

Ramchandran Alias Vethu Vs. the State

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Court : Chennai

Decided On : Apr-07-1994

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Judge : J. Kanakaraj and ;Janarthanam, JJ.

Appeal No. : Criminal Appeal No. 1004 of 1986

Appellant : Ramchandran Alias Vethu

Respondent : The State

Advocate for Def. : B. Sriramulu, Public Prosecutor

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

Janarthanam, J.

1. The appellant was the accused in S.C. No. 108 of 1985 on the file of court of Session, East Thanjavur Division at Nagapattinam. He was found guilty under section 302 IPC, convicted thereunder and sentenced to imprisonment for life. Aggrieved by the said conviction and sentence, the present action had been resorted to.

2. Brief facts are :-

(a) One Kanagasabai (since deceased) was a resident of Peruncheri village, which lies within the jurisdiction of Perumber police station. He was an agricultural labourer. P.Ws. 1 and 2 are his brothers. P.W. 1 is a milk vendor by profession, while P.W. 2, like his deceased brother, is an agricultural labourer. All the three brothers reside separately, in independent houses, situate adjacent to each other, in a row in the same street.

(b) The accused, namely, Ramachandran alias Kullavathu also hails from the same village. He has been eeking out his livelihood by running a tea stall. The said tea stall is forming part and parcel of his residential house, which is located on the northern side of Killiyanoor - Mayiladuthurai Road, which runs east-west. Adjacent to his tea stall on the east, there is a grocery shop of one Ramayan. The petty shop of P.W. 8 is situate adjacent to the grocery shop of Ramaiyan on the east. Likewise, the cycle shop of P.W. 3 is also situate, adjacent to the petty shop of P.W. 8 on the east. Opposite to the petty shop of P.W. 8 on the southern side of the said road, there are two electric lamp posts, fitted with tube-lights and the tube-lights in those lamp posts had been burning during night hours.

(c) At 11 P.M. on 20-5-1985, P.W. 8 had been transacting business in his petty shop, as usual. The accused then came to his shop for the purpose of purchasing some plantains. He was enquiring P.W. 8 about the price of plantains per piece and also for the whole bunch. P.W. 8 had been answering such queries. In the meantime, the deceased came to his shop on his bi-cycle (MO-1) and parked the same on the western side of his shop. After parking his cycle, he was sitting on the road margin. The accused, without paying even the price of a plantain, plucked two plantains from the bunch and ate them. Then P.W. 8 questioned the propriety of his eating the plantains without payment of price. A wordy altercation then ensued between them. In such process, the accused, thinking that the cycle that was parked in front of his shop as belonging to him, kicked the same with his leg, with the result it fell on the ground. The deceased questioned the accused as to why he kicked his cycle. No sooner than such a question emanated from him, a wordy altercation ensued between them and in such process, the accused whipped out the knife (MO. 2) from his waist and attempted to stab the deceased. Before ever such an attempt got fructified, P.W. 9 and one Thyagaraj, who were

present there then, averted any untoward incident happening, by catching hold of the accused and then, they pacified both the accused and the deceased and sent them away.

(d) The deceased then went to the house of P.Ws 1 and 2, woke them up from their sleep and apprised them as to what had happened to him in front of the shop of P.W. 8, in the sense of himself explaining the high-handed act of the accused, in resorting to make an attempt to stab him with knife (MO. 2). After explaining the incident so happened, he requested P.Ws 1 and 2 to come along with him to seek justice' (Vernacular matter omitted). Accordingly, P.Ws 1 and 2 obliged his request and all of them made a march towards the shop of P.W. 8.

(e) When they reached there, the shop of P.W. 8 was found closed. But none-the-less the accused was standing in front of his shop. The deceased, after getting down from his cycle, questioned the accused, as to, (Vernacular matter omitted) the translated version being, 'sometime before, you attempted to stab me. Let me see, you perform such a feat now.' The accused replied as to, '(Vernacular matter omitted) the translated version being, 'you fellow ! sharing the bed with your sister ! I can even now perform such a feat.'" and so saying, he whipped out the knife from his waist and inflicted a stab on the right lower abdomen of the deceased. The accused again attempted to stab the deceased. At that time, P.W. 2, who was standing there, snatched away the knife (MO. 2) and accused, after pushing P.W. 2 down, ran towards west. On receipt of the stab, the deceased fell down and blood soozed out from the exit of the wound. Time was then 1 AM (on 21-5-1985). The tube-lights in the lamp posts, as usual, were burning then. The cycle shop owner, P.W. 3 had also the opportunity of witnessing the occurrence. Thereafter, with the aid of a bullock cart, the victim-deceased had been transported to Kiliyanoor Government Hospital.

