

SUPREME COURT OF INDIA

A. Maharaja

Vs.

State of Tamil Nadu

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

14.11.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court upholding the conviction of the appellant for offences punishable under Section 302 of the *Indian Penal Code, 1860* (in short 'the IPC') and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- with default stipulations, as recorded by the Principal Sessions Judge, Madurai, in S.C. No.189 of 2005.

3. The prosecution version, in a nutshell, is as follows.

“PW-1 is the wife of PW-4. The accused and PW-4 are the sons of Alagu Ambalam (hereinafter referred to as the `deceased'). PW-2 is the son of PW-1. Alagu Ambalam had certain immovable properties which he partitioned 10 years before the occurrence, and he regained a piece of land namely 10 cents, which is a poramboke, for his livelihood. The accused was insisting him to give that land also. There arose a civil dispute between them. It also ended in favour of Alagu Ambalam. On the day of occurrence i.e, 26.05.2003 at about 7.00 A.M., PW-1 was going to the garden to pluck vegetables. At that time, her father-in-law, the said Alagu Ambalam, was cutting Karuvela trees. He was having a spade and aruval in hand. At that time, the accused came there and questioned how he could cut the trees, and following the same, there was a wordy duel. Immediately, the accused snatched the aruval and cut him on the neck and shoulder indiscriminately. PW-1 on seeing this, raised alarm, and immediately, the accused fled away from the place of occurrence. The said Alagu Ambalam met his instantaneous death. PW-1 proceeded to the Police Station, where, the sub- Inspector of Police (PW-11), was present. PW-1 gave a report (Ex.P1), on the strength of which a case came to be registered in Crime No.81/2003 under Section 302 IPC. The first information report, Ex.P-12, along with Ex.P1 was despatched to the Magistrates' Court.

The Inspector of Police (PW-12), on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared an observation mahazar, Ex.P-4, and a rough sketch, Ex.P-13. Then, he conducted inquest on the dead body of Alagu Ambalam in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P-14. The dead body was sent to the Government Hospital along with a requisition, Ex.P-2, for the purpose of autopsy.

The Assistant Surgeon (PW-6), attached to the Government Hospital, Melur, on receipt of the said requisition, conducted autopsy on the dead body of Alagu Ambalam and found 7 cut injuries. The doctor gave a post- mortem certificate, Ex.P-3, with her opinion that the deceased would appear to have died of hemorrhage and shock due to injuries to major vessels.

Pending the investigation, the Investigating Officer arrested the accused on 27.05.2003. He volunteered to give a confessional statement, which was recorded by the Investigator. The admissible part of the confession was marked as Ex. P-6, pursuant to which he produced M.O.-1, aruval and M.O.-4, Shirt, which have been recovered under a mahazar, Ex.P-7. The accused was sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body and M.Os. 1 and 4, recovered from the accused, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in two reports namely Ex.P-10, the Chemical Analyst's report and Ex.P-11, the Serologist's report.

On completion of investigation, the Investigator filed the final report. Charges were framed. The accused pleaded innocence. Twelve witnesses were examined to further the prosecution version. The accused, in his examination under Section 313 of the Code of Criminal Procedure, 1908 (in short 'the Code') submitted that he has been falsely implicated and in any event, there was a wordy duel before the occurrence in which the appellant had purportedly snatched the weapon from the hands of the deceased and, therefore, Section 302 IPC has no application. The Trial Court did not accept the plea and placing reliance on the evidence of the eye-witnesses, PWs-1 and 2, recorded the conviction and sentence, as noted above.”

4. The plea taken before the Trial Court was reiterated by the accused persons before the High Court. By the impugned judgment, the High Court did not find any substance in the plea and dismissed the appeal.
5. The stand before the High Court was reiterated by learned counsel for the appellant.
6. The substantive plea relates to the applicability of Exception 4 of Section 300 IPC.
7. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

8. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to do deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

9. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In *Kikar Singh v. State of Rajasthan*¹ it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage.

10. These aspects have been recently highlighted in *Iqbal Singh v. State of Punjab*².

11. From the background facts as considered in the light of the evidence, the inevitable conclusion is that the occurrence took place in course of sudden quarrel. Therefore, Exception 4 to Section 300 IPC applies. The appropriate conviction would be under Section 304 Part-I IPC. Custodial sentence of 10 years would meet the ends of justice.

12. The appeal is allowed to the aforesaid extent.

¹(AIR 1993 SC 2426)

²(2008 911) SCALE 599)