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Court : Madhya Pradesh

Decided On : Oct-31-1990

Reported in : 1991CriLJ1077

Judge : T.N. Singh and ;Shacheendra Dwivedi, JJ.

Acts : Evidence Act, 1872 - Sections 101 and 105; Indian Penal Code (IPC), 1860 - Sections 97, 100, 300, 302 and 304; Constitution of India - Article 21

Appeal No. : Criminal A. No. 218 of 1978

Appellant : Amarsingh

Respondent : State of M.P.

Advocate for Def. : R.A. Roman, Govt. Adv.

Advocate for Pet/Ap. : B.N. Kulshrestha, Adv.

Judgement :

1. Three persons were booked for committing murder of Ram Roop, of whom two were acquitted. Appellant being one of them and having suffered conviction Under Section 302 IPC has challenged that and also sentence of rigorous imprisonment for life imposed on him.

2. On two short grounds, appellant's counsel Shri B. N. Kulshrestha, has assailled the verdict. His first contention is that the trial Court applied double standard in

appreciating evidence and erred in law in convicting the appellant while acquitting on the same evidence the other two co-accused. Secondly, he submits, at most conviction of the appellant on the evidence may be justifiable Under Section 304 Part II, IPC. Learned Additional Sessions Judge erred in law in ignoring the fact that the case of the appellant was covered by Exceptions (2) and (4) of Section 300 IPC.

3. Be it stated at the outset that the appellant specifically pleaded right of private defence and, in our view, that plea has been rejected on erroneous consideration of facts and law. In any case, we may state briefly prosecution's version of the incident set out in FIR on which itself the plea appears to us to be well founded. P.W. 1, Maniram, lodged the FIR at 9.00 p.m. on 25-3-1978 that at Chandra-Ka-Pura, at a distance of 5 miles from the police station, on the same date, at around 6.00 p.m., incident had occurred, Holi festival was being observed during that period and at Ramnath-Ka-Pura, he, as also some other persons including, P.Ws. 3, 4 and deceased, were singing song and making merry. At around 6.00 p.m. they were informed that at Chandra-Ka-Pura there was some quarrel between accused Amarsingh and P.W. 3, Hearing that deceased Ramroop left for that place and he was followed by P.W. 1 as also P.W. 4, Chhotelal. Ram Roop went with his 12 bore gun and on his person he carried a belt full of cartridges. As soon as Ram Roop climbed to the roof of Vijaya-singh's house he was assaulted there with a pharsa by appellant, Amarsingh, and thereafter by the co-accused. Chandrapalsingh, who was armed with a Barchhi (sphere) and Jagannath Singh, who was armed with lathi, also assaulted him. It is also prosecution's case stated in FIR that Amarsingh fled from the place of occurrence after Ram Roop fell dead and with him he took away the gun and cartridges of deceased Ram Roop.

4. Co-accused, Chandrapalsingh and Jagannath, were acquitted taking the view that ocular evidence in regard to their assault on the deceased, did not match the medical evidence. In that regard it may be observed at this stage even that the autopsy surgeon found on deceased as many as six injuries though he opined also that injury No. 5 was fatal and that had caused death. That injury evidently was an 'incised wound' and had been caused by 'heavy cutting weapon'. Two other serious injuries, Nos. (1) and (6), according to the doctor, were penetrating

wounds. Other incised wounds were also there but ocular evidence, on the other hand, is also that only one blow by Pharsa was given by appellant, Amarsingh, on Ram Roop's neck.

5. Because state has not preferred any appeal against acquittal, we must confine our attention to the challenge posed to the verdict rendered against appellant, Amar Singh. At para 23 of the impugned judgment there is consideration of appellant's plea of self-defence. That appears to be rejected mainly on the ground that appellant, Amarsingh, could have no apprehension of death or grievous hurt entitling him to invoke the plea because deceased had not fired his gun. Although there was evidence of P.W. 3 that he heard sound of a shot being fired, he was disbelieved on the ground that the witness was appellant's cousin. Such summary rejection of plea in our view is wholly untenable in law.

