

CASE NO.:
Appeal (crl.) 1090 of 2007

PETITIONER:
Jesu Asir Singh & Ors

RESPONDENT:
State through Inspector of Police

DATE OF JUDGMENT: 20/08/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:

J U D G M E N T

CRIMINAL APPEAL NO. 1090 OF 2007
(Arising out of SLP (Crl.) No. 3611 of 2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Appellants call in question legality of the judgment rendered by a Division Bench of the Madras High Court upholding the conviction of the appellants while directing acquittal of the co-accused. Appellants and the co-accused for the sake of convenience are described as A1, A2, A3 and A4. The appellants are A1, A2 and A3 and have been convicted for offence punishable under Section 302 and 341 of the Indian Penal Code, 1860 (in short the \021IPC\022). A4 was charged for offence punishable under Section 302 read with Sections 109 and 341 IPC. Each of the appellants was sentenced to undergo imprisonment for life and one month respectively for the aforesaid two offences.

3. Prosecution version as unfolded during trial is as follows:

The occurrence is shown to have taken place at about 06.30 a.m. on 18.09.1993, by A1 to A4 who wrongfully restraining Gift (hereinafter referred to as \021deceased\022) and in course of the same transaction at the instigation of A4, A1 to A3 attacked him fatally, resulting in his death. To prove their case the prosecution examined PWs.1 to 15 besides marking Exs.P1 to P.30 and M.Os 1 to 10. A4 is mother of A1 to A3. PW-1 is the informant. PW 4 is the mother of PW.1. PW.4 and A4 are sisters. PW.5 is the wife of A1. PW5\022s sister is Jenitha, who was the wife of deceased. There was prior enmity between the two families and they were not in talking terms. This was because Jenitha, wife of the deceased started living with AI by deserting her husband.

The deceased married Jenitha about 1= years prior to the occurrence and a female child was born to them. The two families were not in talking terms a month prior to the occurrence. Thereafter, the deceased and his child were living only with PW.1. On 10.9.1993 deceased went to the house of A1 and asked his wife to come back with him and there a quarrel arose. At about 5.00 p.m. on that day, all the four

accused came to the house of PW-1 and asked her the whereabouts of the deceased and also told her that in their absence the deceased had called his wife and, therefore, he must mend his ways; saying so, they damaged the tube lights, cots and other house-hold articles; out of grace no complaint was given. Raja is her son and as he fell sick, and was admitted in the hospital on 17.9.93 and by his bed side PWs. 1, 4 and the deceased were in the hospital. At about 6.30 a.m. on 18.9.93, PW.1 and the deceased came home to take some coffee to the hospital and near the house of PW 2 when they were proceeding from west to east, the accused came from the opposite direction; A1 to A3 were armed with weapons, on seeing them Gift, the deceased, out of fear, left the cycle and started running by a lane near the house of PW.2. Seeing that A4 orally declared that as he is running, he should not be allowed to run and must be killed. Her brother, i.e. the deceased, thereafter passed the house of PW.2 and at that stage A1 to A3 restrained him; A1 cut him twice on his head and when her brother attempted to thwart by stretching his arms, A2's attack fell on his right hand, this was followed by A3 indiscriminately cutting on the other parts of his body and as they were so cutting, one of the attacks aimed by A2 landed on the left wrist of A1 and the attack aimed by A3 landed on the right hand of A1. She shouted and PW 2 came running; at that time, all the accused made good their escape with the weapons of offences in their hands. She went to the house to get some money to take her brother to the hospital, where she found her house damaged; doors, windows and other things were broken; two of her brother's friends, namely, Aaroon, Singh came there and with their help she took her brother to the Government Hospital Kottar, where he was pronounced dead. PW. 12 examined her and reduced into writing what she stated. She read it and signed in that complaint which is Ex.P. 1. The personal wearing apparels of the deceased, were bloodstained and they were recovered. PW.2 witnessed the occurrence.