(f) P.W. 4 was the then doctor attached to, Kilayanoor Government Hospital. At 2-45 AM, he examined the victim - deceased and gave him first aid treatment. He found on him the following injuries :

1) An incised wound over the right lower abdomen in the groin horizontally placed 1 1/2 cm x 1/2 cm depth not known fresh bleeding, clotted around the wound.

2) Abrasion over the right lower chest 1 cm x 1/4 cm vertically placed.

3) Abrasion over the left lower chest 1 cm x 1/4 cm horizontally placed.

Exhibit P. 3 is the copy of the accident register for the injuries he found on the person of the deceased. He opined that the wounds found described in Exhibit P. 3 could have been caused by a weapon like M.O. 2. He referred the victim - Deceased for further treatment to Government Hospital, Mayiladuthurai. From Kiliyanoor - the victim - deceased had been transported by means of a taxi to Government Hospital, Mayiladuthurai.

(g) P.W. 5 was the then doctor attached to the Government Hospital, Mayiladuthurai. The victim - deceased had been produced before him, along with Exhibit P. 3 copy of the accident register at 4.25 A.M. He tendered an advice for the victim-deceased to be taken for better management and treatment to the Government Hospital, Thanjavur and in that connection, he issued an accident register copy, Exhibit P. 4.

(h) Before the victim - deceased was transported to the Government Medical College Hospital, Thanjavur, the knife (MO. 2), bloodstained clothes of the victim - deceased, namely, kaili (MO 3) and dhoti (MO 4) had been handed over to his mother, who went straight to her house from there, along with those material objects.

(i) The doctor, P.W. 6 was the Civil Assistant Surgeon attached to the Thanjavur Medical College Hospital, Thanjavur, he admitted the victim - deceased in the Surgical Ward of the Hospital at 7 a.m. He was then conscious.

(j) P.W. 12 was the then writer attached to Perumber police station. At 7.30 A.M. the accused appeared before him, along with his wife and preferred an oral complaint, as respects the occurrence, which was reduced into writing as per his dictation. Exhibit P. 12 is the complaint, which had been registered as a case in crime No. 49/85 under section 324 IPC. Exhibit P. 13 is the printed copy of FIR. Since the accused, as well as his wife were found injured, P.W. 12 sent them, with a medical memo, to the hospital for treatment.

(k) P.W. 7 was the then doctor attached to the Government Hospital, Kiliyanoor. At 8 A.M., he examined the accused and treated him for the injuries, he found on his person. He found on him the following injuries :

- 1) Incised wound about 1/2 cm x 1/4 cm x 1 cm above the left nipple;
- 2) Incised wound over the tip of the left index finger at the nail.
- 3) Small abrasion 3/4 cm x 1/4 x 3/4 cm over right scapular region complained of pain over right side of the scrotum.

1 and 2 wounds sutured.

Exhibit P. 5 is the copy of the accident register for the injuries he found on the person of the accused. The injuries found described in Exhibit P. 5 were alleged to be due to assault by known persons with a knife in the tea shop, Peruncheri. He had also examined one Chandra, wife of the accused at 8.30 A.M.

1) P.W. 11, then Sub-Inspector of Police, Perumber Police Station, in the meantime, at 6.30 A.M. received intimation from Iliyanoor hospital, through P.W. 9, as to the admission of the victim - Deceased in the said hospital. He then, at 7 A.M., proceeded to the said hospital. On reaching there, he found that the victim - deceased had already been shifted to Government Hospital, Mayiladuthurai. Consequently, he went to Government Hospital, Mayiladuthurai, where he was informed that the victim - deceased has been shifted to Government Medical College Hospital, Thanjavur. Ultimately, he reached there and recorded the first information report, Exhibit P. 1 from P.W. 1, as the injured was then unconscious. The time was then 1 P.M.

