SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Ramegowda

In Re: Ramegowda

SooperKanoon Citation : sooperkanoon.com/371501

Court : Karnataka

Decided On : Nov-09-1951

Reported in : AIR1953Kant45; AIR1953Mys45

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

Acts : Indian Penal Code (IPC), 1860 - Sections 96, 97, 99, 100 and 304; Arms Act, 1878 - Sections 19; Mysore Arms Act - Sections 8 and 14

Appeal No. : Criminal Appeal No. 57 of 1950-51

Appellant : In Re: Ramegowda

Advocate for Pet/Ap. : V. Krishnamurthy, Adv.;A.R. Somanatha Iyer, Adv. General

Judgement :

1. The appellant has been convicted by the Sessions Judge, Shimoga, for an offence under the First Part of Section 304 I. P. C. and sentenced to R. I. for, 10 years; he has also been convicted under Section 14(d) of the Mysore Arms Act and sentenced to R. I. for one year, the sentences being directed to run concurrently. The case against him is that in the evening of 7-3-50 at about 5-15 P. M. he shot one Mullegowda who died the same night about three hours later.

2. It has been contended by Mr. Krishnamurthi, learned counsel for the Appellant, thatthe evidence in the case is insufficient to holdthat it was the accused who shot

Mullegowda.He relies strongly on the fact that the accused'sbrother one Sannegowda, who has been examined as D. W. 1 in the case, has unequivocallyadmitted that it was he that shot; that thelicense for the double-barrel gun from whichthe shots were fired stood in the name of Sanegowda; that it is natural to expect that hewould have used his own gun and that theaccused who had apparently a license to owna muzzle loader gun would have used thatweapon. The evidence, however, appears to bequite clearly against the Appellant. P. W. 7 Capt.Appanna, an Assistant Medical Officer of Health,has deposed that in that evening he was taken bythe S. I. Kuttapppa, p. W. 15, to Jannapura, totreat a stab case of one Channegowda 'a' Cidde-gowda, that while nearing that spot he met Mullegowda who rushed by his side and went to thespot where the deceased Channegowda had fallendown, stopped there for two or three minutes andlater went to the accused's house, that shortly afterhe heard two gun shot sounds from there, andpeople came running from the direction of theaccused's house saying that Mullegowda had beenshot; that he immediately went into the chavadiof accused's house which was about 75 to 100 ft.away from the spot where Channegowda's bodywas lying, that when he entered the chavadi hesaw the accused and his brother Ciddegowda inthe right hand side room, that Ramegowda hada double-barrel breach loader gun which isM. O. 1, that he asked the inmates of the houseto give Mullegowda some water and some clothto bandage him and that in the meantime thelicensed pointed out a knife held in the outstretched right hand of Mullegowda with itsbig blade open. He removed the pen knife andclosed the blade and gave it to P. C. Maha-lingiah, P. W. 13, who had followed him. Theaccused was standing on the threshold just atthe inside of the room. Mullegowda was aliveand told the accused to shoot him at the rightspot and take him as ' ', and requestedthe witness to give him some poison and to endhis life. Absolutely nothing has been elicitedwhy this evidence should be disbelieved, and itis fully corroborated by the evidence of P. Ws. 11and 12 who rushed behind the deceased and aresaid to have been standing on the steps leadingup to the chavadi just below the top step onwhich Mullegowda was standing when he wasshot.

3. Mr. Krishnamurthi has argued that P. Ws. 11 and 12 have tried to deny that Mullegowda was armed. It may be that they did not notice the knife which is not

after all such a very big one and is merely a big penknife. Even if they sought to make it appear that the deceased was not the aggressive party, it is difficult to disbelieve the rest of their evidence particularly when it is fully supported by the disinterested evidence of p. W. 7. P. W. 15, the Sub Inspector, p. W. 13, the police constable, and P. W. 14, one Kasim sab and P. W. 16, who was then a Revenue Inspector and now the Head Clerk of the Taluk Office at Mudigere, who all followed the Doctor immediately after, have all corroborated the Doctor. If really the shots had been fired not by the accused but by his brother Sannegowda, there is nothing shown why the witnesses would have implicated the accused rather than Channegowda. All the witnesses have seen the accused with M. O. 1 in his hand and have heard the deceased telling him to shoot again and kill him.

