

Kaliyaperumal Vs. State

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SooperKanoon Citation : sooperkanoon.com/786901

Court : Chennai

Decided On : Mar-09-1994

Reported in : 1994CriLJ3387

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Appeal No. : Criminal Appeal No. 1116 of 1986 (Against judgment of Sessions J. Court of Sessions West Thanjavur D

Appellant : Kaliyaperumal

Respondent : State

Advocate for Def. : S. Somasundaram, Govt. Adv. for Public Prosecutor

Advocate for Pet/Ap. : N.T. Vanammamalai, ;Sr. Counsel for M/s K.N. Basha and ;S. Panneerselvam, Adv.

Judgement :

ORDER

Janarthanam, J.

1. The appellant was the accused in S.C. No. 149 of 1985 on the file of the Court of Session West Thanjavur Division at Thanjavur. He was found guilty for an offence under section 302 of the Indian Penal Code, convicted thereunder and sentenced to imprisonment for life. Aggrieved by the said conviction and sentence,

the present action has been resorted to by the appellant-accused.

2. Brief facts are :-

a. Accused and PW 1 are brothers. They are residents of Alankottai Village, situate within the jurisdictional limits of Paravakottai Police Station. They inherited certain ancestral properties, subsequent to the death of their father.

b. Some five years prior to the occurrence, which event happened on 18-7-1985, PW 1, in order to the out his livelihood, migrated from the Village and settled down at Madras. He was transacting business in peas and his brother the accused was looking after the ancestral properties.

c. Three years prior to the occurrence, PW 1, got married. His father-in-law was one Thangaraj (since deceased). PW 1 was said to have purchased a field going by the name Ulleri Vayal, from out of his earnings. Some five to six months prior to the occurrence, the brothers partitioned the properties between themselves, in the manner suggested by the panchayatdars of the Village. PW 6, their maternal uncle, was one among the panchayatdars. Even the self acquisition of PW 1, namely, Ulleri Vayal or filed was also put in the hotchpot for effecting partition, between the brothers. Subsequent to the partition, accused complained that the partition effected was not equitable and some more properties had to be given to his share. The share of properties that fell to PW 1 in the partition was looked after by his father-in-law, the deceased thereafter.

d. Some ten days prior to the occurrence, the deceased took a cartload of manure to be spread on the filed. At that time, the accused prevented the deceased from doing so stating that unless a repartition of the properties were made equitably, he would not allow the agricultural operations to go on. The deceased appeared to have informed PW 1 as to the dispute raised by the accused later.

e. On hearing the 'distress - call-news' from his father-in-law, the deceased, PW 1 commenced his journey from Madras on 15-7-1985 and reached the scene village Alankettai on 16-7-1985. On the night of 17-7-1985, P.Ws. 6 and 7 and some others met him and apprised that his brother, the accused, had been demanding

Rs. 500/- more, since the partition effected earlier was not equitable, in the sense of appropriate share not having been allotted to him. PW 1 appeared to have told them that in due deference to the wishes of the panchayatdars, partition of the properties had been effected and if the panchayatdars, who effected mediation and partition, felt that some more property or money was to be given to the accused, he had no objection for such a course.

f. On 18-7-1985 at about 5.30 p.m. he, along with his father-in-law, the deceased, took a cartload of manure of Ulleri field for spreading it as a prelude to agricultural operation. The accused, who was standing there, objected to the unloading and spreading of the manure stating that unless repartition of the properties was made equitably, no agricultural operations should proceed further. On hearing the same, the deceased told the accused as to what had been told by the mediators like PWs 6 and 7 the previous night. On hearing the same, the accused got wild and ran into rage and proclaimed that for all these troubles, the deceased was responsible and so saying, he whipped out a soori knife (M.O. 1) from his waist and inflicted a stab on the chest of the deceased. By impulse of moment, PW 1 caught hold of the hands of the accused, obviously in a bid to prevent any further attack being mounted and in such process, the accused bit the left wrist of PW 1, in a bid to wriggle out from his clutches. The moment, PW 1, was bitten by the accused, he released the clutches of the accused. The accused then ran away with the soori knife (M.O. 1) towards west. PWs 2 to 5 were then available in the neighbouring fields doing some work or other and they had the opportunity of witnessing the occurrence. The victim deceased was then placed in the very same cart utilised for the transport of manure and taken towards the Village.

