SUPREME COURT OF INDIA

Shriram

Vs.

State of Madhya Pradesh

(Doraiswamy Raju and Arijit Pasayat JJ.)

24.11.2003

JUDGMENT

ARIJIT PASAYAT, J

The appellant along with seven others faced trial for alleged commission of offence punishable under Sections 147, 302 and 323 of the Indian Penal Code, 1860 (for short the 'IPC'). The appellant was found guilty of offence punishable under Sections 147 and 302 IPC. Other seven persons were found guilty for offences punishable under Sections 147, 302 read with 149 IPC. Accused Mangilal, Durilal, Bhagatram and Ganpat were also found guilty of offence punishable under Section 323. All were also found guilty of offence punishable under Sections 147 and 302 read with Section 149 IPC. The appellant was sentenced to undergo imprisonment for life with several other custodial sentences. In appeal, one Ganpat whose name did not appear in the first information report was acquitted. All other except appellant-Shriram were convicted under Sections 304 Part II IPC and 323 read with 149 IPC and others were convicted under Section 323 read and 149 IPC but were acquitted of the offence punishable under Section 302 read with Section 149 IPC.

Custodial sentence of five years was imposed on the appellant-Shriram with fine of Rs.5000/- with default stipulation. Because of passage of time already spent in custody instead of custodial sentence, fine was imposed on each one of the other accused. During pendency of appeal before the High Court one Chainram died and the appeal so far he is concerned stood abated.

In a nutshell the prosecution case as unfolded during trial is as follows:

On 4.9.1987 at about 8.00 p.m. informant Laxmansingh, Piyarsingh, Mansingh, Ghansi, Ratan, Machan Singh, Madan and Lalu had gone to the house of Hemraj Mina (hereinafter referred to as 'deceased') for participation in a Bhajan on the festival of Dol-Gyaras. After participating in the Bhajan programme all of them were returning to their village. While returning as such, they were required to go through a road which passes nearby the house of accused-appellant Shriram Jat. The moment they reached in front of his house, all the accused persons and their associates including some women assaulted and caused injuries to complainant party by lathi and stones. One Ratan escaped and went to Sarpanch Dulasingh and came along with him in a jeep. Laxmansingh, Piyarsingh, Ghansi, Mansingh Narain and Hemraj sustained injuries. Deceased Hemraj was seriously injured.

Information was lodged at the police station and injured witnesses were examined. The accused persons also claimed to have sustained injuries and were also examined. According to accused persons, the prosecution witnesses who claimed to have been injured were aggressor since without any reason they started assaults and they pelted stones to protect themselves. Alternatively, it was pleaded that since fight took place and specific roles were not attributed to any particular accused, they were entitled to the benefit of doubt. The trial Court after considering material on record convicted the accused persons as noted above. Appeal was preferred by the accused persons before the Madhya Pradesh High Court.

The High Court after consideration of the submissions made came to hold that the accused persons were the aggressors and merely because they claimed to have sustained injuries which were simple in nature, this was not a case of free fight and they were rightly held guilty by the trial Court. However, considering the nature of the evidence brought on record it was held that case under Section 302 IPC was not made out and the same was altered to Section 304. The judgment is under challenge in the present appeal.

Learned counsel for the appellant submitted that the witnesses PWs 2, 8, 9 and 11 were interested witnesses and related to the deceased and, therefore, their evidence was partisan. Non-examination of independent witnesses renders prosecution version unacceptable.

Moreover, the injuries on the accused persons were not explained and, therefore, adverse inference should have been drawn.

In response, learned counsel for the State submitted that the evidence of eyewitnesses have been carefully analysed by the trial Court and the High Court. As the defence took the plea of their relationship, after carefully analyzing the evidence it has been found cogent and credible and, therefore, the trial Court and the High Court were justified in accepting the prosecution version. Further, merely because the accused persons have sustained minor injuries as is evident from doctor's evidence, that does not in any manner affect the prosecution version. It was also submitted that the High Court has considered the evidence and come to the right conclusion that the appellant was the main architect of the crime and has been rightly convicted and sentenced.

So far as relationship of eyewitnesses, that they being interested and/or the so-called familiarity with the deceased it does not render per se their evidence suspect. All that is required to be done in such case is to carefully analyse the evidence and if after deeper scrutiny it is found acceptable to act on it. The trial Court and the High Court have done it. Nothing infirm would be pointed out as to how the evidence suffers from any unreality or infirmity in law.

We shall next deal with the aspect relating to injuries on accused and the question of right of private defence. 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 found were suffered in the same occurrence and that such injuries on the accused probabilise 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 credit- worthy, 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 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.

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 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.

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. Similar view was expressed by this Court in Biran Singh v. State of Bihar (AIR 1975 SC 87). (See: Wassan Singh v. State of Punjab (1996) 1 SCC 458, Sekar alias Raja Sekharan v. State represented by Inspector of Police, T.N. (2002 (8) SCC 354).

As noted in Butta Singh v. The State of Punjab (AIR 1991 SC 1316), a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use only so much force in retaliation commensurate with the danger apprehended to him. Where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private- defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially a finding of fact.

One of the pleas is that the prosecution has not explained the injuries on the accused. Issue is if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In Mohar Rai and Bharath Rai v. The State of Bihar (1968 (3) SCR 525), it was observed:

"...In our judgment, the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants." In another important case Lakshmi Singh and Ors. v. State of Bihar (1976 (4) SCC 394), after referring to the ratio laid down in Mohar Rai's case (supra), this Court observed:

"Where the prosecution fails to explain the injuries on the accused, two results follow:

(1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants." It was further observed that:

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one." In Mohar Rai's case (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh's case (supra) it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non- explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijayee Singh and Ors. v. State of U.P. (AIR 1990 SC 1459).

Non-explanation of injuries by the prosecution will not affect prosecution case where 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 outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in Ramlagan Singh v. State of Bihar (AIR 1972 SC 2593) prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare krishna Singh and Ors. v. State of Bihar (AIR 1988 SC 863), it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case.

In view of the legal position highlighted above, there is no substance in the plea relating to non-explanation of injuries on the accused persons. The High Court has rightly convicted the appellant under Section 304 Part II IPC and sentence of 5 years imprisonment cannot, by any stretch of imagination, be termed to be harsh. The appeal fails and is dismissed.