

inacio Manuel Miranda, Through the Superintendent Vs. the State of Goa

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Court : Mumbai

Decided On : Jul-16-1998

Reported in : 1998(5)BomCR530; 1999CriLJ422

Judge : A.A. Desai and; J.A. Patil, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 506; [Evidence Act, 1872](#) - Sections 3, 8, 9 and 45; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313;

Appeal No. : Criminal Appeal No. 29 of 1996

Appellant : inacio Manuel Miranda, Through the Superintendent

Respondent : The State of Goa

Advocate for Def. : A.P. Lawande, P.P.

Advocate for Pet/Ap. : P.P. Singh, Adv.

Judgement :

ORDER

J.A. Patil, J.

1. The appellant/accused was tried by the Sessions Judge, South Goa at Margao on the charge that on 16-12-1993 between 7.45 p.m. and 8.30 p.m. the accused

committed murder of deceased Lalit Vadivelu by giving him blows of a knife and further threatened to kill his wife viz., the complainant Smt. Kuku Vadivelu and her two children with the same knife. Having found the prosecution evidence acceptable, the learned Sessions Judge, by his Order dated 31 -5-1996 convicted the accused of the offences punishable under section 302 and 506 (Para II) and sentenced him under the first count, to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 10,000/- in default to suffer further rigorous imprisonment for one year and on the second count to suffer rigorous imprisonment for two years with a fine of Rs. 2,000/- in default to suffer rigorous imprisonment for three months. Feeling aggrieved thereby the accused has preferred this appeal.

2. The facts which are relevant for the purpose of this appeal are that the deceased Lalit was the husband of the complainant Kuku (P.W. 11). Deceased Lalit was previously employed in the State Bank of India, at Madras. It appears that he was dismissed from service since he committed certain misconduct. Thereafter in June, 1993, Lalit came down to Goa with a view to start a poultry business. Initially he came alone and started living with the accused in the latter's house at Gudi, Paroda. In October 1993, Lalit brought his family i.e. wife Kuku (P.W. 11), daughter Sonia (P.W. 12) and son Dinesh. All of them thus started living with the accused in the same house. The house of the accused comprises of a hall only. Therefore, to suit the requirements of the family, a sort of arrangement was made therein by putting some cupboards to separate the portion which was used as a kitchen. It appears that initially the relations between Lalit and the accused were friendly and cordial. That is why Lalit started living with the accused.

3. However, trouble started after Lalit brought his wife Kuku to Goa. It is alleged that a sort of friendship or intimacy developed between the accused and Kuku. The accused used to praise Kuku in the presence of Lalit. He also used to take her to Bar. Not only that, but he also used to embrace Kuku in the presence of Lalit. This was obviously not liked by Lalit who used to express his resentment by warning Kuku and quarrelling with the accused. It appears that Lalit could not do anything more than this probably because he could not offend the accused under whose obligation he was residing in his house. But at the same time there was a limit for Lalit to tolerate the misbehaviour of the accused with Kuku. Ultimately

about a month before the incident, Lalit took a decision to pack up and leave Goa with his wife and children. It appears that this decision was not liked by the accused who had got involved with Kuku and could not probably tolerate the idea of her separation.

4. The incident in question took place on the evening of 6-12-1993 in the house of the accused. On that day in the morning both Lalit and the accused visited the bar of Joao Carvalho (P.W. 7) where they took drinks. Thereafter both of them returned home in the evening and again started taking drinks. At that time Kuku was preparing meals in the kitchen while the two children were busy with packing the house hold articles. In the course of drinks, there was a quarrel between Lalit and the accused and both of them assaulted each other. The prosecution has alleged, that in the meanwhile the accused went to the kitchen and brought a knife with which he later on gave two blows on the chest of Lalit who fell down on the ground in a pool of blood and died on the spot. Kuku on hearing the noise and seeing the assault, rushed to the spot to save her husband but it was futile. On the same night at 9.00 p.m. she lodged her complaint at the Quepem Police Station. The accused was arrested on the same night.

