

SUPREME COURT OF INDIA

Madan

Vs.

State of M.P.

CrI.A.No.....of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

11.07.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of Madhya Pradesh High Court, Indore Bench upholding the conviction of the appellants for offence punishable under Section 302 read with Section 149 and Section 323 read with Section 149 of the *Indian Penal Code, 1860* (in short the `IPC'). Each of the appellants was sentenced to undergo RI for life and to pay a fine of Rs.1,000/- with default stipulation.
3. The prosecution case as unfolded during trial is as follows:

“In the intervening night of 3rd and 4th July, 1991 at about 12.00 in village Khandakhedi Kishanlal (hereinafter referred to as the deceased), his wife Sampatbai and daughter Premlatabai were sleeping inside their house. At that moment appellants and deceased accused Jalu @ Jalamsingh and juvenile accused Jeevan reached at their house. They broke open the wooden door, while abusing the inmates and reached in the courtyard. They told deceased Kishanlal that they would not permit him to take his she-buffallows from their field and asked as to why deceased made a complaint in Tehsil/Revenue Court. They also threatened to eliminate him. While saying all these, appellants Madan and Kamal caught hold both the hands of Kishanlal and threw him near the wall, thereafter assaulted him by lathi. Sampatbai, wife of deceased Kishanlal (PW-2) cried for help. She and her daughter Premlata (PW-1) tried to save deceased but both were assaulted by lathi. Umraobai (PW-3) was assaulted by the deceased accused Jalu @ Jalamsingh when she tried to rescue the deceased. Babulal (PW-7) after hearing the cry reached over there and he was also assaulted by accused persons. When Ramsingh (PW-8) and Preamsingh (PW-9) arrived, appellants fled away. The deceased fell unconscious and died on the way to police station. Premlata (PW-1), Sampatbai, Umraobai, Babulal, Preamsingh

alongwith village Chowkidar Anarsingh reached at the police station at 4.00 a.m. and lodged the report (Ex.P-1) which was recorded by SHO (PW-12) Nandlal. The injured persons were sent for medical examination and treatment. Their medical reports are Ex.P-24 to P-28. After preparation of inquest report (Ex.P-11) dead body of Kishanlal was sent to hospital and postmortem was conducted by Dr. A.S. Rana (PW-13) who issued postmortem report (Ex.P-29). Investigating Officer prepared spot map (Ex.P-2) and also effected seizure of blood stained earth, controller earth, pieces of sticks vide Ex.P-3 from the spot. Through seizure memo (Ex.P-4) pieces of bangles, pieces of glass of watch and roof tiles were seized. Patvari Govindram (PW-6) prepared the spot map (Ex.P-10). After arrest, on disclosure statement of the accused persons lathis were seized and seized articles were sent with covering letter (Ex.P-23) to FSL, Sagar. Dr. Rana also gave report (Ex.P-30) after examination of lathis seized from the accused persons. On completion of the investigation charge sheet was filed before the learned JMFC, Sanwer against the appellants and deceased accused Jalu @ Jalam and juvenile accused Jeevan was produced and charge sheeted before the juvenile Court as directed by the trial Court because he was found below 16 years of age. During the course of trial, accused Jalu @ Jalamsingh died, therefore, case against him was closed.

The appellants denied the charges and pleaded innocence. They examined three witnesses in defence whereas prosecution examined 15 witnesses and adduced 31 documents in evidence. The trial Court found the appellants guilty, convicted them as aforesaid.

Before the High Court the stand taken was to the exercise of the right of private defence. It was pointed out that the deceased and prosecution witnesses were aggressors. In any event, when the appellants had assaulted, then in right of private defence they are entitled to get the benefit of exception in terms of Sections 96 and 97 IPC. The High Court turned down the stand and upheld the conviction.”

4. In support of the appeal, learned counsel for the appellants submitted that most of the injuries were on non vital parts. It has been established that injuries have been sustained by the appellants in the same incident. The High Court had exercised the appellate power under Section 386 (b) (ii) of the *Code of Criminal Procedure, 1973* (in short the 'Code') and had altered the finding of the trial Court in para 27 that the appellants were injured in the same incident in which the deceased and injured witnesses were assaulted and it was held that as per own saying by the defence the appellants sustained injuries at the house of the appellant-Kamal. In essence, it was pointed out that the trial Court and the High Court should have accepted the plea of exercise of right of private defence.

5. Learned counsel for the respondent-State on the other hand submitted that there was injury on the head though there was no fracture and the rest were on non vital parts of the body. Nevertheless, even according to own saying of the accused appellants, there was no question of exercise of right of private defence.

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 IPC lays down the limits of the right of private defence. Sections 96 and 98 IPC 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 IPC. 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, Chhattisgarh*², and *Sucha Singh and Anr. v. State of Punjab*³ and *Raj Pal and Ors. v. The State of Haryana*⁴).

9. The High Court observed that according to the appellants incident occurred in two difference places in difference phases and in the incident of assault to the deceased and the witnesses they were not present and they sustained injuries caused by the deceased and some of the injured witnesses at the house of Kamal. The High Court has in part accepted the stand of the appellants that they were exercising the right of private defence, but at the same time the evidence also shows that the appellants committed criminal trespass. Therefore, they cannot claim the benefit of exception of having acted in exercise of right of private defence.

10. On a combined reading of the judgments of the trial Court and the High Court it is clear that the evidence is to the effect that the accused appellants were upto some stage exercising the right to protect and defend their properties. But thereafter they exceeded the right. Therefore, this appears to be a case where instead of convicting the appellants under Section

302 IPC it would be proper to convict the appellants for offence punishable under Section 304 Part I, IPC. Custodial sentence of 10 years would meet the ends of justice.

11. The appeal is allowed to the aforesaid extent.

¹(AIR 1963 SC 612)

²(2003 (2) SCC 661)

³(2003 (7) SCC 643)

⁴(2006 (9) SCC 678)