

PETITIONER:
PAMMI @ BRIJENDRA SINGH

Vs.

RESPONDENT:
GOVERNMENT OF MADHYA PRADESH

DATE OF JUDGMENT: 12/02/1998

BENCH:
K.T. THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas J.

This appeal is filed under Section 379 of the Code of Criminal Procedure ("Code") and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Appellant was third accused in the trial court. He and all the other accused arrayed along with him were acquitted by the Sessions Court. When State of Madhya Pradesh challenged the acquittal before the High Court of Madhya Pradesh, a Division Bench of the High Court reversed the acquittal as against the present appellant Pammi alias Brijendra Singh and his father Thakkar Singh (who was the first accused). But the latter died and hence this appeal by special leave has been filed by Pammi alias Brijendra Singh alone.

This case relates to the gunning down of three persons (1. Suresh Palia, 2. Suresh Sharma and 3. Bajrang Rajput) at about 9 P.M. on 24.6.1983 near Apsara Punjab Hotel at Itwara Bazar. (Piparia in Madhya Pradesh). The story of the prosecution is in brief, the following:

One Santhosh Singh (who died in a subsequent encounter) and Kamal Kumar Jaiswal (PW-5) were partners in a liquor business. They had to settle accounts between them and that erupted estrangement between them which led to severe antagonism as against each other. On the night of occurrence, Santhosh Singh and his henchmen including appellant and Thakkar Singh went to the house of Kamal Kumar Jaiswal and asked him to settle the accounts by showing a pistol at him. During that time, the three deceased went to that house and tried to pacify them which led to an altercation and it got heated up. Santhosh Singh and appellant and Thakkar Singh took out guns and fired at all the deceased. Appellant then brought a pistol from his car (which was parked nearby) and fired at Suresh Palia; Santhosh Singh fired at Bajrang Rajput while Thakkar Singh shot at Suresh Sharma. All the three victims slumped down. PW-1 Rajendra Prasad Palia (brother of Suresh Palia) who reached the spot was also shot at by the appellant. The shooting spree did not spare some of the onlookers like PW-6 and PW-9. However, the assailants retreated and fled from

the scene in their vehicles.

As information about the escape of the killers was transmitted through wireless to the nearby police stations, the police of Tamiya Station succeeded in blocking the fiat car in which Santhosh Singh and Pammi were travelling. Though they resisted, the police succeeded in intercepting both, but in the encounter, Santhosh Singh died while the appellant was overpowered by the police.

There is no dispute that the three deceased died due to bullet injuries at the time and time and at the place suggested by the prosecution. The appellant admitted, during examination under Section 313 of the Code, that he and Santosh Singh went to the house of PW-5 to settle the accounts and that the three deceased reached the house soon. According to him when an altercation ensued between the three deceased and Santosh Singh, the deceased persons took out irons rod for attacking Santosh Singh and then he whipped out his pistol to counter the threat in self-defence. Though the appellant denied having used any fire arm, he admitted that some persons who came along with them had, for self protection, opened fire.

Thus the defence strategy, adopted by the appellant, is a plea for right of private defence for Santosh Singh and denial of any action for the appellant himself.

The prosecution examined five eye witnesses (PW-1 Rajendra Prasad Palia, PW-2 Vinod Kumar, PW-4 Ashok Kumar Sharma, PW-6 Ravi Kumar Sharma and PW-9 Roop Narayan Sahu). Among them PW-6 and PW-9 have only said that when the firing took place they too sustained injuries, but they could not say who fired and at whom. However, PW-1 has said in evidence in categorical terms that deceased-Suresh Palia received bullet injuries from the fire arms used by the appellant. PW-1 himself was injured. PW-2 and PW-4 also said in the same manner though they did not receive any injury.

Learned Sessions Judge heavily harped on the failure of the investigating agency to conduct a test identification parade and observed that such failure had seriously affected the veracity of the version of the eye-witnesses. Learned Sessions Judge then considered the defence version that the entire episode happened because of the bellicosity demonstrated by the three deceased with iron rods and he found that the defence version is more probable.

The Division Bench of the High Court made a scathing criticism on the reasoning of the Sessions Judge and held that the conclusion arrived at by the Sessions Court is so unreasonable as to warrant interference in appeal. Some of the remarks of castigation made by the Division Bench of the High Court against the Sessions Judge seem to have crossed the limit of judicial restraint which judges, particularly of the superior Courts, are expected to maintain. One such observation is this:

"It is believed that the learned judge has made up his mind to give benefit of doubt to accused persons of the basis of Identification Parade not being held to identify the accused. Making such type of mentality and to analyse the evidence is a judicial fault on the basis of which dignity of judges is often suspected"

We are not quoting some other disparaging remarks hurled against the trial judge except saying that they too are couched in similar to tone.

Time and again this Court has emphasised the need to

exercise judicial restraint, particularly while dealing with judgments and orders of the lower courts. We are in agreement with the submission of Shri Sushil Kumar, senior counsel that the High Court should have avoided such types of unsavoury remarks against a judicial personage of the lower hierarchy. We do not want to say anything more on it now.