6. According to us the entire facts and circumstances of the case ought to have been considered by the trial Court to determine in terms of Sections 97 and 100 I.P.C. whether the facts proved 'reasonable' apprehension in the mind of Amarsingh of death or grievous hurt. Indeed, the important fact that deceased was 'aggressor' and was armed with lethal weapon which could produce that result was ignored summarily. It is significant to note that there is no explanation at all forthcoming in the evidence as to why the deceased went to the place of occurrence armed with the gun. What is not disputed is that the deceased was an outsider and he was definitely a trespasser. Although, in evidence, the case is made out that he had been there with the view to mediate between the quarreling parties, that would not change the manner or character of his sudden appearance at the place of occurrence when he went there armed with a dangerous weapon. It has come in evidence that P.W. 3 had come away from community singing; and that there he was in the company of deceased, as also P. Ws. 1 and 4. From there he came lately and evidence suggests that he joined the quarrel in which, from before, the three accused and others were engaged in pelting stones at each other. Collector Singh and Babusingh, though charge-sheet witnesses have not been examined.

7. It is indeed rightly complained, therefore, that by suppressing the genesis of the occurrence and withholding Collector Singh and Babusingh, the prosecution has deprived the defence of reasonable opportunity to effectively prove the right of private defence. We accept counsel's contention that learned Addl. Sessions Judge, has to be faulted and not the defence if the letter failed to place on record a 'full-proof' plea. Reliance of trial Court only on Sections 101 and 105 of the Evidence Act to blame the defence solely is rightly assailed because that merely debars court 'to presume the absence of such circumstances' as would bring accused's case within any 'exception' contemplated under I.P.C. by that burden of prosecution to prove all ingredients of the offence with which the accused is charged is not relaxed, Penal law is substantive; and not procedural. Provisions of Section 300 IPC, or for that matter even of Section 304, cannot be subordinated to those of Section 105 of the Evidence Act. Support for this view we may read in Kishore Singh v. State of M.P. AIR 1977 SC 2267 : (1977 Cri LJ 1937).

8. In a murder case, in our view, the trial Court is charged with the supreme duty of making proper appreciation of evidence and of law before reaching the finding that the case proved is culpable homicide amounting to murder as defined in Section 300 IPC. This Constitutional duty flows from Article 21 because conviction Under Section 302 IPC is liable to expose the accused to the extreme penalty, that of deprivation of life in regard to which the Court must follow reasonable procedure of due application of mind. Section 300 IPC in terms contemplates : 'except in the cases hereinafter excepted, culpable homicide is murder'. Therefore attention has to be paid by the Court to the Exceptions of Section 300; and consideration of the case of the accused in terms of the exceptions is a mandatory requirement of law and Constitution. Even if any particular exception is pleaded and that is not proved, by that the duty of the trial Court does not cease in regard to consideration of the case of the accused under other exceptions.

9. We see, therefore, sufficient force in the contention of Shri Kulshreshtha that the facts of the instant case being almost similar to those of State of Karnataka v. Siddappa Basanagouda Patil AIR 1990 SC 1047 : (1990 Cri LJ 1116) the impugned verdict is liable to be set aside. Deceased of that case had committed trespass and picked-up quarrel with the two accused. There was no clear

evidence as to how the occurrence had originated. The conviction was altered to Section 304, Part II, by the High Court and that order was upheld. The sentence, which the High Court had reduced to four years, Was also upheld. The decision supports the view we have expressed above that prosecution's burden is not relaxed when case under any particular exception is not proved; it is required always to establish its case beyond reasonable doubt and its failure to prove genesis of the occurrence may, in the facts and circumstances of the case, make doubtful and week its opposition to any defence plea. See also, in this connection Kishoresingh (1977 Cri LJ 1037) (SC) (supra).

