SUPREME COURT OF INDIA

Rizan and another

Versus

State of Chhatisgarh, through the Chief Secretary, Govt. of Chhatisgarh, Raipur

21.1.2003

(Shivaraj V. Patil and Arijit Pasayat, JJ.)

Crl. Appeal No. 82 of 2003 (arising out of SLP (Crl.) No. 3214 of 2001).

JUDGMENT

Arijit Pasayat, J. - Leave granted.

2. Appellants call in question legality of impugned judgment rendered by the Madhya Pradesh High Court at Jabalpur, whereby it upheld the conviction and sentence awarded by the Additional Sessions Judge, Jashpurnagar.

3. Prosecution version which led to the trial of the appellants (hereinafter referred to as 'the accused' by their respective names) is as follows :

On 29-11-86 information was lodged by Jhanguram (PW-2) that six persons had assaulted him with intention to take his life, and had also caused injuries to his wife Pandri Bai (P.W.4) and his daughter-in-law Tilobai (P.W.5). On the basis of such information, the case was registered and investigation was undertaken. On completion of investigation charge was framed for commission of offences punishable under Sections 147, 148, 307 read with Section 34 and Section 323 of the Indian Penal Code, 1860 (in short 'IPC'). It was alleged that accused Khodhibai (since acquitted) and Pandri Bai (P.W.4) are sisters. There was a bad blood between them over certain properties and civil litigation was going on. The six accused persons were cutting the crops raised by Jhanguram (P.W.2) on the date of the occurrence. When he asked them not to do so, the accused persons did not pay any heed. Suddenly accused-appellant Rizan snatched the axe which Jhanguram (P.W.2) was holding and assaulted him with the said weapon and caused several injuries on different parts of his body e.g. lips, hands and feet. More particularly, accused-appellant, Duda hit Jhanguram and Pandri Bai with a stick. Other accused persons also hit him with their hands and feet. Some persons standing nearby came to their rescue. The injured P.Ws. 2, 4 and 5 were examined by the Doctor (P.W. 1). During investigation the weapon of assault i.e. axe was seized from the accused-appellant, Rizan and some other weapons from the other persons. Six witnesses were examined to further the prosecution version. Accused persons pleaded innocence and false implication. On consideration of the evidence on record, the trial Court held that the prosecution has not been able to bring home the accusations against accused-Paras, Vinod, Khodibai and Jaymala.

4. Accused-appellant Rizan was found guilty for the offences punishable under Section 326, IPC for inflicting injuries on Jhanguram (P.W.2) and under Section 323, IPC for the injuries inflicted on

Pandri Bai (P.W.4). Accused Duda was found guilty for the offences punishable under Section 323, IPC for inflicting injuries on aforesaid two witnesses. However, both the accused-appellants Rizan and Duda were acquitted of the offences relatable to Sections 147 and 148, IPC. It was also held that the offence committed by the accused persons is not covered by Section 307, IPC. After hearing the accused persons on the question of sentence, accused-appellant, Rizan was sentenced to undergo RI for two years and two months respectively for the offence punishable under Sections 326 and 323, IPC. Both the sentences were directed to run concurrently. Accused Duda was sentenced to undergo RI for two months. In appeal by the impugned judgment, the High Court dismissed the appeal maintaining the convictions and the sentences.

5. In support of the appeal, learned counsel for the accused-appellants submitted that this is a case where the conviction is not maintainable as the injuries were inflicted by the accused-appellants while exercising their right of private defence. Further on the same set of evidence four persons have been acquitted and, therefore, so far as the appellants are concerned, conviction does not stand to reason. It is also submitted that the witnesses who claim to have seen the occurrence are witnesses who were in inimical terms with the accused-appellants. Residually, it is submitted that the sentences as imposed are high and considering the fact that the occurrence took place five years back, the sentences should be reduced to what has already been undergone which is stated to be about three months. It is pointed out that accused-appellant, Duda has already suffered the sentence awarded. Learned Counsel for the prosecution on the other hand submitted that the evidence clearly rules out application of the right of private defence. Merely because the evidence of some of the witnesses has not been accepted to be fully reliable in view of the clear and categorical findings recorded that the evidence is cogent and credible so far as the appellants are concerned, the conviction does not suffer from any infirmity.

6. We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such case, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In ***Dalip Singh and others v. The State of Punjab (AIR 1953 SC 364)*** it has been laid down as under :

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is personal cause for enmity that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in ***Guli Chand and others v. State of Rajasthan (1974(3) SCC 698)*** in which ***Vadivalu Thevar v. State of Madras (AIR 1967 SC 614)*** was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed :

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one, which another Bench of this Court endeavoured to dispel in ***Rameshwar v. State of Rajasthan (AIR 1952 SC 54*** at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

10. Again in ***Masalti and others v. State of U.P. (AIR 1965 SC 202)*** this Court observed (pp. 209-210, Para 14) :

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses . .....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

11. To the same effect is the decision in ***State of Punjab v. Jagir Singh (AIR 1973 SC 2407)*** and ***Lehna v. State of Haryana (2002(3) SCC 76).***

12. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See ***Nisar Ali v. The State of Uttar Pradesh (AIR 1957 SC 366)***). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See ***Gurucharan Singh and another v. State of Punjab (AIR 1956 SC 460)***). The doctrine is a dangerous one specially in India for if a whole body of the

testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted (sifted ?) with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See ***Sohrab s/o Beli Navata and another v. The State of Madhya Pradesh (1972(3) SCC 751)*** and ***Ugar Ahir and others v. The State of Bihar (AIR 1965 SC 277)***). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made the only available course to be made is to discard the evidence in toto. (See ***Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15)*** and ***Balaka Singh and others v. The State of Punjab (AIR 1975 SC 1962)***). As observed by this Court in ***State of Rajasthan v. Smt Kalki and another (AIR 1981 SC 1390)***, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory, due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however, honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in ***Krishna Mochi and others v. State of Bihar etc. 2002(2) RCR(Criminal) 567 (SC) : (2002(4) JT (SC) 186)*** and ***Gangadhar Behera and others v. State of Orissa (2002(7) SC 276).*** Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

13. Then comes plea relating to alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872, the burden of proof is on the accused, who sets of the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a

case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See ***Munshi Ram and others v. Delhi Administration, AIR 1968 SC 702; State of Gujarat v. Bai Fatima, AIR 1975 SC 1478; State of U.P. v. Mohd. Musheer Khan, AIR 1977 SC 2226*** and ***Mohinder Pal Jolly v. State of Punjab, AIR 1979 SC 577***). Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in ***Salim Zia v. State of U.P. (AIR 1979 SC 391)*** runs as follows :

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

14. 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 probablises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurence 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)***]. In this case, as the Courts below found there was not even a single injury on the accused persons, while PW-2 sustained large number of injuries and was hospitalized for more than a month. 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 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 the 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.

15. 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, or commit the offence, although the offence may not have been committed but not until that 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 ass 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.

16. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Thus, running to house, fetching a tabli and assaulting the deceased are by no means a matter of course. These acts bear stamp of a design to kill and take the case out of the purview of private defence. Similar view was expressed by this Court in ***Biran Singh v. State of Bihar, AIR 1975 SC 87*** and recently in ***Sekar alias Raja Sekharan v. State represented by Inspector of Police, Tamil Nadu, 2002(4) RCR(Criminal) 477 (SC) : (2002(7) Supreme 124).***

17. Sentences imposed do not in any way appear to be harsh. Merely because the occurrence took place sometime back, same cannot be a factor to reduce the sentences. The appeal is without merit and is dismissed.

Appeal dismissed.