5. The dead body of Lalit was sent to the Goa Medical College hospital for postmortem examination. Dr. Silvano Dias Sapeco (P.W. 5) who carried the post mortem examination on 7-12-1993 found on the person of deceased Lalit the following four external injuries :

1. Semilunar incised wound $1\frac{1}{2} \times 1\frac{1}{2} \times 1\frac{1}{2}$ cm. on left mid cheek.
2. Stab penetrating injury with perimetric length of $6\frac{1}{2} \times 1\frac{1}{2}$ 10 cms. were seen at left lower third's proximal aspect of forearm.
3. Stab penetrating injury measuring $3\frac{1}{4} \times 1\frac{1}{2} \times 9$ cms. ($6\frac{1}{2}$ cms. muscle cut and 3 cms. lung cut) was seen at left front of shoulder below outer third of collar bone. It penetrated into the left side of chest cavity between intercostal space of 1st and 2nd ribs thereby piercing the posterior aspect of left lung for 3 cms. and the plural cavity contained 1100 grams of blood clots and 650 ml of fluid blood. Thus it was directed from left to right and downwards.

4. Stab penetrating injury with perimetric length of 9 x 2 x 10 cms. was seen at right axillary front. It was directed from front to back and upwards whereby it had cut the right axillary blood vessels and nerve trunk.

According to Dr. Silvano the injuries were fresh. Injury No. 1 was caused by sharp edge of weapon. While injuries Nos. 2 to 4 were caused by sharp and pointed weapon like a knife. Dr. Silvano further opined that the injuries Nos. 3 and 4 were individually and collectively fatal and sufficient in the ordinary course of nature to cause death.

6. We have heard Shri P.P. Singh learned Advocate for the appellant/accused and Shri Lawande learned P.P. for the respondent/State. Shri Singh did not dispute before us that the death of Lalit was a culpable homicide and that it was caused by the accused. This is because this fact is clearly borne out by the ocular testimony of Kuku (P.W. 11) and her daughter Sonia (P.W. 12) who were present in the very hall in which the incident in question took place. Shri Singh therefore restricted his submissions to the nature of the offence. He submitted that even accepting the prosecution evidence as it is, it cannot be said that the offence amounts to murder within the meaning of section 300 of the Indian Penal Code. According to him having regard to the circumstances of the case under which the assault was made, the offence would be of culpable homicide not amounting to murder. In support of his submission, Shri Singh contended that the accused was acting in exercise of his right of private defence, though he might have exceeded that right. Secondly, he submitted that the assault in question was committed by the accused without premeditation in a sudden fight and upon a sudden quarrel. In short, the attempt of Shri Singh has been to bring, the case of the accused either under Exception 2 or Exception 4 of section 300. Shri Lawande the learned P.P. however pointed out that no foundation was laid by the defence in the cross-examination of the witnesses to make a case under any of these two Exceptions. He submitted that the decision of the deceased Lalit to leave Goa with his wife Kuku had upset the accused and therefore in order to take revenge, he made a deadly assault on Lalit.

7. We have carefully gone through the evidence and we have given our anxious consideration to the submissions made by Shri Singh. We are afraid that we are unable to accept the same. So far as the plea of self defence is concerned, it is not specifically raised by the defence either in the cross-examination of the witnesses or in the statement of the accused under section 313 Cr.P.C. It is true that even in the absence of any such specific plea, the accused will be entitled to get benefit of the same if from the evidence on record he can show that he was acting, at the relevant time, in exercise of his right of private defence. The evidence of the complainant Kuku (P.W. 11) who is the star witness in this case, clearly shows that at the relevant time deceased Lalit and the accused were sitting together in the hall facing each other and drinking liquor. Both of them were quarrelling with each other and exchanging fist blows. She has further stated that the accused then came in the kitchen and picked up a knife and thereafter stabbed Lalit by giving blows of it on his chest. The version of Sonia (P.W. 12) who was present nearby is also to the same effect. Their evidence does not show that it was deceased Lalit alone who was assaulting the accused. Shri Singh pointed out that the accused had also sustained injuries. The evidence of Dr. Silvano (P.W. 5) shows that the accused had sustained the following injuries:

1. grazed abrasions 5 x2 cms. with soft to hard scab at periphery and oozing of serum seen at central aspect along back of neck.
2. Soft to hard scab on was seen at probated aspect of left hand 5 x 1 cms. along base of index finger region.
3. Chocolate brown contusion 4 x 1 cms. was seen at left shoulder front.
4. Scab separated scar 3 x1 cms. area was seen at right knee cap.

