In Re: Narasing Naik

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Court : Karnataka

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Judge : M. Santhosh and ;K. Bhimiah, JJ.

Appellant : In Re: Narasing Naik

Judgement :

M. Santhosh, J.

1. The appellant before this Court, Narasinga Naika alias Narasa Naik, was the 7th accused in the Court of Session. Bellary Division in Sessions Case No. 22 of 1968. He has been convicted of an offence under Section 302 I. P.C. and sentenced to imprisonment for life. He has also been convicted of offences under Sections 25 (1) and 27 of the Arms Act and sentenced on each count, to R. I. for one year. All the sentences have been directed to run concurrently. He was tried along with 10 other accused for various charges and the other accused have all been acquitted. There is no appeal by the State against their acquittal. In this appeal, the appellant challenges the legality and correctness of the said convictions and sentences passed on him by the learned Sessions Judge.

2. The prosecution case, briefly, stated, is as follows: All the 11 accused persons and P. Ws. 1 to 4 are residents of Honnali Thanda which is situate at a distance of about 6 miles from Bellary. P. Ws. 1 to 4 are brothers. Accused-1 and 2 are

brothers and they, are the uncles of P. Ws. 1 to 4. Accused-2 is the son of accused-1 and accused-9 is the son of accused-2. Accused-7 and 8 are brothers and they are the sons of P. Ws, 21 who is also an uncle of P. Ws. 1 to 4. The other accused are also sons of one of the uncles of P. Ws. 1 to 4. The prosecution case is that there were misunderstanding between P. W. 2 Bhimanaik and his brothers on the one hand and the 11 accused persons on the other. There Was a well outside the Thanda at a distance of one or two furlongs from Thanda. All round the well there were Jali trees belonging to Government. Accused-2 cut all these Jali trees and converted the land into a garden. Some persons set a petition to the authorities about this. Accused-2 thought that it was P, W. 2 who sent the petition and ill feelings developed between the accused and P. W. 2 and his brothers. As accused-2 and some of the other accused threatened P. W. 2. he sent petitions to the Superintendent of Police alleging that his life was in danger. It may be mentioned that in petitions Exhibits P-3 and P-4, the name of accused-7 is referred to as one of the supporters of accused-2. An enquiry, was held by P. W. 27 Sub-Inspector of Police. Bellary, on the directions of the Superintendent of Police and accused-2 was warned.

3. The prosecution case is that on 3-7-1968 which was a festival day. in the evening. P. Ws. 1 to 4 were standing in front of P. W. l's house. At that time all the 11 accused persons formed themselves into an unlawful assembly with the common object of murdering P. W. 2 and his brother, armed with deadly weapons. Then, according to the prosecution, these accused came there and bagan attacking P. W. 2 and his brothers and inflicted injuries on them. It is unnecessary to go into the details of the attack, as all the accused have been acquitted of this charge. The case of the prosecution is that when the assault on P. Ws. 1 to 4 was going on, P. Ws. 22 to 24 and some others came and separated accused and P. Ws. 1 to 4. At that time accused-7 ran into the house of accused-2 which is nearby, and brought a gun, M.O. 1. When accused-7 came in front of the house of P. W. 1 with a gun and stood at a distance of about 30 to 35 feet from the house. P. Ws, 1 to 4 got frightened and began running into the house. At that time, accused-7 fired a shot. This shot hit Honnurappa. servant of P. W. 1 who was standing near the door of the house and killed him. The prosecution case is that thereafter the prosecution witnesses ran into their house and P. W. 6 Lakshmibai,

wife of P. W. 3 Lakshmibai Naik. who carrying in her arms her child Rukmini aged l years tried to close the front door. Just at the time, accused-7 re-loaded the gun and fired a shot. This shot hit the head of the child Rukmini who was being carried by P. W. 6 and the head of the child was broken to pieces and the child died instantaneously. Thereafter, the prosecution witnesses closed the door of their house. Then accused pelted stones at the house. Out of fear, P. Ws. 1 to 8 did not come out of their house.

