

**Maya Vs. State**

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**Court :** Delhi

**Decided On :** Oct-15-2004

**Reported in :** 2004(77)DRJ703

**Judge :** T.S. Thakur and; J.P. Singh, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 96, 99, 100 and 302; Code of Criminal Procedure (CrPC) - Sections 161 and 313

**Appeal No. :** Cri.A. No. 244/2003

**Appellant :** Maya

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, Adv.

**Advocate for Pet/Ap. :** Ritu Gauba, Adv

**Disposition :** Appeal allowed

**Judgement :**

**T.S. Thakur, J.**

1. This criminal appeal arises out of a judgment and order on sentence passed by the Additional Sessions Judge, Delhi whereby the appellant has been convicted of an offence of murder punishable under Section 302 of the Indian Penal Code and

sentenced to undergo imprisonment for life and a fine of Rs. 1,000/-. In default of payment of the fine the appellant has been sentenced to undergo simple imprisonment for a period of 15 days.

2. Briefly stated, the prosecution case is as under:-

3. At about 3 a.m. on the night intervening 9th and 10th of March, 2001, Police Station, Okhla Industrial Area, Phase-II, New Delhi received a telephonic information about a quarrel having taken place in House No. F-16, Harkesh Nagar, New Delhi within the limits of the said police station. The information was recorded in D.D. No. 36 of the said police station and PW-11 Head Constable Kishan Lal deputed to visit the spot for necessary action. On reaching the spot, the said witness found a dead body lying in the room near the door of House No. F-16, Harkesh Nagar, New Delhi. A bottle of liquor containing some liquor in the same and a glass were also found on the table in the room apart from two kitchen knives stained in blood near the dead body. Blood was found on the floor as well as on the walls. The appellant Maya Devi was present in the room in a semi-conscious stage along with her child. Her clothes were blood stained and her face and head bore injury marks. PW-12 S.I. Sunil Kumar also reached the spot after being informed by PW-11 Kishan Lal. The appellant was sent to the hospital along with the child. Statement of PW-1 Mohd. Shamim was recorded and sent to the police station along with an endorsement marked Ex. PW12/1 through Constable Vivekanand for registration of a case. On receipt of the statement recorded by SI Sunil Kumar, FIR No. 139/01 was registered in the police station for the commission of an offence under Section 302 of the IPC and investigation started.

4. During the course of investigation, statements of PW-2 Ramji and PW- 3 to PW-12, who happen to be police officials, were also recorded. The knives lying on the place of occurrence were seized, the blood sample lifted from the spot, the bottle of liquor lying in the room, the blood stained clothes of the accused/appellant herein and the medical evidence comprising the post mortem of the dead body and the report of the FSL assembled to file a chargesheet against the appellant accusing her of having killed her husband Kul Prasad by inflicting three stab wounds on his body.

5. The prosecution case precisely was that the deceased Kul Prasad @ Preti, who hailed from Nepal, was living with his wife, the appellant and son Ganga in a room on the first floor of House No. F-16, Harkesh Nagar, New Delhi. The other room situate on the said floor was occupied by PW-1 Mohd. Shamim. The deceased Kul Prasad had brought the appellant to Delhi from Nepal after her earlier husband had passed away. She had come along with her son from her first husband. The prosecution case further is that Kul Prasad used to often beat the appellant and her child on trivial issues. Efforts made by other occupants of the building to make wise the deceased Kul Prasad in this regard, had no effect. On the night intervening 9th and 10th March, 2001 at about 10 p.m., PW-1 Mohd. Shamim returned home from the place of his work. A quarrel was at that time in progress between Kul Prasad and his wife Maya. The radio was playing at a very loud volume in their house. An exchange of harsh arguments between Kul Prasad and Maya was taking place and Kul Prasad was beating the child under the influence of liquor. Mohd. Shamim is alleged to have gone to the room of Kul Prasad and asked him not to quarrel and to lower the volume of the radio. At about 2 a.m. the same night, cries and screams were heard from the room of Kul Prasad. Mohd. Shamim rushed out of his room and saw that Kul Prasad was lying in a pool of blood at the floor of his room and the appellant was holding a knife in her hand. She was crying loudly and saying that she would kill Kul Prasad as under the influence of liquor, he was beating the appellant and her son everyday. The appellant, according to the prosecution story, had inflicted knife blows at the chest of Kul Prasad, the deceased resulting in his death.

