T. Alibi Vs. Government of Mysore

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Court : Karnataka

Decided On : Jun-07-1951

Reported in : AIR1952Kant10; AIR1952Mys10

Judge : Medapa, C.J. and ;Vasudevamurthy, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 423; Indian Penal Code (IPC), 1860 - Sections 96, 99, 100, 304 and 304(2); Evidence Act - Sections 105

Appeal No. : Criminal Appeal No. 35 of 1950-51

Appellant : T. Alibi

Respondent : Government of Mysore

Advocate for Def. : M.K. Srinivasa Iyengar, Adv. for ;Adv. General

Advocate for Pet/Ap. : Maloor Subba Rao, Adv.

Judgement :

Vasudevamurthy, J.

1. The Appellant (accused) has been convicted by the Sessions Judge,. Shimoga Division, in Shimoga Sessions Case No. 4,/ 50-51 under Section 304(2), I.P.C., and sentenced to rigorous imprisonment for five years. The charge against him

was that he committed murder by intentionally or knowingly causing the death or one Mahomed, a brother-in-law of the accused's brother. P.W. 1 and the deceased are said to have gone to Bhadravati on the night of 1-5-1950 to collect some debts said to be due to them by the accused, and when they demanded the same the accused is said to have got enraged; and consequently there was a quarrel between the deceased and the accused when the latter is said to have stabbed the deceased in the back with the Knife M. O. 1 as a result of which Mahomed died very shortly thereafter.

2. That the accused was responsible for the knife injury on the deceased and for his death admits of very little doubt. In his statement both before the Committing Court and in the Sessions Court the accused has admitted his presence at the scene of occurrence and has stated that though P.W. 1 and the deceased beat him, he did not stab the deceased. P.W. 1 has given a detailed version of the occurrence. He has deposed that the accused remonstrated why both P.W. 1 and the deceased had gone to collect money from him, that after heated words there was a hand to hand fight between the deceased and the accused, that the deceased fell down and the accused took out a knife from the left side of his waist and hit the deceased in the back, that the deceased then got up and snatched the knife from the accused, that he himself went to separate them when the accused also hit him and kicked him, that two of his caste people took away the accused, that the deceased said he had lost much blood and asked the witness to take him to the hospital and inform the police and that after walking a few steps he passed away. It was suggested rather weakly that P. W. I himself might have killed the deceased, and some reliance was placed on some casual admission during the cross-examination of P.W. 6, wife of Mahomed, that P.W. 1 and her husband were not on cordial terms. It is possible that she merely meant thereby that they were not very friendly and that does not indicate any Ill-feeling between them. It is very improbable that P.W. 1 and the deceased would have gone together on bicycle from Shimoga to Bhadravati between 8 and 11 p.m., that night if they' were not friendly, and there is absolutely no motive suggested why P.W. 1 should kill his own brother-in-law.

3. P.Ws. 2, 3, 4 and 5 have corroborated P.W. 1 as regards the scuffle between the accused, and P.W. 2 has deposed that he also saw the accused stabbing the deceased on his back. P.W. 19, who was a resident of Bhadravati at the time of the occurrence, has stated that P.W. 1 and the deceased came to his shop at about 10 p.m., and asked for accused Alibi and that late In the evening he saw the deceased and the accused conversing and that subsequently Mahomed said that Alibi had stabbed him with a dagger. He has identified M. O. 1 and has stated that he had seen a knife similar to it in the accused's shop though he cannot swear that it is the same as M. O. 1 and that it was being used to cut ropes.

4. All the three assessors have pronounced the accused guilty though the third has added that the accused might have done the act out of anger. We think, therefore, that the conclusion of the learned Sessions Judge that the accused was responsible for the death of Mahomed is correct.