4. It is contended by the learned Advocate-General that Channegowda had apparently taken on himself the responsibility 'for firing the shots as he was involved in the case connected with the death of Channegowda 'a' siddegowda which is the subject matter of Cr. A. No. 58/50-51; that by admitting that he shot the deceased in self-defence, both of person and property, which has to be partially accepted in this case, he would have felt that he was likely to be acquitted and that his brother would escape the practically certain conviction under the Arms Act and that he himself might be able to plead alibi in the connected case. This argument appears to have considerable force. As the deceased had clearly been shot by one of the brothers on their door-step one or the other of them was bound to explain how it happened.

5. Mr. Krishnamurthi has further argued by a reference to the sketch prepared in the case by P. W. 1 that it was impossible for P. Ws. 11 and 12 to have seen the shots being fired from the right hand side room. Both the committing Magistrate and the Sessions Judge inspected the spot locally, the latter in the presence of the assessors and the Counsel on both sides, and apparently felt fully satisfied that the witnesses could see such an occurrence, nor have we been shown that the same is not possible. As against this argument, there is the inescapable circumstance that a large number of witnesses have spoken to seeing the accused with M. O. 1 in his hand immediately after the occurrence. The accused in his statement does not say that his brother Channegowda did it nor did he say so to

the witnesses.

6. It is next contended by Mr. Krishnamurthi that his client acted in self-defence and is therefore protected by Section 96 read with Sections 97 and 100, I. P. C. The learned Sessions Judge has found that the accused clearly exceeded such right of self-defence which ho may have had by firing the second shot which shattered the left kidney and a part of the spinal column of the deceased and was apparently the cause of his death. The facts as found in this case show that the first shot took effect and hit the deceased in his thigh. The deceased must have slumped down and could not have moved much, if at all, afterwards. It is no doubt true that he had an open knife in his hand and when he came shouting with at least two other persons behind him the accused might have reasonably apprehended serious harm to himself and to the inmates of his house. While the earlier shot may therefore be considered not unreasonable, the second shot, which apparently had been fired at the back of the deceased when he had turned, would appear to be clearly unjustifiable. Under Section 39, I. P. C., the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. The deceased was armed after all with a comparatively insignificant weapon and the accused could have probably used the rifle to hit him rather than shoot at him on the second occasion. The deceased did not proceed into the room after he was hurt by the first shot. The cartridges used contained slugs and the accused who apparently knew how to use the gun quite effectively must have known that it had a deadly power of killing.

7. Mr. Krishnamurthi has relied on a case reported in -- 'Kuppusamier v. Emperor' : AIR1929 Mad748 (A) and has urged that in such a case the accused cannot be expected to calmly consider the exact amount of force which he could employ to prevent the murderous attack over his person and property. In that case, there were a large number of people armed with knives and sticks who sought to attack the accused; and on facts therefore that case is not applicable to the present case. We think, therefore, that the learned Sessions Judge was quite correct in holding that the accused has exceeded his right of private defence and cannot invoke the benefit of Section 97, I. P. C. and claim an acquittal.

