the accused gave one blow each. The blow given by Appellant No.1 although was on a vital part, but it must also be borne in mind that when a person loses his sense, he may act violently. That by itself may not be a ground to reject the plea of self-defence. Recently in *Kailash v. State of M.P.* in Criminal Appeal No. 238 of 2006, disposed of by this Court on this date, it was opined that a holistic view of the matter is required to be taken.

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We, therefore, are of the opinion that Appellants are guilty of commission of an offence under Section 304 Part II and not under Section 302 of the Indian Penal Code. The judgment of conviction is altered accordingly. They are sentenced to undergo 10 years Rigorous Imprisonment.

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The appeal is allowed to the extent mentioned hereinabove.

R.P.

Appeal partly allowed.