g. After reaching the village, PW 8, a driver cum-taxi owner, had been contacted over phone requiring to go over to the scene village and in the meantime, the victim-deceased had been transported in the hillock cart. The moment the taxi of PW 8 bearing registration number MSV 7509 came on the way, the victim-deceased had been placed in the said taxi and taken to the Government Hospital, Mannargudi. When they reached the hospital, the time was about 7 p.m.

h. In the hospital, even before admission, he was proclaimed to be dead. PW 1 then went and reached Paravakottai Police Station for the purpose of laying the first information. PW 9 the Sub-Inspector of Police (Law and Order) was in charge of the Police Station. To him PW 1, gave a written complaint, Exhibit P. 1 and the same had been registered at 8 p.m. as a case in Crime No. 92/85 under section 302, IPC by PW 9. He prepared express reports and sent the same to the concerned officials. Exhibits P. 3 is the express F.I.R.

i. P.W. 16, was the then Inspector of Police (Law & Order) Mannargudi. On receipt of the express F.I.R. at 10 p.m. he took up further investigation in this case. At 10.30 p.m. he proceeded to the scene village and reached the place of occurrence at 11.30 p.m. With the aid of a petromax light, he inspected the scene of occurrence and prepared Exhibit P. 7 observation mahazar. He seized from the place, the blood stained earth, M.O. 4 under Exhibit P8, mahazar. Exhibit P. 7 and P. 8 were attested by PW 13. He also prepared a rough sketch of the scene, Exhibit P. 18. Between 2 and 5 p.m. on 19-7-1985, he held the inquest over the body of the deceased at the Government Hospital, Mannargudi, in the presence of the Panchayatdars. During inquest, he examined PWs 1 to 5, Pappammal and others. Exhibit P. 19, is the inquest report. Immediately after the inquest was over, he handed over the dead body of the deceased to the constable, PW 10, along with the requisition Exhibit P. 4 for the purpose of autopsy.

j. PW 11 was the doctor attached to the Government Hospital, Mannargudi. On receipt of Exhibit P. 4 requisition, he commenced autopsy at 9.30 a.m. Exhibit P. 5 is the Post mortem certificate he issued. He would opine that the deceased would appear to have died of shock and haemorrhage due to injury to vital organ - heart. He would further opine that the injury could have been caused by a weapon like M.O. 1.

k. After the autopsy was over, the Constable PW 10 seized from the body M.O. 2 dhoti and M.O. 3 underwear and handed over the same at the Police Station and the same appeared to have been seized under Form No. 95.

l. P.W. 16, in continuation of the investigation on the same day examined P.Ws. 6, 7, 9 and 10. On 21-7-1985 at 9 a.m. he apprehended the accused near the bus

stand at Mannargudi in the presence of PW 14 and another. On interrogation, the accused gave Section 27 (of the Indian Evidence Act) confession statement, the admissible portion of which is Exhibit P. 9, which had been attested by PW 14 and another. Pursuant to Exhibit P. 9, the accused took PWs 14 and 16 to the road leading towards Alankettai cremation ground and took out and produced M.O. 1 knife from underneath a dry channel near Neiveli Kattamani bush situate on the east of the road. The time was then 11.30 a.m. The same had been seized under Exhibit P. 10 mahazar and the same had been attested by PW 14 and another. Since the accused was found to be having injuries on his person, he despatched him to the Government Hospital, Mannargudi for the purpose of treatment, with a medical memo, Exhibit P. 17 for certain injuries alleged to have been caused on him by stick on 18-7-1985 at about 5.30 p.m.

m. On receipt of Exhibit P. 17 medical memo, the doctor PW 12, attached to the Government Hospital, Mannargudi examined the accused at 2.10 p.m. and gave him treatment for the injuries he found on his person. Exhibit P. 6 is the would certificate he issued. He opined that the injury found described in Exhibit P. 6 could have been caused at the time and manner alleged. He further opined that all these injuries are simple in nature.

n. On 28-7-1985, PW 16 examined the doctor PW 11 with reference to the knife, M.O. 1. On 15-8-1985, he forwarded Exhibit P. 11 requisition to the Judicial Second Class Magistrate, Mannargudi for the purpose of dispatching the incriminating material objects to the Chemical Examiner for the purpose of examination. On 16-8-1985, he examined PW 8.

o. P.W. 15 was the then Head Clerk attached to the Judicial Second Class Magistrate, Mannargudi. On receipt of Exhibit P. 11 requisition, the material objects concerned in the case had been separately packed and sealed and sent to the Chemical Examiner, as per the directions of the Magistrate, under the original of Exhibit P. 12, office copy of the letter. Exhibits P. 13 and P. 14 were respectively the reports of the Chemical Examiner and the Serologist. Exhibits P. 15 and P. 16 are the signatures of the Magistrate, appended of Exhibits P. 1 and P. 3 evidencing receipt of the same.

p. After completing the investigation, PW 16 laid the final report under Section 173(2) of the Code of Criminal Procedure before the Judicial Second Class Magistrate, Mannargudi on 23-8-1985 against the accused for the alleged offence under section 302, I.P.C.

