

SUPREME COURT OF INDIA

Jesu Asir Singh

Vs.

State Through Inspector of Police

Crl.A.No.1090 of 2007

(Dr. Arijit Pasayat and D.K. Jain JJ.)

20.08.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Appellants call in question legality of the judgment rendered by a Division Bench of the Madras High Court upholding the conviction of the appellants while directing acquittal of the co-accused. Appellants and the co-accused for the sake of convenience are described as A1, A2, A3 and A4.

The appellants are A1, A2 and A3 and have been convicted for offence punishable under Section 302 and 341 of the Indian Penal Code, 1860 (in short the IPC). A4 was charged for offence punishable under Section 302 read with Sections 109 and 341 IPC. Each of the appellants was sentenced to undergo imprisonment for life and one month respectively for the aforesaid two offences.

3. Prosecution version as unfolded during trial is as follows:

The occurrence is shown to have taken place at about 06.30 a.m. on 18.09.1993, by A1 to A4 who wrongfully restraining Gift (hereinafter referred to as deceased) and in course of the same transaction at the instigation of A4, A1 to A3 attacked him fatally, resulting in his death. To prove their case the prosecution examined PWs.1 to 15 besides marking Exs.P1 to P.30 and M.Os 1 to 10. A4 is mother of A1 to A3. PW- 1 is the informant. PW 4 is the mother of PW.1. PW.4 and A4 are sisters. PW.5 is the wife of A1. PW5s sister is Jenitha, who was the wife of deceased. There was prior enmity between the two families and they were not in talking terms. This was because Jenitha, wife of the deceased started living with A1 by deserting her husband.

The deceased married Jenitha about 1= years prior to the occurrence and a female child was born to them. The two families were not in talking terms a month prior to the occurrence. Thereafter, the deceased and his child were living only with PW.1. On 10.9.1993 deceased went to the house of A1 and asked his wife to come back with him and there a quarrel arose. At about 5.00 p.m. on that day, all the four accused came to the house of PW-1 and asked her the whereabouts of the deceased and also told her that in their absence the deceased had called his wife and, therefore, he must mend his ways; saying so, they damaged the tube lights, cots and other house-hold articles; out of grace no complaint was given. Raja is her son and as he fell sick, and was admitted in the hospital on 17.9.93

and by his bed side PWs.

1, 4 and the deceased were in the hospital. At about 6.30 a.m.

on 18.9.93, PW.1 and the deceased came home to take some coffee to the hospital and near the house of PW 2 when they were proceeding from west to east, the accused came from the opposite direction; A1 to A3 were armed with weapons, on seeing them Gift, the deceased, out of fear, left the cycle and started running by a lane near the house of PW.2. Seeing that A4 orally declared that as he is running, he should not be allowed to run and must be killed. Her brother, i.e. the deceased, thereafter passed the house of PW.2 and at that stage A1 to A3 restrained him; A1 cut him twice on his head and when her brother attempted to thwart by stretching his arms, A2s attack fell on his right hand, this was followed by A3 indiscriminately cutting on the other parts of his body and as they were so cutting, one of the attacks aimed by A2 landed on the left wrist of A1 and the attack aimed by A3 landed on the right hand of A1. She shouted and PW 2 came running; at that time, all the accused made good their escape with the weapons of offences in their hands. She went to the house to get some money to take her brother to the hospital, where she found her house damaged; doors, windows and other things were broken; two of her brothers friends, namely, Aaroon, Singh came there and with their help she took her brother to the Government Hospital Kottar, where he was pronounced dead. PW. 12 examined her and reduced into writing what she stated. She read it and signed in that complaint which is Ex.P.

1. The personal wearing apparels of the deceased, were bloodstained and they were recovered. PW.2 witnessed the occurrence.

PW 10 is the Causality Medical Officer in the Government Headquarters Hospital at Nagercoil before whom at 8.00 a.m. on 18.9.1993, the deceased, was brought for injuries stated to have been sustained by him at the hands of three known persons. On him he found various symptoms, in all, 22 injuries and issued Ex.P.12, accident register. He sent Ex.P.13 intimation to the police and Ex.P.14 is the death intimation. According to him, except injury No.3, all the injuries could have been caused by a weapon like an aruval.

At 7.45 am A1 appeared before him for injuries stated to have been sustained by him at 6.30 a.m. at the hands of a known person, by using a cutting knife. He found two injuries and issued Ex.P. 15, accident register. Ex.P. 13 is the intimation sent by him to the police regarding the treatment on A1.

PW. 12 was the head constable who had received information from the Government Head Quarters Hospital as well as the death intimation of the deceased. PW 14 was the investigating officer, PW 9 is the medical officer who conducted the post mortem and noted 22 injuries on the body of the deceased. After completion of the investigation charges were framed. The accused pleaded innocence and false implication.

Since the accused persons pleaded innocence, trial was conducted. 15 witnesses were examined to further the prosecution version.

4. Trial court placed reliance on the evidence of PW 1 and found all the four persons guilty. An appeal was preferred by the appellants taking the view that the evidence of PW 1 was not believable. Appellants took the stand that the deceased was the aggressor who had assaulted A1 causing two injuries.

In any event the accused person had acted in exercise of the right of private defence and, therefore,

no offence was made out. Reliance was made on the evidence of Exhibit P 20 to contend that the information lodged by A1 was not properly enquired into. The High Court analysed the evidence of PW 1 and held that investigation in respect of Exhibit P20 was conducted properly and the prosecution version did not get affected even if it is held that there was some lapse in conducting investigation on the basis of Exhibit P20. The plea of right of private defence was also described. However, the High Court accepted that evidence was not sufficient to convict A4.

5. Learned counsel for the appellant submitted that the prosecution version is unbelievable. The presence of PW1 is highly doubtful. When the evidence has been discarded in respect of A4, conviction could not have been maintained for the present appellants. In any event right of private defence aspect has not been properly considered by the High Court.

6. Learned counsel for the State supported the order.

7. We shall first deal with the plea relating to right of private defence.