5. Mr. Maloor Subba Rao, learned Counsel for the Appellant, contended that even if it is found that the accused was responsible for the death of Mahomed, the evidence clearly discloses that he first have acted in the exercise of his right of private defence and that he is therefore entitled to an acquittal. Such a plea was not put forward by the accused in the lower Court; but there is nothing to prevent this Court from giving the benefit of such a defence to the accused if the evidence supports it. In 'In re, Pachai Gounden, AIR (2) 1915 Mad 532 and In re Jogali Bhaigo : AIR1927 Mad97 , the Madras High Court held that even if the accused does not specifically plead the right of private defence it is open to the Court to consider such plea if the prosecution evidence would support it. In 'Afiruddin Chakdar v. Emperor', A I B (6) 1919 Cal 439, the Calcutta High Court has held that it is open to an accused person to adopt a defence in the alternative such as that he was not present at the occurrence and did not strike the complainant taut that if he did strike Him he acted in self-defence. It was observed by Richardson, J., in that case that a plea in that form may not be very convincing, taut nevertheless it was open to a prisoner to adopt such a defence in the alternative and if he cannot satisfy the jury that he did not strike the complainant but can satisfy them either by the cross-examination of the complainant's witnesses or by adducing evidence on his own behalf, that in striking the complainant he acted in self-defence, then he is

entitled to an acquittal. The Allahabad High Court has held in 'Kishenlal v. Emperor', AIR (11) 1924 All 645, that if the Court finds on the evidence before it that the accused acted in the exercise of his right of private defence, it is bound to take cognizance of that fact though such a right has not been pleaded. The Lahore High Court has also held that when there is evidence proving that a person accused of killing or injuring another acted in the exercise of the right of private defence, the Court ought not to ignore that evidence and convict the accused merely because the latter set up a different defence and denied having committed the assault. See 'Ghulam Rasul v. Emperor', AIR (9) 1922 Lah 314 and 'Ghulam Rasul v. Emperor', 39 Cri L Jour 7 (Lah). In 39 Cri L Jour 7 (Lah), the plea of the right of self-defence had apparently not been pleaded taut nevertheless , Young, C. J., and Monroe, J., accepted the argument for the defence that the evidence for the prosecution itself supported such a claim and gave the benefit of it to the accused. See also Ratanlal's Law of Crimes, 16th Edition, pages 198-199.

6. The learned Advocate-General relied on a case reported in '25 Mys. OCR 161', and contended that in Mysore the law in this matter has been laid down differently. But when we come to examine that case we, however, see that it does not lay down any such proposition. In that case it was found that the accused had stabbed P.W. 3 in his throat with a knife. The accused had totally denied the occurrence and urged in the alternative that he was himself being attacked by P. W. 3 and others and that in order to escape from his assailants he may have whipped out his pen-knife and slashed out indiscriminately with it and the blow may have fallen on P.W. 3. Their Lordships pointed out that the appellant did not set up any such defence but had put forward a plea entirely inconsistent with such a defence and denied having stabbed P.W. 3, and that being the case it was not open to a trial Court, much less to an appellate Court, to 'assume' such a set of circumstances in accused's defence. They refer to Section 105 of the Indian Evidence Act which lays down that the burden of proving that the case of an accused's person comes within any of the exceptions in the Indian Penal Code or other law is upon him; and they go on to point out that 'though of course if on the evidence for the prosecution it is clear that the accused acted in self-defence he will be entitled to an acquittal even without pleading self-defence.' In their Judgment their Lordships refer to an earlier case reported in '9 Mys. CCR 334, where it was held that as the

accused had neither pleaded nor proved before the Magistrate that he was acting in self-defence such a plea could not be admitted in revision. In the course of his judgment in '9 Mys. CCR 334, Stanley, C.J., has, however, observed that We may, therefore, examine the evidence in this defence, his conviction should not be supported though he did not plead that he acted in self-defence. But in the present case, the petitioner, it is apparent, not only did not plead that he acted in self-defence but adduced false evidence to prove an 'alibi' and no witnesses for prosecution or defence gave any evidence to prove that the petitioner acted in self-defence.' We may, therefore, examine the evidence in this cas to see how far it supports the accused's plea of private defence under Section 96, I.P.C.