4. P. W, 10 Sri Sivaraj, who was the President of Bellary City Municipal Council, was informed that some rioting was taking place in Honnali Thanda and he phoned to the Police. P. W. 12. Head Constable Hanumantha Rao who was in charge of the Bellary Police Station made an entry in the Station House Diary. Exhibit-P19 (a) and immediately contacted his superior officers. Thereafter P. W. 30, the Circle Inspector of Police along with the other staff went to Honnali Thanda and reached the place at about 10-45 p. m. They found the dead body of the child Rukmini inside the house. The dead body of Honnurappa was not there, Then P. W. 30 recorded the complaint of P. W. 1 as per Exhibit P-l and registered the same. Thereafter, he searched the house of accused but' nothing incriminating was found. At 6 a. m. on the next morning he held inquest over the dead body of Rukmini and he examined P. Ws. 3. 4, 5. 6. 7. 8 and some other witnesses. Then he prepared the panchanama of the scene of offence as per Exhibit P-13. He collected the blood stained earth found at the scene. At a distance of about 42 feet from the house of P. W. 1 he found 4 card-board wads and rubber wad, M. Os. 20 to 24 seized them. He also found lead pieces embedded on the door frame. He also found some distorted pellets inside the house. The body of Honnurappa was traced on 5-7-1968 underneath a culvert about 3 miles away from the scene. P. W. 30 held inquest over the dead body. He tried to trace the accused, but they were not available. On 15-7-1968, accused 1, 5 and 7 were arrested, On 24-7-1968, he arrested accused-2, 3 and 8 after they were discharged from the Medical College Hospital, Bellary, where they were in-patients. He arrested the other accused on different days. After completing the investigation, he submitted a charge-sheet to the court of the I Additional Munisiff-Magistrate Bellary,

5. The case of the appellant was one of total denial. He stated that the witnesses were deposing falsely and he did not know anything about the occurrence. The appellant stated that he was not present in the village at the time of the occurrence and that he was living at that time with his family at Bellary, His plea was one of total denial,

6. It has not been disputed before us that Honnurappa and the child Rukmini met with unnatural death. Apart from the evidence of the eye witnesses, P. Ws. 1 to 8, there is the evidence of P, W. 28. Dr. Thangarai, who conducted post-mortem examination on the bodies of Honnurappa and Rukmini, which clearly proves that both these persons met with homicidal death. P. W. 8 conducted the post-mortem on the child Rukmini at 2 p, m. on 4-7-1968. The doctor has noted the three injuries found on the body, in Exhibit P-39. the post-mortem report. The doctor found the following injuries:

(1) The top of the head was gaping 4' x2 exposing the brain. The scalp was irregularly lacerated over the top of the head. The frontal and parietal bones were gaping. Only part of the brain was found within the brain cavity.

(2) Lacerated wound ' in diameter over the medial and of the left eyebrow. The bone in the depth of the wound was irregularly broken over an area of 1' in diameter.

(3) Lacerated wound 3/4' in diameter 1 behind the left mastoid process. The bone in the depth of the wound was irregularly fractured over an area of 1' in diameter.

The doctor opined that the death was due to injuries to the head. The Doctor stated that all the injuries found on the body could be caused by a gun shot. He also stated that injury No. 2 would be caused by entrance of the bullet and injury No. 3 could be caused by its exit. The doctor opined that the injuries found on the body of Rukmini were sufficient to cause death in the ordinary course of nature.

7. The same doctor conducted post-mortem on the body of Honnurappa on 6-7-1968 at about 10 a. m. Injury No. 1 was a lacerated wound 3/4' in diameter and bone deep on the right side of the scalp 3' above the right ear. The margins were

irregularly eaten by some insects and animals and were overtef. In the depth of the wound there was a mass of brain tissue, pieces of bones, clots of blood, mud, charcoal and one metal piece. On dissection the doctor found that there was a contusion 2' x 1' over the deep aspect of the scalp over the left parietal eminence. It was infiltrated with blood and was brown in colour. In the depth of the wound on the right side of the scalp, there was a depressed comminuted fracture of the skull over a triangular area of the skull over an area of 1 in diameter. Fissured fracture ran from the area of depressed fracture anteriorly to the left frontal, posteriorly to the occipital bone and downwards to the petrous bone of the skull measuring 5' X 7' X 6' respectively. The doctor opined that death was due to the injury to the head and the injury to the head could be caused by a gunshot. The doctor also stated that M.O. 26 was the pellet which he found in the depth of the wound bead of the head of deceased Honnurappa. The doctor stated that the injury found on the head of the deceased was sufficient in the ordinary course of nature to cause death. Exhibit P-40 is the post-mortem certificate issued by the doctor. It has not been challenged before us that both Honnurappa and the child Rukmini met with their death as a result of gun shot injuries.

