

ARJUN

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 356 of 2007)

MAY 03, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Penal Code, 1860 - ss. 96 to 106, 302, 300 Exception 4 and 304 (Part I) - Right of private defence - General principles - Explained - On facts, conviction of appellant u/s. 302 for causing murder of a person and u/s. 326 for causing grievous hurt to the wife of the deceased - Case of the defence that there was a property dispute between the parties; that the appellant as well as another accused sustained injuries; and that the deceased sustained fatal injuries due to sudden fight between the parties and the accused had to ward off the attack in his self defence - On appeal, held: Evidence clearly indicate that the appellant was armed with a knife with which he inflicted serious injuries on the head of the deceased, resulting in his death and also that the appellant inflicted injuries on the wife of the deceased as well when she tried to save her husband - Further, there is nothing to show that the deceased, his wife and his son or others had attacked the appellant, nor the surrounding circumstances indicate that there was a reasonable apprehension that the death or grievous hurt was likely to be caused to the appellant by them or others - Mere fact that the other seven accused were acquitted or that some of the prosecution witnesses were also convicted not sufficient to hold that the appellant was not the aggressor - Plea of private defence not sustainable - Considering the background facts as well as the fact that there was no pre-meditation and the act was committed in a heat of passion and that the appellant did not take any undue advantage or acted in a cruel manner and that there was a fight between the parties, case falls under the fourth exception

A *to s. 300 - Thus, conviction altered from s. 302 to s. 304 Part 1 with custodial sentence of 10 years.*

B There were some property disputes between the appellant and 'J'. On the fateful day, when 'J' came in front of the appellant's shop, the appellant abused 'J' and later on the appellant and his brothers (accused no. 2 to 8) armed with weapons attacked 'J' and his wife-(PW 8) and his son-(PW 1). The appellant inflicted three blows on the head of 'J' with a large knife and deceased fell down.

C When (PW 8) intervened to rescue her husband, the appellant inflicted blows on her head, back and shoulder and when PW 10 (brother-in-law of PW 8) and his son (PW 11) came to their rescue; the appellant assaulted both of them. 'J' succumbed to his injuries. PW 1 lodged FIR. The appellant also lodged an FIR against PW 1, PW 10 and

D PW 11 and other persons. Thereafter, the Sessions court tried the case. The appellants contended that the parties were on inimical terms; that the appellant as well as accused no. 8 sustained injuries; that the deceased J sustained fatal injuries due to sudden fight between the

E parties and the accused had to ward off the attack in his self defence. The Additional Sessions Judge acquitted accused no. 8, however, convicted the appellant for the offence punishable under Section 302 IPC for murder of 'J' and for the offence punishable under Section 326 IPC

F for causing grievous hurt to PW 8. Aggrieved, the appellant filed an appeal and the High Court upheld the order of the conviction and sentence passed by the trial court against the appellant. The State filed an appeal against acquittal and the High Court dismissed the same.

G Thus, the appellant filed the instant appeal.

Disposing of the appeal, the Court

HELD: 1.1 Law clearly spells out that the right of private defence is available only when there is a

H reasonable apprehension of receiving injury. Section 99

IPC explains that the injury which is inflicted by a person exercising the right should commensurate with the injury with which he is threatened. True, that the accused need not prove the existence of the right of private defence beyond reasonable doubt and it is enough for him to show as in a civil case that preponderance of probabilities is in favour of his plea. Right of private defence cannot be used to do away with a wrong doer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence. [Para 12] [672-A-C]

1.2 It is for the accused claiming the right of private defence to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution, if a plea of private defence is raised. [Para 13] [672-D-E]

Munshi Ram and Ors. V. Delhi Administration AIR (1968) SC 702; *State of Gujarat v. Bai Fatima* AIR (1975) SC 1478; *State of U.P. v. Mohd. Musheer Khan* AIR (1977) SC 2226; *Mohinder Pal Jolly v. State of Punjab* AIR (1979) SC 577; *Salim Zia v. State of U.P.* AIR (1979) SC 39114 - relied on.

