UDAYKUMAR PANDHARINATH JADHAV @ MUNNA A

v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 255 of 2006)

APRIL 29, 2008 B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal code, 1860 – s. 304 (Part I) – Murder – Two eye-witnesses – One of the eye-witnesses stating that deceased first attacked the accused – Accused taking the plea of private C *defence – Courts below convicting the accused u/s 302 – On appeal, held: Plea of private defence is available to the accused – However, he exceeded the right of private defence – Hence conviction altered to one u/s 304 (Part I).*

Appellant-accused was prosecuted u/s 302 IPC for D **causing death of a person. The incident was seen by two eye-witnesses. One of the eye-witnesses in his cross-examination stated that the deceased had first attacked the accused with a knife. Accused also took the defence that he caused the injuries to the deceased in exercise of** E **his private defence. Trial Court as well as High Court convicted the accused. Hence the present appeal.**

Partly allowing the appeal, the Court

HELD: 1.1 The case against the accused is proved F **by the evidence of the eye-witnesses whose presence cannot be doubted and in addition, the fact that the accused had caused the injuries, has also been admitted though he has pleaded the right of private defence. [Para 2] [191-F, G]** G

1.2 The plea of private defence is available to the appellant though it has not been specifically raised by him. PW-4 an eye-witness, in his cross-examination stated that the deceased had attacked the accused with knife.

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The Public Prosecutor did not challenge the correctness thereof in any manner. Thus the prosecution itself has accepted this statement as being true. It is well settled that in order to make out a case of private defence, the accused need not plead it in specific terms but if the circumstances justify an inference with regard to such a right, the Court must examine that possibility as well. [Para 4] [192-D, E]

1.3 From the evidence it is clear that the deceased was not only a karate expert but also armed with a knife and the appellant apprehended injury at his hands. At the best that can be said for the prosecution is that the appellant had exceeded the right of private defence. Therefore the appellant is acquitted of the charge under section 302 IPC and his conviction is modified to one under Section 304 (1) IPC in the background that the fatal injury caused on the chest had penetrated deep into the body. [Para 4] [192-G; 193-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.255/2006.

From the final Judgment and Order dated 1.8.2005 of the High Court of Judicature of Bombay Bench at Aurangabad in Criminal A. No. 130 of 1999.

A. Kanade and Aribam Gunseshwar Bharma for the Appellant.

Chinmoy Khaladkar and Ravindra Keshavrao for the Respondent.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal by way of special leave arises out of the following facts:

2. On 22.10.1997, at about 5 or 5.30 p.m., PW1 Rajesh, the first informant along with Santosh Supekar and Shivraj, deceased were standing and talking outside the house of

Santosh Supekar. While they were so involved, the appellant, Udaikumar, who was known to Rajesh, accompanied by an unknown person came there and holding Rajesh took him to the side saying that he had been summoned by one Ram Hallele. While going away Rajesh turned around in time to see that Shivraj was being stabbed by the appellant and while the victim was successful in warding off the first blow, the other blows stuck home. Rajesh thereupon rushed towards the house of one Babar Saheb and narrated the incident to him and information was conveyed by Babar Saheb to the police. The police reached the place shortly thereafter. In the meanwhile, Rajesh had returned to the scene and noticed that Shivraj was lying dead. ASI Jukte recorded the statement of Rajesh, Ex.19 and on the basis, a formal FIR was registered at the Police Station. The dead body was also despatched for the post-mortem. The ASI also recorded the statement of PW2 Sunita, sister of the deceased and PW4 Santosh. He also arrested the accused and on his interrogation, a knife was duly recovered. During the course of the trial, the appellant put up a defence that the injuries had been caused by him in the exercise of his right of private defence as the deceased who was an expert in karate had first attacked him and caused him an injury on the neck. He also stated that he had been able to disarm the deceased and had caused some injuries to him thereafter. In the course of the hearing before us, Mr. Kanade, the learned counsel for the appellant has first and foremost contended that the prosecution story was false and that the appellant had been roped in for some unknown reasons. We have gone through the entire evidence and are of the opinion that this argument has no merit as the case against the accused is proved by the evidence of the eye witnesses whose presence cannot be doubted and in addition the fact that the accused had caused the injuries, has also been admitted though he has pleaded the right of private defence. Mr. Kanade then fell back on the alternative argument that he had caused the injuries in his right of private defence

A B C D E F G H

A and therefore no case of murder could be spelt out.

3. Mr. Kanade's argument with regard to the right of private defence flows from the cross-examination of PW4 Santosh, an eye witness who deposed as under:

B "It is true that the deceased was a teacher of Karate. It is true that the knife was taken out by the deceased and there was scuffle between the accused and deceased. It is true that the deceased was held by his collar of the accused. It is true that the knife had fallen from the C hands of the deceased in the scuffle and the same was taken by the accused and the deceased was stabbed with it. It is true that first blow was inflicted on the thigh, second was on hand and the third one was on the chest."

D 4. It is significant that despite the fact that this statement had been made by Santosh in his cross-examination, the Public Prosecutor did not challenge the correctness thereof in any manner. In other words, it is clear that the prosecution itself has accepted this statement as being true. It is well settled that in E order to make out a case of private defence, the accused need not plead it in specific terms (as it would, indeed, be a very courageous accused who would come out and take the risk of admitting his presence) but if the circumstances justify an inference with regard to such a right, the Court must examine F that possibility as well. In this background, we are of the opinion that the plea of private defence is available to the appellant though it has not been specifically raised by him. The learned Government counsel has, however, pointed out that three injuries had been caused on the person of the deceased and as such G the complete exoneration on the plea of right of private defence was not available to the appellant. We observe from the evidence that the deceased was not only a karate expert but also armed with a knife and it is not surprising that the appellant apprehended injury at his hands. We are therefore of the opinion H that the best that can be said for the prosecution at this stage is

that the appellant had exceeded the right of private defence. A
We therefore partly allow the appeal, acquit the appellant of the charge under section 302 of the IPC and modify his conviction to one under Section 304 (Part 1) of the IPC in the background that the fatal injury caused on the chest had penetrated deep into the body. We also impose a sentence of 7 years rigorous B
imprisonment on the appellant; the other part of the sentence to remain as it is

K.K.T. Appeal partly allowed