8. The prosecution case rests mainly on the direct evidence of the eight eye witnesses P. Ws. 1 to 8. P. W. 1 Seku Naik has stated that P, Ws. 2 to 4 are his brothers, and that accused-1 and 2 are the brothers of his father and the other accused are his cousins. He has also stated that in his house P. W. 7 Ruplibai, his wife, and his sisters-in-law P. W. 6 Lakshmibai and P. W. 8 Sethubai are residing; P. W, 5 Mangalibai, his elder sister is residing nearby. He has stated that there were misunderstandings between himself and his brothers on the one hand and the 11 accused persons on the other hand. P. W. 2 had given number of petitions to the authorities, such as Exhibits P-3 and P-4, alleging that their lives were being threatened by accused-2 and some of the other accused. As a result of this, the police came and enquired into the matter and warned the accused. P W 1 has also stated that on the evening in question, which was a festival day, while he and his brothers were standing in front of their house, the 11 accused came in a body and attacked them. The prosecution case was that these accused were armed with different weapons and they attacked the four brothers and caused injuries on them. As already stated, it is unnecessary to go into the details as the accused

have all been acquitted of this charge. The prosecution case is that when the witnesses were being assaulted by the accused, P. Ws. 22 to 25 came there and separated them and the accused. Then accused-7 ran into the house of accused-2 and brought a gun. It may be mentioned that accused-2 is the licensed owner of the gun. M.O. 1. Accused-7 then came in front of the house with the gun and stood at a distance of about 30 to 35 feet from P. W. l's house. On seeing him standing with the gun, P. Ws. 1 to 4 got afraid and were trying to get into the house. At that time their servant Honnurappa was standing outside the door of the house. Accused-7 fired one shot and this shot hit the head of Honnurappa and he fell down. The witnesses ran inside the house. P. W. 6 Lakshmibai,. sister-in-law of P. W. 1 and wife of P. W. 3 was then inside the house and she was carrying in her arms her child Rukmini aged l years. After the witnesses got into the house, she went to close the door, carrying the child in her arms, Just at the time when she was attempting to close the door, accused-7 fired a second shot with the gun and that shot hit the head of the child and broke it into pieces and the child died instantaneously. The prosecution witnesses were all afraid and closed the door and sat inside. The accused thereafter went on throwing stones at the house. At about 10 or 11 p. m.. the Police party came there and asked them to open the door. The body of Honnurappa was not then in front of the house. The Inspector questioned him and recorded his statement as per Exhibit P-l. The evidence given by P. W. 1 has been fully corroborated by the evidence of the other eye witnesses. P, Ws. 2 to 8. It may be mentioned that just before the occurrence, P. W. 5, Mangalabai. one of the sisters of P. W. 1 had also come to the house. P. W. 5, P. Ws. 6 and 8, the wives of the brothers of P. W. 1 were residing in the house of P. W. 1 and were present at the time of occurrence.

9. Sri Shamanna. learned Counsel appearing on behalf of the appellant, has contended that all the eye witnesses are close relations and are interested witnesses. The evidence discloses that accused-2, 3 and 8 had undoubtedly suffered grievous injuries and the prosecution witnesses had deliberately suppressed the fact that the prosecution party had inflicted grievous injuries on these accused. It is pointed out by the counsel that the learned Sessions Judge has held that P. Ws. 1 to 4 were the aggressors in the incident that happened on the evening in question and that they had inflicted grievous injuries on accused-2.

3 and 8. It is argued that as the learned Sessions Judge has not relied on their evidence and held that the accused were not members of an unlawful assembly and all the accused except accused-7. were not responsible for committing the murder of Honnurappa and Rukmini, it is unsafe to rely on the same witnesses to convict the appellant of the charge under Section 302 I. P.C.