10. What is required under the relevant Explanation 2 of Section 300, contemplated in terms of Sections 97 and 100, is that right of private defence is exercised in 'good faith' and that the act is done 'without premeditation'. Whether the 'harm' done by accused is commensurate with the necessity of the occasion giving rise to the right of self-defence is a question which is decided Under Section 304 IPC. Part I of Section 304 is attracted 'if the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death'; Part II, if 'the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death'. In the instant case evidence has fully established the fact that there was no intention on the part of the accused, Amarsingh, to cause Ram Roop's death as there was no premeditation. Suddenly, Ram Roop appeared on the spot armed with a gun) and jumped to the roof of Vijaysingh's house to join issue with people with frayed temper. If by any objective standard reasonableness of accused's 'apprehension' is to be adjudged, how an ordinary man would react to the circumstances must prove the test. Appellant, Amarsingh's apprehension in the circumstances proved must be regarded as reasonable. It being proved beyond doubt that he had given only a single pharsa blow to deceased which fell on his neck, his act cannot also be regarded as lacking in 'good faith' and not done 'without premeditation', for the same reason.

11. If information was received at 6.00 p.m. itself by the witnesses at Ramnath-Ka-Pura it must have taken them some time to reach the place of occurrence at Chandra-Ka-pura. It appears to us that the occurrence might have taken place

after sun-set because at 9-00 p.m. FIR was lodged though Police station was at 5 miles away. That apart, there being three accused on one side and perched on a roof there is sufficient scope to conjure the situation of a melee in which the deceased landed when the incident took place. The circumstances indicate that excess 'harm' was not intended and that the blow was not given intentionally on the neck with the intention to cause such bodily injury as was likely to cause death of deceased Ram Roop. In any case, it can not be said that the accused-appellant, Amarsingh, acted cruelly in dealing with deceased because only a single blow is ascribed to him by the witnesses though that was given by pharsa and on deceased's neck. Witnesses have deposed that the three accused persons were armed respectively from before with such weapons as Pharsa, Barchi (spear) and lathi and it is not a case in which it can be said that Amarsingh exchanged pharsa for a more lethal weapon. There is even no evidence to indicate that purposely or deliberately the appellant inflicted the pharsa blow on the neck of the deceased, and that the blow did not by chance land on deceased's neck. Facts proved bring appellant's case within the purview of Section 304, Part II, IPC.

12. Reliance is placed by Shri Kulshreshtha on Gotipulla Venkata Siva Subbasayan v. State of A.P. AIR 1970 SC 1079 : (1970 Cri LJ 1004) in support of the settled law that when situation is tense and parties are agitated the right and content or extent of right of private defence being not weighable in golden scales undue importance is not to be attached to situs or extent of injury caused in the exercise of that right. He has also cited Seriyal Udayar v. State of Tamil Nadu AIR 1987 SC 1289 : (1987 Cri LJ 1058) to submit that the trial Court ignored the settled law in regard to the extent of burden of accused in establishing right of private defence. Therein it has been observed that it will be legitimate exercise for the Court to consider material brought out in cross-examination by the accused and to consider also the circumstances indicating the manner in which the incident took place as were suggested by the accused to give him the benefit of the exception.

13. In our view, the appellant is also entitled to invoke the decision in Tholan's case AIR 1984 SC 759 : (1984 Cri LJ 478) though the weapon used in that case was different. The ratio evidently is attracted to this case because of the law laid down therein on Exception 4 of Section 300 I.P.C. In the instant case also

evidence suggest that the blow, though inflicted by a pharsa (and not knife) was given in the same manner; on the spur of the moment; and a single blow. There are good reasons to accept the suggestion that the accused-appellant had taken offence, even if prosecution's version is accepted in toto, against deceased's unwarranted intermeddling in the quarrel which had already acquired a high pitch. It is prosecution's own case that the deceased was not party to the factional fight and, therefore, there could be no intention on appellants part to punish him fatally.

14. For all the aforesaid reasons we are inclined to uphold the contention of Shri Kulshrestha that verdict rendered by the trial Court against the accused-appellant, Amarsingh, is illegal. We accordingly set aside the appellant' conviction and sentence Under Section 302 IPC. We convict him Under Section 304, Part II, IPC and sentence him to rigorous imprisonment for four years.

15. In the result, the appeal succeeds in part and is allowed to the extent hereinabove indicated.

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