3. On committal, learned Sessions Judge, Thanjavur West Division at Thanjavur framed a charge against the accused for an offence under Section 302, I.P.C. The accused when questioned as respects the charge framed against him, denied the same and claimed to be tried.

4. In proof of the charge, the prosecution examined PWs 1 to 16, filed Exhibits P. 1 to P. 19 and marked M.Os. 1 to 4.

5. The accused, when questioned under section 313, CrI. P.C. with reference to the incriminating circumstances appearing in evidence against him, denied the same. He did not choose to examine any witness on his side, but, however chose to mark Exhibits D. 1 and D. 2 the former being copy of the partition deed dated 14-2-1985 that came into existence between himself and his brother, PW 1 and the latter an undated letter of the year 1981 written to him by his brother. PW 1 he also filed a Written Statement in Tamil under section 233(2) Cri.P.C. and the translated version of such statement, in pith and substance, is to the following effect :-

a. The partition between him and his brother PW 1 took place, by means of a deed dated 14-2-1985 and the properties had been divided and allotted to each of them. One such property allotted to him was Ulleri field. As a prelude to cultivation, he unloaded two cartloads of manure in the said field with a design and plan, the deceased requisitioned the services of PW 1 by making him to go over to the village with a view to sniff him from the world.

b. At or about the time of the occurrence, when he was standing in the field, the deceased arming himself with a stick and PW 1, with a bitchuva knife, rushed towards him. The deceased attempted to inflict a stab on his head by means of the stick, which he was having then. But the blow aimed so, fell on his scapular region.

c. PW 1 made an attempt to stab him with the bichuva he was having. Before the stab fell on him, he somehow or other caught hold of the hands, in a bid to wrest the weapon, which he was having in his hands. PW 1 did not, however, let loose his clutches. Then he bit on the hand of PW 1 and somehow or other, wrested the weapon. At the juncture, the deceased again beat him on his right hand with the stick. The beating did not however, stop. He again beat him on his right eye brow with the same stick. He felt the imminence of danger to his life and by the receipt of the hit, he also got perplexed and lost his control, and in such a predicament position he was placed, in an obvious bid to save his life, he held out the bichuva knife he wrested from PW 1. In such process, the deceased got injured. But for such an incident there would have been every likelihood of imminent danger to his life at the hands of the deceased.

d. Then he straightway went to the Inspector of Police (PW 16's) Office located at Mannargudi for preferring a complaint. But, unfortunately, he had been detained there for about three days. In the meantime, secreting the real state of affairs, with the aid of busy body in the Village, acquainted with Court's procedure, after deep deliberation and consideration, PW 1 set the wheels of law in motion by preferring of a complaint and during the course of occurrence, the witnesses PWs 2 to 5 were not at all present and they, being his enemies, deposed falsely in Court.

e. The showing of his arrest near the bus stand, giving of his confession under section 27 of the Indian Evidence Act and consequent recovery effected pursuant thereto are all stage managed for the purpose of this case.

f. In the process of wresting the weapon from the hand of PW 1, he caused an injury on his right hand by biting and that apart, in the process of struggle in the wresting of the weapon, PW 1, also sustained on his palm a bleeding injury and he had not been sent to the doctor purposely for treatment and issuance of a wound certificate in order to suppress such an injury, he suffered during the course of the occurrence. However, PW 1 would claim that he had reported the same to the doctor, which is not reflecting the reality of the situation. He being shorter and weaker in stature than the deceased and PW 1, had a providential escape on the day of the occurrence from them. He did not commit any offence. He had a wife

and three children and in such circumstances, the Court may be pleased to acquit him.