10. This contention has been urged before the learned Sessions Judge and he has rejected the same. The learned Sessions Judge has pointed out that though the evidence of P. Ws. 1 to 8 with regard to the first part of the prosecution case was exaggerated and because of that the accused have been acquitted with regard to those charges, as the evidence of these witnesses with regard to the charge against P. W. 7 was clear and convincing and found support in the circumstantial evidence and also the medical evidence and the Fire Arms Expert's opinion, he held that there was no reason why the evidence of the same witnesses should not be accepted. He has relied on : AIR 1965 SC277 and : 1957 CriLJ550 . wherein their Lordships have pointed out that if a part of the evidence of witnesses is false there is no rule of law that their evidence which is clear and cogent with regard to the other part should not be accepted. We will now examine whether the evidence given by the eye witnesses, P. Ws. 1 to 8 is reliable and trustworthy so far as it relates to the appellant (accused-7).

11. All the eight eye witnesses have consistently deposed that after P. Ws, 22 to 25 had come and separated the accused and the prosecution witnesses. accused-7 went into the house of accused-2 and brought a gun and stood at a distance of 30 to 35 feet from the house of P. W. 1. After seeing the gun with him. P. Ws. 1 to 4 got frightened and were trying to get inside the house. Then Honnurappa was standing near the door of the house. Then accused-7 fired a shot and that shot hit the head of Honnurappa and he fell down. Then all of them ran inside the house. When P. W. 6 Lakshmibai. who was carrying the child Rukmini in her arms, tried to close the door, accused-7 fired a second shot and this shot hit the head of the child Rukmini and the child died as a result of this injury. The consistent evidence given by these witnesses has not been shaken in cross-examination. No serious contradictions have been pointed out in their evidence. In the first information. Exhibit P-l, given at the earlier point of time. P. W. 1, has set out fully the facts as

stated by the eye-witnesses with regard to the two shots fired by accused-7. In Exhibit P-l it has been specifically stated how after the witnesses P. Ws. 22 to 25 separated the accused and the prosecution witnesses, when the prosecution witnesses were going towards their house, accused-7 went into the house of accused 2 and brought a gun and fired a shot and how the shot hit the head of the servant Honnurappa. It has also been stated that when accused-7 fired the second shot, it hit and fractured the head of the child Rukmini which was being carried by P. W. 6 Lakshmibai. It may be pointed out that if the witnesses wanted to depose falsely it would have been easy for them to have stated that accused-2 himself, who was the owner of the gun and against whom the prosecution witnesses had the main grudge, shot those two persons. The very fact that these prosecution witnesses have not stated that accused-2 who was their principal enemy, had shot these persons, but stated that accused-7 shot those persons shows that they were not interested in foisting a false case. The version given by these witnesses finds corroboration in the medical evidence and the evidence given by the Fire Arms Expert P. W. 26. that these two persons Honnurappa and Rukmini met with their death as a result of shooting. We may also point out that the eye witnesses, P. 'Ws. 2. 3, 4, 5. 6, 7 and 8 have been examined by the Inspector at the earliest point of time at the inquest itself held on the morning of 4-7-1968 at 6 a. m. Apparently P. W. 1 was not examined at the inquest as he had already given the complaint, Exhibit P-l. The learned Sessions Judge who had the benefit of seeing these witnesses in the box, has accepted the evidence given by them so far as it related to the shooting by Accused-7 and there are no good reasons for us to disagree with the conclusion arrived at by the learned Sessions Judge. At paragraph 26 of his judgment when discussing the evidence of P. Ws. 1 to 8 the eye witnesses he has observed as follows:. But when their evidence with regard to the complicity of accused-7 is clear and convincing and finds support in the circumstantial evidence and also the medical opinion and the Fire-arm Expert's opinion, there is no reason why their evidence should not be accepted. Because their evidence with regard to one part of the prosecution case is not relied upon, it is no rule of law that their evidence regarding the other part of the prosecution case, which is clear and cogent, cannot be accepted.