(m) He thereafter returned to the police station and registered the case in Crime No. 51/85 under section 307 IPC at 6 P.M. Exhibit P. 9 is the printed FIR sent to Court. At 7 P.M., he inspected the scene, in the presence of P.W. 10 and prepared Exhibit P. 6 observation mahazar. He also drew a rough sketch of the scene, Exhibit P. 10. At 8 P.M., he seized from the scene blood-stained earth, M.O. 5 under Exhibit P. 7 mahazar. He seized from the mother of P.W. 1, knife (MO 2); kaili (MO 3) and dhoti (MO 4) under Exhibit P. 8 mahazar. Exhibits P. 6 to P. 8

were attested by P.W. 10 and another. He examined P.Ws 1, 8, 10 and others. On 22-5-1985, he proceeded to Mayiladuthurai and examined P.Ws 4, 5 and 7. At 2 P.M., he seized MO 1 cycle under Exhibit P 2 mahazar attested by P.W. 3. He examined P.Ws 3 and 9.

(n) At 8 A.M. on 23-5-1985, he received information as to the death of the deceased in the hospital at 10.30 PM on 22-5-1985. He altered the case into one under section 302 IPC and sent express report to the concerned officials. Exhibit P. 11 is the express FIR sent to Court.

(o) P.W. 16 was the then Inspector, Nannilam. On receipt of the copy of the express FIR at 10 AM, he took up further investigation in this case. He went to Government Medical College Hospital, Thanjayur in the afternoon and between 2 and 5 PM, in the presence of the panchayatdars, he held inquest over the body of the deceased. Exhibit P. 20 is the inquest report. During inquest, he examined P.Ws 1, 2, 8 and another. After the inquest was over, he handed over the body of the deceased to the Constable, P.W. 15, along with Exhibit P. 18 requisition for the purpose of autopsy. He reached the scene village at 10 PM and made arrangements for securing the accused.

(p) P.W. 14 was the Tutor in Forensic Medicine, Government Medical College Hospital, Thanjayur. On receipt of requisition, Exhibit P. 18, he commenced autopsy over the body of the deceased at 10.30 AM on 24-5-1985. He found on the body of the deceased, the following external injuries :

1) A stab wound noticed over the front of right side abdomen at its lower part just above the middle of inguinal ligament $2\frac{1}{2} \times \frac{3}{4}$ cm with drainage tube in situ found sutured.

2) A surgical permanent paramedian sutured wound noticed over the front of abdomen 15 cm in length.

3) Abrasion over right lower chest $1 \times \frac{1}{2}$ cm.

4) Abrasion over left lower chest $1 \text{ cm} \times \frac{1}{4}$ cm. He also found the following internal injuries :

5) On dissection of injury No. 1, it is found to pass the anterior abdominal wall entered the peritoneal cavity, injured the lateral wall of the bladder and adjoining tissues, injured the terminal part of jejunum at 4 sites and injured the mesentery and injured the posterior parietal peritoneum on the right side and injured the right side common iliac vein at its termination 1/2 cm in length and adjoining small vessels were found to be injured. Reparative sutures noticed. The injury is found to pass backwards, inwards and upwards.

6) Peritoneal cavity contains 200 cc of thick pus. peritoneum is found to be dull in colour. Walls of intestine were found to be distended. Exhibit P. 19 is the post-mortem certificate he issued. He opined that the injuries he found described therein could have been caused by a weapon like M.O. 2 and that injury No. 1 with its corresponding internal injury is sufficient in the ordinary course of nature to cause the death.

(q) After the autopsy was over, the constable P.W. 15 seized from the body of the deceased lungi (MO 6) and shirt (MO 7) and handed over the same at the police station, which were seized under Form No. 95.

(r) At 5 AM on 27-5-1985, P.W. 16 arrested the accused at Peruncheri. He examined P.W. 15. On the same day, the case in Crime No. 49/85 has been referred as 'mistake of fact' and Exhibit P. 21 is the referred final report. On 4-6-1985, P.W. 16 examined P.W. 14. On 20-6-1985, he sent Exhibit P. 14 requisition to the Judicial Second Class Magistrate, Mayiladuthurai for despatching the seized incriminating material objects to the Chemical Examiner for the purpose of examination.