6. The appellant was committed to the sessions for trial which was made over to the Additional Sessions Judge before whom the appellant pleaded not guilty and claimed a trial. At the trial, the prosecution amongst others examined PW-1, Mohd. Shamim, PW-2 Ramji, PW-10 Dr. Anil Gulia, PW-11 Head Constable Kishan Lal, PW-12 SI Sunil Kumar and PW-14 Dr. Sudhir Gupta who conducted the post mortem on the dead body of the deceased. In the statement of the appellant under Section 313 of the Code of Criminal Procedure, she denied the charge and the credibility of the evidence adduced by the prosecution in proof of the same. Appreciation of the evidence adduced before it, however, led the trial court to hold that although PW-1 Mohd. Shamim and PW-2 Ramji had resoled from their

statements made before the police and denied having seen the appellant actually stabbing the deceased, yet the incriminating circumstances proved by the prosecution were sufficient to provide a safe basis for her conviction as the said circumstances were incompatible with any reasonable hypothesis except that of her guilt. The trial court also placed reliance upon the extra-judicial confession of the appellant and pronounced her guilty of the offence of murder punishable under Section 302. She was accordingly sentenced to undergo imprisonment for life and a fine of Rs. 1,000/- as already mentioned above. The present appeal filed through jail assails the correctness of the said judgment and order.

7. We have heard Ms. Ritu Gauba, counsel for the appellant and Mr. Ravinder Chadha appearing for the respondent. We have also been taken through the record of the case.

8. The prosecution, as seen earlier, placed reliance upon the testimonies of PW-1 Mohd. Shamim and PW-2 Ramji, who were alleged to have seen the occurrence. In their depositions before the court, both these witnesses have denied their being eye-witnesses to the occurrence. PW-1 Mohd. Shamim's deposition recalls that the witness was residing on the first floor of F-16, Harkesh Nagar, New Delhi. The deceased Kul Prasad was a tenant in the room opposite to his room in that house. The deceased was living there with his wife Maya, the appellant herein and a son aged about 5-6 years. The child was from the first husband of the appellant. The witness claims to have heard that the deceased used to beat his step-son, but denies having seen the deceased beating him. He also claims to have heard that the deceased used to beat even the appellant but had never seen him to do so. He also denies having seen the appellant and the deceased quarreling with each other. On the night of 9th and 10th March, 2001, the witness was present at his house. Till the time he woke up he did not see any quarrel between the deceased and the appellant. He had, however, heard the radio playing at a loud volume in the house of the deceased that night. The deceased often used to do so and that he was always under the influence of liquor. According to the witness, his wife (the wife of the witness) had asked the deceased to reduce the volume of the radio but the latter had refused to do so saying that no one had any right to interfere with what he was doing in his room. The witness further says that he did not see Kul

Prasad beating the child on that day. At about 3.30 a.m., the appellant knocked at the door of the witness. When the door was opened by the witness, he found the appellant standing with her child in her lap. The child was unconscious. She told the witness that she had stabbed her husband and that the witness should get the child treated by some doctor. The clothes worn by the appellant were blood stained. She was not, however, carrying any weapon in her hand. The witness asked the appellant to call PW-2 Ramji from the 2nd floor which she did. A number of other neighbours in the meantime gathered and the police was called. The police took the appellant and her child with them. After some time the local police turned up which took him to the police station where proceedings were conducted by them.

9. Since the witness had resiled from his statement under Section 161 of the Code of Criminal Procedure, the APP was allowed to cross-examine. In the cross-examination, the witness denied the suggestion that he woke up on hearing the noise of the quarrel between the deceased and the accused. He admitted that he had seen the deceased lying in a pool of blood in his room but denied and that the appellant was having a knife in her hand and that she was saying that she would finish Kul Prasad as he quarrels with her everyday. The suggestion that the appellant had stabbed Kul Prasad in the chest in the presence of the witness is denied. So also is the suggestion that the witness had gone to call PW-2 Ramji. The witness admits that on the day of the occurrence there was no one in the room of the deceased except the accused and her son. He also admits that there were two knives in the room of Kul Prasad and that the seizure memo of the knives bears his signature. He, however, could not identify the knives shown to him as he had seen them only at night on the date of the occurrence. In further cross-examination, the witness states that the distance between his room and that of the deceased was about two and a half metres. He admits that the deceased used to take liquor everyday and that some times some others also used to accompany Kul Prasad for liquor session.

10. PW-2 Ramji was a tenant on the 2nd floor of House No. F-16, Harkesh Nagar, New Delhi. In his deposition before the court, he states that the appellant was residing with her husband Kul Prasad, the deceased, on the first floor of the said

building with a son aged about 5-6 years. He further states that the appellant had come to his house at night, knocked at his door and asked the witness to save her. According to him, the appellant had told them that she had stabbed her husband. The witness, thereafter, goes to the room of the deceased and found his dead body lying in the room. The police was called to the spot who took the appellant and her child away. He did not notice any knife in the room of the deceased nor any bottle of liquor as he did not enter the room. The clothes of the appellant were blood stained when she came to his room. The witness was cross-examined by the APP, in the course whereof, he denies having seen two knives in the room of Kul Prasad or an empty bottle of liquor. The witness also denied any knowledge about any quarrel between the deceased and the appellant. In the cross-examination by the defense counsel, the witness states that he did not go to the room of the deceased to see as to what was happening there.