Again at paragraph 33, the learned Judge observes as follows:

Therefore, from the above discussion. I am convinced that the prosecution has proved beyond all reasonable doubt that Honnurappa and Rukmini Bai died a homicidal death, that they died on account of the injuries to their heads, that the injuries were caused by gunshots and that the gunshots were fired by accused 7 Narasa Naik. The prosecution has proved these factors both by direct and circumstantial evidence. The direct evidence of P. Ws. 1 to 8 inspire confidence and there is no reason to disbelieve their evidence. Their evidence is corroborated by the circumstantial evidence when I have stated above in detail and by the recitals in the first information report. Exhibit P-l, and their evidence conforms to the probabilities...

After going through their evidence carefully, we agree with learned Sessions Judge that the evidence of the witnesses P. Ws. 1 to 8 is reliable and trustworthy so far as shooting by Accused 7 is concerned and can be acted upon.

12. As pointed out by the learned Sessions Judge, the circumstantial evidence in the case also supports the version given by the eye witnesses as to how the occurrence took place. The Panchanama of the scene of occurrence, Exhibit P-43. prepared by the Inspector fully bears out the truth of the version of the eye-witnesses. The evidence of P, W. 30 Inspector Krishna Murthy and P. W. 29 Panch witness Abdul Gafoor. discloses that at the spot, at a distance of 90 inches from the house of P. W. 1, blood stains were found on earth. By the side of the bloodstains, there was a Valli. M.O. 2. which was also blood stained. The evidence discloses that this belonged to Honnurappa. At a distance of about 42i feet from the house of P. W. 1, opposite the door, four cardboard wads and rubber wad. M. Os. 20 to 24 were found. On the right door frame of the house two holes were found with lead pieces. By the side of the head of the child Rukmini a distorted pellet was found. On the wall behind the door of P.W. l's house on the left side of the window there was a hit mark hole. Beneath that hole, on the ground there were two distorted pellets. In the back wall of the house, there was a window and in that window there was an aluminium vessel and in that aluminium vessel there were four holes. Below this window at a height of 44' from the ground level, there were two holes in the wall. From what has been stated above, it is clear that the evidence given by the eye-witnesses finds full corroboration with regard to the

shooting that took place near the house of P. W. 1.

13. The prosecution has also relied on the evidence of motive. The evidence discloses that there was ill-will between P. W. 2 and his brother on the one side and the accused on the other side. P. W. 2 had repeatedly given petitions to the Superintendent of Police stating that A-2 and his rowdy followers were threatening their lives. In Ext, P-3. the petition dated 25th May 1968 given by P. W. 2 to the District Superintendent of Police, P. W. 2 had stated that A-2 was ably supported by his eight rowdy followers in doing high handed and illegal acts. Among the said eight followers, the first name mentioned is that of A-7. Again in Ext, P-4 petition dated 22-6-68 sent by P. W. 2 to the Superintendent of Police, A-7's name is mentioned second in the list of 13 persons referred to in the petition. In both these petitions, the names of most of the other accused are also mentioned. In Exhibit P-4 it is stated by P. W. 2 that the lives of himself, his family members and others are at stake and that security proceedings may be taken against the persons mentioned therein, for their high handed actions. The prosecution has examined P. W. 27 P. S. I.. Kulkarni of the Rural Police Station. Bellary, who has stated that the petitions sent by P. W. 2 were forwarded to him by the higher authorities for enquiry. He has stated that on the receipt of the petition Exhibit P-3 he sent for A-2 to the police station, recorded his statement and warned him. Again after the receipt of Exhibit P-4, he sent for A-2 once again and warned him against any act of breach of peace. He has further stated that he was making enquiries with regard to taking security proceedings against the persons mentioned therein, but shortly thereafter the occurrence took place. From what has been stated above, it is clear that there was ill will between P. W 2 and his brothers on the one side and A-2. A-7 and A-8 and some of the other accused on the other side.