(s) P.W. 13 was the then Headclerk attached to the Court of the Judicial Second Class Magistrate, Mayiladuthurai. On receipt of Exhibit P. 14 requisition, he separately packed and sent all the incriminating material objects, as per the directions of the Magistrate, to the Chemical Examiner for the purpose of examination, under the original of Exhibit P. 15, office copy of the letter. Exhibits P. 16 and P. 17 are the reports of the Chemical Examiner and the Serologist respectively.

(t) P.W. 16, on completion of the investigation, laid the final report on 25-6-1985, under section 173(2) Cr.P.C. against the accused for an offence under section 302 IPC, before the Judicial Second Class Magistrate, Mayiladuthurai.

3. On committal a charge under section 302 IPC had been framed against the accused, by learned Sessions Judge. The accused, when questioned as respects the charge so framed, denied the same and claimed to be tried.

4. In proof of the said charge, the prosecution examined P.Ws 1 to 16, filed Exhibits P. 1 to P. 21 and marked M.Os. 1 to 7.

5. The accused, when questioned under section 313 Cr.P.C. as respects the incriminating circumstances appearing in evidence against him, denied his complicity in the crime. He did not choose to examine any witness on his side.

6. Mr. K. V. Sridharan, learned Counsel for the appellant-accused wound project double-fanged submission as follows :

1) The facts and circumstances of the case, if sifted, scanned, and analysed in proper perspective, on the touch-stone of probabilities, would unerringly point out that the prosecution faced a dismal failure, in establishing its case beyond any shadow of doubt, the consequence of which is, there is no other go except to acquit the appellant-accused, by giving him the benefit of reasonable doubt, and consequently, setting aside the conviction and sentence, as had been imposed on him by the Court below :

2) Even otherwise, from the established facts and circumstances of the case pointing out that it was the hand of the appellant - accused that was responsible for the overtact of inflicting a stab on the right lower abdomen of the deceased, by means of a knife like M.O. 2, culminating in his death laterly in the hospital, despite best of treatment, it cannot at all be stated that there are no preponderance of probabilities to rule out the plausibility of the appellant - accused having exercised the right of private defence of person, in the sense of there being a reasonable apprehension of imminent threat or danger to his life, which alone impelled him to hurl violence directed against the deceased and in such circumstances, his act

cannot at all be doubted as anyone done otherwise than in exercise of the right of private defence of person, pure and simple - an excusable one indeed !

7. Learned counsel for the appellant - accused, in projection of the first fang of his submission, would commence his arguments in a flamboyant style. He, however, feeling that such an argument, if pursued further, would not yield any dividend therefor, in the sense of getting our seal of approval, abandoned the same for good and made a serious and serene thrust on the other fang of submission, with so much of conviction, to which, of course, emerged a stiff and stout opposition from learned Public Prosecutor.

8. We may now delve deep into the facts and circumstances of the case, to find out the tenability or otherwise of such a submission. 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 reality of the situation, in the sense of painting of projecting a version, different from the one that had happened at or about the time of occurrence. This sort of a stand, the accused would take, right from the beginning and this is evident from the first information. Exhibit P. 12, he would lay before P.W. 12, which resulted in the registration of a case in Crime No. 49/85, lone before investigation in the case on hand had begun, after its registration in Crime No. 51/85, the statement he would make to the doctor, P.W. 7, who treated him for the injuries and issued Exhibit P. 5 copy of the accident register, as to how he happened to receive the injuries and the trend of the cross-examination of the direct eye witnesses to the occurrence. What is clear from such a stand taken is that he and his wife received injuries at or about the time of the occurrence, in which the deceased also received injuries. To put it otherwise, according to defence, both the accused and the deceased received injuries at one and the same transaction. This sort of a stand as the accused would take, we rather feel, cannot at all be lightly brushed aside, as of no merit, in the facts and circumstances of the case. Exhibit P. 12 specifically refers to the injuries the accused suffered in the transaction, apart from his wife receiving a stab injury on her left flank. We may reiterate here, at the risk of repetition, in a bid to emphasis, that this sort of an information, regarding the occurrence had been laid, long before the commencement of the investigation,

after the registration of the case relating to the stabbing of the deceased. The Station House Officer, P.W. 12 has also seen injuries on the person of the accused as well as his wife, Chandra, at the time of registration of the case, at the instance of the accused. It did not stop there and what he would do was that he sent them to the Government Hospital, Kiliyanoor, with a medical memo for treatment.