11. From the deposition of the above two witnesses, it is much too evident that the witnesses had not themselves seen the appellant stab her husband. They could not, therefore, be termed as eye-witnesses to the incident as they were originally sought to be made out. Nevertheless, the deposition of the witnesses prove certain incriminating circumstances. The first and the foremost is that immediately after the occurrence the appellant had knocked at the doors of the witnesses in a dazed condition and that her clothes were blood stained. The second and equally significant circumstance is that the appellant had told the witnesses that she had stabbed her husband. The witnesses had pursuant to this information found that the deceased was lying dead in a pool of blood in his room. Superadded to the above is the medical evidence in the form of the post mortem report and the doctor's opinion that the knives seized from the spot could cause the injuries found on the body of the deceased and that the said injuries were sufficient in the ordinary course of events to cause death. All these circumstances are ex facie highly incriminating which would on the first brush be suggestive of the guilt of the appellant. The trial court had indeed stuck to that first impression which the circumstances indicated above would logically create. It has in the process either ignored or underplayed certain other circumstances which were equally stark and which go a long way, in unfolding the sequence in which the events had taken place resulting in the death of the deceased Kul Prasad. The first and the most

significant of the circumstance which appears to have remained obscure from the consideration of the trial court was the fact that the appellant's son was unconscious and was being carried in her lap by the appellant when she knocked at the door of PW-1 Mohd. Shamim. The second and no less important a circumstance which has escaped the notice of the trial court is that the appellant was asking for the help of her neighbours to take the child to the doctor as he was hurt and unconscious. The third circumstance in the same sequence is that when the child was finally taken to the hospital by the police, the MLC prepared by the doctor mentioned the following while describing the history.

' Alleged to have been hit (punched) by his father in a state of drunken rage an hour ago at home'

12. The fifth circumstance is that the medical examination of the child revealed that he had multiple abrasions over his face, upper chest, abdomen, back, both gluteal regions and upper limbs apart from having a black eye and crusted blood in both nostrils. Dr. Atul, who prepared the MLC marked Ex.PW5/1, described the injuries found on the child to be grievous in nature.

13. The sixth circumstance is that the medical examination of the appellant revealed that she had contusions and abrasions over her face. The last and not the least important circumstance was that the deceased was drinking on the date of occurrence and a bottle of liquor with some left over liquor was seized from the place of occurrence.

14. It was on the above basis argued by Ms. Gauba that the injuries sustained by the deceased were inflicted in exercise of the right of private defense available to the appellant. She urged that while none of the witnesses were examined by the prosecution, had given an account of what had actually transpired in the room occupied by the deceased and the appellant, the circumstances emerging from the prosecution evidence sufficiently showed that the incident had started with a vicious attack by the deceased upon the appellant's four years old son resulting in grievous injuries to him. The presence of injuries even on the person of the appellant sufficiently showed that the injuries sustained by the deceased were preceded by a murderous attack on the hapless child, who was, even according to

the prosecution story, often beaten by the deceased. The fact that the accused was drunk and in a rage and had already caused grievous injuries to the child, gave to the appellant the right to act in private defense which would extend to causing the death of the assailant as the fact situation clearly fell under paras 1 and 2 of Section 100 of the Indian Penal Code. She submitted that the plea of private defense could always be raised by an accused even when the same had not been specifically set up nor any evidence to establish the same led in defense.

15. Right of private defense is one of the general exceptions under Chapter IV of the Indian Penal Code. Section 96 appearing in the said Chapter clearly recognises that anything done in exercise of the right of private defense is not an offence. Subject to the restrictions contained in Section 99, the right of private defense inter alias extends to defending one's own body and the body of any other person against any offence affecting the same. Section 100 extends the right of private defense of the body to voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be one out of the six kinds mentioned there under. In cases where an assault may reasonably cause the apprehension that death will otherwise be the consequence of such assault or in cases where such an assault may reasonably cause an apprehension that grievous hurt will otherwise be the consequence of such assault, the right of private defense of the body would extend to causing death.

