

# SUPREME COURT OF INDIA

Akhil Ali Jehangir Ali Sayyed

Vs.

State of Maharashtra

(K Thomas and S Phukan JJ.)

24.01.2002

## JUDGMENT

### **K.T.Thomas, J.**

1. In this appeal, we passed an order even when special leave was granted that the consideration would be limited to the nature of offence. Appellant was the first accused. He was arraigned along with one Jabbar as second accused and another person as the third accused in a murder case. The trial court convicted all the three accused of the offence under Section 302 read with Section 34 for the murder of one Moulana Mohammed Yusuf Sheikh. The High Court acquitted the third accused but confirmed the conviction and sentence passed on the first and the second accused. We are told that the second accused preferred a special leave petition No. (2828 of 1999) before this Court and the same was dismissed. Subsequently, he filed a review petition which was also dismissed.

2. This appeal by the first accused has to be considered only on the limited question as to the nature of offence. For that purpose, we are proposing to extract the dying declaration relied on by the trial court and the High Court. The relevant portion of the dying declaration is extracted below:

"Today i.e. on 12.6 1992. I was standing in the verandah leaning against the wall of the gallery. At about 1 O'clock, one person by name Akhil who stays on the second floor of my building along with nephew Jabbar, came up climbing the staircase. I asked him as to why four days prior he had got me arrested in a false case.

Upon that he replied that he had merely got me arrested but now he would finish me By saying this, Akhil attacked on my chest and abdomen with the sharp weapon in his hand. At that time Jabbar also attacked on my left hand with a sharp weapon When I tried to resist, Chand caught hold of my hands. On account of this incident I started shouting at that time my wife came out of the room and when she intervened, Akhil attacked on her head with a sharp weapon."

3. One thing is apparently clear from the above dying declaration. The fatal blow was inflicted by the appellant followed by the one given by the second accused when the

deceased confronted him with a query "why four days ago you got me arrested in a false case" From the said query, it is easy to discern that the assailants would have found the deceased in a pugnacious mood. It is quite reasonable to presume that the assailants would have apprehended that the deceased put the said query in retaliation for the false arrest manipulated by the accused. The said apprehension seems to be justified when we looked at the medical evidence which shows that the deceased was smelling alcohol when he was taken before the doctor after sustaining the injuries. If so, the assailants also would have smelt alcohol when the deceased hurled the query quoted above.

4. Ms. Neeru Vaid, learned counsel for the appellant then contended that the appellant had injuries on his person and that would show that he had not exceeded the right of private defence. We are not disposed to countenance the said contention on the basis of seemingly minor injuries noted on the person of the appellant.

5. Nonetheless, we are inclined to bring down the offence from Section 302 to Section 304, part I of the IPC. We do so. We are told that appellant has been in jail for nearly ten years by now. Hence, we sentence him to rigorous imprisonment for ten years for the offence under Section 304, part I of the IPC.

6. The above is not enough to dispose of this matter. As the second accused Jabbar was placed on the same situation as the appellant in this case (if not lesser), Article 21 of the Constitution would not permit us to deny the same benefit to the second accused, notwithstanding the fact that the SLP and the review application filed by him have been dismissed by this Court. We are supported on this aspect by a course adopted by a three judge bench headed by chief justice Chandrachud in Harbans Singh v. State of U.P. In that case also, the co-accused were sentenced and the sentence had been confirmed by this Court earlier. But when a benefit was granted in another appeal to one of the other co-accused, the three judge bench held that the same benefit shall be extended to the earlier co-accused also albeit the dismissal of their appeals on an antecedent date.

7. The following passage from the said decision can be profitably extracted below:

"In the circumstances hereinabove stated, I am of the opinion that it will be manifestly unjust to allow the death sentence imposed on the petitioner to be executed. The question that, however, troubles me is whether this Court retains any power and jurisdiction to entertain and pass any appropriate orders on the question of sentence imposed on the petitioner in view of the fact that not only his special leave petition and review petition have been dismissed by this Court but also the further fact that his petition for clemency has also been rejected by the president-Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for

furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere."

8. After bestowing our anxious consideration on the fact situation in this case and also the spirit of Article 21 of the Constitution, we hereby order that the conviction passed on the second accused Jabbar shall also stand altered to Section 304, part I and a sentence of rigorous imprisonment for ten years be awarded to him. This is done on a parity of reasoning and justice, otherwise glaring injustice would result as for him in a case where his role was by no means more serious than that of the present appellant who was A1 in the case.

9. This appeal is disposed of accordingly.