1.3 A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. [Para 14] [672-F-G]

1.4 Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property of the person exercising the right or of any other person, and the right may be exercised in the case

A of any offence against the body, and in the case of
offences of theft, robbery, mischief or criminal trespass,
and attempts at such offences in relation to the property.
Section 99 lays down the limits of the right of private
defence. Sections 96 and 98 give a right of private
B defence against certain offences and acts. The right
given under Sections 96 to 98 and 100 to 106 is controlled
by Section 99. To plea a right of private defence
extending to voluntary causing of death, the accused
must show that there were circumstances giving rise to
reasonable grounds for apprehending that either death
C or grievous hurt would be caused to him. [Para 15] [672-
H; 673-A-C]

2.1 The evidence of PWs 1, 8, 10 and 11 with regard
to the assault of the appellant on the deceased, was fully
D corroborated by the medical evidence as well as
evidence of independent witnesses. PW 9 proved the
recovery of the weapon of offence. PW 8-wife of the
deceased had also sustained injuries due to the attack
of the appellant, when she intervened to protect her
E husband. The facts would clearly indicate that the
appellant harboured grudge against the victims in view
of the property dispute. The evidence of PW 12 indicates
that the deceased had sustained serious injuries on the
brain. The facts would indicate that PW 1 and others had,
F in fact, obstructed the appellant but he was having a knife
with which he could inflict three fatal injuries on the head
of the deceased. The mere fact that the other seven
accused were acquitted or that some of the prosecution
witnesses were also convicted would not be sufficient to
G hold that the appellant was not the aggressor. True, there
were some minor injuries on the accused and some
serious injuries on PW 8 as well. Evidence of PWs 1, 8,
10 and 11 would clearly indicate that the appellant was
armed with a knife and it was with that knife he had
H inflicted serious injuries on the head of the deceased and

which was the cause of death of 'J'. Further, there is also sufficient evidence to show that the appellant had inflicted injuries on the wife of the deceased as well when she tried to save her husband. The deceased was unarmed so also his wife and the son. At the same time, the accused was armed with a knife. No explanation is forthcoming either in his statement u/s 313 Cr.P.C. or otherwise as to why he was having a knife (sura) in his hand at the time of the incident. There is no evidence to show that the deceased, his wife (PW 8) or his son (PW 1) had ever attacked the accused. [Para 11] [671-B-H; 672-A]

2.2 In the instant case, as rightly held by the High Court and trial court, there is nothing to show that the deceased, his wife (PW 8), his son (PW 1) or others had attacked the appellant, nor the surrounding circumstances would indicate that there was a reasonable apprehension that the death or grievous hurt was likely to be caused to the appellant by them or others. The plea of private defence is, therefore, has no basis and the same is rejected. [Para 16] [673-D-E]

2.3 Considering the background facts as well as the fact that there was no pre-meditation and the act was committed in a heat of passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, the instant case falls under the fourth exception to Section 300 IPC and thus, the conviction is altered from Section 302 IPC to Section 304 Part 1 IPC. The appellant is in custody since 30.07.2003. The custodial sentence of 10 years to the accused-appellant would meet the ends of justice and it is ordered accordingly. [Paras 17 and 18] [673-E-G]

Lakshmi Singh and Ors. v. State of Bihar 1976 (4) SCC 394; *Darshan Singh v. State of U.P.* 2004 (7) SCC 408; 2004

A (3) Suppl. SCR 561 - referred to.

Case Law Reference:

	1976 (4) SCC 394	Referred to	Para 8
B	2004 (3) Suppl. SCR 561	Referred to	Para 8
	AIR (1968) SC 702	Relied on	Para 13
	AIR (1975) SC 1478	Relied on	Para 13
C	AIR (1977) SC 2226	Relied on	Para 13
	AIR (1979) SC 577	Relied on	Para 13
	AIR (1979) SC 391	Relied on	Para 13

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 356 of 2007.

From the Judgment & Order dated 24.11.2006 of the High Court of Judicature at Bombay Bench at Aurangabad in Criminal Appeal No. 646 of 2006.