8. Mr. Krishnamurthi has next contended that the conviction of the appellant under Section 14 (d), Arms Act, is illegal. Section 14 (d) provides that any person who 'goes armed' in contravention of the provisions of Section 8 is liable to punishment. Section 8 recites that no person shall 'go' with any arms except under a license and to the extent and in the manner permitted thereby. The facts disclosed are that Channegowda, brother of the accused, who was living with him in the same house had a gun license to own and possess M. O. 1. The accused took it up and fired the shots. Can it be said in those circumstances that the accused was 'going' armed? The words 'go armed' apparently mean that the accused must move from a place carrying arms with him with the deliberate purpose of using them. Mere carrying of arms of another as by a servant cannot be 'going armed'. The learned Advocate-General has relied on a case in -- '33 Mys. C. C. R. 38:5 Mys LJ', 568 (B). In that case the accused was found shooting a crow in a field with a gun for which his father had a license and was charged under Section 14 (d), Arms Act, and pleaded guilty. The Magistrate nevertheless acquitted the accused relying on an earlier case reported in -- '9 Mys. C. C. R. 93 (C). On appeal by the Government against the order of acquittal, it was held that the case in --'9 Mys. C. C. R. 93 CO dealt only with a case of mere carrying by the son of a gun for which his father had a license and not to a case of the use of the gun and that the accused must therefore be held to have gone armed without a license within the meaning of Section 14 (d). In -- '33 Mys. C. C. R. 39 (D) the accused had taken out the gun with the specific object of using it, and could be said to have been going armed and that circumstance would distinguish that case from the present.

9. The case reported in -- 'Baburam v. Emperor', AIR 1925 Ail. 396 (E) which is strongly relied on for the appellant, is. more applicable to the present case. There the brother of a man who had a license to own a fire arm took his brother's gun and fired several shots in the air to scare away rioters and to prevent them from attacking his house. It was held that he was not guilty of any offence under the Arms Act because it could not be said that the gun had ceased to be in the possession of the license holder and had passed into the possession ol the applicant, Their Lordshipa observed that the word possession is a well known word in law and a man may be in the possession of a thing without being in physical touch with it; as for example when he has locked his vacant house, he is

still deemed to be in possession of the same; or a license-holder going to an out-station leaving his gun in charge of his wife or his servant. In such a case, they pointed out that the possession of the wife and servant would be possession of the license-holder. If a house is invaded by a robber when the owner of the house is non present or is unable to act, surely it cannot be said that some other inmate of the house like his servant or his son cannot use the owner's gun.

9a. An even stronger case in favour of the appellant is the one reported in -- 'Prabhat Chandra v. Emperor', 35 Cal. 219 (F). In that case the gun belonged to a person who was away from the country and was left by him with his brother. The accused who was a close relation of theirs saw a mad dog entering the compound of the house. He seized the gun and fired at the dog. He missed the dog but the shot wounded a stranger. It was held that the temporary possession of the gun which the petitioner had when he snatched it up and fired was not possession contemplated by Section 14. In -- 'Manjhubhai Gordhandas v. Emperor', AIR 1929 Bom. 283 (G) the words 'goes armed' have been interpreted as connoting carrying a weapon with the intention of using it when the necessity arose; and that the words 'goes armed' would imply a man in the possession of the arms in contravention of the license and need not necessarily involve a habitual course of conduct. Mirza, J. in that case has however referred to the Dictionary meaning of the word 'go' which is to pass about or abroad (in a certain state) or to move on a course. It is doubtful if a person can be said to 'go armed' if he merely snatched up a rifle and fired from the place when he is standing. If a man moves another's rifle from one place to another in the same house, it cannot be said he is going armed.

10. We, therefore, think that in this case the accused cannot be said to have been going armed; his primary intention was to fire in self-defence and not to go armed and shoot when occasion arose. In this view of the matter, we think that the accused cannot be convicted for an offence under Section 14 (d), Arms Act. His conviction and sentence for that offence must therefore be set aside and we order accordingly.

11. As regards sentence for the offence under the first part of Section 304, I. P. C., we have given the matter our anxious consideration. There is no doubt that the

accused was in a very difficult and unfortunate situation created by the deceased. The latter in spite of protests by the Sub-Inspector and others apparently tried to rush into the house of the accused after nightfall when there were ladies in the house with an open knife. He was accompanied by at least two persons and the accused could not have been sure that their intention was peaceful. We have held that the first shot was in self-defence and that the accused has stepped beyond the needs of the situation by firing the second shot. In these circumstances we think the sentence of 10 years R. I. imposed by the Sessions Judge is too heavy, and we reduce it to 18 months R. I.

12. Subject to the above modifications, this appeal is dismissed.

13. Order accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com