SUPREME COURT OF INDIA

Ranjitham

Vs.

Basavaraj & Ors.

Crl.A.No.1453 of 2005

(Aftab Alam and Ranjana Prakash Desai,JJ.,)

28.11.2011

JUDGMENT

Ranjana Prakash Desai,J.,

1. These two appeals, by special leave, can be disposed of by a common judgment as they challenge the judgment and order dated 14/3/2005 passed by the Madras High Court in Criminal Appeal No.130 of 1997 filed by Swami Kannu, Basavaraj, Kumaran, Kanagaraj and Gnanapazham (original accused 1 to 5 respectively) who are hereinafter referred to as "A1" to "A5" respectively for convenience.

2. In Sessions Case No. 151 of 1993, A1 to A5 were charged for offence punishable under Section 147 of the IPC. A2 and A4 were charged for offence punishable under Section 148 of the IPC. A2 to A5 were charged for offence punishable under Section 341 of the IPC. A1 was charged for offence punishable under Section 149 read with Section 341, offence punishable under Section 109 read with section 324 and offence punishable under Section 109 read with Section 302 of the IPC. A4 was charged for offence punishable under Section 324 of the IPC. A2, A3 and A5 were charged for offence punishable under Section 149 read with Section 324 of the IPC. A2, A3 and A5 were charged for offence punishable under Section 323 of the IPC. A2 was charged for offence punishable under Section 302 of the IPC. A3, A4 and A5 were charged for offence punishable under Section 149 read with Section 302 of the IPC.

3. The case of the prosecution needs to be narrated in brief.

4. A2 to A5 are the sons of A1. PW-1 Pandurangan is the younger brother of deceased Ranganathan, who was a former Member of Legislative Assembly. He was a member of ADMK political party. He used to, inter alia, run a rice mill. A1 to A5 were residing at Dharmapuri while the deceased was a resident of Madhikonpalayam Village. The relations between the accused and the deceased were strained.

5. On 11/11/1992 at about 7.30 p.m. PW-1 Pandurangan, PW-4 Jabbar and one Nanjappan were sitting near a bus stop at Dharmapuri. The deceased was also present. On seeing A2, the deceased asked PW-1 to go and collect donation for organizing a meeting at Dharmapuri in connection with the visit of a Minister. A2 refused to pay the amount and made some disparaging remarks about the deceased. The deceased got annoyed and told him that if he is not willing to pay donation he may not pay but he should not make such comments. A2 persisted in making comments and told the deceased that he will finish him one day. PW-1 intervened in the quarrel. Thereafter, the deceased and PW-1 got into a car and went to Madhikonpalayam. They alighted near the rice mill. They were discussing about the ensuing marriage of PW-1's son. At about 1.15 p.m. PW-1 came out of the rice mill and saw A1 to A5 coming from the east. On seeing PW-1, A2 to A5 held his hands and A1 instigated others to kill him. A4 beat PW-1 with a cycle chain on his head, back of chest and left side of the wrist. The others beat him with hands. PW-1 raised alarm. The deceased came out of the rice mill and intervened. A1 instigated his sons to kill him. Thereafter A3 to A5 held the hands of the deceased and A2 stabbed the deceased on the left side of his chest. The deceased fell down and all the accused ran away. PW-1 to PW-3 and PW-

5 rushed to the place and removed the deceased to the Government Hospital Dharmapuri where he was declared dead. PW-1 then went to Dharmapuri Police Station and lodged his FIR (Ex.P-1). A2 was arrested on 19/11/1992. A3 was arrested on 20/11/1992. The other accused surrendered. After completion of the investigation the accused were charged as aforesaid.

6. In support of its case, the prosecution examined as many as 21 witnesses. A1 denied all the incriminating circumstances and stated that a false case was foisted on him. Version of A2 as evident from his statement under Section 313 of the Code of Criminal Procedure (for short, "the Code"), is important and needs to be stated. He admitted that there was a dispute between his family and the family of the deceased. The deceased and A1 belonged to different political parties. According to him, PW-1 did not ask for any donation from A2. Donation was asked by a candidate from the political party to which the deceased belonged and A2 made a remark that the amount, which has already been collected, can be utilized for the meeting and the deceased should not use such tactics. On 11/11/1992 the situation in Madhikonpalayam village was tense. When he was going to his father's house he learnt that he and his family members were going to be beaten up by persons belonging to the deceased's political party and that at 9.30 p.m. they are going to burn tyres and throw them on their rice mill. He, therefore, asked his father and other members of his family to leave the house and take shelter at a different place. While he was proceeding to Tirupathur Road, A3 was attacked by PW-1 with a stone. A3 ran away from the place. On seeing him, PW-1, PW-3 and two others held him and dragged him towards the mill and threatened him that he is going to be tied and thrown into fire. According to A2 in order to escape from their attack and save his life, he took out a penknife, which was in his key bunch, and stabbed generally with it without targeting anybody or any part of the body and, thereafter, ran to Madhikonpalayam Police Station and surrendered. A3 was at the Police Station. A complaint was given to the Police Officer about the burning of his rice mill but the Police Officer did not record the said complaint. He also stated that the henchmen of the deceased damaged