6. Learned Sessions Judge, on consideration of the materials placed, rendered a verdict at stated above.

7. From the submissions of Mr. N. T. Vanammamalai, Learned Senior Counsel appearing for the appellant - accused and Mr. S. Somasundaram, learned Government Advocate (Criminal side) representing the prosecution, the sole and lone point that arises for consideration is as to whether the conviction and sentence of the appellant-accused, as had been done by the Court below, are sustainable, in the facts and circumstances of the case.

8. This is not a case, in which the accused is totally denying the occurrence. But what he would contend is that the occurrence, as spoken to by the prosecution witnesses, is divorced of the realities of the situation, in the sense of painting or projecting a version, different from the one that had happened at or about the time of occurrence. This sort of a consistent stand, the accused would take, right from the beginning and this is evident from the trend of cross-examination of the direct eye witnesses to the occurrence. A foundation, during the course of cross examination of PW 1, had been laid for claiming the right of private defence of person and the same had been successively carried out right through till up to the end, besides filing a written statement of what, according to him, actually transpired on the day of the occurrence.

9. We are aware that in criminal cases, the onus of proving everything essential to the establishment of the charge against the accused lies upon prosecution; that onus never charges. This follows from the cardinal principle that the accused is presumed to be innocent until his guilt is established by the prosecution. Section 105 of the Indian Evidence Act is an important qualification of this general rule and is an application of the rule in Section 103. It relieves the prosecution of the necessity of proving the absence of facts, which might bring the case within a general or special exception, or exemption, or proviso under the Penal Code or other Criminal law. Under Section 105 of the Indian Evidence Act, when an accused person wishes to rely on any exception in the penal law, it is incumbent

on him to prove the existence of circumstances which would show, that any of the special or general exceptions would take his case out of Criminal liability.

10. The section involves both (i) a presumption and (ii) a rule as to the burden of proof following it. The Court shall presume the non-existence of circumstances bringing the case within an exception and the accused person, who relies on its existence, has the burden of proof cast upon him. The Section has clarified the position by placing all exceptions special or general on the same footing in the sense of the same required to be proved by the accused. But this does not mean that the must plead it specially or specifically or lead evidence. If it is apparent from the evidence on record, whether produced by the prosecution or the defence, that the general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the exception. Where the evidence adduced fails to satisfy the court of the existence of circumstances bringing the case within the exception pleaded, the accused is entitled to acquitted, if upon a consideration of the evidence on both sides, the court is left in a state of reasonable doubt as to whether the accused is or not entitled to the benefit of the exception pleaded.

11. In the backdrop of the first principles of law, as evolved, we shall now endeavour to scan and sift the materials available on record, in a bid to find out as to whether the version as projected by the defence competes in probabilities with that of the version, as projected by the prosecution, respecting the manner and methodology of the occurrence.

12. There is no pale controversy that the partition took place between the accused and his brother, PW 1 on 14-2-1985 and a division by metes and bounds had been effected. The reason for PW 1 for making an onward march to the scene village seems to be that a few days prior to the occurrence, he received an emergency call from his father-in-law the deceased, who had been looking after the cultivation of the lands allotted to him. After reaching the village, PW 1 did not at all meet his brother, the accused, either on the 16th or 17th of July, 1985. We are unable to understand the attitude of PW 1 in not meeting his brother on those two days of

stay for no reason whatever. He would choose to go along with his father-in-law, the deceased to Ulleri field under the facade of spreading the manure taken in the cart there. The accused was already there in the field. We are asked to believe that the purpose of his visit, along with the deceased, to the field, was only for the purpose of spreading the manure. Whether the version so projected is probable in the course of common events This spreading of manure could be done by anyone, even without the assistance of PW 1. Therefore, the avowed purpose of PW 1, along with his father-in-law, the deceased going to the field would rather appear to be for a purpose, different from the one now projected before Court. We are rather inclined to feel, in the circumstances of the case, his going to the field, along with his father-in-law, was 'what may come taking attitude.' In such a process, it is but natural and also probable for them to have gone there with some weapons of offence. It is only in such a context, we are put in predicament situation to decide the probable course of events that could have been flown during the time of occurrence, that is to say, whether in the manner projected by the prosecution or the otherway about, as painted by the defence.

13. Though many a person had been arrayed as direct eye witnesses, in the shape of the testimonies of PWs 2 to 5, yet, their testimony in court did not at all inspire our confidence, so as to place any reliance upon their testimony. Reasons are rather obvious. They are not only closely related to the deceased; but also appear to create some sort of a contumacious circumstance to have been present in the scene of occurrence at or about the time of occurrence, enabling them to be the witnesses for the occurrence.

