SUPREME COURT OF INDIA

Santokh Singh

Vs.

State of Punjab

Crl.A.No.285 of 2009

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

12.02.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the appellant who was convicted for offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') alongwith the appellant, his wife Gurjit Kaur was tried but she was acquitted by the trial court.

3. Prosecution version in nutshell is as follows:

> "Makhan Singh son of Mangal Singh had three sons, namely, Gopal Singh, Joginder Singh and Santokh Singh, the last indicated being the youngest of the trio and-presently appellant before this Court. He retired from the Army in the rank of a Major few years ago and was Amritsar based thereafter, while his two other brothers, namely, Gopal Singh and Joginder Singh reside in the village to look after their agricultural holding. Makhan Singh had given his agricultural holding to his three sons in equal shares, though they have a joint account inter-se. Initially, there indeed was some problem between them which was sorted out with the intervention of respectables of the village. Appellant Santokh Singh was given land near his tubewell. That land is situated towards the land owned by Gurdip Singh (hereinafter referred to as the `deceased'). On 22.6.1996, informant-Gurdial Singh was proceeding towards his tubewell when he spotted the appellant ploughing the land under reference by a tractor which he had taken on hire from Ladi son of Gurmeet Singh. Gurdip Singh came over there and forbade appellant Santokh Singh from ploughing that land which he claimed to be his. In the light of that conversation, Ladi took away his tractor towards the village. It was followed by a scuffle between Santokh Singh appellant and Gurdip Singh. After they had been separated, Gurdip Singh came home, took his tractor to the land and started ploughing it. Gurdial Singh watched Gurdip Singh

ploughing while standing on the track. Then, appellant Santokh Singh along with his wife Gurjit Kaur appeared on the scene and told Gurdip Singh to desist from ploughing that land. The appellant, in the meanwhile, took out his pistol and fired a shot at Gurdip Singh, while the latter was in the process of getting down from the tractor. The shot fired by the appellant felled Gurdip Singh on the ground. In the meantime, Satnam Singh, a brother of Gurdip Singh, came from the village and caught hold of the appellant from latter's rear side. In the meantime, Gurdial Singh also raised a raula. Satnam Singh, with a view to disable the appellant from firing another shot, twisted latter's right arm. During the period the arm stood twisted towards his rear side, Santokh Singh kept on firing and one of the shots hit him on the right side of hip bone and the ribs. He, too fell down upon the ground and handed over his pistol to Gurdial Singh. In order to ensure that there was no further blood shed, Gurdial Singh fired shots in the air in order to ensure that the revolver did not stay loaded. Thereafter, Gurdial Singh and Joginder Singh transported Gurdip Singh to Guru Nanak Dev Hospital, Amritsar, where the latter was initially hospitalized. While notifying the offence to the police on 23.6.1996, Gurdial Singh (informant) handed over one 32 bore pistol (which had earlier been given to him by appellant Santokh Singh) and six empty cartridges of 32 bore to the police. Gurdip Singh succumbed to the injuries on 24.6.1996. Investigation was undertaken, and on completion thereof chargesheet was filed. As accused abjured guilt trial was held.

The prosecution presentation is, thus, to the effect that it was the appellant who fired the fatal shot at deceased Gurdip Singh. The prosecution version was testified on oath at the trial by HC Surain Singh (PW 1), Dr-. Kulwant Singh (PW 2), Dr. Gurmanjit Rai (PW 3), Gurdial Singh (PW 4), Dr. Vijay Kumar Sethi (PW 5), Joginder Singh (PW 6), Satnam Singh (PW 7), Jagjit Singh Patwari (PW 8), ASI Jagdev Singh (PW 9), Reserver Inspector Ragllbir Singh (PW 10), HC Baljinder Singh (PW l0A), C. Kashmir Singh (PW 11), ASI Santokh Singh (PW 12), Constable Rajinder Kumar (PW 13) and Constable Dharam Singh (PW 12).

The trial court found the accused appellant guilty while directing acquittal of the co-accused. Trial court placed reliance on the evidence of Gurdial Singh (PW4) who was the eye witness. Joginder Singh (PW6) reached the spot immediately after the occurrence and saw the deceased lying on the ground. Satnam Singh (PW7) had witnessed the occurrence and tried to avert further bloodshed by taking the appellant in his grip and by twisting his right arm. It was his case that while he was trying to do so accused started continued firing. The trial court relied on the evidence of prosecution version and as noted above found the accused guilty. It did not accept the plea of the appellant that the accused was acting the exercise of right of private defence. Before the High Court, the appellant took the plea of right of private defence which was rejected. It did not find any substance in the plea that the land in question was in the possession of the appellant."

4. In support of the appeal learned counsel for the appellant submitted that the evidence of the patwari clearly show that the appellant was in possession of the land and the conclusions

of the High Court was contrary to the evidence. It was also submitted that when the right of private defence was pleaded and established, the trial court and the High Court ought not to have directed conviction.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court and the High Court.

6. So far as the question of possession is concerned the High Court has found that the entry made in the name of Makhan Singh and Gurdip Singh was unauthorisedly done.

7. That being so there is no substance in the plea of the appellant that he was in possession. Alternative plea related to exercise of right of private defence and in the alternative that the occurrence took place in the course of sudden quarrel and Section 302 has no application.

8. 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 so caused on the accused probabilises 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 creditworthy, 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*[1]]. 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.

9. 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 to 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*[2], 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.

10. The above position was highlighted in *Rizan and Another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhatttisgarh*[3], *and Sucha Singh and Anr. v. State of Punjab*[4].

11. Merely because there was a quarrel and some of the accused persons 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 persons have been rightly discarded.

12. As rightly observed by the trial court and the High Court there was no question of exercise of right of private defence as claimed by the appellant.

13. 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.

14. 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 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'."

15. 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*[5] 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.

16. Considering the background facts it is clear that the appellant cannot be said to have exercise the right of private defence. However, there is substance in the plea that the occurrence took place in the course of a sudden quarrel. That being so the conviction is altered from Section 302 IPC to 304 Part I IPC, custodial sentence of ten years would meet the ends of justice.

17. The appeal is allowed to the aforesaid extent.

[1]*(AIR 1976 SC 2263)*
[2]*(AIR 1963 SC 612)*
[3]*(2003 (2) SCC 661)*
[4]*(2003 (7) SCC 643)*
[5]*(AIR 1993 SC 2426)*