their properties, but the police did not take any action against them because they belonged to a particular political party. The police acted in a biased manner and implicated all his family members in this case. He denied that A1 instigated A4 to beat PW-1 with a cycle chain. He did not handover knife (M.O.-1) to the police. A3 filed a written statement and took a similar stand.

7. The trial court held A1 to A5 guilty under Section 147 of the IPC and sentenced each one of them to simple imprisonment for one year. A1 was found guilty under Section 302 read with Section 109 of the IPC and sentenced to life imprisonment. A2 was found guilty under Section 148 of the IPC and sentenced to 18 months simple imprisonment. A2 was found guilty under Section 302 of the IPC and sentenced to life imprisonment. A2, A3 and A5 were found guilty under Section 341 of the IPC. Each one of them was sentenced to 2 weeks simple imprisonment. A3, A4 and A5 were found guilty under Section 302 read with Section 149 of the IPC and each one of them was sentenced to life imprisonment. A1 was found not guilty of offence punishable under Section 341 read with Section 149 of the IPC and Section 324 read with Section 109 of the IPC. He was acquitted of the said charges. A2, A3 and A5 were held not guilty of offences punishable under Section 324 read with Section 149 and Section 323 read with Section 34 of the IPC. They were acquitted of the said charges. A4 was found not guilty of the charge under Section 148 and 324 of the IPC, he was acquitted of the said charge. The substantive sentences were directed to run concurrently.

8. The High Court acquitted A2 holding that A2 had stabbed the deceased in exercise of his right of private defence. The High Court further held that since A2 had stabbed the deceased in exercise of his right of private defence, there was no question of the other accused instigating him to stab the deceased. The High Court acquitted all the other accused.

9. Criminal Appeal No.1700 of 2005 is filed by the State of Tamil Nadu and Criminal Appeal No.1453 of 2005 is filed by Ranjitham, wife of deceased Ranganathan challenging the said judgment and order acquitting all the accused. During the pendency of these appeals A1 (Swami Kannu) has died. As against him the appeals have abated.

10. Counsel for the appellants vehemently contended that the impugned order is perverse. Counsel submitted that the High Court was wrong in accepting the argument that A2 attacked the deceased in exercise of his right of private defence. Counsel submitted that it is the accused who were the aggressors and, therefore, plea of private defence could not have been raised by them. Counsel submitted that the High Court did not take note of the unassailable findings of trial court. Counsel submitted that there is cogent and adequate evidence of eye-witnesses which has been overlooked and, therefore, it is necessary to set aside the impugned judgment and order.

11. Counsel for the accused, on the other hand, submitted that substantial part of the prosecution story is disbelieved by the trial court. This being an appeal against order of acquittal, this Court should be slow in disturbing the order of acquittal. Counsel submitted that the evidence on record clearly establishes the theory of right of private defence and, hence, the appeals deserve to be dismissed. Counsel submitted that, in any event, so far as A2

is concerned, intention to kill the deceased cannot be attributed to him. He could be convicted only under Section 304 Part II of the IPC.

12. We are dealing with an appeal against acquittal. We are mindful of the principles laid down by this Court through a long line of judgments which guide a court dealing with an appeal against an order of acquittal. Unless it appears to us that the impugned judgment is perverse, we cannot interfere with it. If the view taken by the court acquitting the accused is a reasonably possible view, we cannot disturb it because the presumption of innocence of the accused is strengthened by the order of acquittal. If two views are possible on appreciating the evidence and if the view taken by the acquitting court is a reasonably possible view we cannot substitute it by the other view just because it appears to us to be a possible view. Keeping these well established principles in mind we shall approach this case.