9. The doctor P.W. 7, who treated and issued copy of accident register, Exhibit P. 5 found on him three injuries - two incised, one on the left nipple and the other on the left index finger, besides one abrasion on the right scapular region. What the accused had stated to the doctor, P.W. 7 as to the time and manner of causation of injuries had been mentioned in Exhibit P. 5. A perusal of Exhibit P. 5 reveals that what the accused stated to the doctor, P.W. 7 was that he was assaulted by known persons with knife at about (12 midnight on 20-5-1985 i.e.) 12.00 A.M. on 21-5-1985 in the tea ship at Peruncheri. Pertinent it is to note at this juncture that the prosecution did not at all elicit in chief-examination from the doctor, P.W. 7 as to the time and manner of causation of injuries found on the person of the accused. The defence, however, in such a situation, has done the job admirably in eliciting an answer in cross-examination that the injuries found on the person of the accused could have been caused at the time and in the manner alleged.

10. It is disturbing to note that the prosecution did not even choose to exhibit copy of the accident register, through P.W. 7, the doctor, who happened to examine the wife of the accused. Puzzling it is to note at this juncture as to how the Sub-Inspector of Police, Investigating agency referred the case in Crime No. 49/85, given by the accused, as 'mistake of fact', by observing in Exhibit P. 21, the referred final report that the accused and his wife suffered self-inflicted injuries on their persons, on coming to know that the victim - deceased was in a precarious condition, without there being an edifice of factual foundation for arriving at such a conclusion. So glaring it is to point out, we feel, that the investigating agency, without making any sort of investigation, referred the case given by the accused as such.

11. What is further worse is that the eye witnesses, P.Ws 1 to 3, in uniform fashion either denied or feigned ignorance as to the accused or anyone other than the deceased sustaining injuries in the occurrence. This is a pointer, we feel, so show that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version of the occurrence.

12. Useful reference, at this juncture, may be made to the epoch making judgment of the apex Court in the case of Lakshmi Singh v. State of Bihar, : 1976 CriLJ1736 , 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; and

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.

13. We may, however, state, with agony and anguish, that though the defence would take a specific stand that the wife of the accused was inflicted an injury at the hands of the prosecution witnesses, consisting of the deceased and his brothers, P.Ws 1 and 2, as revealed by Exhibit P. 12, yet it did not choose to explicitly state, at least by hurling suggestions during the course of cross-examination of the prosecution witnesses that it was the hand of the accused, that was responsible for inflicting a stab on the right lower abdomen of the deceased, resulting in his death, purely in exercise of right of private defence of himself and his wife Chandra. But the trend of cross-examination of the witnesses, particularly

to P.W. 1 points out that P.Ws 1 and 2 and the deceased, arming themselves with knives, went to the scene of occurrence and stabbed the accused and also his wife Chandra and when she intervened to prevent the attack on her husband, the accused, a malee followed in which the deceased sustained injuries on his person, not at the hands of the accused; but at the hands of his (deceased) brothers, P.Ws 1 and 2. The projection of such a theory, however, cannot at all eliminate the theory of self-defence, inasmuch as it is an axiomatic proposition of law that it is very well open to the accused to even deny his presence, in the sense of setting up a plea of alibi, but at the same time, plead the right of private defence, provided, there are materials available on record, either in the shape of evidence adduced by the prosecution and the facts and circumstances, brought to the surface, by putting questions in cross-examination, from which, it is legitimately permissible to infer that the injuries sustained by the deceased at the hands of the accused cannot at all be stated to be one not done in exercise of the right of private defence of person, pure and simple.

14. In order to highlight the right of private defence, as set up by the accused, we may also refer to the decision in *Deonarain v. State of U.P.*, : 1973 CriLJ677 . In order to understand the principle evolved therein, we feel to recapitulate here, in an incisive fashion, the facts of that case.

(a) The accused therein 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 IPC,

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 in 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 a 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 reasonably 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 a 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.'

15. 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 3 were not the witnesses of truth, in the sense of their versions, giving an impression that they have suppressed some part of the occurrence. A little more elaboration, at this juncture, we feel, is necessary to highlight this aspect of the matter.