7. It must also be borne in mind that the right, of private defence under Section 96 is clearly qualified under Section 99, I.P.C., which lays down that right of private defence in no case extends to the inflicting of more harm than it is necessary for the purpose of defence. In the present case P.W. 1 has sought to make out that there was a scuffle between Mahomed and the accused and that when the deceased fell down the accused took out a knife and stabbed him. It may be that this witness is minimising the aggressiveness of Mahomed and of himself. P.W. 2 has deposed that the accused and the deceased were fighting with each other, the accused and the deceased falling down alternatively that the deceased cried out 'Ayayyo' when the accused stabbed him with the knife. He has admitted in cross-examination that P.W. 1 and the deceased both fisted the accused and threw him down. P.W. 3 has stated that P.W. 1, the accused and another had 'Guddat' that the accused had a 'Chaku', that the deceased held out his own hand to seize the knife from the accused and that he saw blood on the back of the deceased. P.W. 4, has deposed that P.W. 1 and the accused and the deceased had 'Guddat' or a fight and that at one time the accused was down and the deceased above and 'vice versa'; P.W. 5 whose evidence is most favourable to the accused in this matter, has deposed that Alibi' the accused had fallen down, that Mahomed was sitting above him, that Mahomed held the neck of the accused, that the accused cried out 'Ayayyo' that P.W. 1 was kicking the accused, that no one rescued him and that P.W. 1 kicked on the head of the accused with his booted leg when the accused was lying down face upwards.

8. It is urged by Mr. Subba Rao that the accused has also been hurt showing that Mahomed himself also used violence on the accused and that when his throat was being pressed by the deceased who was sitting on him and he was being kicked by P.W. 1, the accused was Justified in hiding out against the deceased in order to save himsell. But when we come to see the evidence of P.W. 18, the, Doctor who examined the accused shortly after the occurrence, we find that the accused had sustained no serious hurt at all. P.W. 18 has stated that the accused showed by signs that he had pain in the neck on account of squeezing and pain in the abdomen, that he saw nerely a superficial abrasion irregular in shape 1/2' x 1/2' on the back of the upper part of the left forearm and that he did not see any external injury on the person of the accused. There were no wounds either on the head or on the neck to indicate that the deceased used any considerable violence against the accused. If merely during the course of a slight hand to hand scuffle with an unarmed person the accused pulled out his knife and stabbed the deceased it is very difficult to accept that he did so in the exercise of his right of private defence so as to afford him the benefit of Section 96 of Indian Penal Code. Under Section 100, I.P.C., the right of private defence of the body extends under the restrictions mentioned in Section 99 to the voluntary causing of death only if the accused is the victim of an assault as may reasonably cause the apprehension in his mind that death or grievous hurt will otherwise be the consequence of such assault; and under Section 99 it is clear that the right of private defence in no case extends to the inflicting of more harm than it is necessary for the purpose of defence. Judging by these tests we think that it is impossible to hold that the accused is entitled to the benefit of Section 96, I.P.C., to enable him to escape the conviction under the latter part of Section 304,1.P.C.

9. Mr. Subba Rao has argued that the sentence of five years' rigorous imprisonment imposed on the Appellant is very severe. We are inclined to agree with him. The circumstances under which the accused stabbed the deceased are rather peculiar. P.W. 1 and the deceased went and accosted the accused at 11 p.m., to repay some debt which he is said to have borrowed from them. It is very doubtful if really any money was owing to them or at least such as it is sought to be made out. The entries in Ex. P-1, P.W. 1's note book are not made in the regular course of business and appear to have been inserted subsequently.

Though the amounts involved are fairly considerable, there is no document to evidence the loan and even the signature of the accused has not been taken in Ex. P-l. The deceased himself appears to have been convicted previously and was undergoing a term of imprisonment for 18 months, though it is not stated for what offence, and had been recently released from jail; and it is doubtful if such a man as the deceased would have made large ad-vances. It looks therefore more probable that they went there to pick a quarrel with the accused and to teach him a lesson on account of some real or imaginary grievance. When he was attacked in the very late hour of the night by two persons who were quite young and equally vigorous as himself, it is possible that the accused lost his powers of calm reasoning and hit out against the deceased with a knife which he was apparently in the habit of carrying in his belt. The learned Sessions Judge himself has held in convicting the accused under the latter part of Section 304, I.P.C., that he could not have had either the intention to cause death or such bodily injury as was likely to cause death. There was only a single wound on the deceased and the attack was neither cruel nor brutal much less pre-meaitated. We are, therefore, inclined to reduce the sentence to two years' rigorous imprisonment and we order accordingly.

10. Subject to the above modification in regard to sentence this appeal is dismissed.

11. Sentence reduced.