13. The strained relationship between the family of the deceased and the complainant's family, is admitted. They are related to each other. It is also apparent from the evidence on record that the deceased belonged to ADMK political party and the complainant's family belonged to the rival political party. In fact, the incident in question is preceded by some discussion about collection of donation for the expenses of the proposed meeting of a Minister.

14. That the deceased was stabbed by A2 is admitted. A2 has taken up the defence of right of private defence. In several decisions, this court has considered the nature of this right. Right of private defence cannot be weighed in a golden scale and even in absence of physical injury, in a given case, such a right may be upheld by the court provided there is reasonable apprehension to life or reasonable apprehension of a grievous hurt to a person. It is well settled that the onus of proof on the accused as to exercise of right of private defence is not as heavy as on the prosecution to prove guilt of the accused and it is sufficient for him to prove the defence on the touchstone of preponderance of probabilities (See *Sat Narain v. State of H aryana* [1]) . *In V Subramani & Anr. v. State of Tamil N adu* [2] , this Court examined the nature of this right. This court held that whether a person legitimately acted in exercise of his right of private defence is a question of fact to be determined on the facts and circumstances of each case. In a given case it is open to the Court to consider such a plea even if the accused has not taken it, but the surrounding circumstances establish that it was available to him. The burden is on the accused to establish his plea. The burden is discharged by showing preponderance of probabilities in favour of that plea. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

15. Whether A2 stabbed the deceased in exercise of his right of private defence will have to be considered in the light of the above principles. The High Court while holding that A2 exercised his right of private defence, accepted A2's explanation that A2 had to stab the deceased because his properties were destroyed and henchmen of the deceased dragged him with a view to tying him and throwing him into the fire. The High Court has also observed that PW-19 Inspector Selvaraj has admitted that during the incident, rice mill of A2, home of

A1 and property of A3 were burnt and though he received information about the said incident at 3.30 a.m. on 12/9/1992, he did not register the complaint. The High Court also noted that PW-16 Dr. Asokan has, after examining A3, stated that he had found that A3 had sustained an injury. This injury, which was caused during the course of the same incident, has not been explained by the prosecution. The High Court, therefore, concluded that A2 had reasonable apprehension that death or grievous hurt will be the consequence of the acts of the deceased and his people and, therefore, he stabbed the deceased in exercise of his right of private defence. It is not possible for us to concur with the High Court on this issue.

16. PW-1 has stated in his evidence that the incident occurred near their rice mill. There is no challenge to this statement. PW-19 Selvaraj, the Investigating Officer has been cross-examined at length but no suggestion is put to him that the incident of stabbing did not take place near the rice mill of the deceased. Thus, it is clear that the accused had gone to the rice mill of the deceased. It is also pertinent to note that as per certificate (Exh.13) issued by PW-14 Dr. Ramakrishnan, PW-1 had received simple injuries.

17. To establish the right of private defence, the accused have not laid any evidence. We have narrated, in detail, the gist of A2's statement under Section 313 of the Code. Defence of A3 is also on similar lines. In short, A2's case is that prosecution witnesses were aggressors. According to him the atmosphere in the village was tense and there was a threat that the rice mill and properties of the accused would be set on fire by throwing burning tyres on them and, in fact, the properties of the accused were set on fire. The police adopted a partisan approach. They did not register the complaint. It is further stated by A2 that while he was approaching Tirupathur Road, A3 received a stone injury. He ran away. On seeing A2, PW-1, PW-3 and others dragged him towards the mill and threatened him that he is going to be tied and thrown into fire and, therefore, in order to escape from the attack he stabbed with a penknife without targeting anybody. But the evidence on record does not probabalise the defence version that the burning of the properties of the accused was done before A2 stabbed the deceased. PW-19 Inspector Selvaraj has stated that he came to know at 3.30 a.m. on 12/11/1992 that the rice mill and he properties of the accused were burnt. It is pertinent to note that as per FIR (Annexure P-1) recorded on 12/11/1992, the incident took place at 10.15 p.m. on 11/11/1992. It is not clear as to when exactly the burning of properties of the accused took place. It is possible, therefore, that the said incident was a reaction to the murder of Ranganathan, the deceased. There is, however, some substance in the contention of counsel for the accused that the police did not promptly register the complaint of the accused that their properties were burnt. This is supported by the evidence of PW-18 S.I. Thangaraj and PW-19 Inspector Selvaraj. We record our dissatisfaction about this inaction of the police. But, this does not lead us to conclude that there was imminent threat to the properties of the accused when the stabbing incident took place.