16. Worthwhile it is to repeat here that the initial occurrence that took place at 11 p.m. on the day of the occurrence was in front of the shop of PW 8, when the accused kicked the bicycle of the deceased, parked in front of the said petty shop. A wordy altercation between the deceased and the accused arose, which even

went to the extent of making an attempt by the accused to stab the deceased, which had been duly thwarted by the timely intervention of PW 9 and one Thyagarajan. That perhaps was the reason for the deceased to go straight to the house of his brothers, P.Ws 1 and 2 at dead of night, woke them up from their sleep to take them to the scene with the oblique purpose of 'seeking justice from the accused' at the odd hours of the night. What was 'the justice', they could seek from the accused, we are unable to understand and if 'justice' is to be sought in a rustic village atmosphere, where the accused and prosecution party live, they could, if at all, refer the matter to the panchayatdars. That they had not done. But what they had done was, all the brothers joining together made a march to the place of the accused 'seeking justice' from him. 'Seeking justice', in such a context and situation would connote a different meaning, that is to say, to settle the score with the accused for his alleged high-handed action for making an attempt to stab the deceased, in the occurrence, that preceded it. In such a situation, they would not have gone, without arming themselves. This sort of an impression of ours is further reinforced, by sequence or events, subsequently happened.

17. No sooner than they reached the place, where the accused was available, the deceased getting down from the cycle, challenged accused, 'sometime before, you attempted to stab me. Let me see, you perform such a feat now !' This sort of a poser, in a village atmosphere, could not be anything, with an oblique motive to belabour him for his high-handed action of making an attempt on the life of the deceased, sometime prior to the occurrence. PWs. 1 and 2 would not at all demur or whisper about the wordy altercation or mutual fight that ensued between the accused on the one hand and the deceased, along with his brothers, PWs. 1 and 2 on the other.

18. What they would say in their evidence was that the accused retorted the deceased, 'you fellow ! Sharing bed with your sister ! I can even now perform such a feat !', quite unexpectedly whipped out MO 2 knife from his waist and inflicted a stab on the right lower abdomen of the deceased and when he made an attempt to inflict another stab, PW 2 prevented such a stab being inflicted by snatching the knife, MO 2 from his hand. But, this sort of a projection of a version does not appear to be ringing true, in the facts and circumstances of the case.

19. When we go to the evidence of PW 3, the so-called eye witness, emerging from independent quarter, what he would say was that he was sleeping inside the cycle ship, at or about the time of the occurrence !, then there was a hue and cry for about quarter of an hour outside; that he woke up, came out and happened to witness the overtact of the accused in stabbing the deceased and he had not even deposed as to which part of the body of the deceased, the stab was inflicted.

20. This apart, as already stated, all these witnesses suppressed the receipt of the injuries by the accused and his wife in the same transaction, in which the deceased was stated to have sustained injuries at the hands of the accused. This sort of suppression, we feel, rather, in the circumstances of the case, had been done, only with the avowed purpose of ruling out the plausibility of the right of private defence of person, enuring to the benefit of the accused, by receipt of injuries on his chest by infliction of a stab with a weapon like MO 2 knife, a vulnerable portion of human anatomy, and index finger besides the receipt of a stab injury by his wife at the left flank at the same transaction at the hands of prosecution party, consisting of the deceased and his brother, PWs 1 and 2. In the circumstances of the case, surely the accused could have had a reasonable apprehension in his mind that death or grievous hurt would otherwise be the consequence of such onslaught of attack and in such a situation, the right of private defence would extend to the voluntary causing death or any other harm to the assailant, as per the salient provisions, adumbrated under Section 100 IPC. A mention may be made, at this juncture, that the right of private defence of the body commences, as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have at all been committed, and it continues, as long as such apprehension of danger to the body continues. That is the requisite prescription and mandate of Section 102 IPC. Further, Section 96 IPC prescribes that nothing is an offence, which is done in the exercise of the right of defence.

21. Thus, coming to the case on hand, the act of inflicting a single stab on the right lower abdomen of the deceased by means of a weapon like MO 2, by the accused, in the circumstances of the case, cannot at all be stated to be one done, by exceeding the right of private defence, but one done, in the exercise of right of

private defence of person, pure and simple. In this view of the matter, the appellant - accused is not guilty of the offence under section 302 IPC and consequently, the conviction and sentence imposed on him, as had been done by the Court below are not sustainable.

22. 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.

23. Appeal allowed.

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