16. To the above prefatory observations, we may also add that the right of private defense being an exception, the burden to prove the same is squarely on the accused who sets up such a plea. It is not, however, necessary that the plea must be set up explicitly or that evidence must be adduced in defense to prove the same. It is enough if the accused can, from the evidence led by the prosecution, show that the exercise of the right of private defense was justified. It is also fairly well settled that the standard of proof expected from the accused is not the same as required from the prosecution. A plea of private defense stands discharged by showing preponderance of probabilities in favor of that plea. These propositions are authoritatively settled by the decisions of the Supreme Court in *Munshi Ram and others v. Delhi Administration* AIR 1968 SC 702, *Mohinder Pal Jolly v. State of Punjab* AIR 1979 577 and *State of Punjab v. Gurbux Singh and others* 1996 SCC

88.

17. The absence of a specific plea invoking the right of private defense or any affirmative evidence to prove the same is, therefore, inconsequential. What is important is whether the evidence available on record probabalises the plea raised before us. If it does reasonably do so, the appellant must have the benefit of the same no matter the plea is not proved to the hilt.

18. Let us then revert to the facts on record in the light of the above well settled legal propositions. The prosecution had itself alleged that the deceased used to often beat the appellant's child from the first husband ostensibly because of the absence of any emotional bond between him and the child. The deceased was, it appears, treating the child as a liability and was thrashing him often. The circumstance is, however, double-edged as the same is capable of lending as much support to the plea of private defense as it is to the theory of there being a motive for the commission of the offence. Equally notable is the circumstance that the deceased was a habitual drunkard. On the date of the occurrence also he was drinking and had kept the volume of the radio very high, declining to reduce the same despite a request made by the wife of PW-1 Mohd. Shamim. The seizure of a bottle of liquor shows that the deceased was drinking even on the date of the occurrence. Superadded to these circumstances is the fact that the child was grievously hurt and was unconscious with multiple wounds over his body. There is no Explanationn forthcoming from the prosecution for these injuries if one were to reject the version of the defense that the incident leading to the death of the deceased started because of a murderous attack by the deceased upon the child. The history of the injuries, as disclosed to the doctor in the hospital where the child was removed within a short time of the occurrence, alleged violence against the child by his father in a drunken rage which too supports the plea of private defense advanced before us by Ms. Gauba. That even the appellant had sustained injuries on her face shows that the deceased was perhaps beating up the child violently, which led to a scuffle and eventual death of the deceased on account of appellant using a knife to save the child from an assault that caused a reasonable apprehension in the mind of his mother that the assault may lead to the death of the child. The fact that the assault had already resulted in grievous hurt to the child

would indeed show that the right of private defense could, in the circumstances of the case, extend to causing death of the assailant. The circumstances established by the evidence on record, therefore, probalilise the version of the appellant that it was in exercise of the right of private defense that she had inflicted the injuries upon the deceased. The least that can be said is that in the absence of any direct evidence about the sequence of events that took place inside the room of the deceased, the plea of private defense cannot be lightly brushed aside which would in turn render doubtful the prosecution case that the incident involved an unprovoked attack on the deceased.

19. Having said so we ought to logically consider whether the appellant had exceeded the right of private defense available to her. Two aspects must, in this regard, be kept in view. The first is that Mr. Chadha did not argue that the right of private defense, even if available to the appellant, was exceeded by her. The other aspect is that even if the court were to examine that question the answer ought to be in the negative. We say so because the question whether the accused has exceeded the right of private defense has to be examined by reference to the facts of a given case and in particular the weapon of offence used in the same and the nature of injuries inflicted. The weapon of offence in the present case was a kitchen knife. The number of injuries inflicted were three out of which according to PW-14, Dr. Sudhir Gupta, only injury No. 1 was in the ordinary course of nature sufficient to cause death. Dr. Sudhir Gupta has in his deposition before the court, described the injuries found on the body of the deceased as under:-

'Stab injury, triangular in shape, measuring 3 cm x 1 cm into cavity deep(six cms), situated two cms lateral to left nipple puncturing the heart found on further underneath examination.

Stab injury triangular in shape, measuring 3 cm x 1 cm into cavity deep puncturing the left lung - 7 cm deep situated 2 cms below injury no. 1.

Stab injury 2 cm x 1 cm into 3 cms deep, cutting the chest muscle and puncturing with fracture fifth rib on the left side of the chest.

Lung-three was 700 gm of both lungs seen with bleeding.'

20. The deceased was, according to the material on record, in a drunken rage who had already grievously hurt the child causing multiple injuries to him. The infliction of three stab wounds by the appellant on the deceased were, therefore, intended to disable him from continuing the attack on the child and possibly killing him. It is, in that view, difficult to say that the appellant had exceeded the right of private defense of the body of her four years old child.

21. In the result, we allow this appeal, set aside the impugned judgment and order and giving to the appellant the benefit of doubt acquit her of the charges framed against her.

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