18. It is true that A3 received injury during the course of this incident. But, according to PW-16 Dr. Asokan, it was a simple injury. Its non-explanation by the prosecution, in the facts of this case, does not have any adverse impact on the prosecution case. The fact that the accused had gone to the rice mill of the deceased is a circumstance which needs to be taken into account while considering the plea of right of private defence and it makes an irreparable

dent in the said plea. The High Court was, therefore, clearly in error in drawing an inference that A2 stabbed the deceased in exercise of his right of private defence. It is not possible for us to concur with this finding of the High Court. In our opinion, to this extent, the High Court's finding is perverse and needs to be set aside.

19. What needs to be decided now is what offence has A2 committed. A2 has inflicted one stab wound on the deceased with a penknife after an altercation between the two sides. The blow landed on the chest, a vital part of the body of the deceased. The question is whether A2 is guilty of murder or culpable homicide not amounting to murder.

20. In *H ari Ram vs. State of Haryana* [3] , there was an altercation between the appellant and the deceased. The appellant had remarked that the deceased must be beaten to make him behave. He thereafter ran inside the house, brought out a jelly and thrust it into the chest of the deceased. This Court observed that in the heat of altercation between the deceased on the one hand, and the appellant and his comrades on the other, the appellant seized a jelly and thrust it into the chest of the deceased. This was preceded by his remark that the deceased must be beaten to make him behave. Therefore, it does not appear that there was any intention to kill the deceased. This Court, therefore, set aside the conviction of the appellant under Section 302 of the IPC and instead convicted him under Section 304 Part II of the IPC and sentenced him to suffer rigorous imprisonment for five years.

21. In *J agtar Singh vs. State of Punjab* [4] , in a trivial quarrel the appellant wielded a weapon like a knife and landed a blow on the chest of the deceased. This Court observed that the quarrel had taken place on the spur of the moment. There was exchange of abuses. At that time, the appellant gave a blow with a knife which landed on the chest of the deceased and therefore, it was permissible to draw an inference that the appellant could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death but since there was no premeditation, no intention could be imputed to him to cause death. This Court, therefore, convicted the appellant under Section 304 Part II of the IPC instead of Section 302 of the IPC and sentenced him to suffer rigorous imprisonment for five years.

22. In *H em Raj v. The State (Delhi Administration)* [5] , the appellant and the deceased had suddenly grappled with each other and the entire occurrence was over within a minute. During the course of the sudden quarrel, the appellant dealt a single stab which unfortunately landed on the chest of the deceased resulting in his death. This Court observed that as the totality of the established facts and circumstances show that the occurrence had happened most unexpectedly, in a sudden quarrel and without premeditation during the course of which the appellant caused a solitary injury to the deceased, he could not be imputed with the intention to cause death of the deceased, though knowledge that he was likely to cause an injury which is likely to cause death could be imputed to him. This Court, therefore, set aside the conviction under Section 302 of the IPC and convicted the appellant under Section 304 Part II of the IPC and sentenced him to undergo rigorous imprisonment for seven years.

23. In V. Subramani, there was some dispute over grazing of buffaloes. Thereafter, there was altercation between the accused and the deceased. The accused dealt a single blow with a wooden yoke on the deceased. Altering the conviction from Section 302 of the IPC to Section 304 Part II of the IPC, this Court clarified that it cannot be laid down as a rule of universal application that whenever death occurs on account of a single blow, Section 302 of the IPC is ruled out. The fact situation has to be considered in each case. Thus, the part of the body on which the blow was dealt, the nature of the injury and the type of the weapon used will not always be determinative as to whether an accused is guilty of murder or culpable homicide not amounting to murder. The events which precede the incident will also have a bearing on the issue whether the act by which death was caused was done with an intention of causing death or knowledge that it is likely to cause death but without intention to cause death. It is the totality of circumstances which will decide the nature of the offence.