PW 10 is the Causality Medical Officer in the Government Headquarters Hospital at Nagercoil before whom at 8.00 a.m. on 18.9.1993, the deceased, was brought for injuries stated to have been sustained by him at the hands of three known persons. On him he found various symptoms, in all, 22 injuries and issued Ex.P.12, accident register. He sent Ex.P.13 intimation to the police and Ex.P.14 is the death intimation. According to him, except injury No.3, all the injuries could have been caused by a weapon like an aruval. At 7.45 am A1 appeared before him for injuries stated to have been sustained by him at 6.30 a.m. at the hands of a known person, by using a cutting knife. He found two injuries and issued Ex.P. 15, accident register. Ex.P. 13 is the intimation sent by him to the police regarding the treatment on A1.

PW. 12 was the head constable who had received information from the Government Head Quarters Hospital as well as the death intimation of the deceased. PW 14 was the investigating officer, PW 9 is the medical officer who conducted the post mortem and noted 22 injuries on the body of the deceased. After completion of the investigation charges were framed. The accused pleaded innocence and false implication. Since the accused persons pleaded innocence, trial was conducted. 15 witnesses were examined to further the prosecution version.

4. Trial court placed reliance on the evidence of PW 1 and found all the four persons guilty. An appeal was preferred by

the appellants taking the view that the evidence of PW 1 was not believable. Appellants took the stand that the deceased was the aggressor who had assaulted A1 causing two injuries. In any event the accused person had acted in exercise of the right of private defence and, therefore, no offence was made out. Reliance was made on the evidence of Exhibit P 20 to contend that the information lodged by A1 was not properly enquired into. The High Court analysed the evidence of PW 1 and held that investigation in respect of Exhibit P20 was conducted properly and the prosecution version did not get affected even if it is held that there was some lapse in conducting investigation on the basis of Exhibit P20. The plea of right of private defence was also described. However, the High Court accepted that evidence was not sufficient to convict A4.

5. Learned counsel for the appellant submitted that the prosecution version is unbelievable. The presence of PW1 is highly doubtful. When the evidence has been discarded in respect of A4, conviction could not have been maintained for the present appellants. In any event right of private defence aspect has not been properly considered by the High Court.

6. Learned counsel for the State supported the order.

7. We shall first deal with the plea relating to right of private defence.

8. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probalises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See: Lakshmi Singh v. State of Bihar (AIR 1976 SC 2263). A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right of private defence comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary

causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

9. Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In *Jai Dev v. State of Punjab* (AIR 1963 SC 612), it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

10. The above position was highlighted in *Rizan and Another vs. State of Chhattisgarh*, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, *Chhattisgarh* (2003 (2) SCC 661), and *Sucha Singh and Anr. v. State of Punjab* (2003 (7) SCC 643).

11. Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence, as claimed by the accused persons, has been rightly discarded.

12. Even if the High Court found the evidence to be not sufficient to convict A4 that does not in any way affect credibility of PW 1's evidence so far as present appellants are concerned. It is to be noted that there was no suggestion to PW 1 that A1 acted in exercise of right of private defence. There is not even any material brought in this regard. Certain questions were put to PW 1 in her cross examination. They are as follows:

\023I do not see directly that the accused had attacked or quarreled with Gift earlier to the occurrence.

The accused did not notice me. When the accused chased by brother I did not shout. I shouted when the accused attacked my brother.

The 1st accused attacked my brother on his head twice. I could not say where the two blows landing on his head. The 2nd accused attacked my brother on his right hand and middle of his head. It is not correct to state that I had not deposed in the enquiry by police. The 3rd accused attacked him on his back, nose, hand and leg. I cannot say how

many blows he had inflicted. The incident had taken place around 15 minutes.

It is not correct to state that when my brother sustained injuries the accused 2,3 and 4 were not present there. It is not correct to state that the incident did not take place near by the lane of Albert Nayagam's house.

My brother died only after taking him to hospital. It is correct to state that the police station is located on the way to hospital.

13. The question put in the cross examination to a great extent probabilise the prosecution version. Though questions put in cross-examination are not always determinative in finding an accused guilty, they are certainly relevant.

14. Looked at from any angle the appeal is without merit and is dismissed.