E Sudhanshu S. Choudhari for the Appellant.

Asha G. Nair for the Respondent.

The Judgment of the Court was delivered by

F **K.S. RADHAKRISHNAN, J.** 1. The appellant, herein, was convicted by the 2nd Ad-hoc Additional Sessions Judge for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC') for murder of one Jagannath Rambhau Shirsath and for the offence punishable under Section 326 IPC for causing grievous hurt to Muktabai, wife of deceased -
 G Jagannath.

H 2. Aggrieved by the order of conviction and sentence, the appellant preferred Criminal Appeal No. 646/2004 and the State preferred Criminal Appeal No.828/2004 against acquittal of accused No.8 - Babasaheb Maruti Shirsath before the High

Court of Bombay Bench at Aurangabad. The High Court vide its judgment dated 24.11.2006 dismissed Criminal Appeal No. 646/2004 and confirmed the conviction and sentence passed by the trial court against the appellant. Criminal Appeal No. 828/2004 preferred by the State against acquittal of accused No.8 was also dismissed by the High Court vide judgment dated 24.11.2006. Aggrieved by the judgment in Criminal Appeal No. 646/2004, this appeal has been preferred by the first accused, Arjun.

3. The prosecution story, in a nutshell, is as follows:

The deceased Jagannath and Muktabai (PW 8) parents of Rangnath (PW 1), his brothers Ashok Gahininath and Rajendra -were all living together at Taklimanur, Taluka Pathardi, District Ahmednagar. There were some property disputes between the first accused (appellant) and the deceased - Jagannath for which the appellant had filed Civil Suit being RCS No. 291/2001 before Taluka Court for an order of injunction and possession and the court had ordered status quo. The appellant was in the army service and after retirement, about 5 to 6 years prior to the incident on 30.07.2002, he started a stationery shop at Taklimanur situated adjacent to the subject matter of the suit.

4. In the village Taklimanur, there was an annual fair on 30.07.2002. At about 4 PM, on that date when the deceased came in front of the appellant's shop, the appellant abused the deceased. Later, when the deceased, his wife - Muktabai and son Rangnath were going to Ambikanagar for worship of the Goddess, the appellant, his brothers Babasaheb (accused No.8), Buvasaheb (accused No.2), Suresh - son of Buvasaheb (accused No.7), Dnyandeo (accused No.4), Bhimrao (accused No.5), Patilba (accued No.3), Ramnath (accused No.6) attacked the deceased on the road near Tamarind tree. The appellant was armed with a large knife, accused No.3 was armed with an axe and others were carrying sticks. The appellant inflicted three blows on the head of the deceased with a large knife (Sura - Article No.13)and deceased fell down.

A When PW 8 Muktabai intervened to rescue her husband, the appellant inflicted blows on her head, back and shoulder. Again, when PW 10 Karbhari (brother-in-law of PW 8) and his son Ambadas (PW 11) came to their rescue; the appellant assaulted both of them. Due to the injuries, the deceased died on the spot. Police arrived at the scene of occurrence; the victims were taken to the nearby hospital.

C 5. PW 1, son of the deceased, lodged a report of the incident with Pathardi Police Station at about 8.30PM on the date of the incident. Based on that report, Crime No. 127/2002 was registered under Sections 147, 148, 302, 326, 324 r/w Section 149 IPC and investigation was entrusted to P.I. Randive (PW 14). Later, all the accused were arrested by 04.08.2002. The appellant made a confessional statement and produced a large knife (sura - article no.13) concealed in a pit on the bund of the field of Ramkisan Shinde, which is near the scene of occurrence.

E 6. The appellant had also lodged an FIR on 30.07.2002 at 8.50 P.M. against the complainant Rangnath, Karbhari (PW 10), Ambadas (PW 11) and other persons. The Sessions Court tried the case registered against some of the prosecution witnesses and they were convicted for offences punishable under Section 307 r/w Section 149, Section 324 r/w Section 149, Section 147, Section 148, and Section 149 IPC for five years with fine.