14. It is strenuously contended by Sri Shamanna that even assuming that A-7 fired shots with the gun, he had the right of private defence. Attack by P. Ws. 1 to 4 on his (A- 7's) brother (A-8) and the other accused (A-2 and A-3) was going on and as A-7 apprehended that there was danger of life to these persons, he was justified in making use of the gun and firing the shots in question. It is argued that the prosecution case that P. Ws. 22 to 25 separated the accused and P. Ws. is not true. P. Ws. 22 to 25 when examined in Court have not stated that they separated

the P. Ws, and the accused. It is stressed that even in their statements recorded under Section 162 Criminal P.C. they have not stated so before the Police. It is hence argued that what P. W. 1 and P. W. 8 stated in evidence that these persons (P. Ws. 22 to 25) separated them when the fight was going on and that the shots were fired later on is not true. It is also contended that A-7 had no intention of killing anybody and that he just fired shots to frighten and scare away P. Ws. 1 to 4 and make them desist from attacking A-2, A-3 and A-8. It is stressed that it is an error of judgment and A-7 never intended to harm anybody and the firing was without pre-meditation and in a heat of the moment, when he was in an excited mood. Strong reliance is placed on the decision in Jai Dev v. State of Punjab : [1963]3SCR489 in support of the said contentions. It is urged by Sri Shamanna that the first shot was clearly fired in the right of private defence and that the second was also fired immediately after the first shot it is finally urged that so far as the second shot at least is concerned, it may be a case of exceeding the right of private defence,

15. We see no force in the said contentions. P. Ws. 1 to 8 have all specifically stated that after P. Ws. 22 to 25 had separated them and the accused, A-7 went into the house of accused 2 and brought the gun M.O. 1 and stood with the gun about 30'-35' away. Seeing this, they got frightened and they were all returning to the house. Then A-7 fired a shot which killed Honnurappa. They have also stated that after they had all got into the house and when P. W. 6 went to close the door, the second shot was fired into the house which resulted in the death of the child Rukmini. From the fact that P. Ws. 22 to 25 have turned hostile and did not support the prosecution version, the evidence given by P. Ws. 1 to 8 does not become false. It may be mentioned that in the first information given at the earlier point of time P. W. 1 has specifically mentioned that P. Ws, 22 to 25 separated them and that when they were going to their house A-7 fired the first shot. We may also point out that the eye-witnesses have all been examined at the inquest itself and the version given by them that after P. Ws. 22 to 25 separated them and when they were going into the house A-7 shot at them, has been mentioned by them at the earliest point of time and no contradictions has either been marked or pointed out in their evidence. It is therefore not possible to say that what these witnesses have stated is an afterthought or an improvement made by them in Court. If really

the defence contention that A-7 fired the shot when fight was going on is true then one would expect that P. Ws. 1 to 4 would have been injured and possibly some of the accused also would have been injured. In any case there was absolutely no need to fire the second shot when P, Ws. 1 to 4 had got into the house. Hence there is no force in the contentions urged by Sri Shamanna,

16. With regard to the theory of private defence put forward by Sri A. Shamanna on behalf of A-7, we would like to first point out that A-7 had not raised the plea of private defence, and his case was that he was not all at the scene and was at the time in Bellary City. As per Section 105 of the Indian Evidence Act. when a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions of the Indian Penal Code or any special exception is upon him and the Court shall presume the absence of such circumstances. So it is for the accused to make out the plea of the right of private defence. But it is well settled that though the accused might not have raised the plea of private defence, if there is material on record to show that he had a right of private defence, the Court can act upon the same. It is also well settled that the accused need not prove beyond reasonable doubt the plea raised by him but if there is preponderance of possibilities in favour of his version, the Court can act upon it. In the instant case, as already stated, the evidence of the eye witnesses P. Ws. 1 to 8 clearly shows that no fight was going on when A-7 fired the shots. The evidence clearly discloses that after P. Ws. 22 to 25 separated the accused and P. Ws. 1 to 4. A-7 went into the house of A-2 and brought the gun M. 0.1 and stood in front of the house with the gun. Seeing the gun. P, Ws. 1 to 4 got frightened and were trying to get into the house. It was then that A-7 fired the shot when the P. Ws. were trying to escape into their houses. It is clear from the evidence that there was no fight going on and there was no apprehension of danger when A-7 fired the two shots. It is also in evidence that A-7 fired the shots from a distance of about 35.' If the fight between P. Ws. 1 to 4 and the accused had been going on as already pointed out. P. Ws. 1 to 4 or some of the accused surely would have been injured. When P. Ws. 1 to 4 were rushing into the house, the shot fired at them hit Honnurappa. To a case like this, Section 301 of the I. P.C. is clearly attracted. Section 301 states that if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide

