SUPREME COURT OF INDIA

Moti Singh

Vs.

State of Maharashtra

(K Thomas and S Phukan JJ.)

24.01.2002

JUDGMENT

K.T. Thomas, J.

1. In a situation which pitched upto the brim of a communal riot, one person died of a stab injury on the chest. It appears that he was the only person who sustained fatal injury in the occurrence, and the situation did not fortunately escalate into a carnage. Eight persons were charge-sheeted by the police in regard to the murder of one Abdul Sattar which happened at about 11.00 p.m. on 19.8.1986 in front of the house of the accused. The trial court acquitted seven of them but convicted appellant-Moti Singh alone for the offence under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life. A division bench of the High Court of Bombay (Aurangabad bench) confirmed the conviction and sentence and dismissed the appeal filed by the appellant. He, therefore, filed this appeal by special leave.

2. Accused nos. 1 to 5 are siblings and the other accused are closely associated with them. About one and a half hour prior to the occurrence in this case, a minor incident took place in which appellant and his brother Ram Singh has assaulted one Jowharkhan (PW3) in the vicinity of the statue of Dr. Babasaheb Ambedkar situated at Beed (Maharashtra)., Jowharkhan (PW3) had reported this matter to the other members of his community. A number of them belonging to that community assembled together and proceeded to the house of the appellant at about 11.00 p.m. on the same night. According to the prosecution version they proceeded to the house of the accused for talking out the matter. But all the accused rushed out of the house and launched an attack on the deceased. Four of the accused caught hold of the deceased and appellant inflicted one stab injury with a knife on his chest which eventually turned out to be fatal.

3. Prosecution examined PW1 - Dost Mohammad, PW3 - Jowharkhan. PW4-Ayubkhan (cousin of the deceased), PW5 -Abdul Sami and PW6 - Altaf Khan as witnesses to the occurrence. They have spoken to the prosecution version. The trial court and the High Court accepted their testimony and found the appellant guilty of the offence under Section 302 Indian Pe- nal Code.

4. Though the appellant did not adopt the right of private defence as a plea in the statement recorded under Section 313 of the Criminal Procedure Code, his co-accused (fifth accused - Jai Singh) put forward a case that the prosecution witnesses and the deceased marched towards their house in retaliation for the earlier incident and launched an attack on the inmates including him.

5. The doctor who examined the person of A5 - Jai Singh found the following injuries:

1. One contused lacerated wound on the scalp occipital region of the size 1/2" x 1/4" x 1/4".

2. One abrasion on left pinna of the size 1/4" x 1/4" x 1/4".

3. One abrasion on the lower lip of the size 1/4" x 1/4" I 1/4".

6. In spite of the above fact situation, High Court was not inclined to concede right of private defence to the appellant mainly on two premises. One is that the appellant did not put-forth such a plea at all. The second is that the injuries noted by the doctor on the fifth accused - Jai Singh are minor wounds.

7. Neither of the said premises could be approved on the fact situation. The admitted case of the prosecution is that after the occurrence, witnesses and the deceased together went towards the house of the accused during the untimely hour, on being told that one of them was attacked by the appellant and his brother a little earlier. The injuries sustained by Jai Singh give a clear indication that the prosecution party was armed with blunt objects. They have no case that the injuries found on A5 - Jai Singh were inflicted only subsequent to the injuries which deceased sustained. In all probabilities A5 - Jai Singh would have sustained the injuries prior to the deceased, received the fatal injury.

8. Can the appellant legitimately claim right of private defence in the above situation? The answer in our opinion is in the affirmative. Though the dimension of the injuries on A5 (Jai Singh) cannot be regarded as very serious, the situs of them indicates that he was then in a dangerous situation. The depth of the lacerated wound on the occipital region, injury on his lower lip and the one on his left pinna could possibly account for three different strikes inflicted on him with blunt objects. If such an attack was made on him by a crowd just in front of his house, the accused could reasonably entertain the apprehension that at least grievous hurt would be caused to them by the assaulters unless the aggression is thwarted.

9. Section 102 of the Indian Penal Code says 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 even a threat to commit any offence though the offence may not have been committed and the right continues as long as such apprehension of danger to the body continues. Section 100 of the Indian Penal Code confers the right of private defence of the body upto the voluntary causing of death or of any other harm to the assailant, if the offence

which occasions the exercise of the right, be of any of the acts as may reasonably cause the apprehension that grievous hurt be the consequence of such assault.

10. Regarding the contention that the appellant is disentitled to get the benefit of right of private defence as he failed to make out a plea in that regard we may point out that it would be quite unjust to deny such a right to the accused merely on the ground that he adopted a different line of defence. If the evidence adduced by the prosecution would indicate that the accused were put under a situation where they could reasonably have apprehended grievous hurt even to one of them, it would be inequitable to deny the right of private defence to the accused merely on the ground that he has adopted a different plea during the trial. The crucial factor is not what the accused pleaded, but whether the accused had the cause to reasonably apprehend such danger. A different plea adopted by the accused would not foreclose the judicial consideration on the existence of such a situation.

11. This Court has stated the above legal position time and again. A three judge bench of this Court in State of U.P. v. Lakhmi has stated thus:

> "The law is that burden of proving such an exception is on the accused. But the mere fact that the accused adopted another alternative defence during his examination under Section 313 of the Code without referring to exception I of Section 300 of IPC is not enough to deny him of (he benefit of the exception, if the court can cull out materials from evidence pointing to the existence of circumstances leading to that exception. It is not the law that failure to set up such a defence, would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability".

12. A two judge bench of this Court in Periasami and Anr. v. State of Tamil Nadu has stated thus:

> "We may point out that the appellants have not stated, when examined under Section 313 of the Code, that they have acted in exercise of such right. Of course, absence of such a specific plea in the statement is not enough to denude them of the right if the same can be made out otherwise."

13. Mr. S.S. Shinde, learned counsel for the respondent - State of Maharashtra invited our attention to the decision of a two judge bench of this Court in Suresh Singh and Others v. State of Haryana for supporting a contention that even if the accused had any initial right of private defence, he had exceeded the said right in view of the disparity in the seriousness of the injuries sustained by the accused vis-a-vis those sustained by the deceased. The said decision is on the facts of that particular case, and it cannot have any applicability in this case. Neither the injuries sustained by the accused nor even the absence of the injuries sustained by the accused would be, in certain situation, be sufficient enough to deny the right of private defence or the extent of that right to the accused.

14. In our considered opinion, the appellant, even if the prosecution version that it was he who inflicted the fatal stab on the deceased is to be accepted as correct, it ended in the exercise of right of private defence. As the reasonable apprehension that the grievous hurt would have been inflicted to one of the accused cannot be ruled out on the broad probabilities, delineated by the prosecution to the evidence, we are disposed to extend the said right to this appellant. Resultantly the conviction and sentence passed on him cannot be sustained.

15. In the result, we allow this appeal and set aside the conviction and sentence passed on him by the trial court and affirmed by the High Court. We acquit him. We direct that the appellant be released from jail forthwith unless he is required in any other case.