24. The deceased received a single stab injury. PW-15 Dr. Subramani, who did the postmortem has described the said injury as a stab injury seen at the left chest, that is, junction of second rib bone and chest bone. On internal examination, he found that the injury had gone inside the left chest through the lungs into the heart. Undoubtedly, the injury was serious and on a vital part of the body, but it was caused by a penknife, which was in key bunch of the accused. A key bunch is carried by a person in routine course and a penknife is used for odd jobs, which a person may be required to do during the course of the day. It is not possible for us to say, in the facts of this case, that A2 had carried the penknife which was in his key bunch to stab the deceased. The background of this case also needs to be kept in mind. This case appears to have political overtones. The accused and the deceased belonged to different political parties. Admittedly, there was enmity between the two sides. There had been an altercation between the deceased and PW-1 on the one hand and the accused on the other hand. PW-1 had, at the instance of the deceased, asked for donation from A2 and A2 is stated to have made some disparaging remarks. The situation in the village was tense. The accused had then gone to the rice mill of the deceased. There again, there was an altercation between the two sides. The circumstances on record clearly indicate that A2 stabbed the deceased without premeditation, in a sudden fight in the heat of passion. His case falls in Explanation 4 to Section 300 of the IPC. A2 knew that the act by which the death was caused was likely to cause death but it appears to us that he had no intention to cause death. In the light of the abovementioned judgments of this court, this in our opinion, is a fit case where A2-Basavaraj should be convicted for the offence of culpable homicide not amounting to murder and should be sentenced for five years rigorous imprisonment under Section 304 Part II of the IPC. Needless to say that he must be given set off for the period already undergone by him.

25. So far as A1, A3, A4 and A5 are concerned, we are, however, of the view that the High Court was right in acquitting them. PW-1, PW-2 and PW-3 are eye-witnesses. PW-1 has stated that A4 had levelled attack on his head, back and chest with a cycle chain. The cycle chain is not recovered. PW-14 Dr. Ramakrishnan, who has examined him has stated that the injuries suffered by PW-1 were simple injuries. PW-14 Dr. Ramakrishnan has further stated that if the injuries suffered by PW-1 were caused by a cycle chain, they would have caused imprint and he had not found any imprint injuries on PW-1's body. So far as PW-2 is

concerned, he has rightly been disbelieved by the trial court because his name is not mentioned in the FIR and the evidence of PW-1 and PW-3 do not establish his presence.
PW-3 has given a version similar to that of PW-1. It is pertinent to note that though PW-1 has stated that his clothes were stained with blood, no such clothes were recovered. All this leads us to conclude that the prosecution story narrated by PW-1, PW-2 and PW-3 about the use of cycle chain to beat PW-1 has rightly been disbelieved by the trial court. A4 is, therefore, acquitted of charge under Section 324 of the IPC. Since charge against A4 that he had attacked PW-1 with cycle chain has failed, the trial court has acquitted A1 of the charge that he had instigated A4 to attack PW-1 with a cycle chain. Consequently A2, A3 and A5 have also been acquitted of offence under Section 324 read with Section 149 of the IPC in respect of the alleged cycle chain attack on PW-1. It is observed that they had no intention to attack PW-1 with a cycle chain. The evidence on record clearly establishes that only A2 had a penknife in his key bunch. The other accused did not have any weapon with them. The trial court has observed that the medical evidence does not bear out the story that A2, A3, A5 had attacked PW-1 with hands. Eye-witnesses have also not stated so. Therefore, A2, A3 and A5 have been acquitted of the charge under Section 323 read with Section 34 of the IPC. The trial court has held that A1 had no intention to wrongfully confine PW-1. He is, therefore, acquitted of charge under Section 341 read with Section 149 of the IPC. Having considered the evidence on record in depth, we are of the considered opinion that so far as A1, A3, A4 and A5 are concerned, the substratum of the prosecution story has given way. To hold them guilty for the stabbing of the deceased with the aid of Section 149 or to hold them guilty of murder with the aid of Section 109 after setting aside their order of acquittal, in our opinion, would not be proper because there is nothing perverse about the High Court's order so far as their acquittal is concerned. In the result, we pass the following order:

26. A2-Basavaraj is convicted for culpable homicide not amounting to murder punishable under Section 304, Part II of the IPC. For the said offence, he is sentenced to suffer rigorous imprisonment for five years. Learned First Additional District Judge and Chief Judicial Magistrate, Dharmapuri at Krishnagiri is directed to ascertain whether A2-Basavaraj has undergone any sentence. If he has already undergone five years' sentence, then it is not necessary to arrest him. If he has undergone less than five years' sentence, then he is directed to be taken in custody so that he serves rest of the sentence. If he has undergone any sentence, he is directed to be given set off for the same. In that case, after completion of the sentence, he is directed to be released from custody unless he is required in any other case.

27. Appeals are partly allowed in the aforestated terms.

Judgment

[1]*(2009) 17 SCC 0141*
[2]*(2005) 10 SCC 0358*
[3]*(1983) 1 SCC 0193*
[4]*(1983) 2 SCC 0342*
[5]*(1990) Suppl. SCC 0291*