G 7. The appellant herein took up the defence that the parties were on inimical terms since he had filed Civil Suit No. 291/2001 before the Civil Judge, Junior Division, Pathardi. He also stated that pressure was also exerted on him to withdraw the civil suit. Further, it was stated that on 30.07.2002, when he was opening the shop, the deceased, PW 10 and PW 11 came in front of the shop and asked him to come out. Sensing some trouble, he accosted accused No.8, who was at the market. PW 1, by that time, also joined his father. They were armed with H weapons. Hence, he had to flee but they chased him. PW 1

inflicted a blow with Gupti on the stomach of accused No.8 near a Pipal tree and the other accused continued to assault him. Fearing that he would be killed, he snatched iron rod from the hands of Gahininath and waived iron rod in the air. PW 1 had also inflicted injury on the stomach of accused No.2 with a Gupti. In that melee, the appellant and accused no. 8 were also injured and they were taken to the nearby hospital. The appellant had sustained CLW on occipital region 2X1X1 cms and an abrasion on forearm 3X1/4 cm. Accused No.8 had sustained incised wound on the abdomen from which the intestines were protruding with omentum.

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8. Learned counsel appearing for the appellant Mr. Sudhanshu S. Chaudhari submitted that the incident had occurred in front of the shop of the accused and there was previous rivalry between the parties due to the fact that he had filed civil case against the deceased and others. Learned counsel further submitted that the fact that the appellant as well as accused No.8 had also sustained injuries, would indicate that the appellant and others were also attacked by the deceased and others. Learned counsel, therefore, pointed out the fact that the appellant as well as accused No.8 had sustained injuries during the course of incident was a relevant factor which should have been taken into consideration by the courts below. Learned counsel pointed out that the above facts would also indicate that there was a fight between both the parties and the prosecution had miserably failed to explain the injuries sustained by the appellant and accused No. 8. The non-explanation on the injuries is a relevant factor which should have been taken note of for evaluating the prosecution evidence. In support of his contention, reliance was placed on judgment of this Court in *Lakshmi Singh and Ors. v. State of Bihar*, 1976 (4) SCC 394 and *Dashrath Singh v. State of U.P.*; 2004 (7) SCC 408. Learned counsel also pointed out that injuries sustained by the appellant as well as accused No.8 would positively show that the appellant was not the aggressor and, consequently, the fatal injuries sustained by the deceased was

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- A due to a sudden fight between the parties and the accused had to ward off the attack in his self defence. Learned counsel further pointed out that the findings rendered by the courts below that it was the appellant who was the aggressor and hence the plea of private defence was not available, was not correct.
- B Further, it was pointed out that the injuries sustained by the appellant and accused No. 8 would clearly indicate that the appellant is entitled to raise the plea of private defence.

C 9. Learned counsel, Ms. Asha G. Nair, appearing for the State supported the conviction of the appellant by the trial judge as well as the High Court. Learned counsel took us elaborately to the prosecution evidence. Learned counsel pointed out that the facts narrated by PW 1 - complainant would clearly indicate that the deceased died due to the blows inflicted on his head by the accused. The other witnesses had corroborated the same and stated that it was the accused - appellant, who had opened the attack by inflicting blows on the head of the deceased by a large knife (sura). Reference was also made to the evidence of PW 12 - Dr. Kulkarni, the autopsy surgeon, who had stated that injury Nos. 1, 2 and 5 were caused by hard and sharp weapon such as Sura - article no. 13, injury no. 3 was caused by hard and blunt weapon and injury Nos. 7, 8 and 9 were caused by hard and rough surface. In his opinion, the death was caused on account of shock due to the injuries on the head and on the brain of the deceased. The plea of private defence, as stated by the learned counsel, is not available to the appellant. PW 1 and PW 8 had clearly stated that it was the appellant who had first inflicted three blows on the head of the deceased by a knife which was the cause of death of Jaganath.

