SUPREME COURT OF INDIA

MURALI

Vs.

STATE OF TAMILNADU

14/11/2000

(U.C.Banerjee, K.G.Balakrishnan)

Appeal (crl.) 1236-1237 1998

JUDGMENT

The accused is in appeal against the conviction and sentence imposed by the High Court in affirmation of the finding of guilt under Section 304 Part-I, IPC and sentencing him to suffer rigorous imprisonment for five years. During the course of hearing learned Advocate appearing for the respondent-State, contended that the appeal should be restricted to the question of sentence only: The learned Advocate appearing for the appellant however, contended that question of treating the appeal in any restricted manner does not and cannot arise by reason of subsequent grant of leave without attaching any condition thereto. The records depict that on 20th March, 1998, this Court directed issuance of notice limited to the question of sentence only. Subsequently, however, after about eight months, the matter was placed in the list for hearing but by reason of the objection this Court was pleased to grant special leave in the matter. The learned Advocate appearing in support of the appeals contended that once the leave has been granted the matter is open for all the issues to be agitated otherwise the Court would have specified in the order itself while granting leave. Reliance however has been placed on the decision of this Court in the case of Harbans Singh v. State of Punjab [Criminal Appeal No.659 of 2000] which inter alia is an authority for the proposition that the Leave, as granted by this Court, is to be treated limited to the question of sentence only and as such the appeals were directed to be heard on the question of sentence only. The case of the prosecution as the record depicts appears that the deceased Vinayagam purchased 2/3rd share in the Well as well as the pump- set belonging to the Pankal (the accused). On the date of occurrence that is on 5th March, 1990 at about 6.15 p.m. the deceased was in his Tea shop, the accused went there and according to the prosecution stabbed on the stomach of the deceased. When PW 1 Gopal intervened, the latter also suffered injuries. The prosecution case further goes on to record that the accused dragged the deceased inside the room in the business place and bolted the door from inside and thereafter assaulted on the head of the deceased with iron pipe and stabbed him indiscriminately with a knife and caused his death. Though, strictly speaking, there cannot be eye-witnesses since the fatal blow was given admittedly inside the bolted room but prosecution examined PWs.1,2 and 3 as eye-witnesses to the occurrence though were present outside the room. The prosecution case however, further depicts that the door was opened after some time by the accused and he came out of the room with a blood-stained knife in his hand and the accused made his escape inspite of resistance. It is only thereafter that the body of the deceased was discovered in the room. The full factual analysis has been dealt with by the trial judge as also the High Court and as such we need not deal with the same in extenso, more so by reason of the fact that the appeals are heard on the question of sentence only. Significantly one aspect of the matter which stands high-lighted by the