The evidence of Dr. Silvano (P.W. 5) shows that injuries Nos. 1 to 3 were caused within one week's duration while injury No. 4 was caused more than one week before. The injuries of the accused were thus of very minor nature.

8. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from a danger or threat to commit the

offence and it continues as long as the apprehension of danger to the body continues. There is nothing in the evidence of both Kuku and Sonia that deceased Lalit had posed danger to the accused either by holding out a threat or brandishing a weapon. Assuming that the accused did apprehend danger to his body, still he could not have exercised his right of private defence to inflicting of more harm than it was necessary to inflict for the purpose of defence. In the instant case, the accused gave two blows on the vital part of the body of Lalit. The right of private defence of body extends to voluntary causing of death if the offence which occasions the exercise of the right in any of the six clauses of section 100 of the I.P. Code. Nothing is brought out from the evidence of both Kuku and Sonia that the deceased Lalit had subjected the accused to such an assault which reasonably caused an apprehension in his mind that either death or grievous hurt will otherwise be the consequence of such assault. No case is made out by the defence to attract the application of remaining four clauses of section 100. It will thus be seen that the contention that the accused acted in the exercise of his right of private defence is without basis. The evidence of Kuku shows that during the course of quarrel the accused had picked up a crow bar and kept it near leaning towards the wall. Her evidence further shows that prior to the fatal assault, the accused went to the kitchen and brought a knife. This conduct on the part of the accused only goes to point out his intention to assault deceased Lalit.

9. Since the evidence on record does not show that the accused had acted in the exercise of the right of his private defence, the further question of fitting his case under Exception 2 of section 300 does not arise. Even assuming for a moment that the accused acted in the exercise of the right of his private defence, he does not get benefit of Exception 2 for two reasons. The first is that the exercise of his alleged right of defence was not without premeditation and secondly it was not without any intention of doing more harm than was necessary for his defence. The medical evidence shows that the accused caused in all four injuries by means of a sharp weapon and out of them two were fatal. It will be thus seen that for the aforesaid reasons it is not possible to bring the case of the accused within the ambit of Exception 2.

10. As regards the application of Exception 4, the case of the accused is still worse. In order to bring a culpable homicide within the ambit of Exception 4 it is required to be shown that it was committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. The evidence on record does not show that there was a sudden quarrel between the accused and deceased Lalit which resulted in a sudden fight. As pointed out above both of them were sitting and drinking together for a considerable time and at the same time quarrelling and fighting with each other. It is not that in the course of quarrel there was a sudden fight and that the accused suddenly took out a knife and hit it on the chest of Lalit in the heat of passion. In that event it could have been said that there was no pre-meditation on his part. However, as seen above some time before the incident the accused went to the kitchen and brought a knife with which he later on assaulted Lalit. It will therefore be seen that the case of the accused does not attract application of Exception 4 of section 300, since there was neither a sudden quarrel nor a sudden fight.

11. Having regard to the weapon used i.e. a sharp and pointed knife with a blade of 7 inches, the vital part of the body chosen to give the blows and the number of blows, the accused can certainly be attributed the requisite intention or knowledge contemplated by section 300 of the I.P. Code. It must therefore be said that the learned Judge has rightly convicted him of the offence under section 302 of the I.P. Code. No interference in the order of conviction and sentence on this count is warranted.

12. Shri Singh submitted that the conviction of the accused for the offence under section 506 (Part II) is not proper and correct since there is absolutely no evidence to show that the accused had given any threat to the complainant Kuku and her children. It is found that the evidence of both Kuku and Sonia is silent on this point with the result that the conviction of the accused for the offence under section 506 (Part II) cannot be sustained.

13. In the result, the appeal is partly allowed. The conviction and sentence for the offence under section 506 (Para II) of the I.P. Code, is hereby set aside and the

accused is acquitted of that charge. Fine, if any paid by the accused on that count be refunded to him. Conviction of the accused for the offence under section 302, as well as the sentence passed on him on that count are however maintained.

14. Appeal partly allowed.

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