However, we are not persuaded to interfere with the finding of the High Court that the Sessions Judge went wrong in acquitting the appellant. The question of private defence for Santosh Singh does not arise because on the admission of the appellant himself, Santosh Singh and his henchmen (including the appellant and his father) went to the house of PW-5 equipped with fire arms to settle scores, though they say that they went there to have the accounts settled between them. Such an entry into the house of PW-5 particularly during night time is an act of aggression on the part to those who went there. At any rate, such entry was enough to instill reasonable apprehension in the mind of the occupant of the house that the accused have committed criminal trespass and they might persist in mounting up the aggression.

It is one of the canons of the law of right of private defence that such a right would not enure to an aggressor. Any step resorted to thwart an act of aggression is regarded as defensive act and no right of private defence can be claimed against such an act of self-defence.

So, the High Court was correct in repudiating the plea of the accused claiming right of private defence. According to us, the Division Bench of the High Court has correctly found that evidence of the eye-witnesses in this case is not to be jettisoned merely due to the failure of the investigating officer to conduct test identification parade. This is not a case where the witnesses were seeing the appellant for the first time. Nobody has a case that PW-1 Rajendra Prasad Palia had not seen the appellant prior to the occurrence. In fact, he mentioned the names of some of the assailants including this appellant event in the First Information Statement which he lodged soon after the occurrence. PW-2 Vinod Kumar and PW-4 Ashok Kumar Sharma have also said that they knew the appellant earlier. If their evidence is found believable, then there is no warrant for the reasoning that failure to hold test identification parade had vitiated the evidence of those three eye-witnesses.

However, Shri Sushil Kumar, learned senior counsel contended that none of the above witnesses had seen the occurrence, not even PW-1. Normally, one cannot even venture to think that PW-1 who was an injured person would not have been present at the scene. But learned senior counsel endeavoured to show that the injury found on the person of PW-1 was subsequently created for projecting him as eye witness.

Dr. D.K.Jain (PW-22) Assistant Surgeon of Piparia Primary Health Centre has stated in his evidence that he had examined PW-1 at 11.30 P.M. on the same day. He then noted a fire arm injury on the right thigh of PW1 with blackening on the corners and its exit wound was on the back side of the thigh. Details of the said injury were entered in Exhibit

B-40 report. The doctor-witness further said that injured was admitted in the hospital. In this context, we note that even in Exhibit P1, First Information Report, PW-1 had stated that he was shot at by the appellant.

Yet, the trial court accepted the contention of the defence that the injury on the person of PW-1 would have

been self-inflicted. The first premise for such an approach was the blackening on the entry side of the wound which could support an inference that it would have been a close range shot. Sessions Judge highlighted an answer which PW1 gave in cross-examination that he would have been fired from a distance of 30-40 feet and on its strength it was found that the story of his sustaining injury at the occurrence was untrue. We are not impressed by the aforesaid reasoning based on that answer in cross-examination because either the distance mentioned by PW-1 would have been a wrong estimation or what he would have meant was that the range would be 30-40 C.M.s instead of feet. At any rate for reaching a conclusion that injury would have been self-inflicted, the above premise is too tenuous.

The second premise is that one Purushotham - driver - had stated in Exhibit D-8 that after the incident in this case, he had occasion to take one Rajendra Palia on a motor cycle from Panchsheel Store (Mangal Waria). Thus, learned Sessions Judge used Exhibit D-8 for disbelieving PW-1's version. Exhibit D-8 is a copy of the deposition of a witness called Purushotham recorded in another criminal case tried in the Court of a Judicial Magistrate of First Class. That deponent Purushotham was not examined as a witness in this case. We have absolutely not doubt that the Sessions Judge had committed a gross error in banking on Exhibit D-8 for any purpose whatsoever in this case.

We are in agreement with the reasons advanced by the High Court for believing that PW-1 was an eye-witnesses to the occurrence and he sustained injury from the appellant during the course of the occurrence. Evidence of PW-1 that it was the appellant who fired at deceased Suresh Palia does not suffer from any infirmity. There is no reason to reject his testimony.

Learned Sessions Judge rejected the evidence of the other two witnesses PW-2 and PW-4 also. But the Division Bench of the High Court has chosen to take a different view of it and found the testimony believable. We make a note of the fact that PW-1 has said in evidence about the presence of the other two witnesses. Learned senior counsel attacked their testimony mainly on the ground that their names did not find a place in the FIR or in the Inquest Report, but the investigating officer came to know of them only at a later stage of investigation. It is a matter of appreciation of evidence and the mere fact that PW-1 in the injured condition did not mention the names of all the eye-witnesses when he gave the first information statement is no ground to frown at the evidence of PW-2 and PW-4. The High Court cannot be said to have gone wrong in acting on the testimony of those two witnesses which was subjected to rigorous cross-examination and no material has been elicited to doubt their presence. At any rate, as it relates to appreciation of evidence, we are not taking a different view from what the High Court has taken about that.

We have considered the arguments addressed by the learned senior counsel and we are not persuaded to upset the conclusion made by the Division Bench of the High Court that the appellant Pammi had fired at Suresh Palia and caused his death. We, therefore dismiss this appeal. The bail bond of the appellant will stand cancelled and we direct the Sessions Judge, Hoshanghabad to take prompt steps to put the appellant back into jail for undergoing the sentence imposed on him.