learned Advocate appearing for the respondent- State is that circumstantial evidence as a matter of fact clinches the issue since there is existing a categorical statement from PW 2 that the accused opened the door and came out of the room and was holding Vinayagam with left hand and holding the knife in his right hand. It is at that juncture that PW2 Sundaram took two tender coconut which lay there and threw them at the accused, the accused however moved aside and escaped. More or less identical is the deposition of PW3 without any element of contradiction. It is on this piece of evidence that the learned State-Advocate contended that no exception can be taken to the finding and the sentence passed by the Sessions judge or the High Court. As a matter of fact, the Learned Additional Sessions Judge has been quite lenient while dealing with the matter and has changed the conviction from Section 302 IPC to Section 304 Part I, IPC and recorded a punishment of five years rigorous imprisonment. The High Court however having come to the finding that there is available clinching evidence to come to the conclusion that the appellant has committed the offence together with an observation that the Learned Judge has not properly appreciated the evidence, but since the prosecution has chosen not to file any appeal against the order of the Sessions Judge, the matter rested there. The learned Advocate appearing for the accused-appellant, however, very strongly contended that the right of private defence ought not to be taken away from the appellant-accused and both the courts fell into error in not considering the right of defence available to an accused. It has been contended that the injuries on the body of the accused are all serious in nature and hence the accused was entitled to a clear acquittal. In support of his contention four several decisions have been cited and the first in the line is the decision of this Court reported in the case of Dev Narain v. The State of U.P. [1973 (1) SCC 347]. We need not delve in to the details of the decision having regard to the point in issue before the Court. The contextual facts are totally different and the decision does not have any manner of application and as such we do not feel it expedient to dilate on that score any further. The second is a decision of this Court in the case of Wassan Singh v. State of Punjab [1996 (1) SCC 458] wherein this Court in paragraph 10 of the report, upon reliance on two earlier decisions Mohd. Ramzani v. State of Delhi [1980 Supp. SCC 215] and Deo Narain v. State of U.P. [1973 (1) SCC 347] has been pleased to observe that while judging the nature of apprehension which an accused can reasonably entertain in such circumstances requiring him to act on the spur of the moment when he finds himself assaulted, by number of persons, it is difficult to judge the action of the accused from the cool atmosphere of the Court room. It is on this contextual sphere that this Court held that the appellant had a right of private defence of body which extended even to causing the death and in exercise of that right if he fired one gunshot which unfortunately killed an innocent person, it cannot be said that he was guilty of an offence even under Section 304 Part-I, IPC on the ground that he had exceeded his right of private defence. The factual situation here is different, as such no reliance can be placed thereon also. The third in the line is the decision of this Court in Chanan Singh v. State of Punjab [1979 (4) SCC 399] wherein this Court was pleased to observe as follows: In short the High Court has clearly found that the prosecution has not presented the true version of the occurrence and it is not possible for the Court to find how the occurrence originated and who was the aggressor. Admittedly, two persons on the side of the prosecution, namely, Gulzar Singh and Gurnam Singh had suffered one grievous injury each, similarly five persons on the side of the accused were also injured and two of them had grievous injuries. The High Court also found that it was not a case of free fight. In these circumstances, therefore, it is difficult to hold that the appellant fired a shot from his gun merely to assault Gulzar Singh and not in self-defence particularly when the appellant himself had many injuries, one of which was grievous. It is true that the defence case also has not been accepted by the High Court but once there is a probability of the accused having acted in elf-defence, that is sufficient to entitle him to an acquittal. Mr. Singh tried his best to take us through the findings of the Sessions Judge in order to satisfy us that it was a case of a free fight and, therefore, the appellant could be convicted for

individual assault. The High Court, however, has given cogent reasons for disagreeing with the view of the Sessions Judge. Moreover, as many as five accused persons were acquitted on the reasonings given by the High Court and the State did not chose to prefer any appeal against the judgment in this Court. The High Court having rejected the fundamental details of the prosecution version and having held that the true version of the occurrence was not presented by the prosecution, erred in upholding the conviction of the appellant for an individual assault by reconstructing a new case. In these circumstances, we are satisfied that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt. The appeal is accordingly allowed. The conviction and sentence passed on the appellant are set aside and he is acquitted of the charges framed against him.

A perusal of the facts, as appears from the decision makes it clear the circumstances under which the right of private defence is to be made applicable, unfortunately the same is not available on the contextual facts. The accused was found present at the Tea Stall being deceaseds place of business and as such can be termed to be an aggressor and as such question of there being any right of private defence does not arise. The definite evidence in the matter is that the accused opened the door with a blood stained knife. The nature of his injuries are not, however, sufficient by itself to sustain the plea of private defence. As a matter of fact both, learned Sessions Judge and the High Court have negatived such a plea and we do record our concurrence therewith. The injuries on the accused are rather minor in nature since they were restricted to tender defusion and abrasion. There is no wound, much less any serious injury which may even prompt a person to take the most heinous step of committing the murder. Reliance was also placed on the decision in the case of Vijayan alias Vijayakumar v. State (represented by Inspector of Police) [1999 (4) SCC 36] wherein this Court on the facts of the matter in issue and evidence on record was inclined to give judicial imprimatur to the plea of right of private defence advanced by the appellant and held him not guilty and granted pardon. Right of private defence undoubtedly, a defence available to an accused but the Court while dealing with the defence, ought to act with proper circumspection and caution, since the same is an exception rather than a rule. At the cost of repetition, we do feel it inclined to state that none of the decisions noticed above do not in any way render any assistance to the learned Advocate appearing in support of the appeals. On the wake of the aforesaid, we do not find any merit in these appeals. The appeals, therefore, fail and are dismissed.