G 10. Learned counsel for the State took us to the evidence of PWs 1, 8, 10 and 11 which according to the counsel, would establish beyond doubt that it was the appellant who was the aggressor and had inflicted fatal injuries on the head of the deceased. Further, it was pointed out that the fact that all the

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accused persons including the appellant were armed with lethal weapons would clearly indicate that it was pre-planned and deliberate. The plea of private defence, it was submitted was rightly negated by the trial court as well as the High Court.

11. We have heard the learned counsel on either side at length and critically examined the oral evidence adduced in the case. The evidence of PWs 1, 8, 10 and 11 with regard to the assault, of the appellant on the deceased, has been fully corroborated by the medical evidence as well as evidence of independent witnesses. PW 9 has proved the recovery of the weapon of offence. PW 8 - wife of the deceased had also sustained injuries due to the attack of the appellant, when she intervened to protect her husband. The facts would clearly indicate that the appellant harboured grudge against the victims in view of the property dispute. The evidence of PW 12 indicates that the deceased had sustained serious injuries on the brain. The facts would indicate that PW 1 and others had, in fact, obstructed the appellant but he was having a knife with which could inflict three fatal injuries on the head of the deceased. The mere fact that the other seven accused were acquitted or that some of the prosecution witnesses were also convicted would not be sufficient to hold that the appellant was not the aggressor. True, there were some minor injuries on the accused and some serious injuries on PW 8 as well. Evidence of PWs 1, 8, 10 and 11 would clearly indicate that the appellant was armed with a knife and it was with that knife he had inflicted serious injuries on the head of the deceased and which was the cause of death of Jagannath. Further, there is also sufficient evidence to show that the appellant had inflicted injuries on the wife of the deceased as well when she tried to save her husband. The deceased was unarmed so also his wife and the son. At the same time, the accused was armed with a knife. No explanation is forthcoming either in his statement u/s 313 Cr.P.C. or otherwise as to why he was having a knife (sura) in his hand at the time of the incident. There is no evidence to

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A show that the deceased, his wife (PW 8) or his son (PW 1) had ever attacked the accused.

B 12. Law clearly spells out that the right of private defence is available only when there is a reasonable apprehension of receiving injury. Section 99 IPC explains that the injury which is inflicted by a person exercising the right should commensurate with the injury with which he is threatened. True, that the accused need not prove the existence of the right of private defence beyond reasonable doubt and it is enough for him to show as in a civil case that preponderance of probabilities is in favour of his plea. Right of private defence cannot be used to do away with a wrong doer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence.

D 13. It is for the accused claiming the right of private defence to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution, if a plea of private defence is raised. (*Munshi Ram and Others V. Delhi Administration*, AIR (1968) SC 702; *State of Gujarat v. Bai Fatima*, AIR (1975) SC 1478; *State of U.P. v. Mohd. Musheer Khan*, AIR (1977) SC 2226 and *Mohinder Pal Jolly v. State of Punjab*, AIR (1979) SC 577 and *Salim Zia v. State of U.P.*, AIR (1979) SC 391.

E 14. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting.

G 15. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or

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property of the person exercising the right or of any other person, and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to the property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To plea a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him.

16. We are of the view that in the instant case, as rightly held by the High Court and Trial Court, there is nothing to show that the deceased, his wife (PW 8), his son (PW 1) or others had attacked the appellant, nor the surrounding circumstances would indicate that there was a reasonable apprehension that the death or grievous hurt was likely to be caused to the appellant by them or others. The plea of private defence is, therefore, has no basis and the same is rejected.

17. Considering the background facts as well as the fact that there was no premeditation and the act was committed in a heat of passion and that the appellant had not taken any undue advantage or acted in a cruel manner and that there was a fight between the parties, we are of the view that this case falls under the fourth exception to Section 300 IPC and hence it is just and proper to alter the conviction from Section 302 IPC to Section 304 Part 1 IPC and we do so.

18. We are informed that the appellant is in custody since 30.07.2003. In our view, custodial sentence of 10 years to the accused-appellant would meet the ends of justice and it is ordered accordingly. The appeal is accordingly disposed of, altering the sentence awarded.

N.J.

Appeal disposed of.