SURPEME COURT OF INDIA

Radhe

Vs.

State of Chhattisgarh

Crl.A.No.999 of 2008

(P.Sathasivam and D.A.Pasayat JJ.)

07.07.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Chhattisgarh High Court dismissing the appeal filed by the appellant (hereinafter referred to as the `accused').

3. Challenge before the High Court was to the judgment of the learned Additional Sessions Judge, Manendragarh. The trial Court had found the appellant guilty of offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') but found the co-accused, namely, Kashi and Dev Kumar to be not guilty. The appellant was sentenced to undergo RI for life and fine with default stipulation.

4. Prosecution version as unfolded during trial is as follows: On 10.11.1997 Gyan Singh (hereinafter referred to as the `deceased') went to Ramkhilawan's house for collecting kanda (eatable bulb). When he did not come back till evening, his father Heeralal went in search of the deceased to the house of Ramkhilawan in the evening at around 7.00 p.m. Heeralal along with Ramkhilawan and his son Gyan Singh were returning to his house. On the way, when they reached near the house of Kashi, Kashi started scolding Ramkhilawan, who was refrained from doing so. Therefore, a quarrel erupted. Appellant who was carrying pharsa and Kashi a lathi started beating. Appellant gave a pharsa blow on the leg of the deceased. The leg was cut and turned into two pieces. Gyan Singh fell down, thereafter Radhe chopped his other leg and assaulted Gyan Singh with pharsa on his thigh and other parts of the body. Heeralal came to rescue him. Dev Kumar assaulted him with a lathi on his head and also gave a blow on his left shoulder. Heeralal fell down. When Ramkhilawan intervened, he was assaulted by Dev Kumar. In the meantime, Beerbali, who is son of Ramkhilawan came there. He was also beaten by Radhe with pharsa. Kashi assaulted Ramkhilawan with a club. Gyan Singh instantaneously died at the spot and others were injured. Accused appellant and his associates Kashi and Dev Kumar fled away from the place of occurrence. Heeralal gave

intimation and lodged First Information Report. Both the documents were recorded by Arjun Ram, Assistant Sub Inspector, Head Constable Jagsai conducted inquest, prepared report and forwarded the dead body of Gyan Singh for autopsy to Community Health Centre, Manendragarh. He collected blood stained and plain earth from the spot. Dr. S.K. Chainpuria conducted autopsy. On examination, he found nine injuries on the body of deceased and according to his opinion, the cause of death was syncope due to shock and external hemorrhage caused by multiple injuries. All the injuries found on the body of Gyan Singh were caused by hard and/or sharp objects except one which was found to be abrasion and present below left knee. Death was homicidal in nature. He prepared autopsy report and describing all the injuries found on the body of the deceased forwarded the report to the concerned police station. Injured Beerbali, Ramkhilawan and Heeralal were also sent for medical examination. On medical examination, it was found that they have sustained various injuries. On the memorandum statement of accused Kashi one club and one pharsa were recovered from the appellant and seized. From Dev kumar one club was seized. After post mortem examination, the clothes found on the body of the deceased were also collected. The statements of witnesses were recorded. The seized pharsa, clothes and earth were sent for chemical examination and on examination stained earth, pharsa and clothes of Gyan Singh were found to be stained with blood.

> "After completion of investigation, the charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Manendragarh, who committed the case to the Court of Sessions for trial. Charges were framed against the appellant and co-accused. The accused-appellant pleaded innocence and false implication."

5. Before the High Court the main stand was that the assault, if any done by the appellant was in exercise of right of private defence and, therefore, conviction was not called for. The learned counsel for the respondent on the other hand supported the judgment of the trial Court. The High Court did not accept appellant's plea and dismissed the appeal. Stands taken before the High Court were reiterated in this appeal.

6. 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 IPC 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 IPC 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.

7. 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*[1], 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.

8. The above position was highlighted in *Rizan and Another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhatttisgarh*[2], *and Sucha Singh and Anr. v. State of Punjab*[3].

9. Merely because there was a quarrel and accused persons claimed to have sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused has been rightly discarded.

10. The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300.

11. In *Virsa Singh v. State of Punjab*[4] Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

12. The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows:

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

13. The learned Judge explained the third ingredient in the following words (at page 468):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

14. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to be inflicted.

15. Thus, according to the rule laid down in Virsa Singh case (supra) even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

16. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

17. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages.

18. The position was illuminatingly highlighted by this Court in *State of A.P. v. Rayavarapu Punnayya*[5], *Abdul Waheed Khan alias Waheed and Ors. v. State of A.P.*[6] *and Raj Pal and Ors. v. State of Haryana*[7].

19. It is to be noted that Heeralal has stated that the appellant had assaulted both legs, thigh and hands of the deceased with pharsa. He chopped both the legs of the deceased who died instantaneously. Beerbali's (P.W.5) evidence was also to similar effect.

20. It is nobody's case that the appellant had assaulted any of the accused or that he had participated in the quarrel.

21. Learned counsel for the appellant submitted that since he was present at the place of occurrence, it is but natural on the part of the accused appellant to assume that he may have assaulted him. Mere presence of a person at the place of quarrel is not sufficient to show that he had any intention to cause any injury. In the instant case, even that intention is not manifest and in any event, any intention to do an act cannot be counteracted by actual assault. Even deceased was not armed.

22. In the instant case, in a brutal manner the appellant had chopped both legs of the deceased and with the weapon caused other injuries on the body of the deceased. Above being the position, there is no scope for interference in this appeal. The appeal is dismissed.

[1](AIR 1963 SC 612) *[2](2003 (2) SCC 661)* *[3](2003 (7) SCC 643)* *[4](AIR 1958 SC 465)*
[5](1976 (4) SCC 382) *[6](2002 (7) SCC 175)* *[7](2006 (8) SCC 678)*