by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person, whose death he intended or know himself to be likely to cause. At paragraph 38 of hi? judgment, the learned Sessions Judge in considering this aspect of the case has observed as follows:.It is true that accused No. 7 had no intention to murder Honnurappa or Rukmini Bai. He wanted to kill some of the P. Ws. But. unfortunately, the shots were fired at the two innocent persons. By virtue of Section 301 of the Indian Penal Code, he would be clearly guilty of murder.

17. In : [1963]3SCR489 their Lordships of the Supreme Court have pointed out that right of private defence arises when the person has to face assailants who can reasonably be apprehended to cause grievous hurt to him. When an individual citizen is faced with a danger and immediate aid from the State machinery was not available the individual citizen is entitled to protect himself and his property. But the force that a citizen is entitled to use must not be unduly disproportionate to the injury which has to be averted or which is reasonable to apprehend and should not exceed its legitimate purpose, and the exercise of right of defence must never be vindictive or malicious. Their Lordships have also stated that in a situation where a person is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion in judging the question whether more force is used than necessary or justified by the prevailing circumstances it would be inappropriate to adopt tests of detached objectivity or to weigh the force that is used in golden scales. Their Lordships have also pointed out that to begin with a person exercising a right of private defence must consider whether the threat to his person or property is real and immediate. Their Lordships have also stressed in the said judgment that as soon as the cause for reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion for exercise the right of private defence. If the danger is continuing the right is there; if the danger or the apprehension about it has ceased to exist, there is no longer the right of private defence. So it is clear from the said decision that if the danger or apprehension ceased to exist, there is no longer a right of private defence. In the instant case we have already pointed out that P. Ws. were all trying to escape into

their house and the danger or apprehension had ceased to exist and as such A-7 cannot claim the right of private defence.

18. In any case after A-7 fired the first shot which killed Honnurappa, there was absolutely no justification for him to re-load the gun and fire the second shot. After P. Ws. 1 to 4 had got into the house, there is absolutely no need for him to fire into the house when a number of persons were inside the house. It was this shot that killed the child Rukmini when P. W. 6 Lakshmibai tried to close the door. This act of A-7 would clearly come under 4thly of Section 300 of I. P.C. The said clause reads as follows:

If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

The illustration (d) to Section 300 states that:

'A' without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

We are therefore of opinion that A-7 would come within the definition of Clause (4) of Section 300 I. P.C. and would be clearly guilty of an offence under Section 302 I. P.C.

19. In para 37 of his judgment, the learned Sessions Judge has observed as follows:.In my opinion, there was no justification for accused No. 7 to fire two shots indiscriminately and to take away the lives of two innocent persons. I have no doubt that the shooting indulged in by accused No. 7 was purposeful, vindictive and callous in highest degree. Malicious and vindictive acts are outside the protection afforded by law. It is in evidence that when accused No. 7 brought the gun, P. Ws. were afraid. P. W. 2 began to run towards his house and the other P. Ws. tried to enter inside their house. It is nowhere suggested by the defence that even when accused No. 7 brought the gun and stood in front of P. W. l's house at

a distance of thirty to thirty five feet. P. Ws. were near any of the accused persons and much less they were assaulting them.

We therefore agree with the learned Sessions Judge that the offence made out in the instant case falls within Section 302 I. P.C. and A-7 has rightly been convicted for the said offence.

20. We are also of opinion that the charge under Section 25 (11 and Section 27 of the Arms Act has been established against the appellant. The evidence clearly discloses that A-7 was in possession of the gun M.O. 1 and that he did not have licence for the same. It is also clear that the accused has made use of the gun M. 0.1 for an unlawful purpose. He is therefore guilty of offences punishable under Section 25 (1) and Section 27 of the Arms Act and has been rightly convicted.

21. In the result for the reasons mentioned above, we confirm the convictions and sentences passed on the appellant (A-7) and dismiss this appeal.