14. PW 2 would explain his presence in the scene by stating that he had been there to look after the cattle grazing in the fields lying fallow then. But for such a purpose, there was no occasion for him to have gone there. It is amazing to note here that such a purpose had not been stated during the course of investigation. For the first time, he had stated so during the course of his examination in Court. This sort of an attitude had been adopted by PW 2, just to make it appear that his presence in the scene was not something unnatural. Further, he was not all examined during the course of inquest. But nonetheless, the prosecution would pose as if he had been examined during the course of inquest. The hallowness of

such examination got exposed by the inclusive cross examination and what he would state, during the course of cross-examination is that he did not at all go anywhere except his stay in the village at Alankottai till up to his examination in Court. If that be the case, we are at a loss to understand as to how he could have been examined during the course of inquest all the Government's Hospitals, Mannargudi, as a person acquainted with the occurrence.

15. So is also the case with PW 3. Materials had been elicited during the course of cross-examination as to his not having been examined during inquest. PW 4 is also not an exception. He would explain his contumacious presence in the scene by stating that he had been there for the purpose of spreading manure, which had been already unloaded in the field lying adjacent to the field, where the occurrence took place. This aspect of the matter, he did not at all depose during the course of investigation and what is further worse is, if he had really been there for the purpose of spreading the manure, he would have taken with him some sort of a spade or other instrument for effectuation of such a purpose. What is distressing to find there is, he would candidly admit that though he had, for the first time, stated that the purpose of his visit to the field was for spreading manure, yet he was not having any spade with him for manure-spreading operations. With regard to his examination, during inquest, he would also fall in the same category of the other witnesses, namely, PWs 2 and 3. What is disturbing so far as PW 5 is concerned is his name had not been specifically referred to in Ex. P. 1, the earliest version, as a witness having been present in the scene of occurrence, besides certain answers he had given during the course of cross-examination would expose him to the fore, in the sense that he had not at all been contacted and examined as an eye witness, during the course of inquest.

16. Further, the sordid fact with reference to these eye witnesses, PWs 1 to 5, is that none of them had explained in what manner, the accused came by the injuries. We may profitably refer, at this juncture, the injuries found on the person of the accused, as revealed by the wound certificate, Exhibit P. 6 issued by the doctor, PW 12. He found on him the following injuries :

'(1) a lacerated injury of 2.5 cm. x 1.5 cm. x 1.5 cm. over the outer aspect of the right eye brow. No fresh bleeding.

(2) Contusion of 3 cm. x 2.5 cm. over the right shoulder. Brownish in colour.

(3) Abrasion of 2 cm. x 1 cm. over the dorsum of the right hand. Scab formed.'

These injuries were stated to have been caused, as per Exhibit P. 17, at or about the time of the occurrence, by means of stick, i.e., at or about 5.30 p.m. on 18-7-1985. The doctor PW 12 would also categorically state that those injuries could have been caused at the time and in the manner alleged by the accused. In such state of affairs, we do not think, we are far wrong in coming to the conclusion that the prosecution witnesses had made assiduous attempts to secrete the genesis and origin of the occurrence.

17. Useful reference, at this juncture, may be made to the epoch making judgment of the apex court of this country in the case of Lakshmi Singh v. State of Bihar, : [1977]1SCR306 , in which Their lordships laid down the rule that in a murder case, non-explanation of the injuries sustained by the accused, at or about the time of the occurrence or in the course of altercation is a very important circumstance, from which the court can draw the following inferences :

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) That in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

such a rule has now become an axiomatic proposition of law.

18. In order to highlight the right of private defence, as set up by the accused, we may also refer to the decision in Deo Narain v. State of U.P., : 1973 CriLJ677 . In

order to understand the principle evolved therein, we feel to recapitulate herein in an incisive fashion the facts of that case.

(a) The accused herein did not at all deny the occurrence. But what they pleaded was a right of private defence of person. The complaining party was in possession of a weapon of offence of stick or lathi while accused was in possession of a spear. As a result of the injury caused by the accused with a spear, the death ensued. On consideration of the materials placed, Court of Session, accepting the plea of right of private defence, as set up by the accused, acquitted them.

(b) State however preferred appeal to the High Court of Judicature at Allahabad. The High Court, in turn, on consideration of the materials, reversed the verdict of acquittal and recorded a finding that though the accused persons had the right of private defence and were justified in exercising such right, the appellant-accused had exceeded such right, in inflicting the spear injury on the chest of the deceased and consequently, found him guilty of an offence under Section 304, Part II, I.P.C. convicted him thereunder and sentenced him to rigorous imprisonment for five years.

(c) The matter had been further agitated before the Supreme Court. Their Lordships of the Supreme Court did not agree with the view expressed by the High Court and in such process, what they stated is relevant and the relevant portions, as reflected in paragraph 5 are as below :

'5. In our opinion, the High Court does seem to have erred in law in convicting the appellant on the ground that he had exceeded the right of private defence. What the High Court really seems to have missed is the provision of law embodied in Section 102, Indian Penal Code. According to that section the right of private defence of the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant danger. This right rests on the general principle that where a crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. To say that

the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him.

It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available. In our view, therefore, as soon as the appellant reasonable apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor in exercise of that right Again, the approach of the High Court that merely because the complainant's party had used lathis, the appellant was not justified in using his spear is no less misconceived and insupportable. During the course of a marpeet, like the present, the use of a lathi on the head may very well give rise to a reasonable apprehension that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a lathi as distinguished from the use of a spear must always be held to result only in milder injury. Much depends on the nature of the lathi, the part of the body aimed at and the force used in giving the blow. Indeed, even a spear is capable of being so used as to cause very minor injury If, therefore a blow with a lathi is aimed at a vulnerable part like the head we do not think it can be laid down as a sound proposition of law that in such cases the victim is not justified in using his spear in defending himself. In such moments of excitement or disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to coolly weigh, as if in golden scales, and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression while dealing with the appellant's case curiously enough the High Court has denied him the right of private defence on the sole ground that he had given a dangerous blow with considerable force with a spear

on the chest of the deceased though he himself had only received a superficial lathi blow on his Chest. The view of the High Court is not only unrealistic and unpractical but also contrary to law and indeed even in conflict with its own observation that in such cases, the matter cannot be weighed in scales of gold.'

19. The principles, as extracted above, we rather feel are squarely applicable on all fours to the facts of the instant case. We have already held that the prosecution witnesses namely, P.Ws. 1 to 5 were not the witnesses of truth in the sense of their version, giving an impression that they have suppressed some part of the occurrence. If we take the defence plea, as projected above, it cannot at all be stated that the plea, as taken up by the defence, is not reasonable or probable, in the facts and circumstances of the case. The accused had received three injuries, one on the eye brow, a vulnerable portion of human anatomy and another injury aimed at the head falling on the scapular region and the third injury is on the dorsum of the right hand. The sequence of events that had happened as projected by the defence, suggests the possibility of the accused, wresting the weapon of a bitchuva knife from the hands of P.W. 1 and in such process, P.W. 1, not only sustained a bite injury, which he himself would admit, but also sustained an injury in the palm, as projected by the defence. Through P.W. 1 would state that this sort of an injury he has received on his person to the doctor, yet, in reality, no materials had been placed for taking treatment for such an injury he sustained during the course of the occurrence. The reason for this not taking treatment is rather obvious and is not far to seek. If he had been to the doctor and the injury, he sustained on the palm, if placed on record, by production of the medical testimony, it would be a pointer probalising the defence theory. When the weapon of offence had been wrested, he was again beaten by the deceased, with such a force and ferocity on the eye brow, causing him imminent threat of danger to his life and also the accused, who said that by receipt of such an injury, he got perplexed and annoyed and he lost all balance and control and in such a predicament situation, he was placed, he held out and projected the weapon he wrested from from P.W. 1 and in such process, the deceased got injured. Having been placed in such a situation, there was no need for the accused to weigh the measure of attack in golden scales and rightly so to use force as against the assailant the deceased, rather in a precarious bid to save him from the perilous

consequence of losing his life.

20. For all the reasons as above, we are of the view that the act of the appellant-accused, in causing injuries the person of the deceased, cannot at all be stated to be one not done in the exercise of private defence of person, in the facts and circumstances of the case. In this view of the matter, the accused is found not guilty of the offence under section 302, I.P.C. and consequently the conviction and sentence on the appellant-accused, as had been done by the court below are not sustainable.

21. In the result, the appeal is allowed; the conviction and sentence imposed by the court below on the appellant-accused are set aside and he is acquitted. The bail bond, if any, executed by him shall stand